

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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SUMMARY MINUTES AND RECORD OF DECISIONS July 20-21, 2010 Final and Approved September 14, 2010

Bill Ritter, Jr.
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

A regular meeting of the Colorado Water Conservation Board (CWCB) was convened at the Salida SteamPlant, 220 W. Sackett Street, Salida, CO 81201. The meeting was called to order by Chair Geoff Blakeslee. Seven 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, John McCLOW, April Montgomery, John Redifer, Reed Dils, Travis Smith, and Carl Trick. Non-voting *Ex-officio* members present or represented were CWCB Acting Deputy Director Linda Bassi, the Department of Water Resources Director Dick Wolfe, Senior Assistant Attorney General Patrick Kowaleski representing the State Attorney General's Office, and representing the Department of Agriculture, Jim Miller. The Interbasin Compact Committee Director, Alexandra Davis, 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, July 20, 2010 Call to Order 10:38 a.m.

1. Review and Approval of Agenda

Tape 1, Track 2 00:00:46 – 00:03:03

Action: CWCB staff added Case No. 6-07CW061 and 6-07CW072: Applications of Upper Yampa Water Conservancy District to Executive Session and as an action item, Agenda Item #34. A motion was made by Travis Smith and second by Carl Trick to approve the July 20-21, 2010 Agenda with the above added items. 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.

2. Review and Approval of Meeting Minutes - May 18-19, 2010 Board Meeting

Tape 1, Track 2 00:03:03 – 00:03:54

Action: John Redifer abstained from this motion as he was not in attendance at the May 2010 Board meeting. A motion was made by Travis Smith and seconded by Reed Dils to approve the May 18-19, 2010 Meeting Minutes. The motion was approved unanimously (6-0).

3. Approve and/or Remove Items from Consent Agenda

Tape 1, Track 2 00:03:55 – 00:05:38

Action: A motion was made by Travis Smith and seconded by April Montgomery to approve the Consent Agenda items as listed in the Board memo. The motion was approved unanimously (7-0).

4. Future Board Meeting Dates

- a. September 21-22, 2010** Grand Junction (in conjunction with the Colorado River District Water Seminar, September 16, 2010)
- b. November 16-17, 2010** Denver
- c. January 25-26, 2011** Denver/Hilton Garden Inn(in conjunction with Colorado Water Congress)

Tape 1, Track 2 00:05:38 – 00:08:15

Action: CWCB staff suggested that the Board meetings in September 2010 and November 2010 be extended to include the preceding Monday of the proposed dates above. A motion was made by Travis Smith and seconded by Carl Trick to approve staff recommendation. The motion was approved unanimously ((7-0).

5. Water Information Section – CWCB's New Website

Tape 1, Track 2 00:08:15 – 00:23:13

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

6. Directors' Report

- a. DNR Executive Director** – Alexandra Davis Reporting

Tape 1, Track 2 00:23:14 – 00:30:30

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

- b. IBCC Director** – Alexandra Davis Reporting

Tape 1, Track 2 00:30:31 – 00:33:20

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

- c. Agriculture Commissioner** – Jim Miller Reporting

Tape 1, Track 2 00:33:21 – 00:39:20

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

- d. CWCB Director** – Linda Bassi Reporting

Tape 1, Track 2 00:39:21 – 00:47:44

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

- e. State Engineer** – Dick Wolfe Reporting

Tape 1, Track 2 00:47:45 – 01:11:50

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

- f. Division of Wildlife** - No report on this item.

g. Water Resource and Power Development Authority – Michael Brod Reporting
Action: Director Michael Brod’s report was included in the Board notebook.

7. Finance Section – Construction/Severance Tax Fund Projections and Cash Balance Report.

Tape 1, Track 2 01:11:51 – 01:23:35

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

8. Finance Section – Construction Fund and Severance Tax Trust Fund Perpetual Base Account – New Project Loans

a. Stagestop Owners Association – Stagestop Water Augmentation Reservoirs Projects

Tape 1, Track 3 00:00:00 – 00:07:51

Action: A motion was made by Reed Dils and seconded by April Montgomery to approve staff recommendation that the Board approve a loan from the Construction Fund not to exceed \$192,708 (\$190,800 for project costs and \$1,908 for the 1% Loan Service Fee) to the Stagestop Owners Association for engineering and construction costs related to the Stagestop Water Augmentation Reservoirs Project. The loan terms shall be 20 years at the middle-income municipal rate of 4.25% per annum (reduced from 4.5% for a 30 year term). Security for the loan shall be in compliance with CWCB Financial Policy No. 5. The motion was approved unanimously (7-0).

b. Grand River Ditch Company – Grand River Ditch Pipeline Project

Tape 1, Track 3 00:07:52 – 00:50:09

Action: A motion was made by Travis Smith and seconded by John Redifer to approve staff recommendation that the Board approve a loan, not to exceed \$543,380 (\$538,000 for project costs and \$5,380 for the 1% Loan Service Fee) for engineering and construction costs, to the Grand River Ditch Company from the Construction Fund for the Grand River Ditch Pipeline Project. Following construction, the staff further recommends the loan be amended to an amount not to exceed \$443,380 (\$438,000 for the remaining balance of the Project and \$5,380 for the Loan Service Fee). The loan terms shall be 30 years at a blended interest rate of 4.2% per annum. Security for the loan shall be in compliance with CWCB Financial Policy No. 5.

Additional Contract Condition – all additional grant funds obtained for the purpose of this Project shall be applied to the balance of the final Project cost.

Staff amended the collateral description on Page 5, under Table 3 of the Board memo to read, “Security for the loan shall be a pledge of the Company’s assessment revenues and the project itself including contract language that protects CWCB’s right to deny delivery of water through the project in the event of default. Additionally, in the event of default, the CWCB can enforce the Company’s right to sell a delinquent shareholder’s stock as contained within the Company’s Articles of Incorporation and by-laws.” The motion was approved unanimously (7-0).

c. Swan’s Nest Metropolitan District – Water Acquisition Project

Tape 1, Track 3 00:50:10 – 00:59:50

Action: A motion was made by John McClow and seconded by April Montgomery to approve staff recommendation that the Board approve a loan from the Construction Fund not to exceed \$151,500 (\$150,000 for the water rights purchase and \$1,500 for the 1% Loan Service Fee) to the Swan’s Nest Metropolitan District, acting by and through its

enterprise, for the Water Acquisition Project. The loan terms shall be 20 years at the high-income municipal rate of 4.75% per annum (reduced from 5.0% for a 30 year term). Security for the loan shall be in compliance with CWCB Financial Policy No. 5. The motion was approved unanimously (7-0).

9. Finance Section – Prequalification Project List Update

- a. Plains Metro District – Water Rights Purchase**
- b. Farmers Highline Canal Company – Capital Improvement Projects**
- c. Huerfano Cucharas Irrigation Company – Cucharas Reservoir Dam Rehabilitation**

Tape 1, Track 3 00:59:51 – 01:26:33

Action: A motion was made by Carl Trick and seconded by Travis Smith to approve staff recommendation that the Board approve the projects listed above be placed on the Prequalified Project List. The motion was approved unanimously (7-0).

10. Finance Section/Interstate & Federal Section – Animas-La Plata (A-LP) State's Pool Allocation Update

Tape 1, Track 3 01:26:32 – 01:28:32

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

11. Water Supply Planning Section – Water Supply Reserve Account – Grant Applications

- a. Leroux Creek Water Users Association – Hanson Reservoir Outlet Rehabilitation**

Tape 1, Track 3 01:28:32 – 01:44:01

Action: A motion was made by John McCLOW and seconded by John Redifer to approve staff recommendation that the Board approve up to \$50,000 from the Gunnison Basin Account to help complete the Hanson Reservoir Outlet Rehabilitation. The motion was approved unanimously (7-0).

- b. Colorado Climate Center – Colorado Agricultural Meteorological Network (CoAgMet)**

Tape 1, Track 3 01:44:01 – 01:55:46

Action: A motion was made by Carl Trick and seconded by Travis Smith to approve staff recommendation that the Board approve up to \$20,000 from the South Platte Basin Account for the Colorado Agricultural Meteorological Network (CoAgMet). The motion was approved unanimously (7-0).

- c. Northern Colorado Water Conservancy District – Data Logger and Telemetry Installation Project**

Tape 1, Track 3 01:55:46 – 02:02:46

Action: A motion was made by Carl Trick and seconded by Reed Dils to approve staff recommendation that the Board approve up to \$46,000 from the South Platte Basin Account to help complete the Data Logger and Telemetry Installation Project. The motion was approved unanimously (7-0).

- d. Southeastern Colorado Water Conservancy District – Stakeholders' Cooperative Management Analysis for the Upper Arkansas River Basin**

Tape 1, Track 3 02:02:47 – 02:04:40

Action: A motion was made by Reed Dils and seconded by April Montgomery to approve staff recommendation that the Board approve up to \$33,600 from the Arkansas Basin Account

for Southeaster Colorado Water Conservancy District's Stakeholders' Cooperative Management Analysis for the Upper Arkansas River Basin. The motion was approved unanimously (7-0).

12. Water Supply Planning Section – Proposed Change of Fiscal Agent for Water Supply Reserve Account Projects

a. Fraser River Settling Pond

Tape 1, Track 3 02:04:41 – 02:08:50

Action: A motion was made by Carl Trick and seconded by Travis Smith to approve staff recommendation that the Board grant the requested change of Water Supply reserve Account contracting entity for the Fraser River Settling Pond project to Grand County, to replace East Grand Water Quality Board (EGWQB) as the fiscal agent for this project. The motion was approved unanimously (7-0).

b. Demonstration of Membrane Zero Liquid Discharge Process for Drinking Water Systems

Tape 1, Track 3 02:08:51 – 02:15:08

Action: A motion was made by Carl Trick and seconded by April Montgomery to approve staff recommendation that the Board grant the requested change of Water Supply Reserve Account contracting entity for the project titled, "Demonstration of Membrane Zero Liquid Discharge Process for Drinking Water Systems" to the Water Environment Research Foundation (WERF), to replace WateReuse Foundation as the fiscal agent for this project. The motion was approved unanimously (7-0).

13. Water Supply Planning Section – Alternative Agricultural Transfer Methods Criteria and Guidelines

Tape 1, Track 3 02:15:08 – 02:29:57

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

14. Water Supply Planning Section – Arkansas Basin Roundtable Activities and Next Steps

Tape 1, Track 3 02:29:58 – 02:45:05

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

15. Arkansas Valley Conduit Update

Tape 1, Track 3 02:45:05 – 02:55:35

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

16. Water Information Section – Arkansas River Decision Support System Feasibility Study

Tape 1, Track 3 02:55:36 – 03:12:12

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

17. Water Information Section – Upper Arkansas Water conservancy District Data Collection Platform/Gaging Project

Tape 1, Track 3 03:12:13 – 03:24:04

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

18. Water Information Section – CSU Arkansas Basin Data Collection and Assessment

Tape 1, Track 3 03:24:05 – 03:42:46

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

19. Water Information Section – USGS Upper Arkansas Water Balance Study

Tape 1, Track 3 03:42:47 – 03:52:00

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

RECESSED 5:15 p.m.

A regular meeting of the Colorado Water Conservation Board (CWCB) reconvened at the Salida Steam Plant, 220 W. Sackett Street, Salida, CO 81201. The meeting was called to order by Chair Geoff Blakeslee. Seven 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, John McClow, April Montgomery, John Redifer, Reed Dils, Travis Smith, and Carl Trick. The Colorado Department of Natural Resources Executive Director, Mike King, arrived after the call to order. Non-voting *Ex-officio* members present or represented were CWCB Deputy Director Linda Bassi, the Director of the Department of Water Resources, Dick Wolfe, Senior Assistant Attorney General Patrick Kowaleski, and representing the Department of Agriculture, Jim Miller. The Interbasin Compact Committee Director, Alexandra Davis, was also present.

Wednesday, July 21, 2010

Call to Order 8:09 a.m.

20. Basin Director's Report

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

Tape 1, Track 4 00:00:00 – 00:07:47

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 4 00:07:48 - 00:11:21

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

c. Gunnison River Basin – John McClow Reporting

Tape 1, Track 4 00:11:22 - 00:13:50

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 4 00:13:51 - 00:16:10

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

e. South Platte River Basin Director Report

Action: No Report on this item.

f. Arkansas River Basin Director Report – Reed Dils Reporting

Tape 1, Track 4 00:16:11 - 00:24:16

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

g. City and County of Denver Director Report

Action: No Report on this item.

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

Tape 1, Track 4 00:24:17 - 00:34:06

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 4 00:34:07 - 00:39:25

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

21. Watershed & Flood Protection Section – State Support for the Community Rating System (CRS)

Tape 1, Track 4 00:39:26 – 01:04:37

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

22. Office of Water Conservation & Drought Planning Section – Sterling Ranch Application for the Rainwater Harvesting Pilot Project Program

Tape 1, Track 4 01:04:38 - 01:53:45

Action: A motion was made by April Montgomery and seconded by John McClow to approve staff recommendation that the Board approve the Rainwater Harvesting Pilot Project Application from Sterling Ranch. The Board amended the staff's recommendation to include a substitute water supply plan be in place prior to funds being disbursed. The motion was approved unanimously (8-0).

23. Office of Water Conservation and Drought Planning Section – Presentation on the Guidebook of Best Practices for Municipal Water Conservation in Colorado

Tape 1, Track 4 01:53:46 – 02:32:40

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

24. Office of Water Conservation and Drought Planning Section – Presentation on the Updated Passive Water Conservation Savings from the SWSI Conservation Levels Analysis Report

Tape 1, Track 4 02:32:41 – 03:10:18

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

25. Watershed & Flood Protection Section – Floodplain Rules and Regulations Update

Tape 1, Track 4 03:10:19 – 03:20:39

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

26. Watershed & Flood Protection Section – Chatfield Reallocation Project

Tape 1, Track 4 03:20:40 – 03:24:10

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

27. 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. 3-08CW010: Application of Robert Gregg Sease
- b. Grand Canyon Trust v. U.S. Bureau of Reclamation
- c. U.S./Mexico Negotiations
- d. Republican River Litigation Update
- e. Case No. 6-07CW061 and 6-07CW072: Applications of Upper Yampa Water Conservancy District

Tape 1, Track 4 05:05:34 - 05:07:40

Action: A motion was made by Reed Dils and seconded by Travis Smith to go into Executive Session to discuss Agenda Items 27a-27d. Item 27e was not discussed in Executive Session. The motion was approved unanimously (8-0).

A motion was made by Carl Trick and seconded by John Redifer to go out of Executive Session. The motion was approved unanimously (8-0).

28. Report from Executive Session

Tape 1, Track 3 00:00:00 - 00:00:34

Action: Senior Assistant Attorney General Patrick Kowaleski 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 27a-27d and that the discussion was limited to those items only.

29. Interstate & Federal Section – Wild and Scenic Rivers

Tape 1, Track 6 00:00:35 – 00:16:26

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

30. Interstate & Federal Section – Compact Compliance Strategies Study

Tape 1, Track 6 00:16:26 – 00:23:14

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

31. Stream & Lake Protection Section – Injury with Mitigation – Case No. 4-03CW108:

Application of Upper Gunnison River Water Conservancy District, Lake San Cristobal

Tape 1, Track 4 04:45:37 – 05:05:33

Action: A motion was made by Carl Trick and seconded by John Redifer to approve staff recommendation that the Board 1) Determine that the natural environment of Lake San Cristobal could be preserved to a reasonable degree despite the proposed injury to the ISF if Applicant and any successors in interest, including the enterprise, provide the proposed mitigation, and 2) approve the pretrial resolution of this case. John McClow recused himself from the discussion and motion of this agenda item. The motion was approved unanimously (7-0).

32. Stream & Lake Protection Section – Big and Little Dominguez Creeks Uncontested 2010 Instream Flow Appropriations

Tape 1, Track 6 00:23:15 – 01:16:11

Action: A motion was made by John Redifer and seconded by April Montgomery to approve staff recommendations that the Board make the following determinations and take the following actions on the proposed appropriations on Big Dominguez Creek and Little Dominguez Creek, based on the information contained in the Board memo as well as the information presented by staff both in writing and orally at the May 19, 2010 Board meeting.

1. Determine, pursuant to section 37-92-102(3), C.R.S., and based upon the recommendations of the BLM, and a review of the data and other information presented by Staff, in this memo and orally, that:
 - (a) There is a natural environment that can be preserved to a reasonable degree with the recommended water rights, if granted;
 - (b) Water is available in each stream for appropriation;
 - (c) The natural environment will be preserved to a reasonable degree by the water available for the recommended appropriations; and
 - (d) Such natural environment can exist without material injury to water rights.

2. Pursuant to ISF Rule 5f., establish May 19, 2010 as the appropriation date for these instream flow water rights.
3. Direct staff to request the Attorney General's Office to file the necessary water rights applications and include language in each of the applications that defines the development allowance; outlines the non-precedential nature of these appropriations; and reiterates the Board's requirement under 37-92-102 (3)(b) which provides that these instream flow water rights will be subject to uses or exchanges of water (even if not decreed by the water court) being made on the date the CWCB appropriated these water rights.

Carl Trick opposed this motion. The motion was approved (7-1).

33. Stream & Lake Protection Section – Report on Economic Benefits of Instream Flows and the Recovery Program

Tape 1, Track 6 01:16:12 – 01:33:54

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

34. Stream & Lake Protection Section – Case Nos. 6-07CW061 and 6-07CW072: Applications of Upper Yampa Water Conservancy District

Tape 1, Track 4 03:24:10 – 04:45:36

Action: A motion was made by John McClow and seconded by Reed Dils to delay any action on this agenda item until the November 2010 Board Meeting. The motion was approved unanimously (8-0).

A motion was made by Reed Dils and seconded by John Redifer to adjourn the CWCB July 2010 Board meeting. Mike King was not available for this motion. The motion was approved unanimously (7-0).

ADJOURNED 5:08 p.m.