

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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FINAL AND APPROVED SUMMARY MINUTES AND RECORD OF DECISIONS JANUARY 28-29, 2013

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 Denver Marriott Tech Center, 4900 South Syracuse Street, Denver, CO 80237. 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 at the call to order were: John McClow, Russell George, April Montgomery, Ty Wattenberg, Alan Hamel, Geoff Blakeslee, Barbara Biggs, Travis Smith, and Diane Hoppe. Voting member Mike King, Executive Director, Department of Natural Resources, arrived after Agenda Item 8a. Non-voting *ex officio* members present or represented at the call to order were Ron Carleton, Deputy Commissioner of Agriculture; Dick Wolfe, State Engineer; Rick Cables, Director, Colorado Parks and Wildlife; Casey Shpall, Deputy Attorney General for Natural Resources; and Jennifer Gimbel, CWCB Director. Attorney General John Suthers was present during the executive session and Attorney General's report. 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. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present at the call to order were: John McClow, Barbara Biggs, Russell George, April Montgomery, Ty Wattenberg, Alan Hamel, Geoff Blakeslee, Travis Smith, and Diane Hoppe. Voting member Mike King, Executive Director, Department of Natural Resources, arrived after Agenda Item 24. Non-voting *ex officio* members present or represented at the call to order were Dick Wolfe, State Engineer; and Jennifer Gimbel, CWCB Director. Non-voting *ex officio member* Casey Shpall, Deputy Attorney General for Natural Resources, arrived after Agenda Item 22. Ginny Brannon, Assistant Director for Energy and Minerals; and John Stulp, Special Policy Advisor to the Governor for Water, arrived after Agenda Item 22.

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, JANUARY 28, 2013

CWCB Call to Order 8:30 AM

1. Review and Approval of Agenda

Action: Diane Hoppe made a motion to approve the agenda, which was seconded by Geoff Blakeslee. The motion was approved unanimously (9-0).

2. Review and Approval of Meeting Minutes – November 13-14, 2012 Board Meeting

Action: Diane Hoppe made a motion to approve the November 13-14, 2012 Board Meeting minutes, which was seconded by Geoff Blakeslee. The motion was approved unanimously (9-0).

3. Approve and/or Remove Items from Consent Agenda

Action: Geoff Blakeslee made a motion to accept the consent agenda, which was seconded by Ty Wattenberg. The motion was approved unanimously (9-0).

CWCB CONSENT AGENDA

1. Stream and Lake Protection Section - Statements of Opposition

- a. Case No. 1-12CW214: Application of Upper South Platte Water Conservancy District and Center of Colorado Water Conservancy District
- b. Case No. 5-12CW154: Application of Byers Peak Ranch LLLP

2. Interstate, Federal, and Water Information Section – Statement of Opposition

- a. Case No. 2-2012CW107: Application to Make Absolute by Chaffee County

3. Watershed and Flood Protection Section – Floodplain Designation

- a. “Flood Hazard Area Delineation, Marston Lake North Drainageway” by Olsson Associates, dated July 2012

4. Finance – Changes to Existing Loans

- a. Town of Georgetown – Outlet Works Modification Project

4. Future Board Meeting Dates

- | | |
|----------------|-----------------|
| a. March 19-20 | Denver |
| b. May 14-15 | Grand Junction |
| c. July 16-17 | San Luis Valley |
| d. Sept 24-25 | Telluride |
| e. Nov 19-20 | Denver |

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

5. Directors' Reports

a. DNR Executive Director

Action: Report by Mike King. 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: Report by Mike Brod. This was an informational item only. No Board action was required.

6. CWCB Strategic Plan

Action: Presentation by Tom Browning. A motion was made by Russell George to approve staff recommendation, which was seconded by Alan Hamel. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends that the Board approve the proposed CWCB Strategic Framework, dated November 14, 2012, and direct staff to post the document to the CWCB's website.

7. Finance – Recommended Prequalified Projects

Action: Presentation by Anna Mauss. A motion was made by Barbara Biggs to approve staff recommendation as amended, which was seconded by Travis Smith. The motion as amended was approved unanimously (9-0).

Staff Recommendation: Staff recommends that the Board approve the projects, as listed below, to be placed on the Prequalified Project List.

1. South Metro Water Supply Authority – WISE Partnership
 - a. Cottonwood Water and Sanitation District
 - b. Castle Pines North Metropolitan District
 - c. Dominion Water and Sanitation District
 - d. Pinery Water and Sanitation District
 - e. Rangeview Metropolitan District
 - f. Stonegate Village Metropolitan District
2. Rio Grande Water Conservation District – Atkins Ranch Water Right Purchase
3. Rio Grande Water Conservation District – Treasure Pass Transmountain Diversion Water Rights Purchase
4. San Luis Valley Water Conservancy District – Anaconda Water Rights Purchase

Amendment to Staff Recommendation: Staff recommendation was amended to update both of the Rio Grande Water Conservation District projects (Atkins Ranch Water Right Purchase and Treasure Pass Transmountain Diversion Diversion Water Rights Purchase) to read ‘acre-feet TBD’ on the average annual diversion, rather than ‘26,000 acre-feet’.

8. Interstate, Federal, and Water Information Section

- a. Annual Litigation Account Report

Action: Presentation by Ted Kowalski. A motion was made by Alan Hamel to approve staff recommendation, which was seconded by Diane Hoppe. The motion was approved unanimously (9-0).

Staff Recommendation: Staff and the Department of Natural Resources recommend that the CWCB authorize Staff to forward the proposed report to the appropriate committees.

- b. Request for Utilization of Litigation Account – Rio Grande Basin

Action: Presentation by Ted Kowalski. A motion was made by Travis Smith to approve staff recommendation, which was seconded by Barbara Biggs. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends that the Board:

- 1) Approve the expenditure of a total of \$250,000 to support the CWCB, State Engineer, 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).

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

Action: Presentation by Casey Shpall, with John Suthers, Attorney General. This was an informational item only. No Board action was required.

10. Executive Session

Action: Geoff Blakeslee made a motion for the Board to go into executive session for discussion of agenda items 10a-10f, which was seconded by Alan Hamel. The motion was approved unanimously (10-0).

- a. *Tarrant Regional Water District v. Herrmann*
- b. 2013 Temporary Leases of Water for ISF Use
- c. *Texas v. New Mexico and Colorado* (Rio Grande litigation)
- d. Case No. 4-11CW129: Application of CWCB on San Miguel River
- e. Republican River Issues
- f. A-LP Water Lease Purchase Offer

Diane Hoppe made a motion for the Board to leave executive session, which was seconded by Geoff Blakeslee. The motion was approved unanimously (10-0).

11. 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 10a-10f, and that the discussion was limited to those items only, with no action taken.

12. Interstate, Federal, and Water Information Section – Species Conservation Trust Fund

Action: Presentation by Ted Kowalski, with Jeff Ver Steeg, Assistant Director of Research, Policy, and Planning, Colorado Parks and Wildlife. A motion was made by Alan Hamel to approve staff recommendation, which was seconded by Geoff Blakeslee. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends, contingent upon appropriations, that the Board: 1) concur with the DNR Executive Director's proposed recommendation to the General Assembly to approve an expenditure of up to \$4,000,000 from the SCTF for FY 13-14 for the projects and programs outlined herein; and 2) forward a statement of concurrence to the CPW Commission.

13. Finance – 2012 Design and Construction Presentation

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

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

a. Cash Balance Report

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

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

a. Roxborough Water and Sanitation District – Raw Water Supply Project

Action: Presentation by Anna Mauss. A motion was made by Barbara Biggs to approve staff recommendation, which was seconded by Diane Hoppe. Mike King was unavailable for this motion. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$18,538,550 (\$18,355,000 for project costs and \$183,550 for the 1% Loan Service Fee) to the Roxborough Water and Sanitation District, acting by and through its Water Activity Enterprise, for costs associated with the Raw Water Supply Project from the Construction Fund. The loan terms shall be 30 years at the high-income municipal rate of 3.25% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

b. Twenty Two Road Lateral Company – Twenty Two Road Lateral Ditch Replacement Project

Action: Presentation by Ryan Edwards, with Glen Younger, President, Twenty Two Road Lateral Company, and Charles Blount, Treasurer, Twenty Two Road Lateral Company. A motion was made by Alan Hamel to approve staff recommendation, which was seconded by Russ George. Mike King was unavailable for this motion. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends the Board approve an initial loan not to exceed \$517,848 (\$512,720 for Project costs and \$5,128 for the 1% Loan Service Fee) to the Twenty Two Road Lateral Company, for the Twenty Two Road Lateral Ditch Replacement Project, from the Construction Fund. Following construction and receipt of the NRCS funds, staff further recommends the loan be amended to an amount not to exceed \$118,878 (\$113,750 for project costs and \$5,128 for the 1% Loan Service Fee) with loan terms of 30 years at a blended rate of 2.35% per annum. Security for the loan shall be in compliance with the CWCB Financial Policy #5.

c. City of Greeley – High Park Fire Restoration Project

Action: Presentation by Anna Mauss, with Eric Reckentine, Deputy Director, City of Greeley Water Resources. A motion was made by Diane Hoppe to approve staff recommendation as amended, which was seconded by Ty Wattenberg. Mike King was unavailable for this motion. The motion as amended was approved unanimously (9-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$2,020,000 (\$2,000,000 for project costs and \$20,000 for the 1% Loan Service Fee) to the City of Greeley, acting by and through its Water and Sewer Enterprise, for costs associated with construction of the High Park Fire Restoration Project from the Severance Tax Trust Fund Perpetual Base Account. The loan terms shall be 20 years at the fire mitigation interest rate of 0.0% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

Amendment to Staff Recommendation: Future CWCB fire mitigation loan requests may be considered for terms up to 20 years.

16. Value of Water – Public Survey Results

Action: Presentation by Tom Browning, with Jacob Borenstein. This was an informational item only. No Board action was required.

17. Finance – Projects Bill

Action: Presentation by Tim Feehan. A motion was made by Alan Hamel to approve staff recommendation, which was seconded by Ty Wattenberg. Mike King was unavailable for this motion. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends that the Board, within the 2013 Projects Bill, change the severance tax perpetual base account from an account to a fund.

a. Instream Flow Acquisitions – Statutory Language Change

Action: Presentation by Linda Bassi, with Andy White, Legislative Program Manager, Department of Natural Resources, and Mike Browning, President, Colorado Water Trust. A motion was made by Geoff Blakeslee to approve staff recommendation, which was seconded by Barbara. April Montomergy abstained from this vote and Diane Hoppe opposed this motion. The motion was approved (9-1).

Staff Recommendation: Staff recommends that the Board authorize the inclusion of a section in the 2013 Projects Bill that amends section 37-60-123.7(1), C.R.S. to allow use of the funds authorized therein for the costs of water acquisitions that will improve the natural environment to a reasonable degree.

b. Chatfield Reallocation – Orphan Shares Purchase

Action: Presentation by Tom Browning. A motion was made by Barbara Biggs to approve staff recommendation, which was seconded by Russell George. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends that the Board request the General Assembly to authorize up to \$49 million in the 2013 Projects Bill, from the Severance Tax Trust Fund Perpetual Base Account, to fund the Chatfield Reservoir Reallocation project to acquire reservoir storage space.

c. South Platte Groundwater Study Funding

Action: Presentation by Tim Feehan. A motion was made by Diane Hoppe to approve staff recommendation, which was seconded by Alan Hamel. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends that the Board request the General Assembly to appropriate up to \$250,000 in the 2013 Projects Bill, from the Construction Fund, for the board to collect and analyze data, perform updates, make enhancements to and perform model runs with the South Platte decision support system (SPDSS), to install and monitor various devices, conduct public outreach, and other efforts as necessary to assist in determining the cause and possible remediation of high ground water levels in the South Platte River Basin.

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

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

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

Action: Presentation by Kaylea White. A motion was made by Barbara Biggs to approve staff recommendation as amended, which was seconded by Alan Hamel. The motion as amended was approved unanimously (10-0).

Amended Staff Recommendation: Staff recommends that the Board:

- a. Accept the interest in water that would be provided by Denver Water under the Water Delivery Agreement;
- b. Determine that the amounts set forth in the Water Delivery Agreement to be documented in the water court decree are appropriate to preserve the natural environment to a reasonable degree on the subject reach of the South Platte River in the time, amounts and locations provided by the Agreement;
- c. Determine that the best use of the interest in water to be acquired is in the time, amounts and locations provided by the Water Delivery Agreement; and
- d. Authorize the CWCB Director to finalize and sign the Water Delivery Agreement.

20. Stream and Lake Protection Section – Application of Board of County Commissioners of Clear Creek County and Colorado Historical Society

Action: Presentation by Kaylea White, with Steve Smith, Senior Water Resources Engineer, Applegate Group, Inc., and Jay Skinner, Water Resources Unit Manager, Colorado Parks and Wildlife. A motion was made by Geoff Blakeslee to approve staff recommendation, which was seconded by Ty Wattenberg. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends that the Board:

1. Determine that the inundation does not significantly interfere with the instream flow water right on Clear Creek and therefore the natural environment of Clear Creek can continue to be preserved to a reasonable degree despite the inundation, and;
2. Approve the inundation request.

21. Presentation by Colorado Department of Agriculture – Water Systems Demonstration

Action: This item was removed from the agenda by Chairman John McCLOW.

RECESS

TUESDAY, JANUARY 29, 2013

CWCB Call to Order 8:30 AM

22. Basin Directors' Reports

- 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.

23. Finance – Changes to Existing Loans

- a. Tri-County Water Conservancy District – Tri-County Water Hydropower Project

Action: Presentation by Kirk Russell, with Mike Berry, General Manager, Tri-County Water Conservancy District. A motion was made by April Montgomery to approve staff recommendation as amended, which was seconded by Alan Hamel. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends the Board approve a loan increase of \$4,040,000 (\$4,000,000 for project costs and \$40,000 for the 1% Loan Service Fee), from the Construction Fund, to the Tri-County Water Conservancy District, acting by and through its Water Enterprise, for the Tri-County Water Hydropower Project. The amended loan amount will be \$13,130,000 (\$13,000,000 for project costs and \$130,000 for the 1% Loan Service Fee). The loan terms shall remain 30 years at the hydroelectric rate of 2.0% per annum. Security for the loan shall be in compliance with the CWCB Financial Policy #5. All previously approved contract conditions shall remain.

Amendment to Staff Recommendation: Board approved to include this loan increase within the 2013 Projects Bill.

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

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

25. Water Supply Planning Section – WSRA Applications

- a. Colorado Foundation for Water Education – Solicitation of Stakeholder Input and Advice

Action: Presentation by Greg Johnson. A motion was made by Travis Smith to approve staff recommendation, which was seconded by Alan Hamel. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends approval of up to \$33,237 from the Rio Grande Basin Account to assist in the funding of the Solicitation of Stakeholder Input and Advice through publication of a Rio Grande Edition of Headwaters Magazine.

- b. Animas Airpark Property Owners Association – Animas Airpark Water Distribution System

Action: Presentation by Greg Johnson, with Robert Wolff, Animas Airpark Property Owners' Association. A motion was made by April Montgomery to approve staff recommendation, which was seconded by Geoff Blakeslee. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends approval of up to \$20,000 from the Southwest Basin Account to assist in the funding of the Animas Airpark Water Distribution System.

- c. Purgatoire River Water Conservancy District – Purgatoire River Reach 3 Habitat Improvement Project

Action: Presentation by Todd Doherty. A motion was made by Alan Hamel to approve staff recommendation, which was seconded by Ty Wattenberg. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends approval of up to \$26,200 from the Arkansas Basin Account to assist in the funding of Purgatoire River Reach 3 Habitat Improvement Project contingent upon the resolution of the issues and additional needs identified in this summary.

- d. Grand County – Gore Canyon Whitewater Park at Pumphouse – Colorado River

Action: Presentation by Ted Kowalski, with Suzanne Sellers, Caroline Bradford, Grand County Project Coordinator, Merrit Linke, Grand County Commissioner, James Newberry, Grand County Commissioner, and Lurline Underbrink-Curran, County Manager, Grand County. A motion was made by Russell George to explicitly waive the requirement that this application come before the Board in either September or March as the WSRA grant rules state, and to approve the request to help fund the Gore Canyon Whitewater Park at Pumphouse in the amounts of \$100,000 from the Colorado Basin Account and \$400,000 from the Statewide Account, subject to the following two conditions: 1) the applicant must have the funding necessary to construct the RICD in place before funds are disbursed; and, 2) the applicant must have obtained an RICD decree from the water court before the funds are disbursed. The motion was seconded by Barbara Biggs. Diane Hoppe opposed this motion. The motion as amended was approved (9-1).

26. Water Supply Planning Section – Western Governors' Association Presentation on the Recent Report, *Water Transfers in the West*

Action: Introduction by Todd Doherty, with presentation by Tom Iseman, Program Director for Water Policy and Implementation and Climate Adaptation, Western States Governor's Association. This was an informational item only. No Board action was required.

27. Water Supply Planning Section – Presentation/Discussion of State Water Planning Efforts

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

28. Water Supply Planning Section – Water Efficiency Update

Action: Presentation by Kevin Reidy. This was an informational item only. No Board action was required.

29. Water Supply Planning Section – Basin Roundtable Project Exploration Committee Report

Action: Introduction by Jacob Bornstein, with presentation by Gary Barber, Chairman, Arkansas Basin Roundtable, and Ken Spann, Taylor River Director, Upper Gunnison Board, Representative for Upper Gunnison Water Conservancy District Board on the Gunnison Roundtable. Additional comment was given by Janet Bell, Member, Metro Roundtable. A motion was made by Geoff Blakeslee to recommend that the Board not move forward with funding additional work by the Basin Roundtable Project Exploration Committee at this time, which was seconded by April Montgomery. Alan Hamel opposed this motion. The motion was approved (9-1).

30. Stream and Lake Protection Section – Instream Flow Recommendations in Jackson County

Action: Presentation by Jeff Baessler, with Kent Crowder, President, Jackson County Water Conservancy District, Carl Trick, Jackson County Water Conservancy District, and Roy Smith, BLM. A motion was made by Ty Wattenberg to remove the North Fork of the North Platte River, South Fork of Big Crick, and Wheeler Creek from the CWCB Instream Flow Section's active list of appropriations, which was seconded by Alan Hamel. April Montgomery and Geoff Blakeslee opposed this motion. The motion was approved (8-2).

31. Stream and Lake Protection Section – Instream Flow Appropriations in Water Division 6

Action: Presentation by Jeff Baessler. A motion was made by Ty Wattenberg to approve staff recommendation, which was seconded by Alan Hamel. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends that, pursuant to ISF Rule 5d., the Board declare its intent to appropriate an ISF water right on each stream segment listed on the Tabulation of Instream Flow and Natural Lake Level Recommendations, and direct Staff to publicly notice the Board's declaration of its intent to appropriate.

DIVISION	STREAM NAME	COUNTY	RECOMMENDER
6	Government Creek (<i>Headwaters to the Government Ditch No. 2</i>)	Jackson	Bureau of Land Management
6	Red Creek (<i>Boundary Routt National Forest to Confl. Willow Creek</i>)	Routt	Bureau of Land Management

32. Watershed and Flood Protection Section – Floodplain Rules and Regulations Update

Action: Presentation by Jamie Prochno. This was an informational item only. No Board action was required.

33. Presentation by Southeastern Colorado Water Conservancy District

Action: Presentation by Jim Broderick, Executive Director, Southeastern Colorado Water Conservancy District. This was an informational item only. No Board action was required.

ADJOURN

Ty Wattenberg made a motion to adjourn the January 2013 Colorado Water Conservation Board Meeting. Geoff Blakeslee seconded the motion, which was passed unanimously (10-0).