

Rio Grande Basin Roundtable
Meeting Minutes
Thursday, August 13, 2019
5:00 pm
Saguache County Road & Bridge Building
Saguache, CO

Chairman Nathan Coombs brought meeting to order at 5:00 pm.

Introductions of those present. Chairman explained thought process of moving the Roundtable meeting around the Valley for more diverse Roundtable participation.

Agenda

Chairman entertained a motion to accept the agenda as amended with addition of Bethany Howell of RGWCEI who is asking for letter of support for the CWCB water planning grant. Cindy Medina moved to accept agenda with amendment. Mike Gibson seconded. All approved and the motion passed.

Minutes

Minutes from the July 9, 2019 meeting were presented for review. Judy Lopez motioned to approve the minutes as presented, Keith Holland seconded. All approved and the motion to approve the minutes passed.

Public Comment

Audience member asked a question regarding speaking during the presentations. The chairman explained the format of the regular business of the Roundtable and the presentations afterwards. There will be a Q&A after the presentations.

Keith Holland discussed spill for the reservoir and thanked the Roundtable for grant support. Restrictions should be moved off the reservoir after observation.

Update on Education Subcommittee Report

Requests for letters of support for the CWCB Water Planning Grant applications were heard. Rio de la Vista made a motion to approve Bethany Howell of RGWCEI's ask for a letter of support for their water conservation education grant proposal. Wayne Schwab seconded the motion. Roundtable approved by acclimation.

Max Ciaglo requested on behalf of Colorado Open Lands' grant proposal to engage incoming tourists particularly in the sandhill crane festival involvement. Virginia Christensen made a motion to support, Mike Gibson seconded. Motion passed by acclimation.

Liza Marron asked for a letter of support from the Roundtable for the SLV Local Foods Coalition's grant. They are partnering with CSU. Nicole Langley made a motion to support the grant, Emma Reesor seconded. Cindy Medina asked a question about having a letter after submission. It was explained that the grant submission deadline had already passed for all applicants. The request was approved by acclimation. Letters should be submitted to the chairman for signing as soon as possible.

Colorado Division of Water Resources Update

Kevin Boyle gave update on behalf of the Colorado Division of Water Resources. It was an excellent water year for 2019, comparable to the 1980's. Rio Grande River charted annual flow at Del Norte at 980,000 AF (151% of long term average). Obligation to downstream states is 410,000 AF (42% of index). The Rio Grande Reservoir is draining to fix outlets, so releases will go down.

Conejos River is 150% of average, curtailment at 50%. Obligation to downstream states is 232,000 AF (52% of index). The gage at Mogote is 450,000 AF. This doesn't include Los Pinos or San Antonio gages. Projected precipitation is average through the end of the year. Christine Canaly asked about how the aquifer looks with recharge, Kevin responded that they might have recharged up to 150,000 AF. Cleave Simpson responded with numbers from the Rio Grande Water Conservation District, stating that it depended on the time of year.

CWCB Update

Megan Holcomb of the Colorado Water Conservation Board reminded the Roundtable about the CWCB board meeting taking place September 18, 2019 and hosted in the San Luis Valley, and the C9 State Summit on September 25-26 held in Winter Park. Travel funds are available for members, but they must apply to the chair or vice chair by August 30. Update on the basin funds is \$59,952.00. Funds will be updated in January and April.

Special Presentations

Sean Tonner, partner in Renewable Water Resources and landowner in Saguache County, gave presentation regarding proposed water export. Renewable Water Resources owns confined and unconfined aquifer rights and surface water rights. They propose to export 22,000 acre feet out of confined aquifer through well pumping in subdistrict 1. Tonner claims a billion acre feet are available out of the confined aquifer according to his cited US Geologic Survey. Tonner also claims the confined aquifer is recharging at 1.1 billion acre feet per year through underground streams and that the state of Colorado has spent millions of dollar analyzing the hydrology of the SLV and that is where they get their numbers. He proposes to drill 14-16 wells, 9-10 feet high and 4-5 feet around with a manifold pipe system on their property. They will pipe the pumped water from the state highway and north to the Front Range. The Front Range is 500,000 AF short of water for their communities, are looking for new sources that don't impact the environment, is renewable, and doesn't require intensive treatment. Referring to the confined aquifer as a "bathtub," Tonner said they would get water rights from farmers and ranchers. Tonner claims 250,000 acre feet from agricultural use needs to be curtailed by subdistricts. Their proposal will supposedly return the water on a ratio of 1:1+. Tonner claimed less than 2% of confined aquifer is currently being used, with renewable opportunities. He discussed the need for the Front Range to use their water more conservatively. Renewable Water Resources would allow farmers to sell all or part of their water rights and begin farming with more water-friendly crops. Tonner claimed the project lessens pressure on rivers and streams, benefits to Saguache County with the addition of \$68 million to farmers for selling water, and a \$50 M community fund. Tonner said that the Rio Grande Basin is 98% agriculturally based, higher than any other river basin and that the basin needed to diversify. Tonner claimed that the interest on the proposed \$50 million community fund alone would be higher than the current sales tax grant fund. He also claimed that they would explore

expanding elk habitat in the Baca Wildlife Refuge by adding 3,000 acres as a conservation easement. Other claims included minimal disruption to the area by piping the water following state highway and into the river system, and that the pipe restriction would be decreed at 22,000 AF. They are exploring development of a long term fund for end users to have perpetual use. Using engineering field test reports, Tonner said there are already seven transbasin diversions into and out of the Valley. He noted that they will go through Division 3 water court for approval and will continue to do outreach into the next two years.

Rio Grande Water Conservation District Presentation – Cleave Simpson

Simpson discussed the past request by Renewable Water Resources last year to the board to partner with this project. The board was opposed to a water export as it violated their mission and values and would not partner. Simpson noted that the Saguache County Commissioners requested the district to step forward and discuss the water reality for the Valley.

Simpson brought up the website from Renewable Water Resources to address their claims regarding the Rio Grande Basin. According to Simpson, the Basin is under no legal obligation to retire stream flows and it is under no legal obligation to retire unconfined aquifer wells. Subdistrict 1 has a decree from the state water engineer to bring aquifer sustainability up to a certain level, but it is up to them how they will do it. They were given a 20 year time frame to do so. 2018 was the 4th recorded worst year on record and the aquifer levels suffered a major setback. Simpson noted that the state water engineer is in the unenviable position to shut down wells in subdistrict 1 for the year if they do not reach those levels in the proscribed time. He explained that in the subdistricts, many programs are being utilized to reach this point, such as utilizing the following programs through the NRCS CREP program.

Simpson noted that Saguache County must speak to their own need and concern for not being able to meet needs. He claimed that the San Luis Valley is at risk for lack of renewable water and is unclear how Renewable Water Resources aims to have water put back into stressed streams and unconfined aquifer as they claim. Simpson acknowledged that there is a gap between municipal need across the state and the supply is part of the Colorado Water Plan's goals to meet, but agriculture is important as well and the state doesn't aspire to force the buy & dry approach. Simpson described the water plan's conceptual framework and how it deals with these conversations about water exchanges. Originally, the framework was conceived for the Colorado River, but the Rio Grande may be the first basin to test this framework. Productive agriculture is in the Colorado Water Plan as a beneficial and important part.

Simpson referenced the 2008 Supreme Court case No. 07SA42 Simpson vs. Cotton Creek Circles, LLC discussing rules and regulations governing new withdrawals of groundwater in the confined aquifer in division three. Cotton Creek Circles, LLC asserted that the rules were invalid as they were contrary to statute and violated the Colorado Constitution. The water court disagreed and upheld the rules, which hold that the confined and unconfined aquifers as well as surface water streams are hydraulically connected to varying decrees and that the RGDSS model will be used to determine whether a withdrawal will affect the rate or direction of movement of water.

Simpson noted that Renewable Water Resources must comply with these and new well rules & regulations approved in March 2019, that Saguache County has codes for pipeline construction, and that there are multiple federal lands that must be accessed for pipeline. Simpson explained that it isn't new that we have diversions, four of the diversions coming into the Rio Grande Basin are out of San Juan and Gunnison basins and were all decreed between 1890 & 1940 with a total volume of 3,600 acre feet. Two diversions out of the Rio Grande basin are from an 1890 water right, and in total we have exported about 1,000 acre feet out of the Valley since 1980.

Q&A

Chairman Coombs opened the floor for questions to both Cleave Simpson and Sean Tonner from the audience.

Barbara Tidd asked Sean if when the owner purchased ranch from Gary Boyce, was there an agreement when purchasing in order to pursue water export as it is very similar to prior export attempts? Tonner responded no.

Peggy Godfrey asked Tonner about wells which have to pump from levels according to purchase agreements. What are the perforation levels and how will you control those levels? Tonner didn't know as he didn't bring his engineer. Godfrey asked, would wells only be perforated in level 3? Tonner responded that data will come from the RGDSS model and they will be required to comply with that data when pumping 22,000 AF from the confined aquifer. Additional acre feet to retire will be from stream flows, even though they are not required, in order to reach the extra level of recharge. Tonner said that the reality is subdistrict 1 is under obligation to be back to sustainable levels, if they go under curtailment, no one pumps. Tonner claimed 250,000 acres of ag land would need to be retired. Even if this plan doesn't work, another plan should be put in place. Simpson disagreed with 250,000 number in dispute of ag land or acre feet as there is only 500,000 acres of ag land in subdistrict 1. Tonner and Simpson disagreed on the number according to past meetings, but Tonner eventually claimed that the proposal would help the Valley by keeping streams from being stressed.

Peter Clark asked if there was a route chosen to get the water out of the Valley. Tonner responded that they are proposing to pipe the water from Hwy 17 up to 285 on the right of way by the state and that they will have to go through federal approvals. Clark brought up the federal approvals were not simple. Tonner agreed.

Cindy Medina of Alamosa River Keepers asked about buying water two times the market value. She questioned the business practice since she was involved in purchasing water to increase the instream flow of the Alamosa River. The River Keepers' goal wasn't to inflate the rate for their own farmers. When buying water to put back into the river, if the value is two times that, it makes it difficult for others to purchase water as it has a potential to inflate the market value. Tonner responded that farmers requested it to be above market rates as the only way they would be interested in selling. Medina responded that she still questioned it as others have to buy it for other projects.

Emily Chavez asked how many acres of current farmland used as wildlife habitat will be dried up that will impact wildlife? After some clarification about the question, Tonner responded that it will only be

22,000 AF and they will put more water into the system. Chavez pointed out that the land that will be impacted is already proven wildlife habitat. Tonner said they have 3,000 acres identified to add to the Baca Refuge. Tonner said it was similar to the CREP program when the crops are fallowed.

Alder Lakish asked about water price, as the price on Front Range is 10 times what they would be paid here. Tonner responded that Renewable Water Resources would pay two times the current market value for the water right to willing sellers, in addition to \$50 million in community fund, and a variable fee for the community to decide. Tonner noted that it will cost \$500 million in infrastructure to get the water to Front Range.

Ron Garcia commented on behalf of the Baca Wildlife Refuge. He asserted that unlike Tonner's claim, there isn't a shortage of forage for elk, there is just an abundance of elk and they did not need additional acreage. He would appreciate being talked to as the Division of Wildlife Services before Tonner talks about benefits to the Refuge. Tonner agreed that he should have had a discussion with the Refuge.

Rio de la Vista asked Simpson about the reasoning of why the district opposed participation in the plan. Simpson responded that the district is tasked with protecting the water of the Valley on behalf of their constituents. There is an imbalance of demand that exceeds supply, and the district does not believe the solution is to build a pipeline and export water out of the Valley. This is why subdistricts were formed and people participate in programs to overcome these challenges. Simpson explained that the baseline of aquifer sustainability was established in 1976 and the district has been metering withdrawals since 2009. Subdistrict 1 doesn't extend across the Valley. 260,000 acre feet were pumped last year during the drought, and only 2 out of the last 10 years have been recharged more than they were pumped. Additionally, confined aquifer and unconfined aquifer storage are utilized at about the same rate. The claim that the capacity of the confined aquifer is 20-30 times more than the storage capacity of the unconfined is unclear. However, Renewable Water Resources owns senior surface water rights as well as groundwater.

Mike Gibson commented that the increased market price would affect current rates when assessed as part of the appraisal process.

Juanita Martinez gave background on watering as an acequia association and community member. She asked how much water is 22,000 AF to have a better understanding the volume of water? If people are paid two times the market price, when infrastructure is already in place, 3-5 years down the road, what's to stop the owners from taking more water out of the aquifer? Tonner responded that the Front Range has to have low flow toilets and other water conservation measures in place, but that 22,000 AF would take care of 50,000 existing homes, or build 50,000 new homes. He noted that Aurora, Thornton, and other suburbs, if they have prolonged water drought, they don't have another water supply to help existing homes. Over a million people are moving into the areas. Tonner explained that Renewable Water Resources won't build infrastructure until they are out of the court system. The decree will ask for pipe to stay at 22,000 AF. If other people want to increase the volume pumped, they will have to go through the public process again.

Rio de la Vista asked who are the investors and the people involved in this project. Tonner said he would have to defer on the investors until they want to be identified, but partners include Brian Wright, John Kemp, Gov. Owens, and Jerry Berry.

Virginia Christensen asked about the decree limitation to 22,000 AF. She pointed out that once the floodgates are open, any other people can begin to apply for decrees as well. Tonner pointed out that they would have to go through the court process as well. Christiansen asked about the business plan on the variable rate fee, and is skeptical that there is no guarantee that what is said will happen, such as end water users continuing to pay for a variable rate fee. Tonner responded that three communities in the Denver Metro area are already charging residents additional fees on top of water bill.

Rick Barandes agreed with Virginia Christensen about opening the flood gates to turning this area into a desert. He claimed that so much money is involved, it is easier to just ahead and make it happen. Barandes wants Tonner's investors to be identified in the papers so that people know who is involved. There is great concern about the two times the water rate actually being paid. He thinks it will be higher and increase quickly.

Judy Lopez asked Simpson how would 22,000 AF moving from the confined aquifer affect the subdistricts in their annual replacement plan? Simpson responded that there are response areas divided up in the state, the San Luis Creek Response area is basically subdistrict 1. The aquifer needs to be returned to the pressures from 1978-2000. Rules became effective March of this year that pumping is limited to those delineated by the model that won't harm the aquifer. There are groups of wells that are currently out of compliance. Simpson explained that the state groundwater model is the mechanism for the state and users to predict how those 150 wells in the response area pumping 10,000 AF impact Crestone and San Luis Creeks and how to mitigate injury to those streams. This proposal doubles those withdrawals.

John Wall wants to understand whether what Sean proposes is a way to get credit for something outside of the response area if they acquire a water right. If impact is local, doesn't the offset have to be local to prevent injury to the area? Tonner responded that under state water law they have to comply with the RGDSS model and repair injury. The court will decree how they will do it. Simpson responded that there are two different types of impacts when withdrawing: from the aquifer, and to streams as a result of groundwater withdrawals. The state will determine injuries to streams through RGDSS. Wells in the subdistrict area have impact on San Luis and Crestone Creeks and must provide a portfolio to show how they offer reparations to those injuries (an augmentation plan). Wall asked about subdistrict four's review process. Simpson responded that it will focus on its wells and its ability to sustain the aquifer. Tonner will have to show that removing 22,000 AF won't cause injury. RGDSS predicts an injury and that will set the "how" of repairing the injury. Chairman Coombs explained in greater detail about how the court approves the decree.

Michael Scully asked about the modeling for San Luis Creek and whether it was up to the same standards as other drainages. Is the modeling complete? Simpson replied that the amount of data

currently includes groundwater levels and stream flow gains and losses, and while it could be stronger, it has produced reasonable results.

Mark Jacobi asked about the \$50 million community fund and how that gets distributed. Tonner wants the community to administer the fund by setting up a 501c3 fund through the county, using the interest ideally. Jacobi asked, is it for Saguache County only? Tonner replied that the \$50 million is targeted only for Saguache County unless they want to partner Valley wide. Jacobi also asked about the intended distribution of the community fund, are the other Valley farmers selling water rights not included in the fund? Tonner said local people wanted to control where the money went, not Renewable Water Resources. Jacobi asked Simpson about the proposed pumping area, that the claim is some water goes down into granite and into streams. What is the effect of putting deep wells into that nexus, would the force have the ability to pull the water that normally goes into the unconfined aquifer instead of the confined aquifer? Simpson couldn't speculate on that, and district engineers will review the groundwater model to answer that question. It would be for people with more expertise in hydrology and geology of the area to answer.

Matie Belle Lakish asked about it being a long term project with short term payments, paying people twice as much now, and people later who will not get water later and have useless land. The water keeps going out every year with nothing returning. This is an agricultural area by choice and people are here because they don't want to be in an industrial area. How much of Saguache County does this look like? What does the long term look like? Simpson responded that the challenge for our area is do we accept Renewable Water Resources proposal? The district contends that there are better solutions that don't have that permanency attached such as temporary fallowing, contracts with specific dates. From a broad perspective, this proposal is not helpful.

Chris Canaly, SLV Ecosystem Council, asking about hydrology and geology, studies done on Saguache Creek show that surface water carries a lot of groundwater. How will they show that they won't impact groundwater moving in surface water? Coombs pointed out the question had already been answered with the model delineating where injuries will occur and require compliance.

Norah Schreiber asked Simpson where the 10,000 acre feet are coming from? Simpson described where the ranch is located. Tonner said that it is near CR T north of road AA. Barbara Tidd asked what drainage is near the ranch, and Tonner responded that it is north of Cotton Creek and that they may acquire another ranch north. Simpson said it is difficult to predict what injuries might happen to another water user several miles away. The decree has to show ahead of time where the injuries will happen and Renewable Water Resources will have to mitigate that.

Roy Esquibel asked Tonner about the value of acre feet currently in the Valley. Tonner responded that it depends on the use, as water is more valuable when irrigating potatoes than watering livestock. He explained that it could be \$2-3,000 per acre foot and as low as \$80 per acre foot in other areas.

Suzanne Gosar asked Simpson if the district will be hiring attorneys and fighting the project? Simpson said yes, the RGWCD has a payment from the AWDI settlement which is a base from which to pay. Legal costs are expensive and take time and effort. Gosar told the audience, since we were able to defeat

AWDI, we mustn't be apathetic and be active as a community. Gosar asked Tonner if their investors were willing to pay our costs as opposition? Tonner said only what is proscribed by the court. No blank check if they lose.

Carolyn Brown asked for a visualization of how many square miles is 22,000 AF, and said she believes the Valley already exports "water" in the form of crops leaving and asked for Simpson's perspective on that concept. Simpson responded that every commodity has water attached to it, but water itself leaving doesn't become re-invested in the community such as our profits from crops that are kept in the community. Charles Spielman expressed appreciation for having Tonner explain the concepts in a difficult environment. Spielman referenced the 2008 court case and asked does Tonner ascribe to the knowledge that the water is over appropriated in this Basin? Tonner agreed that they will retire 1:1 and then 8-15,000 more AF for the benefit of the Valley. Spielman asked if Renewable Water Resources will only dry up already appropriated water? Tonner responded yes. Spielman pointed out that there are no new uses for the water, it is already existing. 22,000 AF is per year, in perpetuity. That's about 15-16 sections. Simpson was asked by an unidentified audience member if buying water rights from producers in the confined aquifer, does it affect Subdistrict 1 since it is mostly unconfined aquifer wells? Simpson said some wells in subdistrict 1 are in the confined aquifer. Heather Dutton asked Tonner that since he is using the government's numbers from the geologic survey, would they annotate their website with that information? Tonner responded yes. Dutton asked Tonner about a previous public meeting where it was stated that North Star Farms was being purchased, was that a true statement? Tonner responded no.

Tonner ended the Q&A with pointing people to the website and social media channels for community meetings and one on one meetings. He offered to meet with people and get technical answers to their questions. He stated that the basin's challenges are still there even if the project doesn't go forward and that Renewable Water Resources will work for their support. He asked the community to agree to disagree and still be civil.

Simpson said the proposal wasn't a good one from the district perspective. He would challenge members of any other basin to see if they think a water export plan is a good idea for their basin, or to find an environmental group that thinks transbasin diversions are good for the environment. Simpson said it's not good for the San Luis Valley or the state of Colorado.

Chairman adjourned at 7:12 pm.

Next meeting will be on September 10, 2019 at the SLV Water Conservancy District office in Alamosa.