



DRAFT MEMORANDUM

May 24, 2011

TO: WEST SLOPE ROUNDTABLE MEMBERS

FROM: ERIC KUHN

SUBJECT: *FLAMING GORGE SITUATION ASSESSMENT REPORT – MAY 2011*

Heather Bergman of Peak Facilitators and Mike Hughes of the Keystone Center have completed a report titled “Flaming Gorge Task Force Situation Assessment Report.” This report was funded by the Arkansas and Metropolitan Denver Roundtables.

The reports preferred recommendation (pages 10 & 11) is the formation of a “free-standing stakeholder dialogue” that would not be directly connected to either the CWCB or the IBCC. The work plan for this effort is described on pages 14-16.

With the caveat that I have not had a chance to discuss the Flaming Gorge report with The River District Board of Directors, based on the Board’s current positions and policies, I believe the River District will have a number of serious concerns with the reports preferred recommended action.

A number of years ago, Aaron Million made a detailed presentation to the River District Board on his proposed project. The River District has identified numerous problems and critical unanswered questions about any Flaming Gorge project, including the following fundamental concerns:

1. We have no idea whether or not Colorado River water is available for this project under the 1922 and 1948 compacts. The Colorado River Water Availability Study (CRWAS) has not progressed as anticipated, the Phase I draft report is still undergoing a public review process. Whether or not Phase II will ever move forward is uncertain. The Bureau of Reclamation is conducting a basin study that will provide additional hydrologic information. This study is not expected to be finalized until early 2012. I believe that the completion of these studies is fundamental to the evaluation and consideration, and thus productive dialogue, of any large-scale project.
2. Although the 1948 compact allows one Upper Basin state to physically divert water for its consumptive use in an adjacent Upper Basin state, there are a number of unresolved issues related to how a Flaming Gorge pipeline would be

administered with other Colorado water rights in the face of a compact curtailment.

3. Under Colorado water law, there are strict rules against speculation. The Colorado Supreme Court has recently reinforced anti-speculation in the Upper Yampa Water Conservancy District case. Proponents of the Flaming Gorge pipeline could be in a position to avoid Colorado water law and speculate on Colorado's remaining compact entitlement. Mr. Million made it clear that he has no intention of seeking rights for his project in Colorado water court.

My personal view is that the Flaming Gorge proponents, whether Mr. Million or the group of South Metro entities that are discussing a competing project (but have taken no real formal action like triggering NEPA) want to avoid the issues identified by the CRWCD Board.

I'm in agreement with Bart Miller's recommendations. I believe that moving forward with a stakeholder dialogue at this time makes no sense. It will divert resources and attention from more realistic solutions. I would urge roundtable members to resist the preferred recommendation and focus on more productive efforts such as the Compact Water Bank proposal and completing Phase II or CRWAS. The River District Board will have an opportunity to formally address the proposal at its July quarterly meeting.

REK/ldp