Basin Roundtable Project Exploration Committee: Flaming Gorge
Final Meeting Summary
August 28, 2012; 12 pm – 5 pm

Attendees
Gary Barber Mike Gibson Bob Streeter
Janet Bell Betty Konarski Carl Trick
Dan Birch Kevin McBride Kai Turner
Jacob Bornstein Tim Murrell Chuck Wanner
Rick Brinkman Ken Neubecker Bruce Whitehead
T. Wright Dickinson Ann Oliver Jim Yahn

Facilitation Team
Caroline Beard and Heather Bergman

Public Comment
No public comments were made.

State Involvement in Water Storage Projects
After the last meeting, Jacob Bornstein and Tim Murrell conducted research on state involvement in water projects in Colorado and other states in West. Jacob and Tim presented information to Committee members regarding the role of the following states in existing and future new supply projects: Arizona, California, Colorado, Kansas, New Mexico, Texas, Utah, and Wyoming. Following the Committee members’ discussion about this presentation, they considered the pros and cons of the State of Colorado having a role in a potential Flaming Gorge project. This information was provided as research only and was not intended as support for a particular type of state role in a water project in Colorado.

- Based on Jacob and Tim’s research regarding state roles in water storage projects in the West, many states now have water storage projects that began as state and/or federal projects.
- The role of Texas in some regionally focused water projects is an interesting example of how states can guide the development or implementation of storage projects.
- New Mexico has been heavily involved in water storage projects, some of which were established to provide water to people living on reservations. The State of New Mexico has put five to ten million dollars into water storage projects over the past several years, and this money has typically come from a State general fund. New Mexico’s role has also entailed appropriating water into the future.
- Utah has taken many different approaches to engaging in water storage projects. For example, the State partnered with the federal government to build the Central Utah Project and eventually turned this project over to the Central Utah Water Conservancy District. Utah is currently planning and preparing to fund the construction of a 177-mile pipeline called the Lake Powell Pipeline. The State will have a number of different water rights in this project, and it will also own and oversee this pipeline, pay for all of the wildlife and fisheries mitigation, and charge the districts a fee that will eventually pay off its debt for this project.
There is significant variation regarding the role of western states in meeting their water supply needs, and in planning, financing, and developing new projects. New Mexico and Utah have shown comparatively more aggression than other western states as far as their level of engagement in water projects. Both of these states have spent a substantial amount of money on water storage, and they have had a surprising amount of political support in so doing. A potential reason that these states have been more involved in water storage than Colorado is that the presence of Compact call threats in Colorado complicates how State involvement would work here. The threat of a Compact call is not as eminent in other western states as it is in Colorado.

Committee members discussed the importance of considering Colorado’s role in permitting water projects as compared to other western states. Different states have different rules and regulations regarding water rights and use, and these differences can affect the potential role of the state.

Options for the State of Colorado’s Function in Water Projects

Based on Committee members’ discussion regarding potential options for a State role in water storage projects, most of the group agreed that the State is currently doing well with its overall involvement in water project planning, development, and implementation. However, Committee members discussed potential expansions or improvements that could be made to the State’s function in the areas of leadership, research, and coordinating efforts related to new water projects in Colorado. Several other ideas for how the State could improve its role in water projects emerged during the Committee’s discussion and are also described below.

Research

- Among the things that the State is currently doing right with its role in water projects is attempting to understand Colorado’s water supply issues from a big picture perspective before attempting to address micro-level concerns.
- Before the State can have a more involved role in water storage projects, some members of the Committee believe that the Colorado Water Conservation Board (CWCB) must complete the Compact Compliance Study. This study will provide information about how hydrological variation and the effects of drought will influence Compact call administration, and it would be useful for considering the extent that a new supply project could alleviate the state’s water supply concerns. It could also be used to determine whether a State role in water supply projects is necessary or appropriate. For the Compact study to be most useful, the State should make its protocol for Compact administration transparent to provide more certainty to water rights holders across the state.
- The Colorado River Water Availability Study is another positive aspect of the State’s current role in addressing water supply concerns because it provides hydrological information that can be used when considering new water projects.
- The State should conduct a study on the extent to which the Colorado River system can be further developed without significant risks regardless of the hydrologic or demand scenarios. The Colorado River Water Availability Study did not provide the information necessary to draw conclusions on these topics.
- Successfully defending against municipalities engaging in agricultural transfers to meet their water supply needs could require that the State investigate the possibility of storing water in underground aquifers on the Front Range.
Leadership

- CWCB’s current methods of engagement are mostly adequate and on the right track, but other State entities or agencies may have room for improvement in their respective approaches to showing leadership on water issues.
- While the State is largely doing what it should be doing with regard to water projects at this point in time, the State’s role may need to evolve over time.
- The State should play a role in ensuring that water management in Colorado is conducted in a way that does not degrade water quality and/or reduce instream flows to a degree that would make complying with water quality standards more difficult for wastewater dischargers.
- Because determining the amount of water that can be taken out of the Colorado River system would require socio-political negotiations in addition to new data, a State role could be to initiate collaborative discussions on the feasibility of further development in this river system.
- An option for State involvement in new supply projects is that it could develop a portfolio of potential projects, which would make the State a more active participant in water storage, both politically and financially.
- The State could play a role in setting general guidelines for water projects. Instead of rejecting projects when it does not approve of them, a more constructive approach could be for the State to make it clear that it will not support a water project unless the project includes specified characteristics and is carried out in certain ways.
- The State should have a leadership role in supporting the exploration and development of innovative solutions, which would put the State in a more assertive leadership role. State leadership in this area could help foster creativity, as it is possible that new solutions would be expensive and therefore less of a priority for other entities to investigate.

Coordinating

- Several members of the Committee expressed satisfaction with the State’s involvement in the Interbasin Compact Committee’s (IBCC) scenario planning and adaptive management process. Additionally, some Committee members feel that the State’s initiation of this Committee’s review process of a Flaming Gorge project is an appropriate means of being involved in water projects.
- In assessing water projects and other water management options, the State should discuss plans and ideas with surrounding western states. The State of Colorado has a different role in permitting projects than many states, so developing an approach to becoming more involved in water projects might be most effective if the State approaches it as a comprehensive planning process. It may be possible for projects to be implemented in other states in ways that would benefit Colorado.
- Because land use and water supply management decisions are so closely aligned, a potential role for the State could be to convene discussions regarding future land use (projected versus desired development patterns) in which stakeholders could determine how water can be managed in accordance with land use goals.
- Some members of the Committee believe that the State should play a role in helping to achieve consensus around water projects. If the State were to take on this role, this could provide certainty to the agricultural community and entities concerned with
nonconsumptive water needs that water quality and other concerns are being addressed as part of new supply projects. Additionally, the State could make sure that any new supply project is being developed in the context of the state as a whole and includes multiple benefits.

- The State should have a coordinating role in working with its federal partners to ensure that federal agencies are involved in problem solving and permitting discussions related to a potential water storage project, as this would streamline a process that tends to be slow and inefficient due to federal delays and/or inattention.

**Other Options for a State Role in Water Storage Projects**

- To protect small water providers who own conditional water rights, a State role could be to help fund and actually conduct due diligence. Without this assistance in preserving these rights, there could be a number of negative consequences in areas of the state that are reliant on conditional water rights to meet water supply needs.
- Instead of becoming involved in new supply project planning close to the end of the planning process, it may be more effective for the State to have a proactive and significant role early in the project planning process.
- It may be beneficial for the State to play a role in coordinating agricultural conservation efforts, as there may be ways that water being used for agriculture could be stretched further across the Upper and Lower Colorado River Basins.
- Residents of Colorado and the water community more specifically should take shared responsibility for the water supply future of the state, and the role of the State in this should be to respond to the political will and policy preferences of its residents.
- In order to help address water supply problems in the long term, the State should attempt to sufficiently meet the demands and perceived needs of Public Trust Doctrine proponents within the context of our current prior appropriation system.

**Further Considerations on a State Role in Water Projects**

- The State’s involvement in the Upper Basin Commission has been beneficial for moving the state forward in addressing its water supply needs.
- A downside of the State having a more engaged role in water projects is that this will not solve Colorado’s water supply concerns. The repeated appearance of Public Trust Doctrine ballot initiatives demonstrates dissatisfaction with the current approach to addressing water supply needs in Colorado.
- It may not be appropriate or in the best interest of the State to become more involved in the development of water projects, as the benefits of a new project will likely not be spread evenly across the state and some areas could be negatively impacted.
- If the State becomes more involved in water storage projects in an effort to solve statewide water supply problems, this may not be the best approach as water storage is generally not paid for by all of the residents of the state and it would only solve water supply problems in certain areas, with the chance of worsening them elsewhere. It may not make sense for the state to be involved in potentially imbalanced solutions.
- A possible drawback of the State coordinating efforts to achieve consensus on how the state should move forward with water storage is that stakeholders may have conflicting and incompatible ideas about what direction to take. It may be more productive to
establish a new approach to exploring water projects and recognize that it will likely not be possible to satisfy all interests when developing additional water storage.

- Protecting nonconsumptive uses for the environment and recreation is critical, particularly as we move into a future that is likely to have less water. It is unclear at this point to what degree this is a function of the State or a more diffuse responsibility distributed among all residents of Colorado.
- There are several options for how the State could provide funding assistance for water projects, including the possibility of the Colorado Water and Power Development Authority issuing bonds for small water projects.
- As a means of addressing the state’s water supply needs, it may be possible for Colorado to use existing reservoirs and infrastructure to store all of the remaining water in its Compact entitlement. Regardless of whether new storage projects would be needed to ensure storage capacity for full Compact entitlement, the State could go ahead and make steps towards ensuring it gets its full entitlement of water and then determine the best way for new water to be allocated based on geography and other considerations.
- Land use and its implications for water supply and allocation is an ongoing and critical question that has not been really been addressed. The Western Governors Association and the Western States Water Council are beginning discussions on this issue.
- Perhaps the State could initiate a conversation with the Upper Basin Commission about an Upper Basin water bank.

**Potential Challenges of a Flaming Gorge Project**

An additional focus of the Committee members’ discussion was identification of challenges associated with a potential Flaming Gorge project. All of the challenges that Committee members discussed would require further research to fully address.

- It remains unclear whether there is any water remaining available to develop from the Colorado River system and, if so, how much there is and how much of that can be safely developed. Without an agreement on what amount could or should be developed, it is difficult to further explore any particular project. Diverting any amount of water could foreclose options for future West Slope and Front Range water supply projects.
- There has not been sufficient discussion about the acceptable level of risk and the triggers for risk management that will be incorporated into planning for a project of this magnitude. It is not clear whether and to what degree a Flaming Gorge project would increase the risk of a Compact call.
- It is unclear how the State Engineer would administer a Flaming Gorge project, particularly related to how imported water fits into the Colorado water rights administration system. It is unclear if the State Engineer has the authority to administer this project, and it would be difficult for many in the state to support a project like this unless it was clear that the State Engineer currently has the authority or new actions were taken to give him clear authority.
- It seems that a Flaming Gorge project would exist outside of the existing system of oversights and checks and balances in Colorado, including the conservancy district statute and water court. Without these mechanisms to ensure that all stakeholders have a voice in the decision of whether and how to permit and build a project, many stakeholders will resist this project.
• It is not clear who would decide what the use of the ‘new’ water from a project would be or how the state could ensure that the costs and benefits are distributed appropriately and fairly.
• It remains unclear what the seniority of a Flaming Gorge water right would be and how it would impact more junior water rights and future municipal and agricultural projects on the West Slope. Some mechanism would be needed to create some degree of certainty for holders of existing rights and those planning future projects.
• It is not clear whether and how a Flaming Gorge project would affect flows, fish and wildlife, and fishing and other recreational opportunities below the Flaming Gorge dam. Compliance with the National Environmental Policy Act (NEPA) may be particularly challenging with a project of this size. Some may say that its impacts will be so substantial that they cannot be mitigated. Getting a federal permit for this project in a time- and cost-efficient manner may therefore be extremely difficult.
• A critical component of a future water supply project will be its ability to create value and preserve options for interests and communities around the state. Doing this may be challenging, but without shared protections and benefits around the state, gaining support for a new supply project will be extremely difficult.

Public Comment
No public comments were made.

Next Steps
• Ken Spann and Gary Barber will work together to create a rough version of a process framework for achieving statewide support for a water project like a Flaming Gorge project. They will present their draft process framework for achieving statewide support for water projects during the next meeting, and the Committee members will then spend time discussing and refining this draft framework.
• Heather will create a list of the challenges, concerns, and benefits of a Flaming Gorge project based on the Committee members’ discussions during the meetings held from May to August.
• Heather will wait to begin drafting preliminary sections of the Committee’s report until after the discussion on the process framework at the next meeting. All Committee members should send Heather their revisions of the draft outline of the Committee’s report to the CWCB by September 21.
• The next meeting will include a discussion of how to proceed with drafting the report to the CWCB.
• The next meeting will be held on September 25th in Grand Junction from 12 pm – 5 pm in the Ute Water Conservancy District Building, located at 2190 H ¼ Rd., Grand Junction, CO 81505.