

**RIO GRANDE WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS QUARTERLY MEETING
July 21, 2020 at 10:00 A.M.
By Zoom Teleconference**

Present: Greg Higel, President; Armando Valdez, Vice-President; Dwight Martin, Secretary/
Treasurer; Peggy Godfrey, Director; Steve Keller, Director; Zeke Ward, Director; and Mike Kruse,
Director.

Excused Absent: Cory Off, Director; and Bill McClure, Director.

Staff and Consultants: David Robbins, Hill & Robbins. P.C.; Cleave Simpson, General Manager;
Clinton Phillips, District Engineer; Amber Pacheco, Program Manager; Marisa Fricke, Program
Manager; Chris Ivers, Program Manager; Rose Vanderpool, Program Assistant; Linda Ramirez,
Program Assistant; Chester Tokarsky, Well Technician; Cheryl Anderson, Office Manager; Michael
Carson, Database Administrator; and April Mondragon, Administrative Assistant.

Guests: Nathan Coombs, Judy Lopez, Carlos Lopez, Craig Cotton, Sarah Parmar, Erin Minks, Heather
Dutton, Becky Brooks, Ryan Unterreiner, Daniel Dingmann, Rio Del la Vista, and Allen Law.

CALL TO ORDER

President Greg Higel called the meeting to order at 10:05 a.m. There was a quorum present for the
meeting.

INTRODUCTION OF STAFF AND GUESTS

President Greg Higel welcomed all those present and asked for introductions.

APPROVE AGENDA

President Higel asked for amendments or a motion to approve the agenda. A motion was made by
Armando Valdez to approve the agenda as presented. The motion was seconded by Peggy Godfrey
and unanimously approved.

APPROVE THE CONSENT AGENDA ITEMS

President Higel asked for a motion to approve the consent agenda items:

- April 13, 2020-Special Meeting Minutes
- April 21, 2020-Quarterly Meeting Minutes
- May 28, 2020-Special Meeting Minutes
- May 28, 2020-Special Board of Directors Hearing Meeting Minutes (SD #4 POWM)
- May 28, 2020-Special Board of Directors Hearing Meeting Minutes (SD #5 POWM)

Peggy Godfrey requested the Closed Basin Project Water allocation amounts which are listed in the
approved Resolutions be listed in the April 13, 2020 minutes. Zeke Ward made a suggested change to
the May 28, 2020 Special Meeting Minutes. Cleave Simpson reported the minutes correctly reflect the
conversation, it was agreed no change is needed.

A motion was made by Peggy Godfrey to approve the consent agenda. The motion was seconded by
Armando Valdez and unanimously approved.

PUBLIC COMMENT

President Higel asked for public comment. Carlos Lopez introduced himself as a member of the
Democratic Party running for Colorado State Senate District No. 35. Mr. Lopez provided the Board
with some background information and his plans if elected Senator. President Higel thanked Mr.
Lopez for attending the Board meeting.

FINANCIAL REPORT

President Higel asked for the Financial report. Cleave Simpson presented the profit and loss statement
and highlighted the Bureau of Reclamation reserved revenue. Mr. Simpson explained how the
expenditures are broken out and highlighted an expenditure associated with the construction of a
pedestrian bridge, over the dry moat around part of the Rio Grande Water Conservation District
building grounds, located near the emergency exit of the conference room. Mr. Simpson provided an
update on the legal fees and reported that an additional Subdistrict has now begun to fund its own

operations. Mr. Simpson highlighted some items in the check register including the reoccurring expenses and a payment to the City of Creede for a purchase of water. The balance sheet was presented including the Subdistricts' repayment schedules. Mr. Simpson highlighted Subdistrict No. 1's balance sheet and provided an update on the hearing which had taken place last week.

A motion was made by Armando Valdez to approve the financial report. The motion was seconded by Dwight Martin and unanimously approved.

MANAGER'S REPORT

President Higel asked for the Manager's report. Mr. Simpson reported on the following:

- *Consider Adoption of District Records Retention Policy.*

Cleave Simpson provided the Board with an update on the office operations in connection with COVID-19 guidelines as well as an update on his recent travels. Mr. Simpson reported the District has been working to formalize a records retention policy and explained what is written in the policy. Peggy Godfrey requested some changes to the records retention policy; each request was addressed by Director Godfrey. Mr. Simpson stated he would work with Matt Montgomery at Hill and Robbins, P.C. to incorporate the requested changes.

A motion was made by Peggy Godfrey to approve the Records Retention Policy of the Rio Grande Water Conservation District with amendments. The motion was seconded by Armando Valdez and unanimously approved.

- *Consider Partnership Funding of Appraisal for Potential Property Acquisition*

Cleave Simpson reported on a unique opportunity for the Rio Grande Water Conservation District to be a part of a collaboration with other interested entities on a potential property acquisition which he expressed could have a significant impact on the water balance in this basin. Mr. Simpson suggested the Board agree to move forward with an appraisal of the property and that he would request that the other stake holders proceed as well. Sarah Palmer, from Colorado Open Lands, was available via Zoom and provided information on conservation easements which focus on healthy aquifers and the value of an easement. Mr. Simpson reported the Conejos Water Conservation District as well as the San Luis Valley Water Conservation District boards are interested in contributing. David Robbins suggested the conversation be held in executive session. Mr. Simpson expressed his interest to continue the discussion in open session. Director Kruse questioned the District's role, in a general sense, in funding appraisals on property of people interested in placing conservation easements on the property. Mr. Simpson stated that each situation would be handled on a case by case basis. Ms. Palmer provided further insight on how conservation easements operate and provided her background of involvement with Colorado Open Lands as well as their interest in focusing on water issues. Ms. Palmer reported on crafting conservation easements to include unique aspects focusing less on land conservation and more on protecting the water use. Director Kruse stated he recognizes the value and continued to express his concerns; he requested more information on the specific proposal. Director Valdez asked for the proportional split among the collaborating entities. Heather Dutton, Manager of the San Luis Valley Water Conservancy District, reported on her board's perspective and recognition of the impact the potential conservation easement could have for the entire San Luis Valley. Ms. Dutton described the direction she was given by her Board to reach out to CWCB for funding. She also reported her Board would be comfortable with a cost share split with two (2) other Districts. Nathan Coombs reported on behalf of the Conejos County Conservation District and the opportunity to remain in collaboration with what is going on in the basin. Mr. Coombs reported on the value of what could be accomplished with the only risk being the cost of the appraisal. Ms. Dutton reiterated the significant amount of water that would be retired is worth the risk. Director Kruse commented on the Subdistricts involvement, in response to which Mr. Simpson reported that the Subdistricts play a key role and expressed the need to figure out the value of the potential purchase. Director Ward reported on his interest in getting the maximum benefit to the valley and the benefit of not having to do an appraisal twice. Director Martin reported being in favor of proceeding with an appraisal to identify a valuation they can understand. Director Keller stated they are not sure how long the window of opportunity would be available. Director Valdez explained his view of the goal of the Directors of the Rio Grande Water Conservation District and reported on the need to set the tone of leadership. President Higel agreed to the need to take the lead. Craig Cotton described the critical situation the valley is currently in and stated this could be the golden opportunity to benefit the entire

San Luis Valley. Mr. Cotton stated he would be in support of the District's decision to move forward with the opportunity.

A motion was made by Dwight Martin to move forward with an appraisal. The motion was seconded by Armando Valdez.

Discussion was held on the amount the District should commit to the appraisal.

The motion was amended to give Cleave Simpson authorization to seek an appraisal with the Rio Grande Water Conservation District contributing a maximum amount of \$15,000 and to seek others to contribute and to have a discussion with the Board if more funds are needed. The motion was voted on and passed unanimously.

- *Review Status of Water Export Proposal*

Cleave Simpson presented a testimonial video from Renewable Water Resources and stated there are three (3) other testimonials featuring people he does not recognize. Mr. Simpson reported the District is actively addressing the issue and is crafting a separate website that is distinct from the normal Rio Grande Water Conservation District website, to continue to campaign and market the message of opposition to the export proposal. Mr. Simpson reported he would be speaking at a symposium next week on how the District will move forward and stated he has yet to meet anyone that has sold water to Renewable Water Resources.

- *Consider Participating in Amicus Brief, State of Colorado and WOTUS*

Cleave Simpson reported the Colorado Water Congress has hired an attorney to file an amicus brief in the litigation brought by Colorado seeking to enjoin the EPA's 2020 WOTUS rule. The CWC is seeking financial support from the District in the amount of \$1,000. David Robbins provided the history and background information on the position of the parties in the litigation. Mr. Robbins stated that participation is voluntary but a number of agencies are making contributions. Director Kruse commented on the District's role and need to protect the water rights of the citizens of the District.

A motion was made by Mike Kruse to contribute \$2,000 to Colorado Water Congress for the amicus brief. The motion was seconded by Steve Keller and unanimously approved.

- *Saguache County 1041 Permit Authority Review*

Cleave Simpson provided the background of the effort to update the 1041 land use permit regulations in the counties in the Valley and stated that each county would draft their own set. Mr. Simpson suggested working with the attorney who has the most expertise in the area named Jerry Dahl. President Higel thanked Mr. Simpson for his report.

PROGRAM MANAGER'S REPORTS

President Higel asked for the Program Manager's reports.

- ***Subdistrict No. 1- Marisa Fricke:*** Marisa reported staff is processing farm unit updates and working on the budgets. Ms. Fricke provided an update on the new emergency programs that were launched in May and stated they had a good participation. Ms. Fricke also reported participating in a Subdistrict No. 1 hearing and updated the Board on the status of the aquifers. She stated they continue to track the changes in the aquifer and highlighted the similarities between the current year and 2018. Ms. Fricke also presented a graph that showed the change in the unconfined aquifer storage. President Higel thanked Ms. Fricke for her report.
- ***Subdistrict No.'s 2, 3 and 6-Amber Pacheco:*** Amber Pacheco reported Subdistrict No. 2 and No. 3 are currently in the same stage of operation and have had their Annual Replacement Plans approved by the State Engineer and have begun making replacements. Ms. Pacheco stated she continues to work with the Board of Managers to find additional replacement sources as they are working toward the 2021 Annual Replacement Plans. She updated the Board on the preliminary Annual Reports the Subdistricts had due and provided an analysis of the progress. Ms. Pacheco provided an update on Subdistrict No. 3 operations and highlighted the replacements that had been made. She provided an update on the budget and water projections and reported on the offer of an option contract to purchase permanent water and land in the Conejos area. Ms. Pacheco updated the Board on a permanent recharge structure that was constructed and highlighted working with the State and Federal Agencies to get contracts finalized. President Higel thanked Ms. Pacheco for her report.

- **Subdistrict No. 's 4 and 5-Chris Ivers:** Chris Ivers reported both Subdistricts have been formed and had their Plans of Water Management approved. Mr. Ivers provided an update on the budget process, Annual Replacement Plans and Well Injury Payments for the Subdistricts. He reported that a new appointment to the Board of Managers had entered into an agreement with Renewable Water Resources. David Robbins suggested the Board member should recuse himself to avoid conflict when appropriate. Mr. Ivers provided the status of a test well Subdistrict No. 5 is in the progress of having drilled and the sustainability status of both Subdistrict No. 4 and No. 5. Director Kruse asked for the amount of depletions to the Rio Grande River which Mr. Ivers provided. President Higel thanked Mr. Ivers for his report.

DISTRICT ENGINEER’S REPORT

President Higel asked for the District engineer’s report. Clinton Phillips presented the unconfined aquifer storage study map and the change in the unconfined storage for July 2020. Mr. Phillips highlighted the change between July 2019 and July 2020 and provided the current five (5) year average.

President Higel thanked Mr. Phillips for his report.

DISTRICT LEGAL COUNCIL’S REPORT

President Higel asked for the District’s attorney report. David Robbins provided an update on the Texas vs. New Mexico Supreme Court case and stated he would continue to monitor it. Mr. Robbins reported on a vehicle accident involving a District employee and he provided an update on the law suit filed against Subdistrict No. 1. He also provided an update on the Meager vs. The State of Colorado case as well and described working with Cleave and Lisa Sigler on a response to some of the public claims of Renewable Water Resources.

President Higel thanked Mr. Robbins for his report.

DIVISION (3) ENGINEER’S REPORT

President Higel asked for the Division (3) Engineer’s Report. Craig Cotton presented a graph showing the upper Rio Grande Basin high/low summary of snow pack as well as the percent averages of the basin forecast. Mr. Cotton also presented a 2018 to this year comparison graph and the estimated annual flow at Del Norte and the obligation to downstream states as well as the current curtailment percentage. Mr. Cotton highlighted a graph of the Conejos system with similar patterns to 2018. He showed the estimated annual flow index, obligation to downstream states and the current curtailment on the Conejos River system. Mr. Cotton reported the precipitation forecasts are below average for most of the State of Colorado and will remain below as we move through the year. He stated the winter time calls for average precipitation and presented the temperature forecast. Mr. Cotton updated the Board on the Elephant Butte storage and pool elevation and highlighted the well abandonment lists. He also provided the number of water rights on the abandonment list. Mr. Cotton provided an update on his office being closed to the public due to COVID-19 and the outcome of the Meager case. President Higel thanked Mr. Cotton for his report.

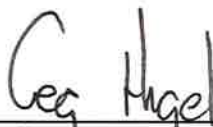
OTHER REPORTS OR COMMENTS

President Higel asked for other reports or comments. Peggy Godfrey asked a question about a response letter to the North valley.

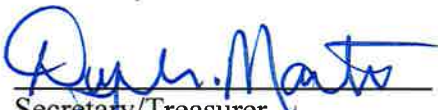
ADJOURN

Meeting was adjourned at 1:32 p.m.

The next scheduled quarterly meeting will be held on October 21, 2020.



President



Secretary/Treasurer

General Manager Report for BOD meeting 7-21-20

Cleave Simpson (chronological order since last quarterly meeting in April of 2020)

The District office has remained closed and staff continue to work remotely since the last quarterly meeting. While this is not the ideal situation, I do believe that staff have continued to serve constituents of the subdistricts and the district very well.

Over the course of the last 3 months I have attended a number of subdistrict video-conference meetings.

Worked with Pete Ampe, Tim Davis, Colorado Open Lands, Rio Grande Headwaters Land Trust and the State of Colorado to review and consider application for new Regional Conservation Partnership Program (RCPP) funding opportunity, Alternative Funding Arrangements (AFA). Ultimately, we decided not to pursue this alternative funding.

Met several times with the Basin Roundtable Implementation Plan subcommittees for water administration and agriculture.

Conference calls with Representative Tipton and Senator Bennett around COVID impacts to rural Colorado.

Participate on Demand Management Committee video conferences for Accounting and Administration organized by the Colorado Water Conservation Board.

Attend Rio Grande Basin Roundtable meetings in May, June and July.

Present to Alamosa County Commissioners in May the MOU with the county for Payment in Lieu of Taxes. Then again in July, just an update on District activities.

Conference calls with representatives of the Mosca Hooper Soil Conservation District.

Met several times with stakeholders around the process to consider updating the 1041 Permit Authority regulations of Saguache County.

Working with the Salazar Center on a virtual edition of the 2020 State of the Basin symposium.

Several engagements with Heather Dutton, Nathan Coombs and Emma Reesor on property appraisal opportunities, water export discussions and Inter Basin Compact Committee.

The Board had a special meeting in May along with public hearings to consider adoption of the Plans of Water Management for SD#4 and SD#5.

Participate in Colorado Water Congress member update calls.

Meet with Dr. Kathy James, just general discussion about water issues/opportunities in the San Luis Valley.

Video conference with US Fish and Wildlife around potential contracting opportunities with subdistricts.

Video conference with Inter Basin Compact Committee.

Video conference with Colorado Parks and Wildlife around potential contracting opportunities as well as reservoir storage opportunities.

Attend hearing in Alamosa District Court, subdistrict #1 and North East Water Users Association case around how the subdistrict uses variable fee revenues.

Meet with Colorado Cattlemen Agriculture Land Trust representatives about subdistrict operations in Saguache county.

Continue to work with Bureau of Reclamation staff on our cooperative agreement.

Working with staff, consultant and stakeholders on communication plan associated with water export proposal.

Dealing with incident that occurred July 7th. District employee working with the Bureau of Reclamation was involved in an accident while operating a dump truck for the Bureau. Tractor trailer ran a stop sign on Highway 17 and hit the dump truck, low speed incident. Dealing with insurance companies and worker compensation representatives.

July 15, 2020

Subdistrict No. 1 Program Managers Report

Current Business

- ❖ Mailed out all 2020 Farm Unit Updates on Friday May 22, staff is currently processing all farm units received.
- ❖ Conducted a special meeting to deploy new emergency programs after closely tracking aquifer decline.
- ❖ Enrolled participants into new Emergency Drought Program and Alfalfa Deficit Program
- ❖ Completed CREP and Fallow field checks
- ❖ Attended Monday July 13th court hearing regarding 2020 budget with Judge Gonzales.
- ❖ Working on 2020 supplemental budget to fund additional programs
- ❖ Starting preliminary draft of 2021 budget, work session will be on July 24 at 2pm.

Highest number of acres enrolled in a conservation program since Sub 1 inception.

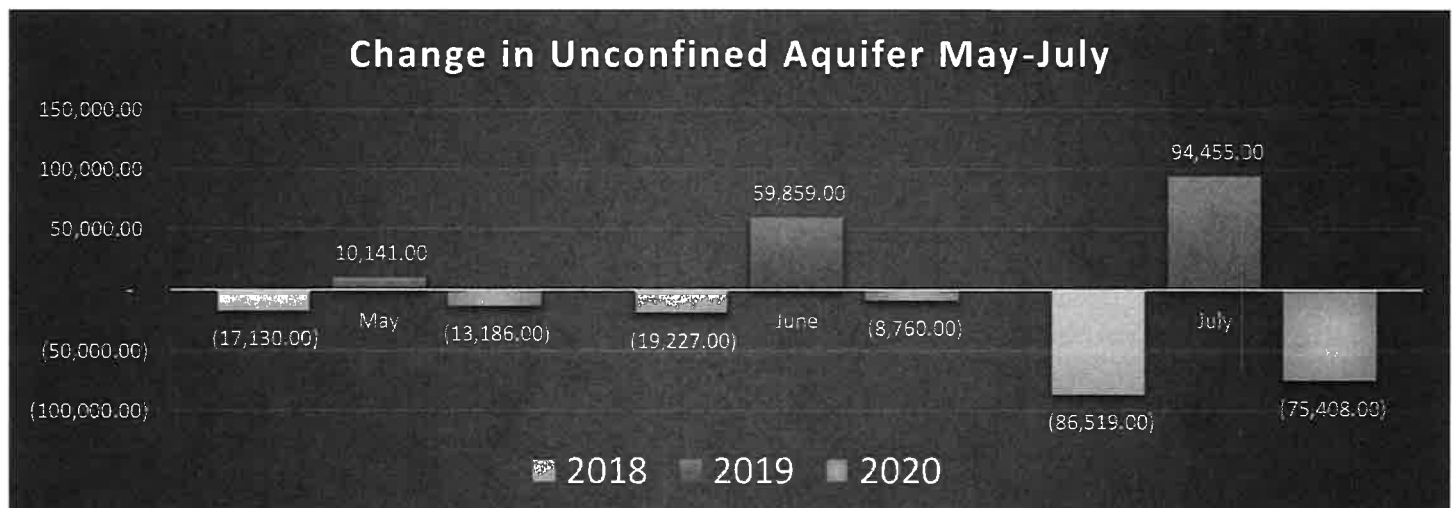
Over 13,000 acres enrolled in 2020

Conservation Programs

CREP = 725 Fallow = 3,190

Half Usage = 5,800 Emergency Abandonment = 2,300

Alfalfa Deficit = 1,100



January 2020 Program Manager Report-Amber Pacheco

Subdistrict 2 and 3—Both Subdistrict 2 and 3 Annual Replacement Plans were submitted to the State Engineer on April 15th and were approved on May 1, 2020. These Subdistricts have been making replacements since May 1 under these approved ARPs. I continue to work with the Boards to try and find sources of replacement water for future ARPs. Preliminary water reports for the 2019 ARP were filed with the State on March 15 and the final Annual Reports were filed on June 30th. The requirement for two reports is part of the Groundwater Rules so this is the first time this has been required for Subdistricts. The annual budget process is beginning now. I am working on gathering information regarding this year's groundwater use to determine if conditions have changed considerably from the Subdistrict ARP projections and if Subdistrict 2 and 3 should consider filing an amended ARP to revise depletion schedules for the remainder of their 2020 ARPs.

Subdistrict No. 3 is working with a landowner in the Conejos area to purchase water rights for use as a permanent source of replacement water for the Subdistrict on the Conejos River. The owners are reviewing an option contract that was approved by the Board of Managers on June 4th. We have not yet heard whether or not the owners will accept that option contract. If accepted, the Subdistrict will have until the 1st of next year to do its due diligence before a final purchase would be done. Due diligence would include financing, effect to subdistrict fees, historical consumptive use of water rights, etc.

Back in March, I toured a property near Del Norte with several members of the Board of Managers for Subdistrict No. 2 to look at a property the Subdistrict may consider trying to purchase in the future for a permanent water supply. I have also been in contact with attorney Peter Nichols to set up a potential ATM type program on a senior ditch on the Rio Grande to provide a source of replacement water to Subdistricts that have depletions on the Rio Grande.

Subdistrict 6 - Subdistrict No. 6 must have an approved ARP no later than the end of September 2020 with replacements beginning October 1st, 2020. The Board of Managers are seeking permanent water, temporary water and forbearance on all stream systems (Alamosa, Conejos and Rio Grande). Subdistrict 6 and Subdistrict 3 Boards of Managers worked together to secure a number of forbearance agreements on the Alamosa and the Conejos. An offer was made to purchase augmentation credits from Terrace Reservoir Company from their share in the Jasper Augmentation Plan. I received notice that the Terrace Irrigation Company accepted the offer and will lease the amount of water stored in 2019 under that augmentation plan (approx. 23.85 ac_ft.). I will work with Pete and DWR to get approval for the Subdistrict to use this water as a replacement source in the ARP. The Board of Managers has been working on a plan to set up an ATM Program on the Alamosa River. As a first step, they filed an application for a grant from the CWCB to fund the initial legal and engineering work to determine how to properly set up a program for the Subdistricts and to determine the historical HCU for 4 ditches on the Alamosa. The CWCB Board met on July 15th and approved this grant request for \$51,700. The goal is to set up a ditch-wide program that allows water right owners on four ditches to fallow their land and lease their HCU to the Subdistrict for 3 out of ten years under a rotational fallow program as an alternative to buy and dry. CWCB hopes this project can be a model for future ATM programs in this water division. Still working on finalizing a few contracts for inclusion in the first ARP.

Other Work-Still working with federal/state/local governments to assist them in their options for complying with the Groundwater Rules.

Assisting staff with annual financial audit and budgets.

Upcoming Subdistrict Meetings

- Subdistrict 2 Quarterly Meeting - Tuesday, August 4th beginning at 9:00 a.m.
- Subdistrict 6 Quarterly Meeting-Tuesday, August 4th beginning at 1:30 p.m.
- Subdistrict 3 Quarterly Meeting-September 3rd beginning at 8:00 a.m.

Both Subdistrict No. 4 and No. 5

The Plans of Water Management were approved and adopted without objection. The Plans are now in effect.

We are contacting owners of wells that either were not or could not be petitioned into a subdistrict and informing them they now have the opportunity to contract with a subdistrict.

Both Subdistricts will start the budgeting process for next year's expenses. Once we have a budget, we will be able to set the fees.

Subdistrict No. 4

We are actively pursuing Well Injury Payment agreements and have reached out to surface water owners to start the discussions. The BOM would like WIPs to be the primary form of remedying injurious stream depletions.

Board member Jan Waye has disclosed that he has entered into a contract with Renewable Water Resources. His partnership is leasing pasture from RWR.

Subdistrict No. 5

We hired an appraiser to conduct appraisals on water rights and a piece of property. Offers were made on both the water rights and the land, but no agreement has been reached. Once we have the appraisals, we will be in a better position to negotiate with the property owners. The plan is to acquire the land to construct a small reservoir that can be filled with the purchased water rights.

We also hired a well driller to drill a test well down to 500 feet. We are hoping to determine the geology in the area and specifically if there is a confining layer.

We have also reached out to surface water owners hoping that we will be able to get some WIP agreements.

**Bureau of Reclamation Report to the RGWCD
July 21, 2020**

OPERATIONS

Water salvage operations continued as recommended by the Project Operating Committee to meet the Rio Grande Compact, mitigation, and Subdistrict depletion obligations.

For the YTD (1/1/2020 to 6/30/2020)

A total of 598 AF was delivered to the Alamosa National Wildlife Refuge through CHO1 & 2.

A total of 439 AF was delivered to the Blanca Wildlife Habitat Area through CHO3 & 4.

A total of 40 AF was delivered to Head Lake West, through the Head Lake Pipeline.

Delivery to the Rio Grande has been 4,793 AF.

San Luis Lake started the year at an Elevation of 7514.6 ft. and has since declined by evaporation to 7513.2.

San Luis Lake (6/30/2020)

San Luis Lake	San Luis Lake Elevation	7513.2 ft. MSL
	Storage	2,358 acre-feet
	TDS	2594 ppm TDS

Project Deliveries: (1/1/2020 to 6/30/2020)

Deliveries to:	Rio Grande—total	4,793 acre feet
	Alamosa National Wildlife Refuge—total	598* acre feet
	Blanca Wildlife Habitat Area—total	439* acre feet
	San Luis Lake—total	0.0 acre feet
	Head Lake (West)	40.0 acre feet
	Total Deliveries as of June 30, 2020	<u>5,870 acre-feet</u>

**Includes 250 AF exchange delivered to BLM, but credited to USFWS mitigation total.*

MAINTENANCE BRANCH:

Drilling and Re-habbing plugged and failed wells within the confines of the Closed Basin Project. Despite delays caused by COVID 19 absences and equipment down time, we have completed 2 redrills and 4 rehabs. We are hoping to complete 3 more redrills and 10 more rehabs this calendar year. SW054 and SW064 redrill efforts were successful and are complete.

The Drill Crew is now on SW080 and are approximately 25% complete. The re-hab crew has completed SW049, SW062, SW057, SW095A, SW101A, SW079A and are now in the process of completing SW118B. The lateral line at SW100 has been repaired and is now back in service. The Rural Electric Coop primary power service cabinet and main meter have been replaced with new updated equipment. All lateral power was delayed for 2 full working days, July 8th and 9th. Power was restored the afternoon of the 9th and canal structures and equipment were checked for full and proper operation.

The hydraulic tractor mower deck is in the process of essential repairs. New hydraulic motor and blade disc have been ordered and parts are 2 weeks out.

Dump Truck I472488 was damaged in a recent accident and is in the shop for repairs. All Closed Basin Project Employees are present and accounted for and have been performing their essential duties diligently despite the COVID Pandemic anomalies.

MANAGER'S WORK:

Management has been working with RGWCD District Management to keep workflows moving in a positive direction.

WATER LABORATORY

A total of 709 samples were collected from the Closed Basin Project during the period of January 1, 2020, through June 30, 2020.

Total Dissolved Solids at the Outlet was an average of 296 ppm for the period.

The Laboratory participated in the Spring USGS Evaluation Program for Standard Reference Water Samples. The Lab continues to perform commendably on these audits.

Lab personnel assisted Operations, Maintenance and Admin groups on various projects.

Rio Grande Watershed Conservation & Education Initiative

RGWCD District Report – July 21, 2020

Programs

All summer programs have been cancelled due to COVID-19 risk, including youth conservation camp. This was originally postponed until August, but with the recent rise in numbers and risk to our staff and presenters as well as children, the board of directors and RGWCEI staff decided to cancel until next year.

The conservation poster contest is still being sponsored by the local conservation districts, Colorado Association of Conservation Districts, and the National Association of Conservation Districts. With the uncertainty of back to school, posters will still be eligible for contest, but staff may not give in person presentations this year. Staff have created an interactive powerpoint presentation on the topic “Pollinators: Where would we BEE without them?” that can be accessed on our website. In addition to posters, RGWCEI will also accept videos on this theme from local schools. These will not be eligible to compete at the state or national level but will allow more creativity around this topic and are eligible for local district prizes.

Fall programs may be in person depending on the school involved. These would potentially be restricted to 10 or less people and primarily focus on the areas directly around the schools to prevent transportation issues. RGWCEI staff will work with school administrators to determine if in person field activities are approved. In class presentations will depend on the local school’s safety precautions to ensure the safety of RGWCEI staff.

Digital learning modules and virtual field trips are in the process of being created. These learning modules will focus on a specific topic for the fall semester, “Creature Jobs.” All learning modules will provide hands-on activities, virtual field trip, and interactive presentation for grades K-12. These can be accessed through our newly re-designed website. RGWCEI also has a YouTube channel that features the virtual field trip and activity videos as an additional resource.

RGWCEI staff are continuing to work in collaboration with community partners to provide outdoor learning activities as able. We currently are in grants with Great Outdoors Colorado’s Generation Wild initiative with City of Alamosa Parks & Rec, SLV GO!, Rio Grande Farm Park, Adams State Adventure Programs, SLV Rattlers, Alpine Achievers Initiative, City of Creede, and SLV Boys & Girls Club. We also were recently awarded an Environmental Protection Agency Environmental Education grant for Region 8. This grant partners with Rio Grande Headwaters Land Trust, Rio Grande Headwaters Restoration Project, and the Rio Grande Farm Park to provide planning and implementation of expanded environmental programs in the SLV.

Staff News

In August, we are excited to bring on our first full-time program coordinator, Hannah Thill. Hannah has worked with RGWCEI for the past two years as our Mennonite Volunteer. Hannah has a biology degree from Goshen College and previously worked in their environmental education center. She has been integral to the success of RGWCEI programs and we are looking forward to having her coordinate our K-12 programs.

Thanks to a grant through the Colorado Water Conservation Board and the Rio Grande Basin Roundtable, Bethany Howell will move into a role with broader community water education. She will continue to be the Executive Director and provide oversight for RGWCEI, but will begin working more closely on community education and outreach for water-related issues throughout the SLV. This role will also begin in August.

Hi Cleave – Here’s the WOTUS situation in a nut shell. Since 1972 there has been an ongoing disagreement over the limit of federal jurisdiction to regulate dredge and fill activities in ‘water of the US’. Prior to 1972 the federal government only regulated actual navigable waters that were used in interstate commerce and the Corps of Engineers (which are responsible for maintaining navigation on our inland waters and territorial seas) dealt with discharges. All other regulation was done, or not done, by states.

- In 1972 Congress amended the Water Pollution Control Act (now the Clean Water Act) and in doing so enacted both a point source discharge permit requirement for point source discharges in to those navigable waters and an expanded dredge and fill permit requirement. But, the real thing that Congress did was to change the applicable definition of what could be regulated from ‘truly navigable waters’ to all waters that flowed in to truly navigable waters, which were then called “waters of the US”. What the limits of WOTUS are has been debated ever since, with one side saying that only those waters that are truly navigable or surface waters that are directly connected to them on the surface are WOTUS and the other side of the debate saying that WOTUS covers all waters in the country, whether connected to actual navigable waters or not, including all wetlands. There have been at least four efforts to define WOTUS by the EPA and COE, each of which has ended up in litigation and none of which have become final law. The Obama era rule is still subject to litigation, challenged by those who prefer a more limited definition of WOTUS. The 2020 Trump effort at a rule is now in place and effective (except in Colorado) and takes a more conservative view of what waters are jurisdictional and considered WOTUS. That doesn’t mean the rule isn’t still being challenged it just means that the court refused to entine a preliminary injunction against the rule, except in Colorado where Judge Martinez granted a preliminary injunction against the rule.

- The State of Colorado has its own definition of ‘waters of the state’ that is much more extensive than either definition of WOTUS. It is basically all waters in the state, surface and underground. So Colorado, if it so chose, could more closely regulate all waters of the state than EPA/COE could. However, the State has chosen to accept delegated federal jurisdiction for point source discharges and has not sought nor accepted delegation of 404 jurisdiction over dredge and fill activities from EPA/COE.

- When the State recently sued EPA and COE seeking to enjoin the Trump WOTUS rule they alleged a broad claim of state power over dredge and fill activities and asserted that the Trump definition did not provide protection for waters of the state to the extent previous rules had. They asserted that there was a “gap” between what had formally been protected (Obama era rule) and what would be protected under the new rule, leaving some waters of the state unprotected against dredge and fill activities.

- The state has never sought delegation of the 404 permit program as to WOTUS nor has it sought authority for its own dredge and fill permit program from the legislature applicable to all waters of the state.

- Although urged to do so by some in the water community the CWC did not feel that it had a clear enough position to intervene in the lawsuit and has not.

- Judge Martinez, in granting the State’s motion for preliminary injunction, took an unusually expansive view of what the state’s power was and opined that dredge and fill activities in any waters of the state were prohibited without a permit. Basically, any water or wetland anywhere in the State should not be filled without a state permit. In my view, this is a potentially serious problem for agriculture where the producers deal with waters on their farms/ranches that are clearly not WOTUS

under either the Obama or Trump rule but could be considered waters of the State and subject to future permit regulation by the State.

- The CWC passed a resolution establishing a special project, to be funded only by voluntary contributions from members, to employ Steve Leonhardt to prepare an amicus brief in the Court of Appeals addressing only the extent and authority of the State, today, to engage in that regulation absent delegation from the EPA/COE or a specific grant of authority from the legislature.

- The impact to our constituency is if the Martinez decision becomes binding it will greatly expand the types of water courses, ephemeral streams, ponds/potholes, various classes of wetlands that might be subject to dredge and fill regulation. Beyond what occurs today.

- The CWC resolution is as follows:

“The Board of Directors of the Colorado Water Congress (CWC) shall establish a special project, to be funded by voluntary contributions of the CWC members, for purposes of filing as amicus curiae in either or both the US District Court of Colorado and/or the US Court of Appeals for the Tenth Circuit in State of Colorado v. EPA (Civil Action No. 20-cv-01461, appealed as Case No. 20-1238) The amicus filing shall specifically challenge the position of the state of Colorado that it has the authority under C.R.S. 25-8-501 to regulate dredge and fill activities in waters of the state without having been delegated such authority under section 404 of the federal Clean Water Act and without any state legislation that authorizes the regulation of dredge and fill activities in so-called “gap” waters that have been determined to be state waters but not waters of the United States (WOTUS), and the District Court’s conclusion that C.R.S. 25-8-501 prohibits such activities. The CWC shall retain attorney Steve Leonhardt’s firm, Burns Figa & Will, to assist it in any such filing. The CWC consents to Burns Figa & Will’s joint representation of CWC, Colorado Farm Bureau and potentially other parties with similarly aligned and consistent interests in filing a joint or separate amici briefs.

- CWC instructed that Steve file an amicus brief only for the purpose set forth in the motion and only on behalf of the CWC, not with other parties. The CWC participation in the litigation as an amicus is directed at the issue(s) raised in the Judge Martinez ruling and are directed at what appears to be a significant expansion of State authority in the context of what can be regulated for dredge and fill purposes.

- The CWC does not require financial participation from its members but welcomes contributions if this issue is one that impacts a particular organization or constituency. David

The Congress and Administration continue to work even with the limitations we are all experiencing.

The House is moving its appropriations bills forward with some speed. The Energy and Water Development bill has passed the full committee and is expected to go to the House floor before the summer recess begins on August 8. It includes a robust plus up of funds for the Bureau of Reclamation. Please note that plus up funding means an increase above the Administration's request. It is not directed to a specific project. Instead, if the additional funds are approved, Reclamation would then develop a "spending plan" for the additional money, and send it to Congress within 45 days of enactment of the bill. This is an opportunity for Bureau programs or projects to receive funds above those included in line items.

The Administration released on July 16 its long-awaited NEPA modernization rule, which has two key provisions: permitting of projects is limited to two years, and a "One Federal Decision" approach will be used to conduct NEPA reviews, meaning that no project would be subject to review by more than one primary federal agency. These are both changes long supported by Western water as well as others.

While there is not a major infrastructure stimulus bill, there are multiple water resources bills in play in both the House and the Senate, along with the appropriations plus up. An omnibus water resources package is expected by year's end.

Let me know if you have any questions.

Submitted via email by Christine Arbogast