

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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DRAFT
SUMMARY MINUTES AND RECORD OF DECISIONS
JULY 17-18, 2012

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 College Center Ballroom, Western State College of Colorado, located at 600 North Adams Street, Gunnison, Colorado, 81231.

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, Russ George, Geoff Blakeslee, Alan Hamel, Travis Smith, April Montgomery, Ty Wattenberg, and Diane Hoppe. Non-voting *ex officio* members present or represented were: Dick Wolfe, State Engineer; Rick Cables, Director, Colorado Parks and Wildlife; Pat Kowaleski, Office of the Attorney General; John Stulp, Special Policy Advisor to the Governor for Water; and Jennifer Gimbel, CWCB Director. Department of Natural Resources Executive Director Mike King arrived during the lunch break.

On the second day, the meeting was called to order by Chair John McClow. 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 John McClow, Russ George, Geoff Blakeslee, Alan Hamel, Travis Smith, April Montgomery, Ty Wattenberg, Diane Hoppe, and Department of Natural Resources Executive Director Mike King. Non-voting *ex officio* members present or represented were: Dick Wolfe, State Engineer; Rick Cables, Director, Colorado Parks and Wildlife; Pat Kowaleski, Office of the Attorney General; John Stulp, Special Policy Advisor to the Governor for Water; and Jennifer Gimbel, CWCB Director.

Due to technical difficulties, the recording for this meeting was unable to begin until the Director's Reports.

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, JULY 17, 2012

CWCB Call to Order 8:30 AM

1. Review and Approval of Agenda'

Action: Chair John McCLOW reminded the Board that items had been added to the agenda since the Board packets had been distributed the week prior: Items 7h and 22d were on the revised agenda. Director Hoppe requested that the Board consider a resolution regarding the Chatfield EIS, which had been distributed to the Board. Chair McCLOW proposed that the Chatfield item be considered after lunch, as Agenda Item 8a. April Montgomery made a motion to approve the agenda as amended, which was seconded by Diane Hoppe. The motion was approved unanimously (8-0).

2. Review and Approval of Meeting Minutes – May 15-16, 2012 Board Meeting

Action: Ty Wattenberg made a motion to approve the May 15-16, 2012 minutes, which was seconded by Alan Hamel. The motion was approved unanimously (8-0).

3. Approve and/or Remove Items from Consent Agenda

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

CWCB CONSENT AGENDA

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 cases:*
 - a. Case No. 1-12CW070: Application of City of Longmont
 - b. Case No. 5-12CW039: Application of Vail Summit Resorts, Inc.
 - c. Case No. 1-12CW087: Application of Eldora Enterprises, LLC and Mountain Lease Enterprises, LLC
 - d. Case No. 1-12CW088: Application of Mesa Trail Ranch, LLC
 - e. Case No. 1-12CW091: Application of St. Vrain & Left Hand Water Conservancy District and County of Boulder

2. Finance Section – Recommended Prequalified Project

3. Interstate, 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. 2- 2012CW39: Application to Make Absolute and for Finding of Reasonable Diligence by Pueblo, a Municipal Corporation

4. Future Board Meeting Dates

- | | |
|--------------------------|------------------------------------|
| a. September 27-28, 2012 | Berthoud (Thursday/Friday Meeting) |
| b. November 13-14, 2012 | Denver |
| c. January 28-29, 2013 | Denver (Monday/Tuesday Meeting) |

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

5. Directors' Reports

- a. DNR Executive Director

Track 2 02:07:30 – 02:15:27

Action: Mike King was unavailable to provide his report at the scheduled time, and made his presentation after lunch on the first day. This was an informational item only. No Board action was required.

- b. IBCC Director

Action: Report by John Stulp. This was an informational item only. No Board action was required.

- c. Agriculture Commissioner

Action: John Salazar was unavailable to present his report. No report was given

- d. CWCB Director

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

- e. State Engineer

Action: Report by Dick Wolfe. This was an informational item only. No Board action was required.

- f. Division of Parks and Wildlife

Track 1 00:00 – 05:14

Action: Report by Rick Cables. This was an informational item only. No Board action was required.

- g. Water Resource and Power Development Authority

Action: A report from Mike Brod was included in the Board materials. This was an informational item only. No Board action was required.

6. Attorney General's Report, Legal Briefing and Executive Session

Track 1 05:15 – 06:45

Action: Report by Pat Kowaleski, Assistant Attorney General. This was an informational item only. No Board action was required.

7. Executive Session

Track 1 **06:45 – 07:40**

Track EXEC

Action: Ty Wattenberg made a motion for the Board to go into executive session for discussion of agenda items 7a-7h, which was seconded by Diane Hoppe. The motion was approved unanimously (8-0).

- a. Ruedi Reservoir issues associated with specific legal questions
- b. Colorado River Issues associated with specific legal questions
- c. Animas-La Plata associated with specific legal questions
- d. Case No. 5-07CW210: Application of Vail Associates
- e. Consolidated Case Nos. 4-10CW164, 165, 166, 167, and 169: Applications of the Board of Commissioners of Montrose County, Town of Nucla and Town of Naturita
- f. Temporary Leases/Loans of Water for Instream Flow Use
- g. Potential Water Right Acquisition for Instream Flow Use
- h. Case No. 4-10CW180: Application of CWCB

Geoff Blakeslee made a motion for the Board to leave executive session, which was seconded by Travis Smith. The motion was approved unanimously (8-0).

8. Report from Executive Session

Track 2 **02:05:00 – 02:07:30**

Action: Assistant Attorney General Pat Kowaleski reported that the Board went into Executive Session, pursuant to C.R.S. Section 24-6-402(3)(a)(II) for discussion of Agenda Items 7a-7h, and that the discussion was limited to those items only.

- a. Diane Hoppe made a motion that the Board approve the proposed resolution in support of the Chatfield Reservoir Reallocation Project, which was seconded by Travis Smith. The motion was approved unanimously (9-0).

9. Interstate, Federal, and Water Information Section – Litigation Account

Track2 **02:15:27 – 02:20:09**

Action: Presentation by Brent Newman with Karen Kwon and Casey Shpall via telephone. Travis Smith made a motion that the Board approve staff recommendation, which was seconded by Alan Hamel. The motion was approved unanimously (9-0).

Staff Recommendation:

The Staff recommends that the Board:

- 1) Approve the expenditure of \$150,000 to support the CWCB and Attorney General in these important tasks,
- 2) direct the CWCB Director and Staff to expend these funds consistent with the request by the Office of the Attorney General, and;
- 3) direct the CWCB Director, CWCB Staff, and Office of the Attorney General to comply with the annual reporting requirements as specifically provided for in Section 37-60-121(2.5).

10. Stream and Lake Protection / Interstate, Federal, and Water Information Sections – Wild and Scenic Rivers Update

Track 2 **02:20:10 – 02:23:45**

Action: Presentation by Linda Bassi. This was an informational item only. No Board action was required.

11. Finance / Interstate, Federal, and Water Information Sections – Animas-La Plata (A-LP) State Pool Allocation – Water Purchase Update

Track 2 **02:23:45 – 02:26:50**

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

12. Interstate, Federal, and Water Information Section – Long Term Experimental and Management Plan (LTEMP) for the Operation of Glen Canyon Dam

Track 2 **02:26:50 – 03:00:19**

Action: Presentation by Assistant Attorney General Shanti Rosset O'Donovan and Randy Seaholm. This was an informational item only. No Board action was required.

13. Watershed & Flood Protection Section – State of the Science for Basin Forecasting

Track2 **03:00:20 – 03:41:54**

Action: Presentation by Joe Busto, Kevin Houck, and Steve Vasiloff. This was an informational item only. No Board action was required.

14. CWCB / Upper Gunnison River Water Conservancy District Joint Meeting

RECESS

WEDNESDAY, JULY 18, 2012

CWCB Call to Order **8:30 AM**

15. Basin Directors' Reports

Track 3 **00:00 – 01:03:10**

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 was not present, so no report was given.

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.

16. Finance Section – Cash Balance Report

Track 3 **01:03:10 – 01:24:15**

Action: Presentation by Kirk Russell. This was an informational item only. No Board action was required.

17. Finance Section – New Construction Fund Loans

a. Center of Colorado Water Conservancy District – Smelter Pipeline Reservoir Enlargement

Track 3 **01:24:15 – 01:29:14**

Action: Presentation by Ryan Edwards. Diane Hoppe made a motion that the Board approve staff recommendation, which was seconded by Alan Hamel. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends the Board approve a loan, from the Construction Fund, not to exceed \$404,000 (\$400,000 for project costs and \$4,000 for the 1% Loan Service Fee) to Center of Colorado Water Conservancy District for the Smelter Pipeline Reservoir Enlargement Project. The loan shall be at the middle-income municipal interest rate reduced to 2.5% per annum for a 10-year term. Security for the loan shall be in compliance with CWCB Financial Policy #5.

b. The Left Hand Ditch Company – Allen Lake and Lake Isabelle Repair Project

Track 3 **01:29:14 – 01:34:35**

Action: Presentation by Ryan Edwards. Diane Hoppe made a motion that the Board approve staff recommendation, which was seconded by Ty Wattenberg. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends the Board approve a loan, from the Construction Fund, not to exceed \$1,157,157 (\$1,145,700 for project costs and \$11,457 for the 1% Loan

Service Fee) to The Left Hand Ditch Company for the Allen Lake and Lake Isabelle Repair Project. The loan terms shall be 30 years at a blended interest rate of 2.45% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

18. Stream and Lake Protection Section – Temporary Leases/Loans of Water for Instream Flow Use

Track 3 01:53:57 – 02:18:05

Action: Presentation by Kaylea White and Linda Bassi, with Amy Beatie from the Colorado Water Trust. Geoff Blakeslee made a motion that the Board approve staff recommendation, which was seconded by April Montgomery. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends that the Board ratify the Director's decision to accept any loans or leases that the State and Division Engineers have approved prior to the Board's discussion of this agenda item. Loans and leases accepted include (1) Temporary Lease of Water from Colorado Water Trust and Upper Yampa Water Conservancy District for ISF Use on the Yampa River via Reservoir Release from Stagecoach Reservoir, and (2) Temporary Loan of Water from Colorado Parks and Wildlife ("CPW") for ISF use on Big Beaver Creek and the White River via Reservoir Release from Big Beaver Creek Reservoir.

19. Stream & Lake Protection Section

Track 3 02:18:05 – 03:21:45

- a. Evolution of the Law Governing Colorado's Instream Flow and Natural Lake Level Program

Action: Presentation by Linda Bassi. This was an informational item only. No Board action was required.

- b. Measuring and Monitoring Water for the Instream Flow Program

Action: Presentation by Brian Epstein. This was an informational item only. No Board action was required.

20. Watershed & Flood Protection / Interstate, Federal, and Water Information Sections – Revised Criteria for Tamarisk, Russian Olive, and other Woody Riparian Invasive Species Control Program

Track 3 03:55:45 – 04:13:33

Action: Presentation by Chris Sturm with Steve Miller via telephone. Due to an error with the electronic Board notebooks, some Board members did not receive the memo or revised criteria. The Board decided to consider the revised criteria, and take action on this program at the September meeting.

21. Watershed & Flood Protection / Interstate, Federal, and Water Information Sections – Presentation by Colorado Youth Corps Association

Track 3 03:30:40 – 03:55:44

Action: Presentation by Chris Sturm with Jennifer Freeman from the Colorado Youth Corps Association (CYCA). Travis Smith made a motion that the Board approve staff recommendation, which was seconded by Diane Hoppe. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends that the Board approve using up to \$50,000 of the \$1,000,000 authorized for phreatophyte control in the 2012 Projects Bill in a small scale (less than \$10,000 per project) control project grant program to be administered by the CYCA.

22. Water Supply Planning Section – WSRA Grants – Basin Applications

Track 3 04:13:40 – 04:37:55

a. Leon Park Reservoir Company - Leon Park Reservoir Dam Outlet Repair

Action: Presentation by Greg Johnson. Alan Hamel made a motion that the Board approve staff recommendation, which was seconded by Travis Smith. The motion was approved unanimously (9-0).

Staff Recommendation: To fund up to \$31,372 from the Gunnison Basin Account for the Leon Park Reservoir Company – Leon Park Reservoir Dam Outlet Repair.

b. Loban, Hackleman and Olsen LLC - Seneca Ditch - Structure for Water Control

Action: Presentation by Jacob Bornstein. Ty Wattenberg made a motion that the Board approve staff recommendation, which was seconded by Diane Hoppe. The motion was approved unanimously (9-0).

Staff Recommendation: To fund up to \$57,539.70 from the North Platte Basin Account for the Loban, Hackleman and Olsen LLC - Seneca Ditch - Structure for Water Control.

c. Rio Grande County - Rio Grande County Hydrogeologic Study

Action: Presentation by Greg Johnson. Travis Smith made a motion that the Board approve staff recommendation, which was seconded by Ty Wattenberg. The motion was approved unanimously (9-0).

Staff Recommendation: To fund up to \$99,564 from the Rio Grande Basin Account for the Rio Grande County - Rio Grande County Hydrogeologic Study.

d. City of Trinidad – North Lake Dam Rehabilitation Project

Action: Presentation by Todd Doherty. Alan Hamel made a motion that the Board approve staff recommendation **as amended** which was seconded by Geoff Blakeslee. The motion was approved unanimously (9-0).

Staff Recommendation as amended: Staff recommends approval of up to \$702,273 from the Statewide Account and up to \$36,962 from the Arkansas basin account (total \$739,235) to help fund the North Lake Dam Rehabilitation Project. This recommendation is contingent on the City of Trinidad's commitment to providing the remaining cost of the project.

23. Water Supply Planning Section – ATM Grant Program – Discussion of Criteria and Guidelines

Track 3 04:37:55 – 05:01:20

Action: Presentation by Todd Doherty. This was an informational item only. No Board action was required.

24. Water Supply Planning Section - Statewide Drought Update and Response

Track 3 05:18:00 – 05:40:56

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

25. Water Supply Planning Section - CWCB Water Efficiency Plan Guidance Document

Track 3 05:40:56 – 05:58:37

Action: Presentation by Taryn Hutchins-Cabibi and Kevin Reidy. Geoff Blakeslee made a motion that the Board approve staff recommendation, which was seconded by April Montgomery. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends final adoption of the 2012 CWCB *Water Efficiency Plan Guidance Document and Template*.

26. Water Supply Planning Section - 2011 Colorado Drought Agriculture Economic Impact Study

Track 3 05:58:38 – 06:34:45

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

27. Water Supply Planning Section - Drought Assessment for Recreation and Tourism-Southwest Colorado

Track 3 06:34:45 – 06:57:37

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

28. Finance Section – Restructuring of Colorado River Water Conservation District Loan

Track 3 06:57:38 – 07:10:55

Action: Presentation by Kirk Russell. This was an informational item only. No Board action was required.

Action: Geoff Blakeslee made a motion that the Board adjourn, which was seconded by Travis Smith. The motion was approved unanimously (9-0).

ADJOURN