

Drought Contingency Planning – Demand Management Subcommittee

Southwest Basin Roundtable

841 E 2nd Avenue, Durango, Colorado

December 10, 2018 9:00-12:00pm

Roundtable Members Present:

Greg Black, At-Large	Mike Preston, At Large, Roundtable Chair
Steve Harris, Legislative Appointee	Jenny Russell, San Miguel County (phone)
Celene Hawkins, The Nature Conservancy	Ed Tolen, At Large Representative, RT Vice Chair
Phil Johnson, Montezuma County Muni (phone)	Mely Whiting, At Large
Ed Millard, Montezuma County	John Currier, Colorado River District
Peter Ortego, Ute Mountain Ute Tribe (phone)	Bruce Whitehead, Animas La Plata WCD
Carrie Padgett, At Large Domestic	Val Valentine, At Large

Other Subcommittee Members Present:

Public:

Ken Curtis, Dolores Water Conservancy District	Rob Genualdi, Colorado Division of Water Resources
Don Schwindt, SW Water Conservation District	Laura Spann, Recorder, SWCD
	Dave Stiller, La Plata County resident
	Chuck Wanner, TU
	John Simpson, Colorado Division of Water Resources

1. Introduction and Meeting Purpose

Mike Preston called the meeting to order and introductions were made. At the past meeting, the subcommittee reviewed the draft drought contingency plan (DCP) agreements, the Law of the River, and Colorado River hydrologic conditions. Carrie highlighted outstanding questions that arose from the previous meeting. The goals of the subcommittee are to digest information about the DCP and any proposed demand management program on behalf of the Roundtable, report back highlights, concerns, and further work for the Roundtable and southwestern Colorado, and guide the public engagement process in southwestern Colorado.

2. General Discussion

a. Ed Millard White Paper

Ed Millard, Montezuma County Representative to the Roundtable, reported that Montezuma County Commissioners acted to oppose the DCP as drafted, as well as the final CWCB policy. Ed then highlighted specific questions and concerns from the white paper he wrote. Montezuma County is very concerned about McPhee as a post-compact reservoir, and Montezuma Valley Irrigation's senior water rights being the subject of speculation, and are seeking solutions better than those proposed in the DCP. Ed asked for clarification on whether section 603 of the Colorado River Basin Project Act of 1968 still provides protection for Upper Basin consumptive use, especially in the case of compact administration driven by a Compact Call by the Lower Basin, and if preemptive curtailment is ever proposed as a tool for demand management. Discussion around this question included perspectives that there is no silver bullet that would protect the Upper Basin from having to comply with the Compact. The 2007 Interim Guidelines renegotiations and demand management are separate topics, the assertion that compact curtailment is not imminent, and that this question would likely need to be addressed in the judicial system, as there are varying legal opinions. On behalf of Montezuma County, Ed said that the criteria for pre-emptive curtailment shouldn't be defined ad-hoc, in the middle of a crisis. Ed communicated a concern of the Montezuma County Commissioners that with advancement of the DCP, the Upper Basin is then under an additional obligation to maintain critical elevations at Lake Powell. Celene clarified that there is no new legal obligation to maintain critical elevations at Lake Powell in the draft DCP. There was a request that Montezuma County provide a letter summarizing their requests and positions regarding the DCP.

b. Outstanding Questions, Comments, Concerns

Celene Hawkins solicited feedback on how to relay questions from our Basin to the CWCB staff, and provide timely responses to the group. There was consensus that questions from DCP-DM subcommittee be summarized/processed by Carrie, then go to Celene to be brought before the AG's office, with responses going back to Carrie and the DCP-DM subcommittee. There was also a request that CWCB have in-person dialogues with concerned stakeholders, including Montezuma County. Mike Preston stated that questions must be answerable and relevant to the purposes of the Subcommittee, stressing that many questions do not have black and white answers at this stage in process.

3. CWCB Policy Statements

Carrie Padgett walked the group through the CWCB's policy statements adopted on November 15, which outlined the agency's authorities, their support for the DCP, guiding principles in any future exploration of a demand management

program, and their view on compact administration. The subcommittee also reviewed comments by Steve Anderson, Uncompahgre Valley Water Users Association manager, on a potential demand management program.

Questions that arose in the discussion included:

- Are we better with or without a demand management program in southwestern Colorado? It may be individual water rights holders feel differently. It was proposed that our communities and stakeholders begin developing criteria for - what would make demand management acceptable, functional, and equitable in Southwestern Colorado. The Roundtable can make recommendations in how this process should go forward to achieve an acceptable outcome.
- In the affirmative, how could we be better off in southwestern Colorado with a demand management program? Could it benefit soil health? Could it provide economic opportunities?
- How likely is federal legislation authorizing the DCP to be passed during the lame duck session? There was a narrow window for a short bill authorizing the DCP to be executed as written.
- What are the appropriate vehicles for guiding the public discussion about demand management? The IBCC could guide the public process. It was suggested that we rely on local leadership to dive deeply into our basin-specific opportunities and challenges in regards to demand management. The Water Bank Working Group also has developed a breadth of information on demand management for reference. The Conservation Districts and other entities will likely conduct their own outreach regarding this program.
- Is demand management truly an option of last resort, as stated in the Water Plan? It is thought that yes, the drought reservoir reoperations will be implemented first, then water supply augmentation options (e.g. phreatophyte removal and cloud seeding). There was additional emphasis that phreatophyte removal, forest health, cloud seeding and other water supply augmentation efforts should be studied and cost/benefit relative to demand management further discussed.
- What is known about the role of the UCRC if the pool is created, and there is a decision to release water?
- How can a voluntary program also be proportional? The West Slope Conservation Districts' position that any demand management program be implemented to avoid disproportionate impacts to any single basin or region within Colorado. This means that the water generated from Colorado under the demand management program would be derived from water rights used on both sides of the Continental Divide and, more specifically, in amounts that are roughly proportionate to those two regions' post-compact depletions from the Colorado River. There were questions about how a voluntary program could truly be proportional without having a mandatory aspect.
- Can a conservancy district "volunteer" its water users? Who gets to decide?
- What if demand management isn't enough?
- Is the state considering preemptive curtailment in anticipation of a compact violation? Celene Hawkins assured the Roundtable that the demand management program and compact administration are separate, and there is no gray area in between that would allow for preemptive curtailment outside of compact administration.
- How will conserved consumptive use end up in Lake Powell? The legal tools to shepherd water to its intended location still have not been developed.
- How could there ever be sufficient funding to support a voluntary demand management program? It's considered by some to be very unlikely that a demand management program could be funded at the level needed to prevent a compact curtailment. It was suggested that investments in phreatophyte control or other water supply augmentation options would be much more cost effective.
- Will compact administration be a consensus-based process? The State of Colorado has the authority to administer in the case of a compact violation, but SWCD and the River District have asked that a goal of consensus be sought in any such process led by the State Engineer.
- What priority should southwestern Colorado place on the demand management discussion versus the compact administration discussion?
- Will the Roundtable have a role to play in framing the process for a conversation around compact administration? The Front Range is pushing to have rulemaking for compact administration. Is it time that DWR start that conversation? Members expressed the view that Southwest Basin Roundtable has a role to ensure that any exploration of demand management, or compact administration, be conducted in a way that incorporates the views and concerns of stakeholders in southwestern Colorado. If the State Engineer is taking steps to consider how compact curtailment would be administered, the Roundtable should be concerned if these discussions are happening in a vacuum. However, the AG's position is that this is confidential information that should not be provided to other states, or speculators.

4. Colorado River District Memo

Themes of this agenda item were covered as part of the CWCB policy discussion.

5. SWCD Perspective

This item was partially covered as part of the CWCB policy discussion. SWCD passed the following motion at their December 4 meeting: in light of everything we've heard today, including about the DCP documents and the CWCB's policy, SWCD support Colorado's participation in the Upper Basin drought contingency plan. The board also directed staff and legal counsel to stay engaged in these Colorado River issues and to send a letter to the Counties, roundtable, and Club 20 expressing our appreciation for their support, explaining the position the board took today, and committing to stay engaged in the process, including through continuing SWCD's outreach and education efforts.

6. Action Items

The next DCP-DM subcommittee meeting was scheduled for Wednesday, January 9, 2019, 12:30-2:30pm at Dolores Water Conservancy District office prior to the Southwest Basin Roundtable. There was a recommendation that the DCP-DM question list be vetted with Roundtable, then be brought to the AG's office. There will also be a list of questions to answer regarding our basin-specific needs and roles in Southwestern Colorado.