



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

1313 Sherman Street  
Denver, CO 80203

P (303) 866-3441  
F (303) 866-4474

John Hickenlooper, Governor

Robert Randall, DNR Executive Director

James Eklund, CWCB Director

**TO:** Colorado Water Conservation Board Members

**FROM:** Lauren Ris, Assistant Director for Water, DNR

**DATE:** November 17, 2016

**AGENDA ITEM:** #23 Chatfield Reservoir Storage Project New Member Buy-In Fee

---

**Staff Recommendation:**

Staff recommends that the Board approve the Chatfield Reallocation Mitigation Company (CRMC) Board's proposal to assess new project participants a one-time buy-in fee, to be added to the cost per acre-foot of the final purchase price on all future transfers of the right to storage space in Chatfield to any party that is not currently a CRMC member.

**Background:**

As further described in the attached memorandum from the CRMC, the buy-in fee is intended to allow current project participants to be reimbursed for some equitable portion of their past investments in the Chatfield Reservoir Storage Project, including costs associated with the development and approval of the Feasibility Report/Environmental Impact Statement, the Fish and Wildlife Recreation Mitigation Plan and the issuance of the federal Record of Decision approving the project. The recommended Buy-In Fee is based on historic costs incurred and includes a 4% interest charge, compounded annually. The fee is presently calculated at \$457 per acre foot, but would be recalculated at the time of any future transaction.

ATTACHMENT



TO: Colorado Water Conservation Board

FROM: The Members of the Chatfield Reservoir Mitigation Company, Inc.

DATE: October 14, 2016

SUBJECT: Chatfield Reservoir Storage Project - New Member “Buy-In Fee”

**Introduction:**

The purpose of this letter is to provide the Colorado Water Conservation Board (CWCB) with an overview of the process that the members of the Chatfield Reservoir Mitigation Company, Inc. (CRMC) followed in developing the recommendation described below for a “Buy-In Fee” to be assessed to new CRMC members in the Chatfield Reservoir Storage Project (CRSP). The purpose of the Buy-In Fee is to allow current project participants, actively involved in implementation of the CRSP the ability to be reimbursed for at least some equitable portion of their past investments in obtaining approval of and implementing the CRSP, specifically the costs associated with the development of and approval by the U.S. Army Corps of Engineers (USACE) of the comprehensive Feasibility Report/Environmental Impact Statement (FR/EIS) for the CSRP, the Fish, Wildlife and Recreation Mitigation Plan (FWRMP) prepared in accordance with C.R.S. 37-60-122.2, and the issuance of the federal Record of Decision (ROD) approving CRSP implementation.

CRMC’s members are recommending that new members and project participants be assessed a one-time Buy-In Fee, to be added to the cost per acre-foot of the final purchase price on all future transfers of the right to CRSP storage space to any party that is not currently a CRMC member. The Buy-In Fee, which is based on historic costs incurred, and includes a 4% interest charge, compounded annually, is presently calculated at \$457 per acre foot, and would be recalculated at the time of any future transaction. Given that CWCB has identified and reserved a significant portion of its current storage allocation for transfer to water providers/users, the CRMC is requesting CWCB’s review and agreement to the recommended Buy-In Fee. A more detailed summary of how the Buy-In Fee was developed is provided below.

**Background:**

The CRSP was authorized in Section 808 of the Water Resources Development Act (WRDA) of 1986, as amended by Section 3042 of WRDA (2007), authorizing the Secretary of the Army to reallocate existing storage space at Chatfield Reservoir. In 1996, USACE, in partnership with the Colorado Department of Natural Resources (CDNR), initiated the process to evaluate the use of Chatfield Reservoir for additional water supply purposes. In 1999, the FR/EIS process was initiated to conduct an analyses required by the USACE, Chief of Engineers’ (ER 1105-2-100, Chapter 4). On March 29, 2014, Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works), by memorandum to the Deputy Commanding General for Civil and Emergency Operation, concurred that the CRSP was technically sound, environmentally acceptable and economically

justified, and approved the FR/EIS, dated July 2013, with Addendum 1. Concurrently, the Assistant Secretary of the Army signed the ROD for the CRSP, signifying that it was in compliance with the National Environmental Policy Act.

From 1986 to present day, the number of project participants has changed. Current project members consist of six water providers and two state governmental entities, as summarized on the attached member list. Given that the project started with sixteen project participants and has evolved into the current eight members, it is acknowledged that investments made by some past participants may have not been recovered by them at the time when the past participant decided not to proceed with CRSP efforts.

### **Chatfield Reservoir Storage Project Cost Summary:**

An accounting maintained by one CRMC member and long-time CSRP participant has tracked non-state project members' contributions for consultant work in support of the development of the FR/EIS and has also tracked non-state project participants' payments to CWCB per their individual letters of commitment (copy attached), as summarized below:

Year	Total Consultant Expenditures	Payments to CWCB per Letters of Commitment
2005	\$0	\$515,000
2007	\$24,305	\$206,000
2008	\$376,108	
2009	\$378,561	
2010	\$310,218	
2011	\$404,241	
2012	\$488,640	
2013	\$460,776	
2014	\$255,000	
2015	\$202,675	
2016	\$960,000	
Total:	<hr/> \$3,860,524	\$721,000

**Note:** The total consultant expenditures identified above do not include each entity's in-house staff or consultant contributions, consultant payments made by Colorado Parks and Wildlife, or CWCB's approximate \$3M contribution paid directly to the USACE, as part of the Federal Cost Share Agreement of 50:50 federal/state payments for the development of the FR/EIS from 1999 to 2014. Additionally, the \$960,000 cost identified in 2016 is CRMC's operational and maintenance expenses for that year, proportionally contributed to by all members.

From the numbers summarized above, including the payments made to CWCB per commitment letters issued, the total project investment to-date is \$4,581,524 (\$4.6M). If a 4% annual interest charge is assessed each year to the costs illustrated above, compounded annually, it would add

approximately \$1.2M, for a total of approximately \$5.8 M. An interest charge is consistent with other similar multi-entity efforts, such as the South Platte Water Related Activities Program (SPWRAP), for which new members are assessed an interest charge to account for earnings that could have been made on past investments.

### **Discussion:**

Based on an estimated total project investment cost to date of \$5.8M (includes 4% interest), a number of questions were discussed and considered by the CRMC Members at the annual CRMC membership meeting in October 2016, including 1) what storage amount should the total \$5.8M in investment costs be divided into; 2) what storage is realistically available for sale; 3) should current project participants that increase their storage allocation be assessed a Buy-In Fee; and 4) what is a reasonable return on past investments of current CRMC members.

Based on a number of productive meetings involving both the CRMC Board of Directors and its Members, and discussions involving various scenarios, it was decided that 12,630 acre-feet was an appropriate storage volume on which to base the Buy-In Fee. The 12,630 acre-feet was derived from taking the total available storage allocation in the CRSP (20,600 AF) and subtracting out CWCB's and CPW's allocation ( $6,970 + 10,000\text{AF} = 16,970\text{AF}$ ) (this is done because the costs incurred above are for non-state participants), given CWCB's initial \$3M 50:50 cost share with the USACE to initiate the FR/EIS and both entities contribution to the environmental pool. Dividing the \$5.8M in total investment costs by the 12,630 acre-feet results in the \$457 per acre-foot recommended current Buy-In Fee. This same methodology would be used to calculate a future applicable Buy-In Fee, based on current expenses at the time of the transaction.

The CRMC Board and the members also discussed whether existing CRMC members seeking to increase their respective storage allocation should be assessed a Buy-In Fee, given their varying degrees of past project investment and participation. Although reasonable arguments exist on both sides of this issue, it was agreed that given the complexities involved, the fact that existing CRMC members have been assuming project risk for a substantial period of time, and other equitable factors, that the Buy-In Fee should not be charged on transfers of additional storage allocation to existing CRMC members.

### **Recommendation:**

At its Annual Meeting on October 17, 2016 all present CRMC Members by unanimous vote recommended the following for consideration by the CWCB:

- 1) A Buy-In-Fee be added to the purchase price for any new CRMC member acquiring storage from a current member using the methodology outlined above, which calculates to a \$457 per acre foot based on expenses incurred through 2016. That fee would be collected by the seller, and by separate agreement, disbursed individually to each CRMC member based on its pro-rata share of storage;

- 2) The Buy-In Fee will increase or be adjusted annually to account for CRMC's annual operating cost for that year, including a 4% interest charge compounded annually;  
and
- 3) Member-to-Member sale of storage shall not be assessed a Buy-In Fee.

The CRMC continues to appreciate the CWCB's support of the CRSP, and thanks the CWCB for its consideration of these recommendations and information. We look forward to discussing any questions you or CWCB staff may have.