

FINAL

Summary Minutes and Record of Decisions

January 23 & 24, 2023 Board Meeting

A regular meeting of the Colorado Water Conservation Board (CWCB) convened at the Hyatt Regency in Aurora and virtually on zoom. The meeting was called to order by Chair Jaclyn Brown. 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, Paul Bruchez, Greg Felt, Celene Hawkins, Steven Anderson, Jessica Brody, and Heather Dutton, 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; 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 Jaclyn Brown. 9 voting members were present at the call to order, so a quorum was present (at least 6 required). The voting members present were: Paul Bruchez, Jessica Brody, Steven Anderson, Robert Sakata, Greg Felt, Celene Hawkins, Jaclyn Brown, and Heather Dutton, and ex-officio voting member Dan Gibbs, Executive Director of the Department of Natural Resources. Non-voting ex officio members present or represented were: Robert Harris, Colorado Parks and Wildlife; Kate Greenberg, 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.

Monday, January 23, 2023

1 Review /Approve Agenda

A motion to approve the agenda was made by Steve Anderson, which was seconded by Greg Felt. The motion was approved unanimously (8-0).

2 Review and Approve November 16 & 17, 2022 Board Meeting Minutes

A motion to approve the November 2022 Board minutes was made by Robert Sakata, which was seconded by Steve Anderson. The motion was approved unanimously (8-0).

3 Approve and/or Remove Consent Agenda Items

A motion to approve the Consent Agenda Items CA1a – c, 2a-b, & 4a was made by Robert Sakata, which was seconded by Jessica Brody. The motion was approved unanimously (8-0). Consent agenda item 3 was moved to the end of the agenda on day 1 for more discussion.

1. Statements of Opposition

Stream & Lake Protection Section

Staff recommends the Board ratify CWCB's filing of the following Statements of Opposition:

- a. Case No. 22CW3042 (Water Division 3): Application of Forbes Park Land Owners Association
- b. Case No. 22CW3097 (Water Division 5): Application of M & M Industries, Inc., Cari Elizabeth Mankowski & Eric David Mankowski and Patricia Price & Robert Price
- c. Case No. 22CW3037 (Water Division 7): Application of LLH Operations LLLP

2. Floodplain Designation

Watershed and Flood Protection Section

- a. "Flood Hazard Area Delineation, Second Creek (Lower) and Third Creek (Lower)", by RESPEC Consulting & Services, dated October 2022
- b. "Flood Hazard Area Delineation, Goldsmith Gulch", by Matrix Design Group, Inc., dated October 2022

4. Changes to Existing Loan

Finance Section

	a. Tunnel Water Company - West Half Laramie-Poudre Tunnel Rehabilitation
4	Directors' Reports
4a.	Agriculture Commissioner – Kate Greenberg
4b.	DNR Executive Director/IBCC Director - Dan Gibbs
4c.	CWCB Director - Rebecca Mitchell
4d.	State Engineer - Kevin Rein
4e.	Colorado Parks and Wildlife Director – Robert Harris
4f.	Water Resource and Power Development Authority – Jim Griffiths
5.	Attorney General's Report, Legal Briefing, and Executive Session Action: Report by Attorney General staff member Phil Weiser and Counsel to the Board, Jen Mele. A motion to go into Executive Session was made by Steve Anderson, which was seconded by Jessica Brody. The motion was approved unanimously (8-0).
6.	Executive Session
6a	Colorado River Interstate Negotiations
6b	Demand Management
6c	Easement Guidelines for the South Platte Downstream Channel Improvement Project
7.	Report from Executive Session Action: Report by Counsel to the Board, Jen Mele. Ed Millard addressed the Board for public comment. A motion to come out of Executive Session was made by Steve Anderson, which was seconded by Jessica Brody. The motion was approved unanimously (8-0).

8 Colorado River Updates

Interstate, Federal, and Water Information Section

Action: Report by CWCB staff members Amy Ostdiek and Michelle Garrison. Ken Curtis addressed the Board for public comment.

This is an informational item with no Board action required.

9 System Conservation Pilot Program

Interstate, Federal, and Water Information Section

Action: Report by CWCB staff members Amy Ostdiek and Michelle Garrison. Ed Millard addressed the Board for public comment.

This is an informational item with no Board action required.

10 Demand Management

Interstate, Federal, and Water Information Section

Action: Report by CWCB staff members Amy Ostdiek and Michelle Garrison.

This is an informational item with no Board action required.

11 2023 Species Conservation Trust Fund Eligibility List Approval

Interstate, Federal, and Water Information Section

Action: Report by CWCB staff member Kara Scheel. A motion to approve the staff recommendation was made by Celene Hawkins, which was seconded by Paul Bruchez. The motion was approved unanimously (7-0).

Staff Recommendation: Staff recommends that the Board: (1) concur with the DNR Executive Director's proposed recommendations to the General Assembly to approve a total expenditure of up to \$5 million from the Species Conservation Trust Fund (SCTF) for FY 2023-24, including up to \$2.25 million for the CWCB priorities outlined herein and \$0.5 million to renew funding for Endangered Species Act litigation support; and (2) forward a statement of concurrence to the CPW Commission.

CA 3 WSRF Guideline Clarifications

Water Supply Planning Section

Action: Report by CWCB staff member Russ Sands. A motion to approve the staff recommendation for consent agenda item 3 was made by Paul Bruchez, which was seconded by Steve Anderson. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Colorado Water Conservation Board (CWCB) approve of the clarifying revisions to the 2023 Water Supply Reserve Fund Criteria and Guidelines (Guidelines).

Tuesday, January 24, 2023

12 Basin Directors' Reports

12a Arkansas River Basin Director's Report – *Greg Felt*

12b City and County of Denver Director's Report – *Jessica Brody*

12c Rio Grande River Basin Director's Report – *Heather Dutton*

12d Yampa-White River Basin Director's Report – *Jackie Brown*

12e Colorado River (Mainstem) Basin Director's Report – *Paul Bruchez*

12f San Juan/San Miguel-Dolores River Basin Director's Report – *Celene Hawkins*

12g Gunnison River Basin Director's Report – *Steve Anderson*

12h North Platte River Basin Director's Report –

12i South Platte River Basin Director's Report – *Robert Sakata*

13 Financial Matters – Construction Fund and Severance Tax Perpetual Base Fund
Finance Section

13a Financial Projections and Cash Management Report

Action: Report by CWCB staff member Kirk Russell. Max Schmidt addressed the Board.

This is an informational item with no Board action required.

14 Water Project Loans
Finance Section

14a Fort Morgan Reservoir and Irrigation Company – Augmentation Pump Replacement Project

Action: Report by CWCB staff member Cole Bedford. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$1,770,530 (\$1,753,000 for project costs and \$17,530 for the 1% service fee) to the Fort Morgan Reservoir and Irrigation Company for costs related to the Augmentation Pump Replacement Project, from the Severance Tax Perpetual Base Fund. The loan term will be 30 years at an interest rate of 2.05% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

14b

Ogilvy Augmentation Company – Loloff Reservoir Acquisition

Action: Report by CWCB staff member Joshua Godwin. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$1,140,290 (\$1,129,000 for project costs and \$11,290 for the 1% service fee) to the Ogilvy Augmentation Company for costs related to the Loloff Reservoir Acquisition, from the Severance Tax Perpetual Base Fund. The loan term will be 30 years at an interest rate of 1.80% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

14c

Special Improvement District No. 4 of the Rio Grande Water Conservation District – Peachwood Farms Augmentation and Aquifer Sustainability Project

Action: Report by CWCB staff member Cole Bedford. Sara Parmar with CO Open Lands and Chris Ivers with the Rio Grande Water Conservation District addressed the Board. A motion to approve the staff recommendation was made by Heather Dutton, which was seconded by Steve Anderson. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$3,490,560 (\$3,456,000 for project costs and \$34,560 for the 1% service fee) to the Special Improvement District No. 4 of the Rio Grande Water Conservation District, operating by and through its water activity enterprise, for costs related to the Peachwood Farms Augmentation and Aquifer Sustainability Project, from the Severance Tax Perpetual Base Fund. The loan term will be 40 years at an interest rate of 2.10% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

14d

Platte Valley Irrigation Company – Platte Valley Reservoir No. 1 Construction

Action: Report by CWCB staff member Joshua Godwin. Matt Rouleau addressed the Board. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Celene Hawkins. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$4,545,000 (\$4,500,000 for project costs and \$45,000 for the 1% service fee) to the Platte Valley Irrigation Company for costs related to the construction of Platte Valley Reservoir No. 1, from the Severance Tax Perpetual Base Fund. The loan term will be 30 years at an interest rate of 1.85% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

14e

Twin Lakes Reservoir and Canal Company – Grizzly Reservoir Rehabilitation

Action: Report by CWCB staff member Joshua Godwin. A motion to approve the staff recommendation was made by Paul Bruchez, which was seconded by Celene Hawkins. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$9,931,330 (\$9,833,000 for project costs and \$98,330 for the 1% service fee) to the Twin Lakes Reservoir and Canal Company for costs related to the Grizzly Reservoir Rehabilitation, from the Severance Tax Perpetual Base Fund. The loan term will be 30 years at an interest rate of 2.90% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

15

Changes to Existing Loan

Finance Section

15a

Special Improvement District No. 5 of the Rio Grande Water Conservation District Saguache Pipeline Project

Action: Report by CWCB staff member Cole Bedford. A motion to approve the staff recommendation was made by Heather Dutton, which was seconded by Robert Sakata. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$6,080,200 (\$6,020,000 for Project costs and \$60,200 for the 1% service fee) to the Special Improvement District No. 5 of the Rio Grande Water Conservation District, acting by and through its water activity enterprise, for costs associated with the Saguache Pipeline, from the Construction Fund. The loan term will remain 30 years at an interest rate of 1.20% per annum. This is an increase of \$1,187,760 (\$1,176,000 for Project costs and \$11,760 for the 1% service fee). Security for the loan shall be in compliance with CWCB Financial Policy #5.

16

2023 Projects Bill

Finance Section

Action: Report by CWCB staff member Kirk Russell.

This is an informational item with no Board action required.

17

Request for Authorization to Proceed to Trial on Stipulated Opposition Case:

Stream and Lake Protection Section

17a

Case No. 18CW3106 (Water Division 1): Application of Central Colorado Water Conservancy District

Action: Report by CWCB staff member Colin Watson. Director Sakata disclosed that some of his wells are augmented by Central Water Conservancy District but he has no direct financial interest.

A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Pursuant to ISF Rule 8.j., Staff recommends that the Board authorize Staff to participate at trial, as necessary, to defend CWCB's stipulation in the case identified in Table 1.

Table 1.

Item	Case No.	Applicant	Trial Date(No. of Days)	CWCB Stipulation Date	CWCB Statement of Opposition Date
17a.	18CW3106 (Division 1)	Central Colorado Water Conservancy District	February 22, 2023 (3 days)	February 26, 2023	September 27, 2018

18 Proposed Acquisition for Instream Flow Use

Stream and Lake Protection Section

18a

Action: Report by CWCB staff member Pete Conovitz. Kathleen Curry addressed the Board. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Direct Staff to move forward with the lease proposal to: 1) approve the proposal for a temporary renewable lease of water for instream flow use; (2) authorize Staff to execute a temporary water sublease for instream flow use with the Colorado Water Trust; and (3) take any administrative action necessary to put the leased water to instream flow use, provided that the State Engineer determines that no injury will result from the proposed lease. Pursuant to 37-83-105(2) C.R.S. and ISF Rule 6k(2), this meeting is the second of a two-Board meeting process to review, consider any public comment, and approve or reject a proposal for a temporary renewable lease of water. No request for a hearing was received following the initial presentation of this lease proposal at the November 2022 Board meeting. Therefore at this meeting, the Board may direct Staff to move forward with the lease proposal pursuant to 37-83-105(2), after which staff will work with the Applicant to file a request for approval of the lease with the Division of Water Resources ("DWR"), and to provide the appropriate public notices. Filing the notices and request for approval will initiate an additional 60-day public comment period for DWR's review.

19

2023 Instream Flow (ISF) and Natural Lake Level (NLL) Appropriations

Stream and Lake Protection Section

Action: Report by CWCB staff member Rob Viehl. A motion to approve the staff recommendation was made by Celene Hawkins, which was seconded by Heather Dutton. 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 in Table 1, and a natural lake level (NLL) water right on the lake listed in Table 2, and direct staff to publicly notice the Board's declaration of its intent to appropriate.

Table 1. ISF Water Rights

Div	Stream	Watershed	County	Length (miles)	Upper Terminus	Lower Terminus	Flow Rate cfs/Timing
1	Herman Gulch (Increase)	Clear	Clear County	3.64	Headwaters	Confluence Clear Creek	0.4 (04/01 - 04/30) 4 (05/01 - 07/31) 0.7 (08/01 - 08/31)
4	Cameron Creek	East-Taylor	Gunnison	3.36	Headwaters	Confluence Lottis Creek	1.1 (04/01 - 09/30) 0.64 (10/01 - 10/31) 0.5 (11/01 - 03/31)
4	Cross Creek	East-Taylor	Gunnison	2.48	Headwaters	Confluence Lottis Creek	0.72 (04/01 - 04/30) 1.4 (05/01 - 07/31) 0.85 (08/01 - 08/31) 0.63 (09/01 - 09/30) 0.27 (10/01 - 03/31)
4	Curecanti Creek (Increase)	Upper Gunnison	Gunnison	9.90	Headwaters	Confluence Commissary Gulch	0.5 (03/01 - 03/31) 8.5 (04/01 - 07/15) 1.5 (07/16 - 7/31)
4	Curecanti Creek (Increase)	Upper Gunnison	Gunnison	10.1	Confluence Commissary Gulch	Confluence Morrow Point Reservoir	3 (03/01 - 03/31) 11.8 (04/01 - 07/15) 4.8 (07/16 - 07/31) 0.4 (08/01 - 09/30) 1.4 (10/01 - 11/30) 0.6 (12/01 - 02/28)
4	Kelly Creek	San Miguel	Montrose	1.59	Headwaters	Confluence Red Canyon	1.2 (04/01 - 04/30) 2.6 (05/01 - 05/31) 2.7 (06/01 - 06/30) 1.2 (07/01 - 07/31) 0.45 (08/01 - 10/31) 0.2 (11/01 - 03/31)

4	Monitor Creek	Lower Gunnison	Montrose	9.44	Confluence Little Monitor Creek	Confluence Potter Creek	4.6 (04/01 - 05/31) 3.6 (06/01 - 06/30)
4	Red Canyon Creek	San Miguel	Montrose	3.20	Headwaters	Confluence Big A Creek	5 (04/01 - 04/30) 6.2 (05/01 - 07/31) 3 (08/01 - 09/30) 2.3 (10/01 - 10/31) 1 (11/01 - 03/31)
4	Van Boxel Creek (Increase)	Upper Gunnison	Gunnison	7.75	Headwaters	Confluence Little Cimarron Rover	2.5 (04/01 - 04/30) 7.8 (05/01 - 06/30) 7.1(07/01 - 07/31) 1.5 (08/01 - 08/31) 0.4 (09/01 - 09/30)
4	West Steuben Creek	Upper Gunnison	Gunnison	5.39	Headwaters	Confluence Steuben Creek	2.2 (04/01 - 04/30) 4.5 (05/01 - 07/31) 1.5 (08/01 - 09/30) 1.1 (10/01 - 11/30) 0.8 (12/01 - 03/31)
6	Piceance Creek	Piceance-Yellow	Garfield Rio Blanco	6.93	Headwaters	Confluence Unnamed Tributary	0.2 (07/01 - 02/29) 0.8 (03/01 - 03/31) 1.5 (04/01 - 04/30) 1.4 (05/01 - 05/31) 0.8 (06/01 - 06/31)
6	Piceance Creek	Piceance-Yellow	Rio Blanco	3.67	Confluence Unnamed Tributary	Piceance Ditch Headgate	0.4 (07/01 - 02/29) 1.5 (03/01 - 03/31) 2.9 (04/01 - 05/31) 1.5 (06/01 - 06/30)

Table 2. NLL Water Right

Div	Lake	Watershed	County	Location (Center-point) (NAD 1983 Zone 13 North)	Surface Elevation (feet)	Volume (acre-feet)
5	Hack Lake	Colorado Headwaters	Garfield	UTM-East: 316816.32 UTM-North: 4409994.98	9,875	8.92

19b ISF Recommendations on Cottonwood Creek, Monitor Creek, and Potter Creek, Water Division 4 (Informational Item)

Action: Report by CWCB staff member Rob Viehl.

This is an informational item with no Board action required.

20 Appointment of CWCB Representative to Closed Basin Project Operating Committee

Action: Report by Attorney General staff member Jen Mele and Board Member Heather Dutton. Cleave Simpson, Clinton Phillips, Amber Pacheco, and David Robbins 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 (8-0).

Staff Recommendation: To appoint Clinton Phillips as representative from the Colorado Water Conservation Board ("CWCB") to the Closed Basin Project Operating Committee

21 Turf Program Rollout Plans

Water Supply Planning Section

Action: Report by CWCB staff member Kathryn Weismiller.

This is an informational item with no Board action required.

22 2023 Colorado Water Plan Approval

Water Supply Planning Section

Action: Report by CWCB staff member Russ Sands. A motion to approve the staff recommendation was made by Heather Dutton, which was seconded by Celene Hawkins. The motion was approved unanimously (8-0).

Staff Recommendation: Staff Recommend the Colorado Water Conservation Board (CWCB) board vote to adopt the 2023 Colorado Water Plan and 2023 Executive Summary to the Colorado Water Plan.

ADJOURN

A motion to adjourn the January 2023 Board meeting was made by Robert Sakata, which was seconded by Steve Anderson. The motion was approved unanimously (8-0).