



SHOSHONE POWER PLANT & XCEL-DENVER FRANCHISE AGREEMENT

ISSUE: Xcel Energy as the owner of the Shoshone Hydroelectric Plant recently entered into a franchise agreement with the City and County of Denver allowing Denver to dictate a reduction in the Shoshone Plant's water right. This agreement impacts West Slope water users and the health of the Colorado River.

BACKGROUND:

The Shoshone hydroelectric plant and its associated water rights are owned and operated by Xcel Energy. The plant has two water rights: a senior right for 1,250 cubic feet per second (cfs) with a priority date of 1905 and a more junior right for 158 cfs with a 1941 priority. Water runs through twin 700 cfs turbines; one can be shut down and the plant can run at half capacity. Total generating capacity of the plant is 15 megawatts or roughly enough electricity to serve 15,000 customers for a year.

Because its senior water rights call water down the river, the Shoshone Plant's operations benefit river flows on the upper and middle Colorado River. When upstream water diversions reduce the flow of the Colorado River to less than the water rights of the power plant (1,250 and 158 cfs), Xcel is entitled under Colorado water law to place a "call" on the river. More junior water rights upstream must reduce their diversions or make reservoir releases to offset their junior diversions. This practice thereby generally ensures that at least 1,250 cfs flows down the Colorado River to the plant's diversion dam in Glenwood Canyon.

Additionally, since operation of the hydro-electric plant does not consume any water, operation of the plant also ensures 1,250 cfs flows below the plant as well. This benefits flows and mainstem Colorado River water users downstream of Glenwood Canyon.

It is important to note that Shoshone's senior water right, like any other water right, does not guarantee there will be that much water in the river. A water right only provides that junior water rights may not cause the river's flow to fall below levels required to meet senior downstream rights. If the natural flow of the river is less than 1,250 cfs, then Shoshone can only call for the amount of water actually in the river. Typically in mid-winter, December through February, river flows will approach 700 cfs or less.

In a most years, during the months of April, May, June, and July, nature provides river flows more than sufficient to meet Shoshone's water rights. Following the spring runoff, from around August through March, the Shoshone call is often on the river and upstream junior water rights are called out. In drier years, the call is on longer, perhaps all year except May and June. In wetter years, the call may be delayed until late fall or early winter.

Denver Water has a number of diversions in the upper Colorado River Basin all upstream of Shoshone. It diverts water on the Upper Fraser, Williams Fork and Blue Rivers. Its water rights are junior to Shoshone. When the Shoshone call is on the river, Denver replaces its diversions through "replacement" or "exchange" releases of water from Williams Fork Reservoir.

If Shoshone is not operating (for maintenance or other reasons), it cannot place a call on the river. If the plant is operating at half capacity for maintenance on one turbine or because there is only 700 cfs in the river after placing a call, then the plant can only call for 700 cfs. Like any other water right, Shoshone can only call for an amount of water it can put to beneficial use.

If Shoshone is not calling its full water right, Denver Water is able to divert water without making a "replacement" release from Williams Fork Reservoir. The "savings" from a Shoshone call reduction can be very important to Denver. In 2002, Denver almost drained Williams Fork Reservoir. If Denver runs out of water in Williams Fork it could not continue to divert water.

Shoshone Benefits:

Water in the river has obvious environmental benefits. Additional flows, especially during naturally low flow months, greatly increase winter survival of vertebrate and critical invertebrate aquatic species. Further, additional flows can dramatically improve water quality, again especially critical during the low flow mid-winter months. From Silt to Grand Junction, numerous municipal utilities rely on the Colorado River for drinking water supplies. Greater stream flow means lower concentrations of chemicals that must be removed during water treatment with attendant cost savings.

Energy Franchise Agreements:

To serve customers within Denver, Xcel must have a renewable franchise contract with the city that allows it to use the city's rights-of-way. The need to renew the franchise provides Denver with considerable leverage over Xcel.

Denver first used this leverage in 1986/87 when it used the franchise renewal negotiations to obtain a letter of agreement giving the Denver Water Board certain qualified rights to limit the Shoshone call during drought. There was a difference of opinion between Xcel and Denver over how the 1987 agreement would be implemented. Denver only used it once in the winter/spring of 2003 following the 2002 drought. Before implementing a call reduction under the 1987 agreement, Denver and Xcel met with West Slope water interests and worked out an approach that would limit the impacts on the West Slope. The River District and many other water users were included in the 2003 discussions. In January 2003, the River District Board when initially approached refused to support a reduction in the call. After provisions were included to protect and benefit West Slope users, the Board in March agreed to a call reduction.

Under the 2003 agreement, the water “savings” accrued to both Denver Water and the West Slope. Additionally, the call reduction was not allowed during the lowest flow periods and ceased as recreation season started. Under the agreement, Xcel also received additional water for its Front Range power plants. These plants have 100s of times more capacity than the Shoshone hydro plant.

The Current Franchise Agreement:

Xcel’s franchise agreement with Denver was again up for renewal in 2006. The River District anticipated that Denver would again use its franchise leverage to strengthen (from its perspective) the 1987 agreement. Unlike the 1987 agreement which was negotiated in secret between then Public Service Company and Denver, during the negotiations for the 2006 agreement Xcel sought input and comments from the West Slope. While neither the River District nor other West Slope parties were directly involved or an official party to the negotiations, Xcel did consult the Colorado River District.

The Colorado River District’s input was to request limits and conditions to any future curtailment of the Shoshone call, allowing it to occur only when there is a relatively minor impact to the West Slope in a manner similar to the winter 2003 agreement. Additionally, as under the 2003 agreement, the River District also sought water savings benefits for West Slope water users. Specifically, we pushed Xcel to include the following provisions:

1. The period when the Shoshone call can be relaxed needs to be very limited. The 2006 agreement is structured so that the call can only be reduced from mid-March through late May. Specifically, the call cannot be reduced during December, January and February. During these months, rivers flows are already naturally very low and salinity (TDS) is a concern for communities, such as Rifle, Silt, Parachute, and Clifton, that divert water from the mainstem of the Colorado River. Additionally, Denver’s ability to reduce the call ends in late May (May 20nd) in order to protect the summer recreation season.

From mid-March through mid-May river flows are normally increasing. This offers both Denver and others an opportunity to store some water during the early spring runoff.

2. There needs to be a clear and quantifiable trigger for any call reduction. The decision to reduce the call cannot be at Denver’s whim. The agreement limits Denver’s ability to reduce the call to years when the Colorado River Forecast Center forecasts that the snow melt runoff into the Colorado River above Shoshone will be less than 85% of normal. As a practical matter, this limits the years when the agreement can be implemented to only a few dry years, generally one in seven to one in every ten years.
3. The Shoshone right is not the only Colorado River mainstem call. Several large irrigation districts in the Grand Junction area have senior rights that can control the river during the irrigation season. These rights are collectively referred to as the “Cameo” call. The 2006 agreement provides that Denver cannot relax the Shoshone call if doing so would trigger a Cameo call. This protects junior water rights downstream of Shoshone including those on the Roaring Fork, Plateau Creek and other tributaries that join the mainstem below Glenwood Canyon.

4. Finally, the 2003 agreement provides that Denver would share a portion of the saved water with the West Slope. A sharing of savings was also incorporated into the 2006 agreement. As a practical matter, it is a small amount of water, but it can have a beneficial effect in the headwaters area. In the headwaters, a few hundred acre feet of water released to augment stream flows is often critical to stream health and water quality.

Summary:

The West Slope would have preferred that Xcel not include any water right reduction provisions in the franchise agreement. The West Slope would have preferred to address the Shoshone agreement in a more comprehensive manner, perhaps in coordination with the Roundtable process. But the decision was not ours to make.

Fortunately, Xcel was open to input from the West Slope during negotiations, and it ultimately entered into an agreement that it believed was in its best business interests as an energy provider throughout Colorado.

The River District's strategy in these negotiations was to limit the potential impacts of any agreement and to ensure some water savings benefit also accrues to West Slope water users. This was accomplished.

Future:

This issue is not over. The 2006 Shoshone agreement is not a permanent agreement. The franchise agreement and Shoshone agreements have different terms. We know that Denver Water is not satisfied with the limitations within the agreement. If there are going to be changes to this agreement in the future, the River District will push for broader West Slope involvement.