

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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Denver, Colorado 80203
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SUMMARY MINUTES AND RECORD OF DECISIONS

November 13-15, 2006¹

Final and Approved January 24, 2007

Monday, November 13, 2006
Call to Order 10:00 a.m.

Bill Owens
Governor

Russell George
Executive Director

Rod Kuharich
CWCB Director

Dan McAuliffe,
Deputy Director

A regular meeting of the Colorado Water Conservation Board (CWCB) was convened at the Red Lion Hotel DIA at 4040 Quebec Street, Denver, Colorado 80216. The meeting was called to order by Chair John Redifer. Nine voting members were present at the call to order so a quorum was present (at least six required). Voting Board members present were Chair John Redifer, Vice Chair Travis Smith, Keith Catlin, Don Schwindt, Tom Sharp, Harold Miskel, Carl Trick, Eric Wilkinson, Barbara Biggs. *Ex Officio* members present or represented were CWCB Director Rod Kuharich, CWCB Deputy Director Dan McAuliffe, Hal Simpson, State Engineer, and Deputy Attorney General Casey Shpall.

Note: While Board's consideration of agenda items does not always follow the sequence indicated by the agenda numbers, these minutes are listed in agenda item order for easier reference.

1. Review and Approval of Agenda

Tape 1, Track 1 00:00:00 – 00:01:43

Action: A motion was made by Carl Trick, and seconded by Keith Catlin to approve the modified agenda, with the addition on page 6 of the agenda of the Contested Instream Flow Appropriation Hearings for the Anthracite Creek and Coal Creek, the Arkansas River, and the Smith Fork Gunnison River and South Fork Smith Gunnison River. The motion was approved unanimously (9-0).

¹

A complete record of the meeting has been made in electronic form using an MP2 format. The recording and the associated written materials are the only legal record of the meeting. These written summaries are intended only as an aid to research and a guide to the tapes. The motions described herein may not represent a verbatim transcription. Agenda items are presented in numerical order, according to the Agenda for the meeting. Disk numbers and approximate locations are identified for the beginning and end of each agenda item.

The complete record of this meeting is available at the CWCB during regular office hours. Arrangements to make copies of the tapes or written transcripts of specific agenda items may be produced at the requestor's expense. Notes from the meeting for identification of times and tapes for specific agenda items can also be reviewed at the CWCB offices.

Voting tallies are based on members present for voting. Members recusing themselves are identified. Board members occasionally leave the meeting, but the original meeting notes typically indicate whether or not a particular Board Member was present during a specific agenda item.

2. Approve and/or Remove Items from Consent Agenda

Tape 1, Track 1 00:01:43 – 00:03:13

Action: A motion was made by Don Schwindt and seconded by Travis Smith to approve Consent Agenda Items 1a, and 2a. Consent Agenda Item 1b was not approved at this time, but was moved on the agenda to after Agenda Item 17. The motion was approved unanimously (9-0).

Tape 2, Track 2 00:00:00 – 00:06:32

Action: A motion was made by Don Schwindt and seconded by Carl Trick to approve Consent Agenda Item 1b. Barbara Biggs and Travis Smith were not available for this agenda item. The motion was approved unanimously (7-0).

3a. Review and Approval of Meeting Minutes – September 19-20, 2006 Minutes

Tape 1, Track 1 00:03:13 – 00:07:18

Action: A motion was made by Eric Wilkinson and seconded by Carl Trick to approve the corrected September 19-20, 2006 minutes. Barbara Biggs abstained from the vote on this agenda item. The motion was approved unanimously (8-0).

4a. Next Meetings Dates and Locations – Jan. 23-24, 2007 Denver, CO, Holiday Inn DIA

Tape 1, Track 1 00:07:18 – 00:07:55

Action: There were no objections to the meeting date and location for the January 2007 Board meeting.

4b. Next Meetings Dates and Locations – Mar. 27-28, 2007 Canon City, CO

Tape 1, Track 1 00:07:55 – 00:12:59

Action: A motion was made by Travis Smith and seconded by Keith Catlin to change the March date to March 12-13, 2007. The motion was approved unanimously (9-0).

4c. Next Meetings Dates and Locations – May 22-23, 2007 Gunnison, CO

Tape 1, Track 1 00:07:18 – 00:07:55

Action: A motion was made by Travis Smith and seconded by Keith Catlin to change the May location to Montrose, CO. The motion was approved unanimously (9-0).

4d. Next Meetings Dates and Locations – Jul. 24-25, 2007 Craig, CO

Tape 1, Track 1 00:07:55 – 00:12:59

Action: There were no objections to the meeting date and location for the July 2007 Board meeting.

4e. Next Meetings Dates and Locations – Sep. 18-19, 2007 Longmont, CO

Tape 1, Track 1 00:07:55 – 00:12:59

Action: There were no objections to the meeting date and location for the September 2007 Board meeting.

4f. Next Meetings Dates and Locations – Nov. 20-21, 2007 Denver, CO

Tape 1, Track 1 00:07:55 – 00:12:59

Action: There were no objections to the meeting date and location for the November 2007 Board meeting.

- 5a. Directors' Reports – DNR Executive Director
Tape 1, Track 1 00:00:00 – 00:00:00
Action: No report, representative not present.
- 5b. Directors' Reports – Interbasin Compact Commission Director
Tape 1, Track 1 00:12:59 – 00:35:21
Action: Informational item only, no action taken. Eric Hecox handed out the IBCC annual report that was presented to the legislature. The report is available on the Department of Natural Resources Web site.
- 5c. Directors' Reports – Agriculture Commissioner
Tape 1, Track 1 00:35:21 – 00:44:18
Action: Informational item only, no action taken.
- 5d. Directors' Reports – CWCB Director
Tape 1, Track 1 00:44:18 – 01:16:09
Action: Informational item only, no action taken. Rod Kuharich congratulated Thuy Patton on becoming a certified Flood Plain Administrator. Randy Seaholm, Water Supply Protection Section Chief announced that Susan Maul will retire at the end of November 2006. Rod Kuharich announced that Dan Merriman, Stream and Lake Protection Section Chief will retire in February 2007. Dan Merriman announced that Owen Williams has been hired in the Stream and Lake Protection Section.
- 5e. Directors' Reports – State Engineer
Tape 1, Track 1 01:16:09 – 01:26:10
Action: Informational item only, no action taken.
- 5f. Directors' Reports – Division of Wildlife Director
Tape 1, Track 1 00:00:00 – 00:00:00
Action: No report, representative not present.
- 5g. Directors' Reports – Water Resources and Power Development Authority Director
Tape 1, Track 1 00:00:00 – 00:00:00
Action: No report, representative not present.
- 6a. Water Supply Planning and Finance Section, and Stream and Lake Protection Section, and Office of Water Conservation and Drought Planning (OWCDP) – Proposed Statute Revisions
Tape 1, Track 1 01:26:32 – 01:38:15
Action: A motion was made by Tom Sharp and seconded by Barbara Biggs to approve Staff's proposed statutory modification to Section 36-20-113 to allow the Flood Protection Section spending authority to expend the funds received through the Weather Modification Program permit fees. The motion was approved unanimously (9-0).

- 6b. Water Supply Planning and Finance Section, and Stream and Lake Protection Section, and Office of Water Conservation and Drought Planning (OWCDP) – CWCB Loan Authority Increase to \$25 Million
Tape 1, Track 1 01:38:15– 01:45:19
Action: A motion was made by Don Schwindt and seconded by Travis Smith to present to the Legislature for preliminary discussion and approval, with a report back to the Board at the January 2007 Board meeting, the request to increase the spending authority in Section 37-60-122 of the Construction Fund to authorize loans up to \$25,000,000 without Legislative approval. The motion was approved unanimously (9-0).
- 6c. Water Supply Planning and Finance Section, and Stream and Lake Protection Section, and Office of Water Conservation and Drought Planning (OWCDP) – Agricultural Emergency Drought Response Program Technical Corrections
Tape 1, Track 1 01:45:19 – 01:52:47
Action: A motion was made by Eric Wilkinson and seconded by Carl Trick to add language to clarify the administration of Section 37-60-123.5 of the Agricultural Emergency Drought Grant Program so that appropriations from the current year may be disbursed to grantees based on drought designations in prior years. The motion was approved unanimously (9-0).
- 6d. Water Supply Planning and Finance Section, and Stream and Lake Protection Section, and Office of Water Conservation and Drought Planning (OWCDP) – Loans of Water Rights for Instream Flow Use
Tape 1, Track 1 01:52:47 – 01:59:13
Action: A motion was made by Don Schwindt and seconded by Harold Miskel to propose changes to add a subsection to Section 37-83-105(2) to assure water rights owners who are interested in loaning water to the CWCB for instream flow use that such a loan will not result in a reduction of the historic consumptive use credited to the loaned water right in any future water court proceeding to change that water right. The added subsection also provides clear guidance to the water courts on how to treat periods of instream flow use of a water right loaned to the CWCB under section 37-83-105(2). In addition, Section 37-92-103(2)(b) would be amended to assure water rights owners who are interested in loaning water to the CWCB for instream flow use that the owner's nonuse of a water right during the period of such a loan to the CWCB shall not give rise to a presumption of abandonment of that water right. The motion was approved unanimously (9-0).
- 6e. Water Supply Planning and Finance Section, and Stream and Lake Protection Section, and Office of Water Conservation and Drought Planning (OWCDP) – OWCDP – Proposed Water Conservation Legislation for the 2007 Legislative Session
Tape 1, Tape 1 02:20:31 – 02:30:26
Action: A motion was made by Eric Wilkinson and seconded by Barbara Biggs to approve Staff's recommendations to propose changes to Section 37-60-126 C.R.S., Section 37-60-126.5 C.R.S., and Section 39-29-109 C.R.S. to (1) broaden the use of the currently existing Water Efficiency Grant Program Fund to include water conservation planning and implementation, education and public outreach, and drought mitigation planning and implementation; to (2) increase the Water

Efficiency Grant Program Fund by \$1.75 million; to (3) extend the Water Efficiency Grant Program Fund sunset date by three years from its current sunset date of 2008 to a sunset date of June 30, 2012; and to (4) allow state and local governmental entities to be eligible for grant monies to carry out water conservation planning and implementation. The motion was approved unanimously (9-0).

7. Water Supply Planning and Finance Section – Loan De-Authorization Review –

- a. Supply Irrigating Ditch Company – Knoth Reservoir Dam Enlargement Project
- b. FL Gill H2O LLC – Groundwater Recharge and Well Augmentation Project
- c. Ryan Gulch Reservoir Company – Ryan Gulch Reservoir Dam Rehab. Project
- d. Tilton Lateral, Inc. – Tilton Lateral Rehabilitation Project
- e. Town of Coal Creek – Water Rights Purchase

Tape 1, Track 2 00:00:00 – 00:05:25

Action: A motion was made by Eric Wilkinson and seconded by Barbara Biggs to approve the following staff recommendations on Agenda Items 7a-7e, which were voted on together: 1) to extend the authorization of the loan to the Supply Irrigating Ditch Company – Knoth Reservoir Dam Enlargement Project for one year; 2) to de-authorize the loan to the FL Gill H2O LLC – Groundwater Recharge and Well Augmentation Project; 3) to de-authorize the loan to the Ryan Gulch Reservoir Company – Ryan Gulch Reservoir Dam Rehabilitation Project; 4) to de-authorize the loan to Tilton Lateral, Inc. – Tilton Lateral Rehabilitation Project; 5) to de-authorize the loan to the Town of Coal Creek – Water Rights Purchase. Harold Miskel was not present for this agenda item. The motion was approved unanimously (8-0).

8a. Water Supply Planning and Finance Section – Financial Matters – Construction Fund and Severance Tax Trust Fund Perpetual Base Account Annual Financial Statements

Tape 1, Track 2 00:05:25 – 00:33:37

Action: Informational item only, no action taken.

9a. Water Supply Planning and Finance Section – Estimate of Funds Available for New Projects in 2007 – CWCB Construction Fund – Loans and Non-Reimbursable Investments

Tape 1, Track 2 00:33:37 – 00:45:43

Action: Informational item only, no action taken.

9b. Water Supply Planning and Finance Section – Estimate of Funds Available for New Projects in 2007 – Severance Tax Trust Fund Perpetual Base Account

Tape 1, Track 2 00:33:37 – 00:45:43

Action: Informational item only, no action taken.

10a. Water Supply Planning and Finance – Construction Fund and Severance Tax Trust Fund Perpetual Base Account New Loans – Southeastern Colorado Water Conservancy District Water Activity Enterprise – Arkansas Valley Conduit Project

Tape 1, Track 2 01:38:18 – 02:33:36

Action: A motion was made by Tom Sharp and seconded by Eric Wilkinson to a conditional loan approval not to exceed \$60,600,000 (\$60,000,000 for project costs and \$600,000 for the 1% Loan Service Fee in accordance with the CWCB Loan Policy #16), to the Southeastern Colorado Water Conservancy District (SECWCD), acting by and through its Water Activity Enterprise, from the Severance Tax Trust Fund Perpetual Base Account, to provide the local share for construction of the Arkansas Valley Conduit, a 138 mile water supply pipeline extending from Pueblo Reservoir to the City of Lamar. The terms of the loan are 30 years at 3.25% per annum. Security for the loan will be a pledge of SECWCD Water Activity Enterprise revenues, including revenues received from the Arkansas Valley Conduit participants through Participant Funding Agreements.

The final approval of the loan shall be conditioned upon all other standard contracting provisions of the CWCB, as well as the following:

1) Final Feasibility Study – Prior to execution of a State loan contract, the project sponsor is required to complete the feasibility study to the satisfaction of the CWCB Director or his designee, including institutional and financial program details;

2) Participant Funding Agreements (a) Prior to execution of a State loan contract, all proposed Participant Funding Agreements contemplated in the Loan Application & Feasibility Study shall be executed, and copies submitted to the CWCB. The format of the agreements shall be as agreed upon by the CWCB and the Enterprise prior to execution with participants. (b) Water Allocation – Participant Funding Agreements shall address water allocation to the Arkansas Valley Conduit. Based on the annual availability of Fry-Ark Project water, the District and the Enterprise shall make every attempt to allocate water in such a manner as to meet the requested demand (6,555 acre feet) of the participants. In average years, this will require the allocation of a minimum of 776 AF of available return flows to the project, or an equivalent amount of water from other sources;

(3) Conservation Plans – Prior to execution of a State loan contract, all “covered entities” participating in the project are required to have a CWCB-approved Water Conservation Plan in place;

(4) Federal Authorization – No State loan contract shall be executed until Federal legislation regarding the federal/ local cost-share for the Arkansas Valley Conduit has been approved;

(5) Federal Funding Appropriation – No State loan contract shall be executed until Federal legislation to authorize the federal/local cost-share for the Arkansas Valley Conduit has been approved;

(6) CWCB Loan Contract – (a) Time Limit – Provisions pertaining to the time limit for loan approval shall be as outlined in CWCB Financial Policy #2 (Time Limits), with the following exception: The moneys appropriated in the CWCB Water Projects Bill shall remain available for the designated purposes until the project is completed; except that if the SECWCD Water Activity Enterprise does not enter into a loan contract with the CWVB within two years after the effective date of the CWCB Water Projects Bill (May 2007), then the moneys appropriated shall no longer be available for the designated purposes and shall revert back to the Severance Tax Trust Fund Perpetual Base Account (b) Step-Up Provision – The contract with SECWCD Water Activity Enterprise, shall include a “step-up” provision, requiring that if any project participants fail to make their loan

repayment to SECWCD, the Enterprise will cover the shortfall; (c) Taxpayer's Bill of Rights (TABOR) Compliance – The Enterprise will supply to the CWCB, a TABOR compliance letter prior to entering into the State contract, with respect both to the loan to the Enterprise and the step-up provisions of the participants' agreements;

(7) Federal Memorandum of Understanding (MOU) It is contemplated that an MOU between the SECWCD Water Activity Enterprise and a federal agency or agencies will be necessary to address such items as design, ownership and operation of the Arkansas Valley Conduit. This agreement shall be in place prior to execution of a State contract;

(8) Status Report on Conditions – Prior to executing a State loan contract, the CWCB staff shall provide a status report to the Board on the fulfillment of the above loan approval conditions;

(9) Loan Disbursements – Disbursements from the CWCB to the Enterprise will be in the same percentage (and time frame) relative to the total CWCB loan amount, as disbursements made from the federal government relative to the total federal government cost-share commitment.

Harold Miskel recused himself from the vote. The motion was approved unanimously (8-0).

10b. Water Supply Planning and Finance – Construction Fund and Severance Tax Trust Fund Perpetual Base Account New Loans – Lazy-O-Ranch – Dual Water Supply System

Tape 1, Track 2 01:25:35– 01:38:18

Action: A motion was made by Barbara Biggs and seconded by Don Schwindt to approve a loan from the Construction Fund in the amount up to \$152,258 (\$150,750 for project costs and \$1,508 for the 1% loan origination fee, in accordance with CWCB Financial Policy No. 16) to the Lazy O Ranch Homeowners Association. The loan is for up to 90% of the cost to construct a secondary water supply system. The recommended loan terms are 30-years at 4.25%. Security for the loan will be a pledge of assessment revenues backed by assessment covenant and the project itself in accordance with Policy No. 5. The final approval of the loan shall be conditioned upon all standard-contracting provisions of the CWCB. The motion was approved unanimously (9-0).

10c. Water Supply Planning and Finance – Construction Fund and Severance Tax Trust Fund Perpetual Base Account New Loans – Penrose Water District - Water Rights Purchase and Raw Water Pipeline Project

Tape 1, Track 2 02:42:44 – 03:03:09

Action: A motion was made by Harold Miskel and seconded by Tom Sharp to approve a loan not to exceed \$8,844,570 (\$8,757,000 for project costs and \$87,570 for the 1% Loan Service Fee in accordance with the CWCB Loan Policy #16), to the Penrose Water District, acting by and through the Penrose Water District Water Activity Enterprise, from the Severance Tax Trust Fund Perpetual Base Account, to purchase water rights and construct a raw water pipeline from the Arkansas River to the District's service area, enlarge Brush Hollow Reservoir, and to cover expenses already incurred. The terms of the loan are 30 years at 3.25% per annum. As security for the loan the Penrose Water District Water Activity Enterprise, will

pledge water user revenues backed by a rate covenant, revenues from the 3.00 mill Special Revenue Fund levy, and annual financial reporting. The final approval of the loan shall be conditioned upon all other standard contracting provisions of the CWCB, with the following additional conditions: 1) Prior to execution of a State Contract, the District and the Enterprise shall comply with the terms of Section 6 of the Resolution establishing the Enterprise, and separate budgets for the Water Activity Enterprise and the District general fund, and shall provide financial reporting and fund accounting for the Enterprise Activity separate from the District general fund; 2) Prior to execution of a State Contract, the District shall enter into an agreement with the Enterprise to provide non-tax based retained earnings necessary to: a) retire the DOLA and USDA-RD loans; b) establish the required CWCB loan reserve; and c) provide for the reallocation of revenues to the Enterprise following the retirement of the 2003 Revenue Bond in 2012; 3) Prior to execution of a State Contract, evidence shall be provided that a CWCB loan reserve fund has been established within the Enterprise, in the amount of \$461,334; 4) Prior to execution of a State Contract, the Enterprise shall have entered into an agreement with Beaver Park Water, Inc., allowing the expansion of Brush Hollow Reservoir to accommodate the proposed project; 5) The District shall obtain a satisfactory Taxpayer's Bill of Rights (TABOR) attorney opinion letter and provide the letter to the CWCB, stating that there are no TABOR issues and that the agreements are fully enforceable by the Enterprise. The motion was approved unanimously (9-0).

10d. Water Supply Planning and Finance – Construction Fund and Severance Tax Trust Fund Perpetual Base Account New Loans – Tom Hill – McElroy Dam Rehabilitation Project

Tape 1, Track 2 00:45:43 – 01:25:35

Action: A motion was made by Tom Sharp and seconded by Carl Trick to approve a loan not to exceed \$862,540 (\$854,000 for projected costs and \$8,540 for the 1% Loan Service Fee) to Tom Hill for land appraisal, engineering and construction costs associated with the McElroy Dam Rehabilitation Project, from the Severance Tax Trust fund Perpetual Base Account. The terms of the loan shall be a 30-year loan at 2.5% per annum. Final approval of the loan shall be conditioned upon all standard contracting provisions of the CWCB Loan Program. Security for the loan shall be collateral in compliance with CWCB Loan Policy #5. A supplemental loan contract condition is included that the borrower shall provide a certified appraisal of the 207 acres of land to be used as security for the loan. The appraisal shall indicate a value greater than 110% of the loan amount. If the appraisal indicates a value less than 110% and more than 90% of the loan amount, the CWCB shall take a second lien, behind the existing lien of the Grand Mountain Bank, on the remainder of the real property known as the Gore Pass Ranch and on all water rights now owned and hereafter acquired. The cost of the appraisal can be made out of the loan proceeds. In addition, if a second lien is required, the second lien on the entire ranch should also include a second lien on the water rights associated with the entire ranch. All liens held as collateral by CWCB should contain due-on-sale clauses so that if any of the lands or water rights encumbered by liens held by CWCB are sold, the proceeds accruing from such sales shall be transferred to the CWCB in accordance with the terms and conditions of the CWCB liens and shall be used to repay the CWCB loan. The motion was approved unanimously (9-0).

- 10e. Water Supply Planning and Finance – Construction Fund and Severance Tax Trust Fund Perpetual Base Account New Loans – Platte Valley Irrigation Company – New Equalizer Reservoir Project
Tape 1, Track 2 03:03:09 – 03:13:40
Action: A motion was made by Eric Wilkinson and seconded by Barbara Biggs to approve a loan not to exceed \$2,388,650 (\$2,365,000 for project costs and \$23,650 for the 1% Loan Service Fee in accordance with CWCB Loan Policy #16), to the Platte Valley Irrigation Company from the Severance Tax Trust Fund Perpetual Base Account, to construct an equalizer reservoir, the Platte Valley Reservoir No. 1, and to add additional measurement and control structures on their main ditch, and to cover land expenses already incurred. The terms of the loan are 20 years at 2.25% per annum. Security for the loan will be a pledge of assessment revenues backed by a rate covenant, and the project itself. Final approval of the loan is conditioned upon all other standard contracting provisions of the CWCB, as well as the following: Reserve Fund – Prior to execution of the State Contract, the Company shall provide CWCB with evidence that the debt reserve fund with \$148,149 has been established. The motion was approved unanimously (9-0).
- 10f. Water Supply Planning and Finance – Construction Fund and Severance Tax Trust Fund Perpetual Base Account New Loans – Headgate 396 Lateral Corp., LLC – 396 Lateral Pipeline Project
Tape 1, Track 2 02:33:36 – 02:42:44
Action: A motion was made by Carl Trick and seconded by Travis Smith to approve an initial loan, not to exceed \$232,300 (\$230,000 for project costs and \$2,300 for the 1% Loan Service Fee) for engineering and construction costs, to the Headgate 396 Lateral Corporation from the Severance Tax Trust Fund Perpetual Base Account, for the 396 Lateral Piping Project; and a post-construction loan not to exceed \$136,300 (\$134,000 for project costs and \$2,300 for the 1% Loan Service Fee) to the Corporation with terms based on the current agricultural rate of 30 years at 2.50% per annum. Security for the loan will be collateral in compliance with CWCB Financial Policy No. 5. The approval of the initial loan shall be conditioned upon the following: 1) Executed USDA Conservation Program Contract. 2) Corporations’ Funding Agreement shall include a “step-up” provision. 3) All standard contracting provisions of the CWCB Loan Program including a revised Debt Service Reserve Fund Provision that requires two annual loan payments (one payment set aside at the time of first draw of funds and one third of an annual payment set aside at the time of the first three annual loan payments). The motion was approved unanimously (9-0).
11. Water Supply Planning and Finance Section – En-bloc Non-Reimbursable Investments Recommendations
- a. CWCB Stream Gage Fund
 - b. Division of Water resources – Satellite Monitoring Fund
 - c. CWCB – Arkansas River Basin – Groundwater Bibliography
 - d. CWCB – Upper Arkansas River Basin – Decision Support System Feasibility Study
 - e. CWCB – CDSS Modeling Support
 - f. CWCB – USGS Snowmelt Timing Study

- g. CWCB – Colorado Floodplain Map Modernization
- h. CWCB – Flood Response Program Revised and Refreshed
- i. CWCB – Flood Decision Support System
- j. CWCB – Chatfield Reservoir Reallocation Project
- k. CWCB – Weather Modification Permitting Program
- l. CWCB – Drought Modification Permitting Program
- m. CWCB – SWSI GAP Project Analysis
- n. Colorado Water Trust – CCC Ditch Diversion Rehabilitation – San Miguel River
- o. Colorado Water Education Foundation – Annual Appropriation

Tape 1, Track 2

03:13:40 – 03:17:15

Action:

A motion was made by Don Schwindt and seconded by Barbara Biggs to approve all Construction Fund non-reimbursable investment project applications listed in Agenda Item 11a-11o. Harold Miskel and Eric Wilkinson were not present for this agenda item. The motion was approved unanimously (7-0).

12a.

Water Supply Planning and Finance – Referred Non-Reimbursable Investments – CWCB – Recreational and Environmental Instream Flows Study

Tape 1, Track 2

03:17:15 – 03:42:56

Action:

An amended motion was made by Don Schwindt and seconded by Harold Miskel to request that the General Assembly authorize \$150,000 from the Construction Fund to be appropriated to the Department of Natural Resources for allocation to the CWCB for a Recreational and Environmental Instream Flows Study, with the following objectives of the study: 1) to analyze how instream flow water rights (ISF and/or RICDs) have affected, and will affect in the future, water management in Colorado; 2) to provide an objective analysis of the different quantification methods; and, 3) to determine the true economic benefits associated with these types of water rights; and/or, 4) other inquiries determined appropriate by the Board . The motion was approved unanimously (9-0).

12b.

Water Supply Planning and Finance – Referred Non-Reimbursable Investments – CWCB – Water Conservation Public Awareness Research Study

Tape 1, Track 2

03:42:56 – 04:07:36

Action:

A motion was made by Eric Wilkinson and seconded by Barbara Biggs to request that the General Assembly authorize \$150,000 from the Construction Fund to be appropriated to the Department of Natural Resources for allocation to the CWCB for a Statewide Water Conservation Public Awareness Research Study by the Office of Water Conservation & Drought Planning. Carl Trick and John Redifer voted against the motion. The motion was approved (7-2).

12c.

Water Supply Planning and Finance – Referred Non-Reimbursable Investments – CWCB – Arkansas and South Platte Basins – Alternative Agriculture Water Transfers and Sustainability Project(s)

Tape 1, Track 2

04:07:36 – 04:25:17

Action:

A motion was made by Eric Wilkinson and seconded by Harold Miskel to approve \$1.5 million dollars for inclusion in the 2007 Projects Bill to be used to develop and implement a competitive grant program to advance alternative agricultural transfers to permanent agricultural dry-up in the Arkansas and South

Platte basins; and to work with Staff to develop the detailed design of the grant program. Tom Sharp voted against the motion. The motion was approved (8-1).

- 12d. Water Supply Planning and Finance – Referred Non-Reimbursable Investments – Colorado Mountain College – Rocky Mountain Fen Research Project

Tape 1, Track 2 04:25:17 – 05:01:33

Action: A motion was made by Eric Wilkinson and seconded by Harold Miskel to authorize an appropriation of \$100,000 from the Construction Fund for the Rocky Mountain Fen Research Project, with the condition that the CWCB disbursements are distributed over the 6-year life of the project and are equal in pro-rata to the funding provided by the other entities involved in the project, with the contingency that the applicant provides evidence they have sufficient funds to carry out the experiment. Don Schwindt and John Redifer voted against the motion. The motion was approved (7-2).

- 12e. Water Supply Planning and Finance – Referred Non-Reimbursable Investments – Central Colorado Water Conservancy District – S. Platte Alluvium Irrigation Recharge Study

Tape 1, Track 2 05:01:33 – 05:25:59

Action: A motion was made by Eric Wilkinson and seconded by Harold Miskel to approve a non-reimbursable investment of \$50,000 for sprinkler and flood recharge for the estimation of deep percolation from irrigation to the South Platte Alluvial Aquifer in a Northern Colorado study, with the contingency that both the CWCB staff and the State engineer's staff determine the project to be a worthwhile and applicable project. A quorum of 6 did not vote to approve the motion. Tom Sharp, Keith Catlin, John Redifer, and Don Schwindt voted against the motion. Thus, the motion failed (5-4)

Meeting Recessed 6:50 p.m.

Tuesday, November 14, 2006

Call to Order (8:00 a.m.)

A regular meeting of the Colorado Water Conservation Board (CWCB) was reconvened at the Red Lion Hotel DIA, 4040 Quebec Street, Denver, Colorado 80216. The meeting was called to order by Chair, John Redifer. Nine voting members were present at the call to order so a quorum was present (at least six required). Voting Board members present at the call to order were Chair John Redifer, Vice Chair Travis Smith, Keith Catlin, Harold Miskel, Don Schwindt, Tom Sharp, Carl Trick, Eric Wilkinson, and Barbara Biggs. *Ex Officio* members present or represented were CWCB Director Rod Kuharich, CWCB Deputy Director Dan McAuliffe, and Deputy Attorney General Casey Shpall.

- 13a. Basin Directors' Reports – Colorado River Mainstem Director's Report

Tape 2, Track 1 00:00:00 – 00:06:20

Action: Informational item only, no action taken.

- 13b. Basin Directors' Reports – Yampa-White River Basin Director's Report

Tape 2, Track 1 00:06:20 – 00:09:13

Action: Informational item only, no action taken.

13c. Basin Directors' Reports – San Juan/San Miguel-Dolores River Basin Director's Report
Tape 2, Track 1 00:09:13 – 00:14:19

Action: Informational item only, no action taken.

13d. Basin Directors' Reports – Gunnison River Basin Director's Report
Tape 2, Track 1 00:14:19 – 00:15:38

Action: Informational item only, no action taken.

13e. Basin Directors' Reports – Denver Director's Report
Tape 2, Track 1 00:15:38 – 00:16:54

Action: Informational item only, no action taken.

13f. Basin Directors' Reports – North Platte River Basin Director's Report
Tape 2, Track 1 00:16:54 – 00:20:50

Action: Informational item only, no action taken.

13g. Basin Directors' Reports – South Platte River Basin Director's Report
Tape 2, Track 1 00:20:50 – 00:34:57

Action: Informational item only, no action taken.

13h. Basin Directors' Reports – Rio Grande Basin Director's Report
Tape 2, Track 1 00:34:57 – 00:41:23

Action: Informational item only, no action taken.

13i. Basin Directors' Reports – Arkansas River Basin Director's Report
Tape 2, Track 1 00:41:23 – 01:01:53

Action: Informational item only, no action taken.

14. Office of Water Conservation and Drought Planning Section – Proposed Revisions to
Guidelines for Financial Assistance to Covered Entities to Develop Water Conservation Plans
Tape 2, Track 1 01:01:53 – 01:17:22

Action: A motion was made by Barbara Biggs and seconded by Eric Wilkinson to adopt language and clarification revisions to the Guidelines for Financial Assistance to Covered Entities to Develop Water Conservation Plans. Travis Smith was not present for this agenda item. The motion was approved unanimously (8-0).

15. Office of Water Conservation and Drought Planning Section – Proposed Revisions to
Guidelines for the Water Efficiency Grant Program

Tape 2, Track 1 01:17:22 – 01:19:46

Action: A motion was made by Carl Trick and seconded by Keith Catlin to approve and adopt language and clarification revisions to the Guidelines for the Water Efficiency Grant Program. Travis Smith was not present for this agenda item. The motion was approved unanimously (8-0).

16. Water Supply Protection Section – Species Conservation Trust Fund recommendations
Tape 1, Track 1 01:59:13 – 02:20:31

Action: A motion was made by Eric Wilkinson and seconded by Travis Smith to approve Staff's recommendation to recommend to the Executive Director of the Department of Natural Resources that an additional \$19,000,000 be placed into the Species Conservation Trust Fund (SCTF) for the Platte Program, and that sufficient funds be placed into and allocated from the SCTP operation and management account to support an annual on-going species conservation program at the Colorado Division of Wildlife in the amount of \$400,000. Additionally, \$85,000 would be authorized to continue implementation of Habitat Conservation Plan for Southwestern Willow Flycatcher in the San Luis Valley. The motion was approved unanimously (9-0).

17. Water Supply Protection Section – Colorado River Future Depletion Projects

Tape 2, Track 1 01:19:46 – 01:30:33

Action: Informational item only, no action taken.

18. Stream and Lake Protection Section – Notice of 2007 Instream Flow Recommendations in Water Divisions 2, 3, 4, and 6

Tape 2, Track 2 00:07:18 – 00:39:12

Action: Informational item only, no action taken.

19. Stream and Lake Protection Section – Proposed Agreement with Upper Eagle Regional Water Authority and Eagle River Water and Sanitation District

Tape 2, Track 2 00:56:05 – 01:23:55

Action: This item was tabled until later in the Board meeting to allow Staff to include additional language to the proposed Memorandum of Agreement.

Tape 2, Track 3 00:00:00 – 00:01:16

Action: A motion was made by Tom Sharp and seconded by Carl Trick to approve the proposed MOA with the removal of the bolded sentence from Recital 1H. The motion was approved unanimously (9-0).

20. Stream and Lake Protection Section – Injury with Mitigation – Case No. 5-04CW238; Application of S.G. Company

Tape 2, Track 2 00:39:12 – 00:56:05

Action: A motion was made by Carl Trick and seconded by Eric Wilkinson to approve Staff's recommendation to 1) make a final determination that the natural environment of the Blue River could be preserved to a reasonable degree with the proposed injury if the S.G. Company provides the proposed mitigation; 2) ratify the injury with mitigation pretrial resolution and authorize staff and the Attorney General's Office to incorporate it into a stipulation with S.G. company that also includes protective terms and conditions relating to the other potentially impacted ISF water rights in this case, and 3) to analyze and report back to the Board the condition of the existing gage on the Blue River. The motion was approved unanimously (9-0).

21. Water Quality Control Commission Director's Briefing

Tape 2, Track 2 01:23:55 – 01:48:06

Action: Informational item by Steve Gunderson, no action taken.

22. Attorney General's Report & Legal Briefing – Southern Ute and Ute Mountain Tribes' Settlement, Case Nos. 7-W-1603-76F & 76J, 02-CW-85, & 02-CW-86

Tape 2, Track 2 01:48:06 – 02:10:32

Action: Casey Shpall, Deputy Director of the Attorney General's Office introduced Alexandra Davis, First Assistant for the Water Rights Unit. A motion was made by Barbara Biggs and seconded by Don Schwindt to go into Executive Session to discuss litigation pending or imminent under Agenda Items 22a, 23b, and items 5 and 6 of the Attorney General's Report. The motion was approved unanimously (9-0).

23. Executive Session Items

Tape 0, Track 0 00:00:00 – 00:00:00

Action: Based upon the recommendation from Deputy Attorney General, Casey Shpall, the discussion of Agenda Items 22a, 23b, and items 5 and 6 of the Attorney General's Report were not recorded pursuant to C.R.S. section 24-6-402(2)(d.5)(I)(B) because those portions of the Executive Session constituted privileged attorney-client communications.

CWCB Attorney

The portion of the Executive Session on Agenda Items 22a, 23b, and items 5 and 6 of the Attorney General's report that were not recorded were confined to the topics authorized for discussion in an Executive Session under C.R.S. section 24-6-402(3)(a)(II).

CWCB Chair

Action: A motion was made by Carl Trick and seconded by Eric Wilkinson to end Executive Session. The motion was approved unanimously (9-0).

24. Report from Executive Session

Tape 0, Track 0 00:00:00 – 00:00:00

Action: Per Deputy Attorney General, Casey Shpall, Agenda Items 22a, 23b, and items 5 and 6 of the Attorney General's report were discussed in Executive Sessions were limited to litigation strategies.

25. Stream and Lake Protection Section – Contested ISF Appropriation Hearing – Anthracite Creek and Coal Creek

Tape 2, Track 4 00:04:02 – 00:26:02

Action: A motion was made by Keith Catlin and seconded by Don Schwindt to proceed with the appropriation, with the stipulation that Trout Unlimited may have input in the final written document. The motion was approved unanimously (9-0).

26. Stream and Lake Protection Section – Contested ISF Appropriation Hearing – Smith Fork Gunnison River and South Fork Smith Gunnison River

Tape 2, Track 4 00:26:02 – 00:30:06

Action: A motion was made by Keith Catlin and seconded by Barbara Biggs to approve Staff's recommendation to file the appropriation. Tom Sharp voted against the motion. The motion was approved (8-1).

27. Stream and Lake Protection Section – Contested ISF Appropriation Hearing – Arkansas River

Tape 2, Track 4 00:30:06 – 01:14:10

Action: A motion was made by Barbara Biggs and seconded by Don Schwindt to approve Staff's recommendation to file the appropriation for 100 cfs. Barbara Biggs and John Redifer voted for the motion. The motion was not approved (2-7).

Meeting Recessed 2:30 p.m.

Wednesday, November 15, 2006

Reconvened: Call to Order 8:00 a.m.

A RICD Rulemaking Hearing of the Colorado Water Conservation Board (CWCB) was convened at the Red Lion Hotel DIA at 4040 Quebec Street, Denver, Colorado 80216. The meeting was called to order by Chair John Redifer. Eight voting members were present at the call to order so a quorum was present (at least six required). Voting Board members present were Chair John Redifer, Vice Chair Travis Smith, Keith Catlin, Don Schwindt, Harold Miskel, Carl Trick, Eric Wilkinson, and Barbara Biggs. *Ex Officio* members present or represented were CWCB Director Rod Kuharich, CWCB Deputy Director Dan McAuliffe, and Deputy Attorney General Casey Shpall.

Tape 3, Track 1 00:00:00 – 00:15:05

Action: A motion was made by Harold Miskel and seconded by Barbara Biggs to approve and adopt the revised RICD rules as presented and explained by Staff, including the Statement of Basis and Purpose, and including the instructions authorizing Staff to work with the Attorney General's Office to finalize the RICD rules. The motion was approved unanimously (8-0).

Hearing adjourned 8:30 a.m.