

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
www.cwcb.state.co.us



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

What: Chatfield Reallocation FR/EIS Progress Meeting Minutes
Where: 143 Union Blvd, 10th Floor, Lakewood (Tetra Tech Conference Room)
When: Tuesday, April 10, 2012 (9:30 am to 11:30 am)

1. Introductions (Tom Browning, Colorado Water Conservation Board [CWCB])
 - Tom Browning welcomed the group and introduced the agenda. Topics included Study Updates (HQ comment and review process, IEPR comment and review process, revised schedule for Draft release to public, study budget, and Tetra Tech updates); Capitol Representatives report; Other items/new business; and Wrap-up.
 - Tom informed the group that Colorado Senate Bill (SB) 165 has passed the House and was sent to the Senate Agriculture, Natural Resources, and Energy Committee for initial review and approval. The bill would authorize \$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. The CWCB expects that up to 1,500 acre-feet of orphan allotments could revert back to the State including those of Perry Park and Colorado Parks and Wildlife (CPW). The House version of SB 165 authorizes release of \$5 million in FY 2012 and the remaining \$8 million in FY 2013. The pending legislation has a fiscal impact on the State’s budget and will be sent to the Senate Appropriations Committee for approval before being signed into law. Although the bill could require amendment to resolve possible differences between House and Senate versions it is expected to pass.
 - The transfer of CPW’s 1,000 acre-foot allotment of storage space in Chatfield Reservoir to the CWCB is pending. State attorneys have prepared the appropriate documents to execute the transfer once SB 165 has passed. Tom will provide an update on the status of the transfer as new information becomes available.
 - Hearings have been held to consider the new nutrient standards for wastewater streams proposed by the Colorado Water Quality Control Commission. Deliberations include weighing the costs and benefits of requiring wastewater treatment facilities to

decrease levels of nutrients such as nitrate and phosphorus in waterways. Final rules have not yet been established and more meetings/hearings are anticipated.

- Tom discussed the state-wide water outlook for Colorado this summer. The measured snowpack depth is approximately 50 percent of average in most watersheds and conditions are actually worse than those reported at this time of year in 2002. The entire state is experiencing D0 to D3 level drought conditions. Tom noted that reservoir storage reserves have not been severely impacted to date.

Rick McLoud (Centennial WSD) noted that had the Chatfield project been operational the reservoir's additional storage capacity could have been filled by tapping free river flows both last year and this past winter/early spring, providing water resources for summer and fall use. The current drought conditions illustrate the value and potential benefits that the Chatfield project offers to Metro Denver water users.

Ann Bonnell (Audubon Society of Greater Denver) asked Rick whether potential impacts on recreational activities (such as ice fishing) related to taking water from the South Platte River during winter months had been considered in the draft FR/EIS. Gene Reetz (Audubon Society of Greater Denver) noted that flows in the South Platte River below the reservoir are critical to maintain wildlife habitat and stream health and asked about potential impacts on the South Platte River from free water taking. Rick responded that urban flow will still occur each year, which would sustain the river even if free water is taken during some months to fill additional storage capacity of the reservoir. He noted that water would be diverted from the river only during winter months and when excess flows were available.

2. Study updates (Gwyn Jarrett, Corps)

a. Corps Headquarters (HQ) comment and review process

- Gwyn reiterated that HQ is reviewing the revised draft document following comment incorporation before releasing it for public review and comment. Gwyn submitted the revised draft FR/EIS to HQ on March 23, 2012, and the document was logged as received on March 27, 2012. Vertical team participation within the Corps, including emails and telephone calls, is being used to facilitate the review and respond to HQ questions as quickly as feasible. Dave Howlett (Capitol Representatives) observed that the process being implemented by HQ during the initial review was seen as an issue during the March meeting in Washington D.C. Gwyn said that currently there are no delays in email and telephone correspondence. She said that she is working with HQ to expedite the review and approval process.
- Comments received from HQ concerned costs, Comprehensive Monitoring Plan (CMP), Real Estate Plan/Conservation Easements, and the Ecological Models. Steve Dougherty (ERO) is responding to HQ comments and responses on the CMP using an iterative approach. Steve indicated that major changes to the draft document have not been required, with revisions mostly involving clarifications, language changes, and additional explanation about mitigation topics in the appendices and main text. Tom noted that Corps HQ may not be familiar with

integrated EIS and FS documents, which may be contributing to some of the requests for clarification and additional information.

- CMP, critical habitat mitigation, and interactions with USFWS – Gwyn stated that HQ is concerned about the extent of off-site mitigation planned for the Preble's jumping mouse along Sugar Creek, since it offsets a relatively limited amount of lost habitat. Concerns were also brought up about costs and ensuring the process described in the draft FR/EIS is the most cost-effective that can be implemented.

Bill Ruzzo (Denver Botanic Gardens/Chatfield Park) wondered why HQ is so concerned about potential over-mitigation since the CMP will be implemented using private funds. Steve Dougherty responded that HQ is concerned about setting a precedent, especially since the project involves cost sharing between government and private interests, as they typically deal with federally funded projects that do not require consideration of cost-sharing agreements. They must also demonstrate to the Assistant Secretary of the Army (Civil Works) that they have exercised due diligence in their review. The scrutiny reflects that it is critical for the FR/EIS to be a compliant, usable, and functional document. Gwyn says that Steve has been very effective in explaining the project to HQ and ensuring that HQ understands the approach, impacts, and mitigations presented in the FR/EIS. Steve told the group that the project has not backed away from any proposed mitigations but has simply clarified the process and potential impacts.

Rick McLoud asked about U.S. Fish and Wildlife Service's (USFWS) involvement in the process to develop a mitigation plan for the endangered Preble's jumping mouse. Pete Plage (USFWS) participated in meetings with Eric Laux (Corps), Steve Dougherty, Gary Drendel, and Gwyn Jarrett to ensure the project is compliant with the Endangered Species Act. Steve says he requested a letter from the USFWS stating that the agency concurs with the project's perspective on critical habitat and endangered species protection, including the planned mitigation along Sugar Creek. He has received this letter, but will touch base with Pete today to follow up (Gwyn, Eric, Steve, and Gary are meeting with Pete Plage following today's Progress Meeting).

Gene Reetz asked about the process that will be used to produce the Biological Opinion (BO). The first step is to prepare the Biological Assessment (BA), which will be presented as an appendix to the draft FR/EIS; the BA has been drafted by Tetra Tech. Following the public review and comment period, formal consultation with the USFWS will begin. The USFWS will review the BA and prepare a BO.

- Real Estate Plan – HQ recommends that the project begin to work through the conservation easements that will be required to implement the Real Estate Plan. Gwyn is meeting with the Real Estate specialists on April 11, 2012, to discuss the process moving forward.
- Ecological Model – The final approval for the ecological model from HQ and PCX under the revised Corps requirements has not been received. This is an issue that could potentially delay release of the draft document. Gwyn is attending a

meeting to discuss the models on April 10, 2012, and will determine what needs to be done to expedite the approval process.

- Executive Summary – Gene asked whether addressing HQ’s comments on the Executive Summary was an outstanding issue. He noted that the Executive Summary is an important component of such a complex document. Gwyn indicated 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. The revised draft has a 13-14 page Executive Summary, slightly longer than the 7-8 page section requested by HQ.

b IEPR comment and review process

- Gwyn has successfully worked through the process with the IEPR panel to respond to their comments on the draft FR/EIS. She has sent the project’s responses to comments to the panel and the District is pleased with the number of concurrences. During a call last week, the panel concurred with 27 out of 27 responses and noted that the responses were thorough and complete. Although responses were prepared, the Corps is not required to make changes to the document based on IEPR comments.

After resolution of any final comments the IEPR panel will prepare a final report which is due the end of April. Preparation of this final report will not impact the project schedule. Gary asked whether the IEPR final report will be released to the public. Gwyn anticipates that the Corps will release the final IEPR report in parallel with the release of the draft FR/EIS.

c. Revised schedule for Draft release to public

- Revised Schedule. Gwyn summarized the revised project schedule for reviews, document release, and public meetings. The first day of the HQ review period was March 27, 2012. If HQ approves the draft FR/EIS by May 8, 2012, a notice will be published in the Federal Register around May 22, 2012, and the document will be released to the public for review and comment about June 1, 2012. Assuming a document release date of June 1, 2012, the public meetings are planned for the beginning of July 2012 at locations to be determined.
- Rick asked Gwyn if she know of any factors that could impact this schedule. Gwyn responded that it is likely HQ can complete their review and approve the draft within 30 working days. Gary Drendel (Tetra Tech) has prepared a draft of the Notice of Availability and Betty Peake (Corps) has reviewed it, so once the release date is inserted in the Notice this task is complete. Gwyn is working with HQ to expedite the process and the weekly status reports provided by Capitol Representatives to the Congressional Delegation and the Assistant Secretary of the Army (Civil Works) serve to focus attention on HQ supporting the June 1, 2012, release date.

Discussion of the Schedule/Other Topics/Questions

- Gwyn told the group that the transmittal letter for the draft FR/EIS to HQ recommended assigning Chuck Moseland to the project. He would then be in a position to help expedite the HQ review and approval process.
- Rick McLoud asked whether it is feasible for Tetra Tech to incorporate final changes from HQ into the draft document and produce the FR/EIS for release in only one or two weeks. Gwyn replied while Tetra Tech will incorporate all required changes into the document, production (printing) of the draft FR/EIS will be carried out by the Corps' in-house production group. Gary indicated that the time required will depend on the extent of the changes.
- Steve Dougherty asked Gwyn whether HQ needed to review the entire draft FR/EIS or just the revisions in order to approve the document for release. Gwyn intends to send the revised chapters or pages along with the associated comments so that HQ can review the revised text. This process will allow HQ to verify the responses and revisions without the need to reproduce the entire document. HQ will either accept the draft revisions or ask Gwyn for further revisions. The revision process will continue until HQ reviews and approves the entire draft FR/EIS.
- Ann Bonnell wanted to know whether printed copies of the draft FR/EIS would be made available to the public during the review period. Gwyn stated that the Corps would have hard copies of the document available for review at the public meetings and at certain public buildings such as libraries and water district buildings. The Corps is considering providing CDs of the report for public use and the document will be available on the public website. Ann thought that providing CDs would improve public access to the document. Gary Drendel noted that the Notice of Availability will inform the public about where they can access the document (i.e., libraries, website).
- Bill Russo asked Gwyn when she anticipated release of the two Marina reports. She will follow up on this question.

d. Study budget

- Gwyn has been informed that \$148,000 has been allocated in FY 2012 for the project in the Corps Work Plan. These funds are expected to be released soon. Gwyn is currently using non-federal funds to move the project forward.

e. Tetra Tech updates

Updates on the status of the Notice for the Federal Register, the process that will be used to incorporate comments, and the procedure for transmitting final files to the Corps for production have been provided in previous sections.

3. Capitol Representatives update

- Dave Howlett (Capitol Representatives) discussed the current and future funding issues faced by the project and summarized the activities and results of the March trip to Washington, D.C. He noted that Gwyn and the project representatives were able to use the March meeting in Washington, D.C. as a forum to convince Divisions and HQ to approve and release the draft FR/EIS in a timely manner. Tom Browning agreed

that the March meeting provided the Water Providers with an opportunity to meet with HQ and work through established channels to help facilitate the review and approval process.

- The federal government is operating under a continuing resolution because Congress did not pass an appropriations bill for FY 2012. The project has been allocated \$148,000 in the Corps Work Plan to support activities in FY 2012 and Gwyn has access to funds carried over from the previous year. The project requested \$200,000 from Congress to cover funding needs for FY 2013 and has learned that \$67,000 has been included in the President's budget for FY 2013. This is significant because the Chatfield project has not been included as a water supply study in the President's budget since FY 2006. The project needs to continue to work with the Congressional Delegation, agency representatives, and the administration to secure adequate funding, however, because the Corps has many projects, and must at times allocate emergency funds to respond to natural disasters and address other unforeseen needs. Dave hopes that Congress will increase the General Investigation budget and provide additional funding to support Chatfield project's future needs.
- The recent meeting in Washington, D.C., held March 6 through 8, 2012, was well represented by the project. Dave commended Gwyn and the Omaha Corps on their efforts to raise awareness in Washington about the project, schedule to release the draft document to the public, and upcoming budget issues. Agency representatives were supportive and responsive, and the Congressional Delegation was 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.
- The project representatives met with members of the Congressional Delegation on Wednesday to discuss the status of the project and upcoming public release of the draft. House and Senate staff, including representatives from both major political parties, attended the meeting with HQ in a strong show of support. The Congressional Delegation is closely following the actions of HQ and process to release the draft document in a timely manner. HQ is aware of the high priority assigned to the project.
- Project representatives met with Assistant Secretary of the Army Lamont to discuss project status. He appeared supportive and indicated he would help push the project to completion. The project was also able to meet with the new branch chief of Energy and Power at OMB, Kelly Colyar. Dave reiterated the importance of meeting with the OMB to successfully secure funding in the President's budget.
- Dave told Gwyn that some of Kelly Colyar's questions indicate that she does not realize the Chatfield project has been fully authorized, and suggested that the Corps should follow up with OMB to answer any questions and provide information. He felt that OMB opened the door for further communication about funding. Kelly Colyar seemed to indicate she thought the \$67,000 included in the FY 2013 President's budget was a one-time allocation, which is not the case, as there is a projected need for increased funding in FY 2013 and FY 2014.

- Overall, Dave felt that the meetings in Washington, D.C. went well even if the discussion was contentious at times. Dave thanked everyone for their participation, including representatives of the State, such as Tom, who participated via telephone. Dave informed the group that Capitol Representatives sends weekly email updates to the Congressional Delegation offices, HQ, Omaha Corps, and the Assistant Secretary of the Army (Civil Works) to foster communication and support progress.
- Dave told the group that the next meeting in Washington, D.C. is planned for either the week of September 9 or September 16, 2012, depending on the Congressional schedule. These trips are very important to raise awareness about the project and everyone who can should attend the next semi-annual meeting. The project needs to continue its active participation to secure needed funding in the future. The meetings also provide the opportunity for the agencies and administration to put names to faces and shows how committed the project is to succeed.
- Dave thanked Bob Peters at Denver Water for producing the Chatfield project presentation booklet for the Washington, D.C. meetings. To save paper, Capitol Representatives prepared a folder that contained the schedule and summary, and provided a CD in place of the booklet.

4. Other Items/new business

- PPA - Tom Browning took the opportunity to commend the group for the dedication, commitment, and hard work shown by the project team, including individuals, NGOs, Water Providers, and State and federal government representatives. He suggested that the project move ahead with the PPA straw-man agreement between CWCB and the Corps that will allow the State to implement the provisions of the Record of Decision. The draft PPA has been prepared and Aaron Hostyk was invited to discuss the agreement with the group. Aaron instead requested that a red-line/strikeout version of the PPA be sent to him so he can review the legal aspects and respond. Language about the PPA will be included in Chapter 7 of the draft FR/EIS.
- Katie Fendel (Leonard Rice Engineering) told the group she will be able to prepare an index to the draft FR/EIS and update the project website with the new FAQ section after revisions to the draft document are complete, and the document is released to the public. The improvements to the web site and index are designed to assist members of the public to find topics of interest within the draft document and enhance its usability to the public.
- Over the past year several members of the group have expressed the belief that visual renderings of project viewscales before and after completion would help the public better understand the project. Tom will follow up on developing these visual renderings to display at the public meetings (Tom and Tetra Tech to meet after the Progress Meeting).
- Gene had a question about the length of the public review period. Gwen replied that while a 60-day period will be specified in the Notice, the Corps is anticipating a request to extend the review period.

- The Corps has a new policy that will impact the process to reserve and use facilities for such meetings. For security reasons, written requests must be submitted in advance to the Corps justifying the use of non-federal facilities for public meetings or permission will not be granted. The written request would not be required if federal facilities are used. Mark Shively (Castle Pines North Metropolitan District; Communications) has a list of venues/facilities that could be used for the public meetings but none of these are federal sites. If Mark or other non-Corps individual were to book the meetings the restrictions would not apply. Mark notes that once he has firm dates he can finalize plans for the meetings and reserve the best facility available.
- The White Papers are currently on hold. Tom asked Mark if it would be possible to resume publication of these White Papers in anticipation of the draft document's release.
- The project website has been updated to refer to a 2012 release of the draft FR/EIS. In addition, 500 flyers have been updated with the 2012 date and are available to the public at Chatfield Park. More flyers can be printed to fill demand. Gwyn requested a copy for her files.

6. Wrap-up

- Next meeting: May 9, 2012, at 9:30 am.