

The Colorado River Cooperative Agreement¹

April 28, 2011

Introduction

The Colorado River Cooperative Agreement is the product of five years of mediated negotiations. The negotiations were triggered by several events. In 2003, Denver Water initiated the National Environmental Policy Act (NEPA) process with the U.S. Army Corps of Engineers to enlarge Gross Reservoir. In 2006, Denver Water filed a diligence application in federal court regarding some of its water rights under the Blue River Decree. These filings created the potential for significant litigation and political dispute between Colorado's East and West Slopes. In 2006, several West Slope entities met with then-Mayor Hickenlooper, who suggested that resolution of longstanding disputes over water would require the services of a mediator. John Bickerman began serving as the mediator for the negotiations in February 2007.

The proposed agreement goes well beyond these triggering events, however. Its geographic scope is from the Front Range, across the Continental Divide, to the western state line. It involves 35 parties:

- Denver Water
- Colorado River District
- Grand County
- Summit County
- Eagle County
- Snake River Water District
- Dillon Valley Metro District
- Grand County Water and Sanitation District No. 1
- Winter Park Water and Sanitation District
- Middle Park Water Conservancy District
- Clinton Ditch and Reservoir Company
- Eagle Park Reservoir Company
- Eagle River Water and Sanitation District
- Upper Eagle Regional Water Authority
- Grand Valley Water Users Association
- Orchard Mesa Irrigation District
- Ute Water Conservancy District
- Palisade Irrigation District
- Mesa County Irrigation District
- Grand Valley Irrigation Company
- City of Glenwood Springs
- City of Rifle
- Town of Breckenridge
- Town of Dillon
- Town of Silverthorne
- Town of Frisco
- Town of Fraser

¹ This briefing is only a summary of the proposed agreement and does not represent the interpretation of the agreement by any party.

- Town of Granby
- Vail Resorts
- Vail Summit Resort's Breckenridge Ski Resort
- Vail Summit Resort's Keystone Ski Resort
- Powdr-Copper Mountain
- Winter Park Recreational Association
- Arapahoe Basin Ski Area
- Copper Mountain Consolidated Metropolitan District

Overview

The proposed agreement begins a long-term partnership between Denver Water and the West Slope. The agreement is really a framework for numerous actions by the parties to benefit water supply and the environment on both sides of the Continental Divide. Certain actions must be completed prior to execution of the agreement. Other provisions in the agreement are effective: (1) upon execution, (2) when the federal district court approves the parties' stipulations in the Blue River (water) Decree, (3) when the Denver Water Board accepts all the permits necessary for the construction of the Moffat Project, and (4) when the Moffat Project becomes operational.

Involvement of the State of Colorado and the United States Government

Denver Water and the West Slope parties have been actively engaged with State of Colorado officials and agencies, and with officials from the U.S. Bureau of Reclamation, to discuss and resolve issues connected to the implementation of the agreement. There are five key areas where cooperation by the State of Colorado is essential.

- Finalize and file the Blue River consent decree, which includes agreement from the State of Colorado on the delivery of water provided under the agreement to Summit County users.
- Reach agreement with the state on a mechanism to deliver the consumptive use water made available to Grand County users under the agreement.
- Reach agreement with the state on a mechanism to protect the environmental flows provided under this agreement.
- Reach agreement with the state and the Bureau of Reclamation on methods to implement the Shoshone Outage Protocol.
- Finalize and file the Green Mountain Reservoir fill administration resolution.

Benefits to Colorado

The agreement is a multiparty agreement that:

- Moves forward an important project for the enlargement of the existing Gross Reservoir (the Moffat Project), which will provide additional water and enhance system reliability for Denver and its service area.
- Reinforces the priority of conservation and reuse within Denver Water's service area.
- Provides water for current and future West Slope environmental and consumptive use needs.

- Provides protections for river flows and water quality along the entire reach of the mainstem of the Colorado River.
- Sets the stage for Denver's participation in the WISE (Water Infrastructure Supply Efficiency) project, which will meet critical needs in the South Metro region.
- Provides that future water projects on the Colorado River will be accomplished through cooperation, not confrontation.
- Demonstrates how future water agreements can be reached through negotiations where all parties can be better off with an agreement than without one.

Summary of Provisions

It is helpful to think of the agreement by geographic area. The following summary provides only a high-level overview of some of the more important provisions. Many other benefits will be created under the proposed agreement. The following are highlights of some of the key provisions of the agreement, when fully implemented.

Provisions Related to Denver's Service Area and Use of Water

- Denver Water's existing water rights must be used within its existing combined service area, which cannot be expanded, with the several exceptions, including:
 - Water may be supplied under existing fixed-amount contracts up to 67,927 acre-feet per year, plus up to 4,000 acre-feet per year under new permanent contracts.
 - Up to 45,000 acre-feet under existing fixed amount contracts may be transferred to different recipients outside the combined service area, subject to certain limitations. Recipients of transferred water must agree to Abstention Provisions² and also pay a 12.5 percent surcharge.³
 - The agreement specifies several circumstances and conditions under which Denver Water may provide service outside the combined service area on a permanent or temporary basis.
- Denver Water may develop any new water project on the West Slope only with the prior approval or under good faith consultation with the West Slope, depending on specified circumstances.
- Denver Water will complete construction of its 17,500 acre-foot per year recycled treatment plant and 30,000 acre-feet of gravel pit storage, scheduled for 2020, and will maximize exchanges. Denver Water may provide up to 6,400 acre-feet outside the combined service area.
- Denver Water will implement its existing water conservation plan to achieve 29,000 acre-feet of savings by 2030.
- Denver Water will develop an additional 10,000 acre-feet per year of water supply through conservation or reuse, anticipated by 2030.

² Under the Abstention Provisions, recipients of service from Denver Water agree to abstain from seeking additional Colorado River water. The abstention is permanent above the Gunnison River. The period of abstention from taking water below the Gunnison is 25 years, which could be shortened or lengthened depending on progress on a major project (20,000 acre-feet to the East Slope).

³ The surcharge, or West Slope Charge, is deposited into the West Slope Fund managed by the Colorado River District. The West Slope Fund may be used only for water supply, water quality and watershed projects. Of the 12.5 percent surcharge, 2.5 percent will be dedicated to forest restoration activities. Where a 15 percent surcharge is imposed on temporary water deliveries, the forest restoration requirement does not apply.

Provisions Related to Grand County and the Williams Fork and Upper Colorado River Basins

- Denver Water will comply with the mitigation plan approved by the U.S. Army Corps of Engineers as part of the Moffat Project permitting process. The Grand County commitments are in addition to the mitigation plan and are intended to improve current stream conditions in Grand County.
- Denver Water will pay \$11 million for projects such as nutrient loading, aquatic habitat, the Berthoud Pass sedimentation pond, Windy Gap pumping costs for environmental purposes and Learning by Doing.
- The Learning by Doing referenced above will include Denver Water managing flows it does not capture for diversion for environmental purposes as determined by the Learning by Doing group.
- Denver Water will make available 1,000 acre-feet of water each year from its Fraser River Collection System for environmental purposes in Grand County, at times and locations requested by Grand County. This water otherwise would have been diverted to the East Slope. This water will be matched with an additional 1,000 acre-feet from Williams Fork Reservoir under specified conditions that also will be released at the request of Grand County.
- Denver Water will limit its existing right to reduce bypass flows to times when it has banned residential lawn watering and to manage spills from its Fraser River Collection System to provide environmental benefits.
- Denver Water agrees to provide 375 acre-feet of water from its system for use by municipal water providers and ski areas in Grand County.
- Denver Water will provide 920 acre-feet of Clinton Bypass Water on a year-round basis, subject to Grand County Water Users providing replacement water.
- Denver Water will allow use of its Fraser River Collection system to convey water as a temporary source of supply and will explore possibilities to use its system to benefit Grand County. Denver Water and Grand County also will study how Denver Water's lands in Grand County may be used for wildlife habitat and public fishing access.
- Denver Water will allow the Grand County Mutual Ditch and Reservoir Company to move water acquired by means of the purchase of Vail Ditch shares through the Fraser River Collection System.
- Denver Water will not oppose Colorado Water Conservation Board instream flow filings on the Colorado River below the Blue River and will not oppose a Recreation In-Channel Diversion water right filing on the Colorado River below Gore Canyon.
- Denver Water will not undertake any future water development activities without the prior approval of Grand County and the Colorado River District.

Provisions Related to Summit County

- Denver Water will contribute \$11 million for projects such as wastewater treatment plant improvements, environmental enhancements, and local water and sewer projects.
- Denver Water will provide 250 acre-feet of water without charge for use in districts and towns in Summit County.
- Denver Water will use best efforts to maintain the water level of Dillon Reservoir at or above 9,012 feet in elevation between June 18 and Labor Day.

- Denver Water will provide 1,493 acre-feet of water to various Summit County water users and ski areas, subject to those entities providing adequate replacement water.
- Denver Water agrees not to exercise its existing right to reduce bypass flows from Dillon Reservoir into the Blue River during droughts to below the amount of inflow to the reservoir unless it has banned residential lawn watering in its combined service area.
- Denver Water and Summit County ski areas and towns agree to amendments to the existing 1992 Clinton Reservoir Agreement.
- Denver Water will not undertake any future water development activities without the prior approval of Summit County and the Colorado River District.

Provisions Related to Eagle County

In Eagle County, Denver Water will not seek new appropriations of water without the approval of several Eagle County water users and Eagle County and will not oppose a future interconnect between Clinton Reservoir and Eagle Park Reservoir.

Provisions Related to the Colorado River Outside Grand and Summit Counties

- Denver Water will pay \$1.5 million for water supply, water quality or water infrastructure projects benefiting the Grand Valley.
- Denver Water will pay \$500,000 to offset additional operations and maintenance costs for water treatment plants in Garfield County to address the exercise of drought relaxation of the Shoshone Call.
- Denver Water will place \$1 million into a fund to protect Wild & Scenic outstanding resource values.
- Denver Water will not undertake any future water development activities without the prior approval of the resident county and the Colorado River District.

Provisions Related to Water Rights and Permits

- West Slope parties, except Grand County, will withdraw opposition to Denver Water's proposed Moffat Project.
- The parties will agree to a resolution of the Blue River Decree litigation.
- The West Slope will agree to storage of Blue River water in any facility on the East Slope up to a limit of 400,000 acre-feet at any one time.
- The West Slope will not object to Denver Water's currently decreed exchanges and operation of listed undecreed exchanges from Dillon Reservoir. Denver Water will file for exchange decrees with a priority date of 2010 and will honor Colorado Water Conservation Board instream flows.
- The West Slope agrees that Denver Water may divert under its direct flow right prior to the Green Mountain fill, under certain conditions.
- The West Slope will support renewals of agreements allowing Denver Water to use water in Wolford Mountain Reservoir in substitution for water otherwise owed to Green Mountain Reservoir.

- Summit County agrees to extend the 1041 permit for Denver Water's proposed Straight Creek project, and Denver Water agrees to develop the project only with the prior approval of Summit County and the Colorado River District.
- Denver Water and the Colorado River District will share the impact of using 1,000 acre-feet of Repayment Water under a 1992 Wolford Mountain Reservoir agreement. Denver Water agrees to waive any right to participate in a second enlargement of Wolford. All parties agree to cooperate to ensure Wolford could be used for replacement water owed to Denver Water under the agreement.
- The West Slope will not contest Denver Water's storage of Williams Fork or Cabin-Meadow Creek water in Gross and Ralston reservoirs.
- The West Slope will not oppose Denver Water's water court applications to change the location of Denver Water's Piney River right or for Denver Water's pending Williams Fork diligence cases.

Provisions Relating to Green Mountain Reservoir Administration

- These provisions are being negotiated among the parties and with the state, the federal government and Northern District.

Provisions Relating to the Shoshone Call

- The parties will implement a "Shoshone Outage Protocol" during an outage of the Shoshone Power Plant to mitigate the potential adverse effects of the absence of the Shoshone Call. Denver Water, the Middle Park District and the River District agree to operate their water collection and storage systems as if the senior Shoshone Power Plant right were in priority during specified times when the plant is not operational. The parties will cooperate to achieve permanent management of the flows of the Colorado River based on historical conditions and will work with the Bureau of Reclamation to achieve operation of Green Mountain Reservoir based on the Outage Protocol.
- Denver Water will agree to cooperate in an investigation and potential acquisition of the Shoshone Power Plant by West Slope parties.
- The parties agree to not oppose the existing 2007 call relaxation agreement between Denver Water and Xcel Energy and to support renewal of the agreement. If the relaxation is made permanent, Denver Water will make 500 acre-feet of its increased yield resulting from the relaxation available as a permanent source of blending water for the WISE (Water Infrastructure Supply Efficiency) project. Recipients of the blending water would pay a system development charge into a special fund to be used for permanent preservation of the Shoshone Call flows. The time of the call relaxation can be extended in defined drought conditions.
- Denver Water will support a Recreational In-Channel Diversion application for the boating park in Glenwood Springs.

Mutual Commitments

- The parties agree to a "peace pact" on water court diligence applications.
- The parties commit to promote best management practices for water conservation.
- The parties commit to cooperate to develop and implement a strategy to diminish the impact of a Colorado River Compact Call on Colorado.