

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
www.cwcb.state.co.us



TO: Colorado Water Conservation Board Members

FROM: Ted Kowalski, Chief, Interstate and Federal Section
Brent Newman, Interstate and Federal Section Staff

SUBJECT: **Agenda Item 19, January 24-26, 2011 Board Meeting
Interstate and Federal Section – Litigation Account
Draft Report to General Assembly**

John Hickenlooper
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Background

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

At the beginning of this year, the fund had approximately \$3.6 million, of which \$80,000 has been authorized to be spent by letters from the Attorney General and actions taken by the Colorado Water Conservation Board. An additional \$220,000 was spent based on previous CWCB and Attorney General actions, leaving approximately \$3.3 million remaining in the fund. Within the last calendar year, the Board authorized the expenditure of: 1) \$50,000 to be used for litigation support expenses, in particular expert witness fees, during promulgation and adoption of the Division 2 Irrigation Improvement Rules; and 2) \$30,000 to support filing of an amicus brief in the case of *Friends of the Everglades v. South Florida Water Management District*, 570 F.3d 1210 (11th Cir. 2008) (Lake Okeechobee litigation).

Staff Recommendation

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

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

John Hickenlooper
Governor

Mike King
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

FROM: Colorado Water Conservation Board in consultation with
the Office of the Attorney General

DATE: January 26th, 2011

SUBJECT: Annual Report on any litigation that involved the use of moneys from the
litigation fund created pursuant to Sec. 37-160-121(2.5)

Background

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

Status of the Litigation Fund

At the beginning of this year, the fund had approximately \$3.6 million, of which \$80,000 has been authorized to be spent by letters from the Attorney General and actions taken by the Colorado Water Conservation Board. An additional \$220,000 was spent based on previous CWCB and Attorney General actions, leaving approximately \$3.3 million remaining in the fund. Within the last calendar year, the Board authorized the expenditure of: 1) \$50,000 to be used for litigation support expenses, in particular expert witness fees, during promulgation and adoption of the Division 2 Irrigation Improvement Rules; and 2) \$30,000 to support filing of an amicus brief in the case of *Friends of the Everglades v. South Florida Water Management District*, 570 F.3d 1210 (11th Cir. 2008) (Lake Okeechobee litigation).

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

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

Attachments

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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TO: Colorado Water Conservation Board

FROM: Steve Miller, Water Supply Protection Section

DATE: January 13, 2010

RE: **Agenda Item 20.b January 26-27, 2010, Board Meeting**
Water Supply Protection Section – Litigation Account Request –
Division 2 Irrigation Improvement Rules case

Bill Ritter, Jr.
Governor

James Martin
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Dan McAuliffe
CWCB Deputy Director

Introduction:

This item is to seek the Board's approval of a request from Attorney General Suthers to use up to \$50,000 from the Board's Litigation Fund for litigation support expenses, including expert witness fees, during promulgation and adoption of the Irrigation Improvement Rules in Div. 2 Water Court. The Attorney General request is contained in his attached letter dated January 15, 2010.

Discussion:

The Board, using its Litigation Fund, has made significant investments in studies to refine our obligations under the Arkansas River Compact and the decree in the current Kansas v Colorado litigation. Activities funded to date include: improvement of the CoAgMet weather station network, four years of irrigation monitoring studies, preparation of expert witness reports on modeling issues, and installation and operation of two weighing lysimeters at the CSU Experiment Station in Rocky Ford. To date the Board has authorized \$1,290,000 for these projects. In addition the Board's Construction Fund is providing \$250,000 of technical support services to the Lower Arkansas Valley WCD, as authorized in the 2009 Projects Bill, related to the SEO's proposed Division 2 Irrigation Improvement Rules. The pending request is for authorization of an additional \$50,000 to be used as may be necessary for litigation expenses, including expert witness fees, in connection with a hearing on protests to the rules in Water Court. A full hearing on the rules is scheduled for November 2010.

The Division 2 Irrigation Improvement Rules are needed to prevent material depletions to usable Stateline flows that might otherwise be caused by improvements or modernization of surface water irrigation systems, such as the installation of sprinkler systems to replace flood and furrow irrigation methods or lining of canals. Such depletions are prohibited by Article IV.D. of the Arkansas River Compact, which states:

This compact is not intended to impede or prevent future beneficial development of the Arkansas river basin in Colorado and Kansas by federal or state agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoirs and other works for the purposes of water utilization and control, as well as the **improved or prolonged functioning of existing works**: Provided, that the waters of the Arkansas river, as defined in article III, **shall not be materially depleted in usable quantity or availability for use to the water users** in Colorado and Kansas under this compact by such future development or construction. (emphasis added).

Therefore this use of the Litigation Account, as requested by Attorney General Suthers to prevent future potential Compact violations, is consistent with the intended purposes of the Litigation Account: "... to defend and protect Colorado's allocations of water in interstate streams and rivers ..." CRS, Section 37-60-121(2.5).

Recommendation:

Staff recommends that pursuant to the Attorney General request contained in his letter dated January 15, 2010, the Board 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.



JOHN W. SUTHERS
Attorney General

CYNTHIA H. COFFMAN
Chief Deputy Attorney General

DANIEL D. DOMENICO
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

January 15, 2010

Colorado Water Conservation Board

Re: Request for Expenditure from Litigation Fund for Continued Arkansas River
Compact Compliance

Dear Board Members:

By this letter, I am requesting the expenditure of up to \$50,000 from the Board's Litigation Fund under section 37-60-121(2.5)(a)(III), C.R.S. That section authorizes the Board to expend money from the Litigation Fund at the request of the Attorney General for the costs to defend and protect Colorado's allocations of water in interstate streams and rivers.

The requested funds will be used for litigation costs related to the State Engineer's proposed Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River Basin in Colorado, also known as the Irrigation Improvement Rules. These rules are necessary to ensure Colorado's continued compliance with the Arkansas River Compact. Article IV-D of the Compact provides in part that improved or prolonged functioning of existing works in the Arkansas Basin in Colorado may not cause a material depletion to usable Stateline flows. The Irrigation Improvement Rules will enable the State Engineer's Office to ensure that improvements to the efficiency of surface water irrigation systems in that basin do not violate Article IV-D by increasing consumption and reducing return flows. By statute, the Rules must be approved by the Water Court for Division 2 after protests are judicially resolved. C.R.S. § 37-92-501 and 37-92-304. The Rules are currently before the Water Court in Case No. 09CW110. The funds requested herein will be used for costs incurred by my office in that case, including expert witness fees.

This use of the Litigation Fund will help ensure Colorado's continued compliance with the Arkansas River Compact, which is essential to defending and protecting Colorado's allocation of the river under that Compact. It is thus a necessary and appropriate use of the CWCB's Litigation Fund. Thank you for your consideration.

Sincerely,

JOHN W. SUTHERS
Colorado Attorney General

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
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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.

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).

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TO:	Colorado Water Conservation Board Members	Bill Ritter, Jr. Governor
FROM:	Jennifer Gimbel, Director Ted Kowalski, Chief, Interstate and Federal Section	Mike King DNR Executive Director
DATE:	September 9, 2010	Jennifer L. Gimbel CWCB Director
SUBJECT:	Agenda No. 18.5, September 13-15, 2010 Board Meeting Interstate and Federal Section: Utilization of CWCB Litigation Account	

Background

Section 37-60-121(2.5) of the Colorado Revised Statutes provides that the Colorado Water Conservation Board is authorized “to expend, pursuant to continuous appropriation and subject to the requirements of paragraph (b) of this subsection (2.5), a total sum not to exceed the balance of the litigation fund, which is created, for the purpose of engaging in litigation...to ensure the maximum beneficial use of water for present and future generations by addressing important questions of federal law...”

The CWCB has received a letter from Attorney General Suthers, attached, regarding the use of the litigation fund for an important water issue related to a question of federal law. The litigation at hand is the issue of the Environmental Protection Agency (EPA) Water Transfers Rule in the case of *Friends of the Everglades v. South Florida Water Management District*, 570 F.3d 1210 (11th Cir. 2008) (“Lake Okeechobee litigation”). The case centers on the National Pollutant Discharge Elimination System (NPDES) permits required under the Clean Water Act. The 11th Circuit Court of Appeals has ruled that these permits should not be required for a water transfer. In Western states, such as Colorado, the transfer of water between basins is critical to municipal supplies. This Water Transfers Rule has been the issue of litigation for many years, and the decisions across the country have varied, in their outcomes and legal reasoning. It would be beneficial to have a reliable decision on this issue rendered by the United States Supreme Court.

This litigation poses an exceptionally important question of federal law to the State of Colorado. Specifically, whether, in enacting the Clean Water Act, Congress intended to respect the established federal-state framework of federal deference to state water law. A federal intrusion on such traditional state authority would threaten the maximum beneficial use for present and future generations, and Colorado's allocations of water in interstate streams and rivers.

Staff Recommendation

The Staff recommends that the Board:

- 1) approve the expenditure of \$30,000 from the Litigation Fund, to support the Attorney General in this litigation;
- 2) direct the CWCB Director and Staff to expend these funds in a manner consistent with the request by the Office of the Attorney General, and;
- 3) direct the CWCB Director, CWCB Staff, and Office of the Attorney General to comply with the annual reporting requirements as specifically provided for in Section 37-60-121(2.5).



JOHN W. SUTHERS
Attorney General

CYNTHIA H. COFFMAN
Chief Deputy Attorney General

DANIEL D. DOMENICO
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

September 13, 2010

Request for Expenditure from Litigation Fund
for Costs Associated with Lake Okeechobee (Water Transfers) Litigation

Dear Board Members:

Section 37-60-121(2.5)(a)(IV), C.R.S., authorizes the Colorado Water Conservation Board to expend money from its Litigation Fund, at the request of the Attorney General, for specific purposes including "[t]o ensure the maximum beneficial use of water for present and future generations by addressing important questions of federal law."

The purpose of this funding request is to support the Environmental Protection Agency's interpretation of the federal Clean Water Act rule known as the Water Transfers Rule ("Rule"). The Rule clarifies that water discharge permits are not required for transfers of water from one body of water to another. Such transfers include routing water through tunnels, channels, or natural stream courses for public water supplies, irrigation, power generation, flood control, and environmental restoration. The Rule explains that Congress intended water resource management agencies, and not the Clean Water Act discharge permit program, to oversee water transfers.

Colorado and other western states have been litigating the issue in several cases over the years arguing that in enacting the Clean Water Act, Congress intended to respect the established federal-state framework of federal deference to state water law. A federal intrusion on such traditional state authority would threaten the maximum beneficial use for present and future generations, and Colorado's allocations of water in interstate streams and rivers.

The 11th Circuit Court of Appeals issued an opinion upholding the legality of the Rule in *Friends of the Everglades v. South Florida Water Management District*, 570 F.3d 1210 (11th Cir. 2008). The Petitioners are now asking the United States Supreme Court to review the decision.

The Department of Law proposes that the Colorado file an *amicus* brief in support of Supreme Court review in order to obtain certainty on this important issue to the State.

We will also solicit support from other western states. The brief is due to the Supreme Court on October 22, 2010.

I therefore request and recommend that the Board authorize the expenditure of up to \$30,000 from the Litigation Fund to fund the filing of an amicus brief in support of Supreme Court review of this important question. I further recommend that the Board's authorization allow the Board Director and my staff to utilize these funds beyond Fiscal Year 2011 should review be granted.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John Suthers", with a stylized flourish at the end.

JOHN W. SUTHERS
Colorado Attorney General

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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SUMMARY MINUTES AND RECORD OF DECISIONS September 13-15, 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 Ute Water Conservancy District's Headquarters office at 2190 H ¼ Road, Grand Junction, Colorado 81505. The meeting was called to order by Chair Geoff Blakeslee. Eight voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were Chair Geoff Blakeslee, Barbara Biggs, John McClow, April Montgomery, Reed Dils, Travis Smith, Carl Trick, and Bob Randall, representing Department of Natural Resources Executive Director Mike King. Voting member John Redifer arrived shortly after the call to order. Non-voting *Ex-officio* members present or represented were CWCB Director Jennifer Gimbel, the Department of Water Resources Director Dick Wolfe, and Deputy Attorney General Casey Shpall. 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.

Monday, September 13, 2010

CWCB Workshops 1:00 p.m. – 5:30 p.m.

Tuesday, September 14, 2010

Call to Order 8:00 a.m.

1. Review and Approval of Agenda

Tape 1, Track 1 00:01:00 – 00:03:58

Action: Jennifer Gimbel suggested the following changes: 1) Agenda Item #7 will be discussed on Wednesday, September 15, 2010; 2) Agenda Items #26 and #27 will be presented in place of Agenda Item #7; 3) add Lake Okeechobee Litigation to Executive Session (11e); and 4) add Agenda Item 18.5: Request for Expenditure from the Litigation Fund. A motion was made by Travis Smith and seconded by Barbara Biggs to approve the September 2010 Agenda with the above changes. The motion was approved unanimously (8-0). John Redifer was not available for this motion.

2. Review and Approval of Meeting Minutes – July 20-21, 2010 Board Meeting

Tape 1, Track 1 00:03:59 – 00:05:19

Action: Barbara Biggs abstained from this motion. A motion was made by Travis Smith and seconded by John to approve the July 20-21, 2010 Meeting Minutes with one change: Agenda Item #8a should say Stagestop not Statestop. The motion was approved unanimously (8-0).

Tape 4, Track 1 **02:35:29 – 02:53:10**

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

18.5. Interstate & Federal Section - Request for Expenditure from Litigation Fund for Costs Associated with Lake Okeechobee (Water Transfers) Litigation

Tape 4, Track 1 **00:00:54 – 00:01:34**

Action: A motion was made by Carl Trick and seconded by John Redifer to approve staff recommendation that the Board:

- 1) approve the expenditure of \$30,000 from the Litigation Fund to support the Attorney General in this litigation;
- 2) Direct CWCB Director and staff to expend these funds in a manner consistent with the request by the Office of the Attorney General, and;
- 3) Direct CWCB Director, staff and the Office of the Attorney General to comply with the annual reporting requirements as specifically provided for in Section 37-60-121(2.5).

The motion was approved unanimously (9-0).

RECESS 5:45 p.m.

A regular meeting of the Colorado Water Conservation Board (CWCB) was convened at the Ute Water Conservancy District's Headquarters office at 2190 H ¼ Road, Grand Junction, Colorado 81505. The meeting was called to order by Chair Geoff Blakeslee. Eight voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were Chair Geoff Blakeslee, Barbara Biggs, John McClow, April Montgomery, Reed Dils, Travis Smith, Carl Trick, and John Redifer. Non-voting *Ex-officio* members present or represented were CWCB Director Jennifer Gimbel, the Department of Water Resources Director Dick Wolfe, and First Assistant Attorney General Susan Schneider. The Interbasin Compact Committee Director, Alexandra Davis, was also present.

Wednesday, September 15, 2010

Call to Order 8:00 a.m.

19. Basin Directors' Reports (8:00 – 9:00)

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

Tape 5, Track 1 **00:00:00 – 00:02:43**

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

b. San Juan/San Miguel-Dolores River Basin Director's Report – April Montgomery Reporting

Tape 5, Track 1 **00:02:44 – 00:07:02**

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

c. Gunnison River Basin Director's Report – John McClow Reporting

Tape 5, Track 1 **00:07:03 – 00:14:16**

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

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

Tape 5, Track 1 **00:14:17 – 00:15:22**

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

e. South Platte River Basin Director's Report

Action: No report on this item.