

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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SUMMARY MINUTES AND RECORD OF DECISIONS January 27-28, 2009 Final and Approved March 17-18, 2009

Bill Ritter, Jr.
Governor

Harris D. Sherman
DNR Executive
Director

Jennifer L. Gimbel
CWCB Director

Dan McAuliffe
CWCB Deputy
Director

A regular meeting of the Colorado Water Conservation Board (CWCB) was convened at the Hilton Garden Inn-DTC, 7675 E. Union Ave., Denver, CO 80237. The meeting was called to order by Chair, Travis Smith. Seven voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were Chair Travis Smith, Vice Chair Geoff Blakeslee, Carl Trick, Bruce Whitehead, Keith Catlin, John Redifer, and Reed Dils. Non-voting, *Ex-Officio* members present or represented were CWCB Director Jennifer Gimbel, Deputy Attorney General Casey Shpall, and State Engineer Dick Wolfe. Harris Sherman, Executive Director of Natural Resources, Directors Eric Wilkinson, Barbara Biggs and Tom Remington, Director of the Division of Wildlife, arrived shortly after the call to order. Alex Davis, Assistant Director of Water for the Department of Natural Resources 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, January 27, 2009 Call to Order 8:10 a.m.

1. Review and Approval of Agenda

Tape 1, Track 1 00:00:00 - 00:04:16

Action: A motion was made by Carl Trick and seconded by Geoff Blakeslee to approve the January 2009 Agenda, moving the Basin Directors' Reports to the afternoon of Tuesday, January 27, 2009, and adding the Tacoma Power Plant to Executive Session. 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 – November 18-19, 2009

Tape 1, Track 1 00:04:17 - 00:05:23

Action: A motion was made by Carl Trick and seconded by Bruce Whitehead to approve the November 18-19, 2009 Meeting Minutes with the following changes: On page 1, Agenda Item #1, add an "e" to Rio Grand. The motion was approved unanimously (7-0).

3. Approve and/or Remove Items from Consent Agenda

Tape 1, Track 1 00:05:24 - 00:06:10

Action: A motion was made by Geoff Blakeslee and seconded by Bruce Whitehead to approve the Consent Agenda Items. The motion was approved unanimously (7-0).

4. Future Board Meeting Dates

Tape 1, Track 1 00:06:11 - 00:07:12

- a. March 17-18, 2009 The Radisson Hotel & Conference Center, Longmont
- b. May 19-20, 2009 Pueblo
- c. July 21-22, 2009 The Elevation Hotel, Crested Butte (in connection
with The Colorado Water Workshop)
- d. September 15-16, 2009 Steamboat Springs
- e. November 17-18, 2009 Denver

Action: A motion was made by Carl Trick and seconded by Reed Dils to approve the Board Meeting dates as listed. The motion was approved unanimously (7-0).

5. Stream and Lake Protection Section - New Appropriation Recommendations in Water Divisions 2, 4, 5, and 6

Tape 1, Track 1 00:07:13 - 02:16:05

Division 2

Tape 1, Track 1 01:38:00 - 01:45:13

Action: A motion was made by Reed Dils and seconded by Geoff Blakeslee to approve staff recommendation that the Board declare its intent to appropriate the streams listed in Division 2, with the understanding that this opens a comment period with the ability to adjust these appropriations as needed. The motion was approved unanimously (8-0).

Division 4

Tape 1, Track 1 01:45:14 - 02:01:58

Action: A motion was made by Bruce Whitehead and seconded by Keith Catlin to approve staff recommendation that the Board declare its intent to appropriate the streams listed in Division 4 with the exception of Tabeguache Creek (upper and lower), which will be delayed until 2010, and with the understanding that this opens a comment period with the ability to adjust these appropriations as needed. The motion was approved unanimously (8-0).

Division 5

Tape 1, Track 1 02:01:59 - 02:08:19

Action: A motion was made by John Redifer and seconded by Geoff Blakeslee to approve staff recommendations that the Board declare its intent to appropriate the streams listed in Division 5. Director Bruce Whitehead made the following amendment to Troublesome Creek (upper and lower), to be included in the decree: "As the appropriation moves forward, and moves towards a decree, there should be a statement added to the decree

regarding reservoir management and release schedules as determined by operators of Matheson Reservoir”. The motion was approved unanimously (8-0).

Division 6

Tape 1, Track 1 02:08:20 - 02:16:05

Action: A motion was made by Geoff Blakeslee and seconded by Carl Trick to table the Grizzly Creek Appropriation until 2010. The motion was approved unanimously (8-0).

6. Stream and Lake Protection Section - Final Settlement Agreement for Tacoma Power Plant Re-licensing

Tape 1, Track 1 02:17:10 - 02:51:10

Action: A motion was made by Bruce Whitehead and seconded by Reed Dils to approve staff recommendation that the Board authorize the CWCB Director to execute the Final Settlement Agreement if and when, in her discretion, the outstanding issues have been resolved in a manner acceptable to the CWCB. The motion was approved unanimously (8-0).

7. Intrastate Water Management & Development Section - Water Supply Reserve Account Grant Applications

Tape 1, Track 1 02:51:11 - 03:15:27

Action: A motion was made by Geoff Blakeslee and seconded by Eric Wilkinson to approve staff recommendation that the Board delay consideration of applications to the Statewide Account until the September 2009 Board meeting. By September, staff will know whether or not additional funds were received from the April transfer and have a good idea of funding levels for Fiscal Year 2009-2010. This will result in only one round of statewide applications in 2009, but the Basin Roundtables and the CWCB Board will have a better idea of future funding levels when making funding decisions. The motion was approved unanimously (8-0). **Did Carl Trick vote against this? If so, Lisa needs to remove unanimously and change the vote to (7-1).**

a. Lost Creek Groundwater Management District – Lost Creek Aquifer Recharge and Storage Study

Tape 1, Track 1 03:15:28 - 03:21:07

Action: A motion was made by Eric Wilkinson and seconded by Carl Trick to approve staff recommendation that the Board approve funding of up to \$80,000 from the South Platte Basin Account and up to \$80,000 from the Metro Basin Account to help fund the Lost Creek Aquifer Recharge and Storage Study, contingent on resolution of the items in the issues/additional needs section of the Board memo. The motion was approved unanimously (9-0).

b. The Town of Silverton - Molas Lake Ditch Rehabilitation and Diversion Structures

Tape 1, Track 1 03:21:08 - 03:30:48

Action: A motion was made by Bruce Whitehead and seconded by Carl Trick to approve staff recommendation that the Board fund up to \$95,000 from the Southwest Basin Account to help construct improvements to the Molas Lake Ditch and its diversion structures, contingent on resolution of the items in the issues/additional needs section of the Board memo. The motion was approved unanimously (9-0).

8. Office of Water Conservation and Drought Planning Section and Intrastate Water Management & Development Section - Evaluation of Water Supply Strategies: Conservation Strategy

Tape 1, Track 1 06:49:31 - 07:34:45

Action: Information item only, no action required.

9. Watershed Protection and Flood Mitigation Section - Colorado Floodplain Map Modernization Program - Business Plan Update

Tape 1, Track 1 06:37:26 - 06:49:30

Action: A motion was made by Geoff Blakeslee and seconded by Keith Catlin to approve staff recommendation that the Board accept the document entitled "Colorado Business Plan 2009 Update" as submitted by Staff to FEMA Region VIII. The motion was approved unanimously (9-0).

10. Watershed Protection and Flood Mitigation Section - Report on Colorado Levee Inspections and Proposed Levee Assistance Guidelines

Tape 1, Track 1 03:32:10 - 04:18:31

Action: A motion was made by Carl Trick and seconded by Eric Wilkinson to approve staff recommendation that the Board approve the "CWCB Levee Assistance Guidelines" and authorize staff to assist affected communities under the terms of the guidelines on a case-by-case basis. The Board amended the above to include: 1) that the staff quantify the amount of payment retainage that would be held by CWCB until a satisfactory inspection is completed, this amount being either 10% of the contract amount or the final invoice, whichever is greater, 2) Clarify that the work done meets both state and federal criteria, and 3) to include a statement that the CWCB will incur no liability by assisting communities with their local projects. The motion was approved unanimously (10-0).

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

a. Park Center Water District – Well Redrilling Project

Tape 1, Track 1 04:18:32 - 04:29:48

Action: A motion was made by Reed Dils and seconded by Barbara Biggs to approve staff recommendation that the Board approve a loan not to exceed \$1,010,000 (\$1,000,000 for project costs and \$10,000 for the 1% Loan Service Fee) to the Park Center Water District acting by and through its Enterprise for its Well Redrilling Project from the Severance Tax Trust Fund Perpetual Base Account. The loan amount at no time shall exceed 90% of the total project expenditures. The loan terms shall be 30 years at an interest rate of 3.5% per annum. Security for the loan shall be in compliance with CWCB Financial Policy No. 5. Staff also recommends additional approval provisions as follows: 1) prior to signing a contract with the CWCB, the District must execute an extended lease agreement with the BLM showing a 30 year minimum lease so that the timeframe of the lease meets or exceeds the CWCB debt service repayment schedule, and 2) prior to signing a contract with the CWCB, the District must obtain written approval of the Well Drilling Project from the BLM as required in its existing lease document. Staff further recommends the following clause be included in the contract: "If the District is successful in obtaining federal assistance through congressional funding or it (in conjunction with the BLM) receives emergency funds for well drilling, it will apply such funds towards repayment of the CWCB loan". The motion was approved unanimously (10-0).

b. Water Supply Storage Company - Grand River Ditch Project & Kluver Reservoir Outlet Project

Tape 1, Track 1 04:29:49 - 04:43:15

Action: A motion was made by Eric Wilkinson and seconded by Barbara Biggs to approve staff recommendation that the Board approve a loan not to exceed \$843,350 (\$835,000 for project costs and \$8,350 for the 1% Loan Service Fee) to The Water Supply & Storage Company for two rehabilitation projects, the Grand River Ditch Project and the Kluver Reservoir Outlet Project from the Construction Fund Account. The loan terms shall be a blended interest rate of 3.70% per annum for 30 years. Staff will have the option to utilize two separate contracts which in aggregate will not exceed the approved limit. Security for the loan shall be in compliance with CWCB Financial Policy No. 5. The motion was approved unanimously (10-0).

12. Water Supply Planning and Finance Section - General Financial Matters for Existing Loans

Tape 2, Track 1 00:43:08 - 01:07:08

Action: Informational item only, no action required.

13. Stream and Lake Protection Section - Instream Flow Rule Making Hearing - The Board held a public rulemaking hearing on proposed revisions to the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program. Notice of this rulemaking hearing was published in the December 2008 Colorado Register.

Tape 1, Track 1 04:43:30 - 06:36:48

Action: A motion was made by Carl Trick and seconded by Reed Dils to approve staff recommendation that the Board adopt; 1) the revised ISF Rules with any changes it has made to the version of the Rules published in the Colorado Register on December 10, 2008, and 2) the Statement of Basis and Purpose for the Rules, with any changes made by the Board to the version posted on the CWCB website. The motion was approved unanimously (10-0).

RECESSED 5:28 p.m.

Wednesday, January 28, 2009
Call to Order 8:00 a.m.

A regular meeting of the Colorado Water Conservation Board (CWCB) was reconvened at the Hilton Garden Inn-DTC, 7675 E. Union Ave., Denver, CO 80237. The meeting was called to order by Chair, Travis Smith. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were Chair Travis Smith, Vice Chair Geoff Blakeslee, Carl Trick, Bruce Whitehead, Keith Catlin, John Redifer, Eric Wilkinson, Barbara Biggs and Reed Dils. Non-voting, *Ex-Officio* members present or represented were CWCB Director Jennifer Gimbel, Deputy Attorney General Casey Shpall, State Engineer Dick Wolfe, and Tom Remington, Director of the Division of Wildlife. Alex Davis, Assistant Director of Water for the Department of Natural Resources was also present.

14. Stream and Lake Protection Section - Injury with Mitigation - Case No. 4-05CW264;
Application of Ranch Properties, LLC.

Tape 1, Track 2 00:53:01 - 01:39:54

Action: A motion was made by Geoff Blakeslee and seconded by Reed Dils to approve staff recommendation that the Board make a preliminary determination that, 1) the natural environment of Ohio Creek could be preserved to a reasonable degree with the

proposed injury if Ranch Properties provides the proposed mitigation, and 2) the Board members provide comments to staff on the proposal and identify any issues that the applicant and staff should address before bringing the proposal to the Board for final approval. The motion was approved unanimously (9-0).

15. Stream and Lake Protection Section - Roaring Fork River Basin Proposed Water Acquisition

Tape 1, Track 2 01:39:54 - 02:12:03

Tape 2, Track 1 00:00:00 - 00:06:12

Action: Information item only, no action required.

16. Water Supply Planning and Finance Section - Design and Construction Status Report

Tape 2, Track 1 00:06:12 - 00:43:07

Action: Information item only, no action required.

17. Water Supply Planning and Finance Section - Review of CWCB Legislation - 2009
Construction Fund Projects Bill

Tape 2, Track 1 01:07:09 - 01:17:14

Action: Information item only, no action required.

18. Directors' Report

a. DNR Executive Director - Harris Sherman and Alex Davis Reporting

Tape 1, Track 1 07:34:45 - 07:37:04

Tape 2, Track 1 01:52:01 - 01:58:38

Action: Information item only, no action required.

b. IBCC Director

Action: No report on this item

c. Agriculture Commissioner

Action: No report on this item

d. CWCB Director - Jennifer Gimbel Reporting

Tape 2, Track 1 01:37:46 - 01:52:00

Action: Informational item only, no action required.

e. State Engineer - Dick Wolfe Reporting

Tape 2, Track 1 01:58:39 - 02:18:43

Action: Informational item only, no action required.

f. Division of Wildlife - Tom Remington Reporting

Tape 2, Track 1 02:18:44 - 02:34:55

Action: Informational item only, no action required.

g. Water Resource and Power Development Authority - Dan Law Reporting

Tape 2, Track 1 01:17:15 - 01:25:24

Action: Informational item only, no action required.

19. Stream and Lake Protection Section - Financial Policy 19

Tape 2, Track 1 04:36:00 - 04:45:16

Action: A motion was made by Reed Dils and seconded by Barbara Biggs to approve staff recommendation that the Board adopt Financial Policy No. 19 with an effective date of March 1, 2009. The motion was approved with the following amendments: 1) change the language to read “water acquisitions that make water available for the appropriation of new instream flow water rights”, and 2) on page 2, section d and section e, remove specific names. The motion was approved unanimously (9-0). **Linda, please update before I finalize this.**

20. 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. Republican River Litigation
- b. Tacoma Power Plant Litigation

Tape 2, Track 1 01:25:16 - 01:29:01

Action: A motion was made by Geoff Blakeslee and seconded by Keith Catlin to go into Executive Session. The motion was approved unanimously (9-0).

A motion was made by Eric Wilkinson and seconded by Keith Catlin to go out of Executive Session. The motion was approved unanimously (9-0).

Action: a. Republican River Litigation – A motion was made by Eric Wilkinson and seconded by Carl Trick to approve the request of the Attorney General by letter dated January 27, 2009, for the expenditure of \$110,000 from the Water Conservation Board Litigation Fund, pursuant to section 37-60-121(2.5)(a)(III), to defend, in negotiations and litigation, Colorado’s interests in the Republican River. The motion was approved unanimously (9-0).

b. Tacoma Power Plant Litigation - A motion was made by Geoff Blakeslee and seconded by Carl Trick to approve staff recommendation that the Board allow CWCB staff the ability to go to litigation in the event a settlement cannot be reached. The motion was approved unanimously (9-0).

21. Report from Executive Session

Tape 2, Track 1 01:29:02 - 01:32:05

Action: Based upon the recommendation from Casey Shpall, Deputy Attorney General, the discussion of Agenda Items 20a and 20b were not recorded pursuant to C.R.S. Section 24-6-402(2)(d.5)(I)(B) because those portions of the Executive Session constituted privileged attorney-client communications.

CWCB Attorney

The portion of the Executive Session on Agenda Items 20a and 20b that were not recorded were confined to the topics authorized for discussion in an Executive Session under C.R.S. section 24-6-403(3)(a)(II)

CWCB Chair

22. Office of Water Conservation and Drought Planning Section - Presentation on "Climate Change in Colorado: A Synthesis to Support Water Resources Management and Adaptation" - NOAA/Western Water Assessment

Tape 2, Track 1 02:34:56 - 03:20:51

Action: Informational item only, no action required.

23. Water Supply Protection Section - Platte River Recovery Program

Tape 2, Track 1 03:20:52 - 03:55:22

Action: Informational item only, no action required.

24. Water Supply Protection Section - Endangered Species Conservation Trust Fund - FY 09-10 Funding Recommendation

Tape 2, Track 1 03:55:23 - 04:10:25

Action: A motion was made by Eric Wilkinson and seconded by Geoff Blakeslee to approve staff recommendation for expenditures from the Species Conservation Trust Fund, with the funding modifications contained in the handout from Doug Robotham, for FY 09-10 and such be transmitted to the Executive Director of the Department of Natural Resources. Contingent upon the availability of funds a total expenditure of \$8,760,000 is recommended of which up to \$3.5 million be allocated to the Colorado Division of Wildlife for T&E and species of concern conservation, and up to \$260,000 allocated to Colorado State Parks for the protection of species associated with State Parks Lands. The motion was approved unanimously (9-0).

25. Water Supply Protection Section - Litigation Account

a. Annual Report to General

Assembly

Tape 2, Track 1 04:10:26 - 04:13:41

Action: A motion was made by Carl Trick and seconded by Geoff Blakeslee to approve staff recommendation that the Board authorize the CWCB staff to forward the Annual Litigation Report to the General Assembly and/or appropriate committees. The motion was amended to remove one sentence in the report in the "Status of the Litigation Fund" section regarding the possible reduction of litigation funds. The motion was approved unanimously (9-0).

b. Attorney General's Request for Republican River Funding

Tape 2, Track 1 01:26:49 - 01:28:00

Tape 2, Track 1 01:29:02 - 01:32:05

Action: A motion was made by Eric Wilkinson and seconded by Carl Trick to approve staff recommendation that the Board, 1) authorize the expenditure of additional moneys, not to exceed \$110,000 for the costs of litigation associated with the defense and protection of Colorado's allocation of water in the Republican River Basin, 2) direct the CWCB Director and staff to authorize and manage the expenditure of these funds in a manner consistent with this approval and the request by the Office of the Attorney General, 3) direct the Office of the Attorney General to consult with the CWCB Director and staff

regularly with regard to the expenditures of these funds; and, 4) direct the CWCB Director, CWCB staff, and Office of the Attorney General to provide the annual report to the General Assembly required and specifically provided for in Section 37-60-1212 (2.5). The motion was approved unanimously (9-0).

26. 2009 State Legislative and Fiscal Decisions and Update

Tape 2, Track 1 01:32:05 – 01:36:04

Tape 2, Track 1 04:45:17 – 05:09:53

Action: A motion was made by Eric Wilkinson and seconded by Geoff Blakeslee that the Board support HB09-1124. The motion was approved unanimously (9-0).

A motion was made by Barbara Biggs and seconded by Eric Wilkinson that the Board support HB09-1017. The motion was approved unanimously (9-0).

A motion was made by Geoff Blakeslee and seconded by Reed Dils that the Board support HB09-1067. The motion was approved unanimously (9-0).

A motion was made by Carl Trick and seconded by Bruce Whitehead that the Board support SB09-106. The motion was approved unanimously (9-0).

A motion was made by Eric Wilkinson and seconded by Barbara Biggs that the Board support SB09-125. The motion was approved unanimously (9-0).

27. Water Supply Protection Section – Tamarisk Control Cost Sharing Grant Program – Consideration and Adoption of Program Guidance and Procedures

Tape 2, Track 1 04:13:42 – 04:34:50

Action: A motion was made by Carl Trick and seconded by Reed Dils to approve staff recommendation that the Board give final approval to the “Tamarisk and Russian Olive Control Cost Sharing Grant Program Guidance and Procedures” as discussed with the Board. Staff is directed to use the 60 day application period and evaluation procedures for final project selection at the May 2009 Board meeting. The motion was approved unanimously (9-0).

28. Basin Director Report

a. Colorado River (Mainstem) Basin Director Report

Tape 1, Track 2 00:00:00 – 00:11:45

Action: Informational item only, no action required.

b. Yampa-White River Basin Director Report – Geoff Blakeslee Reporting

Tape 1, Track 2 00:11:46– 00:15:35

Action: Informational item only, no action required.

c. San Juan/San Miguel-Dolores River Basin - Bruce Whitehead Reporting

Tape 1, Track 2 00:15:36 – 00:28:20

Action: Informational item only, no action required.

d. Gunnison River Basin – Keith Catlin Reporting

Tape 1, Track 2 00:49:37 – 00:53:00

Action: Informational item only, no action required.

- e. Basin Director Report – North Platte River Basin Director Report – Carl Trick Reporting

Tape 1, Track 2 00:28:21 – 00:29:19

Action: Informational item only, no action required.

- f. South Platte River Basin Director Report – Eric Wilkinson Reporting

Tape 1, Track 2 00:29:20 – 00:37:32

Action: Informational item only, no action required.

- g. Arkansas River Basin Director Report – Reed Dils Reporting

Tape 1, Track 2 00:37:33 – 00:41:38

Action: Informational item only, no action required.

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

Tape 1, Track 2 00:41:38 – 00:46:00

Action: Informational item only, no action required.

- i. Rio Grande River Basin Director Report – Chair Travis Smith Reporting

Tape 1, Track 2 00:46:01 – 00:49:36

Action: Informational item only, no action required.

A motion was made by Geoff Blakeslee and seconded by Eric Wilkinson to adjourn the January 2009 CWCBC Board Meeting. The motion was approved unanimously (9-0).

ADJOURNED 4:55 p.m.