

# STATE OF COLORADO

## Colorado Water Conservation Board

### Department of Natural Resources

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### SUMMARY MINUTES AND RECORD OF DECISIONS

July 11 - 12, 2007<sup>1</sup>

Final and Approved September 18, 2007

Bill Ritter, Jr.  
Governor

Harris D. Sherman  
Executive Director

Dan McAuliffe  
CWCB Acting  
Director

Wednesday, July 11, 2007  
Call to Order 1:30 p.m.

A regular meeting of the Colorado Water Conservation Board (CWCB) was convened at the Holiday Inn Hotel and Suites, 300 S. Hwy. 13, Craig, Colorado 81625. 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 six required). Voting Board members present were Chair Travis Smith, Vice Chair Don Schwindt, John Redifer, Keith Catlin, Carl Trick, Eric Wilkinson, and Geoff Blakeslee. *Ex Officio* members present or represented were CWCB Acting Director Dan McAuliffe, Jack Byers representing the State Engineer's office, John Stulp, Colorado Agriculture Commissioner, and Pat Kowaleski, representing Casey Shpall, Deputy Attorney General.

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 2 00:00:00 – 00:03:09

Action: A motion was made by Keith Catlin, and seconded by John Redifer to approve the July 11-12, 2007 agenda. The motion was approved unanimously (7-0).

2. Review and Approval of Meeting Minutes – May 22-23, 2007 Minutes

Tape 1, Track 2 00:03:09 – 00:05:44

<sup>1</sup>

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.

Action: Carl Trick asked if Agenda Item 19 (Preferred Storage Options Plan Authorization) had been accomplished. Dan McAuliffe confirmed that a draft letter had been written, and sent to Harris Sherman and Alex Davis for their comments. Alex Davis informed the Board that the letter would be sent to the Board for its approval prior to being sent to Senator Salazar. A motion was made by Don Schwindt, and seconded by Eric Wilkinson to approve the May 22-23, 2007 Minutes. The motion was approved unanimously (7-0).

3. Approve and/or Remove Items from Consent Agenda

Tape 1, Track 2 00:05:44 – 00:06:16

Action: A motion was made by Eric Wilkinson and seconded by John Redifer to approve the Consent Agenda Items 1a – 1k and Consent Agenda Item 2. The motion was approved unanimously (7-0).

4. Next Meeting Dates and Locations

Tape 1, Track 2 00:06:16 – 00:07:46

- a. September 18-19, 2007 Doubletree Inn, Grand Junction
- b. November 14-15, 2007 Denver, CO.
- c. January 22-23, 2007 Hyatt, Denver, CO (CWC is Jan. 24-25, 2008)

Action: A motion was made by Geoff Blakeslee and seconded by Keith Catlin to approve the meeting dates and locations. The motion was approved unanimously (7-0).

5. Flood Protection Section – Chatfield Reservoir Reallocation Project – Water User Redistribution Agreement

Tape 1, Track 2 00:07:46 – 00:26:10

Action: A motion was made by Eric Wilkinson and seconded by Don Schwindt to approve staff recommendations that the Board approve the resolution regarding the re-distribution of water supply storage space for the Chatfield Reservoir Reallocation Project. The motion was approved unanimously (7- 0).

6. Flood Protection Section – Levee Administration Policy

Tape 1, Track 2 00:26:10 – 00:47:42

Action: This agenda item is presented as an information item but is intended to initiate discussion between the CWC Board and staff, and to solicit feedback regarding the proposed levee policy. Although no formal board action is requested at this time, the item will be brought back before the Board at its September 2007 meeting in Grand Junction for consideration and approval. Comments and feedback from this meeting will be incorporated into the draft levee policy as needed. Informational item only, no action taken.

7. Intrastate Water Management & Development Section – Water Supply Reserve Account – July Grant Requests

Tape 1, Track 2 00:47:42 – 01:39:02

Action: A motion was made by Don Schwindt and seconded by Carl Trick to approve staff recommendations that the Board approve the funding to **Mancos Water Conservancy District**, for the Jackson Gulch Reservoir Feasibility Study, in the amount of \$80,000.00, contingent on resolution of the items in the issues/additional needs section (listed below). It should be noted that past costs cannot be reimbursed.

Issues/Additional Needs are as follows:

- 1) Provide a detailed budget – the project budget does not include level of effort and rates (hours, unit costs, etc) for discrete tasks.
- 2) The scope of work should provide more detail on the purpose of each task, the method or procedure used to accomplish the task and the deliverables or product produced.
- 3) Provide a detailed project schedule.
- 4) The applicant has not identified any TABOR issues, if any.
- 5) The applicant has not identified how they intend to finance construction of the final project.
- 6) Describe why the applicant sought exclusive funding through SB179 funds.

And, to approve staff recommendations that the Board fund the **Upper Yampa Water Conservancy** for the Morrison Creek Reservoir Feasibility Study, in the amount of \$49,500.00, contingent on resolution of the items in the issues/additional needs section (listed below). It should be noted that past costs cannot be reimbursed.

Issues/Additional Needs are as follows:

- 1) Provide a detailed budget – the project budget does not include level of effort and rates for discrete tasks.
- 2) The scope of work should provide more detail on the purpose of each task, the method or procedure used to accomplish the task and the deliverables or product produced.
- 3) Provide a project schedule.
- 4) The applicant discusses water rights available for storage. They are to provide a tabulation of said water rights.
- 5) The applicant has not identified any TABOR issues, if any.
- 6) Clarify why the diversion from Morrison Creek into Stagecoach Reservoir is not a preferred option.
- 7) Clarify why a significant portion of the planned development will be located upstream from the reservoir.

The motion was approved unanimously (7- 0).

8. Water Supply Protection Section – Role of Elkhead Enlargement in Upper Colorado River Endangered Fish Recovery Program

Tape 1, Track 2 01:39:02 – 02:00:00

Action: Informational item only, no action taken.

9. Stream and Lake Protection Section – Authorization to Proceed to Trial – Case No. 1—95CW256; Application of Colorado Water Conservation Board on the Fall River.

Tape 1, Track 2 02:00:00 – 02:03:51

Tape 1, Track 2 02:06:34 – 02:07:15

Action: The Board discussed litigation strategy and potential settlement parameters with staff and the Attorney General's Office in executive session. After the Board returned from executive session, a motion was made by Eric Wilkinson and seconded by Keith Catlin to approve staff's recommendations that the Board

authorize staff to proceed to trial to obtain a decree for the Board's instream flow water rights on the Fall River, in the event that staff and the Attorney General's Office are unable to reach a settlement with the opposers. The motion was approved unanimously (7-0).

10. Attorney General's Report, Legal Briefing and Executive Session

Tape 1, Track 2 02:03:51 – 02:05:48

A motion was made by Eric Wilkinson and seconded by Geoff Blakeslee to go into Executive Session. The motion was approved unanimously (7-0).

Executive Session Items

Tape 0, Track 0 00:00:00 – 00:00:00

Action: Based upon the recommendation from Pat Kowaleski, representing Deputy Attorney General Casey Shpall, the discussion of Agenda Items 10a, 10c, 10d, 10e, and 10f 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. Agenda Item 10b will not be discussed as CWCB staff will be participating in a settlement meeting July 12, 2007, on that case.

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CWCB Attorney

The portion of the Executive Session on Agenda Items 10a, 10c, 10d, 10e, and 10f 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).

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CWCB Chair

Action: A motion was made by Eric Wilkinson and seconded by Geoff Blakeslee to end Executive Session. The motion was approved unanimously (7-0).

11. Report from Executive Session

Tape 0, Track 0 02:05:48 – 02:06:34

Action: Per Pat Kowaleski, representing Deputy Attorney General Casey Shpall, reported that Agenda Items 10a, 10c, 10d, 10e, and 10f were discussed in Executive Session and were limited to litigation strategies.

Meeting Recessed 5:00 p.m.

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Thursday, July 12, 2007  
Call to Order (8:00 a.m.)

A regular meeting of the Colorado Water Conservation Board (CWCB) was reconvened at the Holiday Inn Hotel and Suites, 300 S. Hwy. 13, Craig, Colorado 81625. The meeting was called to order by Chair Travis Smith. 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 Travis

Smith, Vice Chair Don Schwindt, Harris D. Sherman, John Redifer, Keith Catlin, Carl Trick, Eric Wilkinson, and Geoff Blakeslee. *Ex Officio* members present or represented were CWCB Acting Director Dan McAuliffe, Jack Byers representing the State Engineer's office, John Stulp, Colorado Agriculture Commissioner, and Pat Kowaleski, representing Casey Shpall, Deputy Attorney General.

12a. Basin Directors' Reports – Colorado River (Mainstem) Basin  
Tape 2, Track 1 00:00:00 – 00:03:39  
Action: Informational item only, no action taken.

12b. Basin Directors' Reports – Yampa-White River Basin  
Tape 2, Track 1 00:03:09 – 00:06:41  
Action: Informational item only, no action taken.

12c. Basin Directors' Reports – San Juan/San Miguel-Dolores River Basin  
Tape 2, Track 1 00:06:41 – 00:14:49  
Action: Informational item only, no action taken.

12d. Basin Directors' Reports – Gunnison River Basin  
Tape 2, Track 1 00:14:49– 00:17:17  
Action: Informational item only, no action taken.

12e. Basin Directors' Reports – North Platte River Basin  
Tape 2, Track 1 00:17:17– 00:19:20  
Action: Informational item only, no action taken.

12f. Basin Directors' Reports – South Platte River Basin  
Tape 2, Track 1 00:19:20– 00:24:02  
Action: Informational item only no action taken.

12g. Basin Directors' Reports – Rio Grande Basin  
Tape 2, Track 1 00:24:02– 00:27:13  
Action: Informational item only, no action taken.

12h. Basin Directors' Reports – Arkansas River Basin  
Tape 2, Track 1 00:00:00 – 00:00:00  
Action: No report, representative not present during this agenda item.

13a. Directors' Reports – DNR Executive Director  
Tape 2, Track 1 00:27:13– 01:00:24  
Action: Informational item only, no action taken.

13b. Directors' Reports – Interbasin Compact Commission Director  
Tape 2, Track 2 00:27:1 - 01:00:24  
Action: Informational item only, no action taken.

13c. Directors' Reports – CWCB Director  
Tape 2, Track 1 01:00:24 - 01:18:44  
Action: Informational item only, no action taken.

- 13d. Directors' Reports – State Engineer  
Tape 2, Track 1 01:18:44 - 01:39:20  
Action: Informational item only, no action taken.
- 13e. Directors' Reports – Agriculture Commissioner  
Tape 2, Track 1 01:39:20 - 01:43:47  
Action: Informational item only, no action taken.
- 13f. Directors' Reports – Division of Wildlife Director  
Tape 2, Track 1 00:00:00:00 – 00:00:00  
Action: No report, representative not present.
- 13g. Directors' Reports – Water Resource and Power Development Authority Director  
Tape 2, Track 1 00:00:00 – 00:00:00  
Action: No report, representative not present.
14. Office of Water Conservation and Drought Planning Section – Updated Drought Mitigation & response Plan Information to Meet Requirements of the FEMA disaster Mitigation Act of 2000.  
Tape 2, Track 1 01:43:47 - 02:29:54  
Action: A motion was made by Carl Trick and seconded by John Redifer to approve staff recommendations that the Board approve the updated information provided in support of the 2002 Colorado Drought Mitigation and Response Plan and forward to the Colorado Division of Emergency Management for integration into the Colorado Natural Hazard Mitigation Plan for ultimate submission to FEMA. The motion was approved unanimously (8-0).
- 15a. Water Supply Planning and Finance Section – New Project Loans – Henrylyn Irrigation District – Horse Creek Reservoir and Prospect Reservoir Rehabilitation Project  
Tape 2, Track 1 02:29:54 - 02:46:38  
Action: A motion was made by Eric Wilkinson and seconded by Keith Catlin to approve staff recommendations that the Board approve a loan not to exceed \$2,184,327 (\$2,162,700 for project costs and \$21,627 for the 1% Loan Service Fee in accordance with CWCB Loan Policy #16), to the Henrylyn Irrigation District from the Severance Tax Trust Fund Perpetual Base Account, to repair the outlet works and add toe drains at Horse Creek Reservoir, and repair the outlet works at Prospect Reservoir. The recommended terms of the loan are 30 years at 2.25% per annum. Security for the loan will be a pledge of Henrylyn Irrigation District annual assessment levy revenues, backed by an assessment covenant, and a 10% interest in Horse Creek Reservoir and a 10% interest in Prospect Reservoir. Staff also recommends that final approval of the loan be conditioned upon all other standard contracting provisions of the CWCB. Further, staff recommends the following approval conditions:
1. The authority to assume the proposed indebtedness shall be approved by the HID electors in accordance with the applicable provisions of the Irrigation District Law



of 1905, C.R.S. 37-41-113(4) and C.R.S. 37-41-117), prior to execution of a State contract.

2. Reserve Fund – Prior to execution of the State Contract, the Company shall provide CWCB with evidence that the debt reserve fund of \$99,915 has been established.

The motion was approved unanimously (8-0).

15b. Water Supply Planning and Finance Section – New Project Loans – Lower Latham Reservoir Company – Water Rights Purchase/Augmentation Project

Tape 2, Track 1 02:46:38 - 02:57:36

Action: A motion was made by Eric Wilkinson and seconded by Geoff Blakeslee to approve staff recommendations that the Board approve a loan not to exceed \$1,994,596 (\$1,974,848 for project costs and \$19,748 for the 1% Loan Service Fee in accordance with CWCB Loan Policy #16), to the Lower Latham Reservoir Company from the Severance Tax Trust Fund Perpetual Base Account, to acquire surface water rights, a total of 6 shares of Lower Latham Ditch Company, for the purpose of providing augmentation water for existing shareholder wells, and to install a flow measuring and monitoring system to facilitate augmentation plan administration, and to pay expenses already incurred. The recommended terms of the loan are 30 years at 2.25% per annum. Security for the loan will be a pledge of annual revenues from all sources, including a pledge of future assessment revenues, if needed, backed by a rate covenant, and the project water rights, consisting of 6 shares of Lower Latham Ditch Company. Staff further recommends that final approval of the loan be conditioned upon all other standard contracting provisions of the CWCB. The motion was approved unanimously (8-0).

15c. Water Supply Planning and Finance Section – New Project Loans – Montezuma Valley Irrigation Company – May Lateral Pipeline Project

Tape 2, Track 1 02:57:36 - 03:19:17

Action: Don Schwindt recused himself. A motion was made by John Redifer and seconded by Keith Catlin to approve staff recommendations that the Board approve a loan not to exceed \$5,292,400 (\$5,240,000 for project costs and \$52,400 for the 1% Loan Service Fee) for engineering and construction costs to the Montezuma Valley Irrigation Company from the Severance Tax Trust Fund Perpetual Base Account, for the May Lateral Pipeline Project. The loan terms are based on an agricultural interest rate of 2.25% per annum for 30 years. Security for the loan will be collateral in compliance with CWCB Loan Policy No. 5. In addition, the Board required the following supplemental conditions of approval: 1) Loan contracting shall be conditioned upon acceptance of a parity position with the Dolores Water Conservancy District's lien on Company's assessment revenues, and 2) Contract language shall include "All funds received from NRCS related to the May Lateral Pipeline Project must be applied to the Project and the CWCB loan." The motion was approved unanimously (7-0).

15d. Water Supply Planning and Finance Section – New Project Loans – Town of Hillrose – Water Rights Purchase/Well Augmentation Project

Tape 2, Track 1 03:19:17 - 03:34:55

Action: A motion was made by Eric Wilkinson and seconded by Carl Trick to approve staff recommendations that the Board approve a loan not to exceed \$49,995 (\$49,500 for project costs and \$495 for the 1% Loan Service Fee in accordance

with CWCB Loan Policy #16), to the Town of Hillrose, acting by and through its Water Activity Enterprise Fund, from the Severance Tax Trust Fund Perpetual Base Account, to purchase surface water rights, 6 shares of the Lower Platte and Beaver Canal Company, to use for well augmentation for its proposed secondary water system, and to pay expenses already incurred. The recommended terms of the loan are 30 years at 3.00% per annum. Security for the loan will be a pledge of enterprise fund revenues. Staff further recommends that final approval of the loan be conditioned upon all other standard contracting provisions of the CWCB, as well as the following:

1. Appraisal – Prior to execution of a State contract, a written appraisal or opinion of value from a qualified water rights appraiser supporting the water rights (6 shares of Lower Platte and Beaver Canal Company) purchase price, must be submitted for review and approval by CWCB.  
The motion was approved unanimously (8-0).

16. Water Supply Protection Section – BLM Regional Management Planning (Wild and Scenic River Analysis); Presentation by Roy Smith of the BLM

Tape 3, Track 1 00:00:00 – 00:39:23

Action: Informational item only, no action taken.

17. Water Supply Protection Section – Intrastate Water Planning – Oil Shale Water Use

Tape 2, Track 1 03:34:55 - 04:14:10

Action: Informational item only, no action taken.

18. Water Supply Protection Section – Colorado River updates – Updates on USBR EIS Process – Actions Pursuant to 7-State Agreement – Mexican Treaty Issues; Presentation by Randy Seaholm

Tape 3, Track 1 00:39:23 - 00:48:13

Action: Informational item only, no action taken.

19. Stream and Lake Protection Section – New Appropriations – Willow Creek and Beaver Creek in Moffat County

Tape 3, Track 1 00:48:13 - 02:17:33

Action: Beaver Creek: A motion was made by Don Schwindt and seconded by Harris Sherman to approve staff recommendation that the Board declare its intent to appropriate in accordance with Instream Flow Rule 5d. Staff further recommends that the Board approve the proposed stipulation with Vermillion Ranch. Finally, staff also requests that the Board adopt the proposed modified hearing scheduled for these recommendations in accordance with ISF Rule 5c. The motion was approved unanimously (8-0).

Action: Willow Creek: A motion was made by Geoff Blakeslee and seconded by Harris Sherman to approve staff recommendation that the Board declare its intent to appropriate in accordance with Instream Flow Rule 5d. Staff also requests that the Board adopt the proposed modified hearing scheduled for these recommendations in accordance with ISF Rule 5c. The motion was approved unanimously (8-0).



20. Stream and Lake Protection Section – Hat Creek Water Acquisition  
Tape 3, Track 1 02:17:33 - 02:29:42  
Action: A motion was made by Don Schwindt and seconded by Eric Wilkinson to approve Staff's recommendation to:

1. Conclude that the proposed acquisition of the Hat Creek Ditch water right is appropriate to preserve the natural environment of Hat Creek and East Brush Creek to a reasonable degree;
2. Determine that the acquired Hat Creek Ditch water right would be best utilized by combining it with the Board's existing decreed ISF water rights on Hat Creek and East Brush Creek to maintain flows on those creeks in the amounts decreed in Case No. 87CW271 (Hat Creek) and Case No. 77W3627 (East Brush Creek);
3. Acquire the Hat Creek Ditch water right from the Colorado Water Trust pursuant to the proposed Donation and Acquisition Agreement;
4. Authorize the Acting Director to execute the Donation and Acquisition Agreement; and
5. Direct staff to work with the Attorney General's Office to file a water court application to change the use of the acquired water right to instream flow use.

John Redifer was not present to vote. The motion was approved unanimously (7-0).

21. Stream and Lake Protection Section – Pine River Water Acquisition  
Tape 3, Track 1 02:29:42 - 03:07:10  
Action: A motion was made by Carl Trick and seconded by Keith Catlin to approve Staff's recommendation that the Board:

1. Conclude that the amounts of water provided under the Donation Agreement with the Pine River Irrigation District and Southern Ute Indian Tribe, including water that may be available under #7.A of the Agreement, are appropriate to preserve the natural environment to a reasonable degree;
2. Conclude that the amounts of water provided under the Donation Agreement, including water that may be available under #7.A of the Agreement, are appropriate to improve the natural environment to a reasonable degree;
3. Accept the donation of water from the Pine River Irrigation District and the Southern Ute Indian Tribe pursuant to the proposed Donation Agreement;
4. Authorize the Acting Director to execute the Donation Agreement, and
5. Direct staff to work with the Attorney General's Office to file a joint water court application with the District and the Tribe for a new junior storage right for Vallecito Reservoir that provides for instream flow use exclusively by CWCB in the Pine River, and to follow up on implementation of #7.A of the Donation Agreement.

John Redifer was not present to vote. The motion was approved unanimously (7-0).

22. Intrastate Water Management & Development Section – Colorado's Future Water Supply Needs – Update on Consumptive and Non-Consumptive Workgroups  
Tape 3, Track 1 03:07:10– 03:25:34  
Action: Presentation by Rick Brown. Informational item only, no action taken.

Meeting Adjourned 5:02 p.m.

