

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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DRAFT SUMMARY MINUTES AND RECORD OF DECISIONS November 15-17, 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 Northern Colorado Water Conservancy District's office at 220 Water Avenue, Berthoud, Colorado 80513. 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, Barbara Biggs, John McClow, April Montgomery, John Redifer, Reed Dils, Travis Smith, Carl Trick, Eric Wilkinson, and Department of Natural Resources Executive Director Mike King. Non-voting *ex officio* members present or represented were CWCB Director Jennifer Gimbel; Jim Miller, Deputy Commissioner of Colorado Department of Agriculture; Tom Remington, Director, Department of Wildlife; Alexandra Davis, Interbasin Compact Committee Director; and Dick Wolfe, State Engineer. Also present was First Assistant Attorney General Susan Schneider.

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 15, 2010

Joint Meeting with Front Range Water Council (10:00 a.m. – 12:00 p.m.)

Monday, November 15, 2010

Floodplain Rules & Regulations Hearing (1:00 p.m.)

PUBLIC RULEMAKING HEARING BEFORE THE COLORADO WATER CONSERVATION BOARD - 2 CCR 408-1

Tuesday, November 16, 2010

Call to Order 8:15 AM

1. Review and Approval of Agenda

Tape 1, Track 1 00:16:35 – 00:18:29

Action: Geoff Blakeslee suggested the following changes: Since Agenda items 7 and 8 are related, they should be discussed together, and move the break before agenda item 7. Also, at the end of the meeting, the revised floodplain amendments from the rulemaking session the day before should be presented by Tom Browning for the Board's approval. For the Board's information, the Water Resources and Power Development Authority Director would not be presenting a report in person, but a written report is included in the Board notebooks. A motion

was made by Travis Smith and seconded by Eric Wilkinson to approve the November 2010 Agenda with the above changes and information. The motion was approved unanimously (10-0).

2. Review and Approval of Meeting Minutes – September 13-15, 2010 Board Meeting, October 26, 2010 Special Executive Session

Tape 1, Track 1 **00:18:29 – 00:22:22**

Action: Mike King and Eric Wilkinson abstained from this motion. A motion was made by Travis Smith and seconded by Carl Trick to approve the September 13-15 Meeting minutes as well as the October 26 Special Executive Session Minutes. The motion was approved unanimously (8-0).

3. Approve and/or Remove Items from Consent Agenda

Tape 1, Track 1 **00:22:23 – 00:24:41**

Tape 2, Track 2 **03:13:39 – 03:16:10**

Action: Travis Smith requested that Consent Agenda Item 1a be discussed prior to the end of the board meeting. A motion was made by Eric Wilkinson, seconded by John Redifer, to approve the Consent Agenda items remaining in the Board memo, with discussion of item 1a at the conclusion of the meeting. The motion was approved unanimously (10-0). On Wednesday, November 17th, a motion was made by Travis Smith and seconded by John McCLOW to approve Agenda item 1a. Geoff Blakeslee, Barbara Biggs, and April Montgomery were unavailable for this motion. The motion was approved unanimously (7-0).

4. Future Board Meeting Dates

January 25-26, 2011	Denver/Hilton Garden Inn DTC (in conjunction with Colorado Water Congress)
March 15-16, 2011	Denver
May 17-18, 2011	Possibly Durango/Cortez
July 12-13, 2011	Possibly Walden area/Gunnison (in conjunction with Gunnison Water Workshop)
September 13-14, 2011	Grand Junction (Ute Water Conservancy District's Headquarters Office)
November 15-16, 2011	Denver

Tape 1, Track 1 **00:24:42 – 00:27:47**

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

5. Directors' Reports

a. DNR Executive Director – Mike King reporting

Tape 1, Track 1 **00:27:48 – 00:32:47**

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

b. IBCC Director – Alexandra Davis reporting

Tape 1, Track 1 **00:32:48 – 00:35:33**

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

c. Agriculture Commititioner – Jim Miller reporting

Tape 1, Track 1 **00:35:34 – 00:37:47**

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

d. CWCB Director – Jennifer Gimbel reporting. Director Gimbel asked that two subcommittees be formed: one dealing with water conservation, one with compact

issues. Since the Board indicated that all members wished to be involved with both issues, no subcommittees were formed.

Tape 1, Track 1 00:37:48 – 00:53:01

Action: Informational item only. No action was required by the Board. All board members volunteered to serve on both subcommittees.

e. **State Engineer** – Dick Wolfe reporting

Tape 1, Track 1 00:53:02 – 01:06:57

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

f. **Division of Wildlife** – Tom Remington reporting

Tape 1, Track 1 01:06:58 – 01:19:05

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

g. **Water Resource and Power Development Authority** – No report on this item, but one was included in the Board notebook.

6. Finance Section – Financial Matters – Construction Fund and Severance Tax Perpetual Base Account

Tape 1, Track 1 01:19:06 – 02:19:18

Action: Presentation by Steve Biondo and Tim Feehan. Informational item only. No action was required by the Board.

7. Finance Section – En-bloc Non-Reimbursable Investments Recommendations

Tape 1, Track 1 02:46:16 – 02:59:24

Action: Presentation by Tim Feehan. A motion was made by Eric Wilkinson and seconded by Reed Dils to approve staff recommendation that the Board approve an exception to Policy 13 and approve, en-bloc, the non-reimbursable investments listed in Agenda Item a-e. These investments were reviewed and recommended by the CWCB Finance Committee when it met in September 2010 in Grand Junction, Colorado. These non-reimbursable investments will comprise the principal sections of the 2011 Projects Bill. The motion was approved unanimously (10-0).

8. Finance Section – Referred Non-Reimbursable Investments

Tape 1, Track 1 02:59:25 – 03:38:45

Action: Chair Geoff Blakeslee suggested that each section in this agenda item be voted on individually.

- a. removed by staff prior to board meeting
- b. removed by staff prior to board meeting
- c. CWCB – Water Conservation Data Tracking Project. Presentation by Veva Deheza. A motion was made by Barbara Biggs and seconded by April Montgomery to approve staff recommendation that the Board request that the General Assembly authorize \$200,000 from the Construction Fund to be appropriated to the Colorado Water Conservation Board for this project. The motion was approved unanimously (10-0). **03:00:19 – 03:11:42**
- d. CWCB – Arkansas River Decision Support System. Presentation by Andy Moore. A motion was made by Reed Dils and seconded by Carl Trick to approve staff recommendation that the Board request that the General Assembly authorize \$500,000 from the Construction Fund to be appropriated to the Department of Natural Resources for allocation to the CWCB to begin implementation of the

Arkansas River Decision Support System (ArkDSS). Barbara Biggs was not available for this motion. The motion was approved unanimously (9-0).

03:12:13 – 03:17:28

- e. CWCB – Colorado River Water Availability Study. Presentation by Ray Alvarado, Ted Kowalski, Michelle Garrison. A motion was made by John McCLOW and seconded by Eric Wilkinson to approve staff recommendation that the Board request the General Assembly authorize \$700,000 from the Construction Fund to be appropriated to the Colorado Water Conservation Board (CWCB) for completion of the Colorado Compact Compliance Study. Barbara Biggs was not available for this motion. Carl Trick opposed this motion. The motion was approved (8-1).

03:17:30 – 03:38:48

- f. Colorado Water Education Foundation – Annual Appropriation. Presentation by Tim Feehan. A motion was made by Eric Wilkinson and seconded by Travis Smith to approve staff recommendation that the Board approve an amount of \$150,000 for the continuation of the CFWE as provided in HB 02-1152. Barbara Biggs was not available for this motion. The motion was approved unanimously (9-0).

03:38:49 – 03:40:01

9. Northern Colorado Water Conservancy District – Outside Facility Tour

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

Tape 1, Track 1 03:40:02 – 03:45:30

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

Tape 1, Track 2 00:27:46 – 01:06:00

- a. Huerfano Cucharas Irrigation Company – Cucharas Dam Rehabilitation Project.
Action: Presentation by Anna Mauss. A motion was made by Reed Dils and seconded by Travis Smith to approve staff recommendation that the board approve a loan not to exceed \$9,999,000 to the Huerfano-Cucharas Irrigation Company for the Cucharas Reservoir Rehabilitation Project from the Construction Fund. Barbara Biggs was not available for this motion. The motion was approved unanimously (9-0).

00:28:05 – 00:58:35

- b. Farmers' High Line Canal and Reservoir Company – System Rehabilitation Project.
Action: Presentation by Anna Mauss. A motion was made by Eric Wilkinson and seconded by Travis Smith to approve a loan not to exceed \$1,410,768 to the Farmers' High Line Canal and Reservoir Company for engineering and construction costs related to the System Rehabilitation Project. Barbara Biggs was not available for this motion. The motion was approved unanimously (9-0).

00:58:36 – 01:06:00

11. Finance Section – Prequalification Project List Update

Tape 1, Track 2 01:06:01 – 01:08:31

Action: Presentation by Anna Mauss. A motion was made by April Montgomery and seconded by Travis Smith to approve staff recommendation that the Board approve the Montezuma Valley Irrigation Company – Pipeline Project as presented being placed on the Prequalified Project List. Barbara Biggs was not available for this motion. The motion was approved unanimously (9-0).

12. Finance Section – Changes to Existing Loans

Tape 1, Track 2 01:08:33 – 01:47:40

Action: Presentation by Tim Feehan. A motion was made by Travis Smith and seconded by Carl Trick to approve staff recommendation that the Board approve an increase of \$345,412 to the Bull Creek, Canal, and Power Company, from the Severance Tax Trust Fund Perpetual Base Account, at its current interest rate of 2.5 % for 30 years. John Redifer recused himself from the vote, and Barbara Biggs was unavailable for this motion. The motion was approved unanimously (8-0).

13. Stream & Lake Protection Section – Contested and Resolved 2010 Instream Flow Appropriations on the Huerfano River and Cucharas Creek

Tape 1, Track 2 01:48:00 – 01:51:22

Action: Presentation by Jeff Baessler. A motion was made by Reed Dils and seconded by April Montgomery to approve staff recommendation that the Board make the following determinations and take the following actions on the proposed appropriations on the Huerfano River and Cucharas Creek, based on the information in the Board memo as well as the information presented by staff both in writing and orally at the January 27, 2009 Board meeting.

1. Determine, pursuant to section 37-92-102(3), C.R.S. (2010) and based upon the recommendations of the Colorado Division of Wildlife (CDOW), and review of the data and other information presented by staff, in the 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. Establish December 31, 2010 as the appropriation date for these ISF water rights pursuant to ISF Rule 5f.
3. Direct Staff to request the Attorney General's Office to file the necessary water rights applications.

Barbara Biggs and Travis Smith were unavailable for this motion. The motion was approved unanimously (8-0).

14. Stream and Lake Protection Section — Injury with Mitigation — Case No. 6-05CW23: Application of Deerwood Service Company

Tape 1, Track 2 01:51:31 – 02:23:15

Action: Presentation by Linda Bassi. A motion was made by John Redifer and seconded by Eric Wilkinson to approve staff recommendation that the Board: 1) Make a preliminary determination that the natural environment of Trout Creek could be preserved to a reasonable degree with the proposed injury if the Company provides the proposed mitigation, and 2) Provide comments to Staff on the proposal and identify any issues that the Company and Staff should address before bringing the proposal to the Board for final approval. Barbara Biggs was unavailable for this motion. The motion was approved unanimously (9-0).

15. Stream and Lake Protection Section — Authorization to Proceed to Trial in Case No. 5-07CW128: Application of The Ranch at Roaring Fork Homeowners' Association, et al.

**Tape 1, Track 2 02:23:20 – 02:25:23
 04:13:12 – 04:14:40**

Action: Presentation by Linda Bassi. A motion was made by John McCLOW and seconded by Travis Smith to approve staff recommendation that the Board authorize Staff to proceed to trial to protect the Board's Instream flow water rights in the event that Staff and the Attorney General's office are unable to reach a settlement with the Applicants. Barbara Biggs was unavailable for this motion. The motion was approved unanimously (9-0).

16. 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.*

Tape 1, Track 2 **02:25:27 – 02:28:15**

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

17. Executive Session Items

- a. Discussion of Legal Questions Relating to US/Mexico and Colorado River Negotiations
- b. Case No. 5-07CW128: Application of The Ranch at Roaring Fork Homeowners' Association, et al.
- c. San Miguel River ISF Recommendation
- d. Republican River
- e. *Grand Canyon Trust v. Bureau of Reclamation*, et. al: 07-cv-08164-DGC (U.S. Dist. Court Arizona).

Action: A motion was made by John Redifer and seconded by Carl Trick to go into Executive Session for discussion of Items 17a-17e. Barbara Biggs was unavailable for this motion. The motion was approved unanimously (9-0).

A motion was made by Carl Trick and seconded by Reed Dils to go out of Executive Session. Barbara Biggs was not available for this motion. The motion was approved unanimously (9-0).

18. Report From Executive Session

Tape 1, Track 2 **04:12:25 – 04:13:12**

Action: Deputy Attorney General Pat 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 17a-17e and that the discussion was limited to those items only.

RECESS 4:54 p.m.

A regular meeting of the Colorado Water Conservation Board (CWCB) was convened at Northern Colorado Water Conservancy District's office at 220 Water Avenue, Berthoud, Colorado 80513. The meeting was called to order by Vice Chair Eric Wilkinson. Eight voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were John McCLOW, April Montgomery, John Redifer, Reed Dils, Travis Smith, Carl Trick, Eric Wilkinson, and Department of Natural Resources Executive Director Mike King. Non-voting *ex officio* members present or represented were CWCB Director Jennifer Gimbel; Jim Miller, Deputy Commissioner of Colorado Department of Agriculture; Alexandra Davis, Interbasin Compact Committee Director; and Dick Wolfe, State Engineer. Also present was First Assistant Attorney General Susan Schneider.

19. Basin Directors' Reports

a. **Colorado River (Mainstem) Basin Director's Report** – John Redifer reporting
Tape 2, Track 1 **00:19:52 – 00:23:09**
Action: Informational item only. No action was required by the Board.

b. **San Juan/San Miguel-Dolores River Basin Director's Report** – April Montgomery reporting
Tape 2, Track 1 **00:23:10 – 00:25:28**
Action: Informational item only. No action was required by the Board.

c. **Gunnison River Basin Director's Report** – John McCLOW reporting
Tape 2, Track 1 **00:25:29 – 00:27:53**
Action: Informational item only. No action was required by the Board.

d. **North Platte River Basin Director's Report** – Carl Trick reporting
Tape 2, Track 1 **00:27:54 – 00:30:24**
Action: Informational item only. No action was required by the Board.

e. **South Platte River Basin Director's Report** – Eric Wilkinson reporting
Tape 2, Track 1 **00:43:00 – 00:53:24**
Action: Informational item only. No action was required by the Board.

f. **Arkansas River Basin Director's Report** – Reed Dils reporting
Tape 2, Track 1 **00:30:25 – 00:34:38**
Action: Informational item only. No action was required by the Board.

g. **City and County of Denver Director's Report**
Action: No report on this item.

h. **Rio Grande River Basin Director's Report** – Travis Smith reporting
Tape 2, Track 1 **00:34:46 – 00:42:49**
Action: Informational item only. No action was required by the Board.

i. **Yampa – White River Basin Director's Report**
Action: No report on this item.

20. Water Supply Planning Section – SWSI 2010 Update

Tape 2, Track 1 **00:53:25 – 02:20:29**
Action: Presentation by Eric Hecox. The Board agreed to meet once in the month of December, and once in January before the next scheduled Board meeting, to fine tune recommendations and feedback on the draft SWSI 2010 Mission Statement, Key Findings, and Recommendations.

21. Water Supply Planning Section – WSRA Annual Report and Select Completed Projects: Halligan-Seaman Shared Vision Planning; Ducks Unlimited Wetland Recharge Projects; 10,825 Alternatives Study

Tape 2, Track 1 **02:34:15 – 03:38:13**
Action: Informational item only. No action was required by the Board.

22. Water Supply Planning Section – WSRA Grant Applications

Tape 2, Track 1 **03:38:14 – 04:12:27**

- a. San Juan Citizens Alliance – A Way Forward: The Dolores River Below McPhee Reservoir.

Action: Presentation by Jacob Bornstein. A motion was made by April Montgomery and seconded by Reed Dils to approve staff recommendation to fund up to \$25,000 from the Southwest Basin Account to this project. The motion passed unanimously (8-0).

03:39:51 – 03:52:47

- b. La Plata River and Cherry Creek Ditch Company – Diversion Improvement Project
Action: Presentation by Todd Doherty. A motion was made by April Montgomery and seconded by Carl Trick to approve staff recommendation to fund up to \$25,000 from the Southwest Basin Account to this project. The motion passed unanimously (8-0).

03:52:59 – 03:56:53

- c. Animas La Plata Water Conservancy District – Recreational Plan for Lake Nighthorse
Action: Presentation by Jacob Bornstein. A motion was made by April Montgomery and seconded by Travis Smith to approve staff recommendation to fund up to \$25,000 from the Southwest Basin Account to this project. Mike King was not available for this motion. The motion passed unanimously (7-0).

03:56:55 – 04:06:05

- d. Dolores Water Conservancy District – Totten Reservoir Hydrographic Survey
Action: Presentation by Greg Johnson. A motion was made by April Montgomery and seconded by Carl Trick to approve staff recommendation to fund up to \$29,500 from the Southwest Basin Account to this project. Mike King was unavailable for this motion. The motion passed unanimously (7-0).

04:06:16 – 04:09:55

- e. Aspen Springs Metro District – Aspen Springs Metro Water Filling Station
Action: Presentation by Greg Johnson. A motion was made by April Montgomery and seconded by Carl Trick to approve staff recommendation to fund up to \$30,000 from the Southwest Basin Account to this project. Mike King was unavailable for this motion. The motion passed unanimously (7-0).

04:09:56 – 04:12:27

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

Tape 2, Track 1 04:12:38 – 04:14:47

Action: Presentation by Jacob Bornstein. A motion was made by John Redifer and seconded by Travis Smith to approve staff recommendation, granting the requested change of Water Supply Reserve Account contracting entity for the Yellow Jacket Water Storage Feasibility. Mike King was unavailable for this motion. The motion passed unanimously (7-0).

24. Finance Section/Interstate & Federal Section – Animas-La Plata (A-LP) State's Pool Allocation – A-LP Marketing Planning and Supply Study - Phase II Presentation

Tape 2, Track 2 00:27:54 – 01:42:05

Action: Presentation by Tim Feehan and Ted Kowalski. A motion was made by April Montgomery and seconded by Carl Trick to request from the legislature the appropriation of \$12 million to purchase a portion of the State's allocation of A-LP water by inclusion in the CWCB's annual Projects Bill. The motion passed unanimously (8-0).

25. Stream and Lake Protection Section — Conditional Approval of Request to Inundate — Upper Yampa Water Conservancy District

Tape 2, Track 2 01:42:06 – 02:45:25

Action: Presentation by Linda Bassi. A motion was made by Carl Trick and seconded by John McClow to approve staff recommendation that the Board grant conditional approval of the

UYWCD's request to inundate in the form attached to the board memo, AS AMENDED by the Board discussions which arose from the public comment period. Jim Larson, an affected landowner of Silver Creek, also provided a letter to be included in the record. The motion as amended passed unanimously (8-0).

26. Stream and Lake Protection Section – Notice of 2011 Instream Flow

Recommendations in Water Divisions 2, 4, 5, and 6- *Pursuant to ISF Rule 5c., the CWCB is providing notice that the streams indicated on the agenda are being considered for instream flow appropriations in 2011. At the January 2011 CWCB meeting, staff may request the Board to form its intent to appropriate ISF water rights on these streams.*

Tape 2, Track 2 02:45:33 – 03:03:45

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

27. ADDITIONAL AGENDA ITEM – Presentation to the CWCB of the Floodplain Rules with Board-Suggested Revisions Included

Tape 2, Track 2 03:03:55 – 03:13:35

Action: Presentation by Tom Browning, Kevin Reidy, and Susan Schneider. A motion was made by Carl Trick and seconded by Reed Dils accepting the language proposed by staff regarding amendments to the Floodplain rules requested by the Board in the Floodplain Hearing on Monday. Mike King and April Montgomery were unavailable for this motion. The motion passes unanimously (6-0).

ADJOURN 3:48 p.m.