

FINAL

Summary Minutes and Record of Decisions

November 17 & 18, 2021 Board Meeting

A regular meeting of the Colorado Water Conservation Board (CWCB) convened virtually on zoom. The meeting was called to order by Chair Jessica Brody. 9 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, Celene Hawkins, Steven Anderson, Jaclyn Brown, Gail Schwartz, Jessica Brody, Heather Dutton, 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; Bethany Howell, Department of Agriculture; 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, Heather Dutton, and Jessica Brody. 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, November 17, 2021

1 Review /Approve Agenda

A motion to approve the agenda with removal of agenda item 11a. (The applicant asked to wait until the January 2022 meeting to present) was made by Greg Felt, which was seconded by Celene Hawkins. The motion was approved unanimously (9-0).

2 Review and Approve September 15 & 16, 2021 Board Meeting Minutes

A motion to approve the September 2021 Board minutes was made by Greg Felt, which was seconded by Heather Dutton. The motion was approved unanimously (9-0).

3 Approve and/or Remove Consent Agenda Items

Director Celene Hawkins recused herself from consent agenda item 1c, Director Jackie Brown recused herself from consent agenda item 1c, and Director Greg Felt recused himself from consent agenda item 1a.

A motion to approve the Consent Agenda Items 1b, 1d, 2, 3, & 4 was made by Jackie Brown, which was seconded by Celene Hawkins. The motion was approved unanimously (9-0).

A motion to approve the Consent Agenda Item 1a was made by Jackie Brown, which was seconded by Steve Anderson. The motion was approved unanimously (8-0).

A motion to approve the Consent Agenda Item 1c was made by Greg Felt, which was seconded by Steve Anderson. 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. 21CW3033 (Water Division 2): Application of Upper Arkansas Water Conservancy District, acting through the Upper Arkansas Activity Enterprise
- b. Case No. 21CW3044 (Water Division 2): Application of Triview Metropolitan District
- c. Case No. 21CW3039 (Water Division 4): Application of Tri-State Generation and Transmission Association, Inc.
- d. Case No. 21CW3110 (Water Division 5): Application of Gateway of Snowmass Metropolitan District

2. Water Supply Reserve Fund Change of Grantee

Water Supply Planning Section

- a. Rio Grande - Colorado Rio Grande Restoration Foundation - Rio Grande Basin Roundtable Community Education Initiative 2021-2025

3. CWCB Policy Change

Finance Section

- Financial Policy Number 3 - Loan Delinquency, Loan Restructuring and Collections Policy Update

4. Change to Existing Loan

Finance Section

- Arkansas Groundwater and Reservoir Association - Merger and Name Change

4 Directors' Reports

4a. DNR Executive Director/IBCC Director - Dan Gibbs

4b. CWCB Director - Rebecca Mitchell

4c. Agriculture Commissioner – Bethany Howell

4d. State Engineer - Kevin Rein

4e. Colorado Parks and Wildlife Director – Robert Harris

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

5 Financial Matters – Construction Fund and Severance Tax Perpetual Base Fund

Finance Section

5a. Annual Financial Statements – Construction Fund & Severance Tax Perpetual Base Fund

Action: Report by CWCB staff member Kirk Russell.

This is an informational item with no Board action required.

5b. Financial Projections and Cash Management Report

	<p>Action: Report by CWCB staff member Kirk Russell.</p> <p><i>This is an informational item with no Board action required.</i></p>
6	<p>Change to Existing Loan <i>Finance Section</i></p> <p>Left Hand Ditch Company, Allen’s Lake Filler Canal Improvements</p> <p>Action: Report by CWCB staff member Cole Bedford. 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).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$1,102,650 (\$1,065,000 for Project costs and \$10,650 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 \$303,000 (\$300,000 for Project costs and \$3,000 for the 1% service fee). The loan term shall remain at 30 years at an interest rate of 2.50% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.</p>
7	<p>Platte River Recovery Implementation Program <i>Interstate, Federal, and Water Information Section</i></p> <p>Action: Report by CWCB staff member Jojo La and Rich Belt with Xcel Energy.</p> <p><i>This is an informational item with no Board action required.</i></p>
8	<p>2022 Projects Bill <i>Finance Section</i></p>
8a.	<p>Non-Reimbursable Project Investments “En-Bloc” approval</p> <ol style="list-style-type: none"> 1. Arkansas River Decision Support System Project – Continuation 2. Litigation Fund (Budget for AG’s) – Refresh 3. Technical Assistance for Federal Cost Share Program – Continuation 4. UCRC Post-2026 Planning 5. Water Forecasting Partnerships Project 6. Weather Modification Permitting Program – Continuation 7. Satellite Monitoring/Maintenance Program – Continuation 8. Colorado Mesonet Enhancements 9. Floodplain Risk Management (formerly Map Modernization Program) – Continuation 10. Water Plan Grant Funding

	<p>Action: Report by CWCB staff member Kirk Russell. A motion to approve the staff recommendation was made by Gail Schwartz, which was seconded by Robert Sakata. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve all of the Non-Reimbursable Investments listed below for inclusion in the 2022 Projects Bill.</p>
8b.	Non-Reimbursable Project Investments - Presentations
8b. 1	<p>Reservoir Enlargement Assessment Project</p> <p>Action: Report by CWCB staff member Matt Stearns and John Hunyadi with DWR Dam Safety. 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).</p> <p>Staff Recommendation: Staff recommends the Board allocate \$250,000 from the Construction Fund to conduct a Comprehensive Dam Safety Evaluations at existing high hazard dams across Colorado for the purpose of assessing opportunities for reservoir enlargement. This funding will be recommended for appropriation in the 2022 CWCB Projects Bill.</p>
8b. 2	<p>Platte River Recovery Implementation Program</p> <p>Action: Report by CWCB staff members Jojo La and Kirk Russell. A motion to approve the staff recommendation was made by Curran Trick, which was seconded by Robert Sakata. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board allocate \$3,800,000 from the Construction fund to the Platte River Recovery Implementation Program to executive the Cooperative Agreement. This will funding will be recommended for appropriation in the 2022 CWCB Projects Bill.</p>
8b. 3	<p>Republican River Compact Compliance Programming</p> <p>Action: Report by CWCB staff member Kirk Russell, Deb Daniel and Rob Lenz addressed the Board. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Heather Dutton. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board allocate \$2,000,000 from the Construction Fund to the Colorado Division of Water Resources for the Republican River Compact Compliance Programming. This funding will be recommended for appropriation in the 2022 CWCB Projects Bill.</p>
9	<p>WSRF Changes</p> <p><i>Water Supply Planning Section</i></p>

	<p>Action: Motion to move this item to end of agenda on day 2 of the board meeting was made by Celene Hawkins, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).</p>
10	<p>Severance Tax Perpetual Base Fund Transfer to Water Supply Reserve Fund <i>Finance Section</i></p>
	<p>Action: Motion to move this item to end of agenda on day 2 of the board meeting was made by Celene Hawkins, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).</p>
11	<p>Water Project Loan <i>Finance Section</i></p>
11a.	<p>Town of Dove Creek – Reservoir No. 2</p>
	<p>This item was removed from the agenda by the applicant, they will present in January 2022</p>
11b.	<p>Root and Ratliff Ditch Company – Ditch Piping and Rehabilitation</p>
	<p>Action: Report by CWCB staff member Rachel Pittinger, Wayne Eppich addressed the Board. A motion to approve the staff recommendation was made by Celene Hawkins, which was seconded by Greg Felt. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$303,000 (\$300,000 for Project costs and \$3,000 for the 1% service fee) to the Root and Ratliff Ditch Company for costs related to the Ditch Piping and Rehabilitation (Project), from the Construction Fund. The loan term will be 30 years at an interest rate of 1.10% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.</p> <p>Additionally, staff recommends the following loan contract conditions: 1. Submit to CWCB the required Project as-built drawings prior to loan substantial completion that provides the location of the constructed pipeline relative to defined easement locations identified on the as-built drawings.</p>
11c.	<p>Town of Breckenridge, Goose Pasture Tarn Dam Rehabilitation</p>
	<p>Action: Report by CWCB staff member Cole Bedford, Laura Lynch and Kristin Brwnson addressed the Board. A motion to approve the staff recommendation was made by Gail Schwartz, which was seconded by Robert Sakata. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board include this Water Project Loan of \$13,130,000 in the 2022 CWCB Projects Bill for consideration by the Bill sponsors. Upon passage of the Projects Bill and signature by the Governor, CWCB shall enter into a contract for the loan</p>

	<p>(\$13,000,000 for Project costs and \$130,000 for the service fee) with the Town of Breckenridge, acting by and through its Utility Enterprise Fund, for costs related to the Goose Pasture Tarn Dam Rehabilitation Project, from the Construction Fund. The loan terms shall be 30 years at an interest rate of 2.00% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.</p>
11d.	<p>Trinchera Groundwater Management Subdistrict – Augmentation Pipeline</p> <p>Action: Report by CWCB staff member Rachel Pittinger, Mont Smith addressed the Board. A motion to approve the staff recommendation was made by Heather Dutton, which was seconded by Greg Felt. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$986,770 (\$977,000 for Project costs and \$9,770 for the 1% service fee) to the Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting by and through its water activity enterprise, for costs associated with the Augmentation Pipeline, from the Construction Fund. The loan term will be 30 years at an interest rate of 1.40% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.</p> <p>Additionally, staff recommends the following loan contract conditions: 1. Obtain an executable agreement between the Subdistrict and the well owner and submit to CWCB a copy of the agreement prior to any disbursement of loan funds.</p>
12	<p>Bear Creek Lake <i>Interstate, Federal, and Water Information Section</i></p> <p>Action: Report by CWCB staff member Erik Skeie.</p> <p><i>This is an informational item with no Board action required.</i></p>
13	<p>Colorado Water Plan Update <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	<p>Attorney General’s Report, Legal Briefing, and Executive Session</p> <p>Action: Report by Attorney General Phil Weiser and Counsel to the Board, Jen Mele. A motion to go into Executive Session was made by Greg Felt, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).</p>
15	<p>Executive Session</p>

a.	Water Court Case No. 19CW3098, Application of the Board of County Commissioners of Ouray County, Colorado, et al. (Water Division 4)
16	<p>Report from Executive Session</p> <p>Action: Report by Counsel to the Board, Jen Mele. A motion to go out of Executive Session was made by Jackie Brown, which was seconded by Celene Hawkins. The motion was approved unanimously (9-0)</p>
17	<p>Colorado River Interstate Issues <i>Interstate, Federal, and Water Information Section</i></p> <p>Action: Report by CWCB staff members Amy Ostdiek and Michelle Garrison. A motion to approve the staff recommendation was made by Jackie Brown, which was seconded by Greg Felt. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends that the Board adopt the attached resolution. 1.</p>

Thursday, November 18, 2021

18 Rulemaking Hearing to Revise Rules Concerning Colorado's Rules and Regulations for Regulatory Floodplains in Colorado, 2 CCR408-1

Hearing Officer Jen Mele

The Board held a rulemaking hearing and adopted revisions to the Rules and Regulations for Regulatory Floodplains in Colorado. Information pertaining to this proceeding can be found at <https://cwcb.colorado.gov/floodplain-rules-revisions> .

19 Basin Directors' Reports

19a. North Platte River Basin Director's Report – *Curran Trick*

19b. South Platte River Basin Director's Report – *Robert Sakata*

19c. Arkansas River Basin Director's Report – *Greg Felt*

19d. City and County of Denver Director's Report – *Jessica Brody*

19e. Rio Grande River Basin Director's Report – *Absent*

19f. Yampa-White River Basin Director's Report – *Jackie Brown*

19g. Colorado River (Mainstem) Basin Director's Report – *Gail Schwartz*

19h. San Juan/San Miguel-Dolores River Basin Director's Report – *Celene Hawkins*

19i. Gunnison River Basin Director's Report – *Steve Anderson*

20 Evaluating Conserved Consumptive Use in the Upper Colorado Operations Section

Action: Report by Paul Bruchez, Yampa Valley Ag Producer & Project Grantee and Perry Cabot, Colorado State University.

This is an informational item with no Board action required

21 Proposed Lease of Ruedi Reservoir Water for Instream Flow Use on the Fryingpan River and the 15-Mile Reach of the Colorado River (Water Division 5)

	<i>Stream & Lake Protection Section</i>
	<p>Action: Report by CWCB staff member Pete Conovitz. Public comment was presented to the Board by Heather Lewin, Roaring Fork Conservancy and Rick Lofaro, Roaring Fork Conservancy.</p> <p>Staff Recommendation: No formal action is required at this time. 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. 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.</p>
22	<p>Proposed Renewable Temporary Loan of Lake Avery (aka Big Beaver Creek Reservoir) Water for Instream Flow Use on Big Beaver Creek and the White River (Water Division 6) <i>Stream & Lake Protection Section</i></p> <p>Action: Report by CWCB staff member Kaylea White.</p> <p>Staff Recommendation: No formal action is required at this time. Pursuant to 37-83-105(2) C.R.S. (2020) and ISF Rule 6k(2), the Board will use a two-Board meeting process to review, consider public comment and approve or reject a proposal for a temporary renewable loan of water. The Board’s consideration of the loan at this meeting will initiate this process and begin a twenty day period in which any person may request the Board to hold a hearing on the proposed loan. 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. After the second CWCB meeting, the Board may direct Staff to “move forward,” after which the Applicant shall file a request for approval of the loan with DWR, which will initiate a 60- day comment period for DWR’s review.</p>
23	<p>Request for Authorization to Proceed to Trial for Stipulated Water Court Cases <i>Stream & Lake Protection Section</i></p>
23a.	<p>Case No. 18CW3106, Application of Central Colorado Water Conservancy District, and Ground Water Management Subdistrict of the Central Colorado Water Conservancy District (Water Division 1)</p> <p>Action: Report by CWCB staff member Colin Watson. A motion to approve the staff recommendation was made by Greg Felt, which was seconded by Celene Hawkins. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Pursuant to ISF Rule 8j., Staff recommends that the Board authorize Staff to participate at trial, as necessary, to defend CWCB’s stipulation in this case.</p>
23b.	<p>Case No. 19CW3019, Application of Fort Collins – Loveland Water District (Water Division 1)</p>

	<p>Action: Report by CWCB staff member Colin Watson. 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).</p> <p>Staff Recommendation: Pursuant to ISF Rule 8j., Staff recommends that the Board authorize Staff to participate at trial, as necessary, to defend CWCB's stipulation in this case.</p>
23c.	<p>Case No. 14CW3013, Application of Edgemont Ranch Metropolitan District (Water Division 7)</p> <p>Action: Report by CWCB staff member Colin Watson. A motion to approve the staff recommendation was made by Celene Hawkins, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Pursuant to ISF Rule 8j., Staff recommends that the Board authorize Staff to participate at trial, as necessary, to defend CWCB's stipulation in this case.</p>
24	<p>Notice of Recommended 2022 Instream Flow Appropriations in Water Divisions 4, 5 and 6 <i>Stream & Lake Protection Section</i></p> <p>Action: Report by CWCB staff member Rob Viehl.</p> <p>Staff Recommendation: This is an informational item that provides notice of recommended stream segments that staff may bring to the Board in January or March 2022 with a recommendation that the Board form its intent to appropriate ISF water rights. No Board action is required.</p>
25	<p>Ouray County BOCC Request to Delay Filing of ISF Water Court Application on Cow Creek (Water Division 4) <i>Stream & Lake Protection Section</i></p> <p>Action: Report by CWCB staff member Rob Viehl. Public Comment was made on this agenda item by the following people: 1. John Cyran, Western Resource Advocates 2. James Montgomery, Uncompahgre Watershed Partnership 3. Cary Denison, Hayes Teague & Chaffee Ditch Water Users 4. Aaron Clay, Tri County Attorney 5. Carol Viner, Ouray County Attorney 6. Peter Fleming, river District Attorney 7. Ben Tisdell, Ouray County Commissioner 8. Pete Foster, Ouray County Engineer 9. Amanda Clements, Great Old Broads. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Greg Felt. The motion was rejected (3-6).</p> <p>Staff Recommendation: Staff recommends that the Board consider Ouray County BOCC's request to delay filing of the CWCB's water court application on the Cow Creek Instream Flow (ISF) for six months.</p>
9	<p>WSRF Changes <i>Water Supply Planning Section</i></p>

Action: Report by CWCB staff members Russ Sands and Sam Stein. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Heather Dutton. The motion was approved unanimously (9-0). Director Felt had to leave the meeting after this item was voted on.

Staff Recommendation: Staff recommends the CWCB Board approve the proposed updates to the WSRF Criteria and Guidelines and approve the new Public Education Participation and Outreach (PEPO) Criteria and Guidelines.

10 Severance Tax Perpetual Base Fund Transfer to Water Supply Reserve Fund

Finance Section

Action: Report by CWCB staff members Russ Sands and Sam Stein. A motion to approve the staff recommendation was made by Jackie Brown, which was seconded by Gail Schwartz. The motion was approved unanimously (8-0).

Staff Recommendation: Pursuant to SB21-281, staff recommends the Board direct the State Treasurer to transfer \$3,000,000 from the Severance Tax Perpetual Base Fund to the Water Supply Reserve Fund on July 1, 2022.

ADJOURN

A motion to adjourn the November 2021 Board meeting was made by Steve Anderson, which was seconded by Robert Sakata. The motion was approved unanimously (8-0).