

IBCC Colorado River Basin

September 23, 2024 CBRT Roundtable Minutes. Colorado River District update by Andy Mueller covering SCPP (federal fallowing rebate system); Shoshone water right purchase from Xcel.

1. Upcoming Meetings & Deadlines.

- a. CWCB meeting November 20-21 in Denver.
- b. January 27, 2025, CBRT Roundtable Meeting, Glenwood Springs, CO
- c. Water Congress winter meeting, Jan 29-31, 2025, Denver.

2. Recorder: These minutes were prepared by Ken Ransford, Esq., CPA, 970-927-1200, ken@kenransford.com.

3. Today's September 23, 2024, meeting was **conducted by Zoom and held in person at the Colorado River District Office.**

4. **CBRT Roundtable Members Present:** Peggy Bailey Summit County municipalities, Carlyle Currier, James Dilzell, Diane Johnson, Randi Kim City of Grand Junction, Kirsten Kurath, Kelly McNicholas Kury Pitkin County Com'r, Ed Moyer Grand County Manager, Ken Ransford, Charlie Spickert, Richard Vangytenbeek, Greg Williams Ute Water, Tom Wood Grand Valley Water Users Association

5. **Guests:** Tyler Benton Colorado Springs Utilities, Rebecca Briesmore, Colorado River District, Jeff Rodriguez CWCB, Kathy Kitzmann Aurora Water, Joshua Mattson Denver Water, PJ Murray City of Aspen, Andy Mueller Colorado River District Executive Director, Amy Ostdiek CWCB, Katie Randall Middle Park Water Conservancy District, Wendy Ryan West Divide Creek Water Conservancy, Paula Stepp Middle Colorado Watershed Council, Julie Sutor, regional rep for US Representative Joseph Neguse

6. Summary of decisions made at the meeting; more detail below on the discussion.

- a. The CBRT unanimously approved a **\$78,956 grant to the Roaring Fork Community Development Corporation, 10% of the total budget to improve 3 Mile Creek near Glenwood Springs.**
- b. The CBRT unanimously agreed to **provide a letter of support** for a grant request to the Federal Government under the Bipartisan Infrastructure Law **to request up to \$40m from BuRec to support the Shoshone power plant water right purchase.**
- c. The CBRT unanimously agreed to **provide a letter of support for RiversEdge West to develop a master plan to enhance the Colorado River front through Grand Junction.**

7. **River Forecast.** The Colorado River flows at the **Dotsero gage on September 23, 2024, is 1,700 cfs,** compared to its median flow of 1,300 cfs on this date, expected to drop to 1,400 by the end

following rebate system); Shoshone water right purchase from Xcel. ¹ of the week.¹ The Colorado River is flowing **2,500 cfs at Cameo** compared to its median flow of 2,150 on this date.²

8. The September 23, 2024, minutes were approved with the following recommended change: a.

The original version of the minutes read as follows:

What delayed the plan? **Colorado Springs and Eagle River Water and Sanitation could not agree upon the river flow model to predict the impact of the Eagle River MOU.** One concern was that **the model was not peer-reviewed**, and this led to 2-3 years of delays. It was difficult to obtain data from Camp Hale and the Upper Eagle River.

b. The revised minutes based on a comment from Maria Pastore of Colorado Springs Utilities are below:

The Homestake Partners (Cities of Aurora and Colorado Springs) and Eagle River Water and Sanitation District offered their respective models for the Eagle River Community Water Plan. The ERWC consultant selected **the Eagle River Water and Sanitation model** as the preferred model despite **Homestake Partners' concern that the model was proprietary and not peer-reviewed**, and this led to 2-3 years of delay.

9. CWCB Report Amy Ostdiek on the 2026 Colorado River Operating Plan revision. a.

BuRec is developing alternatives for NEPA analysis.

b. **August 24-month study. Lake Powell is in the middle-release tier, releasing 7.48 maf;** the Lower Basin is in a low-release tier.

c. **Fake news.** Ostdiek described recent press as fake news that claim the Upper Division is over-using water during "free river conditions." It is based on an article by University of Virginia engineering professor Peter Debaere that says that **under "free river conditions," anyone can divert as much as they want, leading to excess diversions of 87,577 acre feet from 339 structures in Colorado in 2017, amounting to 1.2% of Colorado's consumptive use.**³ Ostdiek says this is incorrect. The "free river" article suggests that there's a loophole in CO law that if fixed could send more water down to Lake Powell. The right to put water to beneficial use is in the Colorado Constitution. **Ostdiek says the article overstates Colorado use**, and suggests that Colorado could alone solve the Lake Powell deficit.

d. **Colorado sends 9.3 maf downriver to Lake Powell** every year on average. Amy is working on getting more proactive messaging on this subject.

¹ Dotsero forecast: https://waterdata.usgs.gov/usa/nwis/uv?site_no=09070500.

² Cameo forecast: https://waterdata.usgs.gov/co/nwis/uv/?site_no=09095500&PARAMeter_cd=00065.00060

³ Debaere, P., et al, "Closing Loopholes in Water Rights Systems to Save Water: The Colorado River Basin," August 26, 2024, Water Resources Research, Vol. 60, Issue 8, [University of Virginia Darden School of Business](https://www.jstor.org/stable/48700000)

[Professor Peter Debaere recommend that closing Colorado's "free river conditions" loophole](#)

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e. **Another Inflation Reduction Act funding allocation to Colorado is expected from BuRec.**

f. SCPP has not yet been authorized by Congress for water year 2025. **Amy encouraged CBRT Roundtable members to submit comments about the SCPP program.**

10. **Rebecca Briesmore, Colorado River District, Hydrology Update. Anticipated inflow is 84% of normal; next year anticipated inflow is 93% of the 30-year average.** The Lower Basin is in the Tier 1 shortage.

a. Weather is shifting from El Nino into **La Nina conditions; this typically means southern & southwestern Colorado is dryer and northern Colorado is wetter.** Current reservoir levels at selected reservoirs are:

- i. Flaming Gorge 87%
- ii. Navajo Reservoir 57%
- iii. Lake Mead 33%
- iv. Lake Powell 40%

b. The most probable forecast indicates there will not be much change in Lake Powell's reservoir level.

c. Temperatures are quite warm, and we are within the **7 warmest past 12 months on record.**

d. Parts of Colorado are wetter than average in Eagle and Summit Counties, but lower than average in Mesa County, **showing how variable the state is.**

e. **Green Mountain Reservoir is in surplus, so it is releasing 475 cfs in addition to the 575 cfs expected release.**

f. **Irrigators in SW Colorado has been accused of altering rain gages** to increase the impact of drought so they can get additional SCPP funding.

11. **Colorado River District update on Basin Implementation Plan**

a. **To add new projects to the CBRT BIP database**, send them to Jeff Rodriguez first; he'll forward it to the CBRT for further review. Most new projects will be submitted by CBRT Roundtable members, and Jeff assumes the Roundtable would have to approve them.

b. **Randi Kim asked why some of the projects don't have project costs associated with them.**

c. **Kirsten Kurath said the Green Mountain Protocol has been approved in a case brought to the Supreme Court, so it has been accomplished.**

12. **CWCB Update Jeff Rodriguez**

a. CWCB Roundtable Guide—Jeff is requesting comments by November 1, 2024.

- b. The CWCB will support 10 Roundtable members with funds for lodging at the C9 Summit. Will lodging be reimbursed at just the hotel where the room block is, or any hotel.

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- c. **The Colorado Ag Water Alliance drought resilience grant program is accepting grant applications through November 13; it favors projects that test concepts to adapt to decreased water supplies.** Access this at CAWA website or CWCB website.
- d. **Funds are still available through the turf replacement grant program;** see the CWCB Grants portal. This is available to municipalities and NGOs that have experience in turf replacement. The fund was authorized by up by HB10-1051 which requires covered entities (retail water providers who sell 2,000 acre feet or more of water annually) to report, on an annual basis, water use and conservation data to be used for statewide water supply planning. The first round of funding was used (max \$25,000 grant per cycle, and up to 2 cycles). **The funding cap has been eliminated.**
- e. **December 1 Colorado Water Plan grant deadline;** contact CWCB grant liaison Ashley Garrison.
- f. Deadline for **technical assistance grant to aid applying for federal grants is October 15.**
- g. Deadline for **Wildfire Readiness grants is September 30.**
- h. The next CWCB board meeting is November 20-21 in the Denver Metro area.
- i. **32 CWP grants were submitted that requested \$9.3 million were approved out of \$11m asked.** Jeff does not know about grants from the Colorado River District.

13. **IBCC Update** Stan Cazier and Carlyle Carrier.

- a. Stan stressed how **important it is to discuss the Shoshone water right with other basins. Few people really understand this water right** and how important it is to the West slope.

14. Colorado River District update Andy Mueller.

- a. 300 people attended the annual Colorado River District seminar at Colorado Mesa University.
- b. **Oct 16 is the next Colorado River District Board meeting;** the strategic plan will be discussed on Oct 17.
- c. The Upper Colorado River Commission is asking the federal government how to be reimbursed for System Conservation Pilot Program SCPP conservation. This is **“system” water so the Upper Basin does not get credit for.** It’s not clear to the Colorado River District how the Upper Basin will receive credit for SCPP conserved water. **Under demand management the entire Upper Basin got credit for conserved water.**

- d. The Colorado River District believes the Upper Basin should get credit for conservation, so it favors demand management more than **SCPP**. If the credit goes to individual states or water users, this may cause a situation where irrigators will be paid to dry up land and **create credits for particular water users. The Colorado River District would not likely favor that.**

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- e. Will the Bipartisan Infrastructure Law BIL pay for SCPP through 2026? The Senate is currently considering this.
- f. Lorelai Cloud of the Southern Ute tribe learned that BuRec would **allow the Upper Basin tribes to apply for water that they are entitled to** under agreements with the federal government. BuRec recently said tribes could not apply for funding under the Bipartisan Infrastructure Law. This **does not affect the Colorado River District since there are no tribal lands within the Colorado River District boundary.**
- g. Southern Utes have a **BuRec project that has fallen into disrepair**. The tribe has tried to fix a Bureau of Indian Affairs BIA-funded project; **the federal government will not pay for this, so the tribe cannot access all of its water.**
- h. **The Upper Basin is proposing a perpetual conserved consumptive use program in the 2026 Interim Guideline negotiations.**
- i. The **Grand Valley Irrigation Company GVIC diverts 640 cfs from the Colorado River at Palisade, and 800 acres** of land served by GVIC were **enrolled in the SCPP**; the **state engineer then reduced the Cameo call by 26 cfs**. You cannot call for water you will not divert, so this could have the effect of reducing water called down the Roaring Fork River to meet the GVIC's 1882 water right. **This could permit the Twin Lakes Canal Company to divert more water through the Independence Pass tunnel** to Twin Lakes for eventual delivery to Colorado Springs. Or, this "freed up" water could be diverted by the Northern Colorado Water Conservancy District to Greeley through the Alva B. Adams tunnel below Rocky Mountain National Park or through the Homestake Tunnel to the Arkansas River drainage, etc. If the water is diverted and used in the GVIC service area, 50-60% will return to river; **if transmountain diverters take this "freed up" water, it is 100% consumptive.**
- j. **SCPP conserved 16,000 af in 2023, and 32,000 in 2024**; if it keeps doubling, this will ultimately make a big impact.
- k. In the **Uncompahgre, a couple of board members** on the Upper Gunnison River Water Conservancy District **made \$800,000 by participating in SCPP**. This has angered other Uncompahgre board members.
- l. The Colorado River District believes **SCPP should be subject to local control**, and a lot of careful planning. **The Colorado River District developed a decision support tool in Uncompahgre**; it looks at soil health, local economics, where the best yield could be and **where drying up irrigation from SCPP could have greater or lesser benefit**. Producing agricultural products is a hard life. The SCPP program is creating a market

place to transfer water use to other uses. **Pitkin County Commissioner Kelly McNicholas Kury said we have only monetized some of the uses** (i.e., compensated certain uses with money), but not all of them. This is a problem. **We are not monetizing conservation's benefit such as the environmental and recreational benefit of leaving water in the river.**

m. Ken Ransford asked if the problem is that conserved water cannot be shepherded down the river (i.e., protected from other water users taking the "new water" now in the river). **Mueller said the Colorado River District has never endorsed a Compact compliance**

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water right because it is effectively creating a new water right without going through water court. If GVIC had applied to conserve consumptive use of 26 cfs in Water Court, Pitkin County could have challenged it and defended in water court its interest in having water run down the Roaring Fork River. During the summer the **Roaring Fork River has far less than 26 cfs through Aspen**, so the GVIC's conserved consumptive use could project could perversely dry up the Roaring Fork River through Aspen. **"There was no way to protect this water right under SCPP.** That's why we have water court," Mueller said.

n. Ken Ransford asked **if Colorado should provide a water right to shepherd this water, and Andy Mueller said that he believes this would be a bad idea**, and he emphasized that this should be put in the minutes.

o. Was the State Engineer correct in cutting back GVIC's water right knowing that this was only a one-year issue? **Colorado statutes permit irrigators to discontinue irrigating lands for 3 out of 5 years, for instance, but they require notice to adjacent water users.** "That's what is wrong with SCPP. It does not provide notice and the right to object," Mueller said.

p. **GVIC bylaws prevent users from selling water because it is a mutual ditch company.** The State Engineer was calling out shortcomings in the SCPP program.

q. Greg Williams of Ute Water agrees **we need Compact compliance rules in place.**

r. **Tom Wood, GVWUA board member, said a conserved consumptive use program properly run could be another tool in the tool box.** To say never have a program is not the right answer.

15. **PEPO Update. The \$25,000 PEPO grant has been fully expended** for the water year ending 9-30-2024.

16. **Shoshone Purchase – Andy Mueller, Colorado River District General manager**

a. **\$15.975 million has been raised from West slope water users, toward the \$99 m purchase price.**

i. **The Colorado River District approved \$20m.**

ii. **CWCB approved \$20m in the 2024 Projects Bill**; it was approved almost unanimously by the legislature and signed by the governor.

iii. In all, **over \$55m has been committed**. The Colorado River District hopes to get a federal grant from BuRec for most of the remaining funds through the Bipartisan Infrastructure Law BIL

b. The Colorado River District will seek an instream flow right through a change case to maintain the historic water right.

i. Proponents try to maintain their historic use in a change case; objectors try to reduce this.

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ii. The Colorado River District has a range of numbers to support historic use of the water right, and some Front Range entities have agreed to support these flow targets.

iii. **The change case cannot hurt downstream users, so the Water Court's job is to maintain flows for downstream users.**

iv. The instream flow reach is 2.4 miles from the point of diversion to the point of discharge.

v. **As soon as there is water in the river, there are fish.**

c. **Xcel can cease operating the Shoshone Power Plant** since it is Xcel's private property. It's on the National Historic Registry and the dam is also part of this historic designation. The dam is on private property, and the building is on Forest Service property.

d. **The change case will follow the instream flow process at CWCB; it will begin in spring 2025, and must be concluded by the CWCB within 120 days.** The CWCB instream flow team has been very cooperative.

e. The bulk of water supporting the Shoshone water right comes out of Green Mt Reservoir.

f. Northern Water says it can only release the 52,500 af water it controls in response to a call, and **the ShOP (Shoshone Outage Protocol) is an informal agreement, not a call**. It's a contract, not a decree. The state varies in its position of whether the contract should be honored; **a decree has a more secure legal basis.**

g. **The Colorado River District has been charged with securing the power plant water right.** It is **doing a historic use analysis, which it will share with the CBRT Roundtable**. The Dotsero gage is the closest measuring device, and there is no measuring device at the point of diversion; the tunnel. The historic use period is critical. **They are not seeking to expand the water right above 1,408 CFS**; it is in play when less water is historically available.

- h. **Beneficial use includes water added to flush sediment through the tunnel; this additive water is not included in the water right.**
- i. BuRec has keep water records on **hand-entered spreadsheets, which is slowing down the historic use analysis.** The Colo Division of Water Resources does not maintain diversion records for this water right.
- j. **Historic outages will be part of the diversion analysis**—in change cases, an outage for a year or longer can be excused because the owner was using reasonable diligence to get the water right back online.
- k. **The Colorado River District is requesting letters of support before the Oct 14 deadline.** The Colorado River District is doing this in its representative capacity for the entire West slope. Many national and state legislators are supporting the purchase. **Public support is critical.**

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- l. **If the water right is decreased in size, this means a less healthy river, and less water for endangered fish from Rifle to the Utah state line.**
- m. **For as long as Xcel runs the plant, Colorado River District will lease the water back to them for a nominal cost such as \$1/year.**

17. Shoshone Water Right Issues & Goals

- a. Permanently protect the Shoshone water flow. It is not the same as **the Shoshone Outage Protocol ShOP**; the ShOP was negotiated by Denver during the Colorado River Cooperative Agreement CRCA; **Denver “pretends” there is a call when the hydroelectric plant is being repaired and ceases diverting (i.e., goes offline).** Denver Water is committed to supporting the river flows when the ShOP is in effect, but this is voluntary, so **it can pull out at any time.** That would be a risk in an ongoing drought when Denver Water was facing reduced water deliveries to the Front Range.
- b. Victor Lee who represented **BuRec** at Colorado River Basin Roundtable meetings for nearly 20 years, **was very effective at convincing users to contribute water to maintain Shoshone flows.**
- c. **In 2023 the plant was out for 15 months,** the longest period ever, because a turbine went out, and rockfall damaged the building upstream of the plant. The rock was difficult to remove, and the Colorado Department of Transportation CDOT and Xcel Energy struggled with who was responsible.
- d. It is difficult to see who contributes the shortfall when the power goes out. **Denver’s and Aurora’s participation depends on the amount of storage they have.**
- e. Drought conditions affect parties differently. **The ShOP participants want to replace ShOP with a permanent Shoshone Call.**

- f. Mueller has been with Colorado River District for 6.5 years; He spoke to **BuRec** and they **suggested an act of Congress was required to replace the voluntary ShOP agreement with a permanent water right** through Glenwood canyon
- g. **The BuRec ran out of water in March 2023**, an above water year, to keep the call going. **If it was a lower year, the water would have been gone on July 1**, and there would have been under 1,500 cfs in the river. This could easily happen during a dry year.
- h. Endangered Fish Recovery Program. **The Shoshone water right contributes much of the flow of the 15-mile reach. It's based on State Mod**, which was a monthly model, and is now a daily model.
 - i. **The Shoshone water right preserves water in the Historic User Pool HUP** of irrigators in **Grand Junction and protects Green Mountain Reservoir storage**; without the Shoshone water flow, the impact on the HUP is far greater.
- i. Salinity control. This is an inter-state program. Much of the salinity in the Colorado River mostly comes from GWS; **without Shoshone flows, salt concentrations would be greater** and downstream users would be greatly impacted.

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- j. Relaxation of Shoshone Call Agreement Renewal. There's a 2007 agreement between Denver Water and the Colorado River District to reduce flows when Denver Water's reservoirs are low. **When Denver's reservoirs are less than 80% full and flows at Kremmling are below 85% of average, DW can shut down one of the turbines and reduce the Shoshone call by 50%. It has been exercised twice.**
 - k. Upper Colorado **Wild and Scenic Study: Outstanding and Remarkable Values ORVs in this study are contingent on the Shoshone Call.**
 - l. Mueller said this is an exciting project but there's a long way to go. **The Colorado River District is planning to ask BuRec for \$40m.**
 - m. **At the C9 Summit, Mueller encouraged CBRT members to talk up how important this water right is.** It meets the CBRT's agriculture, recreation, municipal, and industrial water needs. It is the **Colorado Roundtable basin's most essential water right**. Other basins do not understand this.
 - n. Ed Moyer thanks Andy Mueller for the presentation and echoed that it is the most important water right in the CBRT Basin.
18. We finished the fiscal year ending 9-30-2024 with \$324,869 in the WSRA grant fund account, and received \$325,000 more for a total of almost \$650,000; if we do not expend the full allocation, we may not get the full allocation next year.
19. The CBRT reviews grants in September and March. One WSRA grant request was received, for **\$78,956 to improve 3 Mile Creek by the Roaring Fork Community Development Corporation**, along with RFCDC Executive Director Sydney Schalit and Philip Cioppino. Pitkin

County Commissioner Kelly McNicholas Kury introduced the grant request.

- a. **The RFCDC, a 501(c)(3) tax-exempt charity, purchased the 3 Mile Mobile Home Park on April 22, 2023, with a goal of turning it into an affordable housing project and selling it to the residents.** It is located on 3 Mile Creek on the south side of Glenwood Springs toward the Sunlight Ski Area. **A high water event on May 3, 2023, caused damage to a bridge, water, and sewer lines on the property.** The water system and sewer line were repaired, but they are requesting a grant to stabilize the bank. **The goal is to do bank stabilization work to mitigate flood damage** in the park. The mobile home park has been there for 40 years.
- b. The fire department will no longer drive a fire truck across the bridge. The RFCDC is asking CBRT for support **to allow residents to stay in homes and mitigate the flood plain and prevent the river from being damaged if another high water event causes debris** and other property at the mobile home park from **falling into the river.**
- c. The bank stabilization project to reduce impacts to downstream properties, and further reduce the impact of severe water events, wildfire, and changes to water quality. Almost every mobile home at the park can be impacted by a high water event.
- d. Prior improvements like riprap placed along the river banks have fallen into the stream and are now causing stream flow problems.

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- e. **Funds are needed for engineering design, permitting, and implementation of river and bridge repairs,** on a 581' linear-foot stretch of the stream. The goal is to do the improvements in September - November 2025.
 - f. A Department of Local Affairs DOLA grant request was tabled. Many community housing groups have written letters of support.
 - g. James Dilzell said the **grants committee recommended approving the grant, \$78,956, which equals 10% of the entire CWCB grant request.** This meets a lot of the basin objectives. The total cost of bridge, water system, is \$2.2m.
 - h. Randi Kim asked if they have pursued FEMA flood mitigation grants. Sydney needs additional capacity to pursue this. **The project is in the flood plain. They are designing a channel to contain most high water events.**
 - i. James Dilzell motioned approval, Richard Vangytenbeek seconded, and it passed unanimously.
20. Request for letter of support by RiversEdge West, presented by Rusty Lloyd, to develop a master plan to enhance the Colorado River corridor through Grand Junction. The planning process is to enhance the river's value to the community. The first three phases include mapping the floodplain, conducting a flow preference workshop, and organizational development and community outreach. The 4th phase is finalizing a master plan. **They are asking for \$305,000 from CWCB toward the \$426,000 cost, mainly to develop a master plan** for habitat,

floodplain, community access.

a. They are asking Gunnison roundtable for a letter of support as well.

b. **Greg Williams asked about the preference flow study and recommended that they consult with the US Fish & Wildlife Service.** The flow preference was conducted by American Rivers, asking whether and how much people valued different flow levels.

c. **Tom Wood asked what the end goal is.** The river has gone from being a marginalized no man's land to being developed with a lot of values competing for it. The goal is to develop a plan for **what river front and the river corridor will look like in 20 years.**

d. Ken Ransford recommended drafting the letter of support, and Tom Wood seconded, and it passed unanimously.

21. Request for letter of support for b-2-E funding for letter of support for grant request to Federal Government under the Bipartisan Infrastructure Law to support Shoshone purchase.

a. Greg Williams made motion to support, tom Wood seconded, it passed unanimously. 22.

Next CBRT meeting November 18.

a. Dredge and Fill permitting and upcoming rulemaking from Colorado WQQ committee