Rio Grande Basin Roundtable

Meeting Minutes

Thursday, August 13, 2019

5:00 pm

Saguache County Road & Bridge Building

Saguache, CO

Chairman Nathan Coombs brought meeting to order at 5:00 pm.

Those present/signed in: Heather Dutton, Cleave Simpson, Taylor Applewhite, Don (?), Ed Nielsen, Jenny Nehring, Cary Aloia, Wayne Schwab, May Engquiest, Joelle Marier, Emily Chavez, Peggy Godfrey, Sean Tonner, Monica McCafferty, Keith Holland, Chuck Finnegan, Tina Sanchez, José Villa, Dale Mofilt, Curtis Ramsey, Jim Miles, Mario Curto, Peter Clark, Bethany Howell, Mike Gibson, Cindy Medina, Crowfox Kimimila Wi, Barb Tidd, Rick Barandes, Kendall Magnussen, Guy Keene, Heather Greenwolf, Katherine Valicenti, Emma Reesor, Rio de la Vista, Jane Harris, Mark Jacobi, Nicole Langley, Christi Bode, Hannah Thill, Matie Belle Lakish, Larry Sveum, Liza Marron, Linda Joseph, Judy Lopez, ML Mackie, John Loll, Virginia Christensen, Ann Bunting, Kris Gosar, Kevin Boyle, Christine Canaly, Ron Garcia, Alder Lakish, JoAnn Slinka, Norah Schreiber, Jullian Ellzey, Bill Ellzey, Daniel Boyes, Connor Born, Micheal Scully, Pam Erickson, Megan Holcomb, Nancy Escalante, James Henderson. Charlie Spielman.

Chairman explained thought process of moving the Roundtable meeting around the Valley for more diverse Roundtable participation.

**Agenda**

Chairman entertained a motion to accept the agenda as amended with addition of Bethany Howell of RGWCEI who is asking for letter of support for their CWCB Colorado Water Plan grant. Cindy Medina moved to accept agenda with amendment. Mike Gibson seconded. All approved and the motion passed.

**Minutes**

Minutes from the July 9, 2019 meeting were presented for review. Judy Lopez motioned to approve the minutes as presented, Keith Holland seconded. All approved and the motion to approve the minutes passed.

**Public Comment**

Audience member asked a question regarding speaking during the presentations. The chairman explained the format of the regular business of the Roundtable and the presentations afterwards. There will be a Q&A after the presentations.

Keith Holland let the Roundtable know that Continental Reservoir spilled in August and thanked the Roundtable for grant support. Restrictions should be moved off the reservoir after observation.

**Colorado Water Plan Grant Letter of Support Requests**

Requests for letters of support for the CWCB Colorado Water Plan Grant applications were heard. Rio de la Vista made a motion to approve Bethany Howell of RGWCEI’s ask for a letter of support for their water conservation education grant proposal. Wayne Schwab seconded the motion. Roundtable approved by acclimation.

Max Ciaglo requested on behalf of Colorado Open Lands’ grant proposal to engage incoming tourists particularly in the sandhill crane festival involvement. Virginia Christensen made a motion to support, Mike Gibson seconded. Motion passed by acclimation.

Liza Marron asked for a letter of support from the Roundtable for the SLV Local Foods Coalition’s grant. They are partnering with CSU. Nicole Langley made a motion to support the grant, Emma Reesor seconded. The request was approved by acclimation. Letters should be submitted to the chairman for signing as soon as possible.

**Colorado Division of Water Resources Update**

Kevin Boyle gave update on behalf of the Colorado Division of Water Resources. It was an excellent water year for 2019, comparable to the 1980’s. The annual flow forecast for the Rio Grande at Del Norte is 980,000 AF (151% of long term average). Obligation to downstream states is 410,000 AF (42% of index). The Rio Grande Reservoir is draining to fix outlets, so releases will go down.

The annual flow forecast for the Conejos River at Mogote is 450,000 AF (150% of long term average) and curtailment is currently at 50%. Obligation to downstream states is 232,000 AF (52% of index). Projected precipitation is average through the end of the year. Christine Canaly asked about how the aquifer looks with recharge, Kevin responded that they might have recharged up to 150,000 AF. Cleave Simpson responded with numbers from the Rio Grande Water Conservation District, stating that it depended on the time of year.

**CWCB Update**

Megan Holcomb of the Colorado Water Conservation Board reminded the Roundtable about the CWCB board meeting taking place September 18-19, 2019 in Alamosa and the C9 State Summit on September 25-26 held in Winter Park. Travel funds are available for Roundtable members, but they must apply to the chair or vice chair by August 30. The Rio Grande Basin Account is currently at $59,952.00. Funds will be updated in January and April.

**Special Presentations**

Sean Tonner, partner in Renewable Water Resources (RWR) and landowner in Saguache County, gave presentation regarding their proposed water export. RWR owns confined and unconfined aquifer rights and surface water rights. They propose to export 22,000 acre feet out of the confined aquifer through pumping from 14-16 wells. They propose to pipe the pumped water from the state highway and north to the Front Range. The Front Range is 500,000 AF short of water for their communities, are looking for new sources that don’t impact the environment, are renewable, and don’t require intensive treatment. Tonner explained they would buy and retire more than 30,000 AF of water rights from farmers to do this. RWR will use the state’s model to determine amount and location of wells retired. RWR’s proposal includes a $50 million community fund. Tonner noted that RWR will go through Division 3 water court for approval and will continue to do outreach into the next two years.

**Rio Grande Water Conservation District Presentation – Cleave Simpson**

Simpson discussed the past request by Renewable Water Resources last year to the board to partner with this project. The board voted to oppose the water export as it violated their mission and values. Simpson brought up the website from RWR to address and dispute several of their claims regarding the Rio Grande Basin. According to Simpson, the Basin is under no legal obligation to retire stream flows and it is under no legal obligation to retire unconfined aquifer wells. Subdistrict 1 has a decree from the state water engineer to bring aquifer sustainability up to a certain level, but it is up to them how they will do it. They were given a 20 year time frame to do so. He explained that in the subdistricts, many programs are being utilized to reach this point, such as utilizing the fallowing programs through the NRCS CREP program.

Simpson acknowledged that there is a gap between municipal need across the state and the supply is part of the Colorado Water Plan’s (CWP) goals to meet, but agriculture is important as well and the state doesn’t aspire to force the buy & dry approach. Simpson described the CWP’s conceptual framework and how it deals with these conversations about water exchanges. Originally, the framework was conceived for the Colorado River, but the Rio Grande may be the first basin to test this framework.

Simpson referenced the 2008 Supreme Court case No. 07SA42 Simpson vs. Cotton Creek Circles, LLC discussing rules and regulations governing new withdrawals of groundwater in the confined aquifer in division three. Cotton Creek Circles, LLC asserted that the rules were invalid as they were contrary to statue and violated the Colorado Constitution. The water court disagreed and upheld the rules, which hold that the confined and unconfined aquifers as well as surface water streams are hydraulically connected to varying degrees and that the RGDSS model will be used to determine whether a withdrawal will affect the rate or direction of movement of water. Simpson noted that Renewable Water Resources must comply with these and new well rules & regulations approved in March 2019, that Saguache County has codes for pipeline construction, and that there are multiple federal lands that must be accessed for pipeline.

**Q&A**

Chairman Coombs opened the floor for questions to both Cleave Simpson and Sean Tonner from the audience.

Barbara Tidd asked Sean if when the owner purchased ranch from Gary Boyce, was there an agreement when purchasing in order to pursue water export as it is very similar to prior export attempts? Tonner responded no.

Peggy Godfrey asked Tonner about the perforation levels the proposed wells and how RWR will control them? Tonner didn’t know as he didn’t bring his engineer, but responded that data will come from the RGDSS model and they will be required to comply with that data when pumping 22,000 AF from the confined aquifer.

Peter Clark asked if there was a route chosen to get the water out of the Valley. Tonner responded that they are proposing to pipe the water from Hwy 17 up to 285 on the right of way by the state and that they will have to go through federal approvals.

Cindy Medina, Mike Gibson, and Alder Lakish raised questions about RWR buying water at twice the market price and inflating the value of water in the SLV. Medina raised concerns relating to organizations purchasing instream flow rights. Gibson commented that the increased market price would affect current rates when assessed as part of the appraisal process. Tonner responded that farmers requested it to be above market rates as the only way they would be interested in selling.

Emily Chavez asked how the dry up of current farmland as a part of this proposal will impact wildlife? Tonner responded that it will only be 22,000 AF and they will put more water into the system. Chavez pointed out that the land that will be impacted is already proven wildlife habitat. Tonner said they have 3,000 acres identified to add to the Baca Refuge. Tonner said it was similar to the CREP program when the crops are fallowed.

Ron Garcia commented on behalf of the Baca Wildlife Refuge. He asserted that unlike Tonner’s claim, there isn’t a shortage of forage for elk, but an abundance of elk and they did not need additional acreage. The USFWS would appreciate being talked to before Tonner talks about benefits to the Refuge. Tonner agreed that he should have had a discussion with the Refuge.

Rio de la Vista asked Simpson about the reasoning of why the district opposed participation in the plan. Simpson responded that the district is tasked with protecting the water of the Valley on behalf of their constituents. There is an imbalance of demand that exceeds supply, and the district does not believe the solution is to build a pipeline and export water out of the Valley.

Juanita Martinez asked for clarification on the amount of 22,000AF and expressed concern about this proposal opening the door for additional water being exported from the valley. Tonner explained that Renewable Water Resources won’t build infrastructure until they are out of the court system. The decree will ask for pipe to stay at 22,000 AF. If other people want to increase the volume pumped, they will have to go through the public process again.

Virginia Christensen and Rick Barandes both expressed concern about this proposal opening the door for future water exports. Christensen asked about the decree limitation to 22,000 AF. Tonner pointed out that they would have to go through the court process as well. Christiansen asked about the business plan on the variable rate fee, and is skeptical that there is no guarantee that what is said will happen, such as end water users continuing to pay for a variable rate fee. Tonner responded that three communities in the Denver Metro area are already charging residents additional fees on top of water bill.

Rio de la Vista asked who are the investors and the people involved in this project. Tonner said he would have to defer on the investors until they want to be identified, but partners include Brian Wright, John Kemp, Gov. Owens, and Jerry Berry.

Judy Lopez asked Simpson how would 22,000 AF moving from the confined aquifer affect the subdistricts in their annual replacement plan? Simpson responded that there are response areas divided up in the state, the San Luis Creek Response area is basically subdistrict 4. The confined aquifer needs to be returned to the pressures from 1978-2000. Rules became effective March of this year that pumping is limited to those delineated by the model that won’t harm the aquifer. There are groups of wells that are currently out of compliance. Simpson explained that the state groundwater model is the mechanism for the state and users to predict how those 150 wells in the response area pumping 10,000 AF impact Crestone and San Luis Creeks and how to mitigate injury to those streams. This proposal doubles those withdrawals.

John Wall and Christine Canaly asked about hydrology and impacts from RWR proposed pumping. Wall asked if impact is local, doesn’t the offset have to be local to prevent injury to the area? Tonner responded that under state water law they have to comply with the RGDSS model and repair injury, which will go through water court. Simpson responded that there are two different types of impacts when withdrawing: from the aquifer, and to streams as a result of groundwater withdrawals. The state will determine injuries to streams through RGDSS. RGDSS predicts an injury and that will set the “how” of repairing the injury. Chairman Coombs explained in greater detail about how the court approves the decree.

Michael Scully asked about the modeling for San Luis Creek and whether it was up to the same standards as other drainages. Simpson replied that the amount of data currently includes groundwater levels and stream flow gains and losses, and while it could be stronger, it has produced reasonable results.

Mark Jacobi asked about the $50 million community fund, how and where gets distributed. Tonner wants the community to administer the fund by setting up a 501c3 fund through Saguache County. Tonner said local people wanted to control where the money went, not Renewable Water Resources. Jacobi asked Simpson about the effect of deep wells on the confined and unconfined aquifer. Simpson replied that district engineers would need to review the groundwater model to answer that question.

Matie Belle Lakish expressed concern about the project having a long-term impact with short term payments and the impacts it will have on the community.

Norah Schreiber and Barbara Tid asked about the location of RWR ranch and proposed wells. Tonner said that it is near CR T north of road AA, north of Cotton Creek and that they may acquire another ranch north. Simpson said it is difficult to predict what injuries might happen to another water user several miles away.

Suzanne Gosar asked Simpson if the district will be hiring attorneys and fighting the project? Simpson said yes, the RGWCD has a payment from the AWDI settlement which is a base from which to pay. Gosar asked Tonner if their investors were willing to pay our costs as opposition? Tonner said only what is proscribed by the court.

Carolyn Brown asked for a visualization of 22,000 AF, and said she believes the Valley already exports “water” in the form of crops leaving and asked for Simpson’s perspective on that concept. Simpson responded that every commodity has water attached to it, but water itself leaving doesn’t become re-invested in the community such as our profits from crops that are kept in the community.

Charlie Spielman referenced the 2008 court case and asked if Tonner ascribe to the knowledge that the water is over appropriated in this Basin? Tonner agreed that they will retire 1:1 and then 8-15,000 more AF for the benefit of the Valley. Spielman asked if Renewable Water Resources will only dry up already appropriated water? Tonner responded yes. Spielman pointed out that there are no new uses for the water, it is already existing. 22,000 AF is per year, in perpetuity. That’s about 15-16 sections.

Heather Dutton asked Tonner that since he is using the government’s numbers from the geologic survey, would they annotate their website with that information? Tonner responded yes. Dutton asked Tonner about a previous public meeting where it was stated that North Star Farms was being purchased, was that a true statement? Tonner responded no.

Tonner ended the Q&A with pointing people to the website and social media channels for community meetings and one on one meetings. He offered to meet with people and get technical answers to their questions. He stated that the basin’s challenges are still there even if the project doesn’t go forward and that RWR will work for their support. He asked the community to agree to disagree and still be civil.

Simpson said the proposal wasn’t a good one from the district perspective. He would challenge members of any other basin to see if they think a water export plan is a good idea for their basin, or to find an environmental group that thinks transbasin diversions are good for the environment. Simpson said it’s not good for the SLV or Colorado.

Chairman adjourned at 7:12 pm.

Next meeting will be on September 10, 2019 at the SLV Water Conservancy District office in Alamosa.