

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



TO: Colorado Water Conservation Board Members

FROM: Ted Kowalski
Steve Miller

SUBJECT: **Agenda 20.a, January 26-27, 2010 Board Meeting**
Water Supply Protection Section - Litigation Account
Annual Report to General Assembly

Bill Ritter, Jr.
Governor

James B. Martin
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Dan McAuliffe
CWCB Deputy Director

Background

Section 37-60-121(2.5) provides that the Colorado Water Conservation Board is authorized "to expend, pursuant to continuous appropriation and subject to the requirements of paragraph (b) of this subsection (2.5), a total sum not to exceed the balance of the litigation fund, which is created, for the purpose of engaging in litigation...to defend and protect Colorado's allocations of water in interstate streams and rivers..." Paragraph (b) of section 121(2.5) provides: "pursuant to the spending authority set forth in paragraph (a) of this subsection (2.5), moneys may be expended from the litigation fund at the discretion of the board if: (I) with respect to litigation, the Colorado attorney general requests that the board authorized the expenditure of moneys in a specified amount not to exceed the balance of the fund for the costs of litigation associated with one or more specifically identified lawsuits meeting the criteria set forth in paragraph (a) of this subsection (2.5)." In addition, Section 121(2.5) states: "the Board, in conjunction with the attorney general, shall report annually to the senate agriculture, natural resources, and energy committee and the house of representatives agriculture, livestock, and natural resources committee on any litigation that involves the use of any moneys from the litigation fund created in paragraph (a) of this subsection (2.5)." A draft of this year's annual report is attached.

At the beginning of this year, the fund had approximately \$1.45 million. In last year's construction fund bill, the General Assembly transferred monies in order to restore the unencumbered balance in the litigation fund to \$4.0 million. Within the last calendar year, the Board authorized the expenditure of: 1) \$110,000 for expenses associated with non-binding arbitration between Colorado, Nebraska, and Kansas to protect Colorado's interests in the Republican River basin; and, 2) \$265,000 for expenses associated with the Defense of the Colorado River Unit work.

Staff Recommendation

The Staff and the Department of Natural Resources recommend that the CWCB authorize the Staff to forward the attached report to the appropriate committees.

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TO: Senate Agriculture, Natural Resources, and
Energy Committee and House of Representatives
Agriculture, Livestock, and Natural Resources Committee

FROM: CWCB in consultation with the Office of the Attorney General

DATE: January 28, 2010

SUBJECT: Annual Report on any litigation that involved the use of
moneys from the litigation fund created pursuant to Sec. 37-60-121(2.5).

Bill Ritter, Jr.
Governor

James B. Martin
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Dan McAuliffe
CWCB Deputy Director

Background

Section 37-60-121(2.5) provides that the Colorado Water Conservation Board is authorized "to expend, pursuant to continuous appropriation and subject to the requirements of paragraph (b) of this subsection (2.5), a total sum not to exceed the balance of the litigation fund, which is created, for the purpose of engaging in litigation...to defend and protect Colorado's allocations of water in interstate streams and rivers..." Paragraph (b) of section 121(2.5) provides: "pursuant to the spending authority set forth in paragraph (a) of this subsection (2.5), moneys may be expended from the litigation fund at the discretion of the board if: (I) with respect to litigation, the Colorado attorney general requests that the board authorize the expenditure of moneys in a specified amount not to exceed the balance of the fund for the costs of litigation associated with one or more specifically identified lawsuits meeting the criteria set forth in paragraph (a) of this subsection (2.5)." In addition, section 121(2.5) states: "the Board, in conjunction with the attorney general, shall report annually to the senate agriculture, natural resources, and energy committee and the house of representatives agriculture, livestock, and natural resources committee on any litigation that involves the use of any moneys from the litigation fund created in paragraph (a) of this subsection (2.5)." This report serves as this year's annual report.

Status of the Litigation Fund

At the beginning of this year, the fund had approximately \$1.45 million, of which \$375,000 has been authorized to be spent by letters from the Attorney General and actions taken by the Colorado Water Conservation Board. In last year's construction fund bill, the General Assembly transferred monies in order to restore the unencumbered balance in the litigation fund to \$4.0 million. Within the last calendar year, the Board authorized the expenditure of: 1) \$110,000 for expenses associated with non-binding arbitration between Colorado, Nebraska, and Kansas to protect Colorado's interests in the Republican River basin; and, 2) \$265,000 for expenses associated with the Defense of the Colorado River Unit work.

Copies of the letters from the Attorney General requesting authorization to spend money from the litigation fund, the Staff memos regarding the same, and Board minutes from the meetings where the Board acted on the requests within the last calendar year, are attached.

If you would like additional information, or a more detailed presentation on this matter, please do not hesitate to contact Jennifer Gimbel, the Director of the CWCB, or Casey Shpall the Deputy of the Natural Resources Section of the Attorney General's Office.

Attachments

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TO: Colorado Water Conservation Board

FROM: Randy Seaholm
Ted Kowalski

DATE: January 15, 2009

SUBJECT: **Agenda Item 25.b, January 27-28, 2009 Board Meeting**
Water Supply Protection Section-Litigation Account
Republican River Compact Litigation

Bill Ritter, Jr.
Governor

Harris D. Sherman
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Dan McAuliffe
CWCB Deputy Director

Background

As you know, the multi-year drought and increasing interstate and intrastate demands on the Republican River have dramatically affected irrigation within the basin. As described in the attached request from the Attorney General's Office, the State has been involved in extensive and contentious negotiations with Kansas and Nebraska regarding enforcement of the Republican River Compact and the settlement signed in 2003. In November 2007, the Attorney General requested, and this Board authorized, the appropriation of \$240,000 in order to prepare for the expected forthcoming litigation. While these efforts are ongoing, and the State has already expended significant resources towards this effort, we need to be prepared for additional non-binding arbitration regarding the proposed Republican River pipeline and for the possibility that the non-binding arbitration efforts (and any related negotiations) may fail. Therefore, the Attorney General is request the Board to approve an expenditure of \$110,000 from the Litigation Fund for the Republican River Compact litigation.

Section 37-60-121(2.5)(a), C.R.S. provides:

The board is authorized to expend, pursuant to continuous appropriation and subject to the requirements of paragraph (b) of this subsection (2.5), a total sum not to exceed [the balance of the] litigation fund, which is hereby created, for the purpose of engaging in litigation: ... (III) To defend and protect Colorado's allocations of water in interstate streams and rivers; and (IV) To ensure the maximum beneficial use of water for present and future generations by addressing important questions of federal law."

Section (b) of subsection (2.5) states:

Pursuant to the spending authority set forth in paragraph (a) of this subsection (2.5), moneys may be expended from the litigation fund at the discretion of the board if: (I) With respect to

the litigation, the Colorado attorney general requests that the board authorize the expenditure of moneys in a specified amount not to exceed the balance of the fund for the costs of litigation associated with one or more specifically identified lawsuits meeting the criteria set forth in paragraph (a) of this subsection (2.5).

The original authorization for the Republican River litigation was \$240,000. These funds were allocated towards the arbitrator's costs, modeling expenses, and travel and operating costs for the Attorney General's Office.

Attached hereto is an addition request for \$110,000 from the litigation account to assist with the non-binding arbitration work. A more detailed description of the work that will be accomplished, and the resources needed to accomplish this work, is attached to the letter from the Office of the Attorney General.

Currently, the litigation fund has approximately \$1.45 million of restricted funds available for litigation costs that comport with the statutory language cited above. If this \$110,000 expenditure is approved, the litigation fund will be reduced to approximately \$1.35 million, but this year's construction fund requests to the General Assembly will seek to restore some of the fund balance.

Staff Recommendation

The request from the Office of the Attorney General falls within the scope of Section 37-60-121(2.5), C.R.S. Thus, the staff recommends that the Board:

- 1) authorize the expenditure of additional moneys, not to exceed \$110,000 for the costs of litigation associated with the defense and protection of Colorado's allocation of water in the Republican River basin;
- 2) direct the CWCB Director and Staff to authorize and manage the expenditure of these funds in a manner consistent with this approval and the request by the Office of the Attorney General;
- 3) direct the Office of the Attorney General to consult with the CWCB Director and Staff regularly with regard to the expenditures of these funds; and,
- 4) direct the CWCB Director, CWCB Staff, and Office of the Attorney General to provide the annual report to the General Assembly required and specifically provided for in Section 37-60-121(2.5).

Attachment



JOHN W. SUTHERS
Attorney General

CYNTHIA H. COFFMAN
Chief Deputy Attorney General

DANIEL D. DOMENICO
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 7th Floor
Denver, Colorado 80203
Phone (303) 866-4500

January 27, 2009

**Request for Expenditure from Litigation Fund
for Republican River Compact Litigation**

Dear Board Members:

By this letter, I request the expenditure of \$110,000 over the current and next fiscal years (FY09 and FY10) from the Water Conservation Board Litigation Fund (Board) pursuant to section 37-60-121(2.5)(a)(III), C.R.S. That section authorizes the Board to expend money from the Litigation Fund at the request of the Attorney General for the costs to defend and protect Colorado's allocations of water in interstate streams and rivers. I believe this expenditure is necessary to adequately defend, in negotiations and litigation, Colorado's interests in the Republican River.

The recent multi-year drought and increasing interstate and intrastate demands on the Republican River have had a dramatic effect on irrigation within the basin. In 2003, a settlement decree was entered into to resolve the interstate litigation on the Republican River, *Kansas v. Nebraska and Colorado, No. 126 Original*. As a result, Colorado has retired thousands of acres of irrigated land and taken additional actions such as the partial draining of Bonny Reservoir. Also, Colorado is developing enforcement rules and exploring additional actions that we will need to undertake to comply with the settlement decree. Recently, the Kansas Attorney General indicated that the States of Nebraska and Colorado are not doing enough to comport with the settlement decree, and that Kansas intends to initiate litigation against those States to enforce the decree. The State of Colorado must be prepared to curtail its uses, seek to augment stream flows and also defend the State's interest in the litigation that is looming.

We currently involved in non-binding arbitration with Kansas and Nebraska on various issues, some of which may adversely affect Colorado's ability to comply with the Compact. Further, we anticipate additional non-binding arbitration regarding Colorado's attempts to build an augmentation pipeline to the North Fork of the Republican River to assist in Compact compliance. Non-binding arbitration is required before any state may file an original action with the United States Supreme Court. We also anticipate claims against Colorado that we have consumed more water in the Republican River basin than allowed by the Compact. Similar claims have been made against Nebraska. Additionally Nebraska will

likely file cross-claims alleging that Colorado's over consumption of water injured Nebraska or contributed to Nebraska's over use. These requested funds will be used to pay for arbitration and litigation expenses, including experts to bolster Colorado's position in the case.

Thus, I am requesting the expenditure of \$110,000 to fund the hiring of consultants with expertise in modeling, engineering and agricultural economics and to fund the required non-binding arbitration. The request also includes funds for travel and other expenses.

This effort is essential to allow my office and the Board to participate in ongoing negotiations and prepare for litigation to protect Colorado's rights to the Republican River, now and in the future. I therefore request and recommend that the Board authorize the expenditure of up to \$110,000 from the Litigation Fund to fund these activities through the end of FY10. I further recommend that the Board's authorization allow the Board Director, in consultation with my staff and the State Engineer, to allocate funds between these activities based on actual costs and litigation necessities.

Thank you for your consideration.

Sincerely,



JOHN W. SUTHERS
Colorado Attorney General

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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DRAFT SUMMARY MINUTES AND RECORD OF DECISIONS January 27-28, 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 Hilton Garden Inn-DTC, 7675 E. Union Ave., Denver, CO 80237. The meeting was called to order by Chair, Travis Smith. Seven 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, and Reed Dils. Non-voting, Ex-*Officio* members present or represented were CWCB Director Jennifer Gimbel, Deputy Attorney General Casey Shpall, and State Engineer Dick Wolfe. Harris Sherman, Executive Director of Natural Resources, Directors Eric Wilkinson, Barbara Biggs and Tom Remington, Director of the Division of Wildlife, 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, January 27, 2009
Call to Order 8:10 a.m.

1. Review and Approval of Agenda

Tape 1, Track 1 00:00:00 - 00:04:16

Action: A motion was made by Carl Trick and seconded by Geoff Blakeslee to approve the January 2009 Agenda, moving the Basin Directors' Reports to the afternoon of Tuesday, January 27, 2009, and adding the Tacoma Power Plant to Executive Session. The motion was approved unanimously (7-0).

*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.

The portion of the Executive Session on Agenda Items 20a and 20b 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

22. Office of Water Conservation and Drought Planning Section - Presentation on "Climate Change in Colorado: A Synthesis to Support Water Resources Management and Adaptation" - NOAA/Western Water Assessment

Tape 2, Track 1 02:34:56 - 03:20:51

Action: Informational item only, no action required.

23. Water Supply Protection Section - Platte River Recovery Program

Tape 2, Track 1 03:20:52 - 03:55:22

Action: Informational item only, no action required.

24. Water Supply Protection Section - Endangered Species Conservation Trust Fund - FY 09-10 Funding Recommendation

Tape 2, Track 1 03:55:23 - 04:10:25

Action: A motion was made by Eric Wilkinson and seconded by Geoff Blakeslee to approve staff recommendation for expenditures from the Species Conservation Trust Fund, with the funding modifications contained in the handout from Doug Robotham, for FY 09-10 and such be transmitted to the Executive Director of the Department of Natural Resources. Contingent upon the availability of funds a total expenditure of \$8,760,000 is recommended of which up to \$3.5 million be allocated to the Colorado Division of Wildlife for T&E and species of concern conservation, and up to \$260,000 allocated to Colorado State Parks for the protection of species associated with State Parks Lands. The motion was approved unanimously (9-0).

25. Water Supply Protection Section - Litigation Account

a. Annual Report to General Assembly

Tape 2, Track 1 04:10:26 - 04:13:41

Action: A motion was made by Carl Trick and seconded by Geoff Blakeslee to approve staff recommendation that the Board authorize the CWCB staff to forward the Annual Litigation Report to the General Assembly and/or appropriate committees. The motion was amended to remove one sentence in the report in the "Status of the Litigation Fund" section regarding the possible reduction of litigation funds. The motion was approved unanimously (9-0).

b. Attorney General's Request for Republican River Funding

Tape 2, Track 1 01:26:49 - 01:28:00

Tape 2, Track 1 01:29:02 - 01:32:05

Action: A motion was made by Eric Wilkinson and seconded by Carl Trick to approve staff recommendation that the Board, 1) authorize the expenditure of additional moneys, not to exceed \$110,000 for the costs of litigation associated with the defense and protection of Colorado's allocation of water in the Republican River Basin, 2) direct the CWCB Director and staff to authorize and manage the expenditure of these funds in a manner consistent with this approval and the request by the Office of the Attorney General, 3) direct the Office of the Attorney General to consult with the CWCB Director and staff

regularly with regard to the expenditures of these funds; and, 4) direct the CWCB Director, CWCB staff, and Office of the Attorney General to provide the annual report to the General Assembly required and specifically provided for in Section 37-60-1212 (2.5). The motion was approved unanimously (9-0).

26. 2009 State Legislative and Fiscal Decisions and Update

Tape 2, Track 1 01:32:05 – 01:36:04

Tape 2, Track 1 04:45:17 – 05:09:53

Action: A motion was made by Eric Wilkinson and seconded by Geoff Blakeslee that the Board support HB09-1124. The motion was approved unanimously (9-0).

A motion was made by Barbara Biggs and seconded by Eric Wilkinson that the Board support HB09-1017. The motion was approved unanimously (9-0).

A motion was made by Geoff Blakeslee and seconded by Reed Dils that the Board support HB09-1067. The motion was approved unanimously (9-0).

A motion was made by Carl Trick and seconded by Bruce Whitehead that the Board support SB09-106. The motion was approved unanimously (9-0).

A motion was made by Eric Wilkinson and seconded by Barbara Biggs that the Board support SB09-125. The motion was approved unanimously (9-0).

27. Water Supply Protection Section – Tamarisk Control Cost Sharing Grant Program – Consideration and Adoption of Program Guidance and Procedures

Tape 2, Track 1 04:13:42 – 04:34:50

Action: A motion was made by Carl Trick and seconded by Reed Dils to approve staff recommendation that the Board give final approval to the “Tamarisk and Russian Olive Control Cost Sharing Grant Program Guidance and Procedures” as discussed with the Board. Staff is directed to use the 60 day application period and evaluation procedures for final project selection at the May 2009 Board meeting. The motion was approved unanimously (9-0).

28. Basin Director Report

a. Colorado River (Mainstem) Basin Director Report

Tape 1, Track 2 00:00:00 – 00:11:45

Action: Informational item only, no action required.

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

Tape 1, Track 2 00:11:46 – 00:15:35

Action: Informational item only, no action required.

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

Tape 1, Track 2 00:15:36 – 00:28:20

Action: Informational item only, no action required.

d. Gunnison River Basin – Keith Catlin Reporting

Tape 1, Track 2 00:49:37 – 00:53:00

Action: Informational item only, no action required.

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Department of Natural Resources

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TO: Colorado Water Conservation Board Members

Bill Ritter, Jr.
Governor

FROM: Ted Kowalski

James Martin
DNR Executive Director

DATE: November 8, 2009

Jennifer L. Gimbrel
CWCB Director

SUBJECT: **Agenda Item 20, November 17-18, 2009 Board Meeting**
Water Supply Protection Section-Request for
Expenditure from Litigation Fund

Dan McAuliffe
CWCB Deputy Director

Background

As you know, the unprecedented drought from 2000-2008 in the Colorado River Basin has lowered storage levels in Lake Powell and Lake Mead. While the runoff from several recent years has improved the situation, the existing drought may continue into the future. Section 37-60-121(2.5), quoted below, allows the Board to authorize the expenditure of litigation account funds if requested by the Attorney General. In 2004, to assist the CWCB with negotiations and to prepare for potential litigation the Attorney General requested, and this Board authorized, the use of litigation account funds to establish the Defense of the Colorado River Unit. Although the Colorado River Basin States and the federal government were able to reach a historic agreement in December 2007, Colorado needs to recognize that there are decisions that we make today that will have consequences for Colorado in the future. Currently there are significant negotiations and lawsuits that are occurring that could affect Colorado's interests in the Colorado River. As described in the attached request from the Attorney General's Office, the Attorney General had committed to transition this special unit to general funding support after the 2007 negotiations were completed. However, that attempt failed in the General Assembly last year due to budgetary constraints. This year, the Attorney General has reduced the funding request for this subunit. The Attorney General's request is attached.

Staff Recommendation

The staff recommends that the Board:

- 1) authorize the expenditure of additional moneys, not to exceed \$265,000 for the costs associated with the defense of Colorado's allocation of water in the Colorado River;
- 2) direct the CWCB Director and Staff to expend these funds in a manner consistent with the request by the Office of the Attorney General, with the clarification that the funds are not limited to FY11; and,
- 3) direct the CWCB Director, CWCB Staff, and Office of the Attorney General to comply with the annual reporting requirements as specifically provided for in Section 37-60-121(2.5).

Discussion

Section 37-60-121(2.5)(a), C.R.S. provides:

The board is authorized to expend, pursuant to continuous appropriation and subject to the requirements of paragraph (b) of this subsection (2.5), a total sum not to exceed four million dollars from the litigation fund, which is hereby created, for the purpose of engaging in litigation: ... (III) To defend and protect Colorado's allocations of water in interstate streams and rivers; and (IV) To ensure the maximum beneficial use of water for present and future generations by addressing important questions of federal law."

Section (b) of subsection (2.5) states:

Pursuant to the spending authority set forth in paragraph (a) of this subsection (2.5), moneys may be expended from the litigation fund at the discretion of the board if: (I) With respect to the litigation, the Colorado attorney general requests that the board authorize the expenditure of moneys in a specified amount not to exceed the balance of the fund for the costs of litigation associated with one or more specifically identified lawsuits meeting the criteria set forth in paragraph (a) of this subsection (2.5).

Section (c) of subsection 2.5 provides: "Any interest earned on the moneys in the litigation fund shall be credited on an annual basis to the litigation fund created in paragraph (a) of this subsection (2.5).

To date, this Board has authorized several expenditures from the litigation fund—there have been expenditures associated with South Platte River three state negotiations, the Kansas v. Colorado Arkansas River litigation, the Colorado River negotiations, and the Republican River litigation. Last year, the General Assembly refreshed the litigation fund up to the original \$4,000,000, with money from the Construction Fund.

The expenditures that have been used for the Colorado River issues have allowed the State to have competent legal counsel during the development of the Shortage Criteria. This money has also funded the organization of a litigation database related to the law of the river. Moreover, this money has allowed Colorado to participate in litigation brought by environmental organizations, such as the recent Grand Canyon Trust litigation. With regard to the \$265,000 request from the Attorney General's Office, the Staff is of the opinion that this amount is justified. Approval of this request would allow the State to continue to adequately defend its interests in the Colorado River basin through various negotiations and litigation.

Attachment



JOHN W. SUTHERS
Attorney General

CYNTHIA H. COFFMAN
Chief Deputy Attorney General

DANIEL D. DOMENICO
Solicitor General

**STATE OF COLORADO
DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 7th Floor
Denver, Colorado 80203
Phone (303) 866-4500

November 17, 2009

**Request for Expenditure from Litigation Fund
to Protect Colorado's Allocations in the Colorado River**

Dear Board Members:

Section 37-60-121(2.5)(a)(III), C.R.S. (2009), authorizes the Colorado Water Conservation Board to expend money from its Litigation Fund, at the request of the Attorney General, for the costs to defend and protect Colorado's allocations of water in interstate streams and rivers. Pursuant to that authorization, I request by this letter, the expenditure of \$265,000 over the next fiscal year (FY11) from the Litigation Fund to support our continuing efforts to protect Colorado's allocations of the Colorado River under the Colorado River Compact and the Upper Colorado River Compact. I believe this expenditure is necessary to adequately defend, in negotiations and in litigation, the State's apportionments under the compacts.

The Department of Law, with the support of the Board's staff, proposes that you continue to fund these necessary efforts to assure that the water users within Colorado can make full beneficial use of the equitable apportionment of waters provided to the State of Colorado by the compacts.

In recognition of the existing budget constraints, we have spoken with Director Gimbel and agreed that, for the next fiscal year, the Office of the Attorney General will continue to protect Colorado's apportionment under the compacts with a reduced staff. Therefore, because of the fiscal restraints that affect us all, I am requesting reduced funding for only 2 attorneys (down from 3 attorneys) and 1 legal assistant, plus operating costs, calculated to total \$265,000 for FY11.

In keeping with our previous commitment to the Board to attempt to transition to General Fund support for the Colorado River Subunit, last year we requested the General Assembly to fund our work protecting our Colorado River allocation by formally combining the Subunit with the Federal and Interstate Water Unit in my office, and funding the consolidated unit as a single line item. Instead, the Joint Budget Committee accepted its staff proposal not to consolidate or fund our effort. As the General Assembly has not granted my request, I now am requesting your approval to expend \$265,000 from the Litigation Fund to continue our ongoing work to defend Colorado's equitable apportionment under the compacts and more specifically, on the following tasks:

(1) representing the State of Colorado and the Board in potential Colorado River litigation; (2) providing the State of Colorado and the Board with legal advice and counsel with respect to Colorado River issues, studies and negotiations; (3) preparing the State of Colorado and the

Board for possible Colorado River Compact litigation and other litigation that may directly affect Colorado's ability to beneficially use its equitable apportionment; (4) finalizing and organizing an electronic database of documents and data relating to the compacts for State and Board use in connection with ongoing and future negotiations and possible litigation; and (5) assisting the State Engineer with respect to intrastate administration issues on the Colorado River and its tributaries, including identifying and analyzing the best strategies to avoid future curtailment due to compact obligations and for developing strategy to plan for possible future administration of water rights within Colorado to assure the State's continued compliance with the compacts.

These tasks are essential to allowing my office and the Board to prepare for and participate in ongoing and future negotiations and potential litigation with the goal to defend Colorado's equitable apportionment to the Colorado River, as provided by the compacts, now and into the future.

I therefore request and recommend that the Board authorize the expenditure of up to \$265,000 from the Litigation Fund to fund these necessary activities through the end of FY11. I further recommend that the Board's authorization allow the Board Director, in consultation with the State Engineer and my staff, to allocate funds between these activities based on actual costs and litigation necessities.

Thank you for your consideration.

Sincerely,


JOHN W. SUTHERS
Colorado Attorney General

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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DRAFT SUMMARY MINUTES AND RECORD OF DECISIONS November 16-18, 2009

Bill Ritter, Jr.
Governor

James Martin
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 1580 Logan St., Denver, CO 80203. The meeting was called to order by Chair, Geoff Blakeslee. Eight voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were Chair Geoff Blakeslee, Vice Chair Eric Wilkinson, Carl Trick, Travis Smith, John McClow, Reed Dils, April Montgomery, and John Redifer. Barbara Biggs arrived shortly after the call to order. Colorado Department of Natural Resources Executive Director, Jim Martin, was present during the Monday afternoon session. Non-voting, *Ex-Officio* members present or represented were CWCB Director Jennifer Gimbel, Deputy Attorney General Casey Shpall, and Deputy State Engineer Mike Sullivan.

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.

Monday, November 16, 2009

Call to Order 10:35 a.m.

1. Stream and Lake Protection Section – Proposed Instream Flow Recommendations on the Huerfano River and Cucharas Creek, Water Division 2

Tape 1, Track 1 00:00:00 – 00:39:03

Action: A motion was made by Reed Dils and seconded by Eric Wilkinson to approve staff recommendation that the Board approve the following stipulations as agreed by all parties:

- 1) The Board postpones the scheduled contested hearing regarding the Huerfano River and Cucharas Creek ISF appropriations and any final action on those ISF appropriations, as defined the Paragraph 4g of the ISF Rules, until its November 2010 meeting.

*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.

A motion was made by Carl Trick and seconded by Reed Dils to go out of Executive Session. Eric Wilkinson was not available for this motion. The motion was approved unanimously (8-0).

19. Report from Executive Session

Tape 1, Track 6 00:00:00 – 00:00:27

Action: Deputy Attorney General Casey Shpall reported that the Board went into Executive Session, pursuant to C.R.S. Section 24-6-402(3)(a)(II) for discussion of Agenda Items 18 and that the discussion was limited to those items.

20. Water Supply Protection Section – Request for Expenditure from Litigation Fund

Tape 1, Track 6 00:04:40 – 00:12:07

Action: A motion was made by Carl Trick and seconded by April Montgomery to approve staff recommendation that the Board, 1) authorize the expenditure of additional moneys, not to exceed \$265,000 for the costs associated with the defense of Colorado's allocation of water in the Colorado River; 2) DIRECT THE CWCB Director and staff to expend these funds in a manner consistent with the request by the Office of the Attorney General, with the clarification that the funds are not limited to FY11, and 3) direct the CWCB Director, CWCB staff, and Office of the Attorney General to comply with the annual reporting requirements as specifically provided for in Section 37-60-121(2.5). Barbara Biggs and Eric Wilkinson were not available for this motion. The motion was approved unanimously (7-0).

RECESSED 4:45 p.m.

A regular meeting of the Colorado Water Conservation Board (CWCB) was convened at 1580 Logan St., Denver, CO 80203. The meeting was called to order by Chair, Geoff Blakeslee. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were Chair Geoff Blakeslee, Vice Chair Eric Wilkinson, Carl Trick, Travis Smith, John McCLOW, Reed Dils, April Montgomery, Barbara Biggs, and John Redifer. Non-voting, *Ex-Officio* members present or represented were CWCB Director Jennifer Gimbel, Deputy Attorney General Casey Shpall, Division of Wildlife Director Tom Remington, and Deputy State Engineer Mike Sullivan.

Wednesday, September 16, 2009

Call to Order 8:08 a.m.

21. Basin Director Report

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

Tape 1, Track 7 00:00:00 – 00:06:08

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

b. San Juan/San Miguel-Dolores River Basin – April Montgomery Reporting

Tape 1, Track 7 00:06:09 – 00:12:30

Action: Information item only. No action was required by the Board. April Montgomery formerly thanked the CWCB for funding the San Miguel/Plasserville Stream Gage.

c. Gunnison River Basin – John McCLOW Reporting

Tape 1, Track 7 00:12:31– 00:21:38

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