

June 8, 2009

Water Acquisition Committee
Draft Meeting Summary
June 3, 2009

Participants: Matt Lindon, Boyd Clayton, Brent Uilenberg, Gene Shawcroft, Kerry Schwartz, Andrew Gilmore, Wayne Pullen (BOR-Provo), Dan Luecke (via phone), Michelle Garrison (via phone), Randy Seaholm, Tom Pitts, Jana Mohrman, Paul Abate, Kevin McAbee, Doug Frugé, Bob Muth, Tom Chart, and Angela Kantola.

Assignments are indicated in the document in bold, preceded by a “>”.

CONVENE 1:30 p.m.

1. Modifications to agenda – the agenda was modified as it appears below.
2. Approve April 2, 2009, meeting summary – The summary was approved with minor editorial changes. **>Angela will post this to the fws-coloriver listserver and web.**
3. Discuss Utah’s ratification process for year-round subordination on the Green River for fish flows - Matt Lindon said the new State Engineer wanted to spend some more time before extending the subordination policy year-round (and subsequently extending in downstream to the confluence). Boyd Clayton said he believes they can probably extend the protection year-round from Flaming Gorge to the Duchesne by the end of 2009. Before extending the policy below the Duchesne, Utah is trying to be sure they’ve worked with all the concerned parties to get the necessary buy-in. Boyd says they think they will get the support needed, but it is taking longer than they anticipated. The Million proposal has raised concerns, since Utah had assumed that whatever was left in Flaming Gorge would come down the Green River. Jana asked if a depletion analysis would help raise comfort levels with the subordination policy. Boyd added that Utah’s law regarding water right forfeiture and lapsing has changed for public water providers, so water that Utah thought would come back into the system may not (Boyd added that private water rights holders may transfer their water to public water providers to avoid lapsing). Utah is working through the priority system on all of this. Gene Shawcroft said they’ve held several meetings regarding the transferred Flaming Gorge water and concluded that using water service agreements will resolve many of the problems. Gene thinks that the larger water users will support these, but perhaps not all at once (it will depend on when they actually need the water); however, the framework should be developed within the next 6 months, then Utah will be in a position to move forward in extending the subordination policy (see also, the Green River pumping project, next page).

A. Concerns with Cumulative impacts to flow in Utah's upper Basin:

Jana provided a list of projects which are part of the 400,000 af transfer of water (application # A30414) from Flaming Gorge to Utah. At the meeting it was stated that change applications are subordinate to the 1994 summer-fall flows down to the Duchesne, but in a later communication with Gene Shawcroft and Robert King it was clarified that if they are not “changed” rights but are instead “transferred” they retain the BOR 1959 priority. Robert King said these issues are still being considered by the State. The Committee discussed potential new depletions:

- Gunnison Butte Irrigation Company - 4064.14 af - in planning for this spring (FG transfer). Additional diversion to irrigate additional lands. Kevin said that if they need a water service contract, but don’t need to pay a depletion fee, that will move this project along.

- Green River Pumping Project, upstream of Duchesne R., 8500 af diversion, 6000 af depletion, proposed years ago, getting closer to initiation, BOR nexus (FG transfer) – The project proponent has agreed to work with Reclamation. This depletion would be above the Duchesne River. The Service has requested that Reclamation consult on the water service contract. The Service will have to determine whether or not the Program can cover the depletion (>4,500 af). Paul Abate said the Service would look to completion of RIPRAP item I.A.4.b.(2), extending the protection year-round to the Duchesne River to provide ESA compliance for this >4,500 af project. Related to this item, the Committee discussed the Utah flow protection language in the 2009 sufficient progress letter, and agreed the following would be appropriate: “A schedule and outline of the steps required for both the year-round protection above the Duchesne (to occur in 2009) as well as flow protection below the Duchesne is needed: a) the public meeting held by August 31, and the protection finalized by December 31, 2009; and b) by September 30, 2009, a schedule outlining steps for year-round protection downstream of the Duchesne to the confluence with the Colorado River.” Paul said Uintah County wants to move forward with their project immediately, so the County might have some concerns about the December 31, 2009, date. Gene said he expects the water service agreements should be structured as additional releases from Flaming Gorge.
- Green River Nuclear Power Plant - 29,600 af - proposed. This is an upstream change application (originally out of Lake Powell, then up to the Kanab area, then up to Green River) which has not yet been approved by the State Engineer. The Service filed an objection with the State based on roundtail chub, flannelmouth sucker and bluehead sucker. The change application will come up for a hearing within the next 6 months. Angela Kantola said she received a call from a reporter with the *Santa Fe Insider* about this proposed project.
- Vitere Farms G.R., UT - 2900 af - in place (Service consulted with BLM), 49,780 af proposed for this year (status unknown, but this is Fremont exchange water and may not have a Federal nexus).
- Errol Johnson - White River - 800 af hydroelectric project, power waste oil evaporation/disposal facility and to irrigate pasture land, proposed – stream alteration permit came to the Service for review earlier this year.
- Hydroelectric Pump-Storage Project on Green River at Bookcliffs – has applied for a FERC permit.
- Million Pipeline - targeting 250,000 af, 165,000 af from reservoir. The Service will submit comments to COE. Randy said that to the extent that the water comes to Colorado it will have to be part of Colorado’s apportionment. The priority is in question, however, and marketing a private water supply to the public will be a big issue. Tom Pitts said that if any project comes along that imperils our ability to protect the fish, then it will become an issue for the Recovery Program to address. Reclamation analyzed the impacts on the power pool and fish flows of a 165,000 af depletion, but the project is now proposed for 250,000 af (from Flaming Gorge as well as from the Green River in Wyoming). Dan Luecke noted that while you could still meet the fish flows at 165Kaf, the water is diverted above the Green River, which is the only habitat the Service has found sufficient to restore minimum viable populations (MVP’s) of Colorado pikeminnow. If in the future, additional water is deemed necessary to achieve those MVP levels and the water is not there, then we will have subverted the Program’s ability to recover the fish.
- Shell Oil - Yampa river - 45,000 af reservoir (?); 375 cfs - oil shale in Colorado. Depletion amounts would vary by year (does have a re-fill option). This is in critical habitat. Randy said CWCB has filed an objection.

Questions/Notes

- When water is developed in the Green River will it be bundled on top the releases from Flaming Gorge targeted for the fish? Meeting participants believed this was the case. (This makes water service contracts with BOR beneficial to the water users with water rights from the Flaming Gorge transfer.)
- BOR gave the State of Utah water from Flaming Gorge; because it was originally BOR's does that give the FWS a federal nexus? The water service contracts will be the Federal nexus (with no depletion fee). Whether the original transfer of water created a Federal nexus is an unanswered question.
- The water from Flaming Gorge given to the State had been an irrigation right.
- Is the water from Flaming Gorge leased to Million to be irrigation water converted to year round use for municipalities?
- Does the BOR pay the depletion fees on the water given to the State of Utah? No.
- Can anyone describe the work going on to address the Compact concerns in Million's project?

4. Updates:

- a) USGS Sediment Monitoring and Evaluation Report: invited to peer review: **Bold accepted; Paul von Guerard, John Pitlick, Kirk LaGory, Bob Mussetter** Ellen Wohl, Tom Wesche. The Committee approved the four peer reviewers.
- b) Payment for FY 07 & 08 Elkhead O&M costs – Brent Uilenberg said they reached agreement (pending Program approval) on the two components 1) construction completion items from capital funds; and 2) annual O&M ~\$70K for 2007 and 2008 combined. Brent said the projected O&M costs for 2009 are ~\$80K (big items beyond traditional reservoir operations are invasive mussel and noxious weed control, erosion control below the dam). This needs to be put into a scope of work for approval by the Recovery Program. Brent said that they made it clear that the Program needs to approve a scope of work, then they need to live within the approved amount or come back to the Program if there are emergency needs. Tom Pitts proposed a standing Elkhead committee (Brent, Jana, Randy and Ray) to review the previous year's costs each January and develop a scope of work for the current year shortly thereafter. O&M costs associated with the reservoir before enlargement are appropriated among the Yampa water users, O&M costs associated with the enlargement are divided proportionately among the District and the Recovery Program.
- c) Tool to predict surplus declaration in the HUP pool (CWCB State Mod) – Michele said the Colorado River Basin Forecast Center (NWS) is still reviewing whether they can use their ESP tool to predict flows; when they've completed checking for bias in this tool this summer, they think they will be able to provide a picture of late summer flows. State Mod actually wouldn't be part of this. (Dave Kanzer was asking for something different -- a large model of the whole river system that would inform the weekly HUP call, but CWCB and BOR do not believe this is called for.) In any case, it still may only provide insurance for Recovery Program water in September and October. Bob Muth asked about the issue that the curves for Green Mtn. didn't include a year like 2002 – why not just re-do the curves? Brent said the curves are just end-of-day storage content. **Plotting 2002 will only show that they were operating at the high end of the envelope.** >Michelle agreed; saying she didn't think adding a different curve would change

much; however she'll take a look at this. Brent said that he thinks the NWS ESP tool could provide additional predictability and build trust to potentially help declare an earlier surplus.

- d) Little Snake River scoping for a new reservoir project - John Shields said he and others from Wyoming met with the Service and Program staff in May to discuss the Little Snake WCD's proposal to build additional storage in the Little Snake River Basin. Elkhead has been a very successful model and the District would like to consider something similar to provide benefits to Wyoming and the Recovery Program. This would build on water covered under the Yampa PBO. John asked if WAC and/or MC members would be interested in a late summer/fall field tour of the basin to discuss this further. Bob Muth noted that environmental benefits clearly are part of the intent (whether those benefits are for the Recovery Program, other native fishes, or both).
- e) USGS Doppler gage on the Green River below Ouray NWR - Jana said this is proceeding as planned and installation will be completed after high flows.
- f) NPS Gunnison River water right and the Aspinall BO – Jana provided information about the Black Canyon water right and modeling of the impacts to power. Randy said the Black Canyon decree is expected to fit within alternative B of the Aspinall EIS. Like any decree, it will depend on whether the water right is in priority at any given time, so it is not a guarantee for water. Also, balancing the need between the authorized purposes of the Aspinall Unit and the Black Canyon right is at the discretion of the Secretary of the Interior (therefore, Reclamation does not *have to* release water from storage to meet the decree). The line on the graph that Jana provided is the *goal* for the decree. Reclamation received some comments from EPA that Colorado believes attempt to paint the decree as an absolute, so Colorado will be providing comments to Reclamation on that. Jana said that in the future when fish flows are delivered, additional predictive capabilities may be useful. Brent noted that this spring was very unusual hydrologically and Bob Muth added that Gunnison Basin flows are notoriously hard to predict.
- g) Myton Diversion update – The rehabilitation is complete except for completion of the SCADA system.
- h) OMID - Brent Uilenberg outlined the proposal to build a canal automation system that would provide ~17,000 af (except in very dry years) to augment fish flows, noting he hopes to get Management Committee approval tomorrow to adopt this as a capital project (with the caveat that we still have to develop an acceptable O&M agreement). The funding is available under the authorized cost ceiling for the Program recently increased by [P.L. 111-11](#) and the cost indexing methodology approved by the Bureau of Reclamation. An adequate balance would remain to construct a fish screen or barrier at Tusher Wash, complete the 24 Road Hatchery rehabilitation, and leave a contingency fund of ~\$11 million for future unknown capital project needs. Reclamation also recommends the Program immediately work with CRWCD to secure property for a reregulating reservoir for this project (this is the urgency) and work with local, regional and State entities to develop a cost sharing agreement to fund an escrow account that would be utilized by OMID to pay increased O&M costs. If an acceptable O&M agreement couldn't be reached and the project couldn't be built, then the CRWCD would re-sell the property. If this seems likely to go forward, Reclamation will make this part of their 2012 budget request. Randy said 2012 would probably be as soon as CWCB could participate. Tom Pitts said this has the potential to provide another component of the Yampa PBO (additional 20,000 af on the peak). Also, at the end of 2012, Reclamation's contract for the Ruedi 10,825 expires and the saved water from OMID would have the potential to replace that. Randy said he'll recommend that the State support this with the caveat regarding the O&M agreement. Tom Pitts moved that the Committee recommend that the MC adopt this project with the caveat that acceptable cost-sharing agreements for O&M can be developed to reimburse the District for incremental O&M costs.

Dan Luecke asked about the lack of saved water in dry years. Brent said he believes the 17,000 af projected savings is **extremely** conservative (he thinks the savings will be closer to 30,000 af). Brent said Grand River's report on CalPoly's analysis regarding management assumes strict water right administration, which is not the case in drought years, when there is a lot of give and take. The Committee approved Tom's motion and will make this recommendation to the Management Committee tomorrow.

- i) Yampa instream flow update – > **Bob Muth will share the meeting summary with the Committee**; the bottom line is that in average or wetter years our operation of Elkhead will get us in the ballpark of what Rick Anderson mentioned.
5. Re-schedule conference call – The call was re-scheduled for July 20, 1:30 – 3:30 p.m. Agenda items will include review of scopes of work for the FY 10-11 work plan, scheduling review of the sediment monitoring report with the Biology Committee, and potentially updates on OMID, HUP surplus, year-round subordination of Green River flows, and Utah's MODSIM-DSS model.

ADJOURN 4:30 p.m.