

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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SUMMARY MINUTES AND RECORD OF DECISIONS July 21-22, 2009 Final and Approved September 15, 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 Elevation Hotel, 500 Gothic Road, Crested Butte, Colorado. The meeting was called to order by Chair, Geoff Blakeslee. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were Chair Geoff Blakeslee, Vice Chair Eric Wilkinson, Carl Trick, Bruce Whitehead, Travis Smith, John McCLOW, John Redifer, Reed Dils, and Barbara Biggs. Non-voting, *Ex-Officio* members present or represented were CWCB Director Jennifer Gimbel, the State Engineer, Dick Wolfe, Deputy Attorney General Casey Shpall, and Alex Davis, Assistant Director of Water for the Department of Natural Resources. Harris Sherman arrived shortly after the call to order.

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.

The Colorado Water Conservation Board held a joint meeting with the Water Resources Review Committee on Tuesday, July 21, 2009, from 8:00 a.m. until 12:00 p.m. This meeting can be heard on our website via our Laser Fiche tool (JUL09A Board Meeting, Tape 1, Track 1).

Tuesday, July 21, 2009
Call to Order 1:14 p.m.

1. Review and Approval of Agenda

Tape 1, Track 2 00:00:00 - 00:02:31

Action: Agenda item number 23 was removed from the agenda. A motion was made by Travis

*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.

Smith and seconded by Carl Trick to approve the amended agenda. The motion was approved unanimously (8-0). Harris Sherman and Barbara Biggs were not available for this motion.

2. Review and Approval of Meeting Minutes for the May 19-20, 2009 meeting

Tape 1, Track 2 00:02:32 - 00:06:07

Action: A motion was made by Eric Wilkinson and seconded by Bruce Whitehead to approve the May 19-20, 2009 Meeting Minutes. The motion was amended to include changing the way the minutes are written to include who was not present for each motion as well as who votes against a motion. This amended motion was approved unanimously (9-0). Harris Sherman was not available for this motion.

3. Approve and/or Remove Items from Consent Agenda

Tape 1, Track 2 00:06:08 - 00:07:04

Action: A motion was made by Eric Wilkinson and seconded by Barbara Biggs to approve the Consent Agenda Items. The motion was approved unanimously (9-0). Harris Sherman was not available for this motion.

4. Future Board Meeting Dates

Tape 1, Track 2 00:07:05 - 00:08:44

- | | |
|--------------------------|---|
| a. September 15-16, 2009 | Steamboat Springs Grand/Steamboat Springs |
| b. November 17-18, 2009 | CWCB Logan Street Office Building, 1580 Logan |
| | St., Ste. 610, Denver, CO 80203 |
| c. January 26-27, 2010 | DTC Denver (in conjunction with the Colorado |
| | Water Congress) |

Action: A motion was made by Travis Smith and seconded by John McClow to approve the Board Meeting dates as listed. The motion was approved unanimously (9-0). Harris Sherman was not available for this motion.

5. Intrastate Water Management & Development Section – Water Supply Reserve Account (WSRA) Criteria and Guidelines

Tape 1, Track 2 00:08:45 - 00:23:46

Action: A motion was made by Barbara Biggs and seconded by Eric Wilkinson to approve staff recommendation that the Board approve the amended version of the Water Supply Reserve Account Criteria and Guidelines as shown in the Board Memo. The motion was amended to include changes to the Criteria and Guidelines; page 13, Part 3, 2nd paragraph: “applications must be received 60 days prior to the September and May Board meetings (i.e., July 16 to March 15 to be allocated at the CWCB May meeting and March 16 to July 15 to be allocated at the CWCB September meeting)”. The motion was approved unanimously (9-0). Harris Sherman was not available for this motion.

6. Intrastate Water Management & Development Section – Water Supply Reserve Account Grant Applications

- a. Park Ditch Company – Park Ditch Improvements

Tape 1, Track 2 00:23:47 - 00:29:15

Action: A motion was made by Bruce Whitehead and seconded by Travis Smith to approve staff recommendation that the Board approves funding up to \$85,000 from the Southwest Basin Account to partially fund the Park Ditch Improvement Project for the Park Ditch Company, contingent on resolution of the items in the issues/additional needs section of

the Board Memo. The motion was approved unanimously (9-0). Harris Sherman was not available for this motion.

b. Town of Sawpit – Domestic Water System Construction

Tape 1, Track 2 00:29:16 – 00:33:20

Action: A motion was made by Bruce Whitehead and seconded by Barbara Biggs to approve staff recommendation that the Board approves funding up to \$25,000 from the Southwest Basin Account to partially fund the Domestic Water System Construction Project for the Town of Sawpit, contingent on resolution of the items in the issues/additional needs section of the Board Memo. The motion was approved unanimously (9-0). Harris Sherman was not available for this motion.

7. Intrastate Water Management & Development Section – Water Supply Reserve Account Project Change – Goodman Point Phase II Project

Tape 1, Track 2 00:33:21 - 00:38:58

Action: A motion was made by Bruce Whitehead and seconded by Eric Wilkinson to approve staff recommendation that the Board grant the requested change of Water Supply Reserve Account Project Applicant for the Goodman Point Phase II Water Project. The applicant will change from the Goodman Point Water Association to the Goodman Point Water District. The motion was approved unanimously (9-0). Harris Sherman was not available for this motion.

8. Intrastate Water Management & Development Section – Colorado Water Supply Future Updates

Tape 1, Track 2 00:38:59 – 01:09:04

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

9. Office of Water Conservation & Drought Planning Section – Water Efficiency Grant Request – City of Grand Junction, Ute Water Conservancy District, and Clifton Water District – Regional Water Conservation Plan

Tape 1, Track 2 01:09:05 – 01:26:30

Action: A motion was made by Bruce Whitehead and seconded by Reed Dils to approve staff recommendation that the Board award a Water Efficiency Grant in the amount of \$50,000 over the next year to the City of Grand Junction, Clifton Water District, and Ute Water Conservancy District to aid in achieving their goal to develop and implement a regional water conservation plan that will deliver broad water conservation programs and educational information. The motion was approved unanimously (8-0). John Redifer recused himself from this discussion and motion. Harris Sherman was not available for this motion.

10. Water Supply Planning and Finance Section – New Project Loans – Farmer’s Reservoir and Irrigation Company – Milton Reservoir and Barr Lake Improvements Project

Tape 1, Track 2 01:26:30 – 01:40:17

Action: A motion was made by Carl Trick and seconded by Barbara Biggs to approve staff recommendation that the Board approve a loan not to exceed \$3,535,000 (\$3,500,000 for project costs and \$35,000 for the 1% Loan Service Fee) to the Farmers Reservoir and Irrigation Company to construct the Milton Reservoir and Barr Lake Improvements Project from the Construction Fund. The loan terms shall be 30 years at a blended rate of 3.7% per annum. Security for the loan shall be in compliance with CWCB Financial Policy No. 5. The motion was approved unanimously (9-0). Harris Sherman was not available for this motion.

11. Water Supply Planning and Finance Section – General Fund Transfer Impacts to Financial Policies

Tape 1, Track 2 01:41:15 – 02:13:54

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

12. 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. Case No. 5-08CW073; Town of Breckenridge RICD
- c. Case No. 5-07CW210; Application of Vail Associates, Inc. and the United States of America

Tape 1, Track 2 02:34:28 - 02:45:17

Action: A motion was made by Eric Wilkinson and seconded by Carl Trick to go into Executive Session. The motion was approved unanimously (10-0).

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

13. Report from Executive Session

Action: Based upon recommendation by Casey Shpall, Deputy Attorney General, and Pursuant to C.R.S. Section 24-6-402(2)(d.5)(I)(B) the discussion of Agenda Items 12a, 12b, and 12c were not recorded. The portion of the Executive Session and these agenda items that were not recorded were confined to the topics authorized for discussion in an Executive Session under C.R.S. section 24-6-402(3)(a)(II).

CWCB Attorney

CWCB Chair

RECESSED 5:16 p.m.

Wednesday, July 22, 2009
Call to Order 8:15 a.m.

14. Basin Director Report

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

Tape 1, Track 5 00:00:00 – 00:04:25

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

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

Tape 1, Track 5 00:04:26 – 00:07:28

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

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

Tape 1, Track 5 00:07:29 – 00:14:00

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

d. Gunnison River Basin – John McCloy Reporting

Tape 1, Track 5 00:14:01– 00:19:57

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

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

Tape 1, Track 5 00:19:58 – 00:21:00

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

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

Tape 1, Track 5 00:21:01 – 00:26:16

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

g. Arkansas River Basin Director Report – Reed Dils Reporting

Tape 1, Track 5 00:26:17 – 00:31:48

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

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

Tape 1, Track 5 00:31:49 – 00:34:02

Action: No report on this item.

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

Tape 1, Track 5 00:34:03 – 00:43:08

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

15. Directors' Report

a. DNR Executive Director - Harris Sherman Reporting

Tape 1, Track 5 00:43:09 - 00:52:40

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

b. IBCC Director – Harris Sherman Reporting

Tape 1, Track 5 00:52:41 – 00:53:55

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

c. Agriculture Commissioner

Action: No report on this item.

d. CWCB Director - Jennifer Gimbel Reporting

Tape 1, Track 5 00:53:56 - 01:09:50

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

e. State Engineer - Dick Wolfe Reporting

Tape 1, Track 5 01:09:51 - 01:23:19

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

f. Division of Wildlife - Tom Remington Reporting

Tape 1, Track 5 01:23:20 - 01:36:05

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

g. Water Resource and Power Development Authority

Action: Dan Law was not available for this agenda item but did hand out his typed report.

16. Watershed Protection and Flood Mitigation Section – CWCB Floodplain Rules and Regulations Update

Tape 1, Track 5 01:37:34 - 01:42:57

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

17. Watershed Protection and Flood Mitigation Section – Mobile Weather Radar Project – Gunnison Basin

Tape 1, Track 6 00:00:00 - 00:07:10

Action: Information item only. No action was required by the Board. Due to mechanical failure, part of this agenda item was not recorded.

18. Watershed Protection and Flood Mitigation Section – Fish and Wildlife Resources Fund Grant – Fountain Creek Fish Passage

Tape 1, Track 5 01:42:58 - 01:51:23

Action: A motion was made by Reed Dils and seconded by Barbara Biggs to approve staff recommendation that the Board approve a \$70,000 non-reimbursable expenditure from the Fish and Wildlife Resources Fund for the purpose of providing matching dollars to the Clear Springs Ranch/Fountain Creek Fish Passage Project. This amount represents 25% of the total Project cost. The remaining costs will be provided by SU (\$40,000 cash) and the agencies discussed in the Board memo (\$172,000 in-kind services). The motion was approved unanimously (9-0). Harris Sherman was not available for this motion.

19. Water Supply Protection Section – Platte River Program – Water Obligation Issues

Tape 1, Track 2 02:14:25 - 02:34:27

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

20. Water Supply Protection Section – Animas La Plata

Tape 1, Track 6 00:07:11 - 00:31:29

Action: There was no formal motion made, but the Board was in agreement that CWCB staff should continue to seek funding for the market analysis and work with the Tribes and those seeking a portion of the State's allocation to develop a funding proposal for consideration by the Board and potential inclusion in next year's Projects Bill. Finally, CWCB staff should continue working with the Association, Reclamation, the Southwestern Water Conservation District and the State Engineer as appropriate to address the water right administration issues.

21. Water Supply Protection Section – Upper Colorado River ESA Recovery Program – 10825 – Ruedi Reservoir Update

Tape 1, Track 6 00:31:30 - 00:41:06

Action: A motion was made by John Redifer and seconded by Bruce Whitehead to approve staff recommendation as follows: Given the impact that storage in Ruedi for ESA purposes has on the cost of water, the water providers would like Congressional legislation to make water for ESA purposes nonreimbursable. Congressional action is needed to ensure repayment of the Ruedi debt on terms that make Ruedi Round II water affordable to the west slope so that the debt can be retired in a reasonable period and the water put to beneficial use, as Congress intended. Water users and the State of Colorado would like Congress to pass stand alone legislation or amend the Fryingpan-Arkansas Project legislation. The legislative package should consider the following:

1. Extension of the repayment period for Round II water sales for 40 years or until 2059.
2. An extension of the development period for Round II water sales through 1996, the date of the first sale of Round II water, and all accumulated debt associated with Round II between 1979 and 1996 cancelled.
3. The capital and OM&R costs of the 5,000 AF of Ruedi water assigned to endangered fish for Round II sales be declared non-reimbursable for the entire development and re-payment period. The capital costs, OM&R costs and associated interest costs for the 5,000 AF should be eliminated from the debt that has accumulated on Ruedi Reservoir Round II water.
4. For the period 1995 through 1999, the 10,825 AF of water subsequently replaced by water users should be considered non-reimbursable and the capital, OM&R, and compound interest costs associated with this water for this period be removed from the Ruedi debt.
5. The 10,825 AF of water assigned to the Recovery Program from 1995 through 2012 be considered non-reimbursable and that the capital, OM&R, and compound interest costs associated with this water eliminated from the Ruedi debt and no longer be charged to the Recovery Program.
6. Declare the 5,412.50 AF contemplated as part of the permanent 10825 water package nonreimbursable. The impact of making the above non-reimbursable would substantially reduce the current debt on Ruedi Reservoir of approximately \$33 million and substantially reduce the projected 2019 debt to \$45 million.

Staff was further instructed to speak to Jim Broderick of the Southeastern Colorado Water Conservancy District regarding any additional thoughts on this item. The motion was approved unanimously (9-0). Eric Wilkinson was not available for this motion.

22. Stream and Lake Protection Section – Huerfano River and Cucharas Creek Contested Instream Flow Appropriations – Water Division 2

Tape 1, Track 6 00:41:07 – 00:49:28

Action: A motion was made by Reed Dils and seconded by Barbara Biggs to approve staff recommendation that the Board consider and rule on Huerfano County's request and direct the hearing officer to reschedule and establish the appropriate deadlines in accordance with the rules. The motion was approved unanimously (9-0). A second motion was made by Barbara Biggs and seconded by John Redifer to grant SeEtta Moss

Contested Party Status. The motion was approved unanimously (9-0). Eric Wilkinson was not available for either of these motions.

23. Stream and Lake Protection Section – This agenda item was removed from the Agenda.

24. State Engineer's Office – Bob Hurford of Division 4 Reporting

Tape 1, Track 6 00:49:29 - 01:14:50

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

ADJOURNED 12:19 p.m.