STATE AFFAIRS UPDATE: ADVOCATING FOR WESTERN COLORADO WATER USERS AT THE COLORADO CAPITOL

A key component of the Colorado River District’s work to protect Western Colorado water users involves maintaining a regular presence at the Colorado State Capitol. The District’s staff works year-round to inform and advise legislators on both sides of the Continental Divide on water issues and policy matters that intersect with the interests of our constituents in the District.

Zane Kessler, Director of Government Relations, provided an overview of the Colorado Interim Water Resource Review Committee (WRRC) efforts over the summer. The Committee focused much of its attention on the state’s instream flow (ISF) program during the interim.

“It’s been a busy interim session at the Capitol. And it will be important in the coming months that we stay engaged in the conversation on instream flows legislation to ensure that the West Slope’s interests are reflected in any future legislation,” said Kessler.

Kessler reported that the WRRC held its first hearing in conjunction with the Colorado Water Congress’ Summer Conference in Steamboat Springs. That hearing featured a “deep dive” into the ISF program, including the temporary loan program, which was the focus of failed legislation during the prior legislative session. The hearing also included a panel discussion on the ISF program moderated by Colorado Water Congress staff.

“The panel included a diverse group of interests,” said Kessler. “It was a robust conversation that included agricultural, municipal and environmental stakeholders.”

With the help of the House Rural Affairs Committee Chairman, Rep. Dylan Roberts of Eagle, the River District was successful in amending problematic language out of the proposed ISF loan program expansion legislation during the 2019 legislative session. That legislation, HB 19-1218, ultimately failed in the Senate Agriculture Committee.

On September 12, the WRRC received a briefing on a compromise “strawman proposal” to revisit the idea of expanding the ISF Loan Program. The proposal was largely the result of summer discussions between both proponents and opponents of HB19-1218 from the prior session.

“That working group was formed under the shared understanding that any new legislation in 2020 would include concessions, including the concerns raised by the River District, made in the last legislative session,” reported Kessler. With those concessions in mind, some West Slope stakeholders that vocally opposed HB19-1218 last session have indicated that they will not oppose the revised version of the bill if it is reintroduced next year.

An outline including key components of HB19-1218 and elements of the “strawman proposal” presented to the WRRC can be found within the River District’s October Board Packet, State Affairs Update.
Government Relations Director Zane Kessler provided a “budget season” update for the Colorado River District Board. To protect Western Colorado water, the Colorado River District works at the Washington, D.C., level with administrative officials and the Colorado delegation to Congress on western water issues.

Congress returned to Washington in September with the stated priority of passing a Fiscal Year 2020 budget. At that time, the House had already passed 10 of the 12 appropriations bills earlier in the summer, while the Senate had yet to pass any.

In light of this, Congress moved forward with a short-term Continuing Resolution (CR) to fund the federal government through November 21, which was signed into law prior to the September 30 funding deadline. The short-term CR sets up another potential showdown over spending just a week before Thanksgiving.

Kessler noted that earlier in September, the Senate Appropriations Committee had marked-up and passed its FY2020 Energy and Water Appropriations and Agriculture bills — both of which included increased funding for western water and agricultural programs. “It is a shame that this will be caught up in the larger budget showdown because the overall numbers look strong,” said Kessler.
Kessler provided an update on the Department of the Interior’s (DOI) Reorganization effort, including the relocation of the Bureau of Land Management’s headquarters to Grand Junction, which may also be impacted by this year’s budget numbers.

Earlier in the summer, Interior Secretary David Bernhardt finalized the reorganization of DOI from 49 regions across eight bureaus to 12 unified Interior Regions across the U.S. (see map below). This summer also brought Interior’s final announcement that Grand Junction would house the new headquarters for the U.S. Bureau of Land Management (BLM).

But on September 26, the Senate Appropriations Committee unanimously passed $35.8 billion in funding for the Department of the Interior, the EPA, the Forest Service and other related agencies that may hinder the move.

“Unfortunately, the Senate Appropriations bill does seek to limit Interior’s ability to relocate BLM jobs out of Washington, D.C.,” Kessler said. The FY2020 numbers provide no new money for Interior’s management overhaul, including a relocation of BLM jobs to Western states and the new headquarters in Grand Junction. The House’s Interior Appropriations bill also did not appropriate any fiscal 2020 funds to the reorganization effort.

Kessler noted though that under a Continuing Resolution, BLM will likely maintain funding levels from FY2019 to continue moving forward with the transition.
Kessler also reported that on September 12, EPA Administrator Andrew Wheeler announced the repeal of the 2015 rule defining the Waters of the United States (WOTUS Rule). This action completes the first step in a two-step process to repeal and replace the 2015 Rule defining WOTUS.

As the result of the repeal, the 2008 definition of what constitutes a water of the U.S will be in place until a new replacement rule is finalized.

Earlier this year, the River District submitted formal comments to the EPA regarding the proposed replacement rule. “The River District is a strong supporter of the goals of the Clean Water Act and works to ensure reliable water supplies to meet the needs of agriculture, municipalities, industry, recreation, and the environment in Western Colorado,” the letter stated. “The Colorado River District believes the proposed 2019 rule represents meaningful and constructive clarifications from prior rules. However, further improvements are necessary to provide the certainty and predictability desired by all.

“The latest that we have heard is that the Administration is planning to finalize its updated WOTUS rule in February 2020,” said Kessler.
The Colorado River District is mission-driven to protect Western Colorado water, a job it has done since its creation 82 years ago.

That helps make it an attractive place to work for people who want to be engaged in natural resource challenges. Five years ago, that is what gained the attention of now Senior Water Resources Engineer Hunter Causey, who just received his five-year anniversary recognition from the Board of Directors and staff.

By chance, Causey had met with friends and Colorado River District employees for a skinning trip up Sunlight Mountain near Glenwood Springs. He knew that the River District represented the Western Slope on protecting the Colorado River, but after talking with Chief Accountant Ian Philips and now former External Affairs Manager Chris Treese, he left the trip hoping for an opportunity to work for the River District.

“I really wanted to find a job where I cared about the mission of the organization and working for the River District fit with that,” Causey said.

Fast forward to today and Causey is a Senior Water Resources Engineer at the River District and the operations manager of Wolford Mountain Reservoir in Grand County and Elkhead Reservoir, located on the Routt-Moffat County line, near Craig. Both facilities provide water storage for municipal, industrial and agricultural use, and what’s more, instream flows for the Upper Colorado River Endangered Fish Recovery Program in both the Colorado and Yampa Rivers. In addition, both reservoirs are widely popular places for camping, boating and fishing.

Causey said many people don’t realize the importance of the reservoirs. The success of the Endangered Fish Recovery Program in both rivers means that water users can continue to divert water and be protected from individual oversight under the Endangered Species Act. The River District has supported this protection by building water storage into the two facilities. Water is released in mid- to late summer to support downstream habitat protection.

“It was my privilege to offer Hunter the job,” said Chief Engineer John Currier. “I knew Hunter was a good engineer. He showed great leadership potential, he’s a great communicator and over last five years he’s proven that.”

Causey believes the mission of the river District is still as vital today as it was 82 years ago at its conception. “The Western Slope is a small part of Colorado’s population and if we don’t have a unified, organized voice on Colorado River system challenges, our interests are going to get lost. I’m glad to be a part of the River District to make sure our water needs are spoken for and protected,” Causey said.
One of the Colorado River District’s strategic missions is to ensure that farmers and ranchers in western Colorado have access to adequate water supplies. This is why River District resources are being applied to protect the use of non-irrigation-season water for livestock and to ensure that instream flow water rights are subject to pre-existing water uses.

The challenge comes from the State’s interpretation of how instream flow water rights held by the Colorado Water Conservation Board (CWCB) are to be administered against pre-existing historical water uses, even if those uses are not decreed in water court. The state maintains that for the non-decreed uses to be recognized, there must be a water court determination of the historical use. This is a significant change to long-standing administrative practices, and it opens the prospect that water users will incur expensive legal fees, engineering fees and challenges that could jeopardize their operations.

“The clear legislative intent of the General Assembly was that water users do not have to get court approval,” said Andy Mueller, the River District’s General Manager.

In their report to the River District Board of Directors at the October 2019 quarterly meeting, General Counsel Peter Fleming and Senior Counsel Jason Turner point out that current water law states that instream water rights “shall be subject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of such appropriation, whether or not previously confirmed by court order or decree.” (C.R.S. § 39-92-102(3)(b))

The State Attorney General’s Office, however, is now advising the Division of Water Resources that legislative history behind the statutory language should influence the Division of Water Resources’ interpretation of the statute. State Engineer Kevin Rein met with the Board on Oct. 16, 2019 and said it was the Attorney General office’s interpretation that the legislative intent was to require a court determination, despite the fact that the proposed language making adjudication of the pre-existing use mandatory was not ultimately adopted by the General Assembly. “What is important to me is the legislative intent,” he said.

“That’s exactly the point with which we disagree,” Mueller said.

The Colorado River District is pursuing a permanent resolution of this issue through conversations with state officials, and is considering new legislation to reaffirm what the current law actually says, with the provision that the State Engineer or a Division Engineer could make the determination about the pre-existing use, keeping it out of court unless a producer or the CWCB wanted to challenge the determination in water court. Rein said he sees this proposal “as a solution.”
COLORADO RIVER BASIN HYDROLOGY AND 2020 WATER SUPPLY OUTLOOK

As we enter water year 2020, the Colorado River Basin’s hydro-climate is drying, changing from above average conditions to below average as evidenced by soil moisture conditions and river levels. Fortunately, reservoir storage conditions are above average.

With the recent drying trend, the total water year (Oct. 1, 2018 to Sept. 30, 2019) unregulated inflow into Lake Powell is expected to be 13.1 million-acre feet (maf) or 121 percent of the long-term average. While still very good news, this is a significant decrease from the April-July 2019 inflow, which tallied at 145 percent of average for this snowmelt period. The cause was a hot, dry summer.

Operational projections for Lakes Powell and Mead now suggest that there will be an 8.23 maf release from Glen Canyon Dam at Lake Powell to Lake Mead for Water Year 2020, as governed by the Interim Guidelines, which the Bureau of Reclamation (BOR) uses to balance levels between the two reservoirs.

This operation is a result of Lake Powell being in the “Upper Balancing Tier” and Drought Contingency Plan operations in the Lower Basin, meaning there will be lower deliveries from Lake Mead. This is a change from earlier BOR predictions and reflects the above average inflow conditions and decreased deliveries from Mead.

Although there is a chance for an April 2020 adjustment, considering conditions after this winter, this would be the first 8.23 maf release from Lake Powell after five years of 9.0 maf releases.

Figure 1 shows the June, July and August monthly precipitation in the Colorado River Basin as a percent of average, reflecting the drying conditions basin-wide. September precipitation has been scant as well. The climatological flip-flop occurred in the headwaters of the Upper Colorado River after unpredicted late June moisture (rain on snow) caused flooding on the Eagle River, controlled spills at Granby and Green Mountain Reservoirs, and unexpected late seasonal peaks in the Grand Valley.
Looking forward, the three-month outlook shown in Figure 2 remains wet and warm in the upper Colorado River Basin (Climate Prediction Center published September 19th).

According to the U.S. Drought Monitor Figure 3, moderate to severe drought conditions persist in Arizona and western New Mexico.
Wet spring conditions in the Upper Colorado Basin extended the peak hydrograph into July for the first time since 1957. Peak runoff usually occurs in early June. This provided uncertainty to how reservoir operators could provide supplemental flows for the Grand Valley to improve habitat for fish protected by the Upper Colorado River Endangered Fish Recovery Program. The Recovery Program strives to both bolster peak flows and then later supplement low summer flows for fish protection.

In fact, the late June moisture caused about 12,000 acre-feet of Windy Gap water pumped by the Municipal Subdistrict to spill from Lake Granby, a loss for Front Range users, and a sign of unanticipated moisture. In any event, releases from Endangered Fish Pools in Granby and Ruedi Reservoirs were delayed, and it seemed as if the lingering snowpack would maintain healthy flows in the 15 Mile Reach without augmentation from these Pools.

However hot and arid summer conditions caused river levels to crash in late August. Figure 4 shows the delayed peak in the 15 Mile Reach, the response to dry summer conditions, and the effect of augmentation releases first from Wolford, then Granby and Ruedi Reservoirs, and finally Green Mountain Reservoir after a Historic Users Pool (HUP) Surplus was declared August 28th.
Wolford Mountain Reservoir operations are shown in Figure 5. April-July runoff volume was 68,700 acre-feet or 127 percent of average, enough to fill the half-empty reservoir and spill for 53 days. In wet years the Wolford Endangered Fish Pool is typically used early in anticipation that Green Mountain Reservoir HUP Surplus water will become available later in the season. In early August it was so wet that the Fish and Wildlife Service could not begin delivering 5,412 acre-feet from Granby (5,412 Fish Water Pool) due to lack of a need to augment endangered fish habitat in Grand Valley. Alternatively, no space was available in Green Mountain, Williams Fork or Wolford Reservoirs to temporarily store the Granby water. To jumpstart fish releases from Granby Reservoir, the River District released water from Wolford to creating space and beginning the second week of August exchanged and temporarily stored 833 acre-feet of Granby water earmarked for the 15 Mile Reach at a rate of 35 cubic feet per seconds. This operation nearly doubled flow below Granby, mitigating high water temperatures and benefiting trout populations and irrigators in the Upper Colorado. The advantage of Granby water is that while it is intended for the Grand Valley, the higher reaches of the river benefit from its journey downstream.

Beginning mid-August, the 6,000 acre-feet permanent U.S. Fish and Wildlife Service Endangered Fish Pool at Wolford was tapped to augment declining flows in the 15 Mile Reach as the HUP Managing Entities pondered a surplus declaration. The Granby Fish water transferred to Wolford is now being released. In additional, 1,285 acre-feet of River District water has been delivered to the 15 Mile Reach to date. The unique operational flexibility at Wolford once again provided great benefit to the River and is appreciated by many entities including the Fish and Wildlife Service and Grand County.
Elkhead Reservoir operations are shown in Figure 6. April through July inflow was 86,300 acre-feet or 118 percent of average. Beginning April 21st the Reservoir spilled for 92 days. As flows in the Yampa rapidly declined in mid-August the U.S. Fish and Wildlife Service requested the River District release 70 cfs from the 5,000 acre-feet CWCB Fish Pool with the intention of maintaining 200 cfs at the Maybell gage.

Figure 7 shows gaged flows at Yampa River near Maybell. At the current release rate of 45 cfs the Elkhead Fish Pool will run out October 12th.
With the April to July inflow volume at 161% of the 30 year average, the Aspinall Unit was able to make elevated releases to achieve the target peak flow of 14,350 cfs above Grand Junction while still filling Blue Mesa Reservoir. Figure 8 shows Gunnison River summer streamflow above Grand Junction reflecting the late runoff, peak enhancement operations and above average base flows.