COLORADO
Colorado Water
Conservation Board
Department of Natural Resources

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Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Rebecca Mitchell, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Rachel Pittinger, P.E., Project Manager
Kirk Russell, P.E., Finance Section Chief

DATE: November 17-18, 2021 Board Meeting

CONSENT AGENDA ITEM: **4. Change to Existing Loan**
Arkansas Groundwater and Reservoir Association
- Merger and Name Change

Staff Recommendation:
Staff recommends the Board approve a transfer of the loan obligations, Contract Numbers C153808 and C150156, from the Arkansas Groundwater Users Association to the Arkansas Groundwater and Reservoir Association. The loan terms will remain the same with no change to the repayment schedule. Collateral for the loan shall be maintained and is in compliance with CWCB Financial Policy #5.

Introduction:
The Arkansas Groundwater Users Association (AGUA) received CWCB loan approval on September 22, 1997 for the purchase of 1,007 shares in the Excelsior Ditch in the amount of $650,000 (Contract Number 153808). On September 22, 2003 AGUA received CWCB loan approval for the purchase of 785 shares in the Excelsior Ditch in the amount of $970,448 (Contract Number 150156). The purpose of the Project was to provide a consistent water supply, enabling the AGUA to sustain its operations and administer plans for augmentation, replacement plans and substitute supply plans within its service area.

The Arkansas Groundwater and Reservoir Association (AGRA) is a result of the merger between the Colorado Water Protective and Development Association (CWPDA) and AGUA per the July 22, 2021 *Agreement and Plan of Merger*. AGRA is requesting CWCB approval of the transfer of the loan obligations from the AGUA to AGRA. See attached Agreement and Plan of Merger. The original board memos are also attached for reference and additional background.

Background:
The original Borrower, AGUA, was a non-profit corporation formed and incorporated in January of 1995. The members and shareholders of AGUA were well owners who joined together for the purpose of including their well pumping in an Arkansas River Replacement Plan (also referred to as a Rule 14 Plan), in water court decreed augmentation plans, and in administratively approved substitute water supply plans (SWSPs). CWPDA was also a non-profit corporation formed and incorporated in 1965 with a nearly identical purpose as AGUA.

AGRA is a non-profit corporation that registered with the Secretary of State on August 26, 2021. The *Agreement and Plan of Merger* identifies the property of and obligations due to are the responsibility of the Surviving Entity. AGRA revenues will be derived from assessments. Additional revenue may be from augmentation water fees charged to its shareholders and from annual leases of replacement water. AGRA is governed by a nine-member Board of Directors. The Board of Directors has certain powers, duties and responsibilities, which include the immediate control and supervision over the business affairs and management of AGRA, set and enforce the payment of all fees and assessments, they shall approve and direct all disbursement of the funds of AGRA and shall determine the necessity for and the extent of any indebtedness or obligations incurred.

Water Rights: The water rights associated with the transfer of loan obligation are shown in Table 1.

TABLE 1: WATER RIGHTS SUMMARY

Name	Amount	Appropriation Date	Adjudication Date	Water Court Case No.
Excelsior Ditch	20 cfs 40 cfs	May 1, 1887 January 6, 1890	March 23, 1896	Case No. 9532
Excelsior Ditch	20 cfs 40 cfs 3,333 shares	May 1, 1887 January 6, 1890	May 30, 2007	04CW062

Schedule: AGRA merger is complete. CWCB will then process contract transfer documents including a Promissory Note, Security Agreement, and Deed of Trust. Per contract, a $1,000 service fee will be imposed by the CWCB.

Financial Analysis: AGRA provided audited financial statements prepared by Hancock Froese and Company LLC – C.P.A.'s and include the past years financial report for CWPDA. AGRA accepted $1,056,088 in existing debt made up of two CWCB loans through the execution of the *Agreement and Plan of Merger*. These loans are in good standing and are shown in Table 2.

TABLE 2: EXISTING DEBT

Lender	Original Balance	Current Balance	Annual Payment	Maturity Date	Collateral
CWCB C150156	$970,448	$651,915	$45,419	2039	Excelsior Ditch water rights
CWCB C153808	$650,000	$404,173	$30,698	2038	
	Total	$1,056,088	$76,117		

Creditworthiness: The AGRA (f/n/a CWPDA) has no outstanding debt. Per AGRA's Bylaws, a resolution of the Board of Directors will approve the CWCB loan contract conditions and take on the debt. AGRA's service area is greater and their operating revenue and cash reserves maintain strong financial ratios compared to the named debtor, AGUA.

TABLE 3: FINANCIAL RATIOS[1]

Financial Ratio	Past Years	With AGUA loan obligation
Operating Ratio (revenues/expenses) weak: <100% | average: 100% - 120% | strong: >120%	159% (strong) $1.61M/$1.02M	148% (strong) $1.61M/$1.09M
Debt Service Coverage Ratio (revenues-expenses)/debt service weak: <100% | average: 100% - 120% | strong: >120%	N/A	784% (strong) ($1.61M-$1.02M) $76K
Cash Reserves to Current Expenses weak: <50% | average: 50% - 100% | strong: >100%	139% (strong) $1.42M/$1.02M	130% (strong) 1.42M/$1.09M

[1] Financial ratios are based on past years Colorado Water Protection Development Authority (CWPDA) audited financials. Audited financial statements prepared were provided by Hancock Froese and Company LLC - C.P.A.'s and include the past years financial report for CWPDA.

Collateral: Security for this transfer of loan obligation will be a pledge of assessment revenues backed by an assessment covenant and the Excelsior Ditch shares in CWCB loans C150156 and C153808. These shares are secured under amended Deed of Trust Reception Nos. 1834356 and 1546951, respectively, and for Certificate Nos. 10 and 7 as stated in the Deed of Trusts. This security is in compliance with the CWCB Financial Policy #5 (Collateral).

cc: Kent Ricken, General Manager, Arkansas Groundwater and Reservoir Association
Jennifer Mele, Colorado Attorney General's Office

Attachments: Agreement and Plan of Merger, July 22, 2021
Original Board Memos (September 2003 and October 1997)

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") dated as of July 22, 2021, is made and entered into by and between Colorado Water Protective and Development Association, a Colorado non-profit corporation ("CWPDA"), and Arkansas Groundwater Users Association, a Colorado non-profit corporation ("AGUA").

WHEREAS, the Board of Directors of CWPDA, and the Board of Directors of AGUA, have approved and adopted this Agreement and the transactions contemplated by this Agreement, in each case after making an independent determination that this Agreement and such transactions are advisable and fair to, and in the best interests of, such entities; and

WHEREAS, upon the terms and subject to the conditions set forth in this Agreement, AGUA will merge with CWPDA (the "Merger") as authorized by the Colorado Revised Nonprofit Corporation Act, as amended (the "Act").

NOW, THEREFORE, in consideration of the promises, the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

THE MERGER

1.1 The Merger. Upon the terms and subject to the conditions hereof, at the Effective Time (as defined in Section 1.3 below), AGUA shall merge with CWPDA and the separate existence of AGUA shall thereupon cease. For tax purposes, CWPDA shall be the surviving entity in the Merger (the "Surviving Entity").

1.2 The Name Change. At the Effective Time, the name of CWPDA as the Surviving Entity shall be changed to the Arkansas Groundwater and Reservoir Association ("AGRA" or the "Association").

1.3 Effective Time. The Merger shall become effective upon the filing of a Statement of Merger under the Act (the "Effective Time").

1.4 Statement of Merger. The Surviving Entity will cause a duly authorized officer to make and execute a Statement of Merger, or other applicable certificates or documentation effecting this Agreement, and shall cause the same to be filed with the Secretary of State of the State of Colorado in accordance with the Act.

ARTICLE II

THE SURVIVING ENTITY

2.1 Articles and Bylaws. The Articles of Incorporation and Bylaws approved at the combined meeting of AGUA and CWPDA on July 22, 2021 contemporaneously with the approval of this Plan of Merger shall be the Articles of Incorporation and Bylaws of AGRA.

2.2 Policies and Procedures. The policies and procedures of CWPDA in effect immediately prior to the Effective Time will be the policies and procedures of AGRA and will continue in full force and effect until thereafter amended in the manner prescribed by the Articles of Incorporation and Bylaws.

2.3 Board of Directors. The Board of Directors of AGRA shall initially be composed of the Directors elected in 2020 from CWPDA and from AGUA. Officers will be elected in accordance with the Bylaws of AGRA at the first meeting of the Board of Directors of AGRA. Thereafter, commencing at the 2023 annual Membership meeting of AGRA, the Board of Directors shall be selected in the manner prescribed by the Articles of Incorporation and Bylaws of AGRA.

2.4 Employees. All employees of AGUA and CWPDA shall become employees of AGRA as of the Effective Date.

ARTICLE III

EFFECT OF MERGER

3.1 Member Interests. At the Effective Time, by virtue of the Merger and without any further action on the part of any other person or entity, all members and participants of AGUA and CWPDA as of July 22, 2021 shall be deemed members of the Surviving Entity. Upon application, Members will receive a contract right, subject to AGRA's Articles of Incorporation, Bylaws, rules, regulations and policies, entitling the member to the benefits of membership in AGRA, including an allotment of augmentation water ("Membership Contract"). Each share of stock in AGUA will be replaced with a Membership Contract.

3.2 Vesting of Property. The Merger shall have the effect described in Section 7-131-104 of the Act. Without limiting the generality of the foregoing, at the Effective Time, all rights, privileges, including specifically the attorney-client privilege, and powers of each of CWPDA and AGUA, all real, personal, and mixed property, and all obligations due to each of CWPDA and AGUA, as well as all other things and causes of action of each of CWPDA and AGUA, shall vest as a matter of law in the Surviving Entity and are thereafter the rights, privileges, powers, and property of, and obligations due to, the Surviving Entity.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of AGUA. As an inducement to CWPDA to enter into this Agreement and to complete the Merger, AGUA represents and warrants to CWPDA and its respective successor and assigns as follows:

4.1.1 Organization of AGUA. AGUA is a nonprofit corporation duly organized, validly existing and in good standing under Colorado law, and is in good standing in any other state or country where the conduct of its affairs requires such qualification. AGUA has full power and authority to conduct its affairs as now conducted. Complete and correct copies of AGUA's articles of incorporation and bylaws, as amended to date, have been delivered to CWPDA.

4.1.2 Authority. AGUA has full power and authority to enter into this Agreement and to complete the Merger. The execution, delivery and performance of this Agreement by AGUA have been duly authorized by AGUA's Board of Directors. AGUA's shareholders have authorized the Merger and approved this Plan for Merger, and the AGRA Articles of Incorporation and Bylaws by a majority vote at a special shareholder meeting held on July 22, 2021. This Agreement is the legal, valid, and binding agreement of AGUA, enforceable in accordance with its terms.

4.2 Representations and Warranties of CWPDA. As an inducement to AGUA to enter into this Agreement and to complete the Merger, CWPDA represents and warrants to AGUA and its respective successor and assigns as follows:

4.2.1 Organization of CWPDA. CWPDA is a nonprofit corporation duly organized, validly existing and in good standing under Colorado law, and is in good standing in any other state or country where the conduct of its affairs requires such qualification. CWPDA has full power and authority to conduct its affairs as now conducted. Complete and correct copies of CWPDA's articles of incorporation and bylaws, as amended to date, have been delivered to AGUA.

4.2.2 Authority. CWPDA has full power and authority to enter into this Agreement and to complete the Merger. The execution, delivery and performance of this Agreement by CWPDA have been duly authorized by CWPDA's Board of Directors. CWPDA members have authorized the Merger and approved this Plan for Merger, and the AGRA Articles of Incorporation and Bylaws by majority vote at CWPDA's Annual Member Meeting on July 22, 2021. This Agreement is the legal, valid, and binding agreement of CWPDA, enforceable in accordance with its terms.

4.3 Limited Representations and Warranties. Except as provided in Sections 4.1 and 4.2, AGUA and CWPDA accept the condition and suitability of the two Associations "as is". AGUA and CWPDA have negotiated in good faith, have conducted their own investigations into the assets and liabilities of the respective associations, and have determined a merger of the two Associations is in the best interests of the members. Both Associations acknowledge there may be undisclosed or unknown liabilities, violations, or property issues that may affect one or both Associations. The

Directors and employees of the Association agree to provide information and resources as necessary to address any such liabilities as soon as practicable.

ARTICLE V

MISCELLANEOUS

5.1 Severability. If any provision of this Agreement shall be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, in whole or in part, such invalidity, illegality or unenforceability shall not affect the remaining provisions hereof, which shall remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the Merger may be consummated as originally contemplated to the fullest extent possible.

5.2 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder will be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. Any assignment in violation hereof shall be null and void.

5.3 Interpretation. As used in this Agreement, the words “include”, “includes”, and “including” will be deemed to be followed by “without limitation.” The words “this Agreement”, “herein”, “hereof”, “hereby”, “hereunder”, and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

5.4 Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof and shall supersede any and all previous contracts, arrangements or understandings between the parties with respect to the subject matter hereof.

5.5 Governing Law. This Agreement shall be construed, interpreted, and governed in accordance with the laws of the State of Colorado, without reference to rules relating to conflicts of law.

5.6 Submission to Jurisdiction. Each party to this Agreement submits to the exclusive jurisdiction of the District Court, Otero County in the State of Colorado for any dispute or action arising out of or relating to this Agreement and agrees that all claims in respect of such dispute or action will be heard and determined in such court. Each party also agrees not to bring any dispute or action arising out of or relating to this Agreement in any other court. Each party agrees that a final judgment in any dispute or action so brought will be conclusive and may be enforced by dispute or action on the judgment or in any other manner provided at law (common, statutory or other) or in equity. Each party waives any defense of inconvenient forum to the maintenance of any dispute or action so brought and waives any bond, surety, or other security that might be required of any other party with respect thereto.

5.7 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity other than the parties hereto any rights or remedies of any nature whatsoever under or by reason of this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their respective successors and permitted assigns.

5.8 Amendments and Modifications; Waiver. This Agreement may not be amended or modified and no term or provision of this Agreement may be waived, or discharged, except in writing and signed by the party against whom such amendment, modification, waiver, or discharge is sought to be enforced. No such amendment or modification shall extend to or affect any obligation not expressly amended or modified or impair any right consequent thereon. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

5.9 Counterparts; Electronic Transmission. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to each party, any one of which may be delivered by facsimile. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

5.10 Further Assurances. From time to time, as and when required by the Surviving Entity or by its successors and assigns, there shall be executed and delivered on behalf of each of CWPDA and AGUA such instruments, and there shall be taken or caused to be taken by it such further and other action, as shall be appropriate or necessary in order to vest or perfect in order to confirm of record or otherwise, in the Surviving Entity, the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of CWPDA and AGUA and otherwise to carry out the purposes of this Agreement, and the officers of the Surviving Entity are fully authorized in the name and on behalf of CWPDA and AGUA or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

[*Signature page follows.*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be duly executed by their respective authorized officers as of the date first above written.

CWPDA:

COLORADO WATER PROTECTIVE AND DEVELOPMENT ASSOCIATION, A Colorado non-profit corporation

By: ______________________________
Name: Matthew Proctor
Title: President

AUGA:

Arkansas Groundwater Users Association, a Colorado non-profit corporation

By: ______________________________
Name: Scott Brazil
Title: President

STATE OF COLORADO

Colorado Water Conservation Board
Department of Natural Resources
721 Centennial Building
1313 Sherman Street
Denver, Colorado 80203
Phone: (303) 866-3441
FAX: (303) 866-4474

October 28, 1997

Board of Directors
Arkansas Groundwater Users Association
100 West First Street
Manzanola, CO 81058

Re: Loan for Acquisition of Water rights

Gentlemen:

I am pleased to inform you that at the September 22, 1997 meeting of the Colorado Water Conservation Board, the Board approved a loan of up to $650,000 from the Arkansas River Augmentation Loan Account of the Construction Fund to the Arkansas Groundwater Users Association for the purpose of acquiring shares in the Excelsior Irrigating Company for use in AGUA's augmentation program. The term of the loan is 40 years and the lending rate is 3.0 percent.

The Board approved the loan subject to the following conditions:

1. the submittal of an appraisal, acceptable to the Director of the CWCB, of the Excelsior Ditch water rights, and

2. ratification of the purchase of the Excelsior Irrigating Company shares by a vote of the shareholders in the Arkansas Groundwater Users Association.

Please continue to coordinate with Bill Green on the water rights appraisal and any remaining feasibility work and with Perry Coons of this office on the loan contract.

On behalf of the Board and the staff, I would like to thank you for applying for a loan from the Colorado Water Conservation Board Construction Fund.

Sincerely,

William P. Stanton

William P. Stanton, P.E.
Chief, Planning and Construction Section

cc: Alan Hamel, Board Member
Chuck Lile
Bill Green
Perry Coons
Linda Bassi, AGO

STATE OF COLORADO

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Roy Romer
Governor
James S. Lochhead
Executive Director, DNR
Daries C. Lile, P.E.
Director, CWCB

REVISED

MEMORANDUM

TO: **Colorado Water Conservation Board Members**

FROM: **Bill Green, P.E.**
Project Planning and Construction

DATE: **October 14, 1997**

SUBJECT: **Agenda Item 14.b., September 22-23, 1997 Board Meeting - Water Project Construction Loan Program -Arkansas River Augmentation Loan Account - Arkansas Groundwater Users Association - Augmentation Plan**

Introduction

The Arkansas Groundwater Users Association (AGUA) is applying for a loan of $650,000 from the Arkansas River Augmentation Loan Account for AGUA's augmentation program in the upper Arkansas River Basin. The loan would be used to purchase shares in the Excelsior Ditch to offset a portion of the depletions resulting from well pumping by members of AGUA.

Project Sponsor

AGUA was formed in 1995 as a non-profit corporation "to protect and develop the surface and underground waters of the State of Colorado in the Arkansas River Basin to their fullest use". AGUA's membership consists of 254 individuals or entities and more than 400 wells of which 336 are currently active. Approximately 95 percent of AGUA's member water use is for irrigation.

The Association's primary service area is the mainstem of the Arkansas River between Pueblo Reservoir and John Martin Reservoir with some members located above Pueblo Reservoir on the Arkansas as far west as Salida and a large number of members in the Fountain Creek Basin. The current officers of AGUA are: Dick Evans, President; Bert Potestio, Vice President; Cliff Walter, Secretary/Treasurer.

AGUA's amended 1997 Replacement Plan, as submitted to the Division 2 Engineer, is for 19,452 acre-feet of well pumping for the current member wells. The estimated long-term replacement requirement for this level of pumping is about 8,950 acre-feet. AGUA does not own any water rights at the present time but leases, from various sources, all of the water used to replace member pumping depletions.

Proposed Purchase

AGUA has submitted a feasibility study, prepared by Rocky Mountain Consultants of Longmont, describing the pumping and replacement requirements of AGUA's member wells and six possible water rights acquisitions to offset a portion of the replacement requirements. AGUA intends to acquire, through water rights purchases, 50 to 60 percent of its augmentation requirements over the next 25 to 30 years.

Six water rights have been offered to AGUA for purchase. The feasibility study included a preliminary screening of the six water rights to: (1) estimate average annual replacement credits, (2) evaluate timing and location characteristics of the water rights, and (3) evaluate the purchase price and other costs associated with use of the rights for augmentation purposes. The results of the evaluation are shown in Table 1, attached.

Table 1 clearly shows that the Excelsior water rights at a purchase price of $864 per acre-foot and a total estimated implementation cost of $1,183 per acre-foot are the most cost-effective alternative. The location of the ditch on the mainstem of the Arkansas River between Pueblo and John Martin reservoirs also makes it very suitable for AGUA's augmentation program.

The Excelsior Ditch diverts from the north bank of the Arkansas River about four miles east of Pueblo and has water rights priorities of May 1, 1887 for 20 cubic feet per second (cfs) and January 6, 1890 for 40 cfs. The average annual diversion of the Excelsior Ditch for the years 1908 to 1985 was about 4,000 acre-feet.

AGUA is proposing to purchase 1,007 shares (a 30-percent interest in the ditch) from Dick Evans. Mr. Evans is both the prospective seller of the water rights and the president of AGUA. Table 2 summarizes the major characteristics of the proposed acquisition.

Table 2. Summary for Excelsior Ditch Purchase

Water Rights Priorities		
	May 1, 1887	20 cfs
	Jan. 6, 1890	40 cfs
Average Annual Diversion, entire ditch (1908-1985) = 4,070 acre-feet		
1,007 Shares at a total price of $650,000		
Consumptive Use Credit for 1,007 Shares = 752 acre-feet		
Cost per Acre-Foot = $864		

Financial Analysis

Rocky Mountain Consultants has submitted a detailed 40-year projection of revenues and expenditures for AGUA over the assumed period of CWCB debt retirement. AGUA is requesting a 40-year loan at a 3.0 percent lending rate. Table 3 gives AGUA's current fee structure and the projected fee structure after a $650,00 loan. The augmentation cost per acre-foot of water pumped, using 19,452 acre-feet, amounts to about $10 per year in current dollars.

Table 3. AGUA Fee Schedule

Item	Current	Future
Total Fee per Well, Active Wells ($/well/year)	$205.00	$225.00
Total Fee per Well, Inactive Wells ($/well/year)	$50.00	$60.00
Water Fee ($/acre-foot/year)	$9.44	$10.68

Discussion

The Excelsior Ditch is not a senior water right but does have a good record of diversions. The Ditch has diverted water in all but one year (1977) ~~since 1908~~ FROM 1908 TO 1985. The 1,007 shares proposed for purchase should provide a reliable average yield of about 750 acre-feet.

Staff has reviewed AGUA's financial statement for 1996 and detailed budget projections for 1997 and 1998. All of these items (along with the 40-year projection described above) indicate that revenues are or will be sufficient to provide for operating expenses and debt service on the loan. The increase in well fees and water charges in Table 3 appear reasonable and appropriate to cover expenses plus debt service.

As collateral for the loan, AGUA will pledge the 1,007 shares in the Excelsior Ditch and revenues from membership fees. Staff has requested that AGUA submit an appraisal of the Excelsior water rights prior to entering into a loan contract.

AGUA's articles of incorporation give the Association the powers to establish and collect charges for all costs incurred in doing business and providing augmentation water. In addition, the application and membership agreement signed by each member includes a commitment to abide by the Rules and Regulations of the State Engineer's Office for groundwater use in the Arkansas Basin as well as an agreement to cease pumping in the event of failure to pay membership fees.

Staff finds the AGUA proposal to be economically, financially and technically feasible. In addition, the proposal and the Association appear to meet all of the requirements for the Arkansas River Augmentation Loan Account as set forth in C.R.S. 37-60-130(3) provided that the collateral is adequate based upon the results of the appraisal.

Recommendation
Staff recommends a loan from the Arkansas River Augmentation Loan Account of the Construction Fund to the Arkansas Groundwater Users Association in the amount of $650,000 for the purchase of 1,007 shares in the Excelsior Ditch. The recommended term of the loan is 40 years at a lending rate of 3.0 percent. As collateral for the loan, AGUA will pledge all shares in the Excelsior Ditch acquired with the loan proceeds and also will pledge revenues from membership fees AND ASSESSMENTS.

Staff further recommends that final approval of the loan be conditioned upon the submittal of an appraisal, acceptable to the Director of the CWCB, of the Excelsior Ditch water rights AND UPON THE RATIFICATION OF THE PURCHASE OF THE 1,007 SHARES IN THE EXCELSIOR DITCH BY A VOTE OF THE SHAREHOLDERS IN THE ARKANSAS GROUNDWATER USERS ASSOCIATION.

Cc: Board of Directors, AGUA
Steve Witte, Division 2
Linda Bassi, AGO
Mark McLean, Rocky Mountain Consultants

Revisions noted above were made at the September 22, 1997 meeting of the CWCB.

Table 1. Water Rights Purchase Comparisons

Water Right	Replacement Credits(ac-ft)	Purchase Price	Purchase Cost per Acre-Foot	Other Costs	Total Cost	Cost per Ac-Ft of Replacement
Fountain Mutual Irrigation Co.	124	$265,500	$2,141	$211,700	$477,200	$3,848
Lock Ditch	1070	$1,733,700	$1,620	$320,700	$2,054,400	$1,920
Liston and Love Ditch	795	$1,287,900	$1,620	$214,100	$1,502,000	$1,889
Robinson Ditch	467	$800,000	$1,713	$146,800	$946,800	$2,027
Excelsior Ditch	752	$650,000	$864	$239,300	$889,300	$1,183
Keesee Ditch	---	---	---	---	---	---

recommendation #4 to add the language "including resolution of Tabor Amendment issues", and recommendation #5, to change the phrase "shareholder assessment" to "District income". The motion was seconded by Elizabeth Rieke and was approved unanimously (10-0).

14b. Water Project Construction Loan Program - Arkansas Groundwater Users Association - Augmentation Plan

Tape 2, Start/Stop: 1669 - 2620

Action: A motion was made by Alan Hamel that the Board accept the staff's recommendation to approve a loan from the Arkansas River Augmentation Loan Account to the Arkansas Groundwater Users Association of up to $650,000 for the purchase of 1,007 shares in the Excelsior Ditch at a lending rate of 3.0 percent for 40 years with the following revisions to the staff memorandum of September 12, 1997:

(1) at the end of the first paragraph of the staff recommendation on page 4 add the words "and assessments.",

(2) at the end of the second paragraph of the staff recommendation on page 4 add the words "and upon the ratification of the purchase of the 1,007 shares in the Excelsior Ditch by a vote of the shareholders in the Arkansas Groundwater Users Association."

The motion included the recommendation in staff's memorandum of September 18, 1997 to release the 1,007 shares in the Excelsior Ditch as collateral on an existing construction Fund Loan for use as collateral on a loan to the Arkansas Groundwater Users Association. The motion was seconded by David Smith and approved unanimously (10-0).

14c. Water Project Construction Loan Program - Severance Tax Operational Account - Jefferson County Mountain Ground Water Investigation

Tape 2, Start/Stop: 0000 - 0000

Action: This item was deleted from the agenda.

15. CWCB Member Appointments and Consideration of Potential Conflicts of Interest

Tape 2, Start/Stop: 2711 - 3488

Action: No action was taken at this time, the Attorney General's Office is drafting a position document to be available in November, and it will be discussed at the January Board meeting.

16a. Colorado River Issues - 7/10 Issues

Tape 2, Start/Stop: 4732 - 4994

Action: Jim Lochhead reported on California's plan to reduce it's use of Colorado

STATE OF COLORADO

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Roy Romer
Governor
James S. Lochhead
Executive Director, DNR
Daries C. Lile, P.E.
Director, CWCB

MEMORANDUM

TO: Colorado Water Conservation Board Members

FROM: Bill Green, P.E. BG
Project Planning and Construction

DATE: September 18, 1997

SUBJECT: Addendum to Agenda Item 14.b., September 22-23, 1997 Board Meeting - Water Project Construction Loan Program – Arkansas River Augmentation Loan Account – Arkansas Groundwater Users Association -Augmentation Plan

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Background

The first memorandum which was sent to the Board for this agenda item outlines AGUA's proposal to purchase 1,007 shares in the Excelsior Ditch for AGUA's augmentation program in the Arkansas River Basin. The proposed collateral for the loan, the 1,007 shares, is currently pledged as collateral on an existing loan to the Excelsior Irrigating Company.

In November of last year, the Board approved a Small Project Loan from the Construction Fund of $100,000 to the Excelsior Irrigating Company for a portion of the cost of a rehabilitation and improvement program on the Company's ditch system. The Board also recommended an additional loan of $230,000, which was subsequently authorized in the 1997 Construction Fund bill, for the same project.

The $100,000 Small Project Loan contract with the Company was executed in April of this year. As collateral, the Excelsior Irrigating Company pledged "an undivided 100 percent interest" in the following:

1. shares of stock in the Company owned by C.R. (Dick) Evans in two certificates for 1,007 shares and for 1,876 shares,

2. all revenues which are obtained from the lease of augmentation water to the Arkansas Groundwater Users Association (AGUA) or any other lessee and,

3. the Excelsior Ditch diversion structure.

Discussion
In order for the 1,007 shares in the Excelsior Ditch to be pledged as collateral for the AGUA loan, the Board would have to consent to the release of these shares as collateral on the Excelsior Ditch loan.

If an additional $230,000 is loaned to the Excelsior Ditch, per the authorization in the 1997 Construction Fund bill, the total amount of the Excelsior loan would be $330,000 secured by the remaining 1,876 shares. Assuming that that the market value per share is $645, as suggested by the asking price for the 1,007 shares, the total value of the remaining collateral on the Excelsior loan would be about $1.2 million. (As suggested in my September 12 memo, a condition of final approval on the AGUA loan request would be an appraisal for the 1,007 shares).

Recommendation
Staff recommends that the Board authorize the release of the 1,007 shares of stock in the Excelsior Irrigation Company owned by C.R. (Dick) Evans in Certificate No. 5 as collateral on the existing Construction Fund loan (Loan Contract #C153748) to the Excelsior Irrigation Company for use as collateral on a loan which the Board may authorize to the Arkansas Groundwater Users Association.

Staff further recommends that final approval of the preceding release of collateral be conditioned upon the submittal of an appraisal, acceptable to the Director of the CWCB, of the Excelsior Ditch water rights so as to provide a firm indication that the remaining 1,876 shares will be adequate in value to secure a loan not to exceed $330,000 to the Excelsior Irrigation Company.

Cc: Dick Evans, Excelsior Irrigating Co.
Board of Directors, AGUA
Linda Bassi, AGO
Mark McLean, Rocky Mountain Consultants

STATE OF COLORADO

Colorado Water Conservation Board
Department of Natural Resources
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See Revisions on other file copy

Original

MEMORANDUM

TO: **Colorado Water Conservation Board Members**

FROM: **Bill Green, P.E.** BG
Project Planning and Construction

DATE: **September 12, 1997**

SUBJECT: **Agenda Item 14.b., September 22-23, 1997 Board Meeting - Water Project Construction Loan Program -Arkansas River Augmentation Loan Account - Arkansas Groundwater Users Association - Augmentation Plan**

Introduction
The Arkansas Groundwater Users Association (AGUA) is applying for a loan of $650,000 from the Arkansas River Augmentation Loan Account for AGUA's augmentation program in the upper Arkansas River Basin. The loan would be used to purchase shares in the Excelsior Ditch to offset a portion of the depletions resulting from well pumping by members of AGUA.

Project Sponsor
AGUA was formed in 1995 as a non-profit corporation "to protect and develop the surface and underground waters of the State of Colorado in the Arkansas River Basin to their fullest use". AGUA's membership consists of 254 individuals or entities and more than 400 wells of which 336 are currently active. Approximately 95 percent of AGUA's member water use is for irrigation.

The Association's primary service area is the mainstem of the Arkansas River between Pueblo Reservoir and John Martin Reservoir with some members located above Pueblo Reservoir on the Arkansas as far west as Salida and a large number of members in the Fountain Creek Basin. The current officers of AGUA are: Dick Evans, President; Bert Potestio, Vice President; Cliff Walter, Secretary/Treasurer.

AGUA's amended 1997 Replacement Plan, as submitted to the Division 2 Engineer, is for 19,452 acre-feet of well pumping for the current member wells. The estimated long-term replacement requirement for this level of pumping is about 8,950 acre-feet. AGUA does not own any water rights at the present time but leases, from various sources, all of the water used to replace member pumping depletions.

Proposed Purchase

AGUA has submitted a feasibility study, prepared by Rocky Mountain Consultants of Longmont, describing the pumping and replacement requirements of AGUA's member wells and six possible water rights acquisitions to offset a portion of the replacement requirements. AGUA intends to acquire, through water rights purchases, 50 to 60 percent of its augmentation requirements over the next 25 to 30 years.

Six water rights have been offered to AGUA for purchase. The feasibility study included a preliminary screening of the six water rights to: (1) estimate average annual replacement credits, (2) evaluate timing and location characteristics of the water rights, and (3) evaluate the purchase price and other costs associated with use of the rights for augmentation purposes. The results of the evaluation are shown in Table 1, attached.

Table 1 clearly shows that the Excelsior water rights at a purchase price of $864 per acre-foot and a total estimated implementation cost of $1,183 per acre-foot are the most cost-effective alternative. The location of the ditch on the mainstem of the Arkansas River between Pueblo and John Martin reservoirs also makes it very suitable for AGUA's augmentation program.

The Excelsior Ditch diverts from the north bank of the Arkansas River about four miles east of Pueblo and has water rights priorities of May 1, 1887 for 20 cubic feet per second (cfs) and January 6, 1890 for 40 cfs. The average annual diversion of the Excelsior Ditch for the years 1908 to 1985 was about 4,000 acre-feet.

AGUA is proposing to purchase 1,007 shares (a 30-percent interest in the ditch) from Dick Evans. Mr. Evans is both the prospective seller of the water rights and the president of AGUA. Table 2 summarizes the major characteristics of the proposed acquisition.

Table 2. Summary for Excelsior Ditch Purchase

Water Rights Priorities		
	May 1, 1887	20 cfs
	Jan. 6, 1890	40 cfs
Average Annual Diversion, entire ditch (1908-1985) = 4,070 acre-feet		
1,007 Shares at a total price of $650,000		
Consumptive Use Credit for 1,007 Shares = 752 acre-feet		
Cost per Acre-Foot = $864		

Financial Analysis

Rocky Mountain Consultants has submitted a detailed 40-year projection of revenues and expenditures for AGUA over the assumed period of CWCB debt retirement. AGUA is requesting a 40-year loan at a 3.0 percent lending rate. Table 3 gives AGUA's current fee structure and the projected fee structure after a $650,00 loan. The augmentation cost per acre-foot of water pumped, using 19,452 acre-feet, amounts to about $10 per year in current dollars.

Table 3. AGUA Fee Schedule

Item	Current	Future
Total Fee per Well, Active Wells ($/well/year)	$205.00	$225.00
Total Fee per Well, Inactive Wells ($/well/year)	$50.00	$60.00
Water Fee ($/acre-foot/year)	$9.44	$10.68

Discussion

The Excelsior Ditch is not a senior water right but does have a good record of diversions. The Ditch has diverted water in all but one year (1977) since 1908. The 1,007 shares proposed for purchase should provide a reliable average yield of about 750 acre-feet.

Staff has reviewed AGUA's financial statement for 1996 and detailed budget projections for 1997 and 1998. All of these items (along with the 40-year projection described above) indicate that revenues are or will be sufficient to provide for operating expenses and debt service on the loan. The increase in well fees and water charges in Table 3 appear reasonable and appropriate to cover expenses plus debt service.

As collateral for the loan, AGUA will pledge the 1,007 shares in the Excelsior Ditch and revenues from membership fees. Staff has requested that AGUA submit an appraisal of the Excelsior water rights prior to entering into a loan contract.

AGUA's articles of incorporation give the Association the powers to establish and collect charges for all costs incurred in doing business and providing augmentation water. In addition, the application and membership agreement signed by each member includes a commitment to abide by the Rules and Regulations of the State Engineer's Office for groundwater use in the Arkansas Basin as well as an agreement to cease pumping in the event of failure to pay membership fees.

Staff finds the AGUA proposal to be economically, financially and technically feasible. In addition, the proposal and the Association appear to meet all of the requirements for the Arkansas River Augmentation Loan Account as set forth in C.R.S. 37-60-130(3) provided that the collateral is adequate based upon the results of the appraisal.

Recommendation
Staff recommends a loan from the Arkansas River Augmentation Loan Account of the Construction Fund to the Arkansas Groundwater Users Association in the amount of $650,000 for the purchase of 1,007 shares in the Excelsior Ditch. The recommended term of the loan is 40 years at a lending rate of 3.0 percent. As collateral for the loan, AGUA will pledge all shares in the Excelsior Ditch acquired with the loan proceeds and also will pledge revenues from membership fees.

Staff further recommends that final approval of the loan be conditioned upon the submittal of an appraisal, acceptable to the Director of the CWCB, of the Excelsior Ditch water rights.

Cc: Board of Directors, AGUA
Steve Witte, Division 2
Linda Bassi, AGO
Mark McLean, Rocky Mountain Consultants

Table 1. Water Rights Purchase Comparisons

Water Right	Replacement Credits(ac-ft)	Purchase Price	Purchase Cost per Acre-Foot	Other Costs	Total Cost	Cost per Ac-Ft of Replacement
Fountain Mutual Irrigation Co.	124	$265,500	$2,141	$211,700	$477,200	$3,848
Lock Ditch	1070	$1,733,700	$1,620	$320,700	$2,054,400	$1,920
Liston and Love Ditch	795	$1,287,900	$1,620	$214,100	$1,502,000	$1,889
Robinson Ditch	467	$800,000	$1,713	$146,800	$946,800	$2,027
Excelsior Ditch	752	$650,000	$864	$239,300	$889,300	$1,183
Keesee Ditch	---	---	---	---	---	---

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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September 25, 2003

Mr. Thomas Dines, Vice-President
Arkansas Groundwater Users Association (AGUA)
P.O. Box 7
Manzanola, Colorado 81058

RE: Loan for Purchase of Excelsior Irrigation Company Water Rights/Recharge Project

Dear Mr. Dines:

I am pleased to inform you that the Colorado Water Conservation Board (CWCB) approved your loan request on September 22, 2003, for the purchase 785 shares of Excelsior Irrigating Company for use as a replacement water source to offset depletions from well pumping, and to construct an additional recharge pond and enlarge approximately 4 miles of the Excelsior Ditch for recharge water delivery.

The Board approved a loan in a maximum amount of $970,448 (including the 1% loan service charge) with loan terms of 2.50% per annum for 30 years. Approximately $761,327, or the amount available at the time of loan contract, shall be made from the Arkansas River Augmentation Loan Fund, and the balance of the loan shall be from the Construction Fund as a Small Project Loan. I have attached a copy of the updated Board memo that includes a section "Action taken by the CWCB on September 22, 2003."

When the Board approves a loan there remain several conditions:

a) <u>A Feasibility Study is required.</u> Bruce Johnson has reviewed the study titled *"Feasibility Study Augmentation Water Acquisition - September 19, 2003."* No further action is required of you on this item. The report, in combination with the CWCB board memo dated September 12, 2003 will meet the requirements of the CWCB Construction Fund Guidelines for feasibility studies.

b) <u>An approved contract must be in place before funds can be advanced.</u> Jan Illian will place this project on our contracting "hot list" and will initiate the loan contracting process. Once the contract is finalized the Company may request loan funds to cover eligible project expenses. For future reference Jan's phone number is 303-866-3462.

c) <u>You must adhere to the CWCB Design and Construction Administration Procedures.</u> Tim Feehan will contact you regarding the CWCB requirements concerning project bidding, design, and construction. Tim will make construction inspections, which will be the basis of the monthly pay estimates for disbursement of your loan funds. Tim's phone number is 303-866-3480.

On behalf of the Board, I would like to thank you for applying for a loan from the Colorado Water Conservation Board.

Sincerely,

Mike Serlet

Mike Serlet, P.E., Chief
Water Supply Planning and Finance Section
Colorado Water Conservation Board

Attachment: Updated Board Memo

cc (w/ Attachment): Harold Miskel, Board Member, Colorado Water Conservation Board
CWCB Section B Staff
Linda Bassi, AGO
Chrono File

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MEMORANDUM
(Updated September 24, 2003)

TO: Colorado Water Conservation Board Members

FROM: Bruce Johnson, P.E.
Mike Serlet, P.E., Chief
Water Supply Planning and Finance Section

DATE: September 12, 2003

SUBJECT: **Agenda Item 5c, September 22-23 Board Meeting**
Water Supply Planning and Finance Section – New Loans
Arkansas Groundwater Users Association–Water Rights Purchase/ Recharge Project

(Note: Revisions to the September 12, 2003 loan memo are shown in *Italics*)

Introduction

The Arkansas Groundwater Users Association (AGUA) is seeking a new loan for $970,448 to purchase 785 shares of Excelsior Irrigating Company (EIC) for use as a replacement water source to offset out-of-priority depletions from well pumping, and to construct an additional recharge pond and enlarge approximately 4 miles of the Excelsior Ditch to allow sufficient delivery of recharge water to develop augmentation credits. Total cost of the project is $1,082,108. Please see the attached project summary and map.

Background

AGUA is a Colorado non-profit corporation formed in January 1995 to protect and develop the surface and underground waters in the Arkansas River Basin. AGUA's current membership is over 435 wells with approximately 350 of those wells active in 2003. AGUA also administers plans and provides augmentation water for the Middle Arkansas Groundwater Users Association (MAGUA) with 18 active wells, Booth Well Association (Booth) with 26 wells (16 active in 2003), and a few small substitute water supply plans. AGUA serves several different types of users with approximately 97% of its replacement water provided for irrigation use and the remaining 3% for domestic, stock watering, municipal and commercial uses. AGUA's primary service area is the main stem of the Arkansas River between Pueblo Reservoir and John Martin Reservoir, plus Fountain Creek. However, AGUA also has members located above Pueblo Reservoir extending to the Arkansas River headwaters, and a small number of members located on tributaries of the Arkansas River and Fountain Creek. The service area includes approximately 13,500 acres of irrigated land.

AGUA relies heavily on annual or short-term leases for augmentation water. Typical lease sources include Pueblo Board of Water Works, SECWCD return flows (often up to 50% of AGUA's leased water need), Colorado Springs Utilities, Cherokee Metro District and the EIC. Currently AGUA leases about 92-95% of its replacement water. Lease agreements are negotiated on an annual basis, and therefore are subject to the terms and conditions imposed by the lessors. Due to uncertainty of availability and prices of leased water, AGUA has begun purchasing water rights for use in its augmentation plans. AGUA's goal is to acquire 50 to 60 percent of its total augmentation replacement water need during the next 20 to 25 years, and to continue to lease the remainder. In March 1998, with the help of a CWCB loan authorized in September 1997, AGUA purchased 1007 shares of the EIC from Mr. Dick Evans, AGUA President at that time. To further its goal of owning water, AGUA is currently requesting a loan for the purchase of an additional 785 EIC shares, offered by Mr. Dick Evans at $1,100 per share or a total cost of $863,500. In May 2003, the AGUA Board of Directors, absent Mr. Evans, current President, took action to pursue a CWCB loan to fund the purchase of the shares. With the additional shares of EIC, AGUA would own an average of about 12-15% of its annual replacement needs. AGUA has two existing loans with the CWCB, as summarized below:

Loan No.	Date of Contract	Principal	Terms	Current Balance	Annual Payment	Future Payment
C153800	10/23/97	$ 25,000	4% - 10 yrs	$8,690.04	$3,082.27	
C153808	2/24/98	$ 590,590	3% - 40 yrs	$600,872.67	$25,550.33 (1)	$30,697.88 (2)
Totals		$ 615,590		$609,562.71		

(1) Deferred for 4 years (2002 through 2005)
(2) New payment beginning 2006 through 2036

In July 2002, CWCB granted AGUA a 4-year deferment on Loan No. C153808 to help it defray approximately $100,000 to $150,000 in legal and engineering fees related to obtaining a decree changing the use of the water rights represented by the purchased 1007 EIC shares, as well as to help AGUA with the financial impact of the drought. <u>If the CWCB approves this loan request, AGUA will agree to increase fees, and to forego the remaining two years of the deferment.</u> If the Board rescinds the deferral, the revised annual payment for the term of the loan would be $27,964. AGUA will add the 785-shares to its application for change of water rights, at minimal cost. In December 2002, AGUA obtained a $100,000 Agricultural Emergency Drought grant from CWCB under S.B. 02S-001 to help cover the costs of purchasing augmentation water. Disbursement of the funds by CWCB is in process.

<u>Project Need</u> – AGUA annually submits an Arkansas River Replacement Plan (Plan) to the State Engineer's Office on March 1st of each year. This Plan covers the upcoming water year (April through March of the following year) and is approved provided that AGUA demonstrates sources of adequate replacement water. The Plan presents a monthly schedule of replacement credits to be provided by each source to augment depletions. AGUA's recent history of total ordered pumping and wellhead depletions are shown below (including MAGUA, Booth, etc.) Because of the drought, 2002 and 2003 were not typical years. With reduced availability of replacement sources, AGUA was unable to provide enough replacement water to support the total amount of pumping ordered by members. For example, of the 12,815 acre-feet of replacement water AGUA anticipated receiving from Pueblo, SECWCD and Cherokee, they received only 5,769 acre-feet, necessitating plan amendments. AGUA's March 1, 2002 Plan submittal (before amendments reflecting lack of replacement water) can be considered typical of its average annual operation.

Year	2001		2002		2003	
AGUA Replacement Plan	March 1st Plan Submittal	Amended Plan (Final)	March 1st Plan Submittal	Amended Plan (Final)	March 1st Plan Submittal*	Amended Plan (May 21)**
Ordered Pumping (acre-feet)	31,713	36,597	34,379	20,234	3,715	14,064
Wellhead Depletions (acre-feet)	14,435	16,750	15,646	9,349	2,204	6,992

* Ordered pumping was 30,880 AF with wellhead depletions of 14,000 AF
** Current amendment to further increase pumping is in process.

Feasibility Studies

AGUA, through its engineer Tetra Tech RMC, has completed a feasibility study in accordance with CWCB guidelines. The feasibility study includes an analysis of alternatives for the purchase of water rights to be used for augmentation, and provides a recommendation regarding the subject water rights in relation to other potential sources.

AGUA

AGUA is a perpetual Colorado non-profit corporation incorporated by well owners in January 1995, for the purpose of including their well pumping in an Arkansas River Replacement Plan, to replace the depletions to the alluvial and surficial aquifers in the Arkansas River Basin. Each member is entitled to one vote per well. AGUA's Board of Directors are authorized to conduct the business affairs of the organization, including determining the necessity for and the extent of incurring any debt. For 2003, the Board of Directors consists of eight persons: seven AGUA Board members and one MAGUA representative. In addition, AGUA employs one full time manager, who is not a director or member of AGUA, to conduct the day-to-day business of the association as directed by the Board. AGUA members do not own shares of stock; however, in the event of dissolution AGUA's assets would be distributed to the members based on the percentage their "asset account" bears to the total of all member asset accounts. This arrangement provides members with an incentive to stay in AGUA, as they are building an asset over time. AGUA's current officers and manager are identified below:

President	Dick Evans	Secretary / Treasurer	Cliff Walter
Vice-President	Tom Dines	Manager	Brenda Fillmore

Revenues/Fees - AGUA has two main sources of revenue: fees charged to the membership for each well included in the Plan, and water charges for each acre-foot of depletion generated by the member well. The basic fees (excluding incidental fees such as new member setup, testing fees, etc.) for 2003 are:

a) Active Wells - $290 per well

Breakdown:

$144	Administration Fee
$ 46	Loan Reserve Fee
$ 30	Well Re-Testing Fee
$ 70	Engineering
$290	Total

b)	Inactive Wells:	$76 per well	Breakdown: $ 30 Administration Fee $ 46 Loan Reserve Fee $ 76 Total
c)	Augmentation Water Fee:		$34 - $60 per acre-foot of annual well depletion
d)	Acquisition Reserve Fee:		$5.00 per acre-foot of annual well depletion

The Augmentation Water Fee reflects AGUA's cost for the lease of augmentation water from other sources. This can vary throughout the year, and has varied substantially during the last two years because of the drought. In general, lease costs from several sources are averaged and "passed through" to members at cost, with the charge to members set by the AGUA Board. In 2003 AGUA has already offered replacement water to members at $60.00 (1st quarter allocation) to $34.00 (2nd and 3rd quarter allocations). During the 2002 plan year, the Augmentation Water Fee ranged from $13.50 to $25. The Acquisition Reserve Fee provides funds for the purchase of water rights, including associated engineering and legal expenses.

Proposed Water Rights Purchase and Recharge Project

The new loan request is similar to the 1998 acquisition in which AGUA purchased 1007 shares of EIC. There are 3,333 total shares outstanding for the EIC. Present ownership of shares and proposed ownership with the new loan are:

	Current	With Proposed Loan
AGUA	1,007 (30.2%)	1792 (53.8%)
Lafarge North America, Inc.	450 (13.5%)	450 (13.5%)
C.R. Evans	1,876 (53.6%)	1,091 (32.7%)
TOTAL	3,333	3,333

Excelsior Ditch Water Right - Costs for water rights acquisition are eligible for CWCB funding under Policy #8, (Purchase of Water Rights). The Excelsior Ditch is a relatively junior direct flow irrigation water right that diverts from the Arkansas River below Pueblo in Section 36, T20S, R64W, approximately 5 miles east of Pueblo. The water right has two priorities, May 1, 1887 with a 20 cfs decree, and January 6, 1890 with a decree of 40 cfs. Diversion records show that the long-term Excelsior Ditch diversions averaged 4,070 acre-feet per year between 1908 and 1985 (excluding 1939). During the pre-Compact period (1908 through 1947), the Excelsior Ditch average diversions were 5,020 acre-feet per year. Between 1948 and 1985 the diversions averaged 3,095 acre-feet per year. Diversions by the Excelsior Ditch ranged from a low of zero acre-feet in 1977 to a high of 9,934 acre-feet in 1948. In 2002 the Excelsior Ditch diverted 12 acre-feet during the irrigation season and approximately 800 acre-feet during the non-irrigation season of November 2002 through March 2003. Average historic consumptive use is based on Excelsior Ditch diversions for the period 1908 through 1947(excluding 1939), 5020 acre-feet, to avoid the effect of significant well diversions beginning in the 1940's. In the water rights appraisal, discussed below, Blatchley Associates, Inc. determined that 785 out of 3,333 total shares would yield 1,182 acre-feet diverted and 703 acre-feet of consumptive use irrigation water (59.5% allowed replacement credit.) At the purchase price of $863,500 this is $1,228 per acre-foot of historic consumptive use.

Alternatives - To determine the feasibility of AGUA's potential purchase of 785 EIC shares, AGUA's engineers utilized results of two previously prepared feasibility studies: AGUA's 1997 Feasibility Study that summarizes average annual yields, cost components, total cost, and cost per acre-foot for each of six water right purchase alternatives investigated; and MAGUA's 2000 Draft Feasibility Study that summarizes average annual yields, cost components, total cost and cost per acre-foot for each of twelve water right purchase alternatives investigated. The feasibility analysis also is based upon an independent water rights appraisal recently prepared by Blatchley Associates, Inc. Analysis of the average annual cost per acre-foot (present worth) of EIC water was $1,537, which is much less than other alternatives. The EIC water was recommended as the preferred water right purchase alternative because it has the lowest cost per acre-foot of consumptive use yield of the alternatives, and because it is located on the main stem of the Arkansas River where most of AGUA's well depletions occur.

Appraisal – An "Update of the Estimated Fair Market Value of Stock in the Excelsior Ditch Company" has been prepared by Blatchley Associates, Inc. of Denver, dated August 11, 2003. Mr. Ron Blatchley, P.E. estimated the fair market value of 785 shares of EIC as of August 11, 2003, with a average historic consumptive use of 703 acre feet per year, to be $1,050,000. This represents $1338 per EIC share and $1494 per acre-foot of historic consumptive use of irrigation water. Comparable sales of water rights decreed from the Arkansas River are between $1,000 and $1,900 per acre-foot, or an average of $1,500 acre-feet of historic consumptive use.

Recharge Project and Ditch Enlargement - AGUA is also proposing the construction of a new 15-acre recharge pond and enlargement of the last 4 miles of the Excelsior Ditch. This will allow AGUA to better utilize excess replacement water sources (such as Excelsior Ditch credits, SECWCD return flows and leased Pueblo water), increase the value of its EIC shares, and provide lagged replacement credits throughout the year in a more uniform monthly pattern. The lagged replacement credits accrue to the stream in a manner that is very similar to the stream depletions caused by AGUA's well pumping. The recharge capability adds significant value to the EIC shares, especially if wet years precede dry years. Excess replacement credit during wet years can be recharged through the ponds which would carry credit into the following dry years. The new pond would complement the two existing ponds totaling 6.3 acres (4.2 and 2.1 acres) constructed in February/March 2003. The ditch enlargement would widen the ditch by about 3 feet east of 39th Lane, to carry 40 cfs (existing capacity 20-30 cfs.) The 15-acre recharge pond is proposed to be constructed on the Pueblo Army Depot property located at the end of the ditch, and on the north side of U.S. 50 highway. This is the preferred location based on distance to the river (longer lag time), and discussions have been initiated regarding an easement agreement. If AGUA is unable to obtain an easement agreement, AGUA will use an alternate location adjacent to the two existing recharge ponds on property owned by Mr. Dick Evans. In the purchase agreement, Mr. Evans has agreed to convey easements to AGUA for all of the recharge pond facilities.

State Engineer's Office – The Division 2 staff generally supports the AGUA loan request, and characterizes the EIC shares as a fairly significant source of replacement water in AGUA's plan. Although the water right is not considered a senior right, and does suffer during dry to very dry years, it appears to still generate some yield even in those years. In better water supply years it can be a significant contribution to the AGUA portfolio. Division 2 estimates average consumptive use yield at 0.88 AF/share or 691 AF per year for 785 shares, but indicates that a higher average yield may be reasonable as 2002 and 2003 were unusually dry years. This tends to support the average historic consumptive use of 703 acre feet per year (0.90 acre-feet) from the Blatchley Associates, Inc. appraisal. Division 2 considers the water right to be a reliable, permanent supply under the requirements of the Arkansas River Augmentation Account criteria. Because the existing recharge facilities appear to work well, Division 2 believes that AGUA probably could operate a larger recharge facility effectively. Since the EIC is not a participant in the Winter Water storage program it is eligible for diversions from November 15th to March 15th under the priority system senior to the Winter Water call, and can obtain some credit that is enhanced by the opportunity to lag the effect back to the river through recharge.

The Total Project cost is estimated to be as follows:

1.	EIC Water Rights Purchase	$ 863,500
2.	Acquisition Costs	20,000
3.	Recharge Construction/Ditch Enlargement	164,000
4.	Recharge Design Costs	25,000
5.	Loan Origination Fee (1%)	9,608
	TOTAL	$1,082,108

Financial Analysis

The total estimated cost of the water rights purchase and recharge project is $1,082,108. AGUA qualifies for a blended interest rate of 2.5%. Staff recommends that the Board consider a maximum loan amount of $970,448 (89.7% of estimated project cost) for 30 years at an interest rate of 2.50%. Table 1 is a summary of the financial aspects of the project. A CWCB Loan of $970,448 would have an annual payment of $51,022 (including the 10% reserve requirement) at the loan terms of 2.50% for 30 years.

Table 1. EIC Water Rights/Recharge Project Loan Financial Summary

Project Cost	$1,082,108
Number of Active Members (Wells) – Varies	400
Number of In-active Members (Wells) – Varies	50
CWCB Loan Amount (30 years)	$970,448
CWCB Loan Payment (includes 10% reserve) – Begin 2004	$51,022
Member Fee per Well – 2003	$290
Future (Increase Loan Fee from $46 to $60 per well)	$304
Aug. Water Loan Assessment Fee in 2003 - (per ac-ft of well depletion)	$5.00
Future, as needed	$2.50 -7.50+
Aug. Water Cost to Members in 2003 – (per ac-ft of well depletion)	$34-60
Future, as needed	$12-60
Annual Loan Cost per ac-foot (aver. Consumptive use 703 ac-ft.)	$72.58

AGUA is proposing to repay the CWCB loans by raising its loan/acquisition-related fees. AGUA plans on increasing the member loan fee (per well) from $46 to $60, and the loan assessment fee (per acre-foot) of replacement water to $7.50, or more as needed. The Augmentation Water Cost to members would not relate directly to CWCB loan repayment, as these charges are "pass-though" costs to members of AGUA's lease expenses to secure replacement.

Table 2 shows the Financial Ratios for AGUA and indicates average ability to repay the $970,448 CWCB loan, with a new loan fee structure in place. The 2001 and 2002 ratios reflect annual operating deficits of $52,475 and $42,117 respectively, and do not reflect the $100,000 Emergency Drought grant from CWCB. The operating deficits can in large part be attributed to the high engineering costs incurred those years of $49,500 in 2001 and $108,500 in 2002, where $25,000 per year is more typical of normal operations. The large change in Debt Service Coverage Ratio from 2001 to 2002 can be attributed to the deferred $25,500 CWCB loan payment, which magnifies the ratio calculated in the formula.

Table 2. Financial Ratios

Financial Ratio	***Without the project)***		***With project Future Year 2004+***
	2001	***2002***	
Operating Ratio (revenue/expense) weak: less than 100% average: 100% - 120% strong: greater than 120%	81% (weak)	80% (weak)	120% (aver.)
Debt Service Coverage Ratio (revenues-expenses)/debt service weak: less than 100% average: 100% - 125% strong: greater than 125%	-183% (weak)	-1387% (weak)	103% (aver.)
Cash Reserves to Current Expense weak: less than 50% average: 50% - 100% strong: greater than 100%	166% (strong)	235% (strong)	80-95%* (aver.)
Annual Operating Cost per Acre-Ft. (Depletions) weak: greater than $20 average: $10 - $20 strong: less than $10	$18	$23	$25 – 75*

*Varies, assuming 14,000 to 9000 Acre-Ft. replacement at $12 to $60 per Acre-Ft.

Table 3 shows the required annual payments on AGUA's existing loans as well as the proposed loan:

Table 3. CWCB Loan Summary*

Loan No.	2004 – 06	2006–33	2034–38
C153800	$3,082		
C153678 (Revised)	$27,964	$27,964	$27,964
Excelsior Loan	$46,366	$46,366	
Totals	$77,412	$74,330	$ 27,964

*Does not include 10% reserve requirement.

Generally, AGUA will fulfill its annual CWCB loan obligation by assessing 1/3 against well membership, and 2/3 against replacement water usage per acre-foot. For example, in 2004-2006, the loan obligations will total $77,412. The loan charge per AF would vary depending on the total amount of replacement water that AGUA is able to offer, as shown below:

Loan Fee per Well	$27,000	(450 wells x $60)
Loan Charge per AF	50,412	(14,000 AF x $3.60; 9000 AF x $5.60; 5000 AF x $10.08)
	$77,412	

Election – The purchase agreement between AGUA and the seller requires that AGUA's membership approve the purchase. AGUA has conducted a membership proxy vote by mail, with voting required on or before September 10, 2003. A letter from AGUA Secretary Clifford Walter has been received certifying that of the 429 ballots mailed, 262 were returned (61.1% of ballots mailed), with 168 (64.1%) of ballots returned voting in favor of the purchase of 785 shares of EIC and enlargement of the recharge facilities. AGUA's Bylaws state, "A vote by a majority of the members present in person or by proxy shall constitute a quorum for the transaction of business at any annual or special meeting."

Security - As security for the loan, AGUA will pledge revenues, including membership fees, augmentation water fees and other incidental operating fees, backed by a rate covenant, as well as the acquired 785 EIC shares. This is in compliance with CWCB Loan Policy #5 (Collateral).

Arkansas River Augmentation Loan Account – The proposed loan meets the criteria for the use of this account, as set forth in CRS 37-60-130, in terms of: reliability of the water rights supply, security and collateral for loan repayment, AGUA's ability to collect assessments and to repay the loan, provision of service to a broad user group, and maintaining agricultural viability of the Arkansas River Valley. In addition, AGUA, as part of its annual Application and Membership Agreement, obtains the necessary commitments from its members to ensure compliance with CRS 37-60-130 (3) (g) and (h), pertaining to the Arkansas River Augmentation Account criteria. This requires that members who fail to make payments in accordance with the loan agreement shall cease pumping, and requires that members comply with State Engineer rules governing the measurement and use of groundwater in the Arkansas River Basin.

Recommendation

Staff recommends a CWCB loan, not to exceed $970,448, (which includes $960,840 for project costs and $9,608 for the 1% Loan Service Fee) to Arkansas Groundwater User Association, to purchase 785 shares of Excelsior Irrigating Company for use as a replacement water source to offset out-of-priority depletions from well pumping and to construct groundwater recharge facilities. Approximately $761,327, or any amount available at the time the CWCB and AGUA enter into a loan contract, shall be made from the Arkansas River Augmentation Loan Fund and the balance of the loan shall be made from the Construction Fund as a Small Project Loan. The recommended term of the loan is 30 years and the recommended lending rate is 2.50% per annum. As security for the loan, AGUA will pledge revenues, including membership fees, augmentation water fees and other incidental operating fees, backed by a rate covenant, and the acquired 785 shares. This is in compliance with CWCB Loan Policy #5 (Collateral).

Staff also recommends that final approval of the loan be conditioned upon all other standard contracting provisions of the CWCB. Further, staff recommends that as part of this loan approval, the CWCB rescind the remainder (years 2004 and 2005) of the 4-year deferral on Loan No. C153808 granted by CWCB in July 2002. The revised payment for the term of the loan would be $27,964.19, with next payment due April 1, 2004. *In addition, the CWCB finds that the portion of the loan to be funded from the Arkansas River Augmentation Loan Account meets the criteria as set forth in CRS 37-60-130.*

cc: Mr. Tom Dines, Vice-President, AGUA
Mr. Dick Evans, Vice-President, Excelsior Irrigating Company
Michelle Matthews, Tetra Tech RMC
Linda Bassi, AGO

Attachment

Action Taken by the CWCB on September 22, 2003

The CWCB approved the Staff Recommendation, with the addition the statement listed in italics above regarding the Arkansas River Augmentation Loan Account criteria.

Water Project Construction Loan Program-Project Data

Borrower: Arkansas Groundwater Users Association (AGUA)

County: Pueblo, El Paso, Fremont, Crowley, Otero, Bent

Project Name: Excelsior Ditch Water Rights

Project Type: Water Rights /Recharge Pond

Drainage Basin: Arkansas River

Water Source: Excelsior Ditch

Total Project Cost: $1,082,108

Funding Sources: CWCB, AGUA

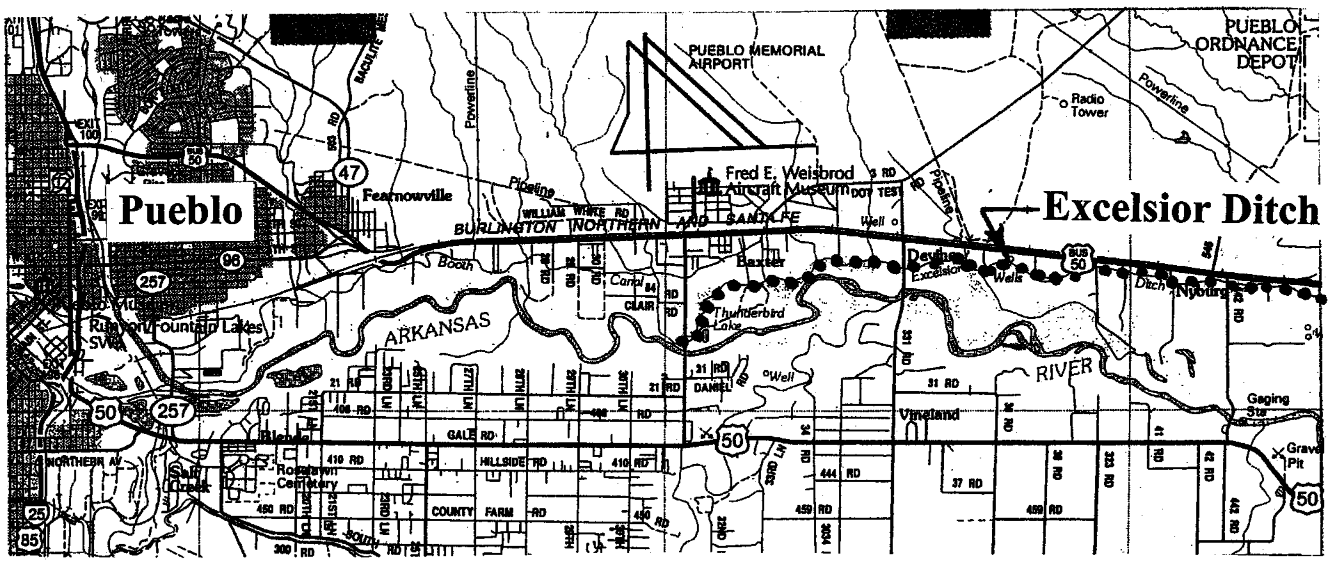
Type of Borrower: Agricultural

Delivery: 703 ac –ft (aver. consumptive use)

CWCB Loan: $970,448

Interest Rate: 2.50% **Term:** 30 years

AGUA seeks a loan to buy 785 shares of Excelsior Ditch for replacement water to offset out-of-priority depletions from well pumping. They currently own 1007 shares of Excelsior Ditch. When combined they will own about 12%-15% of the replacement water needs for members. The remainder is leased from other sources. Current membership is over 435 wells with about 350 active in 2003. They also administer plans and provide augmentation water for MAGUA (18 active wells), and Booth Well Association with 26 wells (16 active in 2003). About 97% of their replacement water is for irrigation use (13,500 acres), and the primary service area is from Pueblo Reservoir to John Martin Reservoir. Members annually order in excess of 30,000 AF in pumping, and AGUA typically is able to supply about 14,000 AF in replacement credits. Excelsior Ditch is a junior direct flow irrigation water right that diverts from the Arkansas River about 5 miles east of Pueblo, with two priorities, May 1, 1887 with a 20 cfs decree, and January 6, 1890 with a decree of 40 cfs. Diversions have averaged 4,070 acre-feet per year between 1908 and 1985, and 5020 acre-feet per year based on a pre-Compact period (1908 through 1947). Average historic consumptive use for irrigation for 785 out of 3,333 total shares is estimated to be 703 acre-feet. AGUA will also construct a 15-acre recharge pond and enlarge the east 4 miles of Excelsior Ditch to allow delivery of recharge water. They have two existing ponds totaling 6.3 acres (4.2 and 2.1 acres) constructed in March 2003. The ditch will be widened by 3' in order to carry 40 cfs for the entire length.



Location Map