



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

Jared Polis
Governor

Dan Gibbs
DNR Executive Director

Rebecca Mitchell
CWCB Director

Final Summary Minutes and Record of Decisions May 20, 2020 Board Meeting

A regular meeting of the Colorado Water Conservation Board (CWCB) convened virtually, the meeting was called to order by Chair Celene Hawkins. Ten voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: Jim Yahn, Greg Felt, 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. 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.



Wednesday, May 20, 2020

1	Review and Approve Agenda There was a request to amend agenda item 18 because of a typo. It was listed as “Colorado Litigation Fund” and should read as “Litigation Fund.” A motion to amend the agenda as requested was made by Jessica Brody, which was seconded by Greg Felt. The motion was approved unanimously (9-0). A motion to approve the agenda was made by Jessica Brody, which was seconded by Greg Felt. The motion was approved unanimously (9-0).
2	Review and Approve March 11 - 12, 2020 Board Meeting Minutes A motion to approve the March 2020 Board minutes was made by Gail Schwartz, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).
3	Approve and/or Remove Consent Agenda Items <i>A motion to approve the Consent Agenda Items was made by Jessica Brody, which was seconded by Jim Yahn. The motion was approved unanimously (9-0).</i> 1. Statements of Opposition <i>Stream & Lake Protection Section</i> <i>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:</i> a. Case No. 19CW3074 (Water Division 2): Application of Town of Buena Vista b. Case No. 20CW3015 (Water Division 5): Application of Steven B. Knudson Consent Agenda Item 2 Diane Hoppe Memorial Scholarship Staff Recommendation Staff recommends the Board approve a \$2,000 scholarship to Student 3.
4	Directors’ Reports
4A	DNR Executive Director Dan Gibbs
4B	CWCB Director Rebecca Mitchell
4C	IBCC Director Russell George
4D	Agriculture Commissioner Kate Greenberg
4E	State Engineer Kevin Rein
4F	Division of Parks and Wildlife Director Robert Harris
4G	Water Resource and Power Development Authority Keith Laughlin
5	Wild and Scenic Rivers Update and fund Annual Review <i>Interstate, Federal, and Water Information Section</i> Action: Report by CWCB staff members Andrew Rickert and Jojo La. A motion to approve the staff recommendation was made by Jessica Brody, which was seconded by Jim Yahn. The motion was approved unanimously (10-0). Staff Recommendation: Staff recommends that the Board: 1) Affirm that the need and purpose of the Wild and Scenic Rivers Fund still exists and is expected to continue in the future; and

	2) Affirm that the existing Terms and Conditions for the Allocation of Funds from the Wild and Scenic Rivers Fund are adequate without revisions.
6	<p>Colorado River Update <i>Interstate, Federal, and Water Information Section</i> Action: Report by CWCB staff member Amy Ostdiek</p> <p><i>This is an informational item with no Board action required.</i></p>
7	<p>Water Education Colorado Annual Scope of Work Review <i>Interstate, Federal, and Water Information Section</i> Action: Report by CWCB staff member Greg Johnson.</p> <p><i>This is an informational item with no Board action required.</i></p>
8	<p>Final Action on Uncontested 2020 Instream Flow Appropriations in Water Divisions 4 and 6 <i>Stream and Lake Protection Section</i> Action: Report by CWCB staff member Rob Viehl. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Gail Schwartz. The motion was approved unanimously (10-0).</p> <p>Staff Recommendation: Staff requests that the Board make the following determinations and take the following actions on each of the appropriations identified in the attached tables. The information necessary to support these determinations is contained in this memo, the recommendation letters and documentation submitted by the Bureau of Land Management (BLM), Colorado Parks and Wildlife (CPW), and High Country Conservation Advocates (HCCA), and in staff's oral and written presentations provided at the January 27, 2020 Board meeting.</p> <p>(1) Determine, pursuant to section 37-92-102(3), C.R.S. (2019), that for each ISF appropriation identified in the attached table:</p> <ul style="list-style-type: none"> (a) There is a natural environment that can be preserved to a reasonable degree with the recommended water rights, if granted; (b) The natural environment will be preserved to a reasonable degree by the water available for the recommended appropriations; and (c) Such natural environment can exist without material injury to water rights. <p>(2) Pursuant to ISF Rule 5f. establish January 27, 2020 as the appropriation date for these water rights.</p> <p>(3) Request staff to work with the Attorney General's office to file an application for these water rights in water court by the end of the calendar year.</p>
9	<p>Contested 2020 Instream Flow Appropriation in Water Division 2 <i>Stream and Lake Protection Section</i> Action: Report by CWCB staff member Rob Viehl. A motion to approve the staff recommendation was made by Jessica Brody, which was seconded by Jim Yahn. The motion was approved unanimously (10-0).</p> <p>Staff Recommendation: Staff recommends that the Board designate Deputy Attorney General Amy Beatie as the Hearing Officer for the contested instream flow appropriation on Iowa Gulch and set the hearing date to be held in conjunction with the Board's September 16-17, 2020 meeting.</p>
10	Financial Matters – Construction Fund and Severance Tax PBF Financial Projections and Cash Management Report

	<p><i>Finance Section</i></p> <p>Action: Report by CWCB staff member</p> <p><i>This is an informational item with no Board action required.</i></p>
11	<p>Water Project Loans</p> <p><i>Stream and Lake Protection Section</i></p>
11A	<p>Arapahoe County Water and Wastewater Authority – Chambers Reservoir Liner Rehabilitation.</p> <p>Action: Report by CWCB staff member Rachel Pittinger. Emily Lowell with Agua addressed the Board. A motion to approve the staff recommendation was made by Jim Yahn, which was seconded by Steve Anderson. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$2,525,000 (\$2,500,000 for Project costs and \$25,000 for the 1% service fee) to the Arapahoe County Water and Wastewater Authority for costs related to the Chambers Reservoir Liner Rehabilitation, from the Severance Tax Perpetual Base Fund. The loan term will be 20 years at a reduced middle-income municipal interest rate of 1.90% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.</p>
11B	<p>Lateral Ditch ML47, Inc. – Lateral Ditch Pipeline Project</p> <p>Action: Report by CWCB staff member Cole Bedford. A motion to approve the staff recommendation was made by Jessica Brody, which was seconded by Gail Schwartz. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$707,000 (\$700,000 for Project costs and \$7,000 for the 1% service fee) to the Lateral Ditch ML47, Inc. for costs related to the Lateral Ditch Pipeline Project, from the Severance Tax Perpetual Base Fund. The loan terms shall be 30 years at a blended interest rate of 1.60% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.</p> <p>Additionally, staff recommends the following contract conditions:</p> <ol style="list-style-type: none"> Any future Bureau of Reclamation Basin States Program 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) days after receipt of said funds. The remaining balance of the loan will be the long-term loan debt. CWCB will hold a lein on a number of Grand Valley Irrigation Company shares represented by a single stock certificate whose value, in combination with other securities, is equal to or exceeds the long-term loan debt prior to any loan disbursements.
11C	<p>Redlands Water and Power Company – Pumphline Replacement Project</p> <p>Action: Report by CWCB staff member Cole Bedford. A motion to approve the staff recommendation was made by Gail Schwartz, which was seconded by Heather Dutton. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$641,350 (\$635,000 for Project costs and \$6,350 for the 1% service fee) to the</p>

	Redlands Water and Power Company for costs related to the Pumpline Replacement Project, from the Severance Tax Perpetual Base Fund. The loan terms shall be 20 years at a reduced blended interest rate of 1.65% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.
12	Water Supply Reserve Fund Grant Applications Water Supply Planning Section
12A	<p>Basin: Colorado Applicant: Trout Unlimited Name of Water Activity: Canyon Creek Fish Passage Project</p> <p>Action: Report by CWCB staff member Craig Godbout. 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).</p> <p>Staff Recommendation: Staff recommends approval of up to \$20,700 from the Colorado Basin Account to help fund the project titled: Canyon Creek Fish Passage Project.</p>
12B	<p>Basin: Colorado Applicant: Grand River Ditch Company Name of Water Activity: Davis Point Piping Project</p> <p>Action: Report by CWCB staff member Craig Godbout. A motion to approve the staff recommendation was made by Gail Schwartz, which was seconded by Heather Dutton. 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: Davis Point Piping Project.</p>
12C	<p>Basin: Southwest Applicant: Town of Sawpit Water Activity Enterprise Name of Water Activity: Water Supply Plan and Water System Analysis</p> <p>Action: Report by CWCB staff member Craig Godbout. 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).</p> <p>Staff Recommendation: Staff recommends approval of up to \$25,000 from the Southwest Basin Account to help fund the project titled: Water Supply Plan and Water System Analysis.</p>
12D	<p>Basin: South Platte Applicant: Colorado Ag Water Alliance Name of Water Activity: Outreach and Capacity Building for Ag Water Projects</p> <p>Action: Report by CWCB staff member Craig Godbout. A motion to approve the staff recommendation was made by Jim Yahn, which was seconded by Heather Dutton. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends approval of up to \$17,750 from the South Platte Basin Account to help fund the project titled: Outreach and Capacity Building for Ag Water Projects.</p>
13	Basin Implementation Plan and Water Plan Updates

	<p><i>Water Supply Planning Section</i></p> <p>Action: Report by CWCB staff member Russ Sands.</p> <p><i>This is an informational item with no Board action required.</i></p>
14	Basin Directors' Reports
14A	Colorado River (Mainstem) Basin Director's Report – Gail Schwartz
14B	San Juan/San Miguel-Dolores River Basin Director's Report – Celene Hawkins
14C	Gunnison River Basin Director's Report – Steve Anderson
14D	North Platte River Basin Director's Report – Curran Trick
14E	South Platte River Basin Director's Report – Jim Yahn
14F	Arkansas River Basin Director's Report – Greg Felt
14G	City and County of Denver Director's Report – Jessica Brody
14H	Rio Grande River Basin Director's Report – Heather Dutton
14I	Yampa-White River Basin Director's Report – Jaclyn Brown
15	Attorney General's Report, Legal Briefing, and Executive Session
	<p>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 Jim Yahn, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).</p>
16	Executive Session
16A	Basin Fund MOA
16B	Litigation Fund
17	Report from Executive Session
	<p>Action: Report by Counsel to the Board, Deputy Attorney General Amy Beatie. A motion to go out of Executive Session was made by Jim Yahn, which was seconded by Jessica Brody. The motion was approved unanimously (8-0) Greg Felt was not online during Executive Session.</p>
18	<p>Litigation Fund</p> <p><i>Interstate, Federal, and Water Information Section</i></p> <p>Action: Report by CWCB Staff Member Amy Ostdiek and -Attorney General staff member Lain Leoniak. A motion to approve the staff recommendation was made by Jessica Brody, which was seconded by Jim Yahn. The motion was approved unanimously (7-0) Greg Felt and Jaclyn Brown were not online during this item.</p> <p>Staff Recommendation: Staff recommends that the Board authorize the expenditure of a total of \$1,516,090 for litigation-related activities in FY2020-21 as follows:</p> <ul style="list-style-type: none"> 1) Colorado River Basin: \$893,090 2) Republican River Basin: \$98,000 3) Rio Grande Basin: \$525,000 <p>Staff also recommends that the Board:</p> <ul style="list-style-type: none"> 1) Direct the CWCB Director and Staff to expend these funds consistent with the request by the Office of the Attorney General; and, 2) Direct the CWCB Director, CWCB Staff, and Office of the Attorney General to comply with the annual reporting requirements as specifically provided for in Section 37-60-121(2.5).
ADJOURN	

A motion to adjourn the May 2020 Board meeting was made by Steve Anderson, which was seconded by Jim Yahn. The motion was approved unanimously (7-0).