



**QUARTERLY ATTORNEY REPORT
GENERAL DISTRICT
July 2011**

TO: CRWCD BOARD OF DIRECTORS

FROM: PETER C. FLEMING, GENERAL COUNSEL *PCF*
JASON V. TURNER, ASSOCIATE COUNSEL

Dear Directors:

This report identifies matters for discussion at the River District's July 19-20, 2011 quarterly meeting. A separate Confidential Report addresses confidential matters. The information in this report is current as of July 7, 2011, and will be supplemented as necessary before or at the Board meeting.

I. EXECUTIVE SESSION

The following is a list of matters that qualify for discussion in executive session pursuant to C.R.S. §§ 24-6-402(4)(b) and (e).

- A. Proposed Colorado River Cooperative Agreement - Implementation Issues.
- B. C-BT Project Operations, Windy Gap Firming Project and Upper Colorado Stream Flow Management.
- C. Green Mountain Reservoir Administrative Fill and Climax C.A. 1710 Priority Issues.
- D. 10825 Proposed Agreements and Implementation Issues.
- E. Colorado River Wild and Scenic Stakeholders Group Proposal for Alternative Management Plan and Proposed CWCB Instream Flows.
- F. Bluestone Project Water Rights Development.
- G. River District Conditional Water Rights - Project Development.
- H. River District Diligence Application for Rampart Reservoir, Second Fill, Case No. 10CW06, Water Division 6.
- I. Colorado River Compact, Interstate, and International Issues.
- J. Application of Busk-Ivanhoe, Inc. Case No. 09CW142, Water Division 2.

II. GENERAL AND GOVERNANCE MATTERS

A. **Report on Colorado Supreme Court Opinion in *Burlington Ditch, Reservoir and Land Co. v. Englewood*, 09SA133 (Colo. May 31, 2011) (commonly referred to as the *FRICO* case).**

Update only, no action requested.

The Colorado Supreme Court recently entered a significant ruling in which the court made a particularly strict application of existing principles for changes of water rights. It is commonly accepted that, in a change of water right case, the amount of water that can be changed and applied to a new use or location is limited to the amount of the water right that was historically consumptively used for originally decreed purposes. The court's strict application will impact the way in which absolute storage rights are quantified/limited in a change of water rights case.

Farmers Reservoir and Irrigation Company ("FRICO") operates the Burlington-Barr Lake system for the benefit of FRICO, Burlington Ditch Reservoir and Land Company and the Henrylyn Irrigation District. The water rights associated with the system include both direct flow and storage rights with 1885, 1908 and 1909 priority dates. In 1909, FRICO purchased the Burlington Company's "excess water" and expanded the system into what is the current day Burlington-Barr Lake System. Historically, the rights were used to irrigate farmland northeast of Denver but the expanded system never obtained a change of water right for use on the new lands.

The subject application was filed in the Division 1 Water Court for changes in points of diversion and storage, as well as a change from irrigation to municipal use for the Burlington and FRICO water rights. Once changed, the FRICO water would be utilized by the United Water and Sanitation District-East Cherry Creek Valley Water and Sanitation District ("ECCV") water supply project. The ECCV project would pump the changed water rights south (upstream) to ECCV's service area, reducing its reliance on non-renewable Denver Basin nontributary groundwater supplies.

The supreme court upheld the water court's strict limitation on the change of the storage rights to the amount used by the Burlington Company prior to FRICO's 1909 involvement and expansion of the system. This reconfirms the rule that water used beyond the scope of the original decree (*i.e.*, use on land not contemplated at the time of the appropriation, or uses made through undecreed points of diversion) is unlawful and cannot be included in any calculation of the historical consumptive use of the water right in a change case. This part of the case is noteworthy, not because it established new law, but because of the very long period of (unauthorized) historical use that was not allowed to be counted toward the change for the new purposes and places of use.

With respect to the amount of water that FRICO had lawfully stored, the supreme court also applied a strict limitation to the amount of the storage right that can be changed to new uses. FRICO argued that it was entitled to change its pro-rata share of the Barr Lake reservoir as limited by the "one-fill rule". The one-fill rule limits a reservoir to one-fill annually within the priority system. The court instead limited the amount of Barr Lake water that could be changed to the average amount that

had been released from storage and placed to specific beneficial use over the historical period of record. The rationale was that, without limits based on historical use, FRICO would be allowed to consume more water than historically was released from the reservoir, resulting in increased diversions from the South Platte River to the detriment of junior water rights. While the ruling is logical from the perspective of junior water rights that have come to rely on the historical stream regime, the law of averages means that a change of a storage right will be limited to an amount much smaller than the actual storage capacity of the subject reservoir.

The ruling may have an impact on how reservoirs are operated. Reservoir owners now have an incentive to release as much water as possible each and every year for beneficial use in order to maximize the value of the water right in the event of a subsequent change of water rights proceeding. However, that type of operation is at odds with the value of having carry-over storage available in times of shortage.

B. Report on Colorado Supreme Court Opinion in *Upper Yampa Water Conservancy Dist. v. Wolfe*, 09SA352 (Colo. June 27, 2011) (*Upper Yampa II*).

Update only, no action requested.

In April, we reported on the Colorado Supreme Court's decision in *Upper Yampa Water Conservancy Dist. v. Dequine Family LLC*, 249 P.3d 794 (Colo. 2011) (*Upper Yampa I*). In that case, the court held that firm contractual commitments to supply water were not sufficient alone to support an application for new conditional water rights – instead, the applicant was required to show that any contractees have specific plans to beneficially use the water. As discussed below, the supreme court issued another ruling in late June on the Upper Yampa District's conditional water rights.

The Upper Yampa District filed an application to make a portion of its conditional Four Counties water rights absolute, based on storage of those rights at Stagecoach Reservoir. The water court entered summary judgment against Upper Yampa. The Colorado Supreme Court upheld the water court's rulings that in order to make the conditional rights absolute, (1) Upper Yampa was required to demonstrate "actual" beneficial use of a specific amount of water – not simply that the water had been put into storage for subsequent beneficial use during a drought, and (2) Upper Yampa was required to show that the amount claimed to be made absolute was in excess of its existing absolute rights – in other words, Upper Yampa was not allowed to put its conditional rights to beneficial use without first showing that it had exhausted the use of its existing absolute rights.

On the first issue, Upper Yampa argued that storage is beneficial use on its own accord – as a form of drought protection. Upper Yampa also argued that the water court's ruling would undermine the character and purpose of a reservoir, and would put conditional storage rights at risk of cancellation even after the applicable reservoir has been constructed and has stored water. The supreme court relied on anti-speculation principles and disagreed, noting that it has long-held that storage is not, in-and-of-itself, a beneficial use. The court also rejected the drought protection argument, noting that the District was not seeking to make the water right absolute for drought protection purposes, and despite the opportunity to provide the water court with evidence of "actual"

beneficial use, Upper Yampa maintained that storage for future beneficial use was sufficient.

On the second issue, Upper Yampa argued that it was entitled to elect to store its conditional water rights in lieu of storing water rights it previously had made absolute. The court rejected that argument as well, noting that holders of conditional rights have a continuing burden to demonstrate a non-speculative need for the water. The court reasoned that if the need could be met by the existing absolute right, that the conditional portion was not required to have been put to beneficial use.

The supreme court's decision will result in significantly increased scrutiny associated with applications to make conditional storage rights absolute.

C. Report on Order of the Division 6 Water Court in the Application of Yellow Jacket Water Conservancy District, Case Nos. 09CW48 and 09CW50.

No action requested.

On July 1st, the Division 6 Water Court entered a ruling abandoning a number of the Yellow Jacket Water Conservancy District's conditional water rights. This order was precipitated by a Motion for Summary Judgment filed by objectors to Yellow Jacket's September 2009 diligence applications. The opposition argued that the conditional water rights must be abandoned because the District lacked the requisite quorum to authorize the filing of the diligence applications.

The Water Court agreed, finding that the terms of appointment for certain Yellow Jacket District board members had expired, and that another board member had resigned – none of whom had been reappointed or replaced (leaving only four out of nine directors) by the time the board met to authorize the diligence applications. The court held that the Water Conservancy District Act requires a quorum to carry out the business of the district and that a duly-appointed quorum was not available at the time the applications were filed. Therefore, the applications were void as a matter of law, and the water rights were cancelled for failure to file a timely diligence application.

It is unclear at this point whether the Yellow Jacket District will appeal this decision. While unfortunate, we do not believe the ruling will adversely impact the Yellow Jacket/River District White River Storage Feasibility Study because that study is not dependent on any specific water right but instead will examine all available storage locations.

D. Update on 2010 Abandonment List.

Update only, no action requested.

Protests to the State Engineer's 2010 Decennial Abandonment list were due July 1, 2011. We reviewed the abandonment lists for Water Divisions 4, 5, 6, and 7 and did not find any River District water rights or pre-Compact water rights of concern on the lists. We therefore did not file any protest to the abandonment lists.

E. Proposed Revision to Colorado River Water Conservation District: Employment Policies and Procedural Guidelines.

Board action is requested.

Currently section 2.12 of the River District's Employment Policy provides: "In response to inquiries for employment recommendations, the District and its Board members and employees will only confirm the dates of employment of a former employee and give no other information, regardless of reasons for departure." In the past, former employees have requested that additional information be provided to prospective employers. To provide flexibility, we recommend that, provided the former employee agrees, that the provision of additional information regarding the past employment is appropriate.

We therefore recommend that section 2.12 of the River District's Employment Policies and Procedural Guidelines be modified to read: "In response to inquiries for employment recommendations, the District and its Board members and employees will only confirm the dates of employment of a former employee and give no other information, regardless of reasons for departure, unless expressly agreed otherwise by the former employee."

III. RIVER DISTRICT WATER MATTERS

A. Colorado River Basin.

No action is requested.

1. Proposed Colorado River Cooperative Agreement - Implementation Issues.

Board members are well aware that the proposed Colorado River Cooperative Agreement ("CRCA") was rolled-out to the public and media on April 28th. Prior to the roll-out, we reached resolution with Denver on the tiering issues in a manner consistent with the Board's direction at the April Quarterly meeting. In summary, the tiering section of the agreement provides in pertinent part that, even if the agreement has been executed (which is proposed to occur prior to the end of 2011), Denver's proposed decree for its Robert Tunnel diligence case will not be submitted to the court for final judgment until (1) Reclamation has executed an agreement by which it agrees to operate the Shoshone Outage Protocol, or (2) the Signatories agree that the goal of permanently protecting the Shoshone Call flows has been met.

Recently, Denver has proposed a change to the West Slope Charge part of the CRCA. The proposed change is discussed in the Confidential Report.

Following the public roll-out, we continued to meet with Denver and the State of Colorado on the implementation issues. However, the last meeting with the State was in the middle of May. Although progress was made on implementation, significant work remains, particularly on the Shoshone Outage Protocol. We are hopeful that the pace with the State will pick up again soon.

2. Update on Permitting and Division of Wildlife Mitigation Plan.

Denver Water and Northern's Municipal Subdistrict are required to submit plans outlining their proposals to mitigate impacts to the state's fish and wildlife resources caused by the construction of the Moffat Collection System and Windy Gap Firming Projects respectively. The mitigation plans are submitted to the Wildlife Commission and the Colorado Water Conservation Board and, if accepted, the plans become the official position of the State of Colorado with respect to mitigation required for the respective projects.

On June 9th the Wildlife Commission approved the final mitigation plans submitted by Denver and the Municipal Subdistrict. Denver Water's mitigation plan for West Slope impacts includes stream temperature monitoring on the Fraser and the Colorado River, including agreements to forego 250 acre feet of diversions when specified temperatures are exceeded, Greenback Cutthroat Trout habitat improvements, and \$750,000 for stream habitat restoration projects. The Municipal Subdistrict's mitigation plan for West Slope impacts include nutrient mitigation to offset impacts to Grand Lake, increased flushing flows below Granby Reservoir from 450 cfs to 600 cfs for 50 hours once every three years, other modification of operations to increase flushing flows below Windy Gap under certain conditions, and an agreement to reduce or curtail pumping at Windy Gap under certain circumstances if temperatures are being exceeded.

Additionally, the entities submitted enhancement plans in which they will contribute \$4.5 million dollars (\$1.5 million from Denver and \$3 million from the Subdistrict) to Upper Colorado River habitat restoration projects through the Learning by Doing Cooperative Effort. The stated goal of the restoration project is to design and implement a stream restoration program to improve the existing aquatic environment below Windy Gap. The CWCB is scheduled to review the Mitigation plans at its July meeting.

The Board may wish to discuss the CRCA implementation issues in executive session.

2. C-BT Project Operations, Windy Gap Firming Project, and Upper Colorado Stream Flow Management.

Negotiations with the Municipal Subdistrict on the Windy Gap Firming Project continue to move forward. We currently are working with Grand County and the Middle Park Water Conservancy District on a joint West Slope response (and drafting revision) to the Subdistrict's most recent draft of a proposed agreement.

The status of the WGFP Wildlife Mitigation Plan is described in the paragraph above regarding Denver's proposed Wildlife Mitigation Plan.

The WGFP negotiations are discussed further in the Confidential Report. We recommend that the Board discuss the issues in executive session.

3. Green Mountain Reservoir Administrative Fill and Climax C.A. 1710 Priority Issues.

No action requested.

River District counsel and staff continue to dedicate substantial time and energy on the mediated effort to resolve the Green Mountain Reservoir administrative problem. All of the Blue River Decree parties have continued to work on a joint response to the State's proposal which was made earlier this past-Spring. The response has taken longer than anticipated because the issues (and associated drafting) are complex and involve numerous parties. We anticipate that the Parties will be able to provide the State with a detailed response in late July or early August.

A fair amount of time has passed since we last discussed the GMR administrative issues with the Board in detail. Once again, we think that it may be premature to engage in a detailed discussion of the proposed resolution of the problems with the Board. However, if time permits at the July Board meeting, we believe that it might be helpful to review some of the key issues. As a reminder, the primary contested issues have been (1) whether the United States can exercise its storage and direct flow power rights at Green Mountain Reservoir simultaneously (without exercise of the power right counting toward the administrative fill of the Green Mountain Reservoir storage right), (2) whether water stored or diverted by Denver's and Colorado Springs' junior water rights during the Green Mountain Reservoir fill-season "counts-toward" the fill of Green Mountain Reservoir, and if not, (3) whether other water rights are impaired by any resulting extension of the Green Mountain Reservoir storage right for a longer period of time than it would be on the river if the Cities' storage did count toward the administrative fill of Green Mountain Reservoir.

When the Cities store water prior to the completion of GMR's fill, Reclamation keeps an account of water that the Cities must repay to Reclamation if GMR does not achieve a complete fill (referred to as the Cities' "Owed to GMR Accounts"). In addition to the administrative issues discussed above, another important subject of the negotiation process is how the Cities' Owed-to-GMR Accounts are calculated and repaid. A particularly tricky issue is whether Reclamation's generation of power at Green Mountain Dam (instead of storing water) creates a "power hole" in the fill of the reservoir and whether the power-hole must be filled before there is any reduction in the Cities' Owed-to-GMR-Accounts. We believe a potential resolution of this issue may be close at hand and we may wish to discuss it with the Board if time permits.

The Board may wish to discuss these issues in executive session.

4. 10825 Proposed Agreements and Implementation Issues.

We may seek approval of the proposed agreements.

There are two updates related to the obligation of Colorado River basin water users to provide 10825 acre feet of water on a permanent basis to the endangered fish species in the 15-Mile Reach. The first is related to the proposed Permanent 10825 Agreement that we previously have discussed with the Board. That proposed agreement will commit the water users to implementation of the

permanent 10825 solution that relies on 5412.5 acre feet of annual releases from Granby Reservoir and an equal amount of annual release from Ruedi Reservoir.

The proposed agreement (and the proposed federal action currently undergoing NEPA review) contemplate that Northern Water will contract with a West Slope municipal entity for the release of the Granby 5412 for use in the Grand Valley. The River District has expressed concerns about whether Reclamation or Northern Water is the appropriate entity to enter the proposed contract for delivery to the Grand Valley. We previously have reported that an informal agreement was reached between Northern and the River District on language to avoid a dispute while protecting the Parties' respective legal and policy positions. The informal agreement contemplates that Reclamation will "concur and approve" of the Granby 5412 contract, using certain language. Reclamation unfortunately cannot commit to the proposed resolution until NEPA has been completed on the 10825 solution.

In January, the Board decided to postpone approval of the permanent agreement in part because the execution of the Permanent 10825 Agreement in the absence of Reclamation's final decision on the "concur and approve" language could adversely impact the River District's interests. In response to significant federal pressure to execute the Permanent 10825 Agreement, we have prepared a proposed side-agreement between the River District and Northern Water that we believe should address the issues of concern. The side-agreement with Northern Water provides that the Granby 5412 component will not be implemented until Reclamation adopts certain language (or language equivalent thereto) to protect the respective rights and legal positions of the River District and Northern. A copy of our most recently-proposed version of the Permanent 10825 Agreement is included as Attachment A to this memo. A copy of the proposed side-agreement with Northern is included as Attachment B to this memo.

The Board may wish to discuss the proposed agreements in executive session.

The second 10825 issue is that a potential impact to the Green Mountain Reservoir 100,000 AF Pool has been disclosed in the draft 10825 environmental assessment related to implementation of the Granby 5412 component. The Granby 5412 component is made possible by the proposed dry-up of historically irrigated lands under the Red Top Valley Ditch ("RTVD"). The RTVD is senior to and diverts just upstream of the C-BT Granby collection system. The Granby 5412 component will retire a portion of the lands so that the water historically diverted by the ditch will instead flow into Granby Reservoir under the C-BT's 1935 priority. Pursuant to Reclamation's 1984 Green Mountain Reservoir Operating Policy, when the C-BT system is out of priority, the system continues to divert but releases are made from Green Mountain's 52,000 acre foot pool in order to keep downstream senior water rights whole. The additional supply made available to the C-BT Project by the dry-up of the RTVD lands will result in increased releases from the GMR 52,000 acre-foot pool in most years. If the following year is very dry, the previous year's increased releases could cause an impact of up to 1,500 acre feet (because the 52,000 acre foot fills first) to the detriment of the West Slope's interests in the Green Mountain Reservoir 100,000 acre foot pool. This issue and potential solutions are described in more detail in Eric Kuhn's June 24, 2011 memo on the subject, a copy of which is included as Attachment C to this memo.

The Board may wish to discuss the associated issues in executive session.

5. Upper Colorado River Wild and Scenic Stakeholders Group Proposal for Alternative Management Plan and Proposed CWCB Instream Flow.

No action requested.

In April, we reported that most of the entities within the Stakeholders Group for the Wild and Scenic Alternative Management Plan had endorsed or were in the process of obtaining formal endorsement of the Plan. At that time, the Stakeholder Group had not reached consensus on the appropriate flow rates to recommend to the CWCB for appropriation of the instream flow that is one of the four long-term protective measures that are part of the Plan. We are pleased to report that in May, the Stakeholder Group agreed on instream flow rates and associated conditions, and presented its recommendation at the CWCB's May meeting. The proposed instream flow segments cover the Colorado River from the Blue River confluence to a point immediately upstream of the Eagle River confluence. The recommended flow rates are within the scope of the flow rates that we previously discussed with the Board.

- Blue River confluence to Piney River confluence:

Sept 16 -May 14	500 cfs
May 15 -July 31	600 cfs
Aug 1 -Sept 15	750 cfs

- Piney River confluence to Cabin Creek confluence

Sept 16 -May 14	525 cfs
May 15 -July 31	650 cfs
Aug 1 -Sept 15	800 cfs

- Cabin Creek confluence to a point immediately upstream of the Eagle River confluence

Sept 16 -May 14	650 cfs
May 15 -Jun 15	900 cfs
Jun 16 -Sept 15	800 cfs

The Stakeholder Group's recommended terms and conditions associated with the proposed instream flows are extensive and may appear to some stakeholders to diminish the value of the instream flow. However, we believe the proposed conditions are reasonable in light of the significance of the river segments at issue and the overall compromises and purposes that are integral to the Stakeholder's Group Plan. The proposed terms and conditions are described below:

- a. A recitation that the instream flow segments are unique due to (a) the diverse stakeholder group for a local management plan designed to help protect resources of “outstanding remarkable value” that have been identified by the Bureau of Land Management and the United States Forest Service, and (b) the segments are on the mainstem of the Colorado River, the relative size of that river, the current level of water supply development, the level of use for recreational fishing purposes, and the river’s overall importance to the State of Colorado.
- b. The instream flow 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 the appropriation [this is a standard condition].
- c. During any period identified by the Upper Colorado River Commission in a finding issued pursuant to Article VIII(d)(8) of the Upper Colorado River Basin Compact of 1948 for curtailment of Colorado River basin water uses within Colorado, which the State of Colorado has agreed to implement in a manner that impacts water diversions within Water Division 5, the CWCB agrees that the ISF water right will be administered in accordance with compact curtailment rules adopted by the State of Colorado that are then in effect, if any. If no such compact curtailment rules are then in effect, it is the intent of the CWCB that the instream flow right will not be administered during the period of any such compact curtailment.
- d. The CWCB agrees not to file a statement of opposition to adjudications of water rights made after the date of this filing that (1) result in depletions that do not exceed 100 acre feet; or (2) are for changes of water rights that do not seek to change more than 2,500 acre feet, provided such changes of water rights do not involve an exchange through the subject ISF reaches; and (3) do not exceed a 1% depletive effect on the instream flow right.
- e. The CWCB intends that the ISF is not appropriate for consideration as a streamflow standard in other administrative or regulatory permitting contexts.

At the May CWCB meeting, some board members expressed concern about the timing of the CWCB’s appropriation and the BLM/FS’s anticipated adoption of the Stakeholder Group Plan. In order to address that concern, the Stakeholder Group supplemented its recommendation to the CWCB. The supplement also addresses a similar concern raised by Denver Water about potential conflicts between the appropriation date for the instream flows and potential applications that may be made to implement the proposed Colorado River Cooperative Agreement. The supplement recommends that the CWCB:

- f. File the instream flow applications in 2011 but seek to defer the prosecution of the applications until formal federal approval of the SG Plan. If the water court declines to defer prosecution of the CWCB application, then the State will seek a recommendation from the SG on a further course of action. Following consultation,

the CWCB will either (1) prosecute the ISF application, seeking a decree upon agency approval of the SG Plan; (2) withdrawal of the ISF application; or (3) take any other action unanimously agreed upon by the SG and the CWCB.

- g. The CWCB will claim an appropriation date within 2011 for the ISF that is junior to the appropriation date claimed in any CRCA application made in 2011. The CWCB will work cooperatively with the SG and the parties to the CRCA to address material conflicts, if any, that may arise between the ISF and CRCA applications if the CRCA application(s) cannot reasonably be filed in 2011.

The CWCB is set to declare its intent to appropriate the proposed instream flows and act on the Stakeholder Group's recommendations at its July 12 meeting in Walden.

We will update the Board on the CWCB's action. If the CWCB declines to adopt the Stakeholder Group's recommended instream flows and associated conditions, the Board may wish to discuss the ramifications and possible actions in executive session.

6. Ratification of Statement of Opposition in Application for Existing Exchanges of the City and County of Denver, acting by and through its Board of Water Commissioners, Case No. 11CW21, Water Division No. 5.

Action requested, as noted below.

We filed a statement of opposition at the end of April in Denver Water's application to adjudicate exchanges between Dillon Reservoir and Denver's Williams Fork and Fraser River system points of diversion and storage. Denver's application is contemplated by the proposed Colorado River Cooperative Agreement. We filed a statement of opposition to ensure that the application and any resulting decree are consistent with the proposed agreement. The statement of opposition is included with your Board materials as Attachment D.

We recommend that the Board ratify the Statement of Opposition in Case No. 11CW21, Water Division No. 5.

7. Ratification of Statement of Opposition in Application of the United States of America in the Taylor River, Case No. 11CW31, Water Division No. 4.

Action requested, as noted below.

We filed a statement of opposition at the end of May to the United States' application to make absolute the remaining 61,530 acre feet conditional portion of the refill right at Taylor Park Reservoir. The refill right is for in-reservoir recreational, fishery, and wildlife purposes as well as for releases at times and in quantities calculated to enhance the fishery and recreational uses of the Taylor and Gunnison River above Blue Mesa. In addition, 5,423 acre feet of the conditional water right is decreed for increased and supplemental irrigation use within the Upper Gunnison River Water

Conservancy District boundaries. The River District's statement of opposition is for "friendly" support for the application. The Upper Gunnison District filed a similar pleading in support of the application. The River District's statement of opposition is included with your Board materials as Attachment E.

We recommend that the Board ratify the Statement of Opposition in Case No. 11CW31, Water Division No. 4.

8. River District Conditional Water Rights/Project Development.
 - a. River District Diligence Applications in Case Nos. 11CW93 (West Divide Project), 11CW94 (Red Cliff Project), 11CW95 (Wolcott Project) 11CW96 (Basalt Project), Water Division No. 5 and Case No. 11CW8 (Flattops Project), Water Division No. 6.

Consistent with the Board's direction in April, we filed applications for findings of reasonable diligence and where appropriate to make conditional water rights absolute in full or in part for the River District's West Divide Project, Red Cliff Project, Flattops Project, Wolcott Project and Basalt Project water rights in Water Division No. 5 and the Flattops Project water rights in Water Division No. 6. The deadline for filing statements of opposition does not expire until the end of July. We will report back to the Board on the status of these cases in October.

- b. River District Diligence Application for Rampart Reservoir Second Fill, Case No. 10CW6, Water Division No. 6.

There are no objectors in this case. However, the Division 6 Engineer has expressed concern to the Division 6 Water Judge (acting as the Water Referee) about the River District's claims. A copy of the Division Engineer's most recent correspondence is included as Attachment F to this memo.

This matter is discussed in the Confidential Report. We recommend that the Board discuss this matter in executive session.

- c. River District Conditional Rights Due for Diligence Filings in 2012.

Applications for reasonable diligence are due in May of 2012 on the River District's Juniper and Cross Mountain water rights as well as water rights associated with the Great Northern Project and Savery-Pothook Project, all located in Water Division 6.

These issues are discussed in the Confidential Report. We recommend that the Board discuss the projects in executive session.

9. Bluestone Project Water Rights Development.

The River District and the Bluestone Water Conservancy District formed the Bluestone Committee in 1983 through a Joint Management Agreement. The Bluestone Committee is made up of two River District members (the directors from Garfield and Mesa counties) and two members appointed by the Bluestone District's Board. The committee is charged with managing the conditional and absolute water rights owned by the River District for the benefit of the Bluestone District. Getty Oil Company and Conoco Shale Oil, Inc., and later their successor, Chevron, leased a portion of the water rights for more than 25 years. Chevron terminated the lease in 2008. We have been working, through the Bluestone Committee, with Chevron to wrap up the lease termination which includes making decisions regarding the disposition of some capital improvements made by Getty associated with the water rights. Recently there has been interest from two oil and gas operators in leasing a portion of the water rights for drilling activities in the Roan Creek area. The Bluestone Committee has been meeting with representatives from these two companies to best determine how to utilize the Kobe assets to meet both the industrial needs as well as the agricultural needs within the Roan Creek basin.

The Committee recently requested an engineering proposal to update the costs associated with various sized pipelines that would be used to carry water up the valley for industrial and agricultural uses as well as a cost estimate on boring the pipeline crossing underneath the railroad, utilizing right-of-ways obtained by the Districts in the mid-80's. It is anticipated that if an agreement can be reached that addresses the needs of the Districts and industry, that construction of a project would move quite quickly.

The Board may wish to discuss this matter in executive session.

10. Update on Aspinall Unit EIS.

We reported in April on three remaining issues of dispute between stakeholders regarding Reclamation's Preliminary Final Environmental Impact Statement (PFEIS) on Re-Operation of the Aspinall Unit. Since that time, the stakeholders have agreed on proposed language to recommend to Reclamation that will address two of the three issues, including the important issue regarding the release of water from the Aspinall Unit to ensure operation of the Redlands Fish Ladder (which is an important component of the Endangered Fish Species Recovery Program).

The remaining disputed issue is whether the scope of potential Reclamation actions contemplated in the PFEIS are within the scope of Reclamation's historical operation of the Aspinall Unit. We believe that the proposed actions are within the historical scope. The State of Colorado and the power generators continue to review pertinent data to reach that conclusion on their own behalf. We understand that the United States is not waiting for a final recommendation from the stakeholders and will be issuing a final EIS in the near term that likely will adopt some, but not all, of the stakeholders' consensus comments.

11. Application of Busk-Ivanhoe, Inc., Case No. 09CW142, Water Division No. 2.

The River District filed a Statement of Opposition to the application filed by Busk-Ivanhoe, Inc., to change its 50% interest in the Busk-Ivanhoe System. Busk-Ivanhoe, Inc. is 100% owned by the City of Aurora. River District staff and Special Counsel David Hallford recently met with representatives of Aurora. David has prepared a confidential memorandum regarding the case which is enclosed with your packet.

We recommend that the Board discuss this matter in executive session.

III. COLORADO RIVER COMPACT, INTERSTATE, AND INTERNATIONAL MATTERS

River District staff and counsel continue to work with the Colorado Water Conservation Board, the Southwestern Water Conservation District, The Nature Conservancy, and the Front Range Water Council toward developing the conceptual Colorado Compact Curtailment Plan/Water Bank. The group has not made too much progress yet. There seems to be some unease among the participants about their respective roles and the primary goals of the proposed water bank.

We also continue to work with the Upper Colorado River Commission staff and other Upper Basin States' advisors toward a recommended curtailment policy. Eric Kuhn, Dave Kanzer and other River District staff have been working on a technical informational tool to better inform decision-makers about various compact assumptions and possible future scenarios.

The Board may wish to discuss some of these issues in executive session.

Attachments:

- A. Revised Draft 6-30-11 Agreement between U.S. Fish & Wildlife Service and the Parties for the Provision of 10,825 A.F. of Water Annually to the 15-Mile Reach of the Colorado River
- B. 6-30-11 Draft Agreement between Northern Colorado Water Conservancy District and CRWCD related to the Proposed Provision of 5412.5 A.F. of Water Annually from Granby Reservoir to the 15-Mile Reach of the Colorado River
- C. Memorandum from E. Kuhn to Participants in the 6/27/11 Meeting on GMR & the RTVD, dated 6/24/2011
- D. CRWCD's Statement of Opposition, Water Division 5, 11CW21, dated 5/31/2011
- E. CRWCD's Statement of Opposition, Water Division 4, 11CW31, dated 5/31/2011
- F. Reply to Applicant's Response to Report of the Division Engineer, Water Division 6, 10CW6, dated 7/5/2011