

# Fall QQ Meeting

Friday, November 15, 2024

10 AM – 3 PM

Hybrid Meeting



Miller Ranch Community Center, 25 Mill Loft Road, Edwards, CO 81632

Zoom:

<https://us02web.zoom.us/j/87322291455?pwd=6MdWZnudmaG5Un6jRFxD3mUfpkcYPz.1>

Call in: (719) 359-4580; Meeting ID: 873 2229 1455; Passcode: 145666

## AGENDA

- 10:00 AM Welcome and QQ Leadership Appointment & Confirmation  
*Kathy Chandler-Henry, QQ Chair*
- 10:20 AM Bridging the Gap  
*Waverly Klaw, Director, Growing Water Smart, Sonoran Institute*  
*"Bridging the Gap" is a project initiated by QQ and the Sonoran Institute in partnership with Colorado Water Conservation Board, Northern Water, the Colorado River District, and Trout Unlimited. The goal of the project is to bridge the gap in understanding between water suppliers investigating potential water transfers and communities that would be affected by such transfers to better highlight environmental and community challenges by interviewing key stakeholders from recent water transfer projects.*
- 11:00 AM Updating the 2012 Water and Its Relationship to the Economies of the Headwaters Counties Report  
*Jessica Harvey, Senior Associate, Harvey Economics*
- 11:40 AM 2025 QQ Contract, Scope of Work, Budget, and Proposed Dues
- QQ Legal Defense Fund
  - QQ 2025 proposed dues
- 12:00 PM Lunch
- 1:00 PM Discussion of QQ issues
- NWCCOG Regional Water Quality Management Plan ("208 Plan")
    - *Recommendation: QQ should recommend that NWCCOG adopt the 2024 208 Plan Policies to be used for consistency reviews until the 2012 Plan Update is approved.*
  - Implementing recent legislation
  - 2025 Legislative Session
  - U.S. Supreme Court recent and upcoming decisions
  - State Dredge & Fill program formation / rulemaking
  - Water Quality Control Commission / Division
  - Energy and Carbon Management Commission
- 2:00 PM Member Updates
- 3:00 PM Adjourn



P.O. Box 2308  
Silverthorne, Colorado 80498



970-468-0295  
qqwater@nwccog.org

## 2025 CONTRACT

Northwest Colorado Council of Governments Water Quality/Quantity Committee  
and  
Barbara Green and Torie Jarvis for Sullivan Green Seavy  
Ashley Bembenek for Alpine Environmental Consultants LLC (subconsultant)  
Anna Drexler-Dreis for Fountainhead Consulting (subconsultant)  
Year of 2025

This Contract is entered into January 1, 2025, by and between the Northwest Colorado Council of Governments Water Quality/Quantity Committee (hereinafter "QQ") and Barbara Green and Torie Jarvis for Sullivan Green Seavy Jarvis ("SGSJ"), Ashley Bembenek for Alpine Environmental Consultants LLC ("Alpine"), and Anna Drexler-Dreis for Fountainhead Consulting (FH) (hereinafter "Consultant Team").

NOW, THEREFORE, the parties mutually agree as follows:

1. Employment of Consultant Team. QQ hereby agrees to engage Consultant Team and Consultant Team hereby agrees to perform the scope of services in Part 2.
2. Scope of Services. In consideration for moneys to be received from QQ, Consultant Team shall do, perform, and carry out in a satisfactory manner, as determined by QQ, all work elements indicated in the "Scope of Services" set forth in attached Exhibit A, incorporated by reference. The Scope of Services is contingent upon receipt of the sum listed in Appendix A.
3. Time of Performance. The services of Consultant Team shall commence January 1, 2025 and shall be undertaken in such a sequence as to assure completion of this Contract by December 31, 2025. After December 31, 2025, the contract may be extended by mutual agreement by both parties on a month to month basis.
4. Method of Payment. Consultant Team shall submit a monthly invoice to NWCCOG/ QQ describing the activities associated with the various work elements described in Exhibit A. Upon receipt of invoice NWCCOG/ QQ shall compensate Consultant Team for work performed.
5. Compensation. Consultant Team shall be compensated monthly based on the proportion of the total contract amount for that billing period. The total amount of compensation paid by QQ to Consultant Team shall not exceed the maximum dollar amount established in the "Scope of Services" set forth in the attached Exhibit A unless QQ and Consultant Team mutually agree on additional services and additional funding to pay for such services.
6. Amendment. QQ may, from time to time, require changes in the "Scope of Services" to be performed by Consultant Team. Such changes shall be incorporated into a Letter of Agreement between

Consultant Team and QQ Chair, Vice-Chair, and Secretary, which shall serve as an amendment to this contract between QQ and Consultant Team.

7. Assign-ability. Consultant Team shall not assign any interest in this Contract and shall not transfer any interest in the same without prior consent of QQ.
8. Termination of Contract by QQ for Cause. If Consultant Team fails to fulfill in a timely and proper manner its obligation under this Contract, or if Consultant Team violates any of the terms or conditions of this Contract, QQ shall have the right to terminate this Contract by giving written notice to Consultant Team at least forty-five (45) days before the effective date of such termination. In the event of termination, all finished or unfinished documents, data, studies, or other material prepared by Consultant Team shall, at the request of QQ, be transmitted to QQ.
9. Termination of Contract by Consultant Team. If QQ fails to make payment as herein provided, Consultant Team may terminate this Contract by giving written notice to QQ at least ten (10) days before the effective date of such termination, during which time QQ may cure the default by making payment. In the event QQ fails to cure, Consultant Team shall retain all materials and documents not previously given to QQ until an agreement is satisfactorily negotiated between QQ and Consultant Team. If Consultant Team proposes to terminate this contract for reasons other than failure to make payment they shall give at least forty-five (45) days notice.
10. Agreement Contains All Understandings. This document represents the entire integrated agreement between QQ and Consultant Team and supersedes all prior negotiations, representations, or agreements either written or oral.

IN WITNESS WHEREOF, QQ and Consultant Team have executed this agreement on the date written above.

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**Chair** \_\_\_\_\_ **Date**  
NORTHWEST COLORADO COUNCIL OF GOVERNMENTS QQ COMMITTEE

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**Ashley Bembenek**, Alpine Environmental \_\_\_\_\_ **Date**

---

**Anna Drexler-Dreis**, Fountainhead Consulting \_\_\_\_\_ **Date**

---

**Torie Jarvis**, Sullivan Green Seavy Jarvis \_\_\_\_\_ **Date**

**EXHIBIT A:**

**NWCCOG/WATER QUALITY AND QUANTITY COMMITTEE**

**SCOPE OF SERVICES 2025**

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**I. INITIATIVES AND PROJECTS FOR THE YEAR 2025**

**A. COALITIONS AND EDUCATION (Implements Policies I, II, V)**

- (1) Facilitate “fact-based” discussions of headwater impacts associated with Front Range growth and the importance of integrating land use planning and water supply planning statewide.
- (2) Continue to inform Front Range policymakers and legislators about headwaters issues and transmountain diversion impacts in appropriate forums.
- (3) Collaborate with other East Slope and West Slope organizations to strengthen public awareness and educate Front Range citizens about headwater issues and transmountain diversion impacts on the West Slope.
- (4) Track and educate members on emerging water-related recreation issues.
- (5) Develop relationship with state-wide media to promote education on QQ issues. Send letters to the editors of the local and state newspapers on water issues to promote QQ policies and refute mis-information.
- (6) Organize and present information, such as the *Water & Its Impact to the Economies of the Headwaters Counties* report and land use/ water integration resource guides at meetings, workshops, and other venues to advocate headwater perspectives throughout the State.
- (7) Serve on appropriate State and local task forces or committees, as time allows, to promote QQ’s interests.
- (8) Track and coordinate efforts with other groups and organizations to ensure awareness of diverse West Slope water concerns.
- (9) Increase efforts to inform certain stakeholders of unintended adverse impacts to local authority; and attempt to convey a more thorough understanding of current law.

**B. COLORADO’S WATER PLAN, BASIN ROUNDTABLES AND 1177 PROCESS (IMPLEMENTS POLICIES I, III, V)**

- (1) Track the outcome of any potential legislation that may be in support of, or counter to, Headwater interests.

- (2) Participate in the Colorado Basin Roundtable, IBCC, and other state and regional policy initiatives as time allows and prepare reports to members as needed when important issues arise.
  - (3) Participate in the implementation of the Colorado Water Plan; advocate for Headwaters interests; provide support and analysis to efforts of elected officials and member jurisdictions to influence Water Plan policy.
  - (4) Evaluate opportunities to identify and promote headwaters interests through these initiatives.
- C. EVALUATE AND MONITOR TRANSMOUNTAIN DIVERSION PROPOSALS (Implements Policies I, II and III).
- (1) Participate in environmental assessment processes.
  - (2) Retain and supervise necessary technical consultants to evaluate and monitor transmountain diversion proposals and related stakeholder groups, plans, studies, reports, and projects as time and budget allow.
  - (3) Work with member jurisdictions to cooperate on review and mitigation of impacts that go beyond the boundaries of the permitting county through intergovernmental agreements.
  - (4) Assist member counties and municipalities with 1041 permitting as requested.
  - (5) Follow activities of Front Range Water Council.
- D. STREAM MANAGEMENT AND NON-CONSUMPTIVE NEEDS (Implements Policies II, III, IV, V)
- (1) Continue to work with QQ members and Front Range diverters to implement solutions to identified in-stream impacts of transmountain diversions.
  - (2) Monitor, provide technical assistance, and advocate for Headwaters interests in Learning By Doing, Grand Lake Clarity adaptive management processes, and Colorado River Cooperative Agreement implementation.
  - (3) Assist member jurisdictions in efforts to support Colorado Water Conservation Board (“CWCB”) Instream Flow Program and ensure state representatives understand the value of the program.
  - (4) Assist member jurisdictions in the creation and protection of recreational in-channel diversions and other methods to promote recreational flows in the Headwaters.
  - (5) Assist members to determine nonconsumptive stream flow needed to protect recreation and environmental values during Colorado River Roundtable process and development of Stream Management Plans and Integrated Water Resource Management Plans.
  - (6) Assist member jurisdictions in Wild and Scenic Rivers processes.

- E. LOBBYING IN COLORADO LEGISLATIVE SESSION (Implements Policies I, II, V)
- (1) Provide policy analysis on legislation as they affect members' authority.
  - (2) Participate in development of any state water planning legislation.
  - (3) Lobby on water-related bills that QQ has taken a position on or based on QQ's mission and policies.
  - (4) Draft testimony, or assist in preparing testimony, for QQ elected officials.
  - (5) Communicate and collaborate with other entities where interests overlap.
  - (6) Provide reports and action alerts to members on legislation, outlining pros and cons, and recommending a QQ position based on QQ policies and member feedback.
  - (7) Prepare alternatives to legislation that is counter to QQ's interests as directed by QQ.
  - (8) Evaluate and encourage legislation that furthers QQ interests. Possibilities include reuse, instream or recreational flows, metropolitan efficiency, special district legislation, or favorable changes in water law to promote conservation and the strengthened connection between land use and water planning.
  - (9) Participate in the Colorado Water Congress and other organizations that may create and or influence legislation pertinent to QQ's issues.
- F. WATER QUALITY PROTECTION (Implements Policies II, III, IV, V)
- (1) File motions for party status on behalf of member jurisdictions and participate in Colorado Water Quality Control Commission ("WQCC") rulemakings, hearings, and meetings that affect the headwaters.
  - (2) Participate in stakeholder meetings and Water Quality Control Division ("WCQD") workgroups related to water quality in the headwaters as time allows.
  - (3) Monitor WQCC and WCQD activities.
  - (4) Support NWCCOG in updating the 208 Plan and obtaining approval by the WQCC. Coordinate with NWCCOG to maintain 208 responsibilities as determined by membership.
  - (5) For a fee that will be passed on to developers, provide 208 Plan consistency review of land development proposals and water and sanitation facility siting on behalf of member jurisdictions during the development application process.
  - (6) Coordinate with Water and Sanitation Districts on water quality issues of interest.
  - (7) Represent members in discussions and hearings related to nutrient standards and other rulemakings and assist members in the site-specific standards hearing.

G. LOCAL, STATE, AND FEDERAL REGULATIONS (Implements Policy I, III)

- (1) For reduced hourly rate, provide legal and technical assistance to member's staff in revisions of their 1041 Regulations or other land use regulations. (Since the revision processes are specific to a particular member, the individual revisions will not fall within services covered by dues. QQ consultants will coordinate to minimize costs to members.)
- (2) Neutralize any objections to the 1041 process.
- (3) Work with members in the QQ region on refinements to land use regulations, policies, and technical approaches to protect water quality. Educate planning departments about the land use/water integration guidance prepared by QQ.
- (4) Maintain and update as necessary the land use/ water integration guidance prepared by QQ.
- (5) Spearhead efforts to maintain county authority over oil and gas operations, including on federal lands, so that water quality and quantity are protected.
- (6) Participate in other state rulemaking proceedings as needed to protect local authority over environmental and water quality impacts of oil and gas, geothermal, mining, and water projects.
- (7) Assist members as needed with federal legislation that approves the study of, or development of, projects leading to further potential transmountain diversions.

H. EVALUATE GROWTH IMPACTS TO WATER RESOURCES FOR MEMBERS (Implements Policies II, IV, V)

- (1) Inform public entities and private sector of regional water quality and quantity impacts of their proposals and identify mitigation measures.
- (2) Assist QQ members with the development and implementation of water conservation measures outlined in the 2020 *Water Savings Guidance and Model Standards for the QQ Region*.
- (3) For a fee that will be passed on to developers, provide 208 Plan consistency review of land development proposals and water and sanitation facility siting on behalf of member jurisdictions during the development application process (repeated from F(5)).

**II. LEGAL SERVICES**

- (1) Assist members to update 1041 or other land use regulations applicable to water matters at reduced hourly rate (repeated from G(1)). Prepare model regulations for the region.
- (2) Represent members in rulemaking hearings in front of WQCC, Colorado Energy and Carbon Management Commission (ECMC), and other state agencies. (When rulemaking hearings are complex and exceed legal time allotted to QQ, fees for this service may be charged to the Legal Defense Fund after approval by QQ.)



- (3) Prepare issue summaries for members and briefs on behalf of members or the organization relating to legal matters of regional importance.
- (4) Stay abreast of evolving judicial and legislative decisions that affect member authority and responsibilities in land use, water quality, and water quantity issues. Prepare reports to members of these developments.

### **III. QQ PROGRAM ADMINISTRATION**

- (1) Organize and prepare for QQ meetings.
- (2) Oversee QQ's program finances and report to QQ.
- (3) Meet with NWCCOG Executive Director as necessary to keep them apprised of issues that affect the NWCCOG organization.

### **IV. MEMBER SERVICES**

- (1) Represent QQ at meetings, rulemaking hearings, and state water policy forums.
- (2) Be available to QQ members to answer questions and provide technical, legislative, and legal expertise on matters regarding water quality or quantity.
- (3) Meet with members on individual basis to update elected officials on QQ's activities. Present QQ Program overview to newly-elected officials.
- (4) Design QQ meetings as a forum for exchange of ideas and establishment of policy.
- (5) Place QQ members on key committees, commissions, and boards relative to water quality and quantity issues. Participate on Boards and Commissions.
- (6) Provide reports and white papers on regulations, Clean Water Act, and water quality and quantity issues.
- (7) Encourage and support intergovernmental, inter-jurisdictional cooperation in water matters. Assist members to implement intergovernmental agreements.

**COST: FLAT RATE FEE OF \$193,408.00.**

*As indicated in the scope of services, and as approved by the QQ Board, the Legal Defense Fund may be used to fund complex rule making hearings, amicus briefs, or other legal and technical defense costs that go beyond this scope of services.*



<b>REVENUE:</b>	<b>2023 budget</b>	<b>2024 budget</b>	<b>2025 proposed budget (3% dues increase; meeting fee added)</b>
<b>TOTAL MEMBER DUES:</b>	\$166,174	\$185,663	\$191,233
County pledges:	\$102,420	\$117,541	\$121,067
Municipal pledges:	\$47,443	\$49,815	\$51,310
Associate pledges:	\$4,501	\$5,906	\$6,083
Water & San District pledges:	\$11,810	\$12,401	\$12,773
<b>QQ meeting costs:</b> Reimbursed costs in 2023 and 2024; member meeting fee in 2025	\$1,500	\$1,000	\$2,175
<b>TOTAL:</b>	\$167,674	\$186,663	\$193,408

*To cover meeting costs, an annual "meeting fee" of \$100 per county, \$50 per municipality and River District, and \$25 per district is assessed as part of member dues. This is in lieu of charging individuals for in-person meeting attendance.*

<b>EXPENSES:</b>			
Consultant Team	\$152,303	\$170,063	\$173,756
Memberships	\$2,600	\$2,600	\$2,600
Meeting Expenses			\$2,175
NWCCOG Indirect Costs	\$12,771	\$14,000	\$14,877
<b>Alpine, FH, RP, &amp; SGS CONTRACT TOTAL</b>	\$167,674	\$186,663	\$193,408

*Includes all services in QQ Scope of Work*

*Includes CO Water Congress, Water Quality Forum, Upper CO River Wild & Scenic Stakeholders Group, file management*

<b>DEFENSE FUND BALANCE:</b>	\$105,337	\$109,828	\$115,328
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*This increase is due to interest on the principle \$100,000, which NWCCOG recently started tracking for QQ.*

## QQ 2025 Proposed Dues

County	2024 Dues	2025 Proposed Dues (3% increase)	2025 Proposed Dues (QQ meeting fee increase, see column E)	QQ Meeting fee
Eagle County	\$ 25,408	\$ 26,170	\$ 26,270	\$ 100
Grand County	\$ 25,408	\$ 26,170	\$ 26,270	\$ 100
Gunnison County	\$ 5,909	\$ 6,087	\$ 6,187	\$ 100
Pitkin County	\$ 25,408	\$ 26,170	\$ 26,270	\$ 100
Summit County	\$ 25,408	\$ 26,170	\$ 26,270	\$ 100
Routt County	\$ 10,000	\$ 10,300	\$ 10,400	\$ 100
<b>Total County</b>	<b>\$ 117,541</b>	<b>\$ 121,067</b>	<b>\$ 121,667</b>	<b>\$ 600</b>
<b>Municipality</b>				
Aspen	\$ 8,036	\$ 8,277	\$ 8,327	\$ 50
Avon	\$ 2,364	\$ 2,434	\$ 2,484	\$ 50
Basalt	\$ 1,477	\$ 1,522	\$ 1,572	\$ 50
Breckenridge	\$ 6,204	\$ 6,391	\$ 6,441	\$ 50
Carbondale	\$ 3,841	\$ 3,956	\$ 4,006	\$ 50
Crested Butte	\$ 1,772	\$ 1,826	\$ 1,876	\$ 50
Dillon	\$ 886	\$ 913	\$ 963	\$ 50
Eagle	\$ 2,069	\$ 2,131	\$ 2,181	\$ 50
Fraser	\$ 827	\$ 852	\$ 902	\$ 50
Frisco	\$ 2,069	\$ 2,131	\$ 2,181	\$ 50
Granby	\$ 827	\$ 852	\$ 902	\$ 50
Grand Lake	\$ 827	\$ 852	\$ 902	\$ 50
Gypsum	\$ 2,364	\$ 2,434	\$ 2,484	\$ 50
Hot Sulphur Springs	\$ 236	\$ 243	\$ 293	\$ 50
Kremmling	\$ 1,182	\$ 1,218	\$ 1,268	\$ 50
Minturn	\$ 769	\$ 792	\$ 842	\$ 50
Silverthorne	\$ 2,010	\$ 2,070	\$ 2,120	\$ 50
Steamboat Springs	\$ 2,955	\$ 3,043	\$ 3,093	\$ 50
Vail	\$ 7,387	\$ 7,608	\$ 7,658	\$ 50
Winter Park	\$ 1,477	\$ 1,522	\$ 1,572	\$ 50
Yampa	\$ 236	\$ 243	\$ 293	\$ 50
<b>Total Municipal</b>	<b>\$ 49,815</b>	<b>\$ 51,310</b>	<b>\$ 52,360</b>	<b>\$ 1,050</b>
<b>Associate Members</b>				
Colorado River Water Conservation District	\$ 4,136	\$ 4,260	\$ 4,310	\$ 50
Middle Park Water Conservancy District	\$ 590	\$ 608	\$ 633	\$ 25
Ruedi Water & Power Authority	\$ 590	\$ 608	\$ 633	\$ 25
Upper Gunnison River Water Conservation District	\$ 590	\$ 608	\$ 633	\$ 25
<b>Total Associate</b>	<b>\$ 5,906</b>	<b>\$ 6,083</b>	<b>\$ 6,208</b>	<b>\$ 125</b>

<b>Water &amp; San Districts</b>				
Basalt Sanitation District	\$ 118	\$ 121	\$ 146	\$ 25
Bellyache Ridge Metro District	\$ 118	\$ 121	\$ 146	\$ 25
Copper Mountain Consolidated Metro District	\$ 1,064	\$ 1,096	\$ 1,121	\$ 25
Dillon Valley District	\$ 590	\$ 608	\$ 633	\$ 25
Eagle River Water & Sanitation District	\$ 2,364	\$ 2,434	\$ 2,459	\$ 25
East Dillon Water District	\$ 590	\$ 608	\$ 633	\$ 25
Granby Sanitation Dist	\$ 590	\$ 608	\$ 633	\$ 25
Grand County Water&San Dist	\$ 590	\$ 608	\$ 633	\$ 25
Hamilton Creek Metro District	\$ 118	\$ 121	\$ 146	\$ 25
Mid Valley Metro District	\$ 118	\$ 121	\$ 146	\$ 25
Silver Creek Water & San Dist	\$ 118	\$ 121	\$ 146	\$ 25
Silverthorne Dillon Joint SA	\$ 2,364	\$ 2,434	\$ 2,459	\$ 25
Snowmass Water & Sanitation	\$ 2,364	\$ 2,434	\$ 2,459	\$ 25
White Horse Springs Water District	\$ 118	\$ 121	\$ 146	\$ 25
Winter Park Ranch Water & San	\$ 590	\$ 608	\$ 633	\$ 25
Winter Park Water & San Dist	\$ 590	\$ 608	\$ 633	\$ 25
<b>Total Water &amp; San District</b>	<b>\$ 12,401</b>	<b>\$ 12,773</b>	<b>\$ 13,173</b>	<b>\$ 400</b>
<b>Total Member Dues</b>	<b>\$ 185,663</b>	<b>\$ 191,233</b>	<b>\$ 193,408</b>	<b>\$ 2,175</b>

**Water Quality & Quantity** - Dues for QQ for each municipality are based on the percentage of the region's total treated water that is served by a particular municipality. Counties, associate members, and water and sanitation districts are based on a contribution.

# NWCCOG Regional Water Quality Management Plan

## Policies for Consistency Review

Nov. 15, 2024: Recommended by QQ for Adoption (Confirm at QQ Meeting)

X DATE: Adopted by NWCCOG Council for Use During Consistency Review until 2012 Plan Update is Approved

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These policies guide regional water quality planning, implementation of the 208 Plan, and overall water quality protection in the NWCCOG Region. These policies shall be used by the NWCCOG 208 Plan Administrator to review applications for consistency with the 208 Plan.

- P-1. Water Quality Protection and Mitigation.** Land use and water development shall not significantly degrade the health of the affected watershed(s). Mitigation of adverse impacts to the watershed are the responsibility of the developer.
- P-2. Transmountain Diversions.** No transmountain diversions of water from the region shall be conducted without the prior approval of the local government and conservancy districts affected by the proposed diversion and the Colorado River Water Conservation District, and shall be consistent with this 208 Plan.
- P-3. Local Government Land Use Regulations.** Local governments in the region will implement land use regulations that require an applicant for a permit or approval of a project to demonstrate that the project is consistent with this 208 Plan. The local government will refer such projects to the NWCCOG Water Quality Administrator for a determination of consistency.
- P-4. Water Smart Land Use and Development.** Land use and development in the region shall be planned, designed, and conducted in accordance with best practices, including but not limited to Sonoran Institute Growing Water Smart recommendations, NWCCOG Water Quality Protection Standards, and other practices that further water use efficiency, conservation, and water quality protection or enhancement.
- P-5. Nonproliferation of Wastewater Treatment Facilities (WWTF).** New wastewater treatment facilities will not be developed in the region if existing facilities have the legal and physical capacity or can be expanded or consolidated to provide additional wastewater treatment service.
- P-6. Private Wastewater Operation.** The ownership and/or management of wastewater treatment facilities by homeowner associations or private wastewater operators should not be allowed unless there is no other practicable alternative.
- P-7. Onsite Wastewater Treatment Systems (OWTS).** No new OWTS should be allowed in the region unless developing or connecting to an existing or consolidated wastewater treatment facility or system is not technically or legally practicable. Where no other alternatives are available, OWTS should be designed, installed, inspected, and maintained to assure effective wastewater treatment and watershed health.
- P-8. Climate Change.** The assessment of water quality impacts of land use and water development shall take into consideration climate change predictions.
- P-9. Chemical Management.** The uses of pesticides, fertilizers, algaecides, and other hazardous substances; and road maintenance, including deicing and sanding, shall not degrade water quality or the health of the watershed.

## MEMORANDUM

**TO: QQ Members**

**FROM: Torie Jarvis, Sullivan Green Seavy Jarvis LLC**

**RE: Updates on Recent Administrative Rulemakings**

QQ recently participated in two administrative rulemakings. The following is an update of key issues on which QQ focused in the rulemakings.

1. **Cumulative Impacts Rulemaking before the Energy and Carbon Management Commission (ECMC).** QQ participated in the recent statewide rulemaking to require an analysis of cumulative impacts to the state oil and gas rules in partnership with the Town of Erie, splitting costs between the two. QQ participated as part of the “Allied Local Government” party (ALG), another HUGE efficiency through partnership.
  - a. QQ’s priorities were to ensure state cumulative impacts rules are compatible with and fully take into account local regulations, and to ensure headwaters interests in water quality and wildlife protection were fully addressed.
  - b. The ALG recommended several improvements to the rules, including:
    - i. Rules include a “mitigation hierarchy:” a preference to first avoid an impact, then minimize the impact, then finally mitigate the impact. These were all lumped together initially to allow for boilerplate ineffective responses.
    - ii. Operators are now required to do a “meta-analysis” of all the separate impacts analyses the rule lays out; after discussing cumulative impacts on separate receptors—air quality, water quality, wildlife, public welfare, etc.—they now need to also analyze the combined cumulative effects of all the separate areas.
    - iii. Rules no longer limit cumulative impact analyses to an arbitrary 1-mile area around operations. The default radius was increased to 2.5 miles for impacts to water resources, and the Commission maintained discretion to increase the area to be analyzed based on site-specific conditions.
  - c. The ECMC adopted the rules on October 15<sup>th</sup> (after a hearing that lasted more than a month! Our partners in the ALG were critical in keeping QQ up-to-date). This [Colorado Sun story](#) gives a good overview of the rulemaking.
2. **401 Certification Rulemaking before the Water Quality Control Commission (WQCC).** QQ participated as a party to the recent rulemaking to update Reg. 82, which provides rules regarding the state certification of compliance with applicable water quality requirements for projects that require a federal permit or license, referred to as “401 certification” because it is authorized under Section 401 of the Clean Water Act.
  - a. 401 Certifications are important for QQ and its members because certifications apply to ***both the construction and operation*** of the project for which a federal license or permit

is required. QQ played a key role in the WQCC decision to include language directing the Division to look at the “operation” of a water diversion project, an important aspect of long-term water quality protection in the state regulations. Importantly, the rulemaking did not alter this language in any way.

- b. The rulemaking focused on updating the regulation to be consistent with the EPA’s 2023 Improvement Rule and mostly addressed procedural issues. QQ monitored the rulemaking for unintended consequences of the rule changes and offered clarifying recommendations that were incorporated into the final rule. Rulemaking materials are available [here](#). The rulemaking occurred on October 15<sup>th</sup>.

## Water warrior: Chandler-Henry will never give up the fight for Eagle County water

By **David O. Williams**

September 24, 2024, 11:29 am



*Kathy Chandler-Henry, second from left, her daughter, Hilary, left, son, Zach, right, and husband, George, on an Eagle River Coalition float trip on the Upper Colorado.*

*Editor's note: This story first appeared in the summer 2024 issue of Vail Valley Magazine.*

The unquestioned queen of water policy in the Eagle River Valley the last dozen years or so, retiring Eagle County Commissioner Kathy Chandler-Henry now knows the form her state barge will take as she metaphorically sails into the sunset, Cleopatra-style on the Nile of life.

"We're newly-minted paddleboarders and love it," Chandler-Henry says when discussing water sports pursuits she enjoys with her husband, George, who's also looking to retire as an electrician and solar installer soon. "We've been to some high mountain lakes, and we're looking forward to trying out some rivers this summer."

As anyone who's attempted to navigate moving water knows, riding rapids is a significant step up in one's paddleboarding game. But Chandler-Henry, who also considers both alpine and Nordic skiing water sports in their frozen forms, is always up for a challenge, whether it's standing up for Western Slope water rights, battling Front Range water interests or taking on Lower Basin states in the increasingly contentious – and potentially litigious – seven-state, two-country, 30-tribe war over the consumption of the dwindling Colorado River.



A graduate of Eagle Valley Elementary and Eagle Valley High School, Chandler-Henry – who turns 69 this summer – was a director of institutional research at Colorado Mountain College before forming her own strategic planning and community survey company while she also ran Brush Creek Electric with George. When Eagle County Commissioner Jon Stavney stepped down to become town manager of Eagle in 2013, Chandler-Henry threw her hat in the ring.

She remembers one prominent member of the business community backing another candidate and telling her she wouldn't be very good at the job: "That was pretty insulting and had the opposite effect of what they were hoping. It fired me up."

Stavney, now the executive director of the regional advocacy group [Northwest Colorado Council of Governments](#), was the county commission's water guru at the time, so it was natural for Chandler-Henry to step into that role as she had been serving on the board of the Eagle River Watershed Council (recently rebranded the [Eagle River Coalition](#)) at the time.

Soft-spoken, nonconfrontational and very easy-going in a small, mountain-town kind of way, that doesn't mean Chandler-Henry backs away from a battle, especially on water issues. She recalls a panel discussion at a [Colorado Water Congress](#) meeting a couple of years ago when an attorney for the behemoth [Denver Water](#) was talking about how bad county [1041 powers](#) are – the legislatively mandated authority counties have over some state infrastructure projects. It's how Eagle County [turned back the Homestake II water diversion project in the 1990s](#).

"This attorney was ... talking about how bad 1041 is because you ended up with these uninformed, uneducated rural county commissioners making water decisions for the important, smart people in Denver," Chandler-Henry laughs, admitting that fired her up too. "He was very well-spoken and had all of his points lined up, and I thought, 'Boy, these guys are dangerous.'"

Chandler-Henry is currently the Eagle County representative for and president of both the [Colorado River District](#) and the [Water Quality and Quantity \(QQ\)](#) program of the Northwest Colorado Council of Governments. She'll be leaving those seats when her term is up as one of the three county commissioners — stepping down rather than seeking a third term – and she says Eagle County and its residents will always have to remain vigilant in the water wars in order to maintain our outdoor recreation economy and status as a high-altitude, headwaters community.

The Colorado River District, made up of 15 Western Slope counties, was launched when the massive Colorado Big-Thompson project in the 1930s rapidly accelerated the then-nascent concept of transmountain diversions (basically tunneling under the Continental Divide to move water from the state's Western Slope drainage that feeds the Pacific Ocean and taking it to the state's Eastern Plains and the Atlantic Ocean drainage). Chandler-Henry has a U.S. Bureau of Reclamation publication with a photo of a group of older white men standing around a table in the 1930s, signing the documents for that seminal Big-Thompson project.

"Who would have thought, 'Let's dig tunnels through the Continental Divide and take the water from the mountains to the Eastern Plains?' It just blows my mind still," Chandler-Henry says. "But that's why the River District got started, because there was a recognition on the Western Slope that the water and the economy here was at great risk if there weren't some protections, and if there wasn't an organization looking out for water rights on the Western Slope. And there's huge inherent tensions. One of the things that QQ works on is trying to get in place, and it is in the [Colorado Water Plan](#), is that the basin of origin of the water has to be recognized and the impacts on that as well as the destination."

The inherent tension, of course, stems from the fact that approximately 80% of Colorado's population lives on those Eastern Plains along the Front Range of the Rocky Mountains, while a

nearly equal percentage of the state's water flows on the Western Slope. About 500,000 acre-feet of water is diverted out of the Colorado River Basin to the Front Range every year, and one acre-foot equals about 326,000 gallons of water, or enough for two or three households per year.

"The reason people come [to Colorado] is so that they can get on I-70 and come ski in Vail on the weekend. It's not because they want to live in Aurora. They like the outdoor recreation [on the Western Slope], which is dependent on water," Chandler-Henry says, crediting the city east of Denver with pioneering water conservation programs, including turf-grass replacement. "But the reason they're doing that is so that they can have more houses and more people and continue to grow their borders and add rooftops."

Aurora and another Front Range city, Colorado Springs, are still trying to develop up to 20,000 acre-feet of Upper Eagle River water rights they obtained in the 1950s – long before manmade climate change and the aridification of Colorado were scientifically accepted facts. Opponents of that Whitney Reservoir proposal on Homestake Creek [say that water needs to stay on the Western Slope](#).

The Colorado River, which starts high on the Western Slope in neighboring Grand County, meanders somewhat placidly through northwestern Eagle County (a stretch known as the Upper C) before the Eagle River pours into it at Dotsero and the Colorado picks up steam through Glenwood Canyon, plunging eventually into Utah, down through the Grand Canyon and terminating near the Gulf of California – a riotous recreational ride for boaters still reminiscent of John Wesley Powell's [deadly inaugural trip in 1869](#). Along the way the river now provides water to an estimated 40 million people, but it's [critically endangered](#) by manmade climate change, historic drought, mismanagement and overuse, particularly by Lower Basin state agriculture interests.

Chandler-Henry chaired the legislatively mandated [Colorado River Drought Task Force](#) that last year produced a report to make recommendations for both interstate and intrastate drought management as the crisis of dwindling flows and rapidly depleted storage in Lake Powell and Lake Mead intensifies and the seven [Colorado River Basin states spar over consumption](#).

"The Front Range and the Western Slope should share equally in any curtailments that are required because of drought management, because the fear on the Western Slope is that all the cuts will come out of agriculture," Chandler-Henry says. "Our economies over here are completely water dependent, whether they're recreation or whether they're agriculture, and if the Front Range diverters get their water and the cuts come out of the Western Slope, either voluntarily or otherwise, it has some pretty devastating effects on the economy over here."

Given the population realities and political power dynamics, that concept didn't fly as an official recommendation to the Colorado Legislature, but it is at least in the [final report](#). Overall, [about 80% of Colorado River water is used for agriculture](#) – 56% for livestock feed and 24% for other



*Chandler-Henry on frozen water.*

crops, and an estimated 90% of the nation's winter vegetables are grown in the Lower Basin states of California, Arizona and Nevada.

The Upper Basin states are Colorado, New Mexico, Utah and Wyoming, and, under the [1922 Colorado River Compact](#), the two basins are each allocated 7.5 million acre-feet of Colorado River Water a year. However, over the last 20 years of megadrought, the Colorado River is down to about 13.4 million acre-feet of water a year. Lower Basin states, Colorado water officials contend, regularly exceed their allotment, [while the Upper Basin states don't come close](#).

Colorado's Upper Colorado River Commissioner Becky Mitchell, on a webinar last spring with stakeholders and press members, pointed out that current, intense negotiations are not over the compact itself but rather operating guidelines for Lake Mead and Lake Powell – the two massive reservoirs that are at their lowest levels since first filling in the 1930s and 1960s respectively. The current 2007 guidelines, which expire in 2026, tie the reservoirs together and require water to be released from Powell into Mead if demand below Mead takes it down too low.

"The crisis on the Colorado River was facilitated by the current guidelines and also somewhat by Mother Nature," Mitchell says. "When there is overuse and drawdown in Lake Mead, Lake Powell gets drawn down as well, and essentially, takes away a level of certainty and security that we have across the entire system. Everybody across the entire basin deserves some level of security and certainty and we understand that, but the only way to do that is to use less."

Put more simply, Mitchell says "operations are out of touch with current hydrologic conditions."

For Chandler-Henry, water policy was imprinted on her DNA at an early age because her mom, Marge Chandler, grew up on a ranch north of New Castle near the Colorado River that her grandfather had first homesteaded. Kathy's sister still runs the ranch, and deals every year with the growing scarcity of water in the Upper Colorado River Basin due to climate change, overuse and changing hydrology. Snowpack, Colorado's biggest reservoir, is shrinking every year.

"They're lucky to have water through July, and the ditch rider comes around and shuts off the headgate and that's it for your crop," Chandler-Henry says of her sister's ranch. "When I was on a Lower Basin tour [in 2022], we were at an alfalfa growers, and I said, 'How many cuttings do you get? [In Colorado] it's two and maybe three if it's a good year.' They said, 'Oh, nine to 11.' Because there's just so much more water. It seems like water wealth down there [in California and Arizona]. And when you're up here, everybody's counting every little drop."

Besides keeping a sharp eye on basin-wide negotiations and an even closer eye on Front Range diverters, Chandler-Henry says Eagle County must do it all it can to protect critical wetlands in the headwaters of the Eagle River and along all the high-mountain streams and tributaries that flow into the Colorado River at the western end of the county. She's very concerned 1041 could be a target after [Boulder County backed down](#) in a standoff with Denver Water in 2022.

"[1041] is what we have relied on here, but it feels a little tenuous," Chandler-Henry says. She also points to the U.S. Supreme Court's [Sackett v. Environmental Protection Agency \(EPA\) decision](#) last year – in which an Idaho couple simply didn't want to have to apply for a federal wetlands dredging permit — that stripped away 50 years of Clean Water Act protections for fully two-thirds of Colorado's wetlands and streams.

"Now that [\[definition of\] Waters of the U.S.](#) is much more limited than it was, the things that [SCOTUS] said are not Waters of the U.S. are ephemeral streams, disconnected wetlands and fens," Chandler-Henry says. "So on the Western Slope, the mountains, nearly all of our streams are not

year-round streams. They flow when there's water. So if those are not protected anymore by the feds, then are they going to be protected by the state or not?"

As of this writing, [two competing pieces of legislation](#) were working their way through the state legislature to set up a state regulatory framework to permit the dredging and filling of wetlands on both private and public lands in Colorado. But water experts point out Colorado has already lost about half of its wetlands since statehood, and they are critically important forms of water storage, pollution filtration, wildlife habitat and a buffer against climate-fueled wildfires.

Asked to enumerate her greatest accomplishments as a county commissioner on water issues the last decade-plus, Chandler-Henry quickly points to "strengthening funding for the [Eagle River Coalition](#), [Roaring Fork Conservancy](#) and the [Eagle County Conservation District](#). Those organizations are doing the important work and should be supported."

She then adds, "elevating the conversation about the importance of connecting land use and water planning [[Powell would be proud](#)]" and "chairs the [Colorado River Drought Task Force](#) in what were civil, thoughtful and intelligent discussions on drought resiliency in Colorado. I think the work of the task force will pay off in future dividends."

Asked for her biggest accomplishment period, and it's no surprise she cites another water issue: "Signing the Purchase and Sale Agreement with Xcel on Dec. 19 [2023] on behalf of the River District. That's an accomplishment going back decades and many people, so I had the great honor of representing the accomplishments of many. We have a lot of work left to do but I feel certain we can get this across the finish line, and it's a big deal!"

That's the [ongoing push](#) by the Colorado River District to buy Xcel Energy's water rights currently used for producing hydropower at the Shoshone Dam of the Colorado River in Glenwood Canyon. But once she hangs up her commissioner's gavel and replaces it with a paddle, Chandler-Henry says she'll never stop protecting Eagle County and Colorado's water.

"I certainly will be here as a resource and to help however I can," she said. "And I won't quit caring about water, that's for sure."

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Daily Trail (Vail), the Del Norte Triuplicate (California), the Denver Daily News, the Denver Gazette, the Denver Post, the Durango Herald, the Eagle Valley Enterprise, the Eastside Journal (Bellevue, Washington), ESPN.com, Explore Big Sky (Mont.), the Fort Morgan Times (Colorado), the Glenwood Springs Post-Independent, the Grand Junction Daily Sentinel, the Greeley Tribune, the Huffington Post, the King County Journal (Seattle, Washington), the Kingman Daily Miner (Arizona), KUNC.org (northern Colorado), LA Weekly, the Las Vegas Sun, the Leadville Herald-Democrat, the London Daily Mirror, the Moab Times Independent (Utah), the Montgomery Journal (Maryland), the Montrose Daily Press, The New York Times, the Parent's Handbook, Peaks Magazine (now Epic Life), People Magazine, Powder Magazine, the Pueblo Chieftain, PT Magazine, the Rio Blanco Herald Times (Colorado), Rocky Mountain Golf Magazine, the Rocky Mountain News, RouteFifty.com (formerly Government Executive State and Local), the Salt Lake Tribune, SKI Magazine, Ski Area Management, SKIING Magazine, the Sky-Hi News, the Steamboat Pilot & Today, the Sterling Journal Advocate (Colorado), the Summit Daily News, United Hemispheres (United Airlines), Vail/Beaver Creek Magazine, Vail en Español, Vail Health Magazine, Vail Valley Magazine, the Vail Daily, the Vail Trail, Westword (Denver), Writers on the Range and the Wyoming Tribune Eagle. Williams is also the founder, publisher and editor of RealVail.com and RockyMountainPost.com.

## One Response to *Water warrior: Chandler-Henry will never give up the fight for Eagle County water*



**Phil Brink**

September 26, 2024 at 5:56 pm

Nice article on Kathy Chandler-Henry.

It would benefit you to do some research on the Sackett case though. Your statement (below) is not accurate.

"[1041] is what we have relied on here, but it feels a little tenuous," Chandler-Henry says. She also points to the U.S. Supreme Court's Sackett v. Environmental Protection Agency (EPA) decision last year – in which an Idaho couple simply didn't want to have to apply for a federal wetlands dredging permit — that stripped away 50 years of Clean Water Act protections for fully two-thirds of Colorado's wetlands and streams."

If you look at the Sackett case and its background, you'll find that it all stemmed from EPA's desire to extend its regulatory authority beyond its congressionally authorized jurisdiction under the Clean Water Act. Simply put, the CWA does not allow EPA to regulate groundwater. The Sackett case involved an assertion by EPA that the Sackett property was connected to a stream via groundwater. It was not connected via surface water, which the EPA conceded.

For years, EPA has been expanding their reach by using an argument based on the assertion that a variety of non-surface connected water bodies have a "significant nexus" to a navigable waterway. This assertion was wishful thinking by EPA. It was based on a comment made by dissenting Supreme

Court justice Kennedy in the 2006 Rapanos case. Kennedy's view was a minority view. It did not represent the majority decision. Thus, it could not be used a guidance by the US COE or EPA. Nevertheless, EPA took it and ran with it. And that is why the Sackett case ended up in the Supreme Court (twice).

Among other things, the Sackett case simply clarified that Congress never authorized EPA to regulate groundwater, and therefore, the Sackett's property did not fall under their purview to regulate it. It also reinforced the limits of what "navigable waters" meant.

Many members of the media seem to love to run with hyperbole on environmental issues without getting the facts. In reality, the Sackett case was long overdue. It also carried the benefit of pushing regulatory authority back to the states, where it should have been all along. Now Colorado is developing its own regulations on wetland protection and dredging and filling in and around water bodies. And these regulations will, hopefully, fit our topography and climate and existing regulatory environment in a way the EPA and COE rules never could.

Sincerely,  
Phil Brink