

# STATE OF COLORADO

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## Colorado Water Conservation Board Department of Natural Resources

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### **SUMMARY MINUTES AND RECORD OF DECISIONS May 17-18, 2011 Final and Approved July 12, 2011**

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John W. Hickenlooper  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

A regular meeting of the Colorado Water Conservation Board (CWCB) was convened at Fort Lewis College in Durango Colorado, located at 1000 Rim Drive, Durango, CO 81301. The meeting was called to order by Chair Eric Wilkinson. 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, Barbara Biggs, John McCLOW, Alan Hamel, Travis Smith, Carl Trick, Russell George, Mike King, and Eric Wilkinson. Non-voting *ex officio* members present or represented were CWCB Director Jennifer Gimbel; Casey Shpall, Deputy Attorney General; and Dick Wolfe, State Engineer. Alexandra Davis, Assistant Director for Water, Colorado Department of Natural Resources was also in attendance. John Stulp, Special Policy Advisor to the Governor on Water, and Chair of the Interbasin Compact Committee was in attendance the first day but left after lunch on the second day.

On the second day the meeting was called to order by Chair Eric Wilkinson. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present on the second day were Chair Eric Wilkinson, Geoff Blakeslee, Barbara Biggs, John McCLOW, Alan Hamel, Russell George, Mike King, Travis Smith, and Carl Trick. Non-voting *ex officio* members present or represented were Dick Wolfe, Director of the Division of Water Resources and Casey Shpall, Deputy Attorney General. Alexandra Davis, Assistant Director for Water, Colorado Department of Natural Resources was also in attendance.

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, May 17, 2011**

**Colorado River Workshop – 8:00 AM – 9:45 AM**

**Monday, May 17, 2011**

**Call to Order                      10:04 AM**

**1. Review and Approval of Agenda**

**Track 1                              00:03:59 – 00:07:13**

**Action:** Eric Wilkinson requested that consent agenda item number 4 be removed as it is not yet ready for board consideration. Eric Wilkinson asked that an item be added to agenda item 6, 6e – Colorado River legal issues. Eric asked that agenda item 18 be removed. Eric asked that item 25 be moved to after agenda item 12. Eric Wilkinson asked that item 28 be moved to after item 9. Geoff Blakeslee made a motion to accept the agenda with noted changes and seconded by Carl Trick. The motion was approved unanimously (9-0).

**2. Review and Approval of Meeting Minutes – May 17 – 18, 2011**

**Track 1                              00:07:13 – 00:10:15**

**Action:** Carl Trick requested that the votes for the failed motion on item 20 be added to the official final minutes. (failed motion - 5/2). Eric Wilkinson requested a change to the first paragraph fourth line from the bottom of Director Wolfe's title from "Director to the Department of Water Resources" to the "Director of the Division of Water Resources". Eric Wilkinson asked that the final adjournment motion be added. John McClow made a motion to approve the March 17 – 18, 2011 minutes with the specified revisions, which was seconded by Alan Hamel. The motion was approved unanimously (9-0).

**3. Approve and/or Remove Items from Consent Agenda**

**Track 1                              00:10:15 – 00:29:57**

**Action:** Travis Smith requested that consent agenda items 2, 5, and 6 be removed from the consent agenda to be addressed by the board following agenda item 29. Jennifer Gimbel clarified consent agenda item 1 will have to be addressed at the next board meeting. Eric Wilkinson requested on behalf of Casey Shpall that consent agenda item 2 be covered in agenda item 5 during the Attorney General's report. Travis Smith made a motion to accept the staff recommendation on the remaining item on the consent agenda (item 3, Stream and Lake Protection Section – Statements of Opposition), which was seconded by Russell George. The motion was approved unanimously (9-0).

**Consent Agenda Item 1 - Watershed & Flood Protection Section - "Flood Hazard Area Delineation, East Toll Gate Creek (Upper)", by J3 Engineering Consultants, dated December, 2010.**

**Action:** This item was postponed until the July Board Meeting.

**Consent Agenda Item 2 - Interstate and Federal Section - Litigation Account Request.**

**Track 2                              00:32:10 – 00:42:27**

**Action:** Russell George made a motion to approve staff recommendation, which was seconded by Barbara Biggs. The motion was approved unanimously (9-0).

**Consent Agenda Item 3 - Finance Section – Stream and Lake Protection Section – Statements of Opposition.**

**Track 1                              00:10:15 – 00:29:57**

**Action:** Travis Smith made the motion to approve the staff recommendation, which was seconded by Russell George. The motion was approved unanimously (9-0).

**Consent Agenda Item 4 - Finance Section – Const. Fund and Severance Tax Trust Perp. Base Acct. – New Loans.**

**Action:** Was removed from the agenda. Not yet ready for board consideration.

**Consent Agenda Item 5 - Finance Section – Prequalification Project List Update**

**Track 1 05:06:23 – 05:09:03**

**Action:** Presentation by Anna Mauss. Travis Smith made the motion to approve the staff recommendation, which was seconded by Carl Trick. The motion was approved unanimously (9-0).

**Consent Agenda Item 6 - Water Supply Planning Section – WSRA Applications for Basin Funds**

**Track 2 06:15:32 – 06:27:33**

- a. *Orchard Mesa Irrigation Company – Canal #1 Check Structure Pilot Project @ Dalton, Kiefer & Springer Properties*

**Track 2 06:15:32 – 6:20:48**

**Action:** Presentation by Eric Hecox. Russell George made the motion to approve the staff recommendation, which was seconded by Travis Smith. The motion was approved unanimously (9-0).

- b. *Agricultural Weather Data Delivery Improvements to Uncompahgre Valley Irrigators*

**Action:** This item was postponed until the September Meeting.

- c. *Relief Ditch Diversion Dam*

**Track 2 06:20:48 – 06:22:53**

**Action:** Presentation by Eric Hecox. John McClow made the motion to approve the staff recommendation, which was seconded by Barbara Biggs. The motion was approved unanimously (9-0).

- d. *Santa Maria & Continental Reservoirs: Priority Studies to Restore Capacity*

**Track 2 06:22:53 – 06:27:33**

**Action:** Presentation by Eric Hecox. Travis Smith made the motion to approve the staff recommendation, approval of up to \$22,000 from the Rio Grande Basin Account to help complete the Santa Maria & Continental Reservoirs: Priority Studies to Restore Capacity, which was seconded by Carl Trick. The motion was approved unanimously (9-0).

- e. *Platoro Reservoir Crest of Dam Repair*

**Action:** This item was postponed until the September meeting.

**4. Future Board Meeting Dates**

- a. **July 12-13, 2011** Walden (Antlers Inn)
- b. **September 13-14, 2011** Grand Junction (Ute Water Conservancy District's Headquarters Office)
- c. **November 15-16, 2011** Denver (possibly NCWCD office in Berthoud)

**Track 1 00:29:57 – 00:32:10**

**Action:** This was an informational item only. No action was required by the Board and nothing was changed.

**5. 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.***

**Track 2 00:32:10 – 00:42:27**

**Action:** Presentation by Casey Shpall, Deputy Attorney General. This was an informational item only. No action was required by the Board. Russell George made a motion to go into Executive Session, which was seconded by Barbara Biggs. The motion was approved unanimously (9-0).

## **6. Executive Session Items**

**Executive Session 1 00:42:27 – 00:59:11**

- a. *Case No. 5-07CW227: Application of the CWCB, Hat Creek Ditch change case.*
- b. *Update and direction on the State's Animas-La Plata project water negotiations with the Tribes and purchase contract with the Bureau of Reclamation.*
- c. *Case No. 2010 CV4197, S4 v. Bull Creek Reservoir Canal and Power Company et al.*
- d. *Draft Board Policy 20, Fish and Wildlife Mitigation Policy*
- e. *Colorado River legal discussion.*

**Action:** Public comments given by Scott McElroy and Bruce Whitehead. Geoff Blakeslee made a motion to come out of executive session, which was seconded by Carl Trick. The motion was approved unanimously (9-0).

## **7. Report from Executive Session**

**Executive Session 00:00:00 –**

**Track 1 01:01:40 – 01:04:36**

**Action:** Casey Shpall reported that the items discussed in Executive Session were the items listed in the agenda under Agenda Item 6. No Board actions were taken during executive session.

## **8. Interstate and Federal / Stream and Lake Protection Sections - Wild and Scenic Update**

**Track 1 01:04:36 – 01:09:22**

**Action:** Presentation given by Ted Kowalski. This was an informational item only. No action was required by the Board.

## **9. Interstate and Federal / Stream and Lake Protection Sections - Update and Status of New ISF Appropriation Recommendations on the Colorado River by the Upper Colorado Wild and Scenic Stakeholder Group**

**Track 1 01:09:22 – 02:38:13**

**Action:** Presentation given by Linda Bassi, Ted Kowalski, and Mark Uppendahl. This was an informational item only. No action was taken by the Board.

## **10. Watershed & Flood Protection Section - Fish and Wildlife Mitigation Policy**

**Track 2 03:47:48 – 03:25:38**

**Action:** Presentation by Chris Sturm. Eric Wilkinson requested that a sentence be revised to say “Mitigation grants shall only be awarded for a project after that project has received a permit, license, or other approval from the United States and/or other permitting entities.” Chris Sturm also clarified the change on the first sentence, of the third paragraph, on the second page, changing the word “account” to “fund”. Geoff Blakeslee made a motion to approve staff recommendation with the suggested revisions, which was seconded by Alan Hamel. The motion was approved unanimously (9-0).

**11. Watershed & Flood Protection Section - Fish and Wildlife Resources Fund – Sportsman’s Paradise Diversion Dam Reconstruction Grant Application**  
**Track 2                      03:25:38 – 03:33:12**

**Action:** Presentation by Chris Sturm. Barbara Biggs made a motion to approve staff recommendation, which was seconded by Geoff Blakeslee. The motion was approved unanimously (9-0).

**12. Directors’ Reports**

- a.        **DNR Executive Director** – Report by Mike King.

**Track 1                      03:33:12 – 03:39:47**

**Action:** This was an informational item only. No action was required by the Board.

- b.        **IBCC Director** – Report by John Stulp.

**Track 1                      03:56:10 – 04:03:43**

**Action:** This was an informational item only. No action was required by the Board.

- c.        **Agriculture Commissioner** – John Salazar was not present. No report was given.

**Action:** This was an informational item only. No action was required by the Board.

- d.        **CWCB Director** – Report by Jennifer Gimbel.

**Track 1                      03:39:47 – 03:43:59**

**Action:** This was an informational item only. No action was required by the Board.

- e.        **State Engineer** – Report by Dick Wolfe.

**Track 1                      03:43:59 – 03:53:18**

**Action:** This was an informational item only. No action was required by the Board.

- f.        **Division of Wildlife** – Tom Remington was not present. No report was given.

**Action:** This was an informational item only. No action was required by the Board.

- g.        **Water Resource and Power Development Authority** – Michael Brod was not present. No report was given other than the clarification the report provided in the board notebook.

**Track 1                      03:53:18 – 03:56:10**

**Action:** This was an informational item only. No action was required by the Board.

**13. Colorado Foundation for Water Education 2012 Scope of Work**

**Track 1                      04:49:15 – 05:51:09**

**Action:** Presentation by Nicole Seltzer. Travis Smith made a motion to accept staff recommendation, which was seconded by Carl Trick. The motion was approved unanimously (9-0).

**14. Legislative Update**

**Track 1                      05:51:09 – 05:06:57**

**Action:** Presentation by Jennifer Gimbel. This was an informational item only. No action was required by the Board.

**15. Basin Directors’ Reports**

**Track 2                      00:01:58 – 0:55:24**

- a.        **Colorado River (Mainstem) Basin Director’s Report** – Russell George reporting.

**Track 2                      00:03:35 – 00:09:32**

**Action:** This was an informational item only. No action was required by the Board.

- b. **San Juan/San Miguel-Dolores River Basin Director's Report** – April Montgomery was not present to give her report.

**Action:** This was an informational item only. No action was required by the Board.

- c. **Gunnison River Basin Director's Report** – John McClow reporting.

**Track 2                      00:09:32 – 00:15:06**

**Action:** This was an informational item only. No action was required by the Board.

- d. **North Platte River Basin Director's Report** – Carl Trick reporting.

**Track 5                      00:15:06 – 00:17:31**

**Action:** This was an informational item only. No action was required by the Board.

- e. **South Platte River Basin Director's Report** – Eric Wilkinson reporting.

**Track 5                      00:17:31 – 00:23:05**

**Action:** This was an informational item only. No action was required by the Board.

- f. **Arkansas River Basin Director's Report** – Alan Hamel reporting.

**Track 5                      00:23:05 – 00:31:08**

**Action:** This was an informational item only. No action was required by the Board.

- g. **City and County of Denver Director's Report** – Barbara Biggs reporting.

**Track 5                      00:31:08 – 00:45:01**

**Action:** This was an informational item only. No action was required by the Board.

- h. **Rio Grande River Basin Director's Report** – Travis Smith reporting.

**Track 5                      00:45:01 – 00:51:06**

**Action:** This was an informational item only. No action was required by the Board.

- i. **Yampa – White River Basin Director's Report** – Geoff Blakeslee reporting.

**Track 5                      00:51:06 – 00:55:24**

**Action:** This was an informational item only. No action was required by the Board.

**16. Stream and Lake Protection Section – Uncontested 2011 Instream Flow Appropriations**

**Track 2                      00:55:24 – 00:59:36**

**Action:** Presentation by Linda Bassi. John McClow made a motion to adopt the staff recommendation, which was seconded by Alan Hamel. The motion was approved unanimously (9-0).

**17. Stream and Lake Protection Section – Contested 2011 Instream Flow Appropriations**

**Track 2                      00:59:36 – 01:07:50**

**Action:** Presentation by Linda Bassi. Carl Trick made a motion to approve staff recommendation, which was seconded by John McClow. The motion was approved unanimously (9-0).

**18. Stream and Lake Protection Section – Proposed Lease of Water from Montezuma Valley Irrigation Company for Instream Flow Use**

**Action:** This item was removed from the agenda and was not discussed.

**19. Stream and Lake Protection Section – Injury with Mitigation – Case No. 4-09CW144  
Track 2 02:59:27 – 03:40:09**

**Action:** Presentation by Kaylea White, Eric Bikis, and Mark Uppendahl. Geoff Blakeslee made a motion to approve staff recommendation with the addition of adding “agrees to appropriate terms and conditions”, which was seconded by Russell George. The motion was approved unanimously (9-0).

**20. Stream and Lake Protection Section – Injury with Mitigation – Case No. 5-07CW074  
Track 2 03:40:09 – 03:58:53**

**Action:** Presentation by Kaylea White, Jim Pearce, and Mark Uppendahl. Russell George made a motion to approve staff recommendation with the addition of adding “agrees to appropriate terms and conditions”, which was seconded by Travis Smith. The motion was approved unanimously (9-0).

**21. Office of Water Conservation and Drought Planning Section – Water Efficiency Grant Fund Application from the City of Aurora**

**Track 2 00:59:36 – 01:35:58**

**Action:** Presentation by Veva Deheza, Lyle Whitney, Mark Cassalia, and Greg Baker. Barbara Biggs made a motion to approve staff recommendation, which was seconded by Russell George. The motion was approved unanimously (8-0). Mike King was unavailable for this vote.

**22. Office of Water Conservation and Drought Planning Section – Proposed Revisions to the Guidelines for the Office to Review and Evaluate Drought Mitigation Plans.**

**Track 2 00:59:36 – 01:07:50**

**Action:** Presentation by Veva Deheza. This was an informational item only. No action was required by the Board.

**23. Office of Water Conservation and Drought Planning Section – HB10-1051 Covered Entities’ Water Efficiency Reporting Update**

**Track 2 02:21:57 – 02:39:55**

**Action:** Presentation by Veva Deheza. This was an informational item only. No action was required by the Board. John Stulp left and was unavailable for the remainder of the Board Meeting.

**24. Office of Water Conservation and Drought Planning Section – Drought Assessment for Recreation & Tourism: Southwestern Colorado**

**Track 2 02:39:55 – 02:59:27**

**Action:** Presentation by Taryn Hutchins-Cabibi. This was an informational item only. No action was required by the Board.

**25. Water Supply Planning Section – Colorado for the 21<sup>st</sup> Century Roadmap**

**Track 1 04:03:43 – 04:49:15**

**Action:** Presentation by Eric Hecox. This was an informational item only. No action was required by the Board.

**26. Finance Section – Financial Matters**

- a. *Projections and Cash Balance Report for the Construction Fund and Severance Tax Perpetual Base Account.*

**Track 2 04:53:29 – 05:03:16**

**Action:** Presentation by Tim Feehan. This was an informational item only. No action was required by the Board.

b. *New Loan Lending Rates Structure FY11/12 and policy review.*

**Track 2**                      **05:03:16 – 05:36:41**

**Action:** Presentation by Tim Feehan. Carl Trick made a motion to approve the staff recommendation regarding interest rates, which was seconded by Barbara Biggs. The motion was approved unanimously (9-0). The Board directed CWCB staff to redraft the staff recommendation for policy 7 taking into account the Board members' input.

## **27. Finance Section / Water Supply Planning Section – Loan/WSRA Statewide Grant Package for the Lake Durango Water Authority – Source Water Supply Project**

**Track 2**                      **06:51:52 – 08:06:21**

**Action:** Presentation by Anna Mauss and Eric Hecox. John McCLOW made a motion to accept the staff recommendation, which was seconded by Russell George. Barbara Biggs, Russell George, Alan Hamel, and John McCLOW voted in favor of this motion. Eric Wilkinson, Geoff Blakeslee, Travis Smith, and Carl Trick voted against it. The motion failed (4-4). Mike King was unavailable for this vote. A motion was made by John McCLOW and seconded by Barbara Biggs to approve staff recommendation (with a reduced grant amount from \$500,000 to \$450,000 and a commitment that the applicant will find the additional \$50,000 from other sources) that the Board approve a loan not to exceed \$2,525,000 (\$2,500,000 for project costs and \$25,000 for the 1% Loan Service Fee) from the Construction Fund to the Lake Durango Water Authority for engineering and construction costs related to the Source Water Supply Project. The loan terms shall be 30 years at the low-income municipal rate of 4.00% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5. Staff amended the recommendation that the Board approve a grant not to exceed \$450,000 from the Statewide Water Supply Reserve Account for engineering and construction costs related to the Source Water Supply Project with the following contingencies: Funds will not be disbursed until legal issues concerning the purchase of A-LP water are resolved and the agreement for the use of the A-LP intake structure is executed.

The motion passed (7-1). Carl Trick voted against the motion. Mike King was unavailable for this vote.

## **28. Water Supply Planning Section – WSRA Application to Statewide Fund**

**Track 2**                      **02:38:13 – 03:47:48**

**Action:** Presentation by Eric Hecox. Alan Hamel made a motion to approve staff recommendation, approval of up to \$37,577 from the Statewide Account and \$9,394 from the Arkansas Basin Account to help complete the Multi-Media Program for Reporting Crop and Turf Water Use Estimates from the Colorado Agricultural Meteorological Network project contingent upon the additional needs detailed in the CWCB staff recommendation, which was seconded by Travis Smith. The motion was approved unanimously (9-0).

## **29. Presentation, questions and answers by Rege Leach, Colorado Division of Water Resources Division Engineer in Durango**

**Track 2**                      **05:36:41 – 06:15:32**

**Action:** Presentation by Rege Leach. This was an informational item only. No action was required by the Board.

## **ADJOURN**

**Track 2**                      **08:06:21 – 08:07:24**



**Action:** Alan Hamel made a motion to adjourn the May CWCB Board Meeting, which was seconded by John McClow. The motion was approved unanimously (8-0). Mike King was unavailable for this vote.