

River Board Meeting Agenda

Pitkin County Courthouse Plaza 1, Aspen, CO

May 15, 2014

Time	Description
4:00 PM	<ul style="list-style-type: none"> • Board Comment • Public Comment • Additions – Deletions to Agenda
4:10 PM	<ul style="list-style-type: none"> • Approval of Minutes February 20, 2014 March 20, 2014
4:15 PM	<ul style="list-style-type: none"> • Branding Update Ruthie Brown/Diane Schwener- Schwener Design Group Materials will be distributed at meeting
4:45 PM	<ul style="list-style-type: none"> • GIS discussion • CO Water Plan Dave Nixa No materials
5:00 PM	<ul style="list-style-type: none"> • Great Divide Film funding request Blair Gawthrop Miller – Havey Productions
5:30 PM	<ul style="list-style-type: none"> • Crystal River Restoration Funding Request Roaring Fork Conservancy – Sharon Clarke
6:00 PM	<ul style="list-style-type: none"> • Transbasin Conditional Water Rights John Ely
6:30	<ul style="list-style-type: none"> • Executive Session C.R.S. 24-6-402 (4)(b) RICD Development

Future meeting dates 2014:

June 19

July 17

Aug 21

HEALTHY RIVERS AND STREAMS CITIZENS ADVISORY BOARD

Meeting Minutes

530 E. Main St Plaza 1

Aspen, CO 81611

February 20, 2014– 4:00 p.m.

River Board members present: Bill Jochems, Andre Wille, Greg Poschman

River Board members absent: Rick Neiley, Lisa Tasker, Ruthie Brown, Dave Nixa

Others present: Lisa MacDonald, John Ely, Laura Makar

Board Comment – Mr. Jochems attended the Colorado Water Congress conference in Denver and reported to the Board on the event.

Public Comment - None

Additions/Deletions to Agenda

Chairman Wille added to the agenda a request from SGM for assistance in hosting a town hall meeting on the basin implementation plan. Basin roundtables in each of the state's major river basins are developing these plans for how to meet the prospect of significant water supply challenges in the future. The Board was enthusiastic about hosting the meeting and offered ideas on how to promote the meeting.

Approval of the Minutes

Mr. Poschman moved to approve minutes of January 16, 2013 meeting with a correction noting Mr. Poschman's absence. Mr. Wille seconded the motion. The motion passed 3 to 0.

Grant Opportunities

Tia Cavender with Chase Park Grants returned to the Board to discuss funding opportunities specific to the Northstar restoration work and to the Basalt River Park. Discussions ensued regarding the opportunities and the Board did not want to move forward with a contract. The Board felt the fund could cover the cost of the Northstar project on its own without outside grant opportunities.

Mr. Poschman moved to deny a request for an expenditure of funds to enter into a contract with Chase Park Grants for grant funding opportunities at this time. Mr. Jochems seconded the motion. The motion passed 3 to 0.

Comprehensive Lower Fryingpan Assessment - Request for Funding

Heather Tattersall Lewin & Sharon Clarke - Roaring Fork Conservancy

The Board was briefed on the assessment and request for funding. The Board heard detailed information at the September 2013 meeting.

Mr. Poschman moved to:

Accept and ratify an average of the individual scoring on the Comprehensive Lower Frying Pan Assessment grant as completed by the Board members;

Recommend funding of \$25,000 towards this project with additional funding up to \$13,000 for a total of \$38,000 if the \$13,000 would be matched by Eagle County;

and recommend incorporation of conditions upon funding as follows:

public relations efforts to include schools,

outreach & feedback results be distributed to this Board,

our logo/brand be incorporated into promotional and distributed materials,

the economic study include a checkbox that asks guests what county they are staying in, i.e. Eagle County, Pitkin County

Mr. Jochems seconded the motion. Motion passed 3 to 0.

Trans Basin Conditional Water Rights

Laura Makar, Assistant County Attorney - This item was continued to a future meeting.

Revision of Grant Procedure

Mr. Neiley was unable to attend the meeting and will present this to the Board at a future meeting.

Approved:

Attest:

Andre Wille– Chairman
Healthy Rivers and Streams Board

Lisa MacDonald

DRAFT

HEALTHY RIVERS AND STREAMS CITIZENS ADVISORY BOARD

Meeting Minutes

530 E. Main St Plaza 1

Aspen, CO 81611

March 20, 2014– 4:00 p.m.

River Board members present: Bill Jochems, Andre Wille, Greg Poschman, Lisa Tasker, Ruthie Brown, Dave Nixa

River Board members absent: Rick Neiley

Others present: Lisa MacDonald, John Ely, Laura Makar

Board Comment – Mr. Jochems commented on an article in Harper’s Magazine April 2014 edition, regarding a rafting trip down the Colorado River through Cataract Canyon and quoted several people on the trip including Jim Lockhead who addressed the Colorado Water Congress in January.

Chairman Wille read an update from Ruthie Brown who would be late to the meeting regarding the branding efforts.

We have retained Diane Schwener of Schwener Design Group Marketing & Graphic Design. Diane was a former president of the RFC Board and has a thorough understanding of the HRS’s mission.

Scope of work is to establish a new HRS logo/name/tagline:

- Raise awareness
- Simplify the name or come up with a new one
- Create a tagline
- Create an easily recognizable identity mark
- Make sure people know this is a Pitkin County program
- Distinguish HRS from other groups doing similar or overlapping work

We will have 3 proposals to present to the board at the April 17th meeting. Call Ruthie with any questions.

Public Comment – None

Additions/Deletions to Agenda - None

Approval of the Minutes

Minutes of February 20, 2014 meeting continued to future meeting date.

Ms. Brown arrived at approximately 4:19 p.m.

The Great Divide - Film production on history of water in Colorado sponsorship request by Harvey Productions.

Mr. Jochems originally received a request for sponsorship for the film. Chairman Wille thought there should be an initial discussion about what our process is to support sponsorships of various types.

Mr. Nixa suggested they go through our grant request criteria process and submit a formalized request.

The Board discussed the project and had many questions regarding the film to determine if sponsorship was appropriate.

Chairman Wille asked the Board to come up with and forward to him, questions they had for the producers. He will then send the questions to the producers and determine whether the producers would be interested in attending a future board meeting to formally request funding.

Finance Committee Year End Update – Dave Nixa

Mr. Nixa updated the Board on year-end figures and pointed out to the Board the figures came out over \$41,000 over our 2013 revenue target.

GIS – Dave Nixa

This came about of a desire for more robust GIS capabilities and is there a need to re-visit the request for proposals for the GIS Mapping Project with some additional information. Mr. Nixa and Ms. Tasker will discuss goals and meet with entities who are using product. They will also try to gather others for a demonstration at a future board meeting.

Colorado River Basin Implementation Plan and Coordination with adjacent counties – Dave Nixa

Mr. Nixa stressed the need for comments on the basin plan. He is planning to attend the 1177 meeting in Glenwood Springs later in the month. His issue was that surrounding communities and counties in our area don't have a water board similar to ours. He suggested taking a leadership position in engaging our neighboring counties to adopt a similar program and create a unified voice around whatever issues we feel the plan is going to present.

Basalt Water Park

John Ely introduced Jason Carey of River Restoration and Lee Rozaklis of AMEC who have both assisted the county with the water park work to date.

Mr. Ely recapped the history of the park idea and Mr. Carey and Mr. Rozaklis discussed park development, costs and the county's obligations under the RICD decree. The Board needs to make a decision about whether to go forward or not with the water park recommendation.

Mr. Poschman left the meeting at approximately 6:04 p.m.

Ms. Tasker moved to enter into executive session pursuant to C.R.S. 24-6-402(4)(a) to discuss property acquisition. Mr. Jochems seconded the motion, the motion passed 5/0.

Mr. Nixa left the meeting at approximately 6:25 p.m.

The Board returned from executive session upon a motion by Ms. Brown and a second by Ms. Tasker. Motion passed 4/0.

Mr. Jochems moved to make a recommendation of approval that the water park project move forward, that the board allocate funds for the development of the park and for coordination with the Town of Basalt for the approvals for construction, for coordination with the town master plan, for a public review process, for putting the project out for bid for the aspects of the in-channel work and other such related items. Ms. Brown seconded the motion, the motion passed 4/0.

The Board adjourned at approximately 7:10 p.m.

Approved:

Attest:

Andre Wille– Chairman

Lisa MacDonald

A film by Havey Productions

the GREAT DIVIDE

The destiny of the West is written in the headwaters of Colorado.

Gold Sponsor \$100,000

- Sponsor name will appear in opening credits of the film
- Opportunity to speak at the premiere event
- Acknowledgment as Gold Sponsor at all screenings and on DVD packaging
- 200 copies of the DVD
- 30 complimentary tickets with preferred seating to the premiere event

Silver Sponsor \$50,000

- Sponsor name will appear in the closing credits of the film
- Opportunity to speak at the premiere event
- Acknowledgment as a Silver Sponsor at all screenings and on DVD packaging
- 100 copies of the DVD
- 25 complimentary tickets with preferred seating to the premiere event

Bronze Sponsor \$25,000

- Sponsor name will appear in the closing credits of the film
- Acknowledgment as a Bronze Sponsor at all screenings and on DVD packaging
- 50 copies of the film DVD
- 20 complimentary tickets with preferred seating to the premiere event

Headwater Sponsor \$15,000

- Sponsor name will appear in the closing credits of the film
- Acknowledgment of sponsorship at all screenings and on DVD packaging
- 30 copies of the film DVD
- 12 complimentary tickets with preferred seating to the premiere event

River Sponsor \$10,000

- Sponsor name will appear in the closing credits of the film
- Acknowledgment of sponsorship at all screenings and on DVD packaging
- 20 copies of the film DVD
- 8 complimentary tickets with preferred seating to the premiere event

Tributary Sponsor \$5,000

- Sponsor name will appear in the closing credits of the film
- Acknowledgment of sponsorship at all screenings and on DVD packaging
- 10 copies of the film DVD
- 4 complimentary tickets with preferred seating to the premiere event

All Sponsorship Levels Include

- Sponsor name will appear in all media publicity and promotional materials
- Sponsor name and logo featured on screen during premiere event

The premiere event will raise funds for distribution of the video to schools and libraries throughout Colorado.



Sponsors • as of May 2014

Water Conservancy/Conservation District

Colorado River District
Lower South Platte Water Conservancy Dist.
Northern Water
Rio Grande Water Conservation District
Upper Gunnison River Conservancy Dist.
Upper Yampa Water Conservancy District
Eagle River Water & Sanitation District
Lower Arkansas Water Conservancy District
Southwestern Colorado Water Conservation
Upper Eagle Regional Water Authority
Tri-County Water Conservancy District
San Luis Valley Water Conservancy District
Platte Canyon Water & Sanitation District
Southwest Metro Water & Sanitation District

Water Utility

Denver Water
City of Greeley
Consolidated Mutual Water
City of Fort Collins
Bancroft-Clover Water & Sanitation District

Government Agency

CO Office of Film Television & Media
Colorado Water Conservation Board
Colorado Water Resources & Power Dev.
Colorado Parks & Wildlife
Northwest Council of Governments

Corporate

Molson Coors Brewing Company
Hydro Resources
Deere & Ault Consultants
Environ

National Heritage Area

Poudre Heritage Alliance
Sangre de Cristo National Heritage Area

Environmental

American Rivers
Nature Conservancy

Foundation

Gates Family Foundation

Individual

Linda Boden

Educational

Water Information Program (WIP)

Non-Consumptive

Colorado Water Trust

Agricultural

Rocky Mountain Farmers Union

Pitkin County Healthy Rivers and Streams Fund
Viability of Project

The Great Divide film is intended to educate the public on a broad spectrum of Colorado water issues concerning the use and availability of western water in the future. The need for all citizens to better understand and participate in decisions affecting this critical resource is paramount.

The production will include filmed interviews with historians, writers, politicians, scientists, conservationists, engineers and others who can provide information and insights on the importance of Colorado water to the state and region. Audio, visual and graphic effects will illustrate important points to facilitate greater understanding of the often complicated nuances of water law, politics, engineering and conservation.

From Ancient Puebloan reservoirs and the establishment of Colorado water law to agriculture, dams, diversions and the critical role of conservation; the film will reveal today's urgent need to cross "the great divide," replacing disagreement with collaboration.

The total budget for the production of ***The Great Divide*** ninety-minute documentary film is \$350,000.00. As of May 12, 2014 the production team has raised \$276,000.00 with a strong indication that an additional \$40,000.00 will be committed within the month, leaving \$ 34,000.00 to raise. We have numerous proposals in process and feel confident the remaining funds will be raised by June 30, 2014 as required by one of our supporters. A \$5,000 grant from the Pitkin County Healthy Rivers and Streams Fund would move us closer to our goal and would broaden our base of support for the project.

The mission of Colorado Humanities' (fiscal agent and partner on the production) is to inspire the people of Colorado to explore ideas and to appreciate our diverse cultural heritage. This film project on Colorado's most important resource will advance our commitment to examine the human experience, ask fundamental questions and facilitate critical discussions throughout the state.

Public Accessibility

The Great Divide will be the seminal film on the topic of Colorado water, providing the informational context from which a more inclusive and educated conversation can occur while inspiring greater citizen interest, stewardship and action toward issues of water use and conservation.

While there are many films that expound a strong message from one special interest group or another, the production team has concluded that there is not currently a wide-ranging film exploring Colorado's water history effectively. ***The Great Divide*** will be a

determining work that will be used by a variety of organizations to create the educated populous necessary to spur the informed dialogue that will ensure a sustainable future for this precious resource.

As the state faces mounting demands on its water supply — the most coveted in the nation with eighteen states and Mexico thirsting for their share — the need for citizens to participate in decisions affecting this critical resource becomes increasingly urgent.

This film will benefit the public by providing an educational and engaging history of water in the west, while showcasing the unique position Colorado is in as the Headwaters State. A more informed appreciation for water's history in Colorado could also have a positive impact on future decisions to the benefit of all Coloradans. Colorado can meet its water challenges if its citizens understand the historical, cultural, political, and scientific contexts of water issues.

Through [the advisory council](#) and the diversity of [funding agencies](#), the production team plans to assemble a unique partnership of water players to shape this production and the conversation about Colorado's water future.

The Foundation for Water Education, The Colorado Humanities, and the Colorado Office of Economic Development, Heritage and Agritourism will collectively tour the film throughout Colorado along with a speaker's program. The film will also be shown statewide to civic groups, historical societies, business associations, service organizations, tourists, and special interest gatherings.

By way of further illustrating the public benefit, we offer the following words of support:

"From the perspective of my current roles as the Director of the Colorado Water Institute at Colorado State University, Trustee of the Colorado Foundation for Water Education and as President of the Colorado Water Congress, enhancing the public recognition and understanding of the value of the State's water heritage is both timely and critically important as we reach the limits of our water supply. My expectation is that *The Great Divide* film will raise the level of understanding needed for more participation and informed discussions around Colorado's water future."

Reagan M. Waskom

Director of the Colorado Water Institute

"Coloradoans generally are aware that we live in a semi-arid environment, but are typically unaware of where their water comes from, why we have a rigid system of water allocation law, or why the West Slope and the East Slope water interests often have conflict over limited water supplies. I have worked in the field of water resources in Colorado for over 30 years, and now is a perfect time for this film project."

Tom Cech

Director, One World One Water Center, Metropolitan State University Denver

"As a member of the Colorado Supreme Court for seventeen years and Vice President of the Colorado Foundation for Water Education, I know there does not presently exist a film that effectively addresses Colorado water history, culture and law in light of our incredible natural heritage as The Great Divide headwaters state and our interstate and international water delivery obligations. Over the past year, Jim Havey has consulted me and many others who stand ready to assist if this film project receives the needed support for its production."

Justice Gregory J. Hobbs, Jr.

Colorado Supreme Court

VP Colorado Foundation for Water Education

The production of the film itself will create approximately 40 jobs for the duration of the project. The film is crewed entirely by Coloradoans.

Goals of the River Board

The Colorado Water Plan will generate a high level of public discussion throughout the state both before and after its release in December of 2015. In support of the Pitkin County Healthy Rivers and Streams Board's goal of ensuring ecological health, recreational opportunities, and wildlife and riparian habitat and promoting water conservation, ***The Great Divide*** will raise public understanding and appreciation of Colorado's water heritage while inspiring personal responsibility and informed discussion concerning the vital challenge confronting the state and region with increasing urgency - forging collaborative solutions for managing this most precious resource for a prosperous and sustainable future.

"***The Great Divide*** will play a very large role in remedying the unfortunate version of amnesia by which Westerners take their access to water completely for granted. The disconnect between the consumers of water and the sites of its origin is a vexing and persistent social, economic, and cultural problem. This film offers a very promising way to restore or create an appropriate sense of wonder over the arrangements that support human settlement in this state. This proposal, from Colorado Humanities and Havey Productions carries my whole-hearted support."

Patty Limerick

Faculty Director and Chair of the Board, Center of the American West

"The mission of the Colorado Foundation for Water Education is to promote better understanding of Colorado's water resources and issues by providing balanced and accurate information and education. ***The Great Divide*** will help further this mission, raising awareness, understanding, and appreciation of this critical resource. As Colorado faces an uncertain water future, informed constituents are essential. I look forward to working with Colorado Humanities and Havey Productions in the production of this film, and using it as an educational tool afterwards."

Nicole Seltzer

Executive Director, Colorado Foundation for Water Education

"The work we do is complex, and sits in the heart of a conversation that is jargon-driven and often impenetrable from the outside. And to talk of our work, one needs to weave in history, sociology, economics, biology, law, geography—so many disciplines—that it can be overwhelming to explain what we do. This film will be really helpful to us as we continue to grow our work and reach out beyond the circle of water insiders."

Amy Beatie

Executive Director, Colorado Water Trust

This ninety minute documentary film will be the seminal piece on the topic of water in the west, and will provide the historical context from which an educated conversation and healthy debate can occur. We tend to take water for granted but it is intimately connected to Colorado's past; and water will determine the state's future. Water has profoundly shaped Colorado's historical and cultural identity and is vitally important to the state's agriculture, cities, industry, energy supply, and environment. Eighteen other states and Mexico depend on rivers born in the mountains of Colorado. Scarcity of this essential substance leads to controversy, conflict, and - if the better angels of our nature prevail - collaboration and cooperation.

Eighty percent of the state's water is located on the Western Slope while eighty percent of Colorado's population is on the Eastern Slope. This disparity has resulted in the construction of massive diversion systems to move water from one side of the mountains to the other. The film will present the sometimes complicated history of how water rights and uses were determined in such a fashion as to make the topic accessible to students and experts alike. There is endless lore about epic water conflicts in the West, but the vast majority of water disputes are settled in courtrooms or through collaborative solutions which indicate a trajectory of moving from a past of water conflicts toward a future of compromise and cooperation. This film will help shape and form that future.

Following are the chapter descriptions of the topics to be covered in the film:

CHAPTER ONE

The First Coloradans

From the ancestral Puebloans of Mesa Verde to the Ute, Arapaho, Navajo and Cheyenne; from Anglo explorers to mountain men, mapmakers and gold seekers, the survival and prosperity of the first Coloradans depended on finding adequate supplies of water in arid lands. The San Luis People's Ditch, an earthwork irrigation channel based on the acequia system of Spanish origin, is the earliest water right in Colorado.

CHAPTER TWO

Gold Rush and Settlement:

The Origins of Colorado's Water Laws

Beginning in 1858, one of the greatest gold rushes in United States history laid the foundation for the legal system governing Colorado's water, a substance indispensable for mining and in short supply. The gold prospectors were followed by homesteaders, who launched an era of irrigated agriculture on Colorado's semi-arid plains and basins, leading to clashes over the use of scarce rivers. These conflicts resulted in landmark court cases that established Colorado water law.

CHAPTER THREE

Agriculture

Along with mining, agriculture was Colorado's original engine of economic development. Irrigation ditches transformed Colorado's parched prairies and mountain basins into productive cropland and rich pastureland. Technological breakthroughs with irrigation allowed farming and ranching to flourish, giving rise to an industry that formed a vital part of Colorado's history and identity. Today 87 percent of Colorado's diverted water goes to agriculture. As the state's population grows, there is mounting pressure to transfer water from agriculture to municipal, environmental and recreational needs. However, supporters maintain that taking water away from agricultural use would harm an important sector of the state's economy and threaten the future of productive and highly valued rural landscapes and communities.

CHAPTER FOUR

Dammed and Diverted:

Harnessing Colorado's Wild Rivers

Denver Water, established in 1918 to ensure that the swelling metropolis had a stable water supply, constructed engineering masterworks to dam rivers and divert flow from the water-rich but sparsely populated Western Slope, across the Continental Divide, to the water-poor Eastern Slope—where most of the state's population resides. This redistribution of the state's liquid assets served as a source of persistent controversy. The historic Colorado River Compact, signed in 1922, became the most important agreement governing water in the West. This and other water compacts throughout the state set the stage for the federal government to build massive infrastructure projects that rearranged the hydrology of Colorado's river basins on an epic scale.

CHAPTER FIVE

The Environmental Era

In the 1960s and 70s, society's shifting values led to increased interest in preserving the aesthetic, recreational and ecological values of rivers, streams and aquifers. A spate of federal legislation that aimed to safeguard the natural environment—such as the Wilderness Act, the Clean Water Act, and the Endangered Species Act—was passed by Congress, fundamentally changing the way water was managed. In 1990, the EPA vetoed Denver's Two Forks Dam, forcing Denver and its suburbs to adopt a conservation and efficient use strategy to make up for the shortfall caused by the cancelled dam. This opened a new chapter in the history of water development in Colorado and throughout the West.

EPILOGUE

Crossing the Great Divide:

Replacing Conflict with Cooperation

In 2011, a pact known as the Colorado River Cooperative Agreement marked a turning point in the long-running water conflicts between the Eastern Slope and the Western Slope. The state, however, is still beset by monumental water challenges. There simply isn't enough water available to meet all municipal, agricultural, energy, recreation and environmental needs. Colorado's population is projected to double to 10 million by 2050. Water demand is already outpacing water supply, leading to a widening gap. How the citizens of Colorado choose to address this gap between water supply and demand will determine the state's future.

Prospect of Reptition of Project

In Colorado, *The Great Divide* will air on Rocky Mountain PBS, municipal and cable channels. Regional and national outreach will seek distribution to additional PBS and other television programmers. Entry in regional and international film festivals will further expand the film's audience and influence.

The film will have a long shelf life and be shown on television and in community presentations for many years. As an example, the producer's program from 1989 on Colorado history, *The Five States of Colorado*, updated and digitized in 2001, continues to be seen by thousands of students and public groups every year.

DVDs of the film will be distributed as premiums to project sponsors and to a variety of groups and individuals who will promote the film through speaking engagements, non-profit fund-raisers and public screenings. DVDs will also be available for purchase at special events with a portion of the proceeds benefiting host organizations, and statewide through book and museum stores with proceeds reimbursing a portion the distribution and promotion efforts. We do not anticipate a profit from DVD sales.

Press releases will be sent to select publications to keep interest building throughout the production process. The production team has developed a PR contact list with over 125 media outlets. A graphic identity has been created and will be used with all project materials and publicity. Each press release will include a listing of the sponsor organizations. [A brief minute and half teaser](#) has been created and the sponsor organizations are recognized in the "credits."

When the film is completed, it will be in high demand from groups who will publicize special screenings and lectures to their members. A premiere event will raise funds to place the film in the 2000 public schools and libraries across the state. Producer Jim Havey has a long record of public and special interest screenings featuring his documentaries.

History of the Requesting Party

Since The Five States of Colorado in 1989, Colorado Humanities and Havey Productions have collaborated on a number of seminal Colorado history films that continue to be screened around the state and are featured in over 2000 Colorado schools and libraries.

These films include - Colfax Avenue: Main Street Colorado, Downtown Denver: Heart of the Queen, Denver Union Station: Portal to Progress and Centennial Statehouse: Colorado's Greatest Treasure. Havey Productions has also produced historical films on Four Mile Historic Park, Civic Center Park, Georgetown - Silver Plume National Historic Landmark District, I-70 West Corridor, the Code of the West in Wyoming, The Aspen Idea, Historic Denver, Inc. and Colorado Preservation, Inc.

Most of the above productions were funded by grants and individual donations. Colorado Humanities was Fiscal Agent for Five States and Colfax and scholarly advisor on all. Funding partners also included History Colorado, Historic Denver, and Colorado Preservation, Inc. Colorado Humanities distributed all of these films to 2,000 public schools and libraries throughout Colorado.

Margaret Coval is the Executive Director of Colorado Humanities, a 501(c) (3) nonprofit organization affiliated with the National Endowment for the Humanities. Their extensive knowledge of Colorado's history, communities and resources makes them an invaluable asset on all aspects of this production. Colorado Humanities has been involved in several water education programs, including: Moving Waters, the first Colorado Citizen's Water Law Handbook, and River of Words. Colorado Humanities will receive and manage all funds including grants and private, corporate and nonprofit sponsorships.

Jim Havey, President of Havey Productions, is an Emmy Award winning documentary filmmaker with extensive experience in producing films on the people, places and stories of the American West. Havey will produce and direct the film.

Participation by Other Parties

The production will involve a large number of individuals and groups from a broad spectrum of the public and private sectors. Past experience with similar projects on the history of the Capitol, Colfax Avenue, Downtown Denver and Union Station validate that this participation will generate a high level of interest and word-of-mouth publicity.

The Foundation for Water Education, The Colorado Humanities, and the Colorado Office of Economic Development, Heritage and Agritourism will collectively tour the film throughout Colorado along with a speaker's program. History Colorado has expressed an interest in hosting the tour. The Denver Botanic Gardens new Science Pyramid building, housing interactive digital displays and high tech elements, has invited the production team to exhibit a section of the film.

Oversight of the production content for *The Great Divide* will be provided by an [Advisory Council](#) composed of 27 diverse water industry experts selected to provide assurance that the film will feature a fair and balanced perspective. Nicole Seltzer, Executive Director of the Colorado Foundation for Water Education will Chair the Council.

The Advisory Council for *The Great Divide* is comprised of a diverse group of Colorado water experts. Members represent agricultural, environmental, municipal and recreational water interests throughout the state. The Council's primary purpose is to advise the production team to ensure the film presents a fair and accurate portrayal of Colorado's water heritage and has long term value in educating the public on the past, present and future of our state's most precious resource.

Havey Productions will rely on the Council's expertise to ensure a thorough treatment of the subject. The Council will provide input on the topics to be covered and the interview subjects to be considered for the film. The Council will also review drafts of the script and consult to achieve an appropriate balance and consensus in any areas of concern.

Council members will be acknowledged by name and affiliation in the closing credits of the film. In addition, Council members will be asked to help identify local partners to screen the completed film in 2015.

Proposed Project Budget

There are other funding sources available to meet our goal. We would like the support of the Pitkin County Healthy Rivers and Streams Fund by way of demonstrating our commitment to involving a broad spectrum of the water community.

ROARING FORK



CONSERVANCY

*Bringing People Together
to Protect Our Rivers*

April 11, 2014

Pitkin County Healthy Rivers and Streams Citizens Advisory Board
Courthouse Plaza
530 E. Main Street, 3rd Floor
Aspen, CO 81611

Re: Creating a Road Map for Crystal River Restoration - Request for Funding for 2014 Fieldwork

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Philanthropy

Ladies & Gentlemen:

Roaring Fork Conservancy (RFC) has requested time at your April 17th meeting to briefly update you on our plans for *Creating a Road Map for Crystal River Restoration* and to request your financial support for the two core components of the project which need to be initiated during the upcoming field season: (i) the development of an Ecological Decision Support System, and (ii) the completion of an Ecosystem Function Assessment, Resource Management Evaluation and Project Prioritization Guidance Document. Both components require a minimum of one complete summer sampling season (May-September). **RFC and its partners have an urgent need for \$ 50,000 in seed money to "kick-start" these projects next month while additional funding partners are secured (both private foundations and public entities, such as the Colorado Water Conservation Board which oversees the Colorado Water Supply Reserve Account).** We would also request a letter of support for these projects from the Board, to assist us in securing additional funding.

An overview of *Creating a Road Map for Crystal River Restoration* and the two components of the project requiring immediate funding *are* provided in Attachment 1. Pitkin County has established a *Protocol and Guidelines for Monetary Grant Awards from the Pitkin County Healthy Rivers and Streams Fund* which establishes criteria to be used by the Board in evaluating grant requests. Attachment 2 discusses how these projects clearly meet those criteria.

RFC and its partners look forward to meeting with you next week.

Sincerely,

Sharon Clarke
Watershed Action Director

Attachments

Cc: Chelsea Congdon
Seth Mason



ATTACHMENT 1

Creating a Road Map for Crystal River Restoration **Need for Near-Term Funding for Completion of 2014 Fieldwork**

Creating a Road Map for Crystal River Restoration - Overview

Serious stream flow alterations, water quality issues (mainly sediment and temperature), and riparian and instream habitat degradation exist on the Crystal River, conditions that are worsening as a result of the current drought and global warming. Late summer and early fall flows are often below the Colorado Water Conservation Board (CWCB) instream flow. There is sometimes insufficient streamflow to satisfy the appropriated requirements of agricultural water users. Reduced summer base flows are a threat to local water quality, geomorphic functioning (e.g., channel maintenance, sediment flushing), and riparian/aquatic ecological functioning. The *State of the Roaring Fork Watershed Report 2008* found that 70% of the riparian and instream habitat in the lower Crystal River was “heavily modified” or “severely degraded”. Stream temperatures exceed state standards when flows are low and air temperatures are high. Trout numbers are very low compared to other similarly-sized rivers in the area.

Roaring Fork Conservancy (RFC) and its partners are working to identify the greatest opportunities for restoring favorable biological and hydrologic conditions in the Crystal River, and ways to work with local land owners and private and governmental entities to leverage these opportunities into lasting improvements on the river. Because the Crystal River is not subject to transbasin diversions and water development in its upper reaches, and because there have been no “downstream calls” on the river, we have a real opportunity in this watershed to work directly and collaboratively with the river’s water users (who know each other) to explore and implement river restoration opportunities.

A handful of studies and projects have been undertaken, or are ongoing, to quantify the ecological, hydrologic and geomorphologic conditions in the watershed. Much of this work has been incremental and opportunistic (performed as funding allowed), and the information has not been integrated into a comprehensive assessment of the watershed. Nor has the work been done with the participation of local stakeholders, specifically individual irrigators, ditch companies and municipalities.

Creating a Road Map for Crystal River Restoration will coalesce and integrate all of the good work that has already been done to develop a logical and well-vetted “action plan” to bring about significant and measured improvements in the health of the river, while at the same time protecting the agricultural heritage of the watershed. The project will employ a science-based approach to identify the most vulnerable and/or valuable areas along the river and apply a systems-based methodology to determine the most effective ways to enhance the river’s biological and hydrologic conditions. And our timing is opportune – as Colorado’s Water Plan is moving forward, stakeholders must find ways to ensure the preservation of the agricultural and municipal water uses on the Crystal River, while at the same time enhancing river health and its non-consumptive water needs.

RFC, working with its lead partner, Public Counsel of the Rockies, proposes to develop a comprehensive decision support framework to inventory, evaluate, prioritize and plan projects to restore the health of the Crystal River. This framework will serve as a ‘road map’ to guide planning and implementation of

projects that have the greatest promise and cost-effectiveness for achieving restoration goals. Importantly, the framework also incorporates a social component of outreach to stakeholders.

Projects Requiring Near-Term Funding¹

► **Development of an Ecological Decision Support System (EcoDSS)**: This approximately one-year project will use fieldwork and state-of-the-art software modeling to:

- Develop a decision support system for understanding and predicting the ecological impacts of geomorphic modification of the streambed or the implementation of alternative consumptive/non-consumptive water use management strategies on the Crystal River and associated floodplain between Potato Bill Creek and the confluence with the Roaring Fork River; and
- Develop a series of hydrologic, hydraulic and statistical models to: 1) predict and simulate rainfall-runoff processes contributing streamflow to the lower Crystal River watershed, 2) allocate and account for 'paper' and 'real' water along the lower Crystal River according to Colorado's Prior Appropriation Doctrine, 3) estimate spatially-distributed water surface elevations, stream depths, and velocity profiles corresponding to a range of hydrological conditions, water conservation scenarios, or physical channel modifications, and 4) quantify the ecological effects of alteration of streambed topography or incremental increases/decreases in streamflow on adjoining reaches of the river.

The models we develop will allow us to determine how the river and the riverine environment, including its fisheries, will respond over time to channel modification projects or other resource management activities. For example, we will be able to determine where the best locations are to make channel modifications to reduce erosion and sediment. We will be able to identify where water conservation measures, or changes in the timing or amounts of diversions, will put the most water into the river for the benefit of the fisheries. We will be able to assess which parts of the floodplain would benefit the most from riparian habitat restoration. These models will allow our future water management planning and conservation investments to be smart – from both an ecological and an economic perspective.

The project will provide the following deliverables:

- A digital elevation model of the lower Crystal River corridor;
- A model capable of simulating 30 years of historical daily streamflow on the lower Crystal River and significant tributaries;
- A model of 30 years of simulated historical daily streamflow as affected by spatially explicit consumptive and non-consumptive water uses;
- 1-dimensional and 2-dimensional steady flow hydraulic models for the lower Crystal River; and
- A model describing relationships between stream depth, velocity profiles, and habitat suitability indices for Rainbow and Brown trout.

The total budget for this project is \$99,274, inclusive of costs associated with overall project oversight, administration, reporting, outreach and education. **RFC is requesting \$15,000 from the Pitkin County Healthy Rivers and Streams Fund to initiate the 2014 fieldwork necessary to complete this project.**

¹ Detailed technical proposals have been prepared for each of the projects. RFC and its partners would be happy to provide the Board with even further detail on the computer modeling and other work involved in each initiative.

► **Completion of an Ecosystem Function Assessment and a Resource Management Evaluation and Development of a Project Prioritization Guidance Document:** During this approximately 18-month project, seven interdisciplinary evaluations of the physical, biological, and human facets of the Crystal River watershed will be performed utilizing a Multi-Criteria Decision Analysis² framework for making decisions among several competing objectives. Results will be used to identify, prioritize, and provide initial project scoping for watershed actions to improve ecological conditions and functions in the Crystal River.

This work will be completed in nine phases:

- Review relevant scientific literature, reports, and policy and planning documents;
- Conduct a fluvial geomorphic characterization for the Crystal River;
- Conduct a riparian health evaluation of the Crystal River;
- Analyze historical water quality and water quantity data collected on the Crystal River;
- Conduct a fisheries health and habitat availability survey;
- Evaluate the feasibility of water diversion infrastructure improvements and associated channel structure modification projects;
- Conduct an irrigation infrastructure efficiency review;
- Develop a Multi-Criteria Decision Analysis framework for prioritizing proposed projects and/or resource management activities; and
- Synthesize results and prepare a final report.

Several of these tasks will rely upon the EcoDSS developed for the Crystal River (as described above).

This project will give us the information and tool we need to help local water users, water conservation groups and resource managers identify the highest priority management alternatives and/or projects for improving stream flows and the Crystal River's riverine ecosystem. We will be able to provide stakeholders with a good understanding of current conditions and trends in the watershed - in terms of both ecological functions and land use/resource management practices. This knowledge, coupled with the decision-support structure provided by this project, will allow the Crystal River stakeholder group to articulate common goals, identify divergent preferences for achieving those goals, and work through their competing interests (e.g., consumptive water use needs to support the local agricultural economy vs. non-consumptive needs to support recreation, aesthetic values, and ecosystem processes). Because our analytical tool will be designed to recognize and incorporate our stakeholders' competing perspectives and values, it is particularly well suited for project selection and prioritization for the Crystal River.

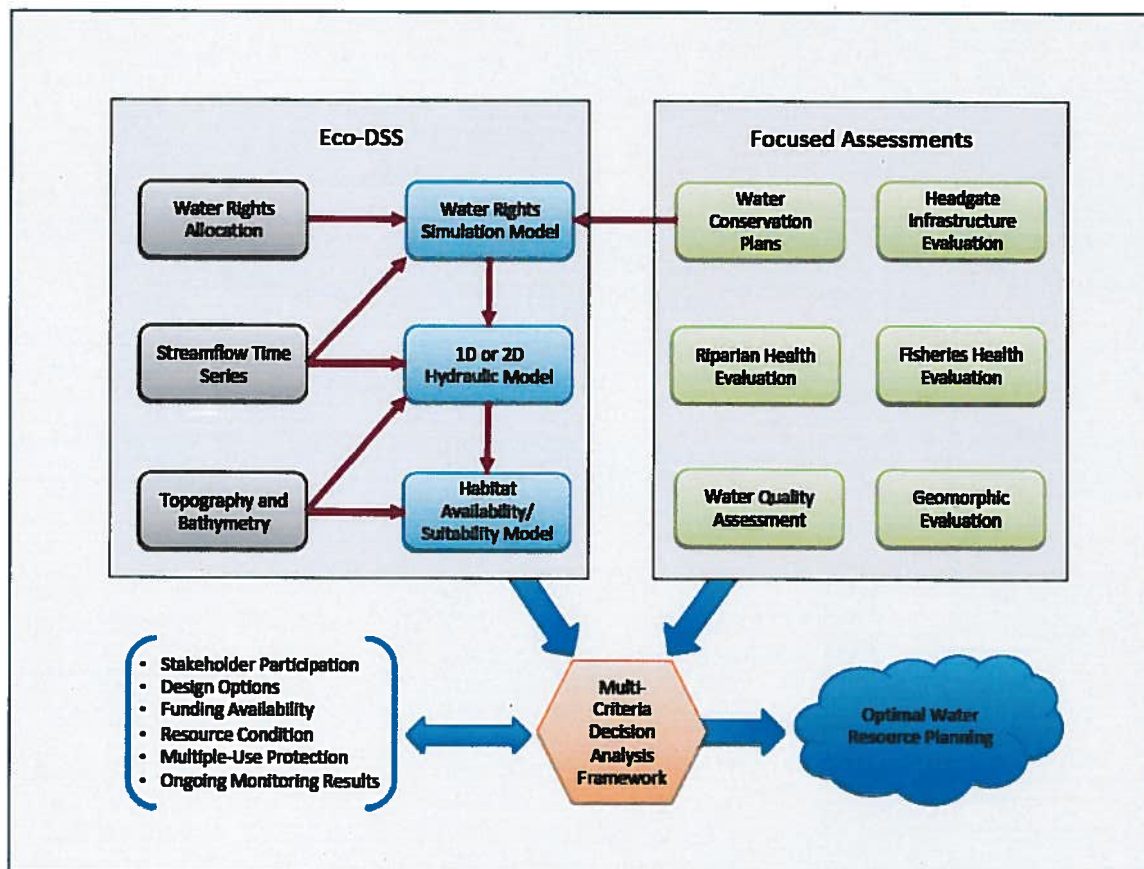
² Multi-Criteria Decision Analysis is a well-established methodology for ranking/scoring decision options against multiple objectives with different units of measurement (e.g., increased streamflow versus enhanced biodiversity). Because water resource management decisions must typically try to achieve multiple objectives, it is useful to employ an analytical tool that allows management options to be ranked/scored against a commensurate set of evaluation criteria that have been defined and weighted by the decision makers/stakeholders. Multi-Criteria Decision Analysis provides transparency and accountability in the decision making process. Because interested parties are provided with the opportunity to state their preferences through a structured process, it is possible to identify areas of agreement and disagreement, thereby better managing conflict.

Deliverables include:

- Two stakeholder meetings to implement the Multi-Criteria Decision Analysis;
- A final report; and
- Presentation of findings and the final report to stakeholder groups.

The total budget for this project is \$191,095, inclusive of costs associated with overall project oversight, administration, reporting, outreach and education. RFC is requesting \$35,000 from the Pitkin County Healthy Rivers and Streams Fund to initiate the 2014 fieldwork necessary to complete this project.

The chart below provides an illustration of the interrelationship of the two projects for which funding is being requested.



Project Results/Next Steps

Completion of these two projects will give us the additional information we need to design (and ultimately implement) priority on-the-ground riparian, instream, head gate, and/or water efficiency improvement projects on critical stream reaches. The modeling and analysis undertaken in these two projects, coupled with other studies and initiatives already undertaken or currently underway, will allow us to determine the sequence of projects that will have the biggest beneficial impact (and make the most economic sense) for the Crystal River. Our ongoing collection of baseline data (fish, temperature,

macroinvertebrates, flow, and potentially sediment) in the Crystal River will be used to both support and monitor the effectiveness of these future projects and resource management activities.

RFC and its partners have already spent a considerable amount of time talking to local landowners and other water users (e.g., the Town of Carbondale) in the Crystal River watershed about their needs and opportunities for improving the health of the river. The substantial amount of stakeholder involvement necessary to complete the second project will allow us to build even stronger relationships and trust with these landowners and water users – providing a better foundation for rapid and successful implementation of recommended on-the-ground projects.

We have actively engaged our local Natural Resources Conservation Service (NRCS) office in our planning efforts. NRCS offers an array of voluntary financial and technical assistance programs to help plan and implement conservation practices, including opportunities to help private landowners improve water resources. Additionally, the agency's resource experts and engineers are available to assist with eligible on-the-ground projects (e.g., improved head gate designs). Once we have our proposed projects and/or resource management activities identified and prioritized, we will be working with NRCS to immediately begin offering financial and engineering assistance for eligible projects. We will also seek funding to supplement financing available from NRCS.

In the course of developing these project components we have also consulted with several private funders and public agency programs to gain their input and support. Our fundraising plan envisions a funding partnership between private and public funders to cover the full cost of undertaking this work, beginning in May 2014. We will be happy to share our funding plan and progress with the Board.

ATTACHMENT 2

The Projects Meet All of the Pitkin County Healthy Rivers and Stream Fund Criteria

Viability of Project: The likelihood of completion of the project with the grant or award, or recognition that other steps and further funding would be needed to fully complete the project.

The two project components covered by this funding request have been carefully scoped and budgeted by Lotic Hydrological, LLC, and reviewed by Roaring Fork Conservancy (RFC) and its primary partner, Public Counsel of the Rockies (PCR). Completion of both projects is currently budgeted at \$290,369. Neither project can be completed with the funding being requested from the Pitkin County Healthy Rivers and Streams Fund. As discussed below, RFC and its partners will be seeking additional funds to complete both projects. Importantly, a “first money” commitment from Pitkin County would allow us to begin work immediately and will serve to leverage funding commitments from private funders who are looking to follow a “first money” commitment.

Public Accessibility: The degree the project will be seen and appreciated by the public or actively used by the public.

RFC and its partners have already spent significant time talking to local landowners and water users in the Crystal River watershed about water needs and opportunities for meeting those needs. Stakeholders are interested in understanding the complex relationships between the geomorphology of the watershed, patterns of land and water use, and the ecological health/functions of the watershed. Quite simply, they want assurance that putting more water into the river will have a demonstrable beneficial effect on the riverine environment. These projects are essential to provide that assurance.

The modeling, assessments and detailed design work that will be completed during these projects will be used by multiple entities to develop on-the-ground projects and resource management activities to restore favorable biological and hydrologic conditions in the Crystal River. In some instances these projects/activities will be visible to the general public. Some work will likely occur on public lands regularly used by the public:

- Much of the Crystal River watershed is on the White River National Forest and is easily accessible to the public. The area supports a myriad of recreational uses.
- The West Elks Scenic and Historic By-way parallels the Crystal River from Marble to Carbondale. The Town of Redstone is a popular tourist destination.
- Several important Pitkin County Open Space and Trails properties are located along the Crystal River, including: the Powerhouse, Elk Park, Redstone Park and the Boulders Property in Redstone, Filoha Meadows and Grange Loadout, Red Wind Point, Thompson Creek Ranch, Cold Mountain River Access Park, and Avalanche Boat Launch.

At a minimum, these public areas present significant public education opportunities (e.g., before-and-after signage), even if specific projects or activities are not visible.

Longer term project impacts will certainly be evident to the public in and along many reaches of the Crystal River – where stream flows are expected to be enhanced and reduced sedimentation and

improvements to stream channels are expected to improve water quality and instream and riparian habitat.

Finally, public dollars have financed many of the studies and projects already undertaken in the watershed. The public will appreciate the fact that the wealth of information already collected is not just continuing to "sit on a shelf". These projects leverage past public investment to create a durable and dynamic framework for problem solving on this and other watersheds now and into the future.

Goals of River Board: *Degree with which the proposed project coincides with the stated goals of the River Board or other ongoing projects of the River Board.*

According to its Bylaws, the policy of the River Board is to further the goals of the Healthy Rivers and Streams Fund. These projects satisfy multiple objectives for use of the Healthy Rivers and Streams Fund:

- *Maintaining and improving water quality and quantity within the Roaring Fork Watershed.*
- *Working to secure, create and augment minimum stream flows in conjunction with non-profits, grant agencies and appropriate state and federal agencies to ensure ecological health, recreational opportunities and wildlife and riparian habitat.*
- *Promoting water conservation.*

These two projects, which are part of the larger project - *Creating a Road Map for Crystal River Restoration* - will provide the information needed for RFC and its partners to design and prioritize a series of site-specific projects and management activities (which will likely include water conservation initiatives) in the Roaring Fork Watershed to improve water quality and quantity and instream and riparian habitat in the Crystal River. Augmenting minimum stream flows and restoring favorable biological and hydrologic conditions in the Crystal River will, in turn, enhance recreational opportunities and wildlife habitat.

Prospect of Repetition of Project: *Degree to which the grant or project represents a strategy or proposal that could be repeated in other locations so that the benefits of the award may not be limited to one single event.*

The key components of both of these projects are directly transferable to other areas of the Roaring Fork Watershed and to other watersheds in the state:

- The models developed will be available and applicable to, and of interest to other entities engaged in similar restoration projects and programs.
- The interdisciplinary evaluations of the physical, biological, and human facets of the Crystal River watershed utilizing a Multi-Criteria Decision Analysis framework for decision making among competing water resource objectives, and the use of the results to identify, prioritize, and provide initial project scoping for watershed actions will provide a template for restoration work on other watersheds.

History of the Requesting Party: *The degree to which the individual or entity has been successful in other projects or endeavors or is known in the community.*

RFC is widely-known as the premier watershed conservation organization in the Roaring Fork Valley. It has also become one of the most respected watershed conservation organizations in Colorado. It has a 17-year history of successfully spearheading a diverse portfolio of watershed projects and programs in the Roaring Fork Watershed. RFC works with other nonprofits, federal, state and local governments, colleges and universities, industry, and other stakeholders on western water issues. RFC has two core program areas:

- **Watershed Action.** RFC's Watershed Action Program addresses current issues and future threats to the Roaring Fork Watershed through proactive scientific studies coupled with multi-jurisdictional watershed planning efforts. The Watershed Action program informs federal, state and local land management decisions, and drives on-the-ground projects to protect and restore the watershed. Many of the program's actions come from the recently published *Roaring Fork Watershed Plan*, and include initiatives addressing a wide range of subject matter: water quantity and quality, hydrology, riparian and river ecology, geomorphology, and economics. Current Watershed Action initiatives include the following:

- Working with Community Office for Resource Efficiency (CORE) and Ruedi Water and Power Authority (RWAPA) on the *Roaring Fork Watershed Regional Water Efficiency Plan*;
- Working with RWAPA and others stakeholders on the *Comprehensive Lower Fryingpan River Assessment 2013-2015* (which includes aquatic studies, the Fryingpan Valley Economic Study, and the investigation and pursuit of solutions for managing releases from Ruedi Reservoir) to ensure the environmental and economic sustainability of the lower Fryingpan River, including its designation as a "Gold Medal" fishery;
- Working with the U.S. Forest Service, White River National Forest and Rocky Mountain Research Station and other stakeholders on an assessment of sediment sources in the Crystal River Watershed, and a pilot restoration project in Coal Basin; and
- Working with Lotic Hydrological, LLC and University of Michigan graduate students on *Water Rights Allocation and Accounting Model Development for the Lower Crystal River*.

- **Watershed Education.** Inspiring people to take action requires knowledge. Each year RFC's watershed education programs reach thousands of students and adults with hands-on science, exploration and experiences. Student classes range from water chemistry and river ecology to watershed mapping and economics. RFC's adult community outreach programs include River Guide Trainings, Watershed Explorations, educational dialogues and forums, and the very popular river float trips. Each of these programs is designed to engage participants with people and/or places in the watershed to which they might not have access otherwise. Additionally RFC publishes a bi-annual *River Currents* newsletter, monthly *River Notes* email, and maintains an informative, comprehensive web site on local watershed issues for the general public as well as resource experts (www.roaringfork.org).

RFC has previously received funding from the Healthy Rivers and Streams Fund: to complete the *Roaring Fork Watershed Plan* (as its lead consultant); for planning, grant writing, assessing existing water quality data, and designing baseline and water quality monitoring plans for the Coal Basin and Crystal River area confluence project restoration work; to enable RFC to work with the U.S. Forest Service to initiate the Coal Basin biochar pilot project in 2012; for work on the *Crystal River Watershed – Assessment and Design of Restoration Projects in the Colorado River Basin* project; and to complete the *2012 Snapshot*

Assessment of the Roaring Fork Watershed with Public Counsel of the Rockies. RFC has successfully completed all of these projects, within budget, and kept Pitkin County fully-informed of its accomplishments using this public funding. Recently, the Healthy Rivers and Streams Citizens Advisory Board recommended additional funding for RFC in connection with the *Comprehensive Lower Fryingpan Assessment*, which is currently underway.

Participation by Other Parties: *Is the grant applicant conducting the project or work on its own or have partnerships been established with other agencies or entities that reflect that the goal of the project is shared by more than one party?*

The projects will be led by RFC working closely with PCR and Lotic Hydrological, LLC. The Colorado Water Trust, the Natural Resources Conservation Service (NRCS), the U.S. Forest Service, the Town of Carbondale, the Colorado Division of Water Resources, Colorado Parks and Wildlife, and interested land owners and water users in the Crystal River watershed will also have roles to play in connection with the two projects.

Proposed Project Budget: *Is the requested grant the sole source of funding for the proposed project or are there other funding sources available to the applicant?*

RFC is asking for \$50,000 in grant funding from the Healthy Rivers and Streams Fund. This is 17% of the total budgeted cost (\$290,369) for these two projects. RFC will be seeking an additional \$240,369 in funding for these projects from the Colorado Water Conservation Board Water Supply Reserve Account (WSRA) during the next WSRA funding cycle. RFC also intends to seek funding from additional public and private entities, including the Southern Rockies Landscape Conservation Cooperative, NRCS, the Gates Family Foundation and the Walton Family Foundation.

Agenda Item Summary
May 15, 2014

TO: River Board

FROM: Laura Makar

SUBJECT: Transbasin Conditional Water Rights

Information: Discussion of transbasin conditional water rights.

Requested Board Action – Informational only

Attachments: Water Rights Report
Reverse and Remand to the Water Referee
Concerning the Application for Water Rights of Clear Creek School
District No. RE-1 Case No. 12CW196

Transbasin Conditional Water Rights in the Roaring Fork Watershed

There are three major transbasin diversion water projects in the Roaring Fork Watershed: (1) the Twin Lakes system; (2) the Fryingpan-Arkansas Project; and (3) the Busk-Ivanhoe System. The conditional water rights associated with the Twin Lakes system and the Frying Pan-Arkansas Project are detailed below. No conditional water rights are associated with the Busk Ivanhoe System.

Twin Lakes Project conditional water rights.

- New York Collection Canal Supplement
 - Diligence Due: January 2016 – Case No. 07CW199
 - Headgate No. 1 (New York Gulch): **20 c.f.s.** (0 c.f.s. absolute)
 - Headgate No. 2 (Brooklyn Gulch): **35 c.f.s.** (15 c.f.s. absolute)
 - Headgate No. 3 (Tabor Gulch): **61 c.f.s.** (39 c.f.s. absolute)
- Roaring Fork Diversion Dam, Tunnel No. 2, and Lincoln Gulch Connection Canal: **28 c.f.s.** (322 c.f.s.)
 - Diligence Due: May 2015 – Case No. 07CW145
- Lost Man Diversion Dam: **24 c.f.s.** (251 c.f.s. absolute)
 - Diligence Due: May 2015 - Case No. 07CW145

Fryingpan-Arkansas conditional water rights.

- Diligence Due: May 2018 - Case No. 09CW40
- South Side Collection System
 - No Name Creek: **10 c.f.s.** (85 c.f.s. absolute)
 - Fryingpan River & Martin Creek: **5 c.f.s.** (395 c.f.s. absolute)
- North Side Collection System
 - Lime Creek: **50 c.f.s.** (0 c.f.s. absolute)
 - Unnamed Tributary to Slim's Gulch: **85 c.f.s.** (0 c.f.s. absolute)
 - Slim's Gulch: **85 c.f.s.** (0 c.f.s. absolute)
 - Last Chance Creek: **135 c.f.s.** (0 c.f.s. absolute)
 - South Side Intercept of Last Chance Creek: **10 c.f.s.** (0 c.f.s. absolute)
 - Carter Creek: **13 c.f.s.** (87 c.f.s. absolute)
 - North Side Intercept of N. Fork of Fryingpan River: **10 c.f.s.** (0 c.f.s. absolute)
 - South Side Intercept of N. Fork of Fryingpan River: **15 c.f.s.** (0 c.f.s. absolute)
 - North Cunningham Intercept: **15 c.f.s.** (0 c.f.s. absolute)
 - Unnamed Tributary to S. Fork Cunningham Creek Canal: **30 c.f.s.** (0 c.f.s. absolute)
 - Ivanhoe Creek Intercept: **30 c.f.s.** (0 c.f.s. absolute)
 - Fryingpan Intercept Canal: **10 c.f.s.** (0 c.f.s. absolute)

Water Division 1, Weld County District Court, Colorado 901 9 th Avenue, P.O. Box 2038 Greeley, CO 80632	DATE FILED: July 15, 2013 10:06 AM
<hr/> CONCERNING THE APPLICATION FOR WATER RIGHTS OF: CLEAR CREEK SCHOOL DISTRICT NO. RE-1, Applicant, In Clear Creek County	Case Number: 12CW196
REVERSE AND REMAND TO THE WATER REFEREE	

This matter comes before the water judge for review of the referee's ruling on the application for finding of reasonable diligence concerning a previously decreed conditional water right. The court, having reviewed the files in 12CW196 and 01CW278, concludes that the record does not support the referee's conclusions, whereby the ruling is contrary to law.

Pertinent Procedural and Historical Findings of Fact

Clear Creek School District No. Re-1 ("School District") filed an application on December 31, 2001, in 01CW289, for direct flow and storage water rights, change of water rights and appropriative right of exchange. The water court entered a decree in that case on August 18, 2006, granting a conditional storage right in Clear Creek School Pond No. 1 ("Pond No. 1") for 8 acre feet to be used for irrigation, with a point of diversion on Beaver Creek. The court also decreed a conditional direct flow right from Beaver Brook into storage at Pond No. 1. The date of appropriation was August 20, 2001, when construction of Pond No. 1 began. Construction of the pond, including a diversion structure, pumping facilities and a pipeline from Beaver Brook, was completed on July 10, 2002, on which date an unidentified amount of water was delivered into storage. The court found that "[t]he Clear Creek Storage Pond No. 1 and diversion structure have been completed with diligence and the conditional storage right claimed can and will be diverted and stored when in priority." (Decree, § 3.14). The court concluded that "[t]he water claimed under the conditional water rights will be diverted and stored and will be beneficially used." (Decree, ¶ 11). The decree required the School District to "install and maintain such measuring devices as are required by the Division Engineer to properly administer" the conditional water rights decreed. (Decree, ¶18).

The School District filed this case on August 28, 2012. The application requests the court find the School District has exercised reasonable diligence in developing the conditional water right decreed in 01CW289, so that the School

District may maintain that conditional water right and avoid a finding that the right has been abandoned. The application alleges that 6.43 acre feet of the 8 acre feet decreed in 01CW289 was made absolute (such amount having been recorded as being stored in Pond No. 1 on July 14 and 15, 2008). The referee did not conclude that any portion of the water right had been made absolute, but did conclude that the School District is entitled to a decree continuing a conditional water right to 8 acre feet.

The referee's diligence findings are as follows:

Outline of work done during the diligence period toward completion of the appropriation and application of water to a beneficial use as conditionally decreed, including expenditures: During this diligence period, in continuing the development of the conditional water right, Applicant has been engaged in the legal defense and protection of said water right and has been diligent in the continued use and development of the water right, including legal expenditures for legal fees and routine maintenance and monitoring of the facilities. Since July 10, 2002, the School District Pond No. 1 has been regularly used for storage of water diverted by exchange from Beaver Brook for subsequent use in the irrigation of landscaping and athletic fields at the school site [.]

The referee further found that:

The evidence indicates, and the Court finds, that the Applicant has demonstrated a specific plan and intent to divert and otherwise capture, possess, and control water as set forth above, and that such water can and will be beneficially used for irrigation, directly or following storage.

The referee concluded that:

Applicant has established that the water can be and will be diverted, captured, possessed, and controlled and will be beneficially used and that the subject water right can and will be completed with diligence and within a reasonable time pursuant to Section 37-92-305(9)(b), C.R.S.

The referee's ruling was not protested.

Legal Principles

"The water judge shall confirm and approve by judgment and decree a ruling of the referee with respect to which no protest was filed, but the water judge may

reverse, or reverse and remand, any such ruling which he deems to be contrary to law." § 37-92-304(5), C.R.S.

A conditional water right is "a right to perfect a water right with a certain priority upon the completion with reasonable diligence of the appropriation upon which such water right is to be based." § 37-92-103(6), C.R.S. "No claims for a conditional water right may be recognized or a decree therefor granted except to the extent that it is established that the waters can be and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time." § 37-92-305(9)(b), C.R.S.

"In every sixth calendar year after the calendar year in which a water right is conditionally decreed, or in which a finding of reasonable diligence has been decreed, the owner or user thereof, if such owner or user desires to maintain the same, shall file an application for a finding of reasonable diligence, or said conditional water right shall be considered abandoned." § 37-92-301(4)(a)(I), C.R.S.

"The measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system." § 37-92-301(4)(b), C.R.S.

"Once granted, conditional rights remain subject to continued scrutiny to prevent the hoarding of priorities." *Vermillion Ranch Limited Partnership v. Raftopoulos Brothers*, 11SA124, 2013WL3185282, at ¶46, (Colo. June 24, 2013) (holding that the burden to show diligence was not met where the applicant was "virtually no closer today to building any of the[] proposed reservoirs than when the conditional right was first decreed" more than 35 years earlier)(citing *Dallas Creek Water Co. v. Huey*, 933 P.2d 27, 35 (Colo. 1997)). "[T]o show reasonable diligence in developing a conditional right, an applicant must demonstrate not only 'steady application of effort' as required by section 37-92-301(4)(b), but also that the waters 'can and will' be stored and beneficially used and that the project 'can and will' be completed with diligence and within a reasonable time, as required by section 37-92-305(9)(b)." *Id.* at ¶47, (citing *Natural Energy Res. Co. v. Upper Gunnison River Water Conservancy Dist.*, 142 P.3d 1265, 1277 (Colo. 2006)). "[T]he applicant bears the burden of proving, through evidence, a substantial probability that the project can and will be completed, with diligence and within a reasonable time, and []whether an applicant has demonstrated that it has met the 'can and will' requirement is a balancing test that examines several relevant factors." *Id.* at ¶68.

Analysis

The referee's factual findings to support the legal conclusion of reasonable diligence are that the School District has (1) defended its conditional right, (2) incurred legal fees, (3) monitored its facilities and (4) conducted routine maintenance of those facilities. Further, Pond No. 1 has, since July 10, 2002, regularly been used for storage of water diverted by exchange from Beaver Brook for irrigation on the school grounds.

The court cannot conclude that retaining legal counsel to defend a conditional water right, without a showing of how this effort contributed toward proactively completing the storage project, as opposed to only guarding the right against injury, constitutes reasonable diligence. Nor can the court conclude that monitoring the facilities and conducting routine maintenance of those facilities, which the previous decree specifically required, constitutes reasonable diligence in completing the project. And finally, the court cannot conclude that diversion and storage since July 10, 2002, which was relied upon by the court in granting the original conditional right, constitutes reasonably diligent efforts to complete the project since August 2006, without specifying what has occurred since August 2006. None of these efforts, individually or together, meets the test of showing that the School District is any closer today to completing the project than when the conditional right was decreed in 2006. And these efforts do not support a conclusion that the project will be completed with diligence and within a reasonable time.

Conclusion

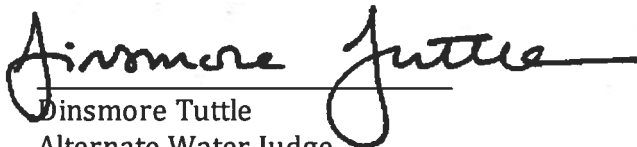
The findings in the referee's ruling are insufficient to support the legal conclusion that the School District has shown reasonable diligence.

Order

The ruling of the referee is reversed and the matter is remanded to the referee with directions to make further findings consistent with this order, if such findings may be made. The referee may conduct a hearing or further investigation upon remand.

BY THE COURT:

Dated: 15 July 2013



Dinsmore Tuttle
Alternate Water Judge
Water Division 1