

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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DRAFT

SUMMARY MINUTES AND RECORD OF DECISIONS NOVEMBER 13-15, 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 History Colorado Center, 1200 Broadway, Denver, CO 80203. The meeting was called to order by Chair John McClow. Seven voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: John McClow, April Montgomery, Ty Wattenberg, Alan Hamel, Geoff Blakeslee, Travis Smith, and Diane Hoppe. Non-voting *ex officio* members present or represented were Ron Carleton, Deputy Commissioner of Agriculture; Bob Randall, Deputy Director, Colorado Department of Natural Resources; Dick Wolfe, State Engineer; Rick Cables, Director, Colorado Parks and Wildlife; and Jennifer Gimbel, CWCB Director. Also present was John Stulp, Special Policy Advisor to the Governor for Water.

On the second day, the meeting was called to order by Chair John McClow. Seven voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: John McClow, April Montgomery, Ty Wattenberg, Alan Hamel, Geoff Blakeslee, Travis Smith, and Diane Hoppe. Non-voting *ex officio* members present or represented were Ron Carleton, Deputy Commissioner of Agriculture; Bob Randall, Deputy Director, Colorado Department of Natural Resources; Dick Wolfe, State Engineer; Chad Bishop, Assistant Director for Wildlife Biology, Colorado Parks and Wildlife; and Jennifer Gimbel, CWCB Director. Also present was John Stulp, Special Policy Advisor to the Governor for Water.

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, NOVEMBER 13, 2012

CWCB Call to Order 8:30 AM

1. Review and Approval of Agenda

Action: Director Gimbel informed the Board that item 15b would be removed from the agenda. Diane Hoppe made a motion to approve the agenda as amended, which was seconded by Ty Wattenberg. The motion was approved unanimously (7-0).

2. Review and Approval of Meeting Minutes – September 27-28, 2012 Board Meeting

Action: April Montgomery, Diane Hoppe, and Alan Hamel proposed edits to the minutes of the previous Board meeting. Ty Wattenberg made a motion to approve the September 27-28, 2012 Board Meeting minutes as amended, which was seconded by Diane Hoppe. The motion was approved unanimously (7-0).

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 (7-0).

CWCB CONSENT AGENDA

1. Stream and Lake Protection Section - Statements of Opposition

- a. Case No. 4-12CW083: Application of Stephen and Margaret Wood
- b. Case No. 1-12CW195: Application of Town of Alma

2. Finance – Recommended Prequalified Project

3. Finance – Loan De-Authorizations

- a. Supply Irrigating Ditch Company - Knouth Reservoir Dam Rehabilitation Project
- b. Park Center Water District - Well Re-drilling Project
- c. South Metro Water Supply Authority - Water Supply Pipeline Capacity Acquisition Project
- d. Paradise Acres Homeowners Association - Dedicated Fill Pipe Project
- e. City of Trinidad - North Lake Dam Rehabilitation Project

4. Watershed and Flood Protection Section – Floodplain Designation

- a. "Flood Hazard Area Delineation, Littles Creek" by AMEC Earth & Environmental, dated July 2012.

4. Future Board Meeting Dates

- a. 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

Action: Report by Bob Randall. 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: Report by Ron Carleton. This was an informational item only. No Board action was required.

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

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 was included in the Board packet. This was an informational item only. No Board action was required.

6. Stream and Lake Protection Section – Proposed Water Rights Acquisition on the Alamosa River

Action: Presentation by Kaylea White. A motion was made by Travis Smith to approve staff recommendation, which was seconded by Geoff Blakeslee. The motion was approved unanimously (7-0).

Staff Recommendation: Pursuant to Rule 6b, staff recommends that the Board:

1. Conclude that the proposed acquisition by donation of 0.5 cfs of this Valdez Ditch water right is appropriate to preserve and improve the natural environment of the Alamosa River to a reasonable degree.

2. Determine that the acquired Valdez Ditch water right would be best utilized by storing in Terrace Reservoir up to 145 acre feet of water historically diverted by the Valdez Ditch water right, and releasing such water to the Alamosa River during the late summer, fall, and early winter to preserve and improve the natural environment by establishing more sustainable surface stream flows in the river segment between Terrace Reservoir and County Road 10.

3. Authorize the Director to execute an agreement allowing the ARK to retain an interest in the water so that ARK may lease back the acquired water right for irrigation use in order to protect the HCU while the reservoir spillway is reconstructed.

4. Determine that until the reservoir spillway is reconstructed, the CWCB should maintain an option to utilize the water right by bypassing the water at the headgate for instream flow use downstream of the headgate on the Alamosa River.

5. Approve the Donation and Acquisition Agreement with Valle Del Sol Community Center/Alamosa Riverkeepers.

6. Accept the donation of 0.5 cfs of the Valdez Ditch from Valle Del Sol Community Center/Alamosa Riverkeepers.

7. Authorize the Director to execute the Donation and Acquisition Agreement.

8. Direct staff to work with the Attorney General's Office to file the necessary change of water right application with the Water Court.

7. Stream and Lake Protection Section — Authorization to Proceed to Trial in Case No. 5-09CW160: Application of Upper Eagle Regional Water Authority

Action: Presentation by Kaylea White. This item was referred for discussion in executive session. A motion was made following executive session by Geoff Blakeslee to approve staff recommendation, which was seconded by Alan Hamel. The motion was approved unanimously (7-0).

Staff Recommendation: Pursuant to ISF Rule 8j., Staff recommends that the Board authorize Staff to proceed to trial to protect its instream flow water rights in the event that Staff and the Attorney General's Office are unable to reach a settlement with the Applicant.

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

Action: Report by Casey Shpall, Deputy Attorney General. This was an informational item only. No Board action was required.

9. Executive Session

Action: Alan Hamel made a motion for the Board to go into executive session for discussion of agenda items 9a-9i, which was seconded by Diane Hoppe. The motion was approved unanimously (7-0).

- a. Colorado River Issues
- b. Case No. 5-09CW160: Application of Upper Eagle Regional Water Authority

- c. Case No. 5-10CW043: Application of the Board of County Commissioners of Summit County
- d. Case No. 4-10CW180: Application of Colorado Water Conservation Board
- e. Case No. 4-11CW129: Application of CWCB on the San Miguel River
- f. Consolidated Case Nos. 4-10CW164, 165, 166, 167, and 169: Application of the Board of Commissioners of Montrose County, Town of Nucla, and Town of Naturita
- g. Chatfield Reservoir Issues
- h. Case No. 5-10CWC298: Application of Grand County
- i. Animas-La Plata

Alan Hamel made a motion for the Board to leave executive session, which was seconded by Ty Wattenberg. The motion was approved unanimously (7-0).

10. Report from Executive Session

Action: Deputy Attorney General Casey Shpall 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 9a-9i, and that the discussion was limited to those items only, with no action taken.

11. Interstate, Federal, and Water Information Section – Colorado River Basin Water Supply and Demand Study Update

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

12. Interstate, Federal, and Water Information Section

- a. Colorado River Water Availability Study Update

Action: Presentation by Ray Alvarado. This was an informational item only. No Board action was required.

- b. U.S. – Mexico Bi-National Negotiations

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

13. Finance – Construction Fund and Severance Tax Trust Fund Perpetual Base Account

- a. Annual Financial Statements

Action: Presentation by Steve Biondo. This was an informational item only. No Board action was required.

- b. Projections and Cash Balance Report

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

14. Finance – New Construction Fund Loan

- a. Bergen Ditch and Reservoir Company – Bergen Reservoir #2 Rehabilitation Project

Action: Presentation by Ryan Edwards. A motion was made by Alan Hamel to approve staff recommendation, which was seconded by Geoff Blakeslee. The motion was approved unanimously (7-0).

Staff Recommendation: Staff recommends the Board approve a loan, from the Construction Fund, not to exceed \$2,020,000 (\$2,000,000 for Project costs and \$20,000 for the 1% Loan Service Fee) to the Bergen Ditch and Reservoir Company for the Bergen Reservoir No. 2 Rehabilitation Project. The loan terms shall be 30 years at a blended interest rate of 3.15% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

15. Finance – Changes to Existing Loans

- a. Farmers' High Line Canal and Reservoir Company – System Rehabilitation Project

Action: Presentation by Ryan Edwards. A motion was made by Diane Hoppe to approve staff recommendation, which was seconded by Ty Wattenberg. The motion was approved unanimously (7-0).

Staff Recommendation: Staff recommends the Board approve a loan increase of \$798,829 (\$790,920 for project costs and \$7,909 for the 1% Loan Service Fee), from the Construction Fund, to the Farmers' High Line Canal and Reservoir Company. The amended loan amount will be \$2,209,597 (\$2,187,720 for project costs and \$21,877 for the 1% Loan Service Fee) for engineering and construction costs related to the System Rehabilitation Project. The loan terms shall remain 30-years at a blended rate of 4.65% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

16. Finance – Construction Fund En-Bloc Non-Reimbursable Investment

- a. Division of Water Resources – Satellite Monitoring System and Streamgage Refurbishment Program
- b. Weather Modification Program
- c. Colorado Floodplain Map Modernization - Refresh
- d. Colorado Watershed Restoration Program - Refresh
- e. Flood & Drought Response Fund – Refresh

Action: Presentation by Kirk Russell. A presentation was made by Ty Wattenberg to approve staff recommendation, which was seconded by Travis Smith. The motion was approved unanimously (7-0).

Staff Recommendation: The Staff recommends the Board approve the Non-Reimbursable Investments listed as Agenda Item 16a through 16e and include them in the 2013 Project Bill. The Board also authorizes an exemption from Financial Policy #13.

17. Finance – Construction Fund Referred Non-Reimbursable Investments

Action: Presentation by Kirk Russell.

a. Rio Grande Water Supply Forecasting Development Project

Action: Presentation by Joe Busto. A motion was made by Travis Smith to approve staff recommendation, which was seconded by Alan Hamel. The motion was approved unanimously (7-0).

Staff Recommendation: Staff recommends that the Board request that the General Assembly authorize up to \$215,000 from the Construction Fund to be appropriated to the Colorado Water Conservation Board for Rio Grande Forecasting Development Projects.

b. CDSS Operations and Maintenance

Action: Presentation by Ray Alvarado. A motion was made by Ty Wattenberg to approve staff recommendation, which was seconded by Geoff Blakeslee. The motion was approved unanimously (7-0).

Staff Recommendation: Staff recommends that the Board request the General Assembly to authorize \$100,000 from the Construction Fund to be appropriated to the Department of Natural Resources for allocation to the CWCB for CDSS operations and maintenance.

c. Colorado River Basin Study Implementation

Action: Presentation by Ted Kowalski. A motion was made by Geoff Blakeslee to approve staff recommendation, which was seconded by (recording error). The motion was approved unanimously (7-0).

Staff Recommendation: Staff recommends that the Board request the General Assembly to authorize \$75,000 from the Construction Fund to be appropriated to the Department of Natural Resources for allocation to the CWCB to assure that Colorado can participate in implementation of the Colorado River Basin Study.

d. Arkansas River Decision Support System

Action: Presentation by Andy Moore. A motion was made by Alan Hamel to approve staff recommendation, which was seconded by Travis Smith. The motion was approved unanimously (7-0).

Staff Recommendation: Staff recommends that the Board request the General Assembly to authorize \$250,000 from the Construction Fund to be appropriated to the Department of Natural Resources for allocation to the CWCB to begin implementation of Phase 2 of the ArkDSS.

e. SWSI 2016

Action: Presentation by Todd Doherty. A motion was made by Travis Smith to approve staff recommendation, which was seconded by Ty Wattenberg. The motion was approved unanimously (7-0).

Staff Recommendation: Staff recommends that the Board request the General Assembly to authorize \$225,000 from the Construction Fund to be appropriated to the Department of Natural

Resources for allocation to the CWCB to begin implementation of the Statewide Water Supply 2016 update.

18. Finance – Projects Bill Discussion Items

a. Windy Gap Bypass Project Funding

Action: Presentation by Rebecca Mitchell, CWCB Section Chief and Eric Wilkinson, Northern Colorado Water Conservancy District. A motion was made by Travis Smith to approve staff recommendation, which was seconded by Diane Hoppe. The motion was approved unanimously (7-0).

Staff Recommendation: The Staff recommends including \$2 million in the Projects Bill that will be used to construct a bypass through or around Windy Gap Reservoir, if such a bypass is appropriate.

b. Chatfield Reallocation – Orphan Shares

Action: Presentation by Rebecca Mitchell and Jennifer Gimbel. This was an informational item only. No Board action was required.

c. Instream Flow Acquisitions – Statutory Language Change

Action: Presentation by Linda Bassi. The Board chose to defer action on this subject until the January 2013 Board meeting. A motion was made by Diane Hoppe to take this course of action, which was seconded by Geoff Blakeslee. The motion was approved unanimously (7-0).

RECESS

WEDNESDAY, NOVEMBER 14, 2012

CWCB Call to Order 8:30 AM

19. Basin Directors' Reports

- a. Colorado River (Mainstem) Basin Director's Report - Russell George was not present, so no report was given.
- 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.

20. Presentation by U.S. Fish and Wildlife Service

Action: Presentation by Ted Kowalski, CWCB Section Chief, with Tom Chart and Debbie Felker from the USFWS. This was an informational item only. No Board action was required.

21. Finance / Interstate, Federal, and Water Information Sections – Animas-La Plata (A-LP) State's Pool Allocation

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

22. Finance – La Plata Archuleta Water District – A-LP Water Lease – Purchase Offer

Action: Presentation by Tim Feehan. A motion was made by Geoff Blakeslee to approve staff recommendation, which was seconded by Alan Hamel. The motion was approved unanimously (7-0).

Staff Recommendation: Staff is recommending that the Board direct staff to enter into formal negotiations with the La Plata Archuleta Water District (District) to draft a contract to purchase up to 2,500 acre feet (supply) of the State's water in the Animas-La Plata Project (A-LP), subject to final review and approval by the Board.

23. Water Supply Planning Section – Update on Alternative Water Transfer Grant Program

Action: Presentation by Todd Doherty. A motion was made by Alan Hamel to approve staff recommendation with suggestions and changes that the Board set forth in their discussion. The motion was seconded by Travis Smith. The motion was approved unanimously (7-0).

Staff Recommendation: Staff requests that the Board approve the amended criteria and guidelines for the Alternative Agricultural Transfer Methods grant program.

24. Water Supply Planning Section – Request for Approval of WSRA Criteria and Guidelines

Action: Presentation by Greg Johnson. A motion was made by April Montgomery to approve staff recommendation, which was seconded by Travis Smith. The motion was approved unanimously (7-0).

Staff Recommendation: Staff recommends that the Board adopt the proposed amendments to the Water Supply Reserve Account Criteria and Guidelines.

- **Page 5-6:** To simplify the document and avoid outdated material, the funding table was replaced with a link to a regularly updated version of the table on the CWCB website. Other language was also streamlined.
- **Page 8:** For consistency with loan program and simplicity with roundtable schedules the application deadline was shortened from 60 days prior to the board meeting to the 1st of month, the month prior to the board meeting. Reminder language about the required Basin Roundtable approval letter was included. Redundant language concerning the application was removed.
- **Pages 9-11:** To minimize redundancy and confusion the unnecessary language concerning the WSRA application was removed. All requirements are clearly detailed in the application.
- **Page 12:** Updated the language concerning the new shortened application deadline. Also included a statement clearly noting final CWCB authority on the approval or denial of all applications to the statewide account.
- **Page 12:** The match requirement for applications to the statewide account was increased from 20% to 25%. A requirement was also added that a minimum of 5% of total WSRA funds must come from the applicant or other 3rd party sources. In other words, both the basin and applicant must contribute at least 5%.
- **Page 15:** In “Evaluation Criteria 3.j” a phrase was added noting examples of complimentary project benefits, such as providing water to CWCB for the Stream & Lake Protection Program or compact compliance.
- **Header:** Added an effective date for these revisions: February 1st (i.e. they are not intended to apply to applications to be considered at CWCB’s March 2013 meeting).
- Other minor revisions to streamline the document are reflected in the redlined version.

25. Water Supply Planning Section – WSRA Grants – New Basin Applications

- a. Town of Rangely – Rangely Raw Water Irrigation System Flow Study/Design

Action: Presentation by Greg Johnson. A motion was made by Geoff Blakeslee to approve staff recommendation, which was seconded by Diane Hoppe. The motion was approved unanimously (7-0).

Staff Recommendation: Staff recommends conditional approval of up to \$12,500 from the Yampa/White Basin Account to develop a master plan for expanding Rangely’s dual water system.

26. Stream and Lake Protection Section – Notice of 2013 Instream Flow Recommendation Appropriations in Water Divisions 1, 2 and 6

Action: Presentation by Jeff Baessler. This was an informational item only. No Board action was required.

27. Stream and Lake Protection Section – Proposed Acquisition of Contractual Interest in Water on the South Platte River

Action: Presentation by Kaylea White. No formal Board action was required at this time.

Staff Recommendation: Pursuant to ISF Rule 6b, the Board's consideration of this proposal at this meeting will initiate the 120-day period for Board review. No formal action is required at this time. Staff believes that the proposed Acquisition will benefit the ISF Program. The initial presentation of this proposal provides an opportunity to the Board and the public to identify questions or concerns that Staff or Denver Water will address at this or a subsequent meeting.

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

Action: Presentation by Ted Kowalski, Suzanne Sellers, and Linda Bassi. This was an informational item only. No Board action was required.

29. Interstate, Federal, and Water Information Section – Board of Commissioners for the County of Grand – Recreational In-Channel Diversion (RICD) Application in Case No. 5-10CW298

Action: Presentation by Ted Kowalski. A motion was made by Ty Wattenberg to approve staff recommendation, and accept the proposed stipulation with Grand County, which was seconded by Alan Hamel. The motion was approved unanimously (7-0).

Staff Recommendation: The Staff recommends that the Board discuss the proposed stipulation and decree with Board and Attorney General Staff during the Executive Session under Agenda Item 9 and subsequently take appropriate actions under Agenda Item 29.

30. Stream and Lake Protection Section – Colorado Water Trust Report on the Request for Water 2012 Program

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

31. CWCB Strategic Framework

Action: The Board chose to defer this item to the January Board meeting. No Board action was taken.

Action: Travis Smith made a motion that the Board adjourn, which was seconded by Diane Hoppe. The motion was approved unanimously (8-0).

ADJOURN