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AGENDA ITEM: 26. Colorado River Storage Project Act (CRSP) Memorandum of Agreement (MOA) Update

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Introduction

CWCB staff anticipates that one or more approved Colorado River Storage Project Act (CRSP) Memorandum of Agreement (MOA) projects may have an inadequate budget allocation to complete its original scope of work. Colorado is already nearing the point at which its $73 million MOA allocation will be fully spent, obligated, or approved for existing projects. Given Colorado's limitations on its MOA allocations—as well as the state's ongoing attention to MOA project implementation—staff seeks direction from the Board on how to manage significant MOA funding modification requests.

Staff Recommendation

Staff recommends that the Board direct staff to draft a proposed process for developing an annual list of the state's MOA project priorities.

Staff additionally recommends that the Board direct staff to develop guidelines for addressing MOA project cost overruns, incorporating certain concepts discussed in this memo.

Background

In 2011, the Upper Colorado River Division States (Colorado, Wyoming, Utah, and New Mexico), the United States Bureau of Reclamation (Reclamation), the United States Department of Energy Western Area Power Administration, and the Colorado River Energy Distributors Association (CREDA) signed a Memorandum of Agreement (MOA) that authorizes the use of the Upper Colorado River Basin Fund (Basin Fund) to further the purposes of the 1956 Colorado River Storage Project (CRSP) Act (Public Law 485) and to reduce the impact on the CRSP firm power rate by eliminating the collection of power revenues beyond that amount needed to repay the costs of the existing projects through Fiscal Year (FY) 2025. The CWCB represents Colorado in the implementation of the MOA.

The Basin Funds that are the subject of the MOA are from excess CRSP power revenues allocated to the Upper Basin states. An average of $11.5 million is to be collected each year, amounting to up to $161 million total over the term of the MOA. Forty-six percent of the total funds collected through 2025 are allocated to Colorado (roughly $73 million after setting aside funds for Basinwide projects). MOA funds can be utilized for specific types of operations, maintenance, and replacement (OM&R) projects—not including completely new construction.

MOA funds can be used for OM&R projects at Reclamation facilities which were congressionally authorized as CRSP Participating Projects (herein, "Participating Projects"). Each Participating Project has one or more associated water conservancy district, irrigation company, or similar entity. These water users helped the state identify their priorities at the beginning of the MOA implementation process—for example, a pump rebuild or lining of a canal. Since these water users directly benefit from the project, they are referred to as "Project Beneficiaries" in the context of the MOA.

Discussion

Colorado's MOA Projects: Truing up Budgets

Colorado has 39 approved MOA projects. These projects were often submitted and approved with budgets based on private sector pricing and the costs of goods and materials at the going rate of the time. Now, eight years into implementation, materials may be more costly than originally estimated. Additionally, Reclamation's design and technical services have proved more expensive than private sector alternatives. Reclamation also has certain administrative costs that were not factored into original cost estimates. These factors—along with project-specific nuances—have resulted in many MOA projects needing more funds than originally anticipated.

CWCB staff has worked closely with Reclamation and water users to develop more accurate accounting for all approved projects. Through this process, CWCB has determined that past accounting documents from Reclamation depicting Colorado as having spent more than its total MOA allocation were incorrect, and Colorado's total approved projects remain within the state's total $73 million allocation. Colorado has roughly $2.5 million left in its MOA allocation that has not been spent, obligated, or allocated to any particular project. Given the history of cost overruns described above, CWCB staff believes this provides a useful buffer for unforeseen future expenses.

Staff is also engaged in conversations with water users to reevaluate priorities among their approved MOA projects. This process will help CWCB assess priorities for the state as a whole. This process will also lay the groundwork for future conversations about refining the plans for approved projects to have more realistic SOWs and budgets.

All of these steps will help Colorado and Reclamation successfully implement MOA projects in the future. However, there are some MOA projects which ran over budget in the past. Most of

those overages were billed against unobligated funds in Colorado's total MOA allocation. These overages have impacted Colorado's overall MOA funds, as well as the state's flexibility in managing requests to increase budgets at this time.

Board Guidance to Staff on MOA Implementation

In March 2015, the Board adopted criteria and guidelines to prioritize MOA projects, both proposed and approved (attached). These criteria and guidelines contemplate that CWCB staff would develop a prioritization list of ongoing MOA projects each year. Additionally, the guidelines establish that approval of MOA projects does not guarantee that the project will receive funding.

CWCB staff now requests direction from the Board to create a process for developing that prioritization list. Staff envisions basing this process on the exsiting criteria and guidelines, but adding elements to define and rank priorities. Staff's ongoing discussions with Reclamation and water users will help inform how priorities are identified. Staff would greatly appreciate the Board's feedback on this concept.

Key Principles for MOA Communications and Project Implementation

CWCB and Reclamation staff have been engaged in discussions to improve MOA project implementation and communications for several months. The agencies are developing a Communications Management Plan (CMP) to set forth best practices for project management and communications, including a process for the state to approve proposed modifications to budgets or scopes of work.

The draft CMP is currently under review by Reclamation, but MOA stakeholders have informally agreed to certain principles as part of the communications plan drafting process:

- Ongoing communication between the MOA parties is essential;
- Reclamation will consult with, and seek approval from, the state regarding proposed changes to a project's budget or scope of work (SOW) before the contracting phase. After contracting commences, Reclamation will notify and consult with the state on potential project modifications, but the state has decidedly less ability to address project modifications at this point in the project;
- Colorado is responsible for setting priorities for its MOA allocation within the state and within individual priorities for a CRSP Participating Project. This point underscores the importance of the state's role in approving any proposed project modification, because changes to a particular project may hold implications for Colorado's total MOA allocation.

Addressing Project Cost Modifications and Reallocation Requests

When Reclamation has sought Colorado's approval on increasing a project's budget in the past, CWCB staff has first worked with Reclamation and the Project Beneficiary to determine

whether it would be feasible to reallocate unobligated funds from the Participating Project's other approved MOA projects. CWCB does not have precedent for approving project modifications that would exceed the Participating Project's own MOA balance. CWCB staff believes that in 2019, there may be one or more MOA project that will need additional funding above its approved allocation, however, the Participating Project may not have sufficient unobligated funds allocated to fully address the anticipated shortfall.

CWCB staff asks for direction from the Board to create a process document for making decisions about approving project budget increases. Staff proposes to draft this process document by building upon the following principles. Any feedback from the Board would be greatly appreciated.

Proposed Process Guidelines for MOA Project Budget Adjustments

(1) Evaluate the project in the context of Colorado's annual prioritization list, according to the criteria and guidelines adopted by the Board in March 2015. Is the project still a priority?
(2) Assess whether the project modification request could be met by reallocating the Participating Project's unobligated funds from their other approved MOA projects. All Project Beneficiaries served by the Participating Project must be consulted regarding any potential reallocation.
(3) Evaluate the availability of funds allocated to other Participating Projects. These funds should only be considered if a Project Beneficiary has indicated those funds are unlikely to be spent before the end of the MOA project period in September 2030.
(4) Consider approving the use of Colorado's unallocated MOA funds.
(5) If no funds are available, ask Reclamation to revise the project design or scope to meet available funds.

The first two steps will be conducted by CWCB staff internally, regardless of the size of a proposed budget increase. CWCB staff will work closely with Reclamation and water users during this process.

To address any outstanding budget needs after an initial reallocation conducted as part of Step 2, CWCB will assess options using the remaining steps. Board approval will be required for a budget increase of $100,000 or more if achieved through Step 3 or Step 4. Staff proposes that the Board authorize CWCB to approve budget increases of $99,999 or less, with notice to the Board, if achieved through Step 3 or Step 4.

CWCB staff acknowledges that it may be appropriate to proceed to Step 5 earlier in the process—without the assessment of available funds contemplated in Steps 2, 3, or 4—if an adequate revised SOW can be developed. Items that are removed from the scope may be funded separately by the Project Beneficiary, the state, or another party (if the parties so choose and if funds are available).

Attachment

Upper Colorado River Basin Fund Memorandum of Agreement Criteria and Guidelines for Prioritization of Projects within Colorado

Approved by the Colorado Water Conservation Board
March 18, 2015

Proposed
Upper Colorado River Basin Fund Memorandum of Agreement Criteria and Guidelines for Prioritization of Projects within Colorado

Background

In 2011, the Upper Division Colorado River Basin States (Colorado, Wyoming, Utah, and New Mexico), the United States Bureau of Reclamation (BOR), the United States Department of Energy Western Area Power Administration, and the Colorado River Energy Distributors Association signed a Memorandum of Agreement (MOA) that authorizes the use of the Upper Colorado River Basin Fund (UCRB Fund) to further the purposes of the 1956 Colorado River Storage Project (CRSP) Act (Public Law 485) through Fiscal Year (FY) 2025. The UCRB Fund is comprised of funds appropriated from the US Treasury for capital projects, as well as proceeds from sales of hydroelectric power, transmission services and municipal and industrial (M&I) water service sales. The 2011 MOA authorized uses for operation, maintenance, and replacement (OM&R) projects on CRSP facilities, among other specified purposes. To utilize these UCRB Funds, each state is tasked with annually recommending and prioritizing eligible expanded or extraordinary OM&R projects following the process prescribed by the MOA. To identify projects related to CRSP facilities that meet MOA criteria, the BOR developed a planning report for the CWCB's use.

Introduction and Purpose

Because the currently identified projects exceed the amount of funds available, the CWCB instructed the Staff to develop general criteria and guidelines to help in the prioritization and use of these funds. The purpose of these criteria and guidelines is to assist the CWCB in identifying, recommending, and prioritizing these and future projects in use of these UCRB funds.

Overview of the Fund Eligibility Requirements and Project Application Process

To be eligible for UCRB Funds, a project must further the purposes of CRSP Act through expanded or extraordinary OM&R and other activities for existing CRSP Initial Units or CRSP projects. The following is a list of activities that will be considered for funding as further described in the MOA:

- Replacements, additions and extraordinary maintenance
- Water conservation activities
- Environmental compliance activities
- Stream gaging
- Consumptive use analysis
- Salinity projects in the Upper Colorado River Basin

The MOA provides that BOR, upon request and using MOA funds, may provide technical and administrative support to identify and implement projects that would qualify for use of MOA revenues. As indicated above, the BOR, through its planning report, identified a long list of possible projects in Colorado for use of these funds. A list of these projects may be found in "Colorado River Storage Project Memorandum of Agreement Planning Report for the State of Colorado" by the Bureau of Reclamation dated August 2014. The planning report further classifies these projects as already approved proposals, proposed expanded or extraordinary OM&R activities, and proposed routine or other OM&R items (non-eligible). BOR considers extraordinary OM&R items to be major nonrecurring items as opposed to routine OM&R items. BOR contends that MOA revenues cannot be used for new construction; such as items that would increase water storage capacity (e.g., new storage reservoirs or the raising of a dam) or expand a delivery system (e.g., new canals). BOR also does not consider routine OM&R items to be eligible for funding under the MOA. In their evaluation, BOR also considers whether a project is eligible for funding from other sources. While the CWCB may not agree with BOR's interpretation of what constitutes appropriate projects under the MOA, the CWCB is not bound by BOR's interpretation. However, the CWCB will consider BOR's position as it develops and submits proposed project applications and as it prioritizes approved projects.

<u>CWCB Criteria and Guidelines for Prioritization of Eligible Projects within Colorado</u>

The CWCB Staff will use the following criteria and guidelines to prioritize eligible and approved projects and make recommendations to BOR for use of UCRB Funds. However, it should be noted that a project does not have to meet all of the criteria to be recommended or considered a high priority. The criteria below are not listed in any order of importance or priority, but rather the criteria will be considered as a whole on a case by case basis.

1. Water Supply – The degree to which the project increases and or conserves water supply for the Colorado River System, including, but not limited to, projects relating to water efficiency improvements, augmentation, weather modification, and/or tamarisk removal.
2. Safety – The degree to which the project addresses facility safety issues and decreases potential risk to people, property, and the environment.
3. Water Quality – The degree to which the project addresses issues of water quality and watershed health or provides targeted substance (e.g. salt and selenium) removal or control in the Colorado River System.
4. Water Information – The degree to which the project improves the availability of, and access to, water information and provides data to the State of Colorado and water mangers for improved water management decisions.
5. Operational Efficiency – The degree to which the project improves the efficiency of the water monitoring, control and management facilities and related operational effectiveness.
6. Cost Sharing – The level of matching funds and opportunity for cost sharing and leveraging amongst project sponsors. The extent, and to what degree, the project has the support of other interested stakeholders or government, as demonstrated by dedicated resources, including in-kind resources and cash resources.
7. Timeline – The length of time needed to implement the project (i.e., projects should be able to be completed within the life of the MOA).
8. Replicable – The degree to which the resources, expertise, and conditions associated with the project can be replicated, or applied to, other Colorado River Basin locations.

9. Local Prioritization – The level to which the project addresses urgent and prioritized community needs as indicated and supported by local water managers.
10. Equitable Balance – The degree to which the projects are balanced amongst qualifying MOA project areas. Projects should adequately and equitably represent the water management needs, and conservation opportunities, in the qualifying areas of the Colorado River System within Colorado.
11. Endangered Species – Whether the project will assist in, and not impair in any way, the recovery of endangered species or species of concern.
12. Beneficial use – Whether, and to what degree, the project would enhance the ability of Colorado to protect existing uses and to fully develop and place to consumptive beneficial use its Colorado River compact entitlements.
13. Maximum use – Whether, and to what degree, the project would promote maximum utilization of the waters of the State.

Prioritization and Recommendation Process

Project proponents must propose projects to the CWCB according to the annual schedule, on the forms required by the Bureau of Reclamation. Currently, the applications are due on a "RAX form" and they are due to the CWCB Staff in mid-June, for the federal fiscal year that begins approximately 16 months later (i.e. in June 2014, the proposals were submitted for projects that start in October, 2015 or "FY2016"). A copy of the current blank RAX form is attached to these criteria and guidelines. Although not explicitly stated on the RAX form, the project descriptions must also include a purpose, detailed projected cost estimate, a timetable for commencement and completion, and a showing that the project is viable (relates to a CRSP facility, provides efficiencies, cost savings or improvements).

Since 2011, many CRSP project participants have expressed interest in applying for funds for qualifying projects, either directly (e.g., Dolores Water Conservancy District), or indirectly under the auspices of the Colorado River Water Conservation District ("CRWCD") or the Southwestern Water Conservation District ("SWWCD"). The CRWCD and SWWCD have been particularly helpful in developing projects for funding under this MOA.

Each year, if funding is available, the CWCB will solicit recommendations for new projects from the CRWCD, SWWCD, CRSP project participants, and other stakeholders if appropriate. The CWCB staff will choose whether to submit proposals to the BOR based on consistency with the criteria under the MOA, and on available funds. Submittal by the CWCB of a proposed project to the BOR, and subsequent approval by the BOR, do not guarantee that the project proponent will receive funding, as funding will be subject to availability and subsequent prioritization on an annual basis. The CWCB staff will report to the Board annually on this program.

For example, once BOR approves a project application, additional prioritization by the CWCB Staff may be necessary each fiscal year to assure appropriate prioritization of the spending of funds. After conferring with CRSP participants and Colorado's Commissioner on the Upper Colorado River Commission, the CWCB Staff will maintain and make available a prioritization list for on-going and current fiscal year projects. Similar consultation will occur if the list of priorities or the level of funding needs to be modified during the year.