

IBCC Colorado River Basin

1. **March 14, 2014 CBRT Minutes – Legislative update on proposed agriculture efficiency bill, Recap of Statewide Roundtable Summit, BIP Projects and Methods discussed**

1. **March 10, 2013, CBRT Minutes –**
2. **Upcoming Meeting: March 24, Glenwood Springs Comm Ctr, 12:00 – 4:00.**
 - a. March 11 – Garfield County Town Hall, GWS library, 6-8.
 - b. March 26 - Summit County Town Hall
 - c. March 27 - Eagle County Town Hall
 - d. April 15-17 – River Management Society Symposium in Denver
3. **Reporter: These minutes were prepared by Ken Ransford, Esq., CPA, 970-927-1200, kenransford@comcast.net.**
4. **CBRT Members Present:** Kim Albertson, Linda Bledsoe, Jacob Bornstein, Art Bowles, Lurline Underbrink Curran, Mark Fuller, Karl Hanlon, Mark Hermundstad, Hannah Holm, Diane Johnson, Wes Mauz, Mike McDill, Louis Meyer, Ken Neubecker, Ken Ransford, Rachel Richards, Mel Rettig, Steve Ryken, Lane Wyatt, Bob Zanella
5. **Guests:** Lauren Barent, concerned citizen, Linn Brooks-Eagle River Water Special District, Paul Bruchez rancher, Kimberly Bullen City of Rifle, Kate Burchenal Eagle County Watershed Council, Don Chaplin-Director/DARCA, Martha Cochran Aspen Valley Land Trust, Kathleen Curry Upper Gunnison Water Conservancy District, Angie Fowler-SGM, Brent Gardner Smith, Andrew Gilmore-Bureau of Reclamation, Hannah Holm-CMU, Brendon Langenhuizen-SGM, Holly Loff-ERWC, Peter Mueller-TNC, Kelsey Nichols, Esq., David Reinertson Clifton Water, Richard Vangytenbeek-Trout Unlimited, Pat Wells Colorado Springs Utilities
6. **Grand County agreement with CTU and Denver Water for Moffatt FIRMING is official.** Colorado Trout Unlimited calls it a victory for the river. Jim Lochhead said this presents a new collaborative method of doing business together. Grand County Commissioner Gary Baumgardner commended Grand County Manager Lurline Curran for her work securing the deal.
7. **Precipitation update.** Colorado's snowpack is 116% of the median and 161% of last year's snowpack for March 10. Statewide, Colorado precipitation is 185% of last year and the South Platte is 232% of last year. Good soil moisture is good for agriculture, and the South Platte's higher moisture will help reduce the South Platte's need for water from the West Slope. The Rio Grande Basin is only 79% of median, and the Southwest is 85% of median.

- a. **Gunnison:** They think Blue Mesa Reservoir could fill. It's estimated that there is 800,000 af of runoff above the reservoir, and Blue Mesa holds 850,000 af.
 - b. **Pueblo Reservoir** is only about 60% of normal.
 - c. **Ruedi is releasing 180 cfs** which will probably continue thru April. Dillon and Green Mt Reservoir are releasing more. Lake Granby is expecting to be within 8' of its maximum fill level.
8. **Update on Agricultural Efficiency Bill, SB 14-23.** Ken Ransford provided an update, but the Roundtable did not vote to support the bill because it is still being amended in sensitive stakeholder discussions. Jim Pokrandt commented that this process shows how difficult the solutions to Colorado's water problems are.
- a. **SB 14-23 permits a farmer to donate *non-consumptive* instream flows (ISFs)** to the Colorado Water Conservation Board that result when efficiency projects like ditch lining, Rubicon check structures, or sprinklers result in less water being diverted from rivers for irrigation.
 - b. **The Northern Water Conservancy District lobbied for and achieved limits** in the proposed bill on **the amount of water that could be conserved to the Instream Flow** amount that the CWCB designates; this is defined as the minimal amount of water that would preserve the environment to a reasonable degree; CRS 37-92-102(3). Northern feared that the bill could permit the "stacking" of water rights that exceed this minimum amount. Senator Schwartz agreed to accept this recommended change.
 - c. **SB 14-23 limits the donation to the minimum amount necessary to improve the stream environment to a reasonable degree.**
 - i. This is a required under current law for donations of consumptive use. Before the CWCB can accept a consumptive instream flow, CRS 37-92-102(3)(c) requires, "Before initiating a water rights filing, **the board shall determine that the natural environment will be preserved to a reasonable degree** by the water available for the appropriation to be made; that there is a natural environment that can be preserved to a reasonable degree with the board's water right, if granted; and that such environment can exist without material injury to water rights."
 - d. Previously, the CWCB has been unwilling to designate instream flow amounts on rivers that are "swept", or completely dried up, by an irrigation diversion. The CWCB's rationale is that it is senseless to determine an ISF amount since the river would be dried up anyway. SB 14-23 would permit the CWCB to accept an ISF that would fix this practice.

- e. **Water Court must find that the efficiency improvements do not harm other water rights by interfering with return flows;** the bill would add new section 37-92-305(3.3)(a)(II)(D) that requires this. Kathleen Curry recommended that the CWCB hire the State Engineer to investigate whether other ditch users would have less water because the location, timing, and amount of return flows could change as a result of efficiency improvements. The CWCB normally consults with the State Engineer when it accepts consumptive ISFs since it must determine that the donation does not injure other users or protect the river more than necessary.
 - f. Ransford commented that **under current law, other stream users cannot object if an irrigator adopts efficiency measures** that change return flow patterns. In fact, proposed SB 14-23 grants rights that don't currently exist to other irrigators on the stream. Water court must approve any change in water rights, and **irrigation efficiency improvements are not considered a water right change** because they are not included in the following list of actions over which the water court has jurisdiction: CRS 37-92-305(3)9a) states, "**A change of water right, implementation of a rotational crop management contract, or plan for augmentation, including water exchange project**, shall be approved if such change, contract, or plan will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right."
9. **SB 14-103, which would require the state to adopt low flow fixtures and appliances** such as low-flush toilets, **passed** the full Senate by a vote of 19-16. **Senator Ellen Roberts of Durango was the lone Republican voting for it.** Jim Pokrandt asked CBRT members to field calls from constituents and to help get this bill passed in the House.
- a. This bill is expecting to save 40,000 af by 2050.
10. **Statewide Roundtable Summit Recap.** CBRT members commented on discussions that they had at the breakout sessions at the Statewide Roundtable Summit on March 6.
- a. Rachel Richards – **Louis Meyer's report that there is no more water surprised the audience, despite the fact we've been saying this for years.** Louis commented that there are conditional water rights already existing for 160,000 af of additional diversions in addition to 150,000 af of water rights already slated for development.
 - i. Rachel asked what happens after these 160,000 af are developed, and Jacob Bornstein said we just cannot answer that question, we need to move ahead.
 - ii. **No one is willing to compromise or sacrifice.** Everyone wants as much water as possible, whether it is for M&I, agricultural water, or water for the

environment. We don't need to do indoor or ag efficiency, we need more water, period. The West Slope is digging its heels in, and we need the State to step in. Water Court is fine to adjudicate a change from agricultural to municipal use, but if water is meant to protect the environment, it's wrong to have to incur expenses by going to Water court.

- iii. Ted Kowalski, CWCB attorney overseeing Colorado's water rights under state compacts, said that **ISFs and Recreation In Channel Diversions (RICDs) threaten the state's ability to develop water it's entitled to under the Colorado River Compact**. Glenwood Springs recently filed a RICD for a water park feature near No Name Creek 2 miles upstream of the town, and Kowalski believes this was filed primarily to prevent further development of Colorado River water.
- iv. **Identified Projects and Processes (IPPs) haven't been through the NEPA process**, and environmental effects or reasonable alternatives have not been publicized yet. Until the environmental impacts of these projects have been vetted, Rachel believes the clamor about developing a new transbasin diversion is premature.
- v. A Broomfield commissioner questioned **why we need a statewide water plan since we have a prior appropriation system**. Gary Baumgardner said the prior appropriation system has worked fine for the Front Range in the past in their efforts to purchase historical agricultural irrigation rights on the Upper Colorado River. Former State Senator Don Ament and several other Colorado Water Congress made similar comment at a meeting last summer.
- b. Mike McDill, Aspen Utilities – **The Low to Medium conservation target**, in which Roundtables say their constituents don't want to strive for high municipal conservation in order to reduce ag dryup or new transbasin diversions, **rings hollow**, and there's increasing recognition that this is just too low. We need to raise the target. If the West Slope wants to be successful, it must partner with statewide environmental organizations. **The IBCC's story** as the same as the water providers – **don't talk to us about land use**. There were few cities and counties represented at the Roundtable Summit, but a lot of water providers.
- c. Don Chaplin said that we need a compilation of conditional water rights in the Basin Implementation Plan (BIP).
- d. Ken Neubecker – had similar response as Rachel – there's more acceptance of West Slope issues, but 150,000 af of IPPs in the pipeline mean it will be difficult to get a new project out of the West Slope that will give reliable supplies to the Front Range. Neubecker's table told him that "was his opinion." There was **no discussion about rivers as intact ecosystems at the Summit**.

- e. Lurline Curran – we can argue endlessly about how much water is left to develop, but **the most important thing we can do to protect the Colorado River basin is to ensure local control through 1041 County Land Use Approval authority.** The Colorado River Cooperative Agreement and the Northern Water mitigation agreement only occurred because Grand County has local approval authority over land use. The Colorado Water Plan should not limit 1041 powers.
 - i. Grand County has never turned down a project.
 - ii. If you have something dictated to you, you'll fight hard. Local control makes you work with the other side rather than reaching for a hammer.
- f. Diane Johnson's table discussed regional collaboration – any project needs regional collaboration. Any project should have multiple beneficiaries. If you write the questions, you control the discussion. A lot of the questions were about new supplies.
- g. Louis Meyer. Jim Pokrandt said he took the air out of the room when he said there's the perception of everyone he's been talking to on the West Slope that there is no more water to develop. Louis' take on what the other RTs are doing:
 - i. **South Platte – very focused on reservoirs.** A Douglas County representative said Colorado Water Plan was all about doing a statewide project to get more water from the Colorado Basin. Kevin McBride said that Douglas County was mining groundwater, and asked whether Douglas County had any regulations preventing this, and he said no.
 - 1) **They think they have the moral high ground on conservation** and use less than we do.
 - ii. **Yampa White** – doing a lot of hydrology in their basin – they haven't had a call, but are concerned. They are **looking at reservoirs and** how to meet the **water needs of their power plants.**
 - iii. **Gunnison** – Focused on **agriculture shortage.**
 - iv. **Southwest** – Focused on **IPPS** – they have **a lot of places that don't have water** and they need to truck it in.
 - v. Arkansas Basin – Setta Moss said transparency is a big issue – they don't know what the big water providers are up to. PSOP is a big concern and will be on its list of desired IPPs. Many in the state are claiming that if all the IPPs are not developed, the state will have to dry up agriculture or do new transbasin diversions.

- vi. According to Jacob Bornstein, there won't be a transbasin diversion in any BIP. He said the RTs were working on developing conditions in the future for transbasin diversions to be acceptable. Rachel said Jacob said this was true of the CWP as a state wide plan, not true of any particular BIP.
- vii. Yampa White and Gunnison have a larger bull's eye than we do.
- viii. Land use- other basins have no idea what we mean by this particularly Douglas County. No connection between land use and water use. CBRT can help them with this.
- h. Ken Ransford – His table observed that **only one Alternative Transfer Method has taken place in the last 10 years**, where water is temporarily transferred from a farm to a city. **Meanwhile, the state has completed the \$750 million Prairie Waters Reuse Project** to pump back water from the South Platte to Aurora, nearly completed the **\$1 billion Southern Delivery System** to transfer water from Pueblo Reservoir to Colorado Springs, signed the **Colorado River Cooperative Agreement**, and agreement has been reached on Northern's mitigation efforts to divert **30,000 af from Windy Gap** and Denver Water's mitigation efforts to divert **15,000 af through the Moffatt tunnel**. Ransford blamed the lack of completed alternative transfers on the high cost of water lawyers and engineers.
- i. In a March 9 NY Times editorial by a NOAA scientist says **lack of precipitation is to blame for California's current drought**, not climate change, but that **what has changed since the last severe drought in 1976-77 is that California's population has nearly doubled** from 21 million to 38 million. That makes the state's ability to cope and adapt more difficult this time.
- i. John Stulp said that 80% of the background work for the BIPs has been done, not that 80% of the Colorado Water Plan has already been written.
- j. Pat Wells –A big issue was **the cost of water transfers**. The ability to use Alternative Transfer Methods important and quickly identify willing buyers and sellers to do substitute water supply plans. Common ground can be found to facilitate Alternative Transfer Methods. The Flex Use concept is a good start, but only 1 has been implemented successfully in the last 10 years.
- i. Jim Pokrandt – water providers want the certainty of a permanent water supply and that Alternative Transfer Methods don't create permanency. **Pat replied that if the concern is for drought recovery or to restore groundwater supplies, Alternative Transfer Methods could work..**

- ii. If long term climate change is the concern, permanent transfers create more certainty than Alternative Transfer Methods.
- k. Kathleen Curry - Traditional agriculture groups such as **the Colorado Farm Bureau often do not represent the West Slope agriculture community**, they represent row crops and feed lots.
 - i. Rachel Richards said her Roundtable said that West Slope agriculture is not as valuable as Front Range ag or M&I. Kathleen replied that they always say this.
 - ii. Kim Albertson pointed out that alfalfa produces milk.
- l. Martha Cochran asked **how to reconcile local control of water and pleas for statewide laws controlling land use**, such as SB 14-17 which would have limited land planted in bluegrass to 15% of the new subdivision area if agriculture was dried up for the new subdivision. Lane Wyatt recommended that **community master plans are very useful documents that could reconcile this**. For instance, the master plan in Summit County has a population cap above Dillon Reservoir. These should be woven into the land use component of water plans. This work has already been done.
- m. Ken Neubecker said that participants were sympathetic when he suggested **water transferred in transbasin diversions should be subject to the highest conservation standards**.
- n. Jim Pokrandt moderated 3 table discussions and was on 2 panels. His takeaway is that **the Colorado Water Plan will not include a new transbasin diversion**. We need to identify our issues and put them in the plan, if only to say they need further study. Let's identify what we do or do not agree upon. We can say a transbasin diversion has to be the last tool out of the box, and that **we are not going to take out agriculture through back door stealth planning**.
 - i. Gary Barber of the Arkansas Basin brought out the principles from the Flaming Gorge Task Force – this addresses how to preserve the transbasin diversion option.
 - ii. The Front Range is talking about going from low/medium conservation to high conservation, and land use planning. This just constitutes good water planning anyway. Even if the CWP promotes a transbasin diversion, it still has to go through a long and involved permitting process.
 - iii. **Projects can be forced on you because that's how Colorado water law works**. There's nothing stopping Front Range cities from filing a water right

for a new transbasin diversion other than the political outcry that could result. Denver Water is considering a project that would deliver water only 3 of 10 years; Jim was surprised at this, because it's hard to justify the cost of this type of a project.

- iv. Jim suggested there won't be a new supply project on the Upper Colorado on top of what they've already taken, so the RICD concern is over-stated.