

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

1580 Logan Street, Suite 600
Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 894-2578
www.cwcb.state.co.us



DRAFT

SUMMARY MINUTES AND RECORD OF DECISIONS JULY 16-17, 2013

John W. Hickenlooper
Governor

Mike King
DNR Executive Director

James Eklund
CWCB Director

A regular meeting of the Colorado Water Conservation Board (CWCB) was convened at Adams State University in the Student Union Building, located at 1601 First Street, Alamosa, CO 81101. The meeting was called to order by Chair Alan Hamel. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: John McClow, Russell George, April Montgomery, Ty Wattenberg, Alan Hamel, Travis Smith, James R. L. Gallagher, Diane Hoppe (by conference call), and Mike King. Non-voting *ex officio* members present or represented were Dick Wolfe, State Engineer; Casey Shpall, Deputy Attorney General for Natural Resources; and James Eklund, CWCB Director. Also present were Ginny Brannon, Assistant Director for Energy and Minerals; Ron Carleton, Deputy Commissioner, Colorado Department of Agriculture; Rick Cables, Director, Colorado Parks and Wildlife; and John Stulp, Special Policy Advisor to the Governor for Water. Voting member Patricia Wells arrived after agenda item 5.

On the second day, the meeting was called to order by Chair Alan Hamel. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: John McClow, Russell George, Ty Wattenberg, Alan Hamel, Travis Smith, James R. L. Gallagher, Patricia Wells, Diane Hoppe (by conference call), and Mike King. Non-voting *ex officio* members present or represented were Dick Wolfe, State Engineer; Casey Shpall, Deputy Attorney General for Natural Resources; and James Eklund, CWCB Director. Also present were Ginny Brannon, Assistant Director for Energy and Minerals; Ron Carleton, Deputy Commissioner, Colorado Department of Agriculture; and 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, JULY 16, 2013

CWCB Call to Order 9:00 AM

1. Review and Approval of Agenda

Action: Director Hamel informed the Board that agenda items 20 and 22 would be presented in reverse order. Director Hamel noted that executive session item 10e. Case No. 4-11CW129: Application of Colorado Water Conservation Board (Notice of Appeal) had been added to the agenda. Also added to the agenda was agenda item 23f. Replacement of Measuring Devices on Grand Mesa. Item 1d. Case No. 6-13CW046: Application of South Gothic Ecological Holding Co. and Rocky Mountain Biological Laboratory was removed from the Consent Agenda and added to the regular agenda as item 14a. Agenda item 17 was modified to include a general update on the Rio Grande Cooperative Project, and agenda item 18 was modified to include an update on local wildfire conditions from Hinsdale County Commissioners and USFS Rio Grande National Forest Supervisor Dan Dallas. Ty Wattenberg made a motion to approve the agenda as amended, which was seconded by Travis Smith. The motion was approved unanimously (9-0). Patricia Wells was unavailable for this motion.

2. Swearing In of Directors

Action: Board Member James R. L. Gallagher was formally sworn in as a Board Member of the Colorado Water Conservation Board.

3. Review and Approval of Meeting Minutes – May 14-15, 2013 Board Meeting, and June 10, 2013 Special Executive Session

Action: Travis Smith made a motion to approve the May 14-15, 2013 Board Meeting minutes as amended, which was seconded by John McClow. The motion was approved unanimously (9-0). Patricia Wells was unavailable for this motion. Ty Wattenberg made a motion to approve the June 10, 2013 Special Executive Session minutes, which was seconded by James R. L. Gallagher. The motion was approved unanimously (9-0). Patricia Wells was unavailable for this motion.

4. Approve and/or Remove Items from Consent Agenda

Action: Travis Smith made a motion to accept the consent agenda with that item 1d. removed, which was seconded by Ty Wattenberg. The motion was approved unanimously (9-0). Patricia Wells was unavailable for this motion. Consent agenda item 1d. was placed on the regular agenda as item 14a.

CWCB CONSENT AGENDA

1. Stream and Lake Protection Section – Statements of Opposition

- a. Case No. 2-13CW3000: Application of New Elk Coal Company, LLC
- b. Case No. 6-13CW3003: Application of Entelco Corporation
- c. Case No. 6-13CW3004: Application of Plug Properties, LLC
- d. ~~Case No. 4-13CW046: Application of South Gothic Ecological Holding Co. and Rocky Mountain Biological Laboratory~~

2. **Stream and Lake Protection Section – Temporary Lease of Water for Instream Flow Use – Winter Park Ranch Water and Sanitation District**
3. **Stream and Lake Protection Section – Case No. 5-11CW152: Application of City and County of Denver acting by and through its Board of Water Commissioners, Board of Commissioners for the County of Grand, Colorado and Colorado Water Conservation Board - Ratification of Amended Application**
4. **Finance – Recommended Prequalified Projects**

5. Future Board Meeting Dates

- | | | |
|----|------------|-----------|
| a. | Sept 24-25 | Telluride |
| b. | Nov 19-20 | Denver |

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

6. 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, Deputy Commissioner of Agriculture. This was an informational item only. No Board action was required.

- d. CWCB Director

Action: Report by James Eklund. 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: No representatives were in attendance to present on this item.

7. Interstate, Federal, and Water Information Section –Upper Colorado River Commission (UCRC) Update

Action: Presentation by John McClow. This was an informational item only. No Board action was required.

8. Interstate, Federal, and Water Information Section – Colorado River Basin Study Next Steps

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

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

Action: Presentation by Casey Shpall. This was an informational item only. No Board action was required.

10. Executive Session

Action: Travis Smith made a motion for the Board to go into executive session for discussion of agenda items 10a through 10i, which was seconded by Ty Wattenberg. The motion was approved unanimously (10-0).

- a. Case No. 5-11CW152: Application of City and County of Denver acting by and through its Board of Water Commissioners, Board of Commissioners for the County of Grand, Colorado and Colorado Water Conservation Board
- b. Case No. 1-02CW292: Application of Eldorado Artesian Springs, Inc.
- c. Case No. 4-10CW180: Application of Colorado Water Conservation Board
- d. Case No. 5-12CW154: Application of Byers Peak Ranch, LLLP
- e. Case No. 4-11CW129: Application of Colorado Water Conservation Board (Notice of Appeal)
- f. Colorado River Issues
- g. Republican River Litigation
- h. Rio Grande River Litigation
- i. *Tarrant Regional Water District v. Herrmann*

April Montgomery made a motion for the Board to leave executive session, which was seconded by Travis Smith. 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 through 10i, and that the discussion was limited to those items only, with no action taken.

12. Interstate, Federal, and Water Information Section –Bureau of Land Management (BLM)’s Grand Junction Field Office (GFO) Recommendation on Suitability to Include a Portion of the Cottonwood Creek in the National Wild and Scenic Rivers System (NWSRS)

Action: Presentation by Ted Kowalski, with Suzanne Sellers, and comments by Roy Smith, Water Rights Specialist/Wild and Scenic Rivers Lead, BLM. A motion was made by John McClow to approve staff recommendation, which was seconded by Russell George. The motion was approved unanimously (9-0). April Montgomery was unavailable for this motion.

Staff Recommendation: Staff recommends that the Board authorize Director Eklund to send the comment letter attached to the related Board memo to the BLM GFO with the Option 1 paragraph on page 2.

13. Finance/Interstate & Federal Section – Animas-La Plata (A-LP) Update

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

14. Stream and Lake Protection Section – Draft Amendments to Policy 19 (Expenditures for Instream Flow Acquisitions)

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

- a. Case No. 4-13CW046: Application of South Gothic Ecological Holding Co. and Rocky Mountain Biological Laboratory

Action: Presentation by Kaylea White. A correction in the title of the item was noted, which is listed as corrected above in 14a. A motion was made by John McClow to approve staff recommendation, which was seconded by Ty Wattenberg. The motion was approved unanimously (9-0). April Montgomery was unavailable for this motion.

15. Criteria and Guidelines for Fallowing-Leasing Pilot Projects

Action: Presentation by Tom Browning, with Kevin Rein, Colorado Division of Water Resources. Comments by Jay Winner, Lower Arkansas Valley Water Conservancy District; Peter Nichols, Legal Counsel to the Lower Arkansas Valley Water Conservancy District; Terry Scanga, Upper Arkansas Water Conservancy District; and Gerry Knapp, Water Resources Program Manager, Aurora Water. This was an informational item only. No Board action was required.

16. Watershed & Flood Protection Section - Rio Grande Headwaters Restoration – Project Presentations

Action: Introduction by Chris Sturm, with presentations by Rio de la Vista, Rio Grande Headwaters Land Trust; Cindy Medina, Alamosa Riverkeeper; and Heather Dutton, Rio Grande Headwaters Restoration Project. This was an informational item only. No Board action was required.

17. Finance – Beaver Park Reservoir Rehabilitation Update

Action: Presentation by Travis Smith, with Patt Dorsey, Southwest Regional Manager for Colorado Parks and Wildlife. This was an informational item only. No Board action was required.

18. Watershed & Flood Protection Section – Colorado Wildfire Assessments

a. Colorado Wildfire Overview

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

b. Local Wildfire Perspective

Action: Presentation by Dan Dallas, USFS Supervisor, Rio Grande National Forest, with Tom Spezzi, Coordinator for REACT (Rio Grande Watershed Emergency Action Coordination Team); with Cindy Dozier, Chair, Hinsdale County Board of County Commissioners. Comments by Max Vezzani, Huerfano County Commissioner. This was an informational item only. No Board action was required.

c. Post-Wildfire Financial Support

Action 1: Presentation by Tim Feehan. A motion was made by Russell George to authorize and make available \$2,500,000 to the Governor of Colorado, within the Board's current statutory ability to do so and where the Board lacks current legislative authority to do so, authorize a request of the Joint Budget Committee (JBC) an emergency appropriation between now and convening of legislature in January at which time the JBC will follow its routine procedure to run a supplemental to replace that money from appropriate sources, which was seconded by Ty Wattenberg. The motion was approved unanimously (8-0). April Montgomery and Diane Hoppe were unavailable for this motion.

Action 2: A motion was made by Russell George to reconsider the motion and action taken in action item 1 listed above, which was seconded by Ty Wattenberg. The motion was approved unanimously (8-0). April Montgomery and Diane Hoppe were unavailable for this motion.

Action 3: A motion was made by Russell George to revote on the motion listed in action item 1 listed above, which was seconded by Ty Wattenberg. The motion was not approved (0-8). April Montgomery and Diane Hoppe were unavailable for this motion.

Action 4: A motion was made by Patricia Wells to approve staff recommendation as amended, which was seconded by James R. L. Gallagher. The motion was approved unanimously (8-0). April Montgomery and Diane Hoppe were unavailable for this motion.

Amended Staff Recommendation: Staff recommends that the Board direct staff to work with the Governor's Office on an Executive Order that would release \$2.5 million from CWCB's Severance Tax Trust Fund Perpetual Base Account to the Disaster Emergency Fund to assist with emergency preparedness, flood warning and post fire mitigation for the West Fork Complex Fire burn areas.

An Executive Order is necessary because of the urgency of the relief efforts necessary to protect human health and the environment. Federal sequestration is impairing the flow of relief funding due to the timing of the West Fork Complex Fire, necessitating the need for immediate financial relief. The authority for the Executive Order is C.R.S. sections 28-3-104 and 24-33.5-701, *et seq.*

The following is CWCB's recommendation of what should be included in the Executive Order:

- \$2.5 million transferred from the Severance Tax Trust Fund Perpetual Base Account to the Disaster Emergency Fund.
- CWCB is the agency assigned with administering the disbursement of the monies to include project review, approval, contracting and accounting.
- Hinsdale County is identified as the fiscal agent. CWCB contracts directly with Hinsdale County on all work and all funds are disbursed directly to Hinsdale County. The County then disburses those funds directly to the contractor or entity performing the work through a separate contract.
- CWCB's Watershed Restoration Program guidelines will be used as a template to review and consider projects submitted by Hinsdale County for funding. The Executive Director of DNR and/or the Director of CWCB will have the authority to approve projects submitted by Hinsdale County for funding. The CWCB Board will be updated at each Board meeting on the projects completed, balance of the fund and projects under consideration.
- The funds will be available for 5 years. The CWCB Board, however, will have the authority to determine when relief efforts have been completed. Any remaining funds will be returned to the Severance Tax Trust Fund Perpetual Base Account.
- Upon completion of the relief efforts, Hinsdale County will be required to provide CWCB with a final report summarizing the work completed including field documentation, photos, funds leveraged, lessons learned and any other information that would assist other entities or organizations in addressing post fire mitigation. The report will be formally presented to the CWCB Board by Hinsdale County or its designated representative.

RECESS

WEDNESDAY, JULY 17, 2013

CWCB Call to Order 8:30 AM

19. 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~~

Action: This report was not given since April Montgomery was not in attendance.

- 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 by conference call.

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 – Patricia Wells 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 – James R. L. Gallagher.

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

20. Watershed & Flood and Water Supply Planning Sections – Colorado Parks and Wildlife Gypsum LEDE Reservoir Fish and Wildlife Mitigation Plan

Action: Presentation by Rebecca Mitchell. A typographical error in the State of Colorado Fish and Wildlife Mitigation Plan attached to the Board memo was noted as follows: at the bottom of page 4 in the last paragraph, letter e, should be corrected to read "Gypsum entered the recovery agreement under the *Upper* Colorado River Programmatic Biological Opinion". A motion was made by Patricia Wells to approve staff recommendation, which was seconded by Ty Wattenberg. The motion was approved unanimously (8-0). April Montgomery and Mike King were unavailable for this motion.

Staff Recommendation: Staff recommends that the Board adopt the Plan if approved by The Colorado Parks and Wildlife Commission as the official state position on the mitigation actions required of the Town.

21. Water Supply Planning Section – Colorado Water Plan

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

22. Water Supply Planning Section – Statewide Water Supply Initiative Update

Action: Presentation by Jacob Bornstein. A motion was made by Ty Wattenberg to approve staff recommendation, which was seconded by Travis Smith. The motion was approved unanimously (8-0). April Montgomery and Mike King were unavailable for this motion.

Staff Recommendation: Staff recommends approval of the nonconsumptive toolbox.

23. Water Supply Planning Section – Water Supply Reserve Account (WSRA) Basin Account Applications

a. Bonita Reservoir Dam Outlet Pipe Rehabilitation

Action: Presentation by Rebecca Mitchell. A motion was made by John McClow to approve staff recommendation, which was seconded by Travis Smith. The motion was approved unanimously (8-0). April Montgomery and Mike King were unavailable for this motion.

Staff Recommendation: Staff recommends approval of up to \$54,285 from the Gunnison Basin Account to help complete the Bonita Reservoir Dam Outlet Pipe Rehabilitation.

b. Curry Easements Woody Invasives Removal for the West Side of the North Fork of the Gunnison River Project

Action: Presentation by Chris Sturm. A motion was made by John McClow to approve staff recommendation, which was seconded by Ty Wattenberg. The motion was approved unanimously (8-0). April Montgomery and Mike King were unavailable for this motion.

Staff Recommendation: Staff recommends approval of up to \$8,865 from the Gunnison Basin Account for the project titled: Curry Easements Woody Invasives Removal Project – West Side of the North Fork of the Gunnison River.

c. Kerber Creek Restoration Project

Action: Presentation by Chris Sturm. A motion was made by Travis Smith to approve staff recommendation, which was seconded by John McClow. The motion was approved unanimously (8-0). April Montgomery and Mike King were unavailable for this motion.

Staff Recommendation: Staff recommends approval of up to \$34,871 from the Rio Grande Basin Account for the Kerber Creek Restoration Project (Phase 2).

d. Development and Implementation of Water Education and Networking 3-Year Program of Discussions, Forums, Workshops, Tours

Action: Presentation by Kate McIntire. A motion was made by James R. L. Gallagher to approve staff recommendation, which was seconded by Patricia Wells. The motion was approved unanimously (8-0). April Montgomery and Mike King were unavailable for this motion.

Staff Recommendation: Staff recommends approval of the applicant's request of \$30,000 from the Yampa-White-Green Basin Account for the purposes of Roundtable education and outreach, and community engagement.

e. McLave Water Association Emergency Grant

Action: Presentation by Rebecca Mitchell. A motion was made by Patricia Wells to approve staff recommendation, which was seconded by Ty Wattenberg. The motion was approved unanimously (8-0). April Montgomery and Mike King were unavailable for this motion.

Staff Recommendation: Staff recommends approval of up to \$64,300 from the Arkansas Basin Account for the McClave Water Association Water Tank Replacement Project.

f. Replacement of Measuring Devices on Grand Mesa

Action: Presentation by Rebecca Mitchell. A motion was made by John McClow to approve staff recommendation, which was seconded by Travis Smith. The motion was approved unanimously (8-0). April Montgomery and Mike King were unavailable for this motion.

Staff Recommendation: Staff recommends approval of up to \$40,000 from the Gunnison Basin Account to help complete the project titled: Replacement of Measuring Devices on Grand Mesa.

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

a. Projections and Cash Balance Report

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

25. Finance – New Water Project Loans

a. East Mesa Water Company, Ditch Piping Project

Action: Presentation by Kirk Russell. A motion was made by Russell George to approve staff recommendation, which was seconded by Patricia Wells. The motion was approved unanimously (8-0). April Montgomery and Mike King were unavailable for this motion.

Staff Recommendation: Staff recommends the Board approve an initial loan, not to exceed \$555,500 (\$550,000 for project costs and \$5,500 for the 1% Loan Service Fee) for project costs, to the East Mesa Water Company from the Construction Fund for the Ditch Piping Project. Following construction and receipt of the NRCS funds, staff further recommends the loan be amended to an amount not to exceed \$255,500 (\$250,000 for project costs and \$5,500 for the 1% Loan Service Fee) with loan terms of 30 years at an agricultural interest rate of 1.75% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

Contract Conditions will include:

1) All additional grant funds obtained for the purpose of this Project shall be submitted to CWCB to be applied to the balance of the loan within thirty (30) calendar days after receipt of said funds.

2) An NRCS contract shall be executed by the East Mesa Water Company prior to disbursement of CWCB loan funds.

- b. Boulder and Left Hand Irrigation Company – Tracy Lateral Pipeline at the Wederquist “Y” Project

Action: Presentation by Jonathan Hernandez. A motion was made by Diane Hoppe to approve staff recommendation, which was seconded by Ty Wattenberg. The motion was approved unanimously (8-0). April Montgomery and Mike King were unavailable for this motion.

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$159,075 (\$157,500 for project costs and \$1,575 for the 1% Loan Service Fee) to the Boulder and Left Hand Irrigation Company for engineering and construction costs related to the Tracy Lateral Pipeline at the Wederquist “Y” Project from the Construction Fund. The loan terms shall be 30 years at the blended interest rate of 2.35% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

Contract Conditions will include:

- 1) An easement for the pipeline through Mr. Wederquist’s property must be obtained prior to disbursement of CWCB loan funds.

- c. Henrylyn Irrigation District – Prospect Reservoir Dam Facing Project

Action: Presentation by Jonathan Hernandez. A motion was made by Diane Hoppe to approve staff recommendation, which was seconded by Travis Smith. The motion was approved unanimously (8-0). April Montgomery and Mike King were unavailable for this motion.

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$2,967,279 (\$2,937,900 for project cost and \$29,379 for the 1% service fee) to the Henrylyn Irrigation District for engineering and construction costs related to the Prospect Reservoir Dam Facing Project from the Construction Fund. The loan terms shall be 30 years at the agricultural rate of 1.75% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

- d. Town of Fowler – Augmentation Waterline Project

Action: Presentation by Anna Mauss. A motion was made by Ty Wattenberg to approve staff recommendation, which was seconded by Travis Smith. The motion was approved unanimously (8-0). April Montgomery and Mike King were unavailable for this motion.

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$277,245 (\$274,500 for project costs and \$2,745 for the 1% Loan Service Fee) to the Town of Fowler Water Enterprise for the Augmentation Waterline Project from the Construction Fund. The loan terms shall be 30 years at the municipal low income rate of 2.25% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

- e. Bellyache Ridge Metropolitan District – Well Replacement Project

Action: Presentation by Anna Mauss. A motion was made by Russell George to approve staff recommendation, which was seconded by James R. L. Gallagher. The motion was approved unanimously (9-0). April Montgomery was unavailable for this motion.

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$169,175 (\$167,500 for project costs and \$1,675 for the 1% Loan Service Fee) to the Bellyache Ridge Metropolitan District for Well Replacement Project from the Construction Fund. The loan terms shall be 30 years at the municipal high income rate of 3.0% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

ADJOURN

A motion was made by Travis Smith to adjourn the July 2013 Board meeting, which was seconded by Ty Wattenberg. The motion was approved unanimously (9-0). April Montgomery was unavailable for this motion.