



# 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 January 25 - 26, 2016 Board Meeting

A regular meeting of the Colorado Water Conservation Board (CWCB) convened at the Hyatt Regency Denver Tech Center, located at 7800 E Tufts Ave, Denver, CO 80237. The meeting was called to order by Chair Diane Hoppe. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: Diane Hoppe, Russ George, April Montgomery, Patti Wells, Ty Wattenberg, Jay Gallagher, Travis Smith, John McClow, and Alan Hamel. Ex-officio member Mike King, Executive Director of the Department of Natural Resources, was not present. Non-voting ex officio members present or represented were Dick Wolfe, Colorado State Engineer for Division of Water Resources; Bob Broscheid, Colorado Parks and Wildlife Director; John Stulp, Director of the IBCC; Chris Wiseman, Deputy Commissioner for the Colorado Department of Agriculture; Lauren Ris, Assistant Director of Water for the Executive Director's Office; Casey Shpall, Deputy Attorney General, Colorado Department of Law Natural Resources Section, and James Eklund, Colorado Water Conservation Board Director.

On the second day, the meeting was called to order by Vice Chair Russ George. Eight voting members were present at the call to order, so a quorum was present (at least 6 required). Eight voting members present were: Russ George, April Montgomery, Ty Wattenberg, Jay Gallagher, Travis Smith, John McClow, Patti Wells, and Alan Hamel. Ex-officio member Mike King, Executive Director of the Department of Natural Resources, was not present. Non-voting ex officio members present or represented were Dick Wolfe, Colorado State Engineer for Division of Water Resources; John Stulp, Director of the IBCC; Casey Shpall, Deputy Attorney General, Colorado Department of Law Natural Resources Section, 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 was made by Travis Smith, which was seconded by Alan Hamel. The motion was approved unanimously (9-0).

## **2. Review and Approve November 18 - 19, 2015 Board Meeting Minutes**

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

## **3. Review and Approve November 4, 2015 Board Meeting Minutes**

**Action:** A motion to approve the minutes was made by Travis Smith, which was seconded by Patti Wells. The motion was approved unanimously (9-0).

## **4. Approve and/or Remove Consent Agenda Items**

**Action:** A motion to approve the Consent Agenda was made by Ty Wattenberg, which was seconded by April Montgomery. The motion was approved unanimously (9-0).

### **1. 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 and to protect CWCB's exclusive authority to hold instream flow water rights in the following water court cases:*

- a. Case No. 1-15CW3145: Application of Winding River Ranch, LLC*
- b. Case No. 3-15CW3025: Application of La Garita, LLC*
- c. Case No. 5-15CW3079: Application of Everist Materials, LLC*
- d. Case No. 5-15CW3091: Application of Town of Basalt*

### **2. Resolved Case**

#### *Stream & Lake Protection Section*

*The Board will be asked to ratify the Director's decision to settle this case by including procedures in the Stipulation to address a potential future inundation of instream flow water rights in the following case:*

- a. Case No. 4-12CW143 : Application of Ronald E. Tipping, Marie E. Tipping, William R. Patterson and Rodney C. Power*

### **3. Change to Existing Loans**

#### *Finance Section*

- a. Bergen Ditch and Reservoir Company - Bergen Reservoir No. 2 Rehabilitation*

## **5. Future Board Meeting Dates in 2015**

- |                      |                      |
|----------------------|----------------------|
| a. March 16 & 17     | La Junta             |
| b. May 18 & 19       | Del Norte            |
| c. July 13 & 14      | Steamboat            |
| d. September 13 - 15 | Colorado River Basin |
| e. November 16 & 17  | Denver               |

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 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 Chris Wiseman. 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 Michael Brod. This was an informational item only. No Board action was required.

## **7. Species Conservation Trust Fund Recommendations**

*Interstate, Federal, & Water Information Section*

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

**Staff recommendation:** Staff recommends, contingent upon appropriations, that the Board concur with the DNR Executive Director's proposed recommendations to the General Assembly to approve an expenditure of up to \$5 million from the SCTF for FY 16-17 for the projects and programs outlined herein.

## **8. Wild and Scenic River Alternatives Update**

*Interstate, Federal, & Water Information Section*

- a. Presentation on Upper Colorado River Wild and Scenic Stakeholder Group

**Action:** Report given by CWCB staff Ted Kowalski. Rob Buirgy, Upper Colorado Wild and Scenic Stakeholder Group and Chris Cares, RRC Associates, addressed the Board. This was an informational item only. No Board action was required.

- b. Presentation on Deep Creek and possible Wild and Scenic protection

**Action:** Report given by CWCB staff Ted Kowalski. Ken Neubecker, American Rivers, addressed the Board. This was an informational item only. No Board action was required.

## **9. HB15-1178 Dewatering Grant Program Application from the Town of Gilcrest**

*Interstate, Federal, & Water Information Section*

**Action:** Report given by CWCB staff Emily LoDolce. Trudy Peterson, Town of Gilcrest, addressed the Board. A motion to approve the staff recommendation was made by Travis Smith, which was seconded by Jay Gallagher. The motion was approved unanimously (9-0).

**Staff recommendation:** This grant will allow the Town of Gilcrest to move forward on finding a long-term dewatering and conveyance solution that will ultimately alleviate their damaging high groundwater problems. This application satisfies the requirements under the statute and the Board's criteria and guidelines. The CWCB staff recommends that the Board approve the Town of Gilcrest's emergency dewatering grant application in the amount of \$139,800.

## **10. Attorney General's Report, Legal Briefing, and Executive Session**

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

## **11. Executive Session**

**Action:** Under the Colorado Open Meetings Act, C.R.S. Section 24-6-402(3)(a)(II), a motion was made by Patti Wells for the Board to go into executive session for the discussion of agenda items 11.a.

through 11.j. The motion was seconded by Ty Wattenberg. The motion was approved unanimously (8-0).

- a. Glenwood Springs RICD
- b. Colorado River Legal Issues
- c. USFS Reserved Rights Litigation
- d. Bear Creek Lake Court Cases
- e. Republican River Litigation
- f. Rio Grande Interstate Litigation
- g. Pagosa Springs Water & Sanitation District - Dry Gulch Reservoir
- h. Chatfield Reallocation Project
- i. Case No. 2-12CW125: Application of United States of America, Bureau of Land Management, and Park Center Water District
- j. Dolores River Instream Flow Issues

April Montgomery made a motion for the Board to leave Executive Session, which was seconded by Alan Hamel. The motion was approved unanimously (8-0).

## **12. 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 11.a. through 11.j., and that the discussion was limited to those items only, with no action taken.

## **13. Request for Authorization to Proceed to Trial in Case No. 2-12CW125 (Application of United States of America, Bureau of Land Management, and Park Center Water District)**

*Stream & Lake Protection Section*

**Action:** A motion to approve the staff recommendation made by Alan Hamel, which was seconded by Patti Wells. The motion was approved unanimously (8-0).

**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.

## **14. AWWA M36 Water Loss Audit Pilot Training Program Workshops**

*Water Supply & Planning Section*

**Action:** Report by CWCB staff member Kevin Reidy. Steve Cavanaugh, Cavanaugh and Associates, addressed the Board. This was an informational item only. No Board action was required.

## **15. Criteria and Guidelines for Fallowing - Leasing Pilot Projects**

**Action:** Report given by CWCB staff Tom Browning and Leah Martinson, Berg Hill Greenleaf Ruscitti. Kevin Rein, DWR, addressed the Board. A motion to approve the staff recommendation was made by Alan Hamel, which was seconded by Travis Smith. The motion was approved unanimously (8-0).

**Staff recommendation:** Staff recommends Board approval of the updated Criteria and Guidelines for Fallowing - Leasing Pilot Projects, as proposed.

## **16. 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 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:** No report given.

### **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. Financial Matters - Construction Fund and Severance Tax Perpetual Base Fund**

### *Finance Section*

#### **a. Projections and Cash Management Report**

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

#### **b. Severance Tax Revenue Presentation**

**Action:** Report given by CWCB staff Kirk Russell and Bill Levine, Budget Director at the Department of Natural Resources. This was an informational item only. No Board action was required.

## **18. Water Project Loans**

### *Finance Section*

#### **a. Orchard Ranch Ditch Company - Orchard Ranch Ditch Piping**

**Action:** Report given by CWCB staff Derek Johnson. Paul Kehmeier, Orchard Ranch Ditch CO., addressed the Board. A motion to approve the staff recommendation was made by Travis Smith, 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 \$151,500 (\$150,000 for Project costs and \$1,500 for the 1% Loan Service Fee) to the Orchard Ranch Ditch Company for the Orchard Ranch Ditch Piping Project from the Severance Tax Perpetual Base Fund. Loan terms shall be 30 years at a blended rate of 1.95% per annum. Security for the loan shall comply with CWCB Financial Policy #5.

#### **b. Lake McIntosh Reservoir Company - Lake McIntosh Outlet Works Repair**

**Action:** Report given by CWCB staff Jonathan Hernandez. Nelson Tipton, Lake McIntosh Reservoir Company, addressed the Board. A motion to approve the staff recommendation was made by Patti Wells, which was seconded by Alan Hamel. The motion was approved unanimously (8-0).

**Staff recommendation:** Staff recommends the Board approve a loan not to exceed \$1,727,100 (\$1,710,000 for Project costs and \$17,100 for the 1% service fee) to the Lake McIntosh Reservoir Company for costs related to the Lake McIntosh Outlet Works Repair Project from the Construction Fund. The loan terms shall be 30 years at a blended interest rate of 2.70% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

## **19. Change to Existing Loans**

### *Finance Section*

#### **a. North Poudre Irrigation Company - Reservoir No. 4 Rehabilitation**

**Action:** Report given by CWCB staff Jonathan Hernandez. Scott Hummer, North Poudre Irrigation Company, addressed the Board. A motion to approve the staff recommendation was made by Patti Wells, which was seconded by Ty Wattenberg. The motion was approved unanimously (8-0).

**Staff recommendation:** Staff recommends the Board approve a loan increase of \$627,210 (\$621,000 for Project cost and \$6,210 for the 1% Loan Service Fee), for a total loan not to exceed \$2,263,410 (\$2,241,000 for Project cost and \$22,410 for the 1% Loan Service Fee) to the North Poudre Irrigation Company for Project costs related to the Reservoir No. 4 Rehabilitation Project, from the Construction Fund. The loan terms shall remain 30 years at a blended interest rate of 2.35% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

b. Orphan Wells of Wiggins - Collateral Change

**Action:** Report given by CWCB staff Kirk Russell. Steve Bruntz, Orphan Wells of Wiggins, addressed the Board. A motion to approve the staff recommendation was made by Patti Wells, which was seconded by Alan Hamel. The motion was approved unanimously (8-0).

**Staff recommendation:** Staff recommends that the Board approve an amendment to the Orphan Wells of Wiggins LLC 's Loan Contract C150159 changing the collateral from five shares of Riverside Reservoir stock and one share of Jackson Lake Reservoir to the Project components including the pipeline, pumps, and wells constructed with the CWCB funds. The amended contract amount will be established as the loan balance at the time of the contract amendment (approximately \$615,220.28) and an annual payment of \$36,961.30.

## **20. CWCB's 2016 Projects Bill**

### *Finance Section*

a. Animas La Plata Project - Statutory Spending Authority

**Action:** Report given by CWCB staff Tim Feehan. A motion to approve the staff recommendation was made by April Montgomery, which was seconded by Travis Smith. The motion was approved unanimously (8-0).

**Staff recommendation:** The Staff recommends the Board approve the Animas-La Plata Project statutory authority language identified above under section 37-60-120.2 for inclusion into the Colorado Water Conservation Board's 2016 Projects Bill, for consideration and approval by the General Assembly.



b. Severance Tax Perpetual Base Fund - Granting Authority

**Action:** Report given by CWCB staff Kirk Russell. A motion to approve the staff recommendation was made by Travis Smith, which was seconded by Patti Wells. The motion was approved unanimously (8-0).

**Staff recommendation:** Staff recommends the Board approve the annual transfer from the Severance Tax Perpetual Base Fund to the Construction Fund. This would add a provision to 39-29-109 of the C.R.S. to annually transfer \$5 million dollars from the Severance Tax Perpetual Base Fund to the Construction Fund for the CWCB to use in funding various studies, programs, and projects to assist in implementing actions identified with the Colorado Water Plan.

c. Statewide Water Supply Initiative (SWSI) 2016 - Funding

**Action:** Report given by CWCB staff Tom Browning. A motion to approve the staff recommendation was made by Alan Hamel, which was seconded by Ty Wattenberg. The motion was approved unanimously (8-0).

**Staff recommendation:** Staff recommends that the Board request the General Assembly to authorize up to \$1,000,000 from the Severance Tax Perpetual Base Fund to be appropriated to the Department of Natural Resources for allocation to the CWCB for the Statewide Water Supply Initiative.

d. Draft of 2016 Projects Bill Fact Sheet

**Action:** Report by CWCB staff Tim Feehan. Board gave verbal approval to move ahead with the staff recommendation.

**Staff recommendation:** Staff would recommend that the Board direct staff to proceed forward in drafting the CWCB's 2016 Projects Bill per the sections identified in the 2016 Water Project Bill Highlights sheet that has been recently revised and is dated January 26, 2016.

**21. Instream Flow Recommendations in Water Divisions 1, 2, 4, 5 and 6**

*Stream & Lake Protection Section*

**Action:** Report given by CWCB staff Jeff Baessler. A motion to approve the staff recommendation was made by Patti Wells, which was seconded by Alan Hamel. The motion was approved unanimously (8-0).

**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 on the

attached Tabulation of Instream Flow Recommendations, and direct Staff to publicly notice the Board's declaration of its intent to appropriate.

## **22. Update to Floodplain Rules and Regulations Local Adoption Status**

### *Watershed & Flood Protection Section*

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

## **23. Rio Grande Forecasting Project Update**

### *Watershed & Flood Protection Section*

**Action:** Report by CWCB staff Joe Busto. Ken Howard, NOAA-National Severe Storms Lab, addressed the Board on the phone. Dave Gochis, National Center for Atmospheric Research, and Jeff Deems, NASA Aerial Snow Observatory, addressed the Board. Craig Cotten, Division Engineer in the Rio Grande Basin, addressed the Board. This was an informational item only. No Board action was required.

## **24. WSRA Grants**

### *Water Supply & Planning Section*

ITEM	BASIN	APPLICANT	WATER ACTIVITY
a.	Colorado	Windy Gap Bypass Committee (Applicant) Trout Unlimited (Fiscal Agent)	Windy Gap Reservoir Modification Project (Bypass Project) - Engineering

**Action:** Report by CWCB staff Craig Godbout. A motion to approve the staff recommendation was made by Travis Smith, which was seconded by April Montgomery. The motion was approved unanimously (8-0).

**Staff recommendation:** Staff recommends approval of up to \$30,000 from the Colorado Basin Account to help fund the project titled: Windy Gap Reservoir Modification Project (Bypass Project) - Engineering.

b.	Colorado	Colorado Mesa University	Integrated Water Management Planning Framework
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**Action:** Report by CWCB staff Craig Godbout. Hannah Holm, Colorado Mesa University, addressed the Board. A motion to approve the staff recommendation was made by April Montgomery, which was seconded by Jay Gallagher. The motion was approved unanimously (8-0).

**Staff recommendation:** Staff recommends approval of up to \$43,404 from the Colorado Basin Account to help fund the project titled: Integrated Water Management Planning Framework.

<b>c.</b>	<b>Metro</b>	<b>Metropolitan State University</b>	<b>Theatre Troupe Water Outreach Project</b>
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**Action:** Report by CWCB staff Craig Godbout. Nona Shipman, OWOW Center, addressed the Board. A motion to approve the staff recommendation was made by Patti Wells, which was seconded by Alan Hamel. The motion was approved unanimously (8-0).

**Staff recommendation:** Staff recommends approval of up to \$8,300 from the Metro Basin Account to help fund the project titled: MSU Denver Theatre Troupe Water Outreach Project.

<b>d.</b>	<b>Southwest</b>	<b>San Miguel Watershed Coalition &amp; TU</b>	<b>San Miguel River Stream Management Plan Pilot Project</b>
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**Action:** Report by CWCB staff Craig Godbout. Mely Whiting, Trout Unlimited, addressed the Board. A motion to approve the staff recommendation was made by April Montgomery, which was seconded by Travis Smith. The motion was approved unanimously (8-0).

**Staff recommendation:** Staff recommends approval of up to \$32,138 from the Southwest Basin Account to help fund the project titled: San Miguel River Stream Management Plan, Pilot Project.

<b>e.</b>	<b>Southwest</b>	<b>Town of Mancos</b>	<b>Mancos Raw Water Improvements</b>
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**Action:** Report by CWCB staff Craig Godbout. Robin Schmittel, Mancos Public Works, addressed the Board. A motion to approve the staff recommendation was made by April Montgomery, which was seconded by Ty Wattenberg. The motion was approved unanimously (8-0).

**Staff recommendation:** Staff recommends approval of up to \$81,765 from the Southwest Basin Account to help fund the project titled: Mancos Raw Water System Improvements.

## **25. Rainwater Harvesting Criteria and Guidelines**

**Action:** Report given by CWCB staff Tom Browning. Kevin Rein and Karlyn Armstrong, DWR, addressed the Board. A motion to approve the staff recommendation was made by Patti Wells, which was seconded by Alan Hamel. The motion was approved unanimously (8-0).

**Staff recommendation:** Staff recommends approval of the updates to the Precipitation Harvesting Criteria and Guidelines, as proposed.

### **Meeting Adjourned**

A motion to adjourn the January 2016 Board meeting was made by Travis Smith, which was seconded by Ty Wattenberg. The motion was approved unanimously (8-0).