



MEMORANDUM

DECEMBER 1, 2008

TO: ROARING FORK COLLABORATIVE

FROM: CHRIS TREESE

SUBJECT: WATER LEGISLATION: 2009

The following is my current outlook for the upcoming Colorado legislative session. They are in no particular order. Additionally, I expect most, but not all, of these issues to mature to legislation; I just don't know which will and which won't at this time.

- **Zebra/Quagga Mussels.** The Colorado General Assembly appropriated \$7 million in the current fiscal year to prevent and address mussel infestations. I anticipate additional funds will be directed to these important invasive species next year as well. Additionally, municipal utilities, along with the River District, have been meeting with the Division of Wildlife to prioritize prevention efforts on their systems.
- Coming out of the Governor's Drought conference in October, there was a call for additional enforcement of utilities' **water conservation planning requirements**. This may take the form of additional resources for technical assistance to communities and/or "teeth" in the current requirement that all drinking water suppliers delivering more than 2000 acre feet per year prepare and submit a conservation plan. Currently the only "enforcement" and incentive mechanism is that those utilities without an approved plan cannot be awarded CWCB or Water & Power Development Authority grants or loans.
- Though the overdue final report from last year's **underground aquifer storage** conference has still not been published. Legislation to facilitate or encourage aquifer storage may be forthcoming. We could see legislation addressing any or all of the following:
 - Property issues - trespass and ownership of recharged waters;
 - Water quality issues;
 - Injury issues of groundwater pumping; and
 - Defining "dominion and control" of stored groundwater.
- **Son of SB 08-247.** Senate Bill 247 was the latest of late bills introduced in the 2008 legislative session. It would have allowed temporary water supplies to be added to an decreed augmentation plan but only for post-pumping depletions for pre-1992 groundwater pumping. Western Colorado water users were concerned that it would allow

additional transmountain diversions. Several state senators indicated their interest in reintroducing this bill again this year.

- Colorado voters rejected Amendment 52, which would have diverted severance tax revenues above a certain threshold from the Department of Natural Resources to transportation needs. I anticipate legislation to revisit the debate on how **severance tax revenues** are allocated. Further, I anticipate such legislation will focus on DNR's severance tax allocations. In addition to reallocating severance taxes to transportation needs, the Colorado Municipal League has proposed reallocating DNR's funds above a specified threshold for municipal wastewater treatment infrastructure.
- The Interim Water Committee approved a single bill this summer. This bill will move the **White River basin to the Steamboat Springs water court**, which will be consistent with the designation of the White River as part of water division 6 (Yampa and White Rivers). This legislation is one of the recommendations of the special water court review panel appointed by the Chief Justice.
- There will likely be a bill to increase to at least 70 acres the minimum lot size for **"Senate Bill 35" exemptions** from local land use authority and special well permits. The current size is 35 acres.
- **"Government Immunity"** The Colorado trial lawyers are exploring an increase in the liability ceiling on governmental immunity.
- Although the case is still pending before the Supreme Court, there may be legislation addressing the ownership and discharge/disposal of groundwater produced during oil and gas production.
- The Colorado Water Quality Control Division is proposing hefty permit fee increases. In the current budget, the division is funded as follows:
 - 16% - General Fund
 - 33% - *Cash Funds (permit fees)*
 - 51% - Federal funds.

If the proposed changes took effect, the proportion of funding would change and fall more heavily on permit fees:

- 14% - General Fund
- 43% - *Cash Funds (permit fees)*
- 43% - Federal funds.

201 Centennial Street / PO Box 1120 * Glenwood Springs, CO 81602

(970) 945-8522 *(970) 945-8799 Fax

www.ColoradoRiverDistrict.org

- At least one prominent water attorney in the South Platte has proposed legislatively **denying water for oil shale** development by defining oil shale production as not beneficial use of water under Colorado law.
- One individual is actively promoting **amendment to Colorado's water quality statute**. Specifically he proposes removing language referring to economic reasonableness of water quality regulations from the legislative declaration. (C.R.S. 25-8-102(5))
 - (5) It is further declared that the general assembly intends that this article shall be construed to require the development of a water quality program in which the water quality benefits of the pollution control measures utilized have a reasonable relationship to the economic, environmental, energy, and public health costs and impacts of such measures, and that before any final action is taken, *with the exception of any enforcement action, consideration be given to the economic reasonableness of the action*. Such consideration shall include evaluation of the benefits derived from achieving the goals of this article and of the economic, environmental, public health, and energy impacts to the public and affected persons. (Emphasis added)

**Roaring Fork Watershed Collaborative Water Group Meeting
Thursday, December 04, 2008**

Town of Basalt Update

RIVER STEWARDSHIP MASTER PLAN

- Pan & Fork Mobile Home Park - As a step toward implementation of the River Stewardship Master Plan, the Town Council negotiated a contract to purchase the Pan & Fork Mobile Home Park, contingent upon voter approval of a bond and property tax increase to finance the purchase. The issue was on the April 2008 municipal election ballot and fell 10 votes short of passing. As a result, the purchase contract was not fulfilled.
- Roundtable Meetings - A group of interested citizens, many of whom were active in the development of the River Stewardship Master Plan, have recently revived efforts to continue implementation of the master plan. The group, with the assistance of Town staff, has met twice since September and will meet for the third time on Thursday evening, December 4th. The goal of the group is to provide assistance and advice to the Town Council on continuing to implement the recommendations of the master plan.
- CDOT / Upper Bypass Bridge - The Town is working cooperatively with the Colorado Department of Transportation to encourage CDOT's efforts to remove accumulated sediment and cobbles from beneath the Upper Bypass Bridge and upstream of the bridge to maintain the flood-carrying capacity of the river in this area. CDOT plans to complete this project before next spring's runoff.

TWO RIVERS ROAD CORRIDOR and ROARING FORK CONSERVANCY RIVER CENTER

- RFC River Center - Town staff is meeting with Roaring Fork Conservancy representatives to outline the procedures for processing and approving a land use application for the Conservancy's proposed River Center on Two Rivers Road adjacent to Old Pond Park.
- Two Rivers Road Corridor - Preliminary design work is also being undertaken to design improvements to the road and river corridor between Midland Avenue and Homestead Drive. The design improvements will include on-street parking for the future river center, a new pedestrian and bicycle trail to provide access to the River Center and the river corridor, protection and enhancement of wetlands adjacent to the roadway, water quality features to treat stormwater runoff and minimize water quality impacts to the river, and overlooks and similar features to promote education and awareness of the river environment. No timeline for construction of the project has been established
- Recycle Center - The Town completed an upgrade of the recycle collection center this year as a first step of the Two Rivers Road corridor improvements.

BASALT REGIONAL LIBRARY

- Construction is underway by the Basalt Regional Library District on a new library between the Post Office and the Roaring Fork River. The Library District has worked with the Town to insure that the library is built in accordance with the Town's floodplain regulations and consistent with the goals of the River Stewardship Master Plan to protect both the floodplain and the library structure. The land between the library and the river is owned by the Town and is being preserved for floodplain / recreation / open space purposes. The library's designers have taken advantage of the proximity and views of the Roaring Fork River in designing the library.

ROARING FORK GAUGING STATIONS

- The Town continues to cooperate with the CRWCD and the USGS in providing funding for operation of the Roaring Fork River gauge near Emma, and with the CWCB / Division of Water Resources in providing funding for the operation of the relatively new stream gauge on the Roaring Fork above the Fryingpan confluence near Basalt.

RIVER PARK / WHITEWATER PARK

- Pitkin County has taken the lead in the potential development of a river park / whitewater park on the Roaring Fork at the upstream end of Basalt. The Town expects to continue to cooperate with Pitkin County on this effort.

SMALL HYDROELECTRIC DEVELOPMENT

- The Town continues to explore the feasibility of developing a small hydroelectric plant utilizing the water resources from the Town's Lucksinger Springs and Basalt Springs.

FLOODPLAIN ADMINISTRATION AND MAPPING

- New Flood Insurance Rate Maps for Basalt were published by FEMA and became effective on December 4, 2007. The maps used for flood insurance purposes are now consistent with the floodplain mapping that has been used for regulatory purposes in Basalt since 2001.

WATERSHED COLLABRATIVE MEETING
December 4, 2008

CITY OF ASPEN STORMWATER PROGRAM UPDATE

BACKGROUND: In November 2007, Referendum 2B was passed that approved funding for the Clean River Initiative – an ongoing project to reduce the City of Aspen’s impact on and to improve the health and water quality of the Roaring Fork River. A stormwater manager was hired in May 2008 to manage and implement the Clean River Initiative.

DISCUSSION: The urbanized areas in and around Aspen have contributed to increased pollutant discharges into the Roaring Fork River which is rated as “severely degraded” by the Roaring Fork Stream Health Initiative. It is the goal of the stormwater program to significantly reduce the amount of pollutants, particularly sediment, reaching the Roaring Fork River. Because stormwater pollutant reduction is a requirement of the EPA in most cities in the country and because we expect those requirements to be enforced upon Aspen soon, the stormwater program is being designed in a way that will meet EPA requirements.

Recent efforts have focused on:

- **Preventing pollution from construction sites** – we have begun to more strictly enforce the installation of erosion prevention and sediment control measures, pollution prevention measures, material and waste handling procedures, and winter stabilization measures at active construction sites throughout the city.
- **Sampling and monitoring outfalls into the River** – we have continued to visually monitor and collect samples at the major outfalls from the City into the River and to analyze those samples for suspended solids.
- **Cleaning and taking inventory of the system** – we have removed over 60 tons of sediment from the settling vaults at Jennie Adair, Rio Grande, and catch basin inlets this year.

While these efforts will continue to grow, focus next year will be placed on:

- **New drainage and water quality standards for development** – we are moving towards a requirement for developments and redevelopments to reduce the amount of suspended solids leaving their site by 80% of the annual expected load; we are hiring an expert consultant team to rewrite our drainage criteria to include quantity and quality standards, an integrated approach for meeting those standards, and a set of design and management tools for incorporating innovative and cutting edge structural and nonstructural stormwater best management practices; these new requirements will direct developments to consider water quality at a site design stage, to reduce the amount of impervious area and the connection of impervious areas, to increase infiltration of stormwater runoff, and

to permanently treat the runoff from their site to meet the City's water quality standard.

- **Evaluation and improvements to City facilities and operations** – we will begin inspecting City facilities (such as maintenance areas) and operations (such as vehicle washing) for areas of improvement to reduce impacts to or contact with stormwater runoff.
- **A more structured and frequent monitoring program** – we will implement a regular schedule and protocol for outfall monitoring to ensure that data is collected consistently and regularly and to further establish base data to measure performance and effectiveness of the stormwater program.
- **Stormwater capital improvement projects** –
 - Diversion of a portion of Mill Street's flow into the Jennie Adair wetlands
 - Redesign of Rio Grande Park to include water quality treatment for the remainder of Mill Street's flow

In conclusion, we are establishing a comprehensive stormwater management program that will not only meet the water quality goals of the Clean River Initiative but one that will also establish the City of Aspen as a leader in stormwater management and water quality programs across the country. It is our goal to be the best stewards of the environment that we can be – minimizing to the maximum extent practicable the impacts of development with innovative and cutting edge yet practical and effective measures.

WATERSHED COLLABORATIVE WATER COMMITTEE MTG - PITKIN COUNTY UPDATE

1. **New Land Use Code Provisions.** The County adopted a new Land Use Code in July, 2006 which established new standards for river and stream corridor and wetlands protection. Greatly increased setbacks and buffer areas from riparian and wetland areas were required for all new development. There have been a few recent amendments to these Code provisions:
 - a) New sections were added to create exceptions and standards for installation of "Micro Hydroelectric Energy Systems" (see Land Use Code Secs 4-30-50(k) and 7-20-20(c)). These systems (up to 500kw) may now be considered for approval by the BOCC through the Special Review process.
 - b) Amendments were made to allow consideration by the BOCC of river and stream "restoration projects" that are "designed for the purpose of restoring, or preventing further degradation of the natural, dynamic functions of the river, stream or other body of water..." (See Land Use Code Secs 7-20-40 and 7-20-80).
 - c) There have been amendments made to accommodate reasonable redevelopment/expansion of existing residential structures within the new setback/buffer areas. Most recently, provision was made for exiting houses to do a one-time 300 sq. ft. attached expansion, even if the expansion is in the 100' setback area, subject to conditions. (See Land Use Code Section 9-50-20).

The County's Land Use Code is Title 8 of the County Code which can be viewed online at: <http://www.aspenpitkin.com/depts/71>.
2. **Approval of the Healthy Rivers & Streams Fund.** A dedicated sales tax (1/10 of 1 cent) was approved in Pitkin County for the purposes specified in C.R.S. Sec. 29-2-103.7 ("purchasing, adjudicating changes of, leasing, banking, and selling water rights that have been adjudicated for use within such county or in a municipality or county that is subject to an intergovernmental agreement concerning such tax"). County implementation plans for this fund are TBD.
3. **New County Floodplain Administrator.** Catherine Berg, County Planning Engineer, is the County's new Floodplain Administrator. Floodplain Development Permits for the County will now be handled by the Planning Department. Catherine will also be taking over the County's site inspections under the State's Stormwater Management Program if the local inspection program is continued by both the State and the County in 2009.
4. **Stormwater Management – Development of BMP Manual.** The County's EH/NR Department received a grant from NWCCOG to develop a stormwater management manual targeted at educating developers on proper installation and maintenance of BMPs on the types of terrain commonly found in mountain communities. A final draft will be available by the end of 2008 and will be made available online. The manual is formatted in a manner that allows it to be tailored for use by other mountain communities.
5. **New OWTS Regulations.** The County adopted a completely new set of OWTS Regulations which became effective on March 8, 2008. The regulations can be found at: <http://www.aspenpitkin.com/pdfs/depts/12/isds.pdf>. Due to lack of staff, the provisions concerning licensing of System Inspectors and Use Permits will be delayed and will not take effect on March 9, 2009. The County still plans on implementing these programs in the future.
6. **Groundwater Resources Study of the Crystal River & West Sopris Creek Watersheds Completed.** Hydrologic Systems Analysis, LLC completed its fourth groundwater resources study for the County in August of 2008. The study on the Crystal River and West Sopris Creek watersheds, together with the prior studies, are all available on the County EH/NR Department website: http://www.aspenpitkin.com/depts/12/water_res.cfm.



TO: Sharon Clarke and the Roaring Fork Watershed Collaborative
FROM: Dave Kanzer, P.E.
RE: USGS / CODWR Stream gaging programs in the Roaring Fork Valley

November 21, 2008

The Colorado River District has long been a significant partner with the USGS in water quality data collection and water quantity stream measurement in Western Colorado. In fact, the River District has been USGS's largest cooperator in the State of Colorado for many years, expending in excess of one-half million dollars per year for the collection of high quality water quantity and quality data throughout the Upper Colorado River Basin within our beautiful state.

Specifically, in the Roaring Fork basin, the River District, along with partners, will spend over **\$66,000** (not including the USGS cost share portion of an additional **\$40,220**) in 2009 for data collection and related studies.

The River District, along with partners, proposes to support **four stream flow gages, at a cost of \$34,275** in 2009, including

- 1) Roaring Fork near Aspen,
- 2) Roaring Fork near Emma,
- 3) Hunter Creek near Aspen, and
- 4) Crystal River near Carbondale

Additionally, the River District and partners plan to support **water quality data** (including temperature) **collection at these four sites, at a cost of \$25,830** in 2009.

Recently, the Colorado Division of Water Resources (CODWR), in conjunction with the Colorado Water Conservation Board, have added two additional stream gages in the Roaring Fork basin, including one on the lower Crystal River near Carbondale and one in the middle Roaring Fork River basin near Basalt. These seasonal gages provide important information for the administration of minimum stream flow rights.

With the addition of these gages, the River District believes it would be helpful to re-assess and optimize the monitoring program in the Roaring Fork basin on a holistic basis. In particular, this assessment aims to determine if the local stakeholders' needs are being met and if the program could be made more efficient, equitable and/or productive.

At the December 4th collaborative meeting, we hope to begin this re-assessment and would like attendees to be prepared to discuss their needs, preferences and potential to support data collection efforts.

Specifically, the River District is strongly considering removing the USGS Lower Crystal River gage ([USGS 09083800 CRYSTAL RIVER BELOW CARBONDALE, CO](#)) and relying upon the CODWR gage ([CRYSTAL RIVER AT DOW FISH HATCHERY AB CARBONDALE](#)). It is recognized that this CODWR gage has a short history, is seasonal only and does not support any current water quality data collection.

The other new gage installed by the CODWR near Basalt ([ROARING FORK RIVER AB FRYINGPAN RIVER NR BASALT \(ROAFRYCO\)](#)) is located only a few miles upstream from another existing USGS gage ([USGS 09081000 ROARING FORK RIVER NEAR EMMA, CO](#)). Although it is not proposed to remove the USGS gage at this time, it would be helpful to discuss the pros and cons of keeping both gages and how to possibly optimize the joint use of these gages to remove flow data uncertainty and data collection redundancy.

We anticipate covering these topics briefly in the morning portion of the Roaring Fork Collaborative meeting on December 4th and welcome interested stakeholders to join us for a more involved conversation immediately after lunch to help us make some more informed decisions.