

# STATE OF COLORADO

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## 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

May 15 -16, 2012

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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 the Hotel Glenwood Springs located at 52000 Two Rivers Plaza Road, Glenwood Springs, CO 81601. The meeting was called to order by Chair John McClow. Eight voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were John McClow, Geoff Blakeslee, Barbara Biggs, Alan Hamel, Travis Smith, April Montgomery Ty Wattenberg, and Diane Hoppe. Non-voting *ex officio* members present or represented were: Casey Shpall, Deputy Attorney General, and Ginny Brannon, Assistant Director for Water and Energy.

On the second day, the meeting was called to order by Chair John McClow. Ten 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 John McClow, Geoff Blakeslee, Alan Hamel, Russ George, Travis Smith, April Montgomery, Ty Wattenberg, Barbara Biggs, Diane Hoppe, and Mike King. Non-voting *ex officio* members present or represented were: John Stulp, Special Policy Advisor to the Governor on Water, and Casey Shpall, Deputy Attorney General. Ginny Brannon, Assistant Director for Water and Energy, Colorado Department of Natural Resources was also in attendance. Prior to the discussion of agenda item 22, Travis Smith made a motion “to adopt a resolution to show support from the board to name the Ruedi Dam after Judge Clifford Stone,” which was seconded by April Montgomery. This item was not on the agenda and therefore does not have a corresponding agenda number. The motion was approved unanimously (10-0).

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, May 15, 2012**

**Call to Order            8:30 AM**

**1. Review and Approval of Agenda**

**Track 1                    00:00:00 – 00:06:36**

**Track 3                    01:20:35 – 01:33:19**

**Track 3                    03:37:17 – 03:40:46**

**Action:** Chair John McCloy made a clarification of the addition of item 17d. A Water Supply Reserve Account application from the Delta Conservation District. Ty Wattenberg additionally requested that the Board decide if they are going to take an official position on ballot initiatives 3 and 45. Chair John McCloy made the recommendation that the item should be discussed on the following day after the Basin Directors reports. This item was again discussed on Wednesday morning. The Board requested that staff draft some language to provide to them later in the meeting to approve. After lunch on the second day staff provided new language to the Board. Geoff Blakeslee made a motion to approve the resolution opposing ballot initiatives 3 & 45 as amended by staff, which was seconded by Diane Hoppe. The motion was approved unanimously (10-0). Alan Hamel made a motion to approve the agenda which was seconded by Ty Wattenberg. The motion was approved unanimously.

**2. Review and Approval of Meeting Minutes – March 20 -21, 2012**

**Track 1                    00:07:07 – 00:08:20**

**Action:** Geoff Blakeslee made a motion to approve the March 20 – 21, 2012 minutes, which was seconded by Barbara Biggs. The motion was approved unanimously (8-0).

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

**Track 1                    00:06:36 – 00:07:07**

**Action:** Alan Hamel made a motion to accept the consent agenda, which was seconded by Travis Smith. The motion was approved unanimously (8-0).

**1. Stream and Lake Protection Section - Statements of Opposition**

*- The Board will be asked to ratify Statements of Opposition that have been filed by staff to protect instream flow and natural lake level water rights in the following case:*

- a. Case No. 1-12CW050; Application of Upper S. Platte Water Conservancy District and Center of Colorado Water Conservancy District*

**2. Interstate and Federal and Water Information Section - Statement of Opposition**

*- The Board will be asked to ratify a Statement of Opposition that was filed by staff to protect Colorado's ability to promote maximum utilization of the waters of the State in the following Recreational In-Channel Diversion (RICD) case:*

- a. Case No. 4-12CW004: Application to Make Absolute by the Upper Gunnison River Water Conservancy District*

**3. Watershed & Flood Protection Section - Floodplain Designations**

- a. "Flood Hazard Area Delineation, Piney Creek and Antelope Creek," dated December 2011, by WRC Engineering*
- b. "Flood Hazard Area Delineation, Big Dry Creek," dated January 2012, by Wright Water Engineers, Inc.*

#### 4. Future Board Meeting Dates

- a. July 17-18, 2012 *Gunnison*
- b. September 27 - 28, 2012 *Berthoud*
- c. November 13 - 14, 2012 *Denver*

**Track 1** 00:07:59 – 00:11:15

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

#### 5. Directors' Reports

**Track 1** 00:08:23 – 00:20:44

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

**Track 1** 00:11:15 – 00:19:09

**Track 3** 00:17:00 – 00:28:57

**Action:** Mike King was unavailable to give this report on the first day of the meeting; therefore Ginny Brannon gave the report. Mike King gave an additional report on the second day. During his report on the second day Diane Hoppe made a motion, "That the CWCB Board supports Mike King's position, and the voicing of his concerns to the governor in regards to the vetoing of HB 1278," which was seconded by Geoff Blakeslee. The motion was approved unanimously (9-0)

- b. **IBCC Director** – John Stulp was unavailable to provide his report at the scheduled time; therefore, he gave it on the second day.

**Track 3** 00:00:43 – 00:05:44

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

- c. **Agriculture Commissioner** – John Salazar was unavailable to provide his report therefore the report was given by Chief Administrative Officer Jennifer Gurr.

**Track 1** 00:20:43 – 00:23:39

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

- d. **CWCB Director** – Report by Jennifer Gimbel/Tom Browning.

**Track 1** 00:23:39 – 00:30:45

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

- e. **Director of the Division of Water Resources** – Because Dick Wolfe was unavailable to give his report, no report was given.

**Track 1** N/A

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

- f. **Colorado Parks and Wildlife** – Report by Rick Cables.

**Track 1** 00:30:45 – 00:48:06

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

- g. **Water Resource and Power Development Authority** – Because Michael Brod was unavailable, no report was given.

**Track 1** N/A

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

## **6. Interstate and Federal and Water Information Section**

- a. *Compacts Overview*
- b. *Decision Support Systems (DSS)*
- c. *Recovery Program*

**Track 1**                    **00:48:32 – 01:43:08**

**Track 2**                    **00:00:00 – 00:23:24**

**Action:** Presentation by Ted Kowalski, Andy Moore, Suzanne Sellers, and Michelle Garrison. This was an informational item only. No action was required from the Board.

## **7. 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 1**                    **00:45:56 – 0048:43**

**Action:** Presentation by Casey Shpall, Deputy Attorney General. This was an informational item only. No action was required by the Board. Geoff Blakeslee made a motion to go into Executive Session, which was seconded by Alan Hamel. The motion was approved unanimously (8 - 0).

## **8. Executive Session**

- a. *US/Mexico*
- b. *Aspinall EIS and ROD*
- c. *Ruedi Reservoir Update*
- d. *Laramie River Basin Instream Flow Appropriations*
- e. *Case Nos. 11CW159, 160 and 161: Application of Colorado Water Conservation Board*
- f. *Case No. 11CW52: Application of City and County of Denver, Grand County and Colorado Water Conservation Board*

**Track ES**                    **00:00:00 – 03:22:26**

**Action:** Geoff Blakeslee made a motion to leave Executive Session, which was seconded by Diane Hoppe. The motion was approved unanimously (8 – 0).

## **9. Report from Executive Session**

**Track 2**                    **03:22:26 – 03:22:59**

**Action:** Casey Shpall reported that the items discussed in Executive Session were the items listed in the agenda under Agenda Item 8. No Board actions were taken during executive session.

## **10. Stream and Lake Protection Section – Uncontested 2012 Instream Flow Appropriations**

**Track 2**                    **03:22:59 – 03:34:17**

**Action:** Presentation by Jeff Baessler and Linda Bassi. Diane Hoppe made a motion to use the language provided in the CWCB board packet, with the additional inclusion of the reference of the Colorado vs. Wyoming decree, and to authorize staff to amend and correct a slight typo in the citations section, which was seconded by Ty Wattenberg. The motion was approved unanimously (8-0). The staff recommendation is “that the Board make the following determinations and take the following actions on each of the appropriations, based on the information contained in this memo as well as the information presented by staff both in writing and orally at the January 24, and March 21, 2012 Board meetings.

(1) Determine, pursuant to section 37-92-102(3), C.R.S., and based upon the recommendations of the Bureau of Land Management (BLM), a review of the data and other information presented by Staff, in this memo and orally, that:

- (a) There is a natural environment that can be preserved to a reasonable degree with the recommended water rights, if granted;
- (b) Water is available in each stream for appropriation;
- (c) The natural environment will be preserved to a reasonable degree by the water available for the recommended appropriations; and
- (d) Such natural environment can exist without material injury to water rights.

(2) Pursuant to ISF Rule 5f., establish January 24, 2012 as the appropriation date for the 4 ISF water rights in Water Division 3, and establish March 21, 2012 as the appropriation date for the 8 ISF water rights in Water Division 1.

(3) Direct Staff to include language in the applications and decrees for the Water Division 1 ISF rights stating that these ISF water rights will not deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact.

(4) Direct staff to request the Attorney General's Office to file the necessary water rights applications.” Ty Wattenberg made a motion to approve the amended staff recommendation which was seconded by Travis Smith. The motion was approved unanimously (8-0).

The specific language which will be included in the applications and decrees is as follows:

This instream flow water right will not deprive the people of the State of Colorado of the beneficial use of those waters available by law and interstate compact, specifically as decreed in *Wyoming v. Colorado*, 259 U.S. 419 (1922), *modified* 260 U.S. 1 (1922), *further modified* 298 U.S. 573 (1936), *further modified* 309 U.S. 572 (1940), *further modified* 353 U.S. 953 (1957).

## **11. Stream and Lake Protection Section – Temporary Leases of Water for Instream Flow Use**

**Track 2**                      **03:34:17 – 03:**

**Action:** Presentation by Linda Bassi and Amy Beatie with the Colorado Water Trust. This was an informational item only. No Board action was required.

## **12. Water Supply Planning Section - Colorado Foundation for Water Education**

**Track 2**                      **03:56:43 – 04:25:40**

**Action:** Presentation by Greg Johnson and Nicole Seltzer with the Colorado Foundation for Water Education. Travis Smith made a motion to approve the staff recommendation, “that the Board approve the Fiscal Year 2013 Scope of Work for the Colorado Foundation for Water Education (CFWE),” which was seconded by Alan Hamel. The motion was approved unanimously (8-0).

**13. Watershed and Flood Protection Section - Revised Criteria for the Colorado Watershed Restoration Program**

**Track 2**                    **04:25:40 – 04:39:17**

**Action:** Presentation by Chris Sturm. Travis Smith made a motion to approve the staff recommendation, “that the Board approve the revised guidance and application for the Colorado Watershed Restoration Program,” with the additional change of making applications available on July 1<sup>st</sup> rather than October 31<sup>st</sup>, and the deadline to submit applications on September 30<sup>th</sup>. Diane Hoppe seconded the motion, which was approved unanimously (8-0).

**14. Water Supply Planning Section - Recharge Colorado Update**

**Track 2**                    **04:39:17 – 04:52:05**

**Action:** Presentation by Tom Browning and by Recharge Colorado C.E.O., Jeffery Nathanson. This was an informational item only. No Board action was required.

**15. CWCB/Colorado River District Joint Meeting**

**Track Joint meeting**            **00:00:00 – 01:16:13**

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

**16. Basin Directors’ Reports**

**Track 3**                    **00:28:57 – 01:20:35**

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

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

- b. San Juan/San Miguel-Dolores River Basin Director’s Report** – April Montgomery reporting.

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

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

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

- d. North Platte River Basin Director’s Report** – Ty Wattenberg reporting.

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

- e. South Platte River Basin Director’s Report** – Diane Hoppe reporting.

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

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

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

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

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

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

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

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

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

**17. Water Supply Planning Section – WSRA Grants – Basin Applications (9:30 – 9:50)**

- a. *El Paso County - Groundwater Quality Study, Phase 2 - Upper Black Squirrel Creek Alluvial Aquifer*
- b. *Eagle River Watershed Council - Colorado River Inventory and Assessment*
- c. *Jackson County Water Conservancy District - Structures for Water Control: Headgates and Diversion - Additional Funds Request*

**Track 3 01:33:19 – 01:52:45**

**Action:** 17a. Presentation by Greg Johnson, Todd Doherty and Sean Chambers with the Cherokee Metro District. Alan Hamel made a motion to approve the staff recommendation “To fund up to \$35,000 from the Arkansas Basin Account, to El Paso County for the Groundwater Quality Study, Phase 2 – Upper Black Squirrel Creek Alluvial Aquifer,” which was seconded by Barbara Biggs. The motion was approved unanimously (10-0). 17b. Presentation by Jacob Bornstein. Geoff Blakeslee made a motion to approve the staff recommendation, “to fund up to \$30,000 from the Colorado Basin Account, to the Eagle River Watershed Council, for the Colorado River Inventory Assessment,” which was seconded by Barbara Biggs. The motion was approved unanimously (10-0). 17c. Presentation by Greg Johnson. Ty Wattenberg made a motion to approve the staff recommendation, “to approve \$55,055 from the North Platte Basin Account, to the Jackson County Water Conservancy District, for structures for Water Control: Headgates and Diversion,” which was seconded by Russell George. The motion was approved unanimously (10-0). Presentation by Todd Doherty. Travis Smith made a motion to approve the staff recommendation, “to fund up to \$20,000 from the Gunnison Basin Account, to the Delta Conservancy District, for North Fork of the Gunnison Invasive Weed Removal,” which was seconded by Geoff Blakeslee. The motion was approved unanimously (10-0).

**18. Water Supply Planning Section - SWSI Work Plan Consideration for Approval**

**Track 3 02:17:20 – 02:30:42**

**Action:** Presentation by Todd Doherty. Geoff Blakeslee made the motion to approve the staff recommendation, “That the Board approve the SWSI 2010 Work Plan,” which was seconded by Ty Wattenberg. The motion was approved unanimously (10-0).

**19. Water Supply Planning Section - Scenario Planning**

**Track 3 02:30:42 – 02:57:03**

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

**20. Colorado Water for the 21<sup>st</sup> Century Roadmap Update**

**Track 3 00:06:37 – 00:16:59**

**Action:** Presentation by Jacob Bornstein. This was an informational item only. No Board action was required.

**21. Water Supply Planning Section - DRAFT Water Efficiency Plan Guidance Document and Template**

**Track 3**                    **02:57:03 - 03:31:26**

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

**22. Water Supply Planning Section - Drought Update**

**Track 3**                    **03:41:06 – 04:00:30**

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

**23. Finance Section – Animas- La Plata (A-LP) State Pool Allocation – Water Purchase Update**

**Track 3**                    **04:00:30 – 04:17:14**

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

**24. Finance Section – Financial Matters**

- a. *Cash Balance report*
- b. *Loan Lending Rates for FY12/13*

**Track 3**                    **04:17:14 – 04:44:15**

**Action:** 24a. Presentation by Kirk Russell. This was an informational item only. No action was required from the Board. 24b. Presentation by Kirk Russell. Ty Wattenberg made a motion to approve the staff recommendation, “that the Board adopt the schedule of 30-year lending rates, as shown in Table 1 and rates for the Special Interest Rate Categories of a Hydroelectric Rate of 2.0% and a Restricted Reservoir Rate reduction of 0.5% for Agricultural, Low Income Municipalities, and companies that include one or both of these borrower categories as a majority of its ownership. These rates shall apply to all loans recommended to the General Assembly or approved by the Board from July 1, 2012 through June 30, 2013. Staff also recommends approval of the proposed revisions to Policy #7,” which was seconded by Alan Hamel. The motion was approved unanimously (10-0).

**25. Finance Section – New Construction Fund Loan**

- a. *McDonald Ditch Company - McDonald Ditch Diversion and Headgate Replacement Project*

**Track 3**                    **04:44:15 - 04:51:54**

**Action:** 25a. Presentation by Ryan Edwards. Travis Smith made the motion to approve the staff recommendation, “Staff recommends the Board approve a loan, from the Construction Fund, not to exceed \$70,700 (\$70,000 for Project costs and \$700 for the 1% Loan Service Fee) to the McDonald Ditch Company for the McDonald Ditch Diversion and Headgate Replacement Project. The loan terms shall be 20 years at the agricultural rate of 2.50% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5,” which was seconded by Diane Hoppe. The motion was approved unanimously (10-0).

**26. Finance Section – Changes to Existing Loans**

a. Tom Hill – McElroy Dam Rehabilitation Project

**Track 3 04:51:54 – 05:10:15**

**Action:** Presentation by Kirk Russell. Travis Smith made the motion to approve the staff recommendation, that “the Board approve a loan amendment to restructure Loan Contract No. C150233 from its current 10 year term to a term of 27 years at the agricultural rate of 2.50% per annum for the remaining principal balance of \$715,942.01. Security for the loan shall not change and is in compliance with CWCB Financial Policy #5.,” which was seconded by Geoff Blakeslee. The motion was approved unanimously (10-0).

**27. Finance Section - Severance Tax Trust Fund Operational Account**

**Track 4 00:00:00 – 00:04:52**

**Action:** Presentation by Tim Feehan. Alan Hamel made a motion to approve the staff recommendation, “that the Board adopt Policy 18, the Approval and Prioritization of Grant Applications from the Severance Tax Trust Fund Operational Account,” which was seconded by Ty Wattenberg. The motion was approved unanimously (10-0).

**28. Colorado Weather Modification - Rulemaking Hearing**

**Track Hearing 1 00:00:00 – 00:35:01**

**Track Hearing 2 00:00:00 – 00:13:02**

**Track Hearing 3 00:00:00 – 00:40:31**

**Action:** Casey Shpall, the hearing officer, explained the manner in which to conduct the hearing. Staff presented the updated version of the Rules. There was Board discussion and direction to revise Rule 19, the evaluation rule, with a goal of requiring a higher degree of accountability from the permit holders. Public testimony was given by Don Griffith, President of North American Weather Consultants, explaining the target versus control methodology for estimating effectiveness of the program. With Board direction, Staff prepared a revised recommendation to strike the target versus control method from the recommended list of studies in Rule 19 and add this method to requirements in Rule 13. Casey Shpall asked if there was agreement among the CWCB members and if Mike King received sufficient direction from the CWCB Members. The Board agreed and the DNR Executive Director agreed to accept these changes and stated that he will work with the Attorney General’s Office to file the amended Rules with the Secretary of State. No formal vote was needed on this item. No Board action was required from the Board.

**ADJOURN**

Barbara Biggs made a motion to adjourn the May 2012 Colorado Water Conservation Board Meeting. Alan Hamel seconded the motion, which was passed unanimously (10-0).