

## History in the making, water agreement touted as game changer for Colorado Water Management

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Grand County CO Colorado

The culmination of several years of negotiations on water protections for the Western Slope took place on Tuesday at the Grand County Administration Building during an official signing of the Colorado Cooperative Agreement.



Colorado's Gov. John Hickenlooper

The signing took place more than one year after Colorado's Gov. John Hickenlooper last visited Grand County, when he first rolled out the Colorado Cooperative Agreement, deemed an unprecedented water agreement for our time. The agreement aims to settle years of East and West Slope water disputes.

"I'm not sure the fighting's ever going to completely stop," Hickenlooper said, "but it is nice to see we are at least moving into rubber bullets and beanbag shot guns rather than the high-velocity weapons we were using before."

"We're saying by this agreement that there's a better way of doing business," said Denver Water Commissioner Penfield Tate. "We ended a bunch of lawsuits and decided to cooperate and that's important from my perspective. It's better to reach an agreement and have certainty rather than spend a whole bunch of time and a whole bunch of other people's money fighting over things. It doesn't belong to me, it doesn't belong to you, it belongs to the planet. We need to have a healthier way of ensuring a more reliable water supply, on both sides of the Divide and for all of our customers."

Since the governor's roll-out of the agreement last year, water attorneys and water officials have been pounding out implementation strategies for each of the benefits highlighted in the agreement, according to Grand County Manager Lurline Underbrink Curran.

"It is hoped by all the signatories to the agreement, including Denver, that we have formed a peace pact for our time," Underbrink Curran said last week, "and that we are all going to work together from now and into the future to make sure that all the things that each entity was promised

happens, and that the protections Grand County was promised happen.”

Denver Water's Moffat Firming Project and its goal to enlarge Gross Reservoir to divert more water from the West Slope, plus its 2006 diligence application in federal court regarding water rights under the Blue River decree, sparked negotiations in an arena when litigation and political disputes between Colorado's West and East Slopes were ripe with potential. A mediator was hired in 2007 under then-Denver Mayor Hickenlooper's advisement, and as many as 35 parties from the Front Range to the western state line joined in to try and resolve some of the state's longest-standing water issues.

The result is a 50- page document, plus pages upon pages of legal attachments, that spells out water resolutions or “enhancements” for the Fraser and Blue rivers, certain tributaries and the upper and middle rivers of the Colorado River to the Grand Valley.

### **A hole in the river**

In his address about the Colorado Cooperative Agreement, Hickenlooper nodded to the “mother of all compacts 90 years earlier,” the Colorado River Compact signed in 1922.

Population and temperature increases and greater uses of the river have put a strain on the state's resources, he said, pointing out that 80 percent of moisture falls west of the Continental Divide, while 80 percent of the consumption is east of the Continental Divide.

With this in mind, the cooperative agreement and its “Learning by Doing” comes at a key time. “Like a muscle, once you start using it, it can only get stronger,” Hickenlooper said.

“It's important to do a deal like this, because water is something none of us know how to make any more of,” Tate said. “So the best we can do is manage the resource that has been given to us by other sources to make sure it's available to everyone in the state, not just those of us in Denver.”

Besides \$11 million in Denver Water dollars promised to address some river issues specifically in Grand County, with more dollars for Summit and Eagle counties, the agreement highlights the importance of the Shoshone Power Plant to the entire Western Slope.

The plant, which has been around since 1902, “puts a demand on the stream,” according to Eric Kuhn, executive director of the Colorado River District, during an annual State of the River meeting last week. “When it

puts a demand on the stream, water is released from Wolford to Green Mountain and from Williams Fork (reservoirs). All that water reaches Kremmling and runs downstream and provides stability," he said.

"The thing we've been concerned about is the 110 year-old plant has started to behave like a 100 year-old plant. We've asked, and Denver has agreed ... to operate its system like the plant was operating, so we wouldn't put a hole in the river. That hole in the river causes problems for irrigators, causes problems for fishing and causes problems for rafting."

The agreement is also poised to settle a Green Mountain reservoir administration dispute, which has been brewing since 1955, according to Kuhn, as well as the Blue River Decree settlement.

And in the agreement, Denver Water set its service area so that it does not become a conduit for expansion on the Front Range.

An agreement on Denver Water bypass flows on the Fraser River amounting to about 3,000 acre-feet, plus 1,000 acre-feet of water allocated each year for environmental purposes from Denver Water's Fraser Collection System are big Grand County "gets," according to county officials.

"I believe the county got everything they could get out of this agreement," Underbrink Curran said last week.

"Would we have liked to have had more water? Sure we would have," she said. "Would we have liked to have had more money? Sure we would. In any negotiations, you always have to be able to give up some things to gain other things. Everything the county bargained for was for the environment."

And how will Grand County see to it promises outlined in the agreement are kept?

"This IGA is a contract," Underbrink Curran said. "Legal action can be taken to enforce the contract if necessary."

"At first we thought we wanted it all in the record of decision (of the Moffat Firming Project permit)," said Grand County Commissioner James Newberry, during last week's State of the River meeting. "But the more we thought about that, the more we thought we had a better chance of going back into the contract and dealing with the issues we wanted changed rather than reopening the entire federal process. It seemed a more direct and efficient way to approach it."

The Colorado Cooperative Agreement is not a deal until all players have signed.

And most of the benefits depend on the permitting of Denver Water's Moffat Firming Project.

### **Silent partners**

With the exception of Grand County, which is a consulting agency on the Moffat Firming Project for the U.S. Corps of Engineers, all signatories of the enhancements document must be silent about Denver Water's National Environmental Policy Act, or NEPA, process with the Corps. If a permit is issued, then at that point, Grand County has agreed it will no longer object to the permit, according to Underbrink Curran.

But until that permit is issued, "We continue to support the comments we made for mitigations," she said. "We continue to provide any information the Corps has asked for."

Although it commends the collaborative approach to Colorado's water problems, Colorado Trout Unlimited still cautions West Slope water stakeholders that additional measures, such as more mitigation listed in the federal record of decision, are needed to protect the Upper Colorado River ecosystem.

"The job isn't finished," said Mely Whiting, counsel for Trout Unlimited's Colorado Water Project. "Unless the impacts of these new projects are mitigated, the river habitat will continue to decline, according to the state's own studies. The Colorado River is still very much a river at risk."

Underbrink Curran assures the county is well-insulated from legal loopholes or future manipulation of the Colorado Cooperative Agreement. During the longer than five years of negotiations, Grand County was represented by legal council, two NEPA specialists, a water engineering firm and the county attorney, she said.

"Has this been vetted for Grand County? Over and over and over," she said.

"There were some of the most high-powered water attorneys and engineers in the state involved in this from day one," Underbrink Curran said. "To do all that with that many attorneys that are that well-known and respected in the state, without litigation, it's pretty amazing when it comes right down to it.

"At first, it was certainly a turf war," she continued. "But after awhile, while

everyone was still protecting their turf, there was a recognition that we were doing something bigger than ourselves.”

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