

# STATE OF COLORADO

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## Colorado Water Conservation Board Department of Natural Resources

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TO: Chatfield Cooperators

FROM: Tom Browning

SUBJECT: Meeting Minutes  
Chatfield Reservoir Reallocation Project

John W. Hickenlooper, Governor

Mike King, DNR Executive Director

Jennifer L. Gimbel, CWCB Director

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**What: Chatfield Reallocation FR/EIS Progress Meeting Minutes**  
**Where: 143 Union Blvd, 10<sup>th</sup> Floor, Lakewood (Tetra Tech Conference Room)**  
**When: Friday, February 8, 2013 (9:30 am to 11:00 am)**

1. Introductions (Tom Browning, Colorado Water Conservation Board [CWCB] and Gwyn Jarrett [Corps])
  - Tom Browning welcomed the group and thanked everyone for attending the meeting. The list of attendees is attached.
  - Gwyn Jarrett (Corps) acknowledged the significant milestones recently achieved by the project, including the release of the draft FR/EIS for public review and comment and successful meetings held to encourage public participation. The Corps received approximately 1,000 comments on the draft FR/EIS.
2. Schedule (Gwyn Jarrett [Corps])
  - Tetra Tech and ERO are currently assisting the Corps in revising the draft FR/EIS based on the comments received from the public and input from the Corps. In coordination with Dave Jensen at the Corps, Tetra Tech is working on revisions to the water quality analysis that incorporates 2012 data and addresses EPA concerns about seasonal anoxic conditions that occur in the reservoir at depth (Appendix J).
  - The draft final FR/EIS will be available for review by the Corps (members of the Project Delivery Team [PDT] and selected subject matter experts), state agencies, and water providers on February 25, 2013. The review will be conducted by all parties in parallel.
  - Gwyn noted that the Corps has committed to completing the FR/EIS during fiscal year 2013 and has initiated an expedited review schedule. The Corps has requested that all comments be submitted to them by March 5, 2013 (within seven working days). To facilitate review of such a large document, all comments on the draft final FR/EIS will be tracked and identified by location within the document (section, paragraph, sentence, etc.).

- Gwyn will review the comments, categorize them into common themes, and decide which require revision to the FR/EIS. The Omaha District will revise the draft final FR/EIS based on the new comments and prepare the document for pre-final Corps review.
  - By March 18 or 19, 2013, the Agency Technical Review (ATR) of the pre-final FR/EIS will begin. The ATR team includes the same subject matter experts who reviewed the draft FR/EIS. The ATR review will last 30 days. After the document has been revised based on ATR comments, the final FR/EIS will be submitted to Corps HQ for approval and release to the public for comment.
  - The Corps will publish the final FR/EIS and EPA will publish a Notice of Availability in the Federal Register. The public will have 30 days to review the document online. The Corps will then revise and finalize the document with support from Tetra Tech and ERO and the document will be sent to the Corps HQ for final approval.
  - The draft ROD will be prepared while the comments on the final FR/EIS are being addressed, and will be submitted to Corps HQ with the final FR/EIS. The ROD is projected to be signed by the Secretary of the Army by September 30, 2013.
  - Gary Drendel (Tetra Tech) noted that the Corps' responses to public comments will be incorporated into the final FR/EIS as an appendix.
  - Gwyn was asked whether she felt the revisions being made to the document would help the project attain the Water Quality Certification from the Colorado Water Quality Control Division under Section 401 of the federal Clean Water Act (CWA). Gwyn responded that the Corps had worked closely with EPA to resolve all issues surrounding compliance with CWA permit requirements, including an extensive modeling effort to evaluate water quality issues, and she did not foresee any conflicts.
3. Study Budget (Gwyn Jarrett [Corps])
- The project currently has \$119,600 (non-federal funds) and \$24,000 (federal funds) available, or \$143,600 on hand to carry the project through approval.
4. Other Topics
- PPA:  
Gwyn discussed some issues involving the PPA that could potentially impact the project schedule. She emphasized that the project has not yet entered the FS phase of planning, and that attempts to formalize provisions of the PPA between the state and water providers could complicate her process to gain approval of the EIS. She understands that the state and water providers would like to move forward at this time to plan for implementation of the ROD. The Corps had requested language from the state and water providers about project implementation (Section 7 of the FR/EIS), but that the needed information was intended to be conceptual. Instead, it appears that the water provider's legal representation pushed for resolution on some specific topics related to the draft PPA. As a result, 16 questions were presented to the Corps' legal department for discussion and resolution. The Corps is responding to these questions, but Gwyn noted that the legal departments may not be aware of the

potential impacts these issues could have on the EIS process. Changes to the FR/EIS have already been made based on the PPA and assignment issues.

- Other uncertainties have been introduced because the draft PPA apparently deleted some legal considerations that are mandatory for federal projects. All rules and regulations that apply to the Corps and federal projects also apply to the water providers. For example, in the draft PPA wage rates applicable under the Davis-Bacon Act were crossed out, but this would not be legal for a federal project. Although all of the alternatives are based on the same information to allow comparison, Alternative 3 is more labor intensive and sensitive to wage rates.
- Further discussion suggested that if the Civil Works Index was used to run the cost models, then wages under the Davis-Bacon Act would have been appropriately included. It is likely that the models used to update the cost estimates did include the Davis-Bacon Act wages, but this would need to be verified. John Hendrick (CWDS) told the group that the water providers were not aware that they were required to pay wage rates stipulated under the Davis-Bacon Act, and this would raise their labor costs substantially.
- Tom asked Gwyn about how the group should respond to her concerns and avoid unintended consequences for the project. Gwyn responded that as sponsors, the state and water providers can continue to move forward, but that the Corps needs to be a participant. At this time, bringing up issues that the Corps has to address could impede progress on the FR/EIS.
- John Hendrick asked Gwyn how work between the water providers and the state could cause adverse impacts on the process. He stated that the water providers did not realize they were only supposed to supply conceptual information about the PPA. The water providers wanted to proceed with their planning so they could be prepared when the ROD is approved. Gwyn responded that by supplying the Corps with too much information, and including the State Attorney General and governor in the process, the potential existed for the Corps to rethink the project. The additional information was not necessary at the EIS phase of development.
- Tom informed the group that he was aware that the Corps was asking for conceptual information concerning contracts and agreements. However, the lawyers representing the water providers were interested in sending a draft PPA through the Attorney General's office for comment and he complied with their request, not realizing what the possible consequences could be.
- Section 122.2 Plan/Adaptive Management Plan:

Gwyn was questioned as to whether the issues could impact the Section 122.2 planning process. She said that the 122.2 plan process is referenced in the EIS but is not part of it. The Corps wants to emphasize the federally recommended alternative. The state and water providers are negotiating on items that go above and beyond the federally recommended plan. Under adaptive management there is flexibility for 122.2 plan and CMP implementation to be compatible.
- The Adaptive Management Plan will address issues such as tree management, operations, water quality, endangered species habitat, and fish and aquatic habitat,

and outline uncertainties, contingencies, and steps to address needed mitigations that occur over time. The draft Adaptive Management Plan will be completed by February 22, 2013, and will be an appendix to the FR/EIS.

- Biological Assessment (BA)/Biological Opinion (BO):

Gary Drendel provided the following update on the BA/BO. At the October meeting it was announced that Pete Plage (USFWS) was leaving the project at the end of the month and moving to Florida, and so the team met with Pete in October and focused on responding to comments on the CMP and revising the Biological Assessment (BA) while Pete was still available. Pete recommended changes to the weighting factors and buffer requirements, and these issues were successfully resolved before he moved. Craig Hansen (USFWS), who has experience with Preble's mouse and critical habitat in the Pike National Forest, has been assigned to the project to help prepare the BO. On February 7, the Corps, Tetra Tech, and ERO met with Craig and his supervisor Susan Linner, and the team provided Craig with a review of the project and how USFWS comments had been addressed. The BA consists of two parts, one addressing threatened and endangered species (i.e., Preble's) in the project area (Craig Hansen is lead for USFWS), and the other addressing downstream depletions and potential impacts to threatened and endangered species in the central Platte River basin of Nebraska (Sandy Vana-Miller is lead for USFWS, and provided comments in June and October 2012). The draft versions of both components of the BA will be revised by Tetra Tech the week of February 11<sup>th</sup> and submitted to the Corps for review before the Corps formally submits them to USFWS to initiate formal consultation. Review and development of the BO by USFWS is expected to take 60 to 90 days.

- Gwyn does not anticipate that preparation of the BO will impact the project schedule. USFWS management appears comfortable with the work completed to date on both components of the BA.

- Special Technical Advisor (STA) Process:

Tom asked Gwyn to comment on the STA process. This team helped prepare the draft FR/EIS. Gwyn suggested that she should thank them for their service to the project, but she does not know of any formal closure process that needs to be followed for the final FR/EIS.

- Upcoming Meeting in Washington, D.C. in March:

John Hendrick told the group that a meeting was planned in about a month with Aaron Hostyk. John was concerned about the best way to approach the PPA issues and avoid conflict with the EIS process as discussed earlier in the meeting.

- Gwyn noted that the Corps, State, Parks and Wildlife, USFWS, and the water providers all have a vested interest in seeing the project move forward. The longer the project takes to complete the greater the potential for increased costs, new regulations, changes in interest rates, and unforeseen events. The sooner the project is completed the better. Tom and John said they would get together before the Washington, D.C. meeting.

- John asked Gwyn if she was going to attend the meeting the March. Gwyn said she planned to go and agreed a “pre-meeting huddle” could be beneficial so that a consistent message is sent by the project.

#### 5. Wrap-up

- Gwyn thanked everyone for attending the meeting. The next meeting will be announced at a later date.