

# 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:** Tuesday, January 31, 2012 (9:30 am to 11:30 am)

1. Introductions and general announcements
  - Tom Browning (CWCB) welcomed the group and introduced the agenda. Topics included Capitol Representatives report (federal funding and March trip to Washington, D.C.); Study updates (Corps Headquarters [HQ] comments: Progress on addressing review comments and next steps for submitting responses to HQ; Study budget and schedule; and Tetra Tech updates); Other items/new business; and Wrap-up.
  - Tom informed the group that the governor has announced recent appointments to the Colorado Water Conservation Board (CWCB) to replace members whose terms of service end in 2012. Ty Wattenberg has been nominated to represent the North Platte River Basin, replacing Carl Trick, and Diane Hoppe has been nominated to represent the South Platte River Basin, replacing Eric Wilkerson. John McCLOW has been reappointed to represent the Gunnison-Uncompahgre River Basin. These appointments are dependent upon Senate confirmation.
2. Capitol Representatives update
  - Dave Howlett (Capitol Representatives) addressed the group via teleconference. He is preparing for the upcoming trip to Washington, D.C., March 6-8, 2012. The Water Providers have been notified and several have indicated that they will be attending. Dave noted that while discretionary funds from the FY 2012 Corps budget will be sufficient to release the draft FR/EIS, hold public meetings, and address public comments, there is still uncertainty over how much funding will be provided in the FY 2012 omnibus appropriations. As reported in previous meetings the project is dependent on annual appropriations from the federal government to match the state contributions to the study. Dave repeated that the Chatfield project is not currently in the President's budget as a water supply study, and earmarks are not being accepted.

The project therefore has no mechanism in place to secure funding for FY 2012 and FY 2013. Dave is working with the Congressional Delegation, agency representatives, and the administration to get the project included in the President's budget in the future.

- The Congressional Delegation has been proactive in helping the project pursue its request with OMB and the Corps to be included in the President's budget. The project has also been proactive in maintaining contacts with members of the Senate and House Committees and representatives from the Corps and federal agencies.
  - Dave noted it is very important that the project members continue to attend the semi-annual meetings in Washington D.C. to raise awareness about the project and address upcoming budget issues. The Assistant Secretary of the Army, members of the Corps, and the OMB expect to see representatives of the Chatfield project at these meetings. For example, in September 2011 the project team met with Roger Cockrell of the Senate Appropriations Subcommittee on Energy and Water Development and Sally Erickson at OMB to discuss the budget and potential fiscal benefits of the project. The project needs to continue its active participation to secure needed funding in the future. Dave is arranging meetings with the Congressional Delegation, Corps HQ, Assistant Secretary of the Army (Civil Works), and OMB in March 2012.
  - In the past Denver Water has generously printed the Chatfield project presentation booklet for the Washington, D.C. meetings. To save paper, Capitol Representatives has suggested preparing a folder that contains the schedule and summary, but provides a CD in place of the booklet. Dave is waiting to hear from Denver Water to see how the meeting materials will be produced.
  - Dave asked the group to let him know who will be attending the meeting. Gwyn will be attending and reiterated how important it is for the project team to support the Corp's request for funding. This allows the agencies and administration to put names to faces and shows how committed the project is to succeed.
3. Study updates (Gwyn Jarrett, Corps)
- a. HQ comments
    - i. Progress on addressing review comments and next steps for submitting responses to HQ
      - Gwyn explained that a parallel process that incorporated vertical team participation within the Corps has been completed to address both the HQ and IEPR comments on the draft FR/EIS. The HQ comments were distributed to the group during the December 2011 meeting. She indicated that the draft comment responses were being reviewed internally by the Corps. She plans to send responses to Corps HQ by February 14, 2012. HQ indicated that they wanted to review the entire document again before releasing it for public review and comment. Gwyn will send the revised chapters or pages along with the associated comments so that Corps HQ can review the revised text. This process will allow Corps HQ to verify the responses and revisions without the need to reproduce the entire document. Corps HQ will either accept the draft revisions or ask Gwyn for further revisions. The revision

process will continue until Corps HQ reviews and approves the entire draft FR/EIS.

- Gwyn's team at the Corps is working with the IEPR to resolve their comments on the draft FR/EIS package. She noted that although responses will be prepared, the Corps is not required to make changes to the document based on IEPR comments.
- Gwyn said that the comment response and document revision process would result in a stronger document for public review, and noted that no major rework or new evaluation was required to respond to comments. Most of the comments requested clarification or justification of information provided in the draft FR/EIS package.
- A 100-year sediment study was finalized and the Comprehensive Mitigation Plan was clarified with additional information as requested. While the technical approach to mitigation was not changed, some important information was brought forward into the main text from the appendix.
- The Executive Summary is being rewritten for clarity and conciseness. The goal is to reduce the chapter from its present 40 pages to approximately 7 to 10 pages. Three options were discussed to address material removed from the chapter. The narrative of the State-Water Provider negotiations could be presented in an abstract, summarized in an appendix, or moved to the main body of the document.
- Tony Truschel (Tetra Tech) noted that the Executive Summary was conceived as a stand-alone document, but had grown over time in response to earlier comments and contained new material, including some that could be presented elsewhere in the document. He noted that the intent of the revised Executive Summary is to tell the story of the project, focusing on the federally recommended plan, implementation actions, planned mitigations, Corps/Water Provider responsibilities, sequencing, and timeline to implement the project.
- Gary Drendel (Tetra Tech) noted that the comment response team concluded that the most feasible option for the Executive Summary would be to summarize the key issues and direct the reader to the appropriate chapters within the main text and appendices for further information. Examples included reorganizing and revising the text to clarify the authorization granted by Congress and defining the purpose and need for the project.
- The discussion of impacts to Parks and Wildlife was also identified as a topic that should be moved out of the Executive Summary. Gene Reetz (Audubon) was concerned about deemphasizing impacts to wildlife in the Executive Summary since this is a state park. Gary responded that the Executive Summary should focus on the federally recommended plan, and provide a summary of those issues negotiated between the State and Water Providers that are outside the federally recommended plan. The plan is to provide a

synopsis of the State-Water Provider issues in the Executive Summary and present detailed information in Chapter 5.

- Other topics that will be moved from the Executive Summary to the main text of the document include cost estimates. Conversely, Gwyn feels that the discussion of NED benefits versus NED costs needs to be emphasized in the Executive Summary and in Chapter 5.
- Rick McLoud (Centennial WSD) agreed that including this information in the main body of the report was a better solution than providing it in an abstract or separate appendix. He noted that NEPA provides for public disclosure and this information needs to be accessible to the public.
- Polly Reetz (Audubon Society of Greater Denver) mentioned that Katie Fendel (Leonard Rice Engineering) was preparing an index to the draft FR/EIS that would assist members of the public to find topics of interest. This was part of the website supporting the public meetings, however, and not a physical component of the draft FR/EIS document.
- Mike Mueller (Sierra Club) noted that the Executive Summary needs to stimulate interest in the document while offering a balanced approach between the federally recommended plan and the ongoing issues negotiated between the state and the Water Providers that exceed the minimum requirements. Since the FR/EIS will apparently present the negotiated language separately from the federally recommended plan, how will this affect what must be legally considered in the ROD after the final FR/EIS is signed? Mike understood that contractual agreements between the Water Providers and the State cannot begin until the ROD is signed. Will CWCB or State agencies oversee these discussions? He noted that many of the negotiated issues involve mitigations to protect fish and wildlife. Becky Mitchell (Colorado Department of Natural Resources [CDNR]) responded that development of the Chatfield plan to comply with the provisions of C.R.S. 37-60-122.2 has begun and will be completed after receipt of public comments on the draft FR/EIS. This 122.2 Fish and Wildlife mitigation plan will establish requirements for mitigating the effects of water projects on fish and wildlife resources and funding for mitigation and enhancement grants. The plan will be included in the final FR/EIS and must be approved by the Parks and Wildlife Commission. The Commission has the option of approving the 122.2 Fish and Wildlife mitigation plan before the final FR/EIS is issued and then revise the plan after the final document is issued if necessary.
- Mike wanted to know how the negotiated issues will be accounted for in the ROD if they are not part of the federally recommended plan. Becky said that the State agencies that are involved in the project are working on a process to resolve this question. One solution could be to issue separate intergovernmental agreements that would stipulate how the negotiated requirements would be implemented. This is important because several Water Providers need to sign contracts with the State to implement agreed-upon mitigations and perform maintenance and monitoring activities that are not

specified in the ROD but are enforceable. Becky reasoned that once the ROD nears completion the Water Providers and State will be able to determine which requirements should be enforced as a ROD requirement and which will need to be enforced through other vehicles. In any case, the requirements that need to be enforced will not be known until the ROD process is completed.

- Mike asked Becky about the process to formulate the legal requirements in the ROD and whether meetings will be held that would include Water Provider participation. Becky said that the details were still being resolved. Gary responded that language describing implementation agreements between the Corps and State and State and Water Providers is included in Chapter 5 of the FR/EIS and the Executive Summary.
- Rick referred to the schedule Gwyn provided at the December 2011 meeting and noted that April 2, 2012, had been the target date to release the draft FR/EIS for public review and comment. He was wondering what the new target date would be given the current comment resolution and document revision process. Gwyn pointed out that the group could use the March meeting in Washington, D.C. as a forum to convince Divisions and Corps HQ to approve and release the draft FR/EIS in a timely manner. She said that she would work with Corps HQ to expedite the review and approval process, but thought the release could be delayed a few months.
- Tom agreed that the March meeting would give the Water Providers the opportunity to meet with Corps HQ and work through established channels to help facilitate the review and approval process.
- Gene Reetz noted that changes that will be made as a result of the HQ and IEPR reviews will make the document more defensible. Gwyn said that some of these issues have been addressed before, but she hoped that the document would benefit in the end. Steve Dougherty (ERO) said clarifying some discussions and adding justification to other topics would strengthen the draft FR/EIS.
- Gwyn summarized some parts of the draft FR/EIS still need to be finalized or approved, including the draft Real Estate Plan and draft contract between Douglas County and the State. The Ecological Model approved in March 2011 requires HQ and PCX approval, but the project will not wait for this approval to release the draft FR/EIS.

b. Study budget and schedule

- Revised Schedule. Impacts to the project schedule were described in the discussion about the HQ review and approval process. Gwyn reminded the group that the draft FR/EIS could not be released for public review and comment until Corps HQ has re-reviewed the entire document and granted its approval. She will work with HQ to identify a revised target release date.
- Budget. Approximately \$26,000 was spent on project activities during the last few months. Of this, \$4,000 was spent to complete the sediment study. This leaves \$127,000 of federal and nonfederal funds on hand to resolve comments,

revise the document, hold public meetings, and resolve public comments. The project should be advised soon on the level of FY 2012 funding to expect. Funding for FY 2013 and FY 2014, however, is challenging and uncertain. It is important for this project to be included in the President's budget to ensure adequate support is available for future needs.

4. Other Items/new business

- Tom said that CDNR had addressed a technical formality pursuant to the 1986 Water Development Act. The correspondence file for the Chatfield project was found to be incomplete. A letter was sent from CDNR to the Corps providing information sufficient to determine that the in-kind credits granted to CDNR are integral to the reallocation project. The letter outlines the work required for the reallocation, what work the CDNR will undertake, and how that work is integral to the reallocation action.
- Polly Reetz had some questions about items introduced by Tom during the December 2011 meeting. Specifically, she asked about CWCB or a third party assuming the storage space for Brighton, Perry Park, and Mount Carbon. Tom had reported in December that the Board recommended authorizing \$13 million to handle "orphan" allotments of storage space within the reservoir that revert back to the State after being relinquished by a Water Provider. It appears likely that up to 1,500 acre-feet of orphan allotments could revert back to the CWCB, including Perry Park. Tom also announced that the CWCB will handle Parks and Wildlife's allocation of storage space within Chatfield Reservoir. As far as Tom knew, however, Mount Carbon had not relinquished any storage space and Brighton's storage space may be obtained by other Water Providers when an agreement is finalized. Tom clarified that the \$13 million used to acquire the orphan reservoir storage space would include associated costs for mitigation. This will allow the project to remain "whole" and the State to act as a broker for the storage space and facilitate trades and potential redistribution agreements among the Water Providers. Letters of Commitment have been executed between the CWCB and all Water Providers that specify procedures to be followed in the event that a Water Provider wants to opt out of its storage allocation, including acquisition by another Water Provider or a third party or reversion to the CWCB to hold or redistribute.
- Rob Harris (Western Resource Advocates) said that he has been fielding questions about Colorado Parks and Wildlife water rights. Becky responded that Colorado Parks and Wildlife holds junior water rights to Denver Water that are a valuable resource. It would seem beneficial for Colorado Parks and Wildlife to have discretion over how these rights might be exercised for the good of the State. She hopes that control of these water rights will be retained once the agency's financial situation improves. Referring to the water rights and Colorado Park and Wildlife's transfer of allocated storage space in the reservoir to CWCB, Tom noted that Colorado Parks and Wildlife still has an interest in the project that has not gone away. He said that by working as a team CDNR can determine the best way to manage both the water rights and allocated storage space in the reservoir. Colorado Parks and Wildlife staff will continue to participate in FR/EIS development and implementation and manage Park operations.

5. Wrap-up
  - Next meeting: March 15, 2012, at 9:30 am.