



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

Jared Polis  
Governor

Dan Gibbs  
DNR Executive Director

Rebecca Mitchell  
CWCB Director

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## **Final Summary Minutes and Record of Decisions January 27 & 28, 2020 Board Meeting**

A regular meeting of the Colorado Water Conservation Board (CWCB) convened at the Westin Hotel 10600 Westminister Boulevard, Westminister 80020. The meeting was called to order by Chair Heather Dutton. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: Jim Yahn, Jack Goble, Heather Dutton, Celene Hawkins, Steven Anderson, Jaclyn Brown, Gail Schwartz, Jessica Brody, and Curran Trick, and ex-officio voting member Dan Gibbs, Executive Director of the Department of Natural Resources arrived at 10:30am and left at 12:50pm. Non-voting ex officio members present or represented were: Phil Weiser, Attorney General; Dan Prenzlowl, Colorado Parks and Wildlife; Kate Greenberg, Department of Agriculture Commissioner; Kevin Rein, State Engineer; Russell George, Director of Compact Negotiations; and Rebecca Mitchell, Colorado Water Conservation Board Director. Counsel to the Board, Deputy Attorney General Amy Beatie, was also in attendance.

On the second day, the meeting was called to order by Chair Heather Dutton. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). The voting members present were: Jaclyn Brown, Gail Schwartz, Jessica Brody, Steven Anderson, Curran Trick, Jim Yahn, Jack Goble, Heather Dutton, and ex-officio voting member Dan Gibbs, Executive Director of the Department of Natural Resources was absent, Tim Mauck attended in his place. Non-voting ex officio members present or represented were: Dan Prenzlowl, Colorado Parks and Wildlife; Kevin Rein, State Engineer; Russell George, Director of Compact Negotiations; and Rebecca Mitchell, Colorado Water Conservation Board Director. Counsel to the Board, Deputy Attorney General Amy Beatie, was also in attendance.



## **Monday, January 27, 2020**

### **1. Review and Approve Agenda**

Amy Beatie requested that Executive Session agenda item 15a.3 "NEPA Scoping Comments" be removed from the agenda because the discussion was no longer needed. A motion to approve the agenda was made by Gail Schwartz, which was seconded by Jim Yahn. The motion was approved unanimously (9-0).

### **2. Review and Approve November 20 & 21, 2019 Board Meeting Minutes**

A motion to approve the November 2019 Board minutes was made by Jack Goble, which was seconded by Jim Yahn. The motion was approved unanimously (9-0).

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

A motion to approve the Consent Agenda Items was made by Gail Schwartz, which was seconded by Celene Hawkins. The motion was approved unanimously (9-0).

#### **1. Statement 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. 19CW3061 (Water Division 2): Application of Thomas H. Smith*

### **4. Directors' Reports**

- a. DNR Executive Director - Dan Gibbs
- b. IBCC Director - Russell George
- c. Agriculture Commissioner - Kate Greenberg
- d. CWCB Director - Rebecca Mitchell
- e. State Engineer - Kevin Rein
- f. Division of Parks and Wildlife Director - Dan Prenzlow
- g. Water Resource and Power Development Authority - Mike Brod and Keith McLaughlin

### **5. Species Conservation Trust Fund**

*Interstate, Federal, and Water Information Section*

**Action:** Report by CWCB staff members Jojo La and Alex Funk. A motion to approve the staff recommendation was made by Jim Yahn, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends, contingent upon available revenues, that the Board:

- (1) *Concur with the DNR Executive Director's proposed recommendations to the General Assembly to approve an expenditure of up to \$4 million from the SCTF for fiscal year 2020-2021, including up to \$2 million for the CWCB priorities outlined herein; and*
- (2) *Forward a statement of concurrence to the Colorado Parks and Wildlife Commission.*

**6. Alternative Agricultural Transfer Method Grant Program**  
*Interstate, Federal, and Water Information Section*

**a) WaterNow Alliance, Alternative Transfer Methods Outreach Initiative for Local Municipal Decision Makers in Colorado**

**Action:** Report by CWCB staff member Alex Funk. Lindsey Rogers with WaterNow Alliance addressed the Board. A motion to approve the staff recommendation was made by Jim Yahn, which was seconded by Jack Goble. The motion was approved unanimously (10-0).

**Staff Recommendation:** Staff recommends approval of up to \$75,311 from the Alternative Agricultural Water Transfer Methods Grant Program to help fund the "Alternative Transfer Methods Outreach Initiative" project.

**7. Basin Fund Memorandum of Agreement Technical Assistance Grant Program**  
*Interstate, Federal, and Water Information Section*

**Action:** Report by CWCB staff member Alex Funk. Ken Curtis with Dolores Water Conservancy District addressed the Board. Steve Anderson disclosed that his employer is Uncompaghre WCD. A motion to approve the staff recommendation was made by Celene Hawkins, which was seconded by Steve Anderson. The motion was approved unanimously (10-0).

**Staff Recommendation:** Staff recommends that the Board adopt the criteria and procedures for the Basin Fund MOA Technical Assistance Grant Program. With the change that all grant applications will be evaluated according to the criteria adopted by the Board regarding prioritization of Basin Fund MOA funding

**8. Proposed Lease of Water for Instream Flow Use in the 15-Mile Reach of the Colorado River, Water Division 5 (Garfield County)**  
*Stream and Lake Protection Section*

**Action:** Report by CWCB staff member Linda Bassi. A motion to approve the staff recommendation was made by Gail Schwartz, which was seconded by Celene Hawkins. The motion was approved unanimously (10-0).

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

1. Conclude that the proposed acquisition of an interest in water under the proposed Water Lease Agreement with Garfield County is appropriate to preserve and improve the natural environment of the 15-Mile Reach of the Colorado River to a reasonable degree.
2. Determine that the acquired interest in water would be best utilized by: (a) using it to preserve the natural environment of the 15-Mile Reach of the Colorado River at rates up to the existing decreed ISF water rights in that reach; and (b) using it to improve the natural environment in that reach by protecting flows above the decreed ISF rates at rates not to exceed the U.S. Fish and Wildlife Service's flow recommendations to protect habitat for the endangered fish;
3. Approve the expenditure of up to \$14,000.00 from the Species Conservation Trust Fund for the lease in 2020;
4. Authorize the Director to execute the Water Lease Agreement; and
5. Direct staff to implement the Water Lease Agreement pursuant to the following conditions:
  - a. Releases of Ruedi water under the Water Lease Agreement shall not cause the releases out of Ruedi Reservoir to exceed 300 cfs and shall not cause flows in the Frying pan River below Ruedi

Reservoir to exceed 350 cfs. Staff shall coordinate with the Bureau of Reclamation to ensure that this condition is met.

b. If CWCB and Garfield County desire to renew the Water Lease Agreement after the first year, CWCB staff will notify local stakeholders of the potential renewal and seek input, and will seek the Board's approval of any lease renewal and related expenditure at a regularly scheduled CWCB meeting.

c. CWCB staff shall consult and coordinate weekly with CPW staff on proposed releases to minimize impacts to the fishery below Ruedi Reservoir.

**9. Proposed Lease of Water for Instream Flow Use in the 15-Mile Reach of the Colorado River, Water Division 5 (Ute Water Conservancy District)**  
*Stream and Lake Protection Section*

**Action:** Report by CWCB staff member Linda Bassi.

**Staff Recommendation:** Pursuant to Rule 6b. of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program ("ISF Rules"), the Board's consideration of this proposal at this meeting will initiate the 120-day period for Board review. **No formal action is required at this time.** The initial presentation of this proposal provides an opportunity for the Board and the public to identify questions or concerns that Staff will address at this or a subsequent meeting.

**10. 2020 Instream Flow Appropriations in Water Divisions 2, 4, and 6**  
*Stream and Lake Protection Section*

**Action:** Report by CWCB staff member Rob Viehl. A motion to approve the staff recommendation was made by Gail Schwartz, which was seconded by Jack Goble. 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 ISF water right on each stream segment listed on the Tabulation of Instream Flow Recommendations attached to staff's memo with the exception of the Spring Creek segment located in Montrose County, and direct staff to publicly notice the Board's declaration of its intent to appropriate.

**11. Colorado Water Trust Request for Water Update**  
*Stream and Lake Protection Section*

**Action:** Report by CWCB staff member Linda Bassi. Tony LaGrecca with the Colorado Water Trust addressed the board.

This is an informational item with no Board action required.

**12. Water Plan Grant Program Funding**  
*Lauren Ris*

**Action:** Report by CWCB staff member Lauren Ris. A motion to approve the staff recommendation was made by Jim Yahn, which was seconded by Jaclyn Brown. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends that the Board make the remaining (\$5.3M) General Fund appropriation available immediately to the Water Plan Grant Program, allocate funding between all grant categories in a manner responsive to the needs demonstrated by grant applications, and continue to recommend grant awards on a competitive basis to projects that best meet the goals and objectives of the Water Plan.

**13. Colorado River Updates**  
*Interstate, Federal, and Water Information Section*

**Action:** Report by CWCB staff member Amy Ostdiek.

This is an informational item with no Board action required.

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

**Action:** Report by Attorney General Phil Weiser and Counsel to the Board, Deputy Attorney General Amy Beatie. A motion to go into Executive Session was made by Jessica Brody, which was seconded by Jack Goble. The motion was approved unanimously (9-0).

#### **15. Report from Executive Session**

**Action:** Report by Counsel to the Board, Deputy Attorney General Amy Beatie. A motion to go out of Executive Session was made by Steve Anderson, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).

**RECESS**

**Tuesday, January 28, 2020**

#### **17. Basin Directors' Reports**

- a. Colorado River (Mainstem) Basin Director's Report - Gail Schwartz
- b. San Juan/San Miguel-Dolores River Basin Director's Report - Celene Hawkins
- c. Gunnison River Basin Director's Report - Steve Anderson
- d. North Platte River Basin Director's Report - Curran Trick
- e. South Platte River Basin Director's Report - Jim Yahn
- f. Arkansas River Basin Director's Report - Jack Goble
- g. City and County of Denver Director's Report - Jessica Brody
- h. Rio Grande River Basin Director's Report - Heather Dutton
- i. Yampa-White River Basin Director's Report - Jaclyn Brown

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

*Finance Section*

##### *a) Financial Projections and Cash Management Report*

**Action:** Report by CWCB staff member Kirk Russell.

This is an informational item with no Board action required.

##### *b) Loan Program Processing Update*

**Action:** Report by CWCB staff member Lauren Miremont.

This is an informational item with no Board action required.

##### *c) 2020 Projects Bill*

**Action:** Report by CWCB staff member Kirk Russell.

This is an informational item with no Board action required.

## **19. Changes to Existing Loans**

### *Finance Section*

- a) Left Hand Ditch Company – Allen’s Lake Ditch Improvements

**Action:** Report by CWCB staff member Cole Bedford. A motion to approve the staff recommendation was made by Jim Yahn, which was seconded by Jack Goble. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends the Board approve a loan for \$772,650 (\$765,000 for Project costs and \$7,650 for the 1% service fee) to the Left Hand Ditch Company for costs related to the Allen’s Lake Filler Canal Improvements Project, from the Construction Fund. This is an increase of \$101,000 (\$100,000 for Project costs and \$1,000 for the 1% service fee). The loan term shall remain at 30 years at blended interest rate of 2.50% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

## **20. Water Project Loans**

### *Finance Section*

- a) *Highlands Meadows Home Owners Association - Noecker Reservoir Repair*

**Action:** Report by CWCB staff member Matt Stearns. A motion to approve the staff recommendation was made by Gail Schwartz, which was seconded by Jim Yahn. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends the Board approve a loan not to exceed \$655,490 (\$649,000 for Project costs and \$6,490 for the 1% service fee) to the Highland Meadow Estates at Castle Peak Ranch, Inc. for costs related to the Noecker Reservoir Repair, from the Construction Fund. The loan terms shall be 20 years at a reduced high-income municipal interest rate of 2.15% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5. Staff additionally recommends borrower, prior to loan contracting, amend legal documents as necessary to provide CWCB with the ability to foreclose a lien on the 2002 Settlement Agreement water rights, and to use the water outside of any current place of use restrictions in the event of loan default, and borrower shall provide an appraisal of the collateral with a value to loan of at least 110%.

- b) *Town of South Fork - Augmentation Water Purchase*

**Action:** Report by CWCB staff member Rachel Pittinger. Dan Hicks with the Town of South Fork, Colorado addressed the Board. A motion to approve the staff recommendation was made by Gail Schwartz, which was seconded by Curran Trick. Heather Dutton disclosed that she had a conflict of interest with this agenda item and recused herself from the vote. The motion was approved unanimously (8-0).

**Staff Recommendation:** Staff recommends the Board approve a loan not to exceed \$444,400 (\$440,000 for Project costs and \$4,400 for the 1% service fee) to the Town of South Fork, acting by and through its water activity enterprise, for costs related to the Augmentation Water Purchase, from the Construction Fund. The loan term will be 30 years at a low-income municipal interest rate of 1.95% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

## 21. Colorado Springs Utilities Fallowing-Leasing Pilot Project

### *Interstate, Federal, and Water Information Section*

**Action:** Report by CWCB staff member Alex Funk. Tracy Kosloff and Bill Tyner with Division of Water Resources, Gerry Knapp with Super Ditch, and ?? with Colorado Springs Utilities addressed the Board. A motion to approve the staff recommendation was made by Jack Goble, which was seconded by Jim Yahn. Jack Goble disclosed that his employer had been involved with this agenda item but would stay in the room for the discussion. Jaclyn Brown disclosed that she had a conflict of interest with this agenda item and recused herself from the vote. The motion was approved unanimously (8-0).

**Staff Recommendation:** Staff recommends that Board (1) approve the Pilot Project based on the Determination of the State Engineer, including terms and conditions necessary for project operation and administration, that the Pilot Project can operate without causing injury and without impairing compliance with any interstate compact and (2) adopt the additional term and condition regarding dry-land farming.

## 22. Status Update on Water Plan and Basin Implementation Plans

### *Water Supply Planning Section*

**Action:** Report by CWCB staff member Greg Johnson and Russ Sands.

This item is informational only, no Board action required.

## 23. WSRF Grant Program

### *Water Supply Planning Section*

#### a) WSRF Grant Program Reconciliation

**Action:** Report by CWCB staff member Greg Johnson.

This item is informational only, no Board action required.

#### b) Water Supply Reserve Fund Application Grant

Basin	Applicant	Name of Water Activity
Yampa/White/ Green	Upper Yampa Water Conservancy District	Diversion Infrastructure Improvement Project

**Action:** Report by CWCB staff member Craig Godbout. Holly Kirkpatrick with the Upper Yampa Water Conservancy District addressed the Board. A motion to approve the staff recommendation was made by Jaclyn Brown, which was seconded by Celene Hawkins. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends approval of up to \$100,000 from the Yampa/White/Green Basin Account to help fund the project titled: Diversion Infrastructure Improvement Project.

## 24. Sukle Presentation - Tim Wohlgenant

### *Water Supply Planning Section*

**Action:** Presentation by Tim Wohlgenant with For the Love of Colorado and Mike Sukle with Sukle Design.

This item is informational only, with no Board action requested

**25. Potential Effects of Climate Change on Rainfall-Induced Floods - Next Steps***Watershed and Flood Protection Section*

**Action:** Report by CWCB staff member Kevin Houck.

This item is informational only, with no Board action requested

**26. Colorado Watershed Restoration Program - Grant Funding Recommendations***Watershed and Flood Protection Section*

**Action:** Report by CWCB staff member Chris Sturm. A motion to approve the staff recommendation was made by Jessica Brody, which was seconded by Jim Yahn. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends that the Board Approve the projects/activities listed in the following table for Colorado Watershed Restoration Program funding contingent upon the applicants' abilities to resolve issues and additional needs discussed earlier.

Agenda Item	Applicant	BASIN	Name of Water Activity	Grant Request Amount	Staff Recommendation
a	Huerfano County Water Conservancy District	Arkansas	Spring Creek Fire Flood Mitigation	\$668,566	Approve \$500,000
Kent Maes with the Huerfano County Water Conservancy District addressed the Board.					
b	Colorado Rio Grande Headwaters Restoration Project	Rio Grande	Rio Grande Riparian Stabilization Project Phase 5	\$200,000	Approve \$200,00
Emma Reesor with the Colorado Rio Grande Headwaters Restoration Project addressed the Board.					
c	Headwaters Alliance	Rio Grande	Comprehensive Willow Creek Watershed Plan	\$256,707	Approve \$256,707
d	Costilla County Conservancy District	Rio Grande	Upper Culebra Watershed Assessment	\$399,831	Approve \$399,831
e	Poudre Learning Center Foundation	South Platte	Poudre Learning Center, Hall-133 Riparian Restoration 60% Design Plan	\$100,000	Approve \$100,000
Larry Rodstead with the Poudre Learning Center Foundation addressed the Board.					



f	Fourmile Watershed Coalition	South Platte	Upper Ingram Gulch Restoration Project	\$100,116	Approve \$100,116
g	Left Hand Watershed Center	South Platte	Science, Stewardship, and Education in Saint Vrain Watershed	\$377,241	Approve \$377,241
h	Left Hand Watershed Center	South Platte	Adaptive Management at Scale	\$382,320	Approve \$382,320
Jessie Olsen with the Left Hand Watershed Center addressed the Board.					
i	Mile High Flood District	South Platte	Westerly Creek Restoration and Water Quality Project	\$500,000	Approve \$250,000
j	RiversEdge West	Southwest /Colorado	Western Colorado Sustainable Stewardship	\$164,566	Approve \$164,566
k	Trout Unlimited	Yampa	Lower Elkhead Creek Restoration Project Phase I	\$100,000	Approve \$100,000
<b>ADJOURN</b> A motion to adjourn the January 2020 Board meeting was made by Jack Goble, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).					