

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
www.cwcb.state.co.us



SUMMARY MINUTES AND RECORD OF DECISIONS

March 17-18, 2009

Final and Approved May 19, 2009

Bill Ritter, Jr.
Governor

Harris D. Sherman
DNR Executive
Director

Jennifer L. Gimbel
CWCB Director

Dan McAuliffe
CWCB Deputy
Director

A regular meeting of the Colorado Water Conservation Board (CWCB) was convened at The Radisson Hotel & Conference Center, 1900 Ken Pratt Blvd., Longmont, CO 80501. The meeting was called to order by Chair, Travis Smith. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were Chair Travis Smith, Vice Chair Geoff Blakeslee, Carl Trick, Bruce Whitehead, Keith Catlin, John Redifer, Reed Dils, Eric Wilkinson, and Harris Sherman. Non-voting, *Ex-Officio* members present or represented were CWCB Director Jennifer Gimbel, Deputy Attorney General Casey Shpall, and Jim Miller, representing the Agriculture Commissioner. Barbara Biggs arrived shortly after the call to order. Alex Davis, Assistant Director of Water for the Department of Natural Resources was also present.

Note: While the 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.

Tuesday, March 17, 2009

Call to Order 10:45 a.m.

1. Review and Approval of Agenda

Tape 1, Track 1 00:00:00 - 00:02:10

Action: A motion was made by Geoff Blakeslee and seconded by Bruce Whitehead to approve the March 2009 Agenda, changing Agenda items #24 and #26 (reversing them), adding a presentation by Nicole Seltzer of the Colorado Foundation for Water Education after Agenda Item #26, and pulling Consent Agenda Item 1i, to be discussed in Executive Session. The motion was approved unanimously (9-0).

*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. Review and Approval of Meeting Minutes – January 27-28, 2009

Tape 1, Track 1 00:02:11 - 00:02:40

Action: A motion was made by Eric Wilkinson and seconded by Reed Dils to approve the January 27-28, 2009 Meeting Minutes. The motion was approved unanimously (9-0).

3. Approve and/or Remove Items from Consent Agenda

Tape 1, Track 1 00:02:41 - 00:03:08

Action: A motion was made by Geoff Blakeslee and seconded by Reed Dils to approve the Consent Agenda Items, removing #1i for discussion in Executive Session. The motion was approved unanimously (9-0).

4. Future Board Meeting Dates

Tape 1, Track 1 00:03:09 - 00:04:00

- a. May 19-20, 2009 Cambria Suites/Pueblo Convention Center, Pueblo
- b. July 21-22, 2009 The Elevation Hotel, Crested Butte (in connection with The Colorado Water Workshop)
- c. September 15-16, 2009 Steamboat Springs Grand/Steamboat Springs
- d. November 17-18, 2009 The Marriott, Denver South, Littleton

Action: A motion was made by Geoff Blakeslee and seconded by Reed Dils to approve the Board Meeting dates as listed. The Board will hold a Water Strategy Workshop and a Financial Planning Workshop on Monday afternoon, May 18, 2009, in Pueblo. The motion was approved unanimously (9-0).

5. Blue Mesa Reservoir Issues

Tape 1, Track 1 00:04:01 - 00:12:27

Action: Information item only. No action was required by the Board.

6. 2009 State Legislative and Fiscal Decisions Update

Tape 1, Track 1 00:12:28 - 00:26:37

Action: Information item only. No action was required by the Board.

7. Intrastate Water Management & Development Section - Water Supply Reserve Account Grant Applications

- a. Lower Blanco Property Owners Association – Lower Blanco River Restoration Project

Tape 1, Track 1 00:26:38 - 00:39:15

Action: A motion was made by Bruce Whitehead and seconded by Barbara Biggs to approve staff recommendation that the Board fund up to \$100,000 from the Southwest Basin Account to partially fund the Lower Blanco River Restoration Project contingent on resolution of the items in the issues/additional needs section of the Board memo. The motion was approved unanimously (10-0).

- b. Florida Mesa Canal Companies – Ditch Loss, Hydropower, and Monitoring Improvement Program

Tape 1, Track 1 00:39:16 - 00:44:41

Action: A motion was made by Bruce Whitehead and seconded by Geoff Blakeslee to approve staff recommendation that the Board fund up to \$100,000 from the Southwest Basin

Account to partially fund the Ditch Loss, Hydropower, and Monitoring Improvement Program for the Florida Mesa Canal Companies, contingent on resolution of the items in the issues/additional needs section of the Board memo. The motion was approved unanimously (10-0).

c. Ducks Unlimited – Central South Platte Wetland Partnership

Tape 1, Track 1 00:44:42 – 00:47:16

Action: A motion was made by Eric Wilkinson and seconded by Barbara Biggs to approve staff recommendation that the Board fund up to \$150,000 from the South Platte Basin Account to partially fund the wetland design and construction of the Central South Platte Wetland Partnership, contingent on the resolution of the items in the issues/additional needs section of the Board memo. The motion was approved unanimously (10-0).

d. Town of Ridgeway – Ridgeway Ditch and Lake Otonawanda Improvement Project

Tape 1, Track 1 00:47:17 – 00:53:45

Action: A motion was made by Keith Catlin and seconded by Reed Dils to approve staff recommendation that the Board fund up to \$109,500 from the Gunnison Basin Account for technical assistance regarding design, cost estimates, and permitting associated with enlargement of its municipal reservoir and rehabilitation of the associated diversion structure, contingent on resolution of the items in the issues/additional needs section of the Board memo. The Board further requests that the applicant include some of the ditch rehabilitation cost in their budget. The motion was approved unanimously (10-0).

e. City of Grand Junction Water Enterprise Fund – Juniata Reservoir Enlargement Project

Tape 1, Track 1 00:56:06 – 01:02:10

Action: A motion was made by Keith Catlin and seconded by John Redifer to approve staff recommendation that the Board fund up to \$97,000 from the Gunnison Basin Account to help enlarge the Juniata Reservoir. The motion was approved unanimously (10-0).

f. Upper Gunnison River Water Conservancy District – Agricultural Water Needs Assessment and Water Supply Analysis

Tape 1, Track 1 00:53:46 – 00:56:06

Action: A motion was made by Keith Catlin and seconded by John Redifer to approve staff recommendation that the Board fund up to \$120,560 from the Gunnison Basin Account to help better understand the agricultural water needs of the basin. The motion was approved unanimously (10-0).

g. Northwest Colorado Council of Governments – Colorado Basin Nonconsumptive Needs Quantification

Tape 1, Track 1 01:02:11 – 01:16:24

Action: A motion was made by John Redifer and seconded by Harris Sherman to approve staff recommendation that the Board fund up to \$315,171 from the Colorado Basin Account to help complete this project. The motion was approved unanimously (10-0).

8. Intrastate Water Management and Development Section – Identified Projects and Processes (IPP) Database Demonstration

Tape 1, Track 1 01:16:37 - 01:41:03

Action: Information item only. No action was required by the Board.

9. Lunch

10. Water Information Section – Colorado Water Availability Study (CRWAS) Status Presentation

Tape 1, Track 1 01:41:04 - 02:05:33

Action: Information item only. No action was required by the Board.

11. Watershed Protection and Flood Mitigation Section – 2009 Flood Outlook Report

Tape 1, Track 1 02:05:34 - 02:40:59

Action: Information item only. No action was required by the Board.

12. Watershed Protection and Flood Mitigation Section – Fish and Wildlife Resources Fund Grant Application – Blanco River Restoration Project

Tape 1, Track 1 02:41:00 - 02:48:32

Action: A motion was made by Bruce Whitehead and seconded by John Redifer to approve staff recommendation that the Board approve a \$132,000 non-reimbursable expenditure from the Fish and Wildlife Resource Fund for the purpose of providing matching dollars for Phase 5 of the Lower Rio Blanco Restoration Project. This amount represents 36% of the total Phase 5 cost. The motion was approved unanimously (10-0).

13. Watershed Protection and Flood Mitigation Section – Enhanced Snowpack Assessment Project Overview

Tape 1, Track 1 02:48:32 - 03:20:31

Action: Information item only. No action was required by the Board.

14. Water Supply Planning and Finance Section – Construction Fund and Severance Tax Trust Fund Perpetual Base Account – New Loans

a. Deuel and Snyder Improvement Company – River Sand Gate Structure Project

Tape 1, Track 1 03:20:32 - 03:27:34

Action: A motion was made by Eric Wilkinson and seconded by Barbara Biggs to approve staff recommendation that the Board approve a loan not to exceed \$90,900 (\$90,000 for project costs and \$900 for the 1% Loan Service Fee) to the Deuel and Snyder Improvement Company to construct its River Sand Gate Structure Project from the Severance Tax Trust Fund Perpetual Base Account. The loan terms shall be 30 years at the agricultural interest rate of 2.5% per annum. Security for the loan shall be in compliance with CWCB Financial Policy No. 5. The motion was approved unanimously (10-0).

b. South Metro Water Supply Authority – Water Supply Pipeline Capacity Acquisition Project

Tape 1, Track 1 03:27:35 – 03:52:57

Action: A motion was made by Barbara Biggs and seconded by Geoff Blakeslee to approve staff recommendation that the Board approve a loan not to exceed \$5,090,400 (\$5,040,000 for project costs and \$50,400 for the 1% Loan Service Fee) to the South Metro Water Supply Authority for its Water Supply Pipeline Capacity Acquisition Project from the Construction Fund. The loan terms shall be 30 years at an interest rate of 4.5% per annum. Security for the loan shall be in compliance with CWCB Financial Policy No. 5. Staff further recommends additional approval conditions prior to contracting with the CWCB:

- 1) Water Conservation Plan: Pinery Water and Wastewater District must have a State approved water conservation plan in place.
 - 2) Purchase/Operating Agreements: The Authority must have a final purchase agreement and final operating agreement executed with copies submitted to the CWCB.
 - 3) Prior to signing a contract with the CWCB, the Authority must provide an executed step up provision (as part of the Authority's participation agreement) whereby, in the event of default by one of the borrowers, all of the remaining participants in the Project (Castle Pines North Metropolitan District, Centennial Water and Sanitation District, Cottonwood Water and Sanitation District, Inverness Water and Sanitation District, and the Town of Castle Rock) will be required to pay for the defaulting party's commitment and that the payments due must be sufficient to enable the Authority to meet the CWCB debt service requirements. This step-up provision must be signed by all participants in the Project. The terms of the step-up provision shall be as agreed upon by the CWCB and Authority prior to execution with participants.
 - 4) To utilize construction funds in a timely manner, the Authority will have a two-year time limit from CWCB approval to execute a funding contract with the CWCB. If a contract is not executed within two years of Board approval, the Project will be recommended for loan deauthorization unless the Board specifically approves a time extension.
- The motion was approved unanimously (10-0).

15. Water Supply Planning and Finance Section – General Financial Matters of Existing Loans
Tape 1, Track 1 03:57:13 - 04:45:45

Action: Information item only. No action was required by the Board.

16. Water Supply Planning and Finance Section – General Financial Matters – Review of Financial Policies

- a. Policy No. 7 – Loan Lending Rate Determinations
- b. Policy No. 10 – Loan Payment Deferment Requests
- c. Policy No. 12 – Prioritization of Project Fund Applications

Tape 1, Track 1 03:57:16 - 04:45:45

Action: Information item only. No action was required by the Board, however, the Board decided to meet in May, in Pueblo, for a half day workshop regarding CWCB financial matters. This meeting will take place on Monday, May 18, 2009, just prior to the Board meeting.

17. Water Attorney General's Report, Legal Briefing and Executive Session – *This is a briefing on legal issues contained in the Attorney General's written report and on items listed below that the Board may refer for discussion in an Executive Session based upon attorney client privilege.*

Executive Session Items

- a. Case No. 4-05CW264; Application of Ranch Properties, LLC
- b. Case No. 6-08CW909; Application of Shell Frontier Oil and Gas, Inc.
- c. Case No. 5-08CW73; Town of Breckenridge; Application to make absolute a portion of the Town of Breckenridge's RICD
- d. Case No. 5-08CW72; Eagle River Water & Sanitation District; Application to make absolute a portion of the Town of Vail's RICD

- e. Case No. 5-07CW227; Colorado Water Conservation Board; Application for change of water right on Hat Creek for instream flow use (acquisition)

Tape 1, Track 1 03:53:47 - 03:55:20

Action: A motion was made by Geoff Blakeslee and seconded by Harris Sherman to go into Executive Session. Barbara Biggs and Carl Trick were not available for this motion. The motion was approved unanimously (8-0).

A motion was made by Geoff Blakeslee and seconded by Carl Trick to go out of Executive Session. Harris Sherman was not available for this motion. The motion was approved unanimously (9-0).

18. Report from Executive Session

Tape 1, Track 1 03:55:39 - 03:56:00

Action: Based upon the recommendation from Casey Shpall, Deputy Attorney General, the discussion of Agenda Items 17a through 17e 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 17a through 17e that were not recorded were confined to the topics authorized for discussion in an Executive Session under C.R.S. section 24-6-403(3)(a)(II)



CWCB Chair

Executive Session Items

Tape 1, Track 1 03:56:01 - 03:57:15

Action: Regarding Consent Agenda 1i; Case No. 6-08CW090; Application of Shell Frontier Oil & Gas, Inc., a motion was made by Eric Wilkinson and seconded by Geoff Blakeslee to ratify the Statement of Opposition entered by CWCB, with instructions to CWCB staff that the opposition effort be focused on obtaining a stipulation from Shell Frontier Oil & Gas, Inc. for the protection of the water released from Elkhead Reservoir for the Colorado River Recovery Program. Harris Sherman was not available for this motion. The motion was approved unanimously (9-0).

RECESSED 5:45 p.m.

Wednesday, January 28, 2009
Call to Order 8:00 a.m.

A regular meeting of the Colorado Water Conservation Board (CWCB) was convened at The Radisson Hotel & Conference Center, 1900 Ken Pratt Blvd., Longmont, CO 80501. The meeting was called to order by Chair, Travis Smith. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were Chair Travis Smith, Vice Chair Geoff Blakeslee, Carl Trick, Bruce Whitehead, Keith Catlin, John

Redifer, Reed Dils, Eric Wilkinson, and Barbara Biggs. Non-voting, *Ex-Officio* members present or represented were CWCB Director Jennifer Gimbel, Deputy Attorney General Casey Shpall, and Alex Davis, Assistant Director of Water for the Department of Natural Resources.

19. Basin Director Report

a. Colorado River (Mainstem) Basin Director Report – John Redifer Reporting

Tape 1, Track 2 00:00:00 – 00:01:50

Action: Information item only. No action was required by the Board.

b. Yampa-White River Basin Director Report – Geoff Blakeslee Reporting

Tape 1, Track 2 00:01:51– 00:04:52

Action: Information item only. No action was required by the Board.

c. San Juan/San Miguel-Dolores River Basin - Bruce Whitehead Reporting

Tape 1, Track 2 00:04:53– 00:17:25

Action: Information item only. No action was required by the Board.

d. Gunnison River Basin – Keith Catlin Reporting

Tape 1, Track 2 00:17:26– 00:19:30

Action: Information item only. No action was required by the Board.

e. Basin Director Report – North Platte River Basin Director Report – Carl Trick Reporting

Tape 1, Track 2 00:19:31 – 00:22:35

Action: Information item only. No action was required by the Board.

f. South Platte River Basin Director Report – Eric Wilkinson Reporting

Tape 1, Track 2 00:22:36 – 00:29:34

Action: Information item only. No action was required by the Board.

g. Arkansas River Basin Director Report – Reed Dils Reporting

Tape 1, Track 2 00:29:35 – 00:35:18

Action: Information item only. No action was required by the Board.

h. City and County of Denver Director Report – Barbara Biggs Reporting

Tape 1, Track 2 00:35:19 – 00:37:47

Action: Information item only. No action was required by the Board.

i. Rio Grande River Basin Director Report – Chair Travis Smith Reporting

Tape 1, Track 2 00:37:48 – 00:42:57

Action: Information item only. No action was required by the Board.

20. FY 10-11 Severance Tax Operational Account Recommendations

Tape 1, Track 2 00:42:58 - 01:20:30

Action: A motion was made by Geoff Blakeslee and seconded by Keith Catlin to approve staff recommendation that the Board approve the Severance Tax Trust Fund Operational Account recommendations as listed in the Board memo, with the understanding that CWCB Director and staff have the flexibility to adjust the rankings of each recommended project as necessary. The motion also included changing some of the rankings as discussed in the meeting. The motion was approved unanimously (9-0).

21. Stream and Lake Protection Section – 2010 Instream Flow Recommendations – Pursuant to ISF Rule 5c., the CWCB is providing notice that the stream segments listed in the Board memo are being considered for instream flow appropriations in 2010. Staff provided a summary of the ISF Workshop held on February 24, 2009, at which it received these recommendations. At the January 2010 CWCB Board meeting, staff may request that the Board form its intent to appropriate ISF water rights on these streams.

Tape 1, Track 2 01:20:31 - 01:52:30

Action: Information item only. No action was required by the Board.

22. Stream and Lake Protection Section – 2009 New Instream Flow Appropriations – The Board will take public comment on the 19 ISF appropriations listed in the Board memo, pursuant to ISF Rule 5c. The Board declared its intent to appropriate at its January 2009 meeting.

Tape 1, Track 2 01:52:31 - 01:56:50

Action: Information item only. No action was required by the Board.

23. Water Supply Protection Section – Colorado River Compact Compliance Scope of Work

Tape 1, Track 2 01:56:51 - 02:33:58

Action: Information item only. No action was required by the Board; however there was general concurrence on the direction the study was taking and a stated desire by the Board to be transparent in the conduct of the study while being sensitive to the legal issues involved.

24. Water Supply Protection Section – Update on South Platte River Issues

Tape 1, Track 2 04:23:45 – 04:29:49

Action: Information item only. No action was required by the Board.

Colorado Foundation for Water Education Update – Presentation by Nicole Seltzer

Tape 1, Track 2 03:23:09 – 03:29:36

Action: Information item only. No action was required by the Board.

25. Directors' Report

a. DNR Executive Director - Alex Davis Reporting for Harris Sherman

Tape 1, Track 2 03:46:04 - 03:46:40

Action: Information item only. No action was required by the Board.

b. IBCC Director

Action: No report on this item

c. Agriculture Commissioner

Action: No report on this item

d. CWCB Director - Jennifer Gimbel Reporting

Tape 1, Track 2 03:29:37 - 03:41:05

Action: Information item only. No action was required by the Board.

e. State Engineer - Dick Wolfe Reporting

Tape 1, Track 2 03:46:41 - 04:03:16

Action: Information item only. No action was required by the Board.

f. Division of Wildlife

Action: No report on this item

g. Water Resource and Power Development Authority

Action: Dan Law forwarded copies of his report to be handed out to the Board.

26. Water Supply Protection Section – Wild and Scenic Rivers Issues – Staff updated the Board on the following Wild and Scenic processes:

- a. Upper Colorado River
- b. River Protection Workgroup (Hermosa Creek)
- c. Lower Dolores River Management Plan Update

Tape 1, Track 2 02:33:59 – 03:23:08

Action: A motion was made by Geoff Blakeslee and seconded by Barbara Biggs to have CWCB draft a letter to the Secretary of Interior, copying the State's BLM Director, to make a case for and request a time extension on the matter of the Upper Colorado River issue. The motion was approved unanimously (9-0).

27. Office of Water Conservation and Drought Planning Section – Federal Stimulus Package Pertaining to State Revolving Funds for Water Projects

Tape 1, Track 2 04:29:50 – 04:54:38

Action: Information item only. No action was required by the Board.

28. Stream and Lake Protection Section – Roaring Fork River Basin Proposed Water Acquisition – Pursuant to ISF Rule 6m.(5), the Board will be asked to consider and take action on two requests for hearing on this proposed water acquisition from Pitkin County.

Tape 1, Track 2 04:54:39 – 05:02:04

Action: A motion was made by Reed Dils and seconded by John Redifer to approve staff recommendation that the Board (1) grant the requests for hearing; (2) schedule the hearing to be held in conjunction with the September 2009 Board meeting; and(3) appoint Deputy Attorney General Casey Shpall as Hearing Officer. The motion was approved unanimously (9-0).

A motion was made by Geoff Blakeslee and seconded by John Redifer to adjourn the March 2009 Board meeting. The motion was approved unanimously (9-0).

ADJOURNED 3:30 p.m.