

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



SUMMARY MINUTES AND RECORD OF DECISIONS July 12-13, 2011 Final and Approved September 13, 2011

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 the Antlers Inn, Walden Colorado, located at 460 Main Street, Walden, CO 80480. The meeting was called to order by Chair Eric Wilkinson. Ten voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were Chair Eric Wilkinson, Geoff Blakeslee, Barbara Biggs, John McClow, Alan Hamel, Travis Smith, Carl Trick, Russell George, April Montgomery, and Mike King. Non-voting *ex officio* members present or represented were CWCB Director Jennifer Gimbel and Dick Wolfe, Director of the Division of Water Resources. 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.

On the second day the meeting was called to order by Chair Eric Wilkinson. Ten voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were Chair Eric Wilkinson, Geoff Blakeslee, Barbara Biggs, John McClow, Alan Hamel, Travis Smith, Carl Trick, Russell George, April Montgomery, and Mike King. Non-voting *ex officio* members present or represented were CWCB Director Jennifer Gimbel, 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. John Stulp left in the morning of the second day during the discussion of agenda item 18b. Mike King left following the lunch on the second day.

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, July 12, 2011

Call to Order 08:04 AM

1. Review and Approval of Agenda

Track 1 00:12:20 – 00:13:24

Action: Eric Wilkinson requested that an additional item be added to agenda item number 24, 24c – Application of the Upper Gunnison Conservancy District. Alan Hamel made a motion to accept the agenda with noted change which was seconded by Geoff Blakeslee. The motion was approved unanimously (10-0).

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

Track 1 00:13:24 – 00:15:11

Action: Carl Trick noted a typo regarding a duplication of the wording of a vote to “go into Executive Session”. He noted the second mention in the minutes should be a vote to “come out of Executive Session”. Barbara Biggs made a motion to approve the May 17 – 18, 2011 Minutes with the specified revision, which was seconded by Geoff Blakeslee. The motion was approved unanimously (10-0).

3. Approve and/or Remove Items from Consent Agenda

Consent Agenda Item 1 - Stream and Lake Protection Section - Statements of Opposition

- a. Case No. 5-11CW056: Application of Midland Holdings, LLC
- b. Case No. 5-11CW057: Application of Midland Holdings, LLC

Track 1 00:15:11 – 00:15:55

Action: Travis Smith made a motion to approve the Consent Agenda, which was seconded by Barbara Biggs. The motion was approved unanimously (10-0).

4. Future Board Meeting Dates

- a. *September 13-14, 2011* *Grand Junction (Ute Water Conservancy District's Headquarters Office) Joint Workshop IBCC 9/12/11*
- b. *November 15-16, 2011* *Denver (NCWCD office in Berthoud)*
- c. *January 23-24, 2012* *Denver (in conjunction with the CWC 1/25-27/12) (Note date changed)*

Track 1 00:15:55 – 00:17:29

Action: Jennifer Gimbel noted the changes to the dates for the January Board Meeting in Denver in conjunction with the Colorado Water Congress. The new dates are January 23rd and 24th. Jennifer Gimbel also reminded the Board that at the meeting in September there will be a joint workshop with the IBCC on September 12, 2011. Eric Wilkinson noted that the November Board meeting date should be changed to note the location as Berthoud rather than Denver. Carl Trick made a motion to approve the changes made to the Future Board Meeting dates, which was seconded by Travis Smith. The motion was approved unanimously (10-0).

5. Directors' Reports

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

Track 1 00:17:29 – 00:18:51

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

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

Track 1 00:18:51 – 00:20:31

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 00:20:31 – 00:38:46

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

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

Track 1 00:38:46 – 00:51:36

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

f. **Division of Parks and Wildlife** – Report by Mike King.

Track 1 00:51:36 – 00:53:30

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.

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

6. Interstate & Federal Section – Public Deliberation on the Board of Commissioners for the County of Pitkin’s Recreational In-Channel Diversion (RICD) Application in Case No. 5-10CW305 .

Track 1 01:41:52 – 05:09:06

Track 4 00:10:00 – 0:19:26

Track 4 02:46:52 – 02:49:27

Action: Presentations were given by Ted Kowalski and Suzanne Sellers of the staff, Susan Schneider with the Attorney General’s Office, Patricia DeChristopher with Moses, Wittemyer, Harrison and Woodruff representing Pitkin County Board of County Commissioners, Jason Carey with River Restoration, and Jim Pearce with Canyon Water Resources. Jim Broderick of the Southeastern Colorado Water Conservancy District also made a statement requesting that the Board incorporate his proposed language into their findings of fact. The Board expressed a desire to modify the wording of the staff’s recommended findings of fact associated with the RICD. The Board requested that staff prepare a modified set of recommended findings of fact based on the Board’s and Mr. Broderick’s input and comments. They requested that staff present these modified findings of fact to the Board on day two of the July Board Meeting (7/13/11). Staff circulated a modified version of the findings of fact dated July 13, 2011. On the morning of the second day (7/13/11), the Board readdressed this addenda item indicating that Board members had modifications to the draft findings of fact dated July 13, 2011. Ted Kowalski made a recommendation that the Board review the modified findings of fact dated July 13, 2011 and provide comments to staff by the close of business on July 18th. It was proposed that staff will then incorporate the Board’s additional input and provide the Board with a final revised findings of fact on July 19th to be discussed at a telephonic board meeting scheduled for July 21, 2011 at

8:00 AM. Separate minutes will be prepared for this Telephonic Board meeting which will summarize the outcome of that call.

7. Interstate & Federal Section – Platte River Recovery Implementation Program Update

Track 1 00:53:30 – 01:25:21

Action: Presentation by Suzanne Sellers. This was an informational item only. No action was required by the Board.

8. Office of Water Conservation and Drought Planning – Revisions to the Guidelines for the Office to Review and Evaluate Drought Mitigation Plans

Track 2 00:05:30 – 00:13:45

Action: Presentation given by Veva Deheza. Eric Wilkinson requested that the staff recommendation clarify the specific steps one through four. Geoff Blakeslee made a motion to approve staff recommendation with the suggested revisions, which was seconded by Alan Hamel. The motion was approved unanimously (10-0).

9. Office of Water Conservation and Drought Planning – Current Drought Status and Update on State Drought Plan Activation

Track 2 00:13:45 – 00:35:19

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

10. Stream and Lake Protection Section – Injury with Mitigation – Case No. 5-07CW074: Application of John and Charlene Simcox

Track 2 00:35:19 – 00:44:40

Action: Presentation given by Linda Bassi. Barbara Biggs made a motion to approve staff recommendation, which was seconded by Geoff Blakeslee. The motion was passed unanimously (10-0).

11. Water Information Section - Arkansas River DSS - Proposed Implementation from the Feasibility Study

Track 2 00:44:40 – 01:07:57

Action: Presentation by Andy Moore, and Lindsay Griffith with Brown and Caldwell. Alan Hamel made a motion to approve staff recommendation, which was seconded by Carl Trick. The motion was approved unanimously (10-0).

12. Agenda item removed prior to the Board Meeting

Action: None taken, item removed

13. Denver/West Slope Negotiations

Track 2 01:26:19 – 01:47:44

Action: Presentation by Eric Kuhn with the Colorado River Water Conservation District and Dave Little with Denver Water. This item was informational only. No action was required by the Board.

14. Stream and Lake Protection Section – New Instream Flow Appropriation Recommendations in Water Division 5

Track 2 01:47:44 – 02:13:09

Track 3 00:00:00 – 01:27:42

Action: Presentation by Jeff Baessler, Linda Bassi, and Mark Uppendahl with Colorado Parks and Wildlife. The Board requested that the language be added to the staff recommendation, terms and conditions #3, “The ISF water right decreed herein shall be administered in accordance with any rules promulgated by the State Engineer related to Colorado River compact compliance. The ISF water right decreed herein is not intended to deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact.” Carl Trick made a motion to accept staff recommendation with the suggested modification, which was seconded by April Montgomery. The motion was approved unanimously (10-0).

15. Basin Directors’ Reports

Track 4 **00:20:36 – 01:11:54**

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

Track 4 **00:20:36 – 00:25:33**

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 reporting.

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

Track 4 **00:25:33 – 29:05**

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

Track 4 **00:29:05 – 00:31:55**

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 4 **00:31:55 – 00:34:53**

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 4 **00:34:53 – 00:40:22**

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 4 **00:40:22 – 00:46:42**

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 4 **00:46:42 – 00:54:48**

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 4 **00:54:48 – 01:04:15**

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 4 **01:04:15 – 01:11:54**

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

16. Watershed & Flood Protection Section - Floodplain Designations

Track 4 **01:11:54 – 01:36:27**

Action: Presentation by Kevin Houck. Barbara Biggs made a motion to approve the staff recommendation, which was seconded by Geoff Blakeslee. The motion was approved unanimously (10-0).

17. Watershed & Flood Protection Section - Alamosa Levee Update

Track 4 **01:36:27 – 02:30:30**

Action: This was an informational item only. No action was required by the Board. Mike King left during this agenda item and did not return for the remainder of the meeting.

18. Watershed & Flood Protection Section - Fish and Wildlife Mitigation Plans

- a. **Windy Gap Firing Project**
- b. **Moffat Collection System Project**

Track 4 **02:49:27- 03:40:54**

Action:

18a. Eric Wilkinson recused himself from this discussion. As Vice Chair, John McClow moderated the discussion in Eric's absence. Presentation by Chris Sturm and Jeff Drager with the Municipal Sub-District of Northern Colorado Water Conservancy District. Geoff Blakeslee made a motion to approve the staff recommendation, which was seconded by Barbara Biggs. The motion passed unanimously (9-0).

18b. Presentation by Chris Sturm and Travis Bray with Denver Water. Eric Wilkinson recused himself from this discussion. John Stulp left during this agenda item and did not return for the remainder of the meeting. Travis Smith made a motion to approve staff recommendation, which was seconded by Alan Hamel. The motion was approved unanimously (9-0).

19. Watershed & Flood Protection Section - 2011 Runoff Season Recap

Track 4 **03:40:54 – 03:52:20**

Action: Eric Wilkinson returned as Chair following the previous agenda item. This was an informational item only. No action was required by the Board.

20. Finance Section – Financial Matters

- a. Projections and Cash Balance Report for the Construction Fund and Severance Tax Perpetual Base Account.
- b. New Loan Lending Rate Categories – Financial Policy No. 7 Revisions

Track 6 **00:39:48 – 01:03:57**

Action: 20a. Presentation by Tim Feehan. This was an informational item only. No action was required by the Board.

20b. Travis Smith made a motion to approve staff recommendation with the modification “to help promote this interest, the hydro electric interest rate will be the same as the Colorado Water and Power Development Authority rate”, which was seconded by John McClow. The motion was approved unanimously (9-0).

21. Finance Section Prequalification Project List Update

- a. Tri-County Water Conservancy District – Ridgway Hydropower Project
- b. Paradise Acres Homeowners Association – Pipeline Project
- c. Missouri Heights Mountain Meadow Irrigation Company – Ditch Lining Project

Track 6 **01:03:57 – 01:08:58**

Action: Presentation by Anna Mauss. John McCLOW; made a motion to approve staff recommendation, “to approve the new projects as presented, to be placed on the Prequalified Project List”, which was seconded by Alan Hamel. The motion was approved unanimously (9-0).

22. Finance Section – Construction Fund and Severance Tax Trust Perpetual Base Account – Changes to Existing Loans

Track 4 **03:52:20 – 03:57:04**

Action: This agenda item was moved to follow agenda item 19. Presentation by Tim Feehan. A motion was made by Travis Smith, which was seconded by Russ George, to approve staff recommendation. The motion was approved unanimously (9-0).

23. Attorney General’s Report, Legal Briefing and Executive Session

Track 4 **03:57:04 – 04:00:46**

Action: Presentation by Pat Kowaleski. Alan Hamel made a motion to enter executive session, which was seconded by Carl Trick. The motion was approved unanimously (9-0)

24. Executive Session

- a. Intrastate and Federal Section- Colorado River Compact Issues
- b. Finance Section/Interstate & Federal Section – Animas-La Plata (A-LP) State’s Pool Allocation – Update
- c. Case No. 4-03CW108; Application of Upper Gunnison Water Conservancy District

Track 5 **00:00:00 – 00:34:29**

Action: John McCLOW recused himself from the discussion of Agenda item 24.c. Geoff Blakeslee made a motion to go out of executive session, which was seconded by Travis Smith. The motion was approved unanimously (8-0).

25. Report from Executive Session

Track 6 **00:38:19 – 00:39:48**

Action: Pat Kowaleski reported that the items discussed in Executive Session were the items listed in the agenda under Agenda Item 24. Agenda item 24a was not discussed. John McCLOW recused himself from the discussion of Agenda item 24c. No Board actions were taken during executive session. John McCLOW rejoined the meeting prior to moving on to the following agenda item.

26. Finance Section – Construction Fund and Severance Tax Trust Perpetual Base Account – New Loans.

- a. Last Chance Ditch Company - Ditch Headworks Replacement Project.
- b. Fisher Ditch Company – Ditch Infrastructure Improvement Project
- c. Thunderbird Water and Sanitation District – Lambert Ranch Water Rights Purchase
- d. Town of Georgetown – Outlet Works Modification Project

Track 6 **01:08:58 – 01:32:12**

Action: Presentation by Ryan Edwards and Anna Mauss.

26a A motion was made by Carl Trick and seconded by Travis Smith to approve staff recommendation that the Board approve a loan, from the Construction Fund, not to exceed \$185,436 (\$183,600 for project costs and \$1,836 for a 1% Loan Service Fee) to the Last Chance Ditch Company for the Ditch Headworks Replacement Project. The loan terms shall be 30 years

at a blended rate of 4.65% per annum. Security for the loan shall be in compliance with the CWCB Financial Policy #5. The motion was approved unanimously (9-0).

26b. A motion was made by Barbara Biggs and seconded by Alan Hamel to approve staff recommendation that the Board approve a loan, from the Construction Fund, not to exceed \$454,500 (\$450,000 for project costs and \$4,500 for a 1% Loan Service Fee) to the Fisher Ditch Company for the Ditch Infrastructure Improvements Project. The loan terms shall be 30 years at a blended interest rate of 5.95% per annum. Security for the loan shall be in compliance with the CWCB Financial Policy #5. The motion was approved unanimously (9-0).

26c. A motion was made by Geoff Blakeslee and seconded by John McCLOW to approve staff recommendation that the Board approve a loan, from the Construction Fund, not to exceed \$318,150 (\$315,000 for project costs and \$3,150 for a 1% Loan Service Fee) to the Thunderbird Water and Sanitation District for the Lambert Ranch Water Rights Purchase. The loan term shall be 20 years at a rate of 4.25% per annum (reduced from a middle-income municipal base rate of 4.50% per a 30-year term). Security for the loan shall be in compliance with CWCB Financial Policy #5. The motion was approved unanimously (9-0).

26d. A motion was made by Barbara Biggs and seconded by Alan Hamel to approve staff recommendation that the Board approve a loan not to exceed \$2,976,975 (\$2,947,500 for project costs and \$29,475 for the 1% Loan Service Fee) from the Construction Fund to the Town of Georgetown, acting by and through its Water and Sewer Enterprise, for engineering and construction costs related to the Outlet Works Modification Project. The loan terms shall be 30 years at the middle-income municipal rate of 4.50% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5. The motion was approved unanimously (9-0).

27. Finance Section – Construction Fund and Severance Tax Trust Perpetual Base Account – Changes to Existing Loan.

- a. Orphan Wells of Wiggins – Construction Interest Forgiveness

Track 6 01:32:12 – 01:49:57

Action: Presentation by Tim Feehan. Travis Smith made a motion to accept the staff recommendation with the change from 10 shares of Riverside to 5, the removal of the word “and” just before “to provide copies”, the addition of “to provide a \$213,000 principal payment, and the adjustment of the annual payment to reflect the reduced principal, which was seconded by Geoff Blakeslee. The motion passed unanimously (9-0).

28. Water Supply Planning Section -- Alternative Ag Transfer Grant – Use of ATMs to meet nonconsumptive and consumptive needs in the Yampa Basin

Track 6 01:52:23 – 01:58:39

Action: Presentation by Todd Doherty. Geoff Blakeslee recused himself from this discussion. Alan Hamel made a motion to approve staff recommendation, with the change of the amount requested to reflect \$132,000, which was seconded by April Montgomery. The motion was approved unanimously (8-0). Following the vote on this Agenda item Geoff Blakeslee rejoined the meeting.

29. WSRA – Basin Requests

- a. Rotating Agricultural Fallowing Public Policy Working Group
- b. Pagosa Lakes Area Village Lake Dam Outlet Pipe Repair Project

Track 6 01:58:39 – 02:09:19

Action: Presentation by Todd Doherty.

29a. Alan Hamel made a motion to approve the staff recommendation, which was seconded by Barbara Biggs. The motion was approved unanimously (9-0).

29b. April Montgomery made a motion to approve the staff recommendation, which was seconded by Barbara Biggs. The motion was approved unanimously (9-0)

30. Water Supply Planning Section -- Request for change of fiscal agent -- 75 Ditch (Gunnison Basin WSRA grant)

Track 6 **02:09:19 – 02:11:07**

Action: Presentation by Todd Doherty. John McCLOW made a motion to approve the staff recommendation, which was seconded by Travis Smith. The motion was approved unanimously (9-0)

31. Portfolio Tool and Development

Track 6 **02:02:09 – 03:43:21**

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

ADJOURN

Track 6 **03:43:21 – 03:44:05**

Action: John McCLOW made a motion to adjourn the July CWCB Board Meeting, which was seconded by Geoff Blakeslee. The motion was approved unanimously (8-0). April Montgomery was unavailable for this vote.