



# COLORADO

## Colorado Water Conservation Board

Department of Natural Resources

John W. Hickenlooper  
Governor

Mike King  
DNR Executive Director

James Eklund  
CWCB Director

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### FINAL

## Summary Minutes and Record of Decisions

### January 26-27, 2015 Board Meeting

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A regular meeting of the Colorado Water Conservation Board (CWCB) 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 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, April Montgomery, Ty Wattenberg, Travis Smith, Patricia Wells, Russell George, and Jay Gallagher. Diane Hoppe was available by conference call. Non-voting *ex officio* members present or represented were Casey Shpall, Deputy Attorney General for Natural Resources; Dick Wolfe, Colorado State Engineer; Bob Broscheid, Colorado Parks and Wildlife Director; John Stulp, Director of the IBCC; and James Eklund, CWCB Director.

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. Diane Hoppe was available by conference call. Non-voting *ex officio* members present or represented were Casey Shpall, Deputy Attorney General for Natural Resources; Dick Wolfe, Colorado State Engineer; John Stulp, Director of the IBCC; and James Eklund, CWCB Director. Diane Hoppe was available by conference call. *Ex-officio* voting member Mike King was available after agenda item 19.

*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.*



## 1. Review and Approval of Agenda

**Action:** A motion to approve the agenda was made by Alan Hamel, which was seconded by Jay Gallagher. The motion was approved unanimously (9-0).

## 2. Review and Approval of November 19-20, 2014 Board Meeting Minutes

**Action:** A motion to approve the minutes as corrected was made by Ty Wattenberg, which was seconded by Alan Hamel. The motion was approved unanimously (9-0).

## 3. Approve and/or Remove Consent Agenda Items

**Action:** A motion to approve the consent agenda was made by Ty Wattenberg, which was seconded by Travis Smith. The motion was approved unanimously (9-0).

### 1. Statements of Opposition

*Stream and Lake Protection Section* - 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 Nos. 5-14CW3097 and 3098: Application of Byers Peak Properties LLC and Byers Peak Downhill Properties, LLC
- b. Case No. 5-14CW3122: Application of Tiger Run Owners Association
- c. Case No. 6-14CW3028: Application of M/R White River Ranch

### 2. Dolores River Instream Flow Appropriation

*Stream and Lake Protection Section* - The Board will be asked to establish the ISF Rule 5 procedural schedule for this instream flow appropriation.

### 3. New Prequalification Loans

#### *Finance Section*

- a. Lower Arkansas Valley Water Conservancy District - Water Rights Purchase

### 4. Change to Existing Loans

#### *Finance Section*

- a. Eckhardt Farms Inc. - Water Rights Purchase
- b. Santa Maria Reservoir Company - Continental Dam Spillway Restoration Project

## 4. Future Board Meeting Dates in 2014

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

## 5. Directors' Reports

- a. Department of Natural Resources Executive Director

**Action:** Report by Lauren Ris. This was an informational Item only. No Board action was required.

- b. Interbasin Compact Committee Director

**Action:** Report by John Stulp. This was an informational item only. No Board action was required.

c. Agriculture Commissioner

**Action:** Report by Jennifer Gurr. This was an informational item only. No Board action was required.

d. Colorado Water Conservation Board 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. This was an informational item only. No Board action was required.

**6. Colorado River Storage Project Act Memorandum of Agreement Consideration and Approval of Criteria Guidelines**

*Interstate, Federal, & Water Information Section*

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

**7. Upper Colorado River Commission (UCRC) Update & Approval of Resolution Honoring Larry Walkowiak**

*Interstate, Federal, & Water Information Section*

**Action:** Presentation by CWCB staff member Ted Kowalski. Report by John McClow. A motion to approve the staff recommendation was made by John McClow, which was seconded by Alan Hamel. The motion was approved unanimously (9-0).

**Staff recommendation:** Staff recommends that the Board adopt a resolution honoring Larry Walkowiak.

**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 Patricia Wells for the Board to go into executive session for the discussion of agenda items 9.a. through 9.i. The motion was seconded by Travis Smith. The motion was approved unanimously (9-0).

- a. Case No. 2007CW176 (consolidated Case Nos. 07CW54 & 07CW55): St. Jude's Co. and Reno Cerise (Appellants) v. Roaring Fork Club, L.L.C.; Basalt Water Conservancy District; and Colorado Water Conservation Board (Appellees)
- b. Colorado River System Conservation Agreement-legal issues
- c. Additional interstate Colorado River legal issues
- d. Colorado River, Navajo Nation litigation
- e. Rio Grande River interstate litigation
- f. Endangered Species Act legal issues
- g. Bear Creek Lake Water Rights Application
- h. Pagosa Area Water & Sanitation District - Loan Restructuring
- i. Animas La-Plata

Alan Hamel made a motion for the Board to leave executive session, which was seconded by Ty Wattenberg. The motion was approved unanimously (9-0).

## 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.i., and that the discussion was limited to those items only, with no action taken.

## 11. Species Conservation Trust Fund Recommendations

*Interstate, Federal, & Water Information and Stream & Lake Protection Sections*

**Action:** Presentation by CWCB staff member Ted Kowalski. A motion to approve the staff recommendation was made by Ty Wattenberg, which was seconded by John McClow. The motion was approved unanimously (9-0).

**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 15-16 for the projects and programs outlined herein; and 2) forward a statement of concurrence to the CPW Commission.

## 12. Wild and Scenic Rivers Update

*Stream & Lake Protection Section*

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

**13. Notice of 2015 Instream Flow Appropriation Recommendations in Water Divisions 1, 4, 5 and 6**  
*Stream & Lake Protection Section*

**Action:** Presentation by CWCB staff member Jeff Baessler. A motion to approve the staff recommendation was made by Jay Gallagher, which was seconded by Alan Hamel. 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 and natural lake level ("NLL") water right for each lake listed on the attached Tabulation of Instream Flow and Natural Lake Level Recommendations, and direct Staff to publicly notice the Board's declaration of its intent to appropriate.

**14. Proposed Acquisition of Contractual Interest in Water on St. Vrain Creek in Case No. 1-12CW91 (Application of St. Vrain and Left Hand WCD and County of Boulder)**  
*Stream & Lake Protection Section*

**Action:** Presentation by CWCB staff member Kaylea White. Jay Skinner, of Colorado Parks and Wildlife, addressed the Board. A motion to approve the staff recommendation was made by Diane Hoppe, which was seconded by Patricia Wells. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends that the Board:

1. Accept the interest in water that would be provided by Boulder County under the Water Delivery Agreement;
2. Determine that the amounts set forth in the Water Delivery Agreement are appropriate to preserve and improve the natural environment to a reasonable degree on the subject reach of St. Vrain Creek in the time, amounts and locations provided by the Agreement and described in this memo;
3. 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
4. Authorize the CWCB Director to finalize and sign the Water Delivery Agreement.

**15. Catlin Canal Following-Leasing Pilot Project**

**Action:** Presentation by CWCB staff member Tom Browning, Susan Schnieder of the Attorney General's Office, Leah Martinson representing the applicants, and Dick Wolfe. A motion to approve the staff recommendation was made by Alan Hamel, which was seconded by Patricia Wells. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends that the Board approve the Catlin Canal Pilot Project based on the State Engineer's written determination, including new terms and conditions as proposed in the Colorado Parks and Wildlife letter necessary for project operation and administration, that the pilot project can operate without causing injury and without impairing compliance with any interstate compact.

## **16. Basin Directors' Reports**

### **a. Colorado River (Mainstem) Basin Director's Report**

**Action:** Report by Russell George. This was an informational item only. No Board action was required.

### **b. San Juan/San Miguel-Dolores River Basin Director's Report**

**Action:** Report by April Montgomery. This was an informational item only. No Board action was required.

### **c. Gunnison River Basin Director's Report**

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

### **d. North Platte River Basin Director's Report**

**Action:** Report by Ty Wattenberg. This was an informational item only. No Board action was required.

### **e. South Platte River Basin Director's Report**

**Action:** Report by Diane Hoppe. This was an informational item only. No Board action was required.

### **f. Arkansas River Basin Director's Report**

**Action:** Report by Alan Hamel. This was an informational item only. No Board action was required.

### **g. City and County of Denver Director's Report**

**Action:** Report by Patricia Wells. This was an informational item only. No Board action was required.

### **h. Rio Grande River Basin Director's Report**

**Action:** Report by Travis Smith. This was an informational item only. No Board action was required.

### **i. Yampa-White River Basin Director's Report**

**Action:** Report by Jay Gallagher. This was an informational item only. No Board action was required.

## **17. Construction Fund and Severance Tax Perpetual Base Fund**

### *Finance Section*

### **a. Annual CWCB Water Project Loan Review**

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

**b. Projections and Cash Balance Report**

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

**18. Water Project Loan and Water Efficiency Grant**

*Finance and Water Supply Planning Sections*

**a. City of Cortez - Water Meter Replacement Project**

**Action:** Presentation by CWCB staff member Anna Mauss. A motion to approve the staff recommendation for the CWCB loan was made by Travis Smith, which was seconded by John McClow. The motion was approved unanimously (9-0). A motion to approve the staff recommendation for the water efficiency grant was made by Travis Smith, which was seconded by John McClow. The motion was approved unanimously (9-0).

**Staff Recommendation for CWCB Loan:** Staff recommends the Board approve a loan not to exceed \$858,500 (\$850,000 for Project cost and \$8,500 for the 1% service fee) to the City of Cortez, acting by and through its water activity enterprise, for engineering and construction costs related to the Water Meter Replacement Project from the Construction Fund, up to the approved loan amount. The loan terms shall be 10 years at the reduced low-income municipal interest rate of 2.1% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

**Staff Recommendation for Water Efficiency Grant:** Staff recommends the Board approve a Water Efficiency Grant not to exceed \$50,000 to the City of Cortez, acting by and through its water activity enterprise, for the installation of Automated Meter Reading (AMR) water meters related to the Water Meter Replacement Project.

**19. Changes to Existing Loans**

*Finance Section*

**a. Pagosa Area Water & Sanitation District - Dry Gulch Reservoir Loan Restructuring**

**Action:** Presentation by CWCB staff member Tim Feehan. Mike Church and Rod Proffitt, of the Pagosa Area Water & Sanitation District, addressed the Board. A motion to approve the staff recommendation was made by Travis Smith, which was seconded by Ty Wattenberg. The motion was approved unanimously (10-0).

**Staff Recommendation:** The Board directs staff to proceed with Pagosa Area Water and Sanitation District to amend its existing loan contract with the Colorado Water Conservation Board, Contract C150261, per the terms and conditions listed as 1 through 9 above. The terms and conditions detailed above shall be in the form of a signed agreement, between the Pagosa Area Water and Sanitation District, the San Juan Water Conservancy District, and the Colorado Water Conservation Board. The agreement must be executed prior to Loan Contract C150261 being amended.

b. 2013 Emergency Flood Loans - Contract Condition Change

**Action:** Presentation by CWCB staff member 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 (10-0).

**Staff Recommendation:** In regard to the emergency loans identified below, staff recommends the Board approve a change to the original Contract Condition to require all FEMA grant funds be applied to the balance of the emergency loan within thirty (30) calendar days after FEMA Project Closeout, as long as the borrower deposits received FEMA grant funds in a secured account prior to Project Closeout. The secured account shall only allow for repayment of rescinded grant funds, or to pay down the CWCB emergency loan principal. Furthermore, staff recommends the Board recognize these rescinded FEMA grants as an eligible expense in the future. Emergency Loans: C150368, C150369, C150370, C150371, C150372, C150373, C150374, C150375, C150376, C150377, C150380, C150382, C150383, C150385, C150389, C150390, C150391, C150392, C150398, CMS 71730.

c. East Mesa Irrigation Ditch Company - Tunnel Rehabilitation

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

**Staff Recommendation:** Staff recommends the Board approve a loan increase of \$202,000 (\$200,000 for Project costs and \$2,000 for the 1% service fee) for a total loan not to exceed \$757,500 (\$750,000 for Project costs and \$7,500 for the 1% service fee) to the East Mesa Water Company from the Construction Fund for the design and construction of the Ditch Piping Project. The loan terms shall be 30 years at an agricultural interest rate of 1.75% per annum. Following completion of construction and receipt of all applicable grant funds, staff will amend the loan to the reduced principal amount. Security for the loan shall be in compliance with CWCB Financial Policy #5.

Contract Conditions shall remain as follows: 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.

20. CWCB's 2015 Projects Bill

*Finance Section*

a. Colorado Watershed Restoration Program - Non-Reimbursable Investment

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

**Staff Recommendation:** Staff recommends that the Board approve this request for the General Assembly to authorize this project and appropriate \$1,500,000 from the Severance Tax Perpetual Base Fund to the Department of Natural Resources for allocation to the CWCB



for purposes of the Colorado Watershed Restoration Program.

**b. Colorado Mesonet – Non-Reimbursable Investment**

**Action:** Presentation by CWCB staff member Taryn Finnessey. A motion to approve the staff recommendation was made by Ty Wattenberg, which was seconded by Jay Gallagher. The motion was approved unanimously (10-0).

**Staff Recommendation:** Staff recommends that the Board approve this request for the General Assembly to authorize this project and appropriate \$150,000 from the Construction Fund to the Department of Natural Resources for allocation to the CWCB for partial support of the Colorado Mesonet.

**c. Projects Bill in Draft Form**

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

**21. Colorado Water Plan Update**

*Water Supply Planning Section*

**Action:** Presentations by CWCB staff member Rebecca Mitchell and Kate McIntire. This was an informational item only. No Board action was required.

**22. Water Supply Reserve Account Grants**

*Water Supply Planning Section*

**a. Arkansas – Southeastern Colorado Water Conservancy District: Lower Arkansas Valley Water Quality & Water Use Efficiency Working Group**

**Action:** Presentation by CWCB staff member Craig Godbout. Tracy Bouvette, consultant to the project, addressed the Board. 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:** Staff recommends approval of up to \$29,460 from the Arkansas Basin Account to help fund the project titled: Lower Arkansas Valley Water Quality and Water Use Efficiency Working Group.

**b. Metro – Rural Water Authority of Douglas County: Rural Well Level Monitoring in Douglas County**

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

**Staff Recommendation:** Staff recommends approval of up to \$13,977 from the Metro Basin Account to help fund the project titled: Rural Well Monitoring in Douglas County.

### **23. Wyoming Weather Modification Pilot Program - Final Results**

*Watershed & Flood Protection and Interstate, Federal, & Water Information Sections*

**Action:** Introduction by CWCB staff member Ted Kowalski. Presentation by Barry Lawrence of Wyoming Development Office and Dan Breed of the National Center for Atmospheric Research.

### **24. Floodplain Rules and Regulations Update**

*Watershed & Flood Protection Section*

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

### **25. Flood Recovery Update**

*Watershed & Flood Protection Section*

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

### **26. Colorado's Decision Support Systems—Overview and Update**

*Interstate, Federal, & Water Information Section*

**Action:** Presentations by CWCB staff member Andy Moore and Carolyn Fritz. This was an informational item only. No Board action was required.

A motion to adjourn was made by Ty Wattenberg, which was seconded by Alan Hamel. The motion was approved unanimously (10-0).