

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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DRAFT SUMMARY MINUTES AND RECORD OF DECISIONS

January 26-27, 2010

Final and Approved May 18, 2010

A regular meeting of the Colorado Water Conservation Board (CWCB) was convened at the Hilton Garden Inn, Denver Tech Center, 7675 E. Union Ave., Denver, CO 80237. The meeting was called to order by Chair, Geoff Blakeslee. Ten 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, John Redifer, and James Martin. Non-voting, *Ex-Officio* members present or represented were CWCB Director Jennifer Gimbel, State Engineer Dick Wolfe, Division of Wildlife Director Tom Remington, Deputy Attorney General Casey Shpall, and Assistant Director of Water, Alexandra Davis.

Bill Ritter, Jr.
Governor

James Martin
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Dan McAuliffe
CWCB Deputy Director

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 26, 2010

Call to Order 10:38 a.m.

1. Review and Approval of Agenda

Tape 1, Track 2 00:00:00 – 00:01:34

Action: Jennifer Gimbel advised the Board members that there was a change to agenda item 20b. The amount being requested in 20b had been changed from \$25,000 to \$50,000. There was no motion on this agenda item.

*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 for the November 17-18, 2009

Tape 1, Track 2 00:01:35- 00:04:54

Action: Eric Wilkinson suggested corrections to the November Draft Minutes as follows: 1) Page 7, the date should be changed from September 16 to November 18, and 2) change the spelling of Plasserville to Placerville. A motion was made by Travis Smith and seconded by Carl Trick to approve the amended November 17-18, 2009 Meeting Minutes. The amended motion was approved unanimously (10-0).

3. Approve and/or Remove Items from Consent Agenda

Tape 1, Track 2 00:04:56 - 00:5:42

Tape 1, Track 5 01:10:22 – 01:17:14

Action: A motion was made by Eric Wilkinson and seconded by Travis Smith to remove consent agenda item 1a for later discussion. The motion was approved unanimously (10-0). A motion was made by Eric Wilkinson and seconded by Travis Smith to approve consent agenda items 1b and 2. The motion was approved unanimously (10-0).

On Wednesday, January 27, 2010, after discussion of consent agenda item 1a, a motion was made by Eric Wilkinson and seconded by Barbara Biggs to approve consent agenda item 1a. The motion was approved unanimously (8-0).

4. Future Board Meeting Dates

Tape 1, Track 2 00:07:12 - 00:13:08

- | | |
|--------------------------|---|
| 1. January 26-27, 2010 | Hilton Garden Inn/DTC Denver (in conjunction with the Colorado Water Congress Conference) |
| 2. March 16-17, 2010 | Denver |
| 3. May 17-19, 2010 | Durango w/ALP tour (tour on Monday, 5/17/10) |
| 4. July 20-21, 2010 | Buena Vista/Salida |
| 5. September 21-22, 2010 | Grand Junction |
| 6. November 16-17, 2010 | Denver |

Action: A motion was made by Carl Trick and seconded by Travis Smith to approve the Board meetings listed above, changing the July 2010 meeting date to July 20-21, 2010. Barbara Biggs, if reappointed, will not be able to make this proposed date. The motion was approved unanimously (10-0). Jennifer Gimbel asked the Board if they would be interested in a joint meeting with the Division of Wildlife and offered their future meeting dates. The CWCB Board will be polled on these future meeting dates to see who will be available to attend.

5. Directors' Report

Tape 1, Track 2 00:13:09 - 00:15:10

- a. DNR Executive Director – James Martin Reporting

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

- b. IBCC Director – Alexandra Davis Reporting

Tape 1, Track 5 00:15:11 – 00:16:30

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

- c. Agriculture Commissioner

Action: No report on this item.

- d. CWCB Director - Jennifer Gimbel Reporting
Tape 1, Track 2 00:16:31 - 00:29:42
Action: Jennifer Gimbel proposed a Resolution to the Board honoring Dan Law of the Water Resource and Power Development Authority, for his years of service to the State of Colorado. A motion was made by Barbara Biggs and seconded by James Martin to enter this Resolution into the Official Record. The motion was approved unanimously (10-0).
- e. State Engineer – Dick Wolfe Reporting
Tape 1, Track 2 00:29:43 - 00:45:32
Action: Information item only. No action was required by the Board.
- f. Division of Wildlife - Tom Remington Reporting
Tape 1, Track 2 00:45:33 - 00:52:52
Action: Information item only. No action was required by the Board.
- g. Water Resource and Power Development Authority – Dan Law Reporting
Tape 1, Track 2 00:52:53 - 01:04:34
Action: Information item only. No action was required by the Board.
6. Watershed Protection and Flood Mitigation Section – Fish and Wildlife Mitigation Grant – Hartland Diversion Dam, Gunnison River
Tape 1, Track 2 01:04:35 - 01:18:32
Action: A motion was made by John McCloy and seconded by John Redifer to approve staff recommendation that the Board approve a non-reimbursable expenditure up to \$560,000 from the Fish and Wildlife Resource Fund for the purpose of providing matching dollars to the Hartland Diversion Reconstruction and Fish Passage Project. This amount represents 30% of the total Project cost. The remaining costs will be provided by USFWS (\$804,000 cash committed) and other stakeholders (\$484,000). James Martin was not available for this motion. The motion was approved unanimously (9-0).
7. Watershed Protection and Flood Mitigation Section – 2009/2010 Colorado Cloud Seeding Programs and Grants
Tape 1, Track 2 01:19:30 – 01:43:00
Action: Informational item only. No action was required by the Board at this time. The Board did ask that CWCB staff keep them informed of the Department of Regulatory Agencies Weather Modification Statutes (expires in 2011) Sunset Review, and possibly invite Brian Tobias to the November 2010 meeting to discuss the findings of his report due out in October 2010 (Final Copy of Sunset Review Report).
8. Watershed Protection and Flood Mitigation Section – Chatfield Reservoir Reallocation Project
Tape 1, Track 2 01:43:01 - 02:05:18
Action: A motion was made by Barbara Biggs and seconded by Carl Trick to approve staff recommendations that the Board pass this resolution, as outlined in the memo, in support of the Chatfield Reservoir Reallocation Project within the South Platte River Basin. James Martin was not available for this motion. The motion was approved unanimously (9-0).

9. Water Supply Planning Section – Water Supply Reserve Account – Grant Applications
a. Trinchera Irrigation Company – Shortfall Request – Sangre de Cristo Trinchera Diversion Canal Restoration

Tape 1, Track 2 02:05:19 – 02:13:47

Action: A motion was made by Travis Smith and seconded by Eric Wilkinson to approve staff recommendations that the Board approve an additional \$54,000 from the Rio Grande Basin Account to fund the Shortfall Request for the Sangre de Cristo Trinchera Diversion Canal Restoration Project for the Trinchera Irrigation Company. Jim Martin was not available for this motion. The motion was approved unanimously (9-0).

- b. Town of Norwood – Raw Water System Update and Future Needs Study

Tape 1, Track 2 02:13:47 – 02:18:21

Action: A motion was made by Reed Dils and seconded by Barbara Biggs to approve staff recommendation that the Board approve up to \$58,458 from the Southwest Basin Account to help fund the Town of Norwood's raw water system update and future needs study, contingent on resolution of the item in the issues/additional needs section of the Board memo. April Montgomery recused herself from this discussion and motion and James Martin was not available for this motion. The motion was approved unanimously (8-0).

- c. Yellow Jacket Water Conservancy District – Water Storage Feasibility

Tape 1, Track 2 02:18:22 – 02:30:12

Action: A motion was made by Eric Wilkinson and seconded by Carl Trick to approve staff recommendation that the Board approve up to \$220,800 from the Yampa/White Basin Account to help complete the Yellow Jacket Water Conservancy District's Water Storage Feasibility Project. James Martin was not available for this motion. The motion was approved unanimously (9-0).

- d. The Nature Conservancy – Yampa White Basin Nonconsumptive Needs Assessment Watershed Flow Evaluation Tool

Tape 1, Track 2 02:30:13 – 02:35:32

Action: A motion was made by April Montgomery and seconded by Travis Smith to approve staff recommendation that the Board waive the application deadline requirement and approve up to \$169,002.35 from the Yampa/White Basin Account to help complete this project. Geoff Blakeslee recused himself from this discussion and motion, and James Martin was not available for this motion. The motion was approved unanimously (8-0).

10. Water Supply Planning Section – Colorado's Water Supply Future - Update

Tape 1, Track 2 02:35:33 – 02:58:00

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

11. Stream and Lake Protection Section – New Appropriation Recommendation in Water Divisions 1, 2, 4, 6, and 7

- a. Staff will ask the Board to declare its intent to appropriate on the 25 instream flow water right recommendations listed on the Board Memo.

Tape 1, Track 2 02:58:01 – 03:40:34

Action: A motion was made by April Montgomery and seconded by Reed Dils to approve staff recommendation that, pursuant to Rule 5d, the Board declare its intent to appropriate an instream flow water right on each stream segment listed on the Board memo and direct

CWCB staff to publicly notice the Board's declaration of its intent to appropriate. James Martin was not available for this motion. The motion was approved unanimously (9-0).

- b. Staff will ask the Board to determine when to declare its intent to appropriate the instream flow recommendation on the San Miguel River (Calamity Draw to Dolores River) in Montrose County.

Tape 1, Track 2 03:40:35 – 04:43:40

Action: A motion was made by April Montgomery and seconded by Carl Trick to delay the Board's Intent to Appropriate the Instream Flow Recommendation on the San Miguel River (Calamity Draw to Dolores River) in Montrose County. The CWCB Board and staff will hear a report in May 2010 on the progress of negotiations and discuss how to proceed at that time. The Board may decide to Form its Intent to Appropriate at that time or wait until January 2011. James Martin was not available for this motion. The motion was approved unanimously (9-0).

12. Stream and Lake Protection Section – Update on Instream Flow Recommendations on big Dominguez Creek and Little Dominguez Canyons Wilderness Area.

Tape 1, Track 2 04:43:41 – 05:04:28

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

13. Stream and Lake Protection Section – Proposed Water Rights Acquisition on the Alamosa River

Tape 1, track 2 05:04:29 – 05:30:00

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

14. Stream and Lake Protection Section – Proposed Water Rights Acquisition on Washington Gulch and the Slate River

Tape 1, Track 2 05:30:01 – 05:53:25

Tape 1, Track 4 00:00:16 – 00:05:50

Action: A motion was made by John McClow and seconded by Barbara Biggs to approve staff recommendation that the Board:

1. Conclude that: (1) the proposed acquisition by purchase of the Breem Ditch Conservation Use Right is appropriate to preserve the natural environments of Washington Gulch and the Slate River to a reasonable degree; and (2) that the proposed acquisition by donation from the CWT of the portion of the Conservation Use Right above that needed to preserve the natural environment of Washington Gulch is appropriate to improve the natural environment of Washington Gulch to a reasonable degree.
2. Determine that the acquired Breem Ditch Conservation Use Right would be best utilized by: (1) combining it with the Board's existing decreed ISF water right on Washington gulch to maintain flows up to 5.45 cfs to preserve or improve the natural environment; and (2) combining it with the Board's existing decreed ISF water right on the Slate River to maintain flows up to 23 cfs, the amount decreed in Case No. 80CW092C;
3. Approve the purchase and accept the donation of a portion of the Breem Ditch Conservation Use Right from the CWT;
4. Determine that the benefit to the natural environment of Washington Gulch and the Slate River from this acquisition of 5.45 cfs during the irrigation season outweighs the potential detriment to the natural environment from lagged return flows of 0.065 cfs in October on the Slate River.

5. Authorize the Director to execute the portion of the Water Rights Purchase and Sale Agreement documenting the Board's agreement to the terms and conditions of Paragraph 16 of that Agreement;
6. Authorize the Director to execute: (1) an agreement with Skyland regarding the maintenance of return flows; and (2) the Joint Operating Principles, once finalized to the satisfaction of all parties;
7. Pursuant to section 37-60-123.7, C.R.S. (2009), authorize the expenditure and transfer to the CWT of \$335,000 to pay: (1) \$300,000 toward the cost of the Breem Ditch Conservation Use Right; and (2) \$35,000 for costs related to the acquisition of the Breem Ditch Conservation Use Right, as outlined in the financial summary provided to the Board; and
8. Direct staff to work with the Attorney General's Office to negotiate the return flow agreement and Joint Operating Principles and to file water court application to change the use of the acquired water right to add instream flow use.

The Board placed a condition on the purchase such that the Joint Operating Principles to be approved by the CWCB Director will include a contract provision to the satisfaction of the State Engineer wherein the CWCB will be able to place a call for the water right. Carl Trick voted against the \$35,000 reimbursement payment to CWT, but is in favor of this project. Eric Wilkinson and James Martin were not available for this motion. The motion was approved (7-1).

15. 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. 5-07CW210: Application of Vail Associates, Inc. et al.
- b. Grand Canyon Trust v. U.S. Bureau of Reclamation
- c. Proposed Water Rights Acquisition on Washington Gulch and the Slate River
- d. Case No. JC4353; In Superior Court of California, Sacramento, Verification proceedings for Quantified Settlement Agreement

Tape 1, Track 2 05:53:25 - 05:55:17

Action: Per Casey Shpall, Deputy Attorney General, 15a has been removed from the agenda and 15b and 15d are discussed in the memo provided by the Attorney General. A motion was made by Travis Smith and seconded by Barbara Biggs to go into Executive Session to discuss 15c only. Eric Wilkinson and James Martin were not available for this motion. The motion was approved unanimously (8-0).

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

16. Report from Executive Session

Tape 1, Track 4 00:00:00 – 00:00:15

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 15c and that the discussion was limited to that item only.

RECESSED

6:17 p.m.

A regular meeting of the Colorado Water Conservation Board (CWCB) was reconvened at the Hilton Garden Inn, Denver Tech Center, 7675 E. Union Ave., Denver, CO 80237. 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, State Engineer Dick Wolfe, and Deputy Attorney General Casey Shpall. Assistant Director of Water, Alexandra Davis arrived shortly after the call to order.

Wednesday, January 27, 2010

Call to Order 8:10 a.m.

17. Basin Director Report

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

Tape 1, Track 5 00:00:00 – 00:03:07

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 5 00:03:08 – 00:08:15

Action: Information item only. No action was required by the Board. April Montgomery informed the Board that she would not be able to attend the March 2010 meeting.

c. Gunnison River Basin – John McClow Reporting

Tape 1, Track 5 00:08:16– 00:21:14

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

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

Tape 1, Track 5 00:21:15 – 00:26:25

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

e. South Platte River Basin Director Report – Vice Chair Eric Wilkinson Reporting

Tape 1, Track 5 00:26:26 – 00:43:46

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

f. Arkansas River Basin Director Report – Reed Dils Reporting

Tape 1, Track 5 00:43:47 – 00:49:33

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

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

Tape 1, Track 5 00:49:34 – 00:56:00

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

h. Rio Grande River Basin Director Report – Travis Smith Reporting

Tape 1, Track 5 00:56:01 – 01:03:55

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

i. Yampa-White River Basin Director Report – Chair Geoff Blakeslee Reporting
Tape 1, Track 5 01:03:56 – 01:10:21
Action: Information item only. No action was required by the Board.

18. Office of Water Conservation and Drought Planning Section – CWCB Criteria and Guidelines for the Rainwater Harvesting Pilot Project Program
Tape 1, Track 5 01:17:15 – 01:47:05

Action: A motion was made by Carl Trick and seconded by Barbara Biggs to approve staff recommendation with changes to the following: 1) Change the first sentence in the “Background” section of the Criteria and Guidelines to say, “Rainwater harvesting has not been (utilized or considered), instead of “overlooked”; 2) on page 6, under “b” section ii; specify that a “system wide irrigation audit” be performed; and 3) on page 10, the bold face italic section, 4th sentence: change the wording to read, “It is the pilot project sponsor’s responsibility to propose the appropriate level of detail subject to the review and approval of the state”. The motion was approved unanimously (9-0).

19. Water Supply Protection Section – Wild and Scenic Rivers
Tape 1, Track 5 01:47:06 – 02:13:58

Action: A motion was made by Carl Trick and seconded by Eric Wilkinson to approve staff recommendation, as described on the Board memo, with the following amendments: 1) on page 1 of the Terms and Conditions, in the first paragraph (Background item 4), eliminate the second sentence, “Currently, there are seven different federal processes where a federal agency is evaluating the eligibility or suitability of different rivers or streams for Wild and Scenic designation”; 2) Change the sentence immediately following to read, “In response to federal processes, local groups may form alternative resource protection groups that explore different avenues for resource protection (deleting the mention of “wild and scenic” from this sentence); 3) on page 3, under Project Area Description, part 2, change the second part of the sentence to read, “proposed project facilities and river segments that are being considered for listing as eligible and/or suitable for Wild and Scenic designation; and 4) page 5, section e: the language will remain, but CWCB staff will use its judgment, in the context of Director Eric Wilkinson's comments, in interpreting the language related to the length of time a process is taking. The motion was approved unanimously (9-0).

20. Water Supply Protection Section – CWCB Litigation Account

a. The CWCB staff requested that the Board authorize staff to submit its Annual Report to the General Assembly.

Tape 1, Track 5 02:13:59 - 02:16:59

Action: A motion was made by Travis Smith and seconded by John Redifer to approve staff recommendation that the Board authorize CWCB staff to submit its Annual Report to the appropriate General Assembly committees. Barbara Biggs was not available for this motion. The motion was approved unanimously (8-0).

b. The CWCB staff requested that the Board authorize, per Attorney General Suther’s request, an expenditure of up to \$50,000 from the Litigation Account for expert witness fees in the pending Division 2 Irrigation Improvement Rules case.

Tape 1, Track 5 02:17:00 – 02:19:45

Action: A motion was made by Carl Trick and seconded by Reed Dils to approve staff recommendation that the Board, pursuant to the Attorney General request contained in his letter dated January 15, 2010, approve the expenditure of up to \$50,000 from the

Litigation Fund, an account within the Board's Construction Fund, to be used for litigation support expenses, in particular expert witness fees, during promulgation and adoption of the Division 2 Irrigation Improvement Rules. Barbara Biggs was not available for this motion. The motion was approved unanimously (8-0).

21. Watershed Protection and Flood Mitigation Section – Notice of Formal Rulemaking for Floodplain Regulations

Tape 1, Track 5 02:19:46 – 03:13:48

Action: A motion was made by Carl Trick and seconded by Travis Smith to approve staff recommendation that the Board approve: 1) the initiation of formal rulemaking (file a Notice of Rulemaking), 2) the proposed timeline for the rulemaking process, and 3) Deputy Attorney General Casey Shpall be appointed as the Hearing Officer for the rulemaking hearing. The motion was approved unanimously (9-0).

22. Water Supply Protection Section – Endangered Species Conservation Trust Fund FY10-11 Funding Recommendations

Tape 1, Track 6 00:00:00 – 00:21:25

Action: A motion was made by Eric Wilkinson and seconded by Barbara Biggs to approve the amended staff recommendation, that the Board, contingent upon appropriations, approve funding of up to \$3,000,000 for the Platte River Basin Agreement and up to \$1,000,000 for the Upper Colorado Fish Recovery Program as it relates to the improvements of the Orchard Mesa Irrigation District. The motion was approved unanimously (9-0).

23. Water Supply Protection Section – The Colorado River Basin Water Supply and Demand Study

Tape 1, Track 6 00:21:26 – 00:37:54

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

24. Water Supply Planning and Finance Section – Financial Matters – Projections & Cash Balance Reports

Tape 1, Track 6 00:37:55 – 00:50:00

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

25. Review of CWCB Legislation – 2010 Construction Fund Projects Bill

Tape 1, Track 6 00:50:01 – 00:53:00

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

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

a. Lower Latham Reservoir Company – Well Augmentation Project – Phase III

Tape 1, Track 6 00:53:01 - 01:00:48

Action: A motion was made by Eric Wilkinson and seconded by Travis Smith to approve staff recommendation that the Board approve a loan from the Construction Fund not to exceed \$3,811,573 (\$3,773,835 for project costs and \$37,738 for the 1% Loan Service Fee) to Lower Latham Reservoir Company for the water rights purchase, engineering and construction costs related to the Well Augmentation Project – Phase III. The loan terms shall be 30 years at the agricultural rate of 2.75% per annum. Security for the loan shall be in compliance with CWCB Financial Policy No. 5. Staff also recommends a contract condition requiring the bridge financing related to the Project be paid in full with the proceeds from this CWCB loan. The motion was approved unanimously (9-0).

b. Trinchera Irrigation Company – Smith Dam Repair Project

Tape 1, Track 6 01:00:49 – 01:09:50

Action: A motion was made by Travis Smith and seconded by Barbara Biggs to approve staff recommendation that the Board approve a loan from the Construction Fund not to exceed \$606,000 (\$600,000 for project costs and \$6,000 for the 1% Loan Service Fee) to the Trinchera Irrigation Company for engineering and construction costs related to the Smith Dam Repair Project. The loan terms shall be 30 years at the agricultural rate of 2.75% per annum. Security for the loan shall be in compliance with CWCB Financial Policy No. 5. Staff also recommends a contract condition requiring that all bridge financing be paid in full with the proceeds from the CWCB loan. The motion was approved unanimously (9-0).

27. Water Supply Planning and Finance Section – Design and Construction Status Report

Tape 1, Track 6 01:09:51 – 01:36:45

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

ADJOURNED 2:40 p.m.