



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

John W. Hickenlooper
Governor

Mike King
DNR Executive Director

James Eklund
CWCB Director

DRAFT

Summary Minutes and Record of Decisions July 15-16, 2015 Board Meeting

A regular meeting of the Colorado Water Conservation Board (CWCB) convened at the Sky Ute Casino Resort, located at 14324 State Highway 172 North, Ignacio, CO 81137. The meeting was called to order by Vice Chair Russ George. Ten voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: Russ George, Diane Hoppe, Alan Hamel, John McClow, April Montgomery, Ty Wattenberg, Travis Smith, Jay Gallagher, and Patti Wells. *Ex-officio* member Mike King, Executive Director of the Department of Natural Resources, was present. *Non-voting ex officio* members present or represented were Casey Shpall, Deputy Attorney General for Natural Resources, Colorado Department of Law; Dick Wolfe, Colorado State Engineer for Division of Water Resources; Patt Dorsey, Colorado Parks and Wildlife Southwest Region Manager; John Stulp, Director of the IBCC; Chris Wiseman, Deputy Commissioner for the Colorado Department of Agriculture; Lauren Ris, Assistant Director Water for the Executive Director's Office; and James Eklund, Colorado Water Conservation Board Director.

On the second day, the meeting was called to order by Vice Chair Russ George. Ten voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: Russ George, Alan Hamel, John McClow, April Montgomery, Ty Wattenberg, Travis Smith, Jay Gallagher, Patti Wells, and Diane Hoppe. *Ex-officio* member Mike King, Executive Director of the Department of Natural Resources, was present. *Non-voting ex officio* members present or represented were Casey Shpall, Deputy Attorney General for Natural Resources, Colorado Department of Law; Dick Wolfe, Colorado State Engineer for Division of Water Resources; Patt Dorsey, Colorado Parks and Wildlife Southwest Region Manager; John Stulp, Director of the IBCC; Lauren Ris, Assistant Director Water for the Executive Director's Office; and James Eklund, Colorado Water Conservation Board Director.

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 Approve Agenda

Action: A motion to approve the agenda as amended with the removal of 21.b. was made by John McCloy, which was seconded by Jay Gallagher. The motion was approved unanimously (10-0).

2. Review and Approve May 20-21, 2015 Board Meeting Minutes

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

3. Approve and/or Remove Consent Agenda Items

Action: A motion to approve the amended Consent Agenda with the removal of item 2.c. was made by Patti Wells, which was seconded by Jay Gallagher. The motion was approved unanimously (10-0).

1. New Prequalification Loans

Finance Section

- a. Florida Consolidated Ditch Company - Hess Lateral Improvement Project
- b. Lookout Mountain Water District - Upper Beaver Brook Dam Spillway Improvement Project

2. Statements of Opposition

Stream & 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 No. 2-15CW3005: Application of Park Center Water District
- b. Case No. 2-15CW3010: Application of The United States of America - US Air Force*
- c. **Case No. 4-15CW016: Application of Cross Bar Ranch, Claudio Alvarez (removed)**
- d. Case No. 5-15CW3032: Application of Upper Eagle Regional Water Authority
- e. Case No. 6-14CW3043: Application of Rio Blanco Water Conservancy District*
- f. Case No. 6-15CW3009: Application of Steamboat Ski & Resort Corporation

*Motion to Intervene and Statement of Opposition filed.

3. Flood Plain Designations

Watershed and Flood Protection Section

- a. "Lower St. Vrain Watershed, Phase 2 Hydrologic Evaluation", by Jacobs, dated July 2015
- b. "Lower Big Thompson Watershed, Phase 2 Hydrologic Evaluation", by Jacobs, dated July 2015
- c. "Boulder Creek Hydrologic Analysis, Phase 2: Boulder Creek Above St. Vrain Creek", by CH2MHill, dated June 2015

- d. "Little Thompson River Hydrologic Analysis, Phase 2: Little Thompson River Above Big Thompson River", by CH2MHill, dated June 2015

4. Temporary Lease of Water for Instream Flow Use - Colorado Water Trust and Trout Unlimited

Stream & Lake Protection Section

The Board will be asked to ratify the Director's acceptance of a temporary lease of water from the Colorado Water Trust and Trout Unlimited for instream flow use on Tomichi Creek.

4. Future Board Meeting Dates in 2015

- a. September 16 & 17 Montrose
- b. November 18 & 19 TBD

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

5. Proposed Board Meeting Dates in 2016

- a. January 25 & 26 Denver Tech Center
- b. March 16 & 17 Arkansas Basin
- c. May 18 & 19 Del Norte
- d. July 13 & 14 Steamboat
- e. September 14 & 15 Colorado Basin
- f. November 16 & 17 TBD

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

6. Directors' Reports

- a. Department of Natural Resources Executive Director

Action: Report by Mike King. 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: No report given. 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 Patt Dorsey. This was an informational item only. No Board action was required.

g. Water Resource and Power Development Authority

Action: No report given as Michael Brod was not present. No Board action was required.

7. Rio Grande Cooperative Project Report

Action: Presentation by CWCB Board Member, Travis Smith. Patt Dorsey addressed the Board. CWCB staff Tim Feehan addressed the Board. A member of the public, Drew Peternell from Trout Unlimited, addressed the Board. This was an informational item only. No Board action was required.

8. Basin Directors' Report

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 McCloy. 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.

9. Colorado's Water Plan Update

Water Supply & Planning Section

Action: Report by CWCB staff Rebecca Mitchell. John Stulp, Chairman of the IBCC, presented to the Board. CWCB staff Jacob Bornstein and CWCB staff Kate McIntire presented to the Board. 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).

Public Comment Section

Bart Miller, Western Resource Advocates; Drew Peternell, Trout Unlimited; Ken Neubecker, American Rivers and Colorado Basin Roundtable; Anne Castle, Getches-Wilkinson Center for Natural Resources, Energy, and the Environment; Steve Harris, a representative from the IBCC; and Bruce Whitehead, Southwest Water Conservation District, Southwest Basin Roundtable, and IBCC member, all addressed the Board.

Staff Recommendation: Staff recommends that the CWCB recognize the hard work of the IBCC on the conceptual framework for potential future transmountain diversions and directs staff to incorporate it into Chapter 8 of the second draft of Colorado's Water Plan for the purpose of allowing public feedback in the context of the plan.

10. Financial Matters - Construction Fund and Severance Tax Perpetual Base Fund

Finance Section

a. Projections and Cash Management Report

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

11. Water Project Loan

Finance Section

a. Oligarchy Irrigation Company - Dam Outlet Works Rehabilitation

Action: Report by CWCB staff Derek Johnson. A motion to approve the staff recommendation was made by Diane Hoppe, which was seconded by Alan Hamel. The motion was approved unanimously (10-0).

Staff recommendation: Staff recommends the Board approve a loan not to exceed \$781,740 (\$774,000 for Project costs and \$7,740 for the 1% Loan Service Fee) to the Oligarchy Irrigation Company for costs associated with design and construction of the Dam Outlet Works Rehabilitation Project from the Construction Fund. Loan terms shall be 30 years at a blended interest rate of 2.40% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

12. Change to Existing Loan

Finance Section

- a. Pisgah Reservoir and Ditch Co., Mt. Pisgah Dam/Wrights Reservoir Outlet Works Rehabilitation

Action: Report by CWCB staff 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 the Board approve a loan increase of \$623,170 (\$617,000 for Project costs and \$6,170 for the 1% Loan Service Fee) for a total loan not to exceed \$1,172,261 (\$1,160,655 for Project cost and \$11,606 for the 1% Loan Service Fee) to the Pisgah Reservoir and Ditch Company for engineering and construction costs related to the Mount Pisgah Dam/Wrights Reservoir Outlet Works Rehabilitation Project from the Construction Fund. The loan terms shall remain at 30 years at a blended interest rate of 1.75% per annum. Security for the loan shall be a pledge of assessment revenues backed by an assessment covenant and the Wrights Reservoir (aka Mount Pisgah Reservoir) and Mount Pisgah Dam including all associated appurtenances, rights-of-ways, easements, and the underlying parcel, which is in compliance with CWCB Financial Policy #5.

13. Program Guidance Revisions: Colorado Watershed Restoration Program

Watershed & Flood Protection Section

Action: Report by CWCB staff Chris Sturm. A motion to approve the staff recommendation (with the addition that if the stream management plan grant language in Section 6.6 of Colorado's Water Plan changes, the language will also change in the guidance application for continuity) was made by Ty Wattenberg, which was seconded by Alan Hamel. The motion was approved unanimously (10-0).

Staff recommendation: Staff recommends that the Board approve the revised guidance and application for the Colorado Watershed Restoration Program.

14. Criteria and Guidelines Phreatophyte Legislation

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

Action: Report by CWCB staff Chris Sturm. A motion to approve the staff recommendation was made by Alan Hamel, which was seconded by Jay Gallagher. The motion was approved unanimously (10-0).

Staff recommendation: Staff recommends that the Board approve the revised guidance and application for the Invasive Phreatophyte Control Program.

15. RCPP Technical Assistance Funds

Interstate, Federal, & Water Information Section

Action: Report by CWCB staff Steve Miller. 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 seeks comments and suggestions from the Board on the outlined procedures for providing funds to RCPP applicants and participants. In addition, Board authorization for the Director to begin dispersing funds in accordance with the attached outline, as it may be modified by Board discussion is requested.

16. South Platte High Groundwater Legislation -- Criteria & Guidelines

Interstate, Federal, & Water Information Section

a. HB15-1013 -- Pilot Projects for Lowering Groundwater Table

Action: Report by CWCB staff Andy Moore. This item is informational only, and there is no action required by the Board. Staff plans to bring the criteria and guidelines back to the Board in September 2015, after the public notice period is over.

b. HB15-1178 -- Emergency Dewatering Grant Program for Gilcrest and Sterling Areas

Action: Report by CWCB staff Andy Moore. A motion to approve the staff recommendation was made by Patti Wells, which was seconded by Ty Wattenberg. The motion was approved unanimously (10-0).

Staff recommendation: CWCB staff recommends that the Board approve the criteria and guidelines for the HB15-1178 Emergency Dewatering Grant Program.

c. Consideration of Town of Gilcrest Emergency Dewatering Application

Action: Report by CWCB staff Andy Moore. A motion to approve the staff recommendation was made by Patti Wells, which was seconded by Alan Hamel. The motion was approved unanimously (10-0).

Staff recommendation: This grant will allow the Town of Gilcrest to move forward on dewatering in the area to avoid further damage to structures in the town. CWCB staff asks that the Board consider for approval, with conditions if necessary, the Town of Gilcrest emergency dewatering grant application.

17. River Protection Workgroup, Wild and Scenic River Alternatives Update

Interstate, Federal, & Water Information Section

Action: Report by CWCB staff Suzanne Sellers. Marsha Porter-Norton, facilitator; Steve Fearn of Southwestern Water Conservation District; and Chuck Wanner from Trout Unlimited addressed the

Board. CWCB staff Ted Kowalski addressed the Board. This was an informational item only. No Board action was required.

18. WSRA Grants

Water Supply & Planning Section

WSRA Applications for Consideration at the CWCB July 2015 Board Meeting			
	Basin	Applicant	Name of Water Activity
a.	Colorado	Colorado River Water Conservation District and West Divide Water Conservancy District	Kendig Reservoir Feasibility Evaluations
<p>Action: Report by CWCB staff Craig Godbout. Tyler Benton from the Wilson Water Group addressed the Board. 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).</p> <p>Staff recommendation: Staff recommends approval of up to \$40,000 from the Colorado Basin Account to help fund the study titled: Kendig Reservoir Feasibility Evaluations.</p>			
b.	Colorado	Water Enhancement Authority	Remote Cloud Seeder North Grand Mesa
<p>Action: Report by CWCB staff Craig Godbout. Mark Ritterbush from the Water Enhancement Authority addressed the Board. A motion to approve the staff recommendation was made by Ty Wattenberg, which was seconded by April Montgomery. The motion was approved unanimously (9-0).</p> <p>Staff recommendation: Staff recommends approval of up to \$25,000 from the Colorado Basin Account to help fund the project titled: Remote Cloud Seeder for North Grand Mesa.</p>			
c.	Gunnison	Water Enhancement Authority	Remote Grand Mesa Cloud Seeder
<p>Action: Report by CWCB staff Craig Godbout. 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).</p> <p>Staff recommendation: Staff recommends approval of up to \$25,000 from the Gunnison Basin Account to help fund the project titled: Remote Grand Mesa Cloud Seeder.</p>			
d.	Rio Grande	Rio Grande Watershed Conservation and Education Initiative	Meeting the Rio Grande Basin Roundtables Public Education and Public Outreach Goals
<p>Action: Report by CWCB staff Craig Godbout. Judy Lopez from the Rio Grande Basin Roundtable and Rio Grande Watershed Conservation and Education Initiative addressed the Board. A motion to</p>			

approve the staff recommendation was made by Travis Smith, which was seconded by John McClow. The motion was approved unanimously (9-0).

Staff recommendation: Staff recommends approval of up to \$45,300 from the Rio Grande Basin Account to help fund the project titled: Meeting the Rio Grande Basin Roundtable's Public Education and Public Outreach Goals.

e.	Yampa	Routt County Conservation District	Phase II Agricultural Needs/Return Flow Preliminary Assessment
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Action: Report by CWCB staff Craig Godbout. 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 approval of up to \$13,250 from the Yampa/White/Green Basin Account to fund the study titled: Yampa White Green Phase II Agricultural Needs/Return Flow Study.

19. Joint Meeting with Southern Ute & Ute Mountain Ute Tribal Councils

Action: Presentation by the Southern Ute Indian Tribe and the Ute Mountain Ute Indian Tribe. Roundtable discussion between both Tribal Councils and the CWCB Board. This was an informational item only. No Board action was required.

20. Glenwood Springs RICD

Interstate, Federal, & Water Information Section

Action: Report by CWCB staff Suzanne Sellers and CWCB staff Ted Kowalski. First Assistant Attorney General Susan Schneider addressed the Board. A motion to approve the staff recommendation was made by John McClow, which was seconded by Travis Smith. The motion was approved (8-1).

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

1. Staff recommends that the Board adopt the Staff's Recommended 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 RICDs will materially impair the ability of Colorado to fully develop and place to consumptive beneficial use its compact entitlements;
 - the proposed RICDs will not affect the natural environment that instream flow (ISF) water rights protect; and

- the adjudication and administration of the RICDs, in the amounts claimed, will not promote maximum utilization of the waters of the State.
3. Staff recommends that the Board instruct Staff to participate in the water court case to defend the subject Findings of Fact and to assure that the final decree fully complies with relevant statutes.

21. Dolores River Instream Flow Appropriation - Proposed Stipulations

Stream & Lake Protection Section

a. Dolores Water Conservancy District

Action: Report by CWCB staff Linda Bassi. A motion to approve the staff recommendation was made by Travis Smith, which was seconded by Alan Hamel. The motion was approved unanimously (9-0).

Staff recommendation: Staff recommends that the Board approve the above terms and conditions that would apply to the pending Dolores River ISF appropriation. In addition, Staff recommends that the terms and conditions be included in a stipulation that will be attached to the Board's water court decree for ISF water rights on the Dolores River.

22. Southwestern Water Conservation District Request to Address the Board on Instream Flow Policy

Stream & Lake Protection Section

Action: Report by CWCB staff Linda Bassi. John Porter, Bruce Whitehead, and Barry Spear from Southwestern Water Conservation District; Peter Flemming and Eric Kuhn from the Colorado River District; Rob Harris from Western Resource Advocates; Leigh Robertson from Sheep Mountain Alliance, and Ken Neubecker from American Rivers addressed the Board. This was an informational item only. No Board action was required.

23. Request for Cancellation of Intent to Appropriate Instream Flow Water Rights On Yellow Creek

Stream & Lake Protection Section

Action: Report by CWCB staff Linda Bassi. A motion to approve the staff recommendation was made by Ty Wattenberg, which was seconded by John McClow. The motion was approved unanimously (8-0).

Staff recommendation: Staff recommends that the Board cancel its intent to appropriate instream flow water rights on the following reaches of Yellow Creek in Water Division 6:

- Yellow Creek Upper (confluence with Barcus Creek to confluence with Lambert Springs)
- Yellow Creek Lower (confluence with Lambert Creek to confluence with White River)

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

Action: Report by Casey Shpall, Deputy Attorney General for Natural Resources. This was an informational item only. No Board action was required.

25. Executive Session

Action: Under the Colorado Open Meetings Act, C.R.S. Section 24-6-402(3)(a)(II), a motion was made by John McCLOW for the Board to go into executive session for the discussion of agenda items 25.a. through 25.e. The motion was seconded by Alan Hamel. The motion was approved unanimously (8-0).

- a. Animas-La Plata Litigation
- b. Colorado River Issues
- c. Rio Grande Legal Issues/Questions
- d. Pagosa Area Water & Sanitation Dist, Loan Restructuring
- e. Request for Authorization to Proceed to Trial in Case No. 1-12CW088 (Application of Mesa Trial Ranch LLC)

John McCLOW made a motion for the Board to leave Executive Session, which was seconded by Ty Wattenberg. The motion was approved unanimously (9-0).

26. Report from Executive Session

Action: 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 25.a. through 25.e., and that the discussion was limited to those items only, with no action taken.

27. Request for Authorization to Proceed to Trial in Case No. 1-12CW088 (Application of Mesa Trial Ranch LLC)

Stream & Lake Protection Section

Action: Report by CWCB staff Linda Bassi. A motion to approve the staff recommendation was made by Patti Wells, which was seconded by Jay Gallagher. The motion was approved unanimously (9-0).

Staff recommendation: Pursuant to ISF Rule 8j., Staff recommends that the Board authorize Staff to proceed to trial to protect its instream flow water rights in the event that Staff and the Attorney General's Office are unable to reach a settlement with Applicant before trial.

**28. Pagosa Area Water and Sanitation District - Dry Gulch Loan
Restructuring/Agreement**
Finance Section

Action: Report by CWCB staff Tim Feehan. A motion to approve the staff recommendation was made by Patti Wells, which was seconded by Jay Gallagher. The motion was approved unanimously (9-0).

Staff recommendation: Staff recommends that the Board approve the “Agreement to Restructure Colorado Water Conservation Board Dry Gulch Reservoir Loan Contract Number C150261,” and direct the CWCB Director James Eklund to execute the Agreement.

Meeting Adjourned

A motion to adjourn the July 2015 Board meeting was made by Alan Hamel, which was seconded by Ty Wattenberg. The motion was approved unanimously (9-0).