

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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DRAFT

SUMMARY MINUTES AND RECORD OF DECISIONS MARCH 18-19, 2014

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 History Colorado Center located at 1200 Broadway, Denver, CO 80203. The meeting was called to order by Chair Alan Hamel. Ten 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, Russell George, and Jay Gallagher. *Ex-officio* member Mike King, Department of Natural Resources Director, was present. Non-voting *ex officio* members present or represented were Casey Shpall, Deputy Attorney General for Natural Resources; Dick Wolfe, Colorado State Engineer; Ginny Brannon, Assistant Director for Energy and Minerals; John Salazar, Commissioner for the Colorado Department of Agriculture; Bob Broscheid, Colorado Parks and Wildlife Director; John Stulp, Director of the IBCC; and James Eklund, CWCB Director. Attorney General John Suthers was present for agenda item 8.

On the second day, the meeting was called to order by Chair April Montgomery. 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, Russell George, and Jay Gallagher. Non-voting *ex officio* members present or represented were Casey Shpall, Deputy Attorney General for Natural Resources; Ginny Brannon, Assistant Director for Energy and Minerals; and James Eklund, CWCB Director. *Ex-officio* member Mike King, Department of Natural Resources Director, was present after agenda item 24. Mike King and Patricia Wells were unavailable after agenda item 35.

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 MARCH 18, 2014

CWCB Call to Order 9:00 AM

1. Election of Officers

Action: Travis Smith made a motion to elect April Montgomery as Chair of the Colorado Water Conservation Board, by acclamation. The motion was seconded by Patricia Wells and was approved unanimously (10-0).

Patricia Wells made a motion to elect Diane Hoppe as Vice Chair of the Colorado Water Conservation Board, by acclamation. The motion was seconded by Ty Wattenberg and was approved unanimously (10-0).

2. Review and Approval of Agenda

Action: Chair Montgomery updated the agenda as follows: agenda 17b was removed from the agenda, agenda item 11 was switched with agenda item 28, agenda item 21 was switched with agenda item 25, and agenda item 37 was added.

3. Review and Approval of Meeting Minutes – January 27-28, 2014

Action: Patricia Wells changed the spelling of Lee Rozaklis and Kerry Sundeen's names in agenda item 12. Jay Gallagher changed the spelling of Steve Harris' name in agenda item 20. A motion to approve the amended minutes was made by Diane Hoppe, which was seconded by Ty Wattenberg. The motion was approved unanimously (10-0).

4. Approve and/or Remove Items from Consent Agenda

Action: A motion to approve the consent agenda was made by Alan Hamel, which was seconded by Patricia Wells. The motion was approved unanimously (10-0).

CWCB CONSENT AGENDA

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

– The Board will be asked to ratify a Statement of Opposition that was filed by staff to protect Colorado's ability to promote maximum utilization of the waters of the State for the following Recreational In-Channel Diversion (RICD) case:

- a. Case No. 5-13CW3109: Application for Surface Water Rights for Recreational In-Channel Diversion Uses by the City of Glenwood Springs

2. Stream and Lake Protection Section – Statements of Opposition

– The Board will be asked to ratify Statements of Opposition that have been filed by staff to protect instream flow and natural lake level water rights in the following cases:

- a. Case No. 1-13CW3185: Application of City of Fort Collins
- b. Case No. 2-13CW3061: Application of Town of Palmer Lake
- c. Case No. 2-13CW3062: Application of Huerfano County Water Conservancy District

- d. Case No. 2-13CW3070: Application of Bar NI Corporation
- e. Case No. 3-13CW3015: Application of Robert and Carol Dugan
- f. Case No. 4-13CW095: Application of Hathaway Ranch Properties, LLC
- g. Case No. 4-13CW3072: Application of City of Ouray
- h. Case No. 4-13CW3074: Application of Bruce and Roy Cranor and Colorado Dream Ranch, LLC
- i. Case No. 5-13CW3088: Application of Vail Associates, Inc.
- j. Case No. 5-13CW3094: Application of Town of Breckenridge
- k. Case No. 5-13CW3105: Application of K2 Family Properties, LLC
- l. Case No. 5-13CW3108: Application of W/J Metropolitan District
- m. Case No. 6-13CW3034: Application of Imago Enterprises, Inc.
- n. Case No. 7-13CW3032: Application of Bootjack Ranch, LLC

3. **Watershed & Flood Protection Section – Floodplain Designations**

- a. "Flood Hazard Area Delineation, West Toll Gate Creek," dated November 2013 by Michael Baker, Jr., Inc.
- b. "Flood Hazard Area Delineation, Senac Creek," dated November 2013 by Matrix Design Group.

4. **Finance – Change to Existing Loan**

- a. Bellyache Ridge Metropolitan District – Well Replacement Project

5. **Future Board Meeting Dates**

- a. May 21-22, 2014 Pueblo
- b. July 16-17, 2014 Rangely
- c. September 11-12, 2014 Glenwood Springs (joint board meeting with CPW)
- d. November 19-20, 2014 Berthoud

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 John Salazar. 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 submitted by letter to the Board. This was an informational item only. No Board action was required.

7. 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.

8. Executive Session

Action: Under the Colorado Open Meetings Act, C.R.S. Section 24-6-402(3)(a)(II), a motion was made by Alan Hamel for the Board to go into executive session for the discussion of agenda items 8.a. through 8.e. The motion was seconded by Ty Wattenberg. The motion was approved unanimously (10-0).

- a. Colorado River Issues
- b. Rio Grande River Litigation
- c. Republican River Litigation
- d. Chatfield Reallocation Project – Orphan Shares/Central Colorado WCD Agreement
- e. Case No. 5-13CW3109: Application for Surface Water Rights for Recreational In-Channel Diversion Uses by the City of Glenwood Springs

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

Chair Montgomery welcomed Representative Fischer. Representative Fischer addressed the Board.

9. 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 8.a. through 8.e., and that the discussion was limited to those items only, with no action taken.

10. 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.

Jennifer Freeman of the Colorado Youth Corps Association addressed the Board.

11. Interstate, Federal, and Water Information Section – Minute 319 Delivery Plan

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

12. Water Supply Planning Section – Basin Implementation Plan Update

Action: Presentation by Jacob Bornstein, Craig Godbout, and Brent Newman. This was an informational item only. No Board action was required.

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

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

14. Water Supply Planning Section – Public Input on Colorado’s Water Plan

Action: Presentation by Kate McIntire. The following individuals addressed the Board: Bart Miller of the Western Resource Advocates; Theresa Conley of Conservation Colorado; and Tom Easley of Rocky Mountain Climate Organization. This was an informational item only. No Board action was required.

15. Water Supply Planning Section – Statewide Water Supply Initiative 2016

Action: Presentation by Jacob Bornstein. This was an informational item only. No Board action was required.

16. Water Supply Planning Section – WSRA Statewide Grant Evaluations

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

17. Water Supply Planning Section – WSRA Basin Grants

- a. South Platte and Metro - Metro Wastewater Reclamation District: South Platte River Diurnal Flow Study

Action: Presentation by Craig Godbout. Barbara Biggs of the Metro Wastewater Reclamation District addressed the Board. A motion to approve the staff recommendation was made by Patricia Wells, which was seconded by Diane Hoppe. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends approval of up to \$50,000 from the Metro Account and \$50,000 from the South Platte Basin Account (for a total of \$100,000) to fund the study titled: Metro Wastewater Reclamation District – South Platte River Diurnal Flow Study.

- b. Arkansas - Huerfano Count Water Conservancy District: Red Wing Augmentation Facility

Action: This staff recommendation was removed from the agenda. No Board action was required.

- c. Arkansas - Pikes Peak Regional Water Authority: Arkansas Basin Implementation Plan; Section 2.1, Nonconsumptive Needs; Section 4.1, Education, Participation and Outreach; and Section 4.7, Nonconsumptive Projects and Methods

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

Staff Recommendation: Staff recommends approval of up to \$58,750 from the Arkansas Basin Account to help complete the project titled: Arkansas Basin Implementation Plan – Section 2.1, Nonconsumptive Needs; Section 4.1: Education, Participation, and Outreach; and Section 4.7, Nonconsumptive Projects and Methods.

- d. Colorado - East Mesa Water Company - East Mesa Water Company Tunnel Bypass Pipeline

Action: Presentation by Craig Godbout. A motion to approve the staff recommendation was made by Russell George, which was seconded by Jay Gallagher. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends approval of up to \$60,000 from the Colorado Basin Account for the project titled: East Mesa Water Company Tunnel Bypass Pipeline.

- e. Gunnison - City of Gunnison: Gunnison River Riparian and Diversion Restoration Project

Action: Presentation by Craig Godbout. Steve Westbay of the City of Gunnison addressed the Board. A motion to approve the staff recommendation was made by John McClow, which was seconded by Ty Wattenberg. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends approval upon the condition of providing the additional documentation specified below in Issues/Additional Needs section of up to \$45,540 from the Gunnison Basin account to help fund the Gunnison River Riparian and Diversion Restoration Project.

- f. Gunnison - Colorado River Water Conservation District: NoChicoBrush Agricultural Water Research Project

Action: Presentation by Craig Godbout. John Herald of NoChicoBrush addressed the Board. John McClow amended the staff recommendation to the Gunnison Basin Account, not the Colorado Basin Account. A motion to approve the amended staff recommendation was made by Mike King, which was seconded by John McClow. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends approval of up to \$35,000 from the Colorado Basin Account for the project titled: Colorado River Water Conservation District - No Chico Brush Agricultural Water Research Project.

- g. Southwest - Animas Valley Ditch and Water Company: Animas Valley Ditch and Water Company Emergency Repair

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

Staff Recommendation: Staff recommends approval of up to \$30,000 from the Southwest Basin Account for the project titled: Animas Valley Ditch and Water Company Emergency Ditch Repair.

- h. Southwest - La Plata County Palo Verde Public Improvement District #3: La Plata County Palo Verde Public Improvement District #3 Water Delivery Project

Action: Presentation by Craig Godbout. A motion to approve the staff recommendation was made by Patricia Wells, which was seconded by Ty Wattenberg. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends approval of up to \$25,000 from the Southwest Basin Account for the project titled: La Plata County Palo Verde PID #3 Water Deliver Project.

- i. Southwest - Geothermal Greenhouse Partnership, Inc.: Geothermal Greenhouse Partnership Project

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

Staff Recommendation: Staff recommends approval of up to \$25,000 from the Southwest Basin Account for the project titled: Geothermal Greenhouse Partnership Project.

- j. Yampa/White/Green - Colorado River Water Conservation District: Basin Implementation Plan

Action: Presentation by Craig Godbout. A motion to approve the staff recommendation was made by Russell George, which was seconded by Jay Gallagher. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends approval of up to \$77,066 from the Yampa/White Basin Account to help complete the project titled: Yampa/White Basin Implementation Plan.

18. Stream and Lake Protection Section – Deferral of Consideration of Request to Inundate

Action: Presentation by Kaylea White. A motion to approve the staff recommendation was made by Travis Smith, which was seconded by Diane Hoppe. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends that the Board defer consideration of the request to inundate until after Pueblo has applied for the required state and federal permits and approvals and before it diverts the enlargement water right, so long as Pueblo agrees to the terms and conditions in its water court decree requiring Pueblo to request the Board's approval of its inundation request after it has applied for the required state and federal permits and approvals and to obtain such Board approval before it diverts the enlargement water right.

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

Action: Presentation by Linda Bassi. Amy Beatie of the Colorado Water Trust addressed the Board. A motion to approve the staff recommendation was made by Patricia Wells, which was seconded by Diane Hoppe. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends that the Board adopt revised Policy 19 with the changes made by the Board during the Board meeting.

20. Stream and Lake Protection Section – 2014 New Instream Flow Appropriations

Action: Presentation by Jeff Baessler. Frank Kugel of the Upper Gunnison River Water Conservancy District addressed the Board. This was an informational item only. No Board action was required.

21. Stream and Lake Protection Section – Instream Flow Appropriation Recommendations for 2015

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

RECESS

WEDNESDAY, MARCH 19, 2014

CWCB Call to Order 8:30 AM

22. Basin Directors' Reports

- a. Colorado River (Mainstream) 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 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.

23. Interstate, Federal, and Water Information Section – Wild and Scenic Update

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

24. Interstate, Federal, and Water Information Section – Platte River Recovery Implementation Program Update

Action: Presentation by Suzanne Sellers and Ted Kowalski. Don Ament, the Governor's representative to the Program, addressed the Board. This was an informational item only. No Board action was required.

25. HB13-1248 Fowler Pilot Project Update

Action: Presentation by Tom Browning. Jay Winner of the Lower Arkansas Valley Water Conservancy District addressed the Board. This was an informational item only. No Board action was required.

26. Water Supply Planning Section – Metering Projects Language in the Water Efficiency Grant Guidelines

Action: Presentation by Ben Wade. A motion to approve the staff recommendation was made by Alan Hamel, which was seconded by Patricia Wells. The motion was approved unanimously (10-0).

Staff Recommendation: CWCB Staff recommends the CWCB Board approve or amend new language in the Guidelines for Water Conservation Implementation Projects concerning metering infrastructure projects.

27. Watershed & Flood Protection Section –Spring Climate Forecast and Runoff Potential

Action: Presentation by Kevin Houck. Klaus Wolter from the University of Colorado addressed the Board. This was an informational item only. No Board action was required.

28. Watershed & Flood Protection Section –Watershed Planning and Stream Restoration Update

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

29. Watershed & Flood Protection Section – The 2013 Alberta Flood - Notes from a Similar Event

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

30. 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.

31. Finance – Rodney Preisser Loan Settlement

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

Staff Recommendation: Staff recommends that the Board support the terms of the Settlement Agreement between Jason Preisser and CWCB as full repayment of the loan obligation including the release of the Deed of Trust.

32. Finance – Change to Existing Loan

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

Action: Presentation by Jonathan Hernandez. A motion to approve the staff recommendation was made by Diane Hoppe, which was seconded by Ty Wattenberg. The motion was approved unanimously (10-0).

Staff Recommendation: The Boulder and Left Hand Irrigation Company (Company) received approval of a \$157,500 CWCB loan (Contract C150357) to finance the Tracy Lateral Pipeline at the Wederquist “Y” Project (Project) in July 2013. The purpose of the Project is to improve the hydraulic efficiency of the ditch while reducing the Company’s operation and maintenance cost. In response to the bids received, the Company is requesting a loan increase of \$42,500 as the total cost of the Project has increased from \$175,000 to \$223,500. See attached Project Data Sheet for a location map and project summary.

33. Water Supply Planning - WSRA Grant Scope of Work Change

a. North Delta Irrigation Company - Tunnel Reconstruction Project

Action: Presentation by Kirk Russell. A motion to approve the staff recommendation was made by John McClow, which was seconded by Alan Hamel. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends the Board approve up to \$82,686 from the Statewide Account to fund the additional work necessary to complete the North Delta Irrigation Company’s – Ditch System Study.

34. Finance – Severance Tax Operational Fund Grants

Action: Presentation by Steve Biondo, Tim Feehan, and Brian Epstein. A motion to approve the staff recommendation was made by Ty Wattenberg, which was seconded by Travis Smith. The motion was approved unanimously (10-0).

Staff Recommendation: Staff recommends that the Board approve the proposed funding for each of the projects from the Severance Tax Operational Fund as summarized as Table 1 to this memo. Recommended projects are numbered 1 – 27 and projects not recommended are numbered 28 – 32.

35. Finance – Emergency Flood Loan Presentation

Action: Presentation by Kirk Russell and Mike Serlet. Gary Gerard of Consolidated Home Supply addressed the Board. This was an informational item only. No Board action was required.

36. 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.

37. Consideration of a Public Trust Doctrine Resolution

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

ADJOURN

A motion was made by Jay Gallagher to adjourn the March 2014 Board meeting, which was seconded by Ty Wattenberg. The motion was approved unanimously (8-0).