



COLORADO
Colorado Water Conservation Board
Department of Natural Resources

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TO: Colorado Water Conservation Board Members

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

DATE: November 20-21, 2019 Board Meeting

AGENDA ITEM: 10a. Water Project Loans
Republican River Water Conservation District - Surface Water Rights Purchase

Introduction

The Republican River Water Conservation District (District), acting by and through its water activity enterprise, is applying for a loan for the Surface Water Rights Purchase (Project). The District purchased surface water rights located on the North Fork and the South Fork of the Republican River. The District made these purchases within the Republican River Basin with the sole purpose of assisting the State of Colorado to meet its obligations under the Republican River Compact (Compact). The District needed to act quickly to purchase the surface water rights and avoid losing that opportunity. The quick action is the reason the District did not go through the CWCB loan application and approval process prior to purchasing the water rights. The total purchase price was \$6,925,000. The District is requesting a loan of \$5,515,000, approximately 80% of the Project costs. The remaining portion will be paid with the District's cash. See attached Project Data Sheet for a location map and Project summary.

Staff Recommendation for Loan

Staff recommends the Board approve a loan not to exceed \$5,570,150 (\$5,515,000 for Project costs and \$55,150 for the 1% service fee) to the Republican River Water Conservation District, acting by and through its water activity enterprise, for costs associated with the Surface Water Rights Purchase, from the Severance Tax Perpetual Base Fund. The loan term will be 20 years at a reduced agricultural interest rate of 1.20% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.



Borrower – Republican River Water Conservation District

The District encompasses about 7,800 square miles or about 7.5% of Colorado's 104,247 square miles. There are approximately 566,340 irrigated acres within the District. In 2015, irrigated land in the Republican River Basin accounted for approximately 16% of the irrigated acres in Colorado.

The District was established by Senate Bill 04-235 in 2004 to assist the State of Colorado to comply with the Republican River Compact. The District is managed and controlled by a 17-member board of directors comprised of one member appointed by the county commissioners of each of the eight counties within the District, one member appointed by the boards of the eight ground water management districts, and one member appointed by the Colorado Ground Water Commission.

The District's board of directors is authorized to establish a water activity enterprise and is authorized to impose a use fee on the diversion of water within the District. The District has used revenues from use fees to provide local cost sharing for federal programs designed to retire irrigated acreage in the basin, including the Conservation Reserve Enhancement Program (CREP) and the Environmental Quality Improvement Program (EQIP). Approximately 39,433 irrigated acres have been voluntarily retired in the basin under CREP and EQIP. With the purchase of water rights that supply augmentation for the Compact Compliance Pipeline (CCP), another 10,100 irrigated acres were permanently retired. Currently the number of retired irrigated acres is approximately 5% of the irrigated acreage in the basin. In 2018, the U.S. Department of Agriculture approved an amendment to the Colorado Republican River CREP allowing up to 60,000 irrigated acres to be retired through this program.

Background

The Republican River Basin overlies the Ogallala Aquifer, a regional underground aquifer system underlying portions of seven states from South Dakota to the Texas panhandle including Colorado, Kansas and Nebraska. The District is located in northeastern Colorado and includes all of Yuma, Kit Carson and Phillips Counties and portions of Lincoln, Logan, Sedgwick, Cheyenne and Washington Counties that overlie the Ogallala aquifer.

The average withdrawals of ground water in the Republican River Basin from 2002-2018 are approximately 700,535 acre-feet per year. Ground water impacts included in the Republican River Compact Accounting (RRCA) are approximately 29,000 acre-feet per year. From 2003 until 2013, Colorado exceeded its compact allocations by 7,660 acre-feet per year. Reductions in the amount that Colorado exceeded its Compact allocations have occurred since 2013 as the result of irrigated acreage retirement programs and the operation of the CCP. Without the CCP and acreage retirement it was projected that the deficit would increase gradually to 12,000 acre-feet in 2029. The expected yield of the CCP is 15,000 acre-feet per year. Together with acreage retirement this should be adequate to ensure Compact compliance for in excess of 40-years. Calculations of stream flow depletions resulting from well pumping are made with the RRCA Groundwater Model, which was developed under the provisions of the Final Settlement Stipulation. With the use of the CCP and efforts by the District and working closely with the State Engineer's Office, Colorado has been able to attain compact compliance. These efforts must continue in order to comply with the Compact.

Additionally, the previous owner of the South Fork water rights sued the State Engineer in an attempt to de-designate the Northern High Plains Designated Groundwater Basin based on claimed injury to these surface water rights. That same entity was actively opposing the State Engineer's promulgated Compact Rules Governing Water Use within the RRCA Groundwater Model Domain. By purchasing the

South Fork water rights, the District ended the de-designation litigation and eliminated a primary opposer to the Compact Rules.

The District intends to proceed in Colorado Water court to change these water rights to instream flow and compact compliance purposes to assure that the State Engineer has the legal authority to deliver the historical consumptive use of this water to the State line, past any junior diversions, to assist the State of Colorado in Compact compliance, somewhat similar to the change case in 14CW3135. The District has communicated with the State Engineer regarding these purchases and would like to partner with the CWCB and the Colorado Water Trust to work toward changing these water rights to instream purposes to benefit the State's efforts in Compact compliance. Such a change would not require consent or even any action by the States of Nebraska, Kansas or the Republican River Compact Administration.

Loan Feasibility Study

David W. Robbins, Esq. with Hill and Robbins, P.C. prepared the Loan Feasibility Study titled, "Loan Feasibility Study for Purchase of Surface Water Rights," dated October 2019. Water rights analysis and hydrology support was provided by Randy Hendrix, P.E., with Hendrix Wai Engineering, Inc. The feasibility study was prepared in accordance with CWCB guidelines and includes an analysis of alternatives and costs. Financial statements were provided by the District and were reviewed by Sarah Bailey with Winfrey, County and Hays, P.C.

Water Rights

The District continues actively seeking to attain senior surface water rights to improve water deliveries and increase streamflow. The surface water rights associated with the Project are shown in Table 1.

TABLE 1: WATER RIGHTS PURCHASED

Name	Tributary to Republican River	Pro-rata Amount	Appropriation Date	Adjudication Date	Water Court Case No.
Hayes Creek Ditch	North Fork	3.0 cfs	March 1, 1888	July 3, 1912	CA872
Hayes Creek Ditch No. 3	North Fork	3.5 cfs	June 1, 1884	July 3, 1912	CA872
Tip Jack Ditch	South Fork	2.0 cfs	February 8, 1889	December 28, 1893	CA18162
1/3 of Hale Ditch	South Fork	1/3 of 23 cfs	January 17, 1908	September 8, 1938	CA2985
Hutton No. 1	South Fork	12.90 cfs	December 31, 1976	May 3, 1978	W-8667-77
Hutton No. 2	South Fork	4.92 cfs	December 31, 1976	May 3, 1978	W-8667-77

Project Description

The purpose of the Project is to assist the State of Colorado meet its obligations under the Republican River Compact by purchasing surface water rights in the Republican River Basin.

Alternative 1 - No Action: By not purchasing these surface water rights when they were made available would have caused the District to search for other more expensive and more complicated alternatives to meet compliance with the Republican River Compact. By not purchasing the South Fork water rights, the District would not have ended the de-designation litigation and eliminated a primary

opposer to the Compact Rules. Additionally, the purchase reduced historical consumptive uses associated with irrigation under these rights and improved the State of Colorado’s position in complying with the Compact.

Selected Alternative 2 - Surface Water Rights Purchase: This alternative includes the purchase of six senior surface water rights in the North Fork and South Fork of the Republican River. The water rights purchase results in the contribution of surface water rights to instream flow purposes above the Stateline and for long-term Compact compliance that avoids curtailment of existing water rights and wells due to non-compliance conditions. Compact accounting considers 60% of any surface water diversions to be consumptively used which is a much larger immediate impact in compact accounting than groundwater diversions. Acquiring the remaining surface water rights has been expensive and time intensive. When the water rights shown in Table 1 became available, the District decided to purchase these water rights for a total of \$6,925,000.

Permitting: The change of surface water rights to instream flow use by the CWCB and compact compliance must be approved by Colorado Water Court. The District intends to work with the CWCB staff and Colorado Water Trust to ensure that any change of the water rights to instream flow use complies with the statutes and Instream Flow (ISF) Rules governing acquisitions of water for instream flow use. The District anticipates there will be limited, if any, opposition for this Project.

Schedule: The District anticipates completing this Project in 2020.

Financial Analysis

Table 2 provides a summary of the Project’s financial aspects. The District qualifies for a reduced agricultural interest rate of 1.20% for a 20-year term (Ownership: 100% Agricultural).

TABLE 2: FINANCIAL SUMMARY

Project Cost	\$6,925,000
CWCB Loan Amount	\$5,515,000
CWCB Loan Amount (Including 1% Service Fee)	\$5,570,150
CWCB Annual Loan Payment	\$314,924
CWCB Annual Loan Obligation (1 st Ten Years)	\$346,416
Number of Irrigated Acres	566,340
Annual Loan Obligation per Irrigated Acre	\$0.61
Current Assessment per Irrigated Acre	\$14.50
Estimated Total Future Assessment per Irrigated Acre	\$14.50

Creditworthiness: The District has \$36,821,540 in existing debt. These loans are in good standing and are shown in Table 3. The established use fee of \$14.50 per assessed irrigated acre on the diversion of ground water for irrigation use within the District. The General Assembly passed, and the Governor signed into law HB19-1029 which increased the size of the District to include all lands on which pumping can impact the flows of the Republican River. Of the 43,858 irrigated acres added to the District 1,259 acres will not be assessed fees per HB19-1029. The remaining 42,599 acres will be assessed for a partial year in 2019 at \$6.00 per assessed acre which will increase to \$14.50 per assessed acre in 2020 and each year after. The District has repaid almost half of their original loan of \$59,587,885.95 loan during the last 7 years. Notably, \$6,000,000 in additional principal was paid in 2014, enabling the District to pay off this loan 3 years ahead of their loan term.

TABLE 3: EXISTING DEBT

Lender	Original Balance	Current Balance	Annual Payment	Maturity Date	Collateral
CWCB C150260	\$60,600,000	\$34,204,300	\$3,706,097	2032	Project and Revenues
CREP 2006	\$5,868,577 ⁽¹⁾	\$1,751,945	\$134,955	2021-2034	Revenues
Revised CREP 2018	\$18,325,760	\$211,745	\$211,745	2035	Revenues
EQIP 2005-2024	\$10,041,614	\$653,550	\$276,523	2019-2023	Revenues
Total		\$36,821,540	\$4,329,320		

¹ The original CREP balance contracted in years 2006 through 2018.

TABLE 4: FINANCIAL RATIOS

Financial Ratio	Past Years	Future w/ Project
Operating Ratio (revenues/expenses) weak: <100% - average: 100% - 120% - strong: >120%	114% (average) \$7.33M/\$6.42M	108% (average) \$7.33M/\$6.76M
Debt Service Coverage Ratio (revenues-expenses)/debt service weak: <100% - average: 100% - 120% - strong: >120%	121% (strong) (\$7.33M-\$2.09M) \$4.33M	112% (average) (\$7.33M-\$2.09M) \$4.68K
Cash Reserves to Current Expenses weak: <50% - average: 50% - 100% - strong: >100%	126% (strong) \$8.07M/\$6.42M	98% (average) \$6.66M/\$6.76M

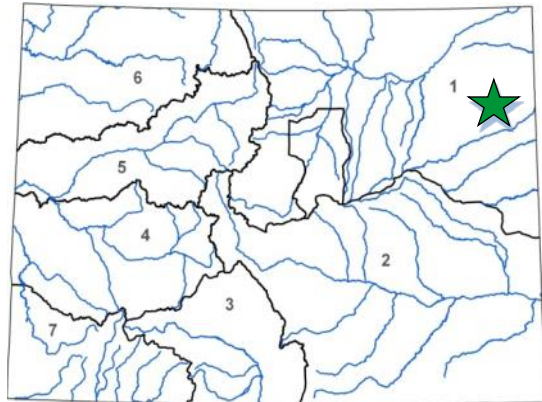
Collateral: Security for this loan will be a pledge of the assessment revenues and the purchased surface water rights. This security is in compliance with the CWCB Financial Policy #5 (Collateral).

cc: Debra Daniel, General Manager, Republican River Water Conservation District
 Rodney Lenz, President, Republican River Water Conservation District
 Jennifer Mele, Colorado Attorney General's Office

Attachments: Water Project Loan Program - Project Data Sheet



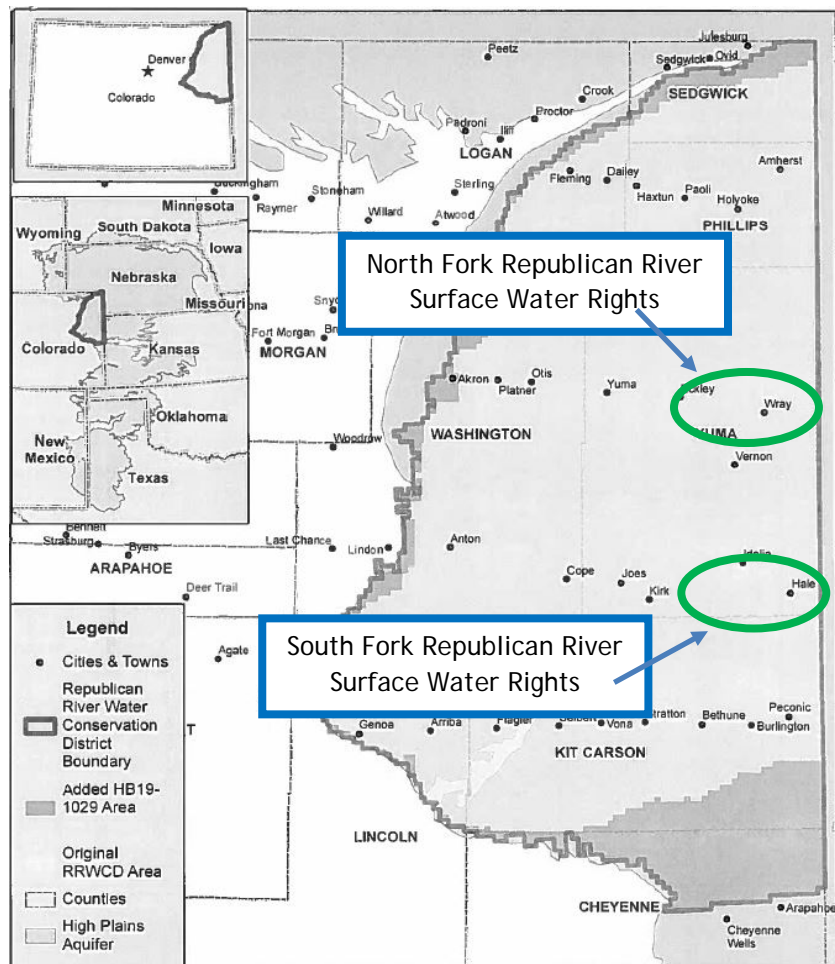
L O A N D E T A I L S		
Project Cost:	\$6,925,000	
CWCB Loan (with 1% Service Fee):	\$5,570,150	
Loan Term and Interest Rate:	20 years @ 1.20%	
Funding Source:	Severance Tax Perpetual Base Fund	
B O R R O W E R T Y P E		
Agriculture	Municipal	Commercial
100%	0% Low - 0% Mid - 0% High	0%
P R O J E C T D E T A I L S		
Project Type:	Water Rights Purchase	
Average Annual Delivery:	N/A	



In December 2002, Colorado entered into a Stipulation with Kansas and Nebraska to address the U.S. Supreme Court Case of Kansas v. Nebraska and Colorado. Since then, the State of Colorado had exceeded its annual allocations of beneficial consumptive use under the Republican River Compact (Compact) by an average of 11,000 acre-feet per year. In 2004, the State of Colorado established the Republican River Water Conservation District (District) to assist with Compact compliance. Since, the District has actively sought to acquire senior surface water rights. The water rights result in streamflow increases and help to improve water deliveries required under the Compact.

L O C A T I O N			
Counties:	Yuma		
Water Source:	North Fork and South Fork of the Republican River		
Drainage Basin:	South Platte		
Division:	1	District:	49, 65

This Project includes the purchase of senior surface water rights in both the North Fork and South Fork of the Republican River in order to assist the State in complying with the Compact by increasing stream flows. The Project provides multiple benefits that include preventing curtailment of existing water rights and wells due to non-compliance, avoiding a reduction of groundwater-irrigated acreage, furthering a collaborative approach to Endangered Species Act compliance, and minimizing costly litigation with Kansas and Nebraska.



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