

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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DRAFT

SUMMARY MINUTES AND RECORD OF DECISIONS JANUARY 27-28, 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 the Hyatt Regency Denver Tech Center located at 7800 East Tufts Avenue, Denver, CO 80237. The meeting was called to order by Chair Alan Hamel. Eight voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: Alan Hamel, John McCLOW, Diane Hoppe, April Montgomery, Ty Wattenberg, Travis Smith, Patricia Wells, and Jay Gallagher. Non-voting *ex officio* members present or represented were James Eklund, CWCB Director; Casey Shpall, Deputy Attorney General for Natural Resources; Dick Wolfe, Colorado State Engineer; Ginny Brannon, Assistant Director for Energy and Minerals; Ron Carleton, Deputy Director for the Colorado Department of Agriculture; Bob Broscheid, Colorado Parks and Wildlife Director; and John Stulp, Director of the IBCC. Non-voting *ex-officio* member John Suthers, Attorney General arrived for agenda item 9. Russell George was ill and unable to attend.

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: Alan Hamel, John McCLOW, Russell George, Ty Wattenberg, Diane Hoppe, Patricia Wells, April Montgomery, Travis Smith, and Jay Gallagher. *Ex-officio* member Mike King, Department of Natural Resources Director was present. Non-voting *ex officio* members present or represented were James Eklund, CWCB Director; Casey Shpall, Deputy Attorney General for Natural Resources; Dick Wolfe, Colorado State Engineer; Ginny Brannon, Assistant Director for Energy and Minerals; Ron Carleton, Deputy Director for the Colorado Department of Agriculture; Bob Broscheid, Colorado Parks and Wildlife Director; and John Stulp, Director of the IBCC. Russell George was ill and unable to attend.

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 27, 2014

CWCB Call to Order 9:00 AM

Chair Alan Hamel welcomed Bob Broscheid. Chair Hamel announced that Russ George will be unable to attend and Mike King will attend the second day.

1. Review and Approval of Agenda

Action: Chair Hamel updated the agenda as follows: move agenda item 17a before the afternoon break and remove agenda item 16a from the agenda. A motion to approve the agenda was made by Travis Smith, which was seconded by Ty Wattenberg. The motion was approved unanimously (8-0).

2. Review and Approval of Meeting Minutes

a. November 19-20, 2013 Board Meeting

Action: A motion to approve the minutes was made by Jay Gallagher, which was seconded by Diane Hoppe. The motion was approved unanimously (8-0).

b. December 19, 2013 Special Board Meeting

Action: A motion to approve the minutes was made by Ty Wattenberg, which was seconded by Travis Smith. The motion was approved unanimously (8-0).

3. Approve and/or Remove Items from Consent Agenda

Action: A motion to approve the consent agenda was made by April Montgomery, which was seconded by Diane Hoppe. The motion was approved unanimously (8-0).

CWCB CONSENT AGENDA

1. Interstate, Federal, and Water Information Section – Statements of Opposition

- a. Case No. 7-13CW3028: Application for Finding of Reasonable Diligence by the City of Durango
- b. Case No. 5-13CW3057: Application for Finding of Reasonable Diligence by the Town of Silverthorne

2. Stream and Lake Protection Section – Statements of Opposition

- a. Case No. 5-13CW058: Application of Charles E. Shupe & Annette R. Wescott

4. Future Board Meeting Dates

- | | |
|--------------------------|---|
| a. March 18 - 19, 2014 | History Colorado, Denver |
| b. May 21-22, 2014 | Pueblo |
| c. July 16-17, 2014 | Rangeley |
| d. September 11-12, 2014 | Glenwood Springs (joint board meeting with CPW) |
| e. November 19-20, 2014 | Berthoud |

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

5. Directors' Reports

a. DNR Executive Director

Action: Report by Ginny Brannon. 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 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 Bob Broscheid. This was an informational item only. No Board action was required.

g. Water Resource and Power Development Authority

Action: Report by Mike Brod, the Executive Director of the Water Resource and Power Development Authority. This was an informational item only. No Board action was required.

6. Interstate, Federal, and Water Information Section – Colorado River Issues

a. Upper Colorado River Commission (UCRC) Update

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

b. Other Colorado River Issues

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

7. Interstate, Federal, and Water Information Section – Litigation Account Request

Action: Presentation by Ted Kowalski. A motion to approve the staff recommendation was made by John McClow, which was seconded by Diane Hoppe. The motion was approved unanimously (8-0).

Staff Recommendation: The Staff recommends that the Board: 1) approve the expenditure of \$200,000 from the Litigation Fund; 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).

8. 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.

9. Executive Session

Action: Under the Colorado Open Meetings Act, C.R.S. Section 24-6-402(3)(a)(II), a motion was made by Ty Wattenberg for the Board to go into executive session for the discussion of agenda items 9.a. through 9.d. The motion was seconded by April Montgomery. The motion was approved unanimously (8-0).

- a. Legal Issues concerning Loans for Boxelder Basin Regional Stormwater Authority
- b. Colorado River Issues
- c. Rio Grande River Litigation
- d. Republican River Litigation

Ty Wattenberg made a motion for the Board to leave executive session, which was seconded by April Montgomery. The motion was approved unanimously (8-0).

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 9.a. through 9.d., and that the discussion was limited to those items only, with no action taken.

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

Action: Presentation by Ted Kowalski and by Linda Bassi. Jeff Ver Steeg addressed the Board. A motion to approve the staff recommendation was made by Travis Smith, which was seconded by Patricia Wells. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends, contingent upon appropriations, that the Board: 1) concur with the DNR Executive Director’s proposed recommendations to the General Assembly

to approve an expenditure of up to \$5,000,000 from the SCTF for FY 14-15 for the projects and programs outlined herein; and 2) forward a statement of concurrence to the CPW Commission.

12. Interstate, Federal, and Water Information Section – Pitkin County RICD

Action: Presentation by Susan Sellers. Tim Beeton addressed the Board. Jason Kerry addressed the Board. Lee Roseacollis addressed the Board. Emma Schultz addressed the Board. Carl Olsen addressed the Board. Carry Sundean addressed the Board. Peter Fleming addressed the Board. A motion to approve the staff recommendation amended to add a period after compact curtailment in paragraph 24c in recommendation 1 was made by April Montgomery, which was seconded by Patricia Wells. The motion was approved unanimously (8-0).

Staff Recommendation: The Staff hereby submits recommendations for the subject RICD application as follows:

1. Staff recommends that the Board adopt the redlined version of the Amended Comprehensive Findings of Fact as attached.
2. Staff also recommends that the Board adopt the following abbreviated Findings of Fact so long as the specific conditions of the Comprehensive Findings of Fact are incorporated in the final decree:
 - ☐ The adjudication and administration of the RICD will not materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements;
 - ☐ material injury to existing ISF water rights is not a basis for denial of the RICD, but should this RICD be constructed, the Applicant should consult with the Colorado Parks and Wildlife (CPW) before and during construction and maintenance of the RICD structures to assure that these actions will not injure the natural environment that the ISF water rights protect; and
 - ☐ the adjudication and administration of the RICD, in the amounts claimed, will promote maximum utilization of the waters of the State.
3. Staff recommends that the Board instruct Staff to fully participate in the water court case to defend the subject Findings of Fact and to assure that the final decree fully complies with statute.

13. Finance/ Interstate, Federal, and Water Information Section – Animas-La Plata (A-LP) Update

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

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

- a. Projections and Cash Balance Report

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

15. Finance – New Water Project Loans

a. Boxelder Basin Regional Stormwater Authority

Action: Presentation by Jonathan Hernandez. Kenzie Griffin addressed the Board. Margaret Griffin addressed the Board. A motion to approve the staff recommendation with the corrected number 353 was made by Diane Hoppe, which was seconded by Ty Wattenberg. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$818,100 (\$810,000 for project costs and \$8,100 for the 1% Loan Service Fee) to the Boxelder Basin Regional Stormwater Authority, acting by and through its Water Activity Enterprise, for the County Road 52 Improvements Project from the Construction Fund. The loan terms shall be 15 years at the municipal middle income interest rate of 2.50% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

Additionally, Staff recommends the following contract condition: The Authority will not seek, and CWCB will not disburse, loan funds until the Authority has the right of possession to all property necessary for the East Side Detention Facility Project (CWCB Loan Contract No. C150352). If land is to be acquired through condemnation, this will be evidenced by an Order of Possession. If land is to be acquired through negotiated real estate contract(s), this will be evidenced by a binding real estate contract between the Authority and the property owner.

16. Finance – Emergency Loans

a. Sylvan Dale Ranch – Emergency Irrigation Pond Excavation Project

Action: This item was removed from the agenda.

b. Big Elk Meadows Association – Emergency Raw Water Storage Reconstruction Project

Action: Presentation by Jonathan Hernandez. Roy McCutchen addressed the Board. A motion to approve the staff recommendation was made by Diane Hoppe, which was seconded by John McClow. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$1,515,000 (\$1,500,000 for Project cost and \$15,000 for the 1% service fee) to the Big Elk Meadows Association for 100% of engineering and construction costs related to the Emergency Raw Water Storage Reconstruction Project from the Severance Tax Perpetual Base Fund, up to the approved loan amount. The loan terms shall be 3 years of no interest followed by 27 years at a middle-income municipal interest rate of 2.75% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

Additionally, staff recommends the following contract condition: Any future 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) days after receipt of said funds.

17. Finance – Loan Deferral

a. Big Elk Meadows Association

Action: Presentation by Jonathan Hernandez. A motion to approve the staff recommendation was made by Patricia Wells, which was seconded by Diane Hoppe. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve the Big Elk Meadows Association's request for financial relief by granting an annual loan payment deferment of principal and interest for three years for Loan Contract C150327. During the three year deferment interest will be adjusted from 4.5% to 0%. After the deferral period the interest rate will revert to 4.5%. The repayment period will be extended three years for a loan maturity date of February 1, 2046. The deferment will expire, and the Associations next annual payment will be due on February 1, 2017.

18. Finance – Construction Fund Non-Reimbursable Investments

a. Ag Transfer Grant

Action: Presentation by Tim Feehan. A motion to approve the staff recommendation was made by Travis Smith, which was seconded by Diane Hoppe. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends that the Board request the General Assembly to authorize \$750,000 from the Construction Fund to be appropriated to the Department of Natural Resources for allocation to the CWCB to fund the Alternative Agricultural Water Transfer Methods—Statewide Competitive Grant Program to continue the support of critical projects and activities that advance methods providing for alternatives to permanent transfer of agricultural water rights to urban areas for municipal and industrial uses.

19. Finance – Draft 2014 Projects Bill Discussion Items

Action: Presentation by Tim Feehan. A motion to approve the staff recommendation was made by Travis Smith, which was seconded by Diane Hoppe. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends that the Board include in the 2014 CWCB Projects Bill amendments to section 39-29-109(2)(a)(VIII)(B), and section 37-60-120.1(2), giving the Board clear authority to continuously appropriate and spend monies received from the sale or the lease of water associated with the Animas-La Plata Project and the Chatfield Reservoir Reallocation Project. All proceeds and interest earned from monies received from these projects shall be credited to the Colorado Water Conservation Board Construction Fund, created in section 37-60-121(1).

20. SB14-017 “Limit Use of Ag Water for Lawn Irrigation” Update

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

21. HB12-1278 Report of the South Platte River Alluvial Aquifer by Reagan Waskom

Action: Presentation by Reagan Waskom. This was an informational item only. No Board action was required.

RECESS

WEDNESDAY, NOVEMBER 20, 2013

CWCB Call to Order 9:00 AM

22. Update from the Front Range Water Council

Action: Mark Pfeiffer addressed the Board. This was an informational item only. No Board action was required.

23. Basin Directors' Reports

- a. Colorado River (Mainstream) Basin Director's Report - Russell George was unable to report at this meeting.

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 McCloy reporting.

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

- d. North Platte River Basin Director's Report – Ty Wattenberg yielded his time.

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 – 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 – Jay Gallagher reporting.

24. Watershed & Flood Protection Section – Floodplain Mapping and RiskMap Program

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

25. Watershed & Flood Protection Section – Floodplain Rules and Regulations Update

Action: Presentation by Chris Sturm. This was an informational item only. No Board action was required.

26. Watershed & Flood Protection Section – Stream Task Force and River Master Planning Update

Action: Presentation by Chris Sturm. This was an informational item only. No Board action was required.

27. Watershed & Flood Protection Section – Update on the 2013 Flood Frequency Report

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

28. HB13-1248 Fowler Pilot Project Update

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

29. Stream and Lake Protection Section – Instream Flow Appropriations in Water Divisions 1, 4 and 5

Action: Presentation by Jeff Baessler. A motion to approve the staff recommendations excluding the appropriation for the Dolores River was made by Patricia Wells, which was seconded by Travis Smith. The motion was approved unanimously (9-0). Bruce Whitehead addressed the Board. Peter Mueller addressed the Board. John Porter addressed the Board. Marc Catlin addressed the Board. David White addressed the Board. Steve Smith addressed the Board. Walter Henes addressed the Board. Bruce Smart addressed the Board. Robert Harris addressed the Board. Theresa Conley addressed the Board. Brooke Webb addressed the Board. Mike Preston addressed the Board. A motion to declare intent to appropriate with a modified Rule 5 process, delay potential hearing to 2015, and notices to contest due January 31, 2015 for the Dolores River was made by April Montgomery, which was seconded by Ty Wattenberg. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends that, pursuant to ISF Rule 5d., the Board declare its intent to appropriate an instream flow ("ISF") water right on each stream segment listed on the

Tabulation of Instream Flow and Natural Lake Level Recommendation attached to the Board memo, and direct Staff to publicly notice the Board's declaration of its intent to appropriate.

30. Water Supply Planning Section – Colorado Water Efficiency Data Portal-Implementation of HB10-1051

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

31. Water Supply Planning Section – WSRA Basin Grants

- a. Arkansas Basin – Pikes Peak Regional Water Authority: Basin Implementation Plan; Section 4.2 Watershed Health

Action: Presentation by Craig Godbout. A motion to approve the staff recommendation was made by Ty Wattenberg, which was seconded by Diane Hoppe. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends approval of up to \$19,975 from the Arkansas Basin Account for project titled: Arkansas Basin Implementation Plan – Section 4.2: Watershed Health.

- b. Arkansas Basin – Pikes Peak Regional Water Authority: Basin Implementation Plan; Section 4.3 Conservation

Action: Presentation by Craig Godbout. A motion to approve the staff recommendation was made by Travis Smith, which was seconded by Patricia Wells. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends approval of up to \$10,000 from the Arkansas Basin Account for project titled: Arkansas Basin Implementation Plan – Section 4.3: Conservation.

- c. Gunnison Basin – Town of Paonia: Raw Water Pipeline

Action: Presentation by Craig Godbout. A motion to approve the staff recommendation was made by John McClow, which was seconded by April Montgomery. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends approval of up to \$310,000 from the Statewide Account, and \$75,000 from the Gunnison Basin Account (total request of \$385,000) for project titled: Town of Paonia Raw Water Pipeline.

- d. Gunnison Basin – Lone Cabin Ditch and Reservoir Company: Lone Cabin Dam Repair and Rehabilitation Project

Action: Presentation by Craig Godbout. A motion to approve the staff recommendation was made by John McClow, which was seconded by Diane Hoppe. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends approval of up to \$83,150 from the Gunnison Basin Account (total Basin Account request of \$121,150) for project titled: Lone Cabin Ditch and

Reservoir Company - Lone Cabin Dam Rehabilitation Project.

e. Rio Grande Basin – Acequia del Cerro: Rehabilitation and Ditch Lining

Action: Presentation by Craig Godbout. A motion to approve the staff recommendation was made by Travis Smith, which was seconded by Patricia Wells. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends approval of up to \$100,000 from the Rio Grande Basin Account for project titled: La Acequia del Cerro - Rehabilitation and Ditch Lining.

f. Southwest Basin – Summit Reservoir and Irrigation Company: Evaluation of Potential Infrastructure Upgrades

Action: Presentation by Craig Godbout. A motion to approve the staff recommendation was made by April Montgomery, which was seconded by Jay Gallagher. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends approval of up to \$26,000 from the Southwest Basin Account for the study titled: Summit Reservoir and Irrigation Company - Evaluation of Potential Infrastructure Upgrades.

g. Southwest Basin – Telluride Pines Homeowners Association: Telluride Pines Water Augmentation

Action: Presentation by Craig Godbout. A motion to approve the staff recommendation was made by April Montgomery, which was seconded by Jay Gallagher. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends approval of up to \$25,000 from the Southwest Basin Account for the activity titled: Telluride Pines Homeowner's Association – Telluride Pines Water Augmentation.

h. Yampa/White Basin – Moffat County: Yampa-White Basin Projects and Methods Analysis

Action: Presentation by Craig Godbout. A motion to approve the staff recommendation was made by Jay Gallagher, which was seconded by Diane Hoppe. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends approval of up to \$20,000 from the Yampa/White/Green Basin account to help the roundtable determine its consumptive and nonconsumptive projects and methods by performing additional model simulations (Task 5).

32. Water Supply Planning Section – Chatfield Fish and Wildlife Mitigation Plan

Action: Presentation by Rebecca Mitchell. Robert Harris addressed the Board. Rick McLoud addressed the Board. A motion to approve the staff recommendation was made by Patricia Wells, which was seconded by Travis Smith. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends that the Board adopt the Fish and Wildlife Mitigation Plan for the Chatfield Reallocation Project as the official State position on the mitigation actions required for the Project.

33. Water Supply Planning Section – Statewide Water Supply Initiative and Basin Implementation Plan Update

Action: Presentation by Brent Newman. This was an informational item only. No Board action was required.

34. Water Supply Planning Section – Colorado’s Water Plan

Action: Presentations by Rebecca Mitchell, Jacob Bornstein, Taryn Finnessey, and Kate McIntire. Bart Miller addressed the Board. Theresa Conley addressed the Board. This was an informational item only. No Board action was required.

ADJOURN

A motion was made by John McClow to adjourn the January 2014 Board meeting, which was seconded by Diane Hoppe. The motion was approved unanimously (9-0).