

DRAFT

Summary Minutes and Record of Decisions

July 21 & 22, 2021 Board Meeting

A regular meeting of the Colorado Water Conservation Board (CWCB) convened virtually and in person. The meeting was called to order by Chair Jessica Brody. 8 voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: Robert Sakata, Greg Felt, Heather Dutton, Celene Hawkins, Steven Anderson (arrived at 10:12a.m.), Jaclyn Brown (arrived at 10:30a.m.), 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; Robert Harris, Colorado Parks and Wildlife; Kate Greenberg, Department of Agriculture Commissioner; Kevin Rein, State Engineer, and Rebecca Mitchell, Colorado Water Conservation Board Director. Counsel to the Board, Jen Mele, was also in attendance.

On the second day, the meeting was called to order by Chair Jessica Brody. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). The voting members present were: Gail Schwartz, Jessica Brody, Steven Anderson, Curran Trick, Robert Sakata, Greg Felt, Celene Hawkins, Jaclyn Brown, and Heather Dutton. Ex-officio voting member Dan Gibbs, Executive Director of the Department of Natural Resources was not present. Non-voting ex officio members present or represented were: Robert Harris, Colorado Parks and Wildlife; Kevin Rein, State Engineer; and Rebecca Mitchell, Colorado Water Conservation Board Director. Counsel to the Board, Jen Mele, was also in attendance.

Wednesday, July 21, 2021

1 Review /Approve Agenda

A motion to approve the agenda was made by Robert Sakata, which was seconded by Greg Felt. The motion was approved unanimously (7-0).

2 Review and Approve May 19 & 20, 2021 Board Meeting Minutes

A motion to approve the May 2021 Board minutes was made by Greg Felt, which was seconded by Robert Sakata. The motion was approved unanimously (7-0).

3 Approve and/or Remove Consent Agenda Items

A motion to approve the Consent Agenda Items was made by Curran Trick, which was seconded by Robert Sakata. The motion was approved unanimously (7-0).

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. 21CW3006 (Water Division 3): Application of Karen R. Rhoads and John H. Rhoads
- b. Case No. 21CW3029 (Water Division 5): Application of Eagle River Water & Sanitation District and Upper Eagle Regional Water Authority
- c. Case No. 21CW3030 (Water Division 5): Application of Eagle River Water & Sanitation District and Upper Eagle Regional Water Authority

2. Water Supply Reserve Fund Application Grants

	Basin	Applicant	Name of Water Activity	Amount
a.	North Platte	Lucky Penny Ranches, LLC	Aqua Fria Reservoir Rehabilitation	\$75,000
b.	Yampa/White/Green	City of Craig	Yampa River Diversion Park	\$65,000
c.	Yampa/White/Green	Town of Oak Creek	Sheriff Dam Rehabilitation - Advanced Hydrology and Gate Replacement	\$73,750

3. Flood Plain Designations

Watershed and Flood Protection Section

a. Flood Plain Designation: “Flood Hazard Area Delineation, Sulphur Gulch”, by Merrick and Company, dated February 2021

4 Directors’ Reports

4a. DNR Executive Director - Dan Gibbs

4b. CWCB Director - Rebecca Mitchell

4c. IBCC Director - Absent

4d. Colorado Parks and Wildlife Director – Dan Prenzlów

4e. Agriculture Commissioner – Kate Greenberg

4f. State Engineer - Kevin Rein

4g. Water Resource and Power Development Authority - Keith McLaughlin

5 Expedited Temporary Loan of Water for Instream Flow Use on Big Beaver Creek and the White River (Water Division 6)

Stream and Lake Protection Section

Action: Report by CWCB staff member Kaylea White. A motion to approve the staff recommendation was made by Jackie Brown, which was seconded by Gail Schwartz. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends that the Board ratify the Director's decision to accept the loan and sign the agreement.

6 Final Action on Uncontested 2021 Uncontested Instream Flow Appropriations in Water Divisions 2 and 4

Stream and Lake Protection Section

Action: Report by CWCB staff member Rob Viehl. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).

Staff Recommendation: Staff requests that the Board make the following determinations and take the following actions on each of the appropriations identified in Table 1. 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 March 10, 2021 Board meeting.

(1) Determine, pursuant to section 37-92-102(3), C.R.S., that for each ISF appropriation identified in Table 1:

- (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.

(2) Pursuant to ISF Rule 5f. establish March 10, 2021 as the appropriation date for these water rights.

(3) Accept the provisions in the Trappers Crossing Homeowners Association Stipulation and agree to include them in any subsequent Water Court applications, filings, and decrees.

(4) Request staff to work with the Attorney General's office to file applications for these water rights in water court by the end of the calendar year.

Table 1

Div	Stream	Watershed	County	Length (miles)	Upper Terminus (UTM)	Lower Terminus (UTM)	Flow Rate, cfs (Timing)
2	East Fork Arkansas River	Arkansas Headwaters	Lake	6.46	headwaters in the vicinity of: E: 399540.97 N:4353749.78	confl Chalk Creek at E: 394793.07 N: 4356126.94	0.25 (12/16 - 04/30) 7 (05/01 - 07/31) 2.8 (08/01 - 09/20) 0.7 (09/21 - 12/15)

4	Cow Creek	Uncompahgre	Ouray	7.4	confl Lou Creek at E: 265665.02 N: 4231002.60	confl Uncompahgre River at E: 258039.02 N: 4237591.58	7.2 (01/01 - 03/31) 20 (04/01 - 04/30) 53 (05/01 - 06/30) 20 (07/01 - 07/31) 15 (08/01 - 08/15) 7.2 (08/16 - 08/28) 5.9 (08/29 - 09/19) 7.2 (09/20 - 12/31)
4	Wildcat Creek	East-Taylor	Gunnison	2.48	outlet of Green Lake at E: 323800.20 N: 4301420.95	confl Coal Creek at E: 325687.24 N: 4304206.95	0.35 (12/01 - 03/31) 0.65 (04/01 - 04/30) 2.1 (05/01 - 08/31) 0.6 (09/01 - 11/30)

7	<p>Update on Contested ISF Appropriation on Rincon la Vaca Creek – Water Division 7 <i>Stream and Lake Protection Section</i></p> <p>Action: Report by CWCB staff member Rob Viehl.</p> <p><i>This is an informational item with no Board action required.</i></p>
8	<p>Financial Matters – Construction Fund and Severance Tax Perpetual Base Fund <i>Finance Section</i></p> <p>Financial Projections and Cash Management Report</p> <p>Action: Report by CWCB staff member Kirk Russell.</p> <p><i>This is an informational item with no Board action required.</i></p>
9	<p>Change to Existing Loan <i>Finance Section</i></p> <p>Arapahoe County Water and Wastewater Authority – Chambers Reservoir Liner Rehabilitation</p> <p>Action: Report by CWCB staff member Rachel Pittinger. Kevin McBride with Arapahoe County Water addressed the Board. The Board asked to amend the recommendation to read “a total loan amount of \$4,040,000”. A motion to approve the amended staff recommendation was made by Robert Sakata, which was seconded by Greg Felt. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan increase not to exceed a total loan amount of \$4,040,000 (\$4,000,000 for Project costs and \$40,000 for the 1% service fee) to the Arapahoe Water and Wastewater Authority for costs related to the Chambers Reservoir Liner Rehabilitation, from the Severance Tax Perpetual Base Fund. This is an increase of \$1,515,000 (\$1,500,000 for Project costs and \$15,000 for the 1% service fee). The loan term shall remain at 20 years at an interest rate of 1.90% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.</p>
10	<p>Loan Delinquency Action Two Rivers Water & Farming Company, and Two Rivers Farms F-2, Inc. <i>Finance Section</i></p> <p>Action: Report by CWCB staff member Kirk Russell.</p> <p><i>This is an informational item with no Board action required.</i></p>

11	<p>Colorado River Updates <i>Interstate, Federal, and Water Information Section</i></p> <p>Action: Report by CWCB staff member Michelle Garrison.</p> <p><i>This is an informational item with no Board action required.</i></p>
12	<p>Wild and Scenic Rivers Update and Fund Annual Review <i>Interstate, Federal, and Water Information Section</i></p> <p>Action: Report by CWCB staff members Jojo La and Andrew Rickert. 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 that the Board:</p> <ol style="list-style-type: none"> 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.
13	<p>Colorado Weather Modification Program Update <i>Interstate, Federal, and Water Information Section</i></p> <p>Action: Report by CWCB staff member Andrew Rickert.</p> <p><i>This is an informational item with no Board action required.</i></p>
14	<p>Demand Management Feasibility Investigation Update <i>Interstate, Federal, and Water Information Section</i></p>

Action: Report by CWCB staff members Amy Ost diek and Greg Johnson. James Eklund and Drew Peternell addressed the Board. There was no motion made to approve this item at this time.

Staff Recommendation: Staff recommends that the Board adopt the Demand Management decision-making roadmap attached hereto as Exhibit A.

Colorado Water Conservation Board Demand Management Feasibility Investigation Exhibit A - DRAFT Roadmap for Decision Making July 2021

Achievability

[Tentatively to begin September 2021; subject to change]

- ☐ Monitoring & Verification: is it technically possible to monitor and verify conserved consumptive use within Colorado as required for a potential Demand Management program? - Tentatively September 2021
- ☐ Environmental Considerations: is it technically possible to track and monitor potential environmental impacts and benefits? - Tentatively September 2021
- ☐ Education & Outreach: is it possible to develop an outreach plan for a Demand Management program that would increase general water education, motivate participation in the program, and help to inform program design? - Tentatively September 2021
- ☐ Funding: given the above determinations, is it possible to secure a funding source to pay for a Demand Management program? – Pending

Worthwhile for Colorado

[Tentatively to begin November 2021; subject to change]

- ☐ Proportionality considerations: Can Colorado establish a Demand Management program that prioritizes avoidance of disproportionate negative economic or environmental impacts to any single sub basin or region within Colorado while protecting the legal rights of water rights holders, consistent with the Board's November 2018 Support and Policy Statement? - Pending IBCC input to be received in October 2021, informing Board discussion in November 2021 and beyond
- ☐ Analyses and findings of UCRC and other states: Based on information gained from the UCRC feasibility investigation and those ongoing in the other Upper Division States, would a Demand Management program be worthwhile from Colorado's perspective? - Investigation ongoing

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Budget Update*Operations Section***Action:** Presentation was given by Anna Mauss.*This is an informational item with no Board action required.*

16

Water Supply Reserve Fund Applications for Consideration at the July 2021 CWCB Board Meeting

16a.

Action: Report by CWCB staff member Ben Wade. Jim Baller addressed the Board.

A motion to approve the staff recommendation was made by Curran Trick, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).

Basin	Applicant	Name of Water Activity	Amount
North Platte	Jackson County Water Conservancy District	North Platte Airborne Cloud Seeding Project	\$225,000

Staff Recommendation: Staff recommends approval of up to \$225,000 from the North Platte Basin Account to help fund the project: North Platte Basin Airborne Cloud Seeding Project.

16b.

This agenda item was withdrawn by the applicant – Owl Mountain Partnership

16c.

Action: Report by CWCB staff member Ben Wade. Deb Heeney and Deb Alpe addressed the Board.

A motion to approve the staff recommendation was made by Curran Trick, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).

Basin	Applicant	Name of Water Activity	Amount
North Platte	Owl Mountain Partnership	Irrigation Infrastructure Improvement Project	\$320,537

Staff Recommendation: Staff recommends approval of up to \$320,537 from the North Platte Basin Account to help fund the project: Jackson County Irrigation Infrastructure Improvement Project.

17	Attorney General's Report, Legal Briefing, and Executive Session
	Action: Report by Attorney General Phil Weiser and Counsel to the Board, Jen Mele. A motion to go into Executive Session was made by Gail Schwartz, which was seconded by Greg Felt. The motion was approved unanimously (9-0).
18	Executive Session
18a.	Best Practices for Boards and Commissions Compliance
19	Report from Executive Session Action: Report by Counsel to the Board, Jen Mele. A motion to go out of Executive Session was made by Steve Anderson, which was seconded by Greg Felt. The motion was approved unanimously (9-0)

Thursday, July 22, 2021

20 Basin Directors' Reports

20a. Arkansas River Basin Director's Report – *Greg Felt*

20b. City and County of Denver Director's Report – *Jessica Brody*

20c. Rio Grande River Basin Director's Report – *Heather Dutton*

20d. Yampa-White River Basin Director's Report – *Jackie Brown*

20e. Colorado River (Mainstem) Basin Director's Report – *Gail Schwartz*

20f. San Juan/San Miguel-Dolores River Basin Director's Report – *Celene Hawkins*

20g. Gunnison River Basin Director's Report – *Steve Anderson*

20h. North Platte River Basin Director's Report – *Curran Trick*

20i. South Platte River Basin Director's Report – *Robert Sakata*

21 Water Education Colorado Scope of Work Review

Action: Report by CWCB staff member Greg Johnson. Jayla Poppleton with Water Education Colorado addressed the Board. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends the Board approve the proposed Fiscal Year 2022 Scope of Work for Water Education Colorado (WEco).

22	Floodplain Rules and Criteria Manual Update <i>Watershed and Flood Protection Section</i>
	<p>Action: Report by CWCB staff members Kevin Houck and Terri Fead. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Heather Dutton. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends that the Board:</p> <ol style="list-style-type: none"> 1. Authorize staff to coordinate with the Attorney General’s Office to initiate the formal rulemaking process for revisions to the Rules and Regulations for the Designation and Approval of Floodplains in Colorado to: to 1) update the standards and processes for floodplain designation to make the Rules consistent with FEMA floodplain mapping procedures, 2) amend and clarify Rule 4 definitions; 3) update references to external documents; and 4) clarify the following Rules: Rule 5, Rule 7.I.(2), Rule 8.D, Rule 10.C-F, Rule 11.B, Rule 12.D, Rule 12.J, the introductory paragraph to Rule 14, Rule 17, and Rule 20, including taking all required steps to initiate the rulemaking. Such steps include but are not limited to filing notice with the Secretary of State and the Department of Regulatory Agencies of the proposed rulemaking and a rulemaking hearing to be held no earlier than November 2021. 2. Appoint First Attorney General Jen Mele as Hearing Officer for the rulemaking hearing to oversee procedural matters, such as setting deadlines and submission of documents.
23	Water Plan Scoping Phase and Next Steps <i>Water Supply Planning Section</i>
	<p>Action: Report by CWCB staff members Russ Sands and Kat Weismiller. Jared Romero, Molly Muggleston, and Bart Miller addressed the Board for public comment.</p> <p><i>This is an informational item with no Board action required</i></p>
24	Chatfield Settlement Agreements
	<p>Action: Report by CWCB staff member Lauren Ris. A motion to approve the staff recommendation was made by Jackie Brown, which was seconded by Robert Sakata. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends that the Board approve the terms for settlement agreements with Central Colorado Water Conservancy District (Central), Centennial Water and Sanitation District (Centennial), and Colorado Parks and Wildlife contingent on the approval of the parties respective Boards and on the Chatfield Reallocation Project Participants resolving payment of OMRRR&R for the project’s Environmental Pool.</p>

ADJOURN

A motion to adjourn the July 2021 Board meeting was made by Steve Anderson, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).