

DRAFT

Summary Minutes and Record of Decisions

May 17 & 18, 2023 Board Meeting

A regular meeting of the Colorado Water Conservation Board (CWCB) convened at Northern Water in Berthoud and virtually on zoom. The meeting was called to order by Chair Jaclyn Brown. 10 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, Barbara Vasquez, Greg Felt, Lorelei Cloud, Steven Anderson, Jessica Brody, and Nathan Coombs, and ex-officio voting member Dan Gibbs, Executive Director of the Department of Natural Resources. Non-voting ex officio members present or represented were: Scott Steinbecher, Attorney General's Office; 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 Greg Felt. 8 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, Steven Anderson, Barbara Vasquez, Robert Sakata, Greg Felt, Lorelei Cloud, Jaclyn Brown, and Nathan Coombs. Kelly Romero-Heaney, 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 Lauren Ris, Colorado Water Conservation Board Assistant Director. Counsel to the Board, Jen Mele, was also in attendance.

Wednesday, May 17, 2023

1 Election of Officers

Robert Sakata nominated Greg Felt as Chair and Paul Bruchez as Vice Chair, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).

2 Review /Approve Agenda

A motion to approve the agenda was made by Steve Anderson, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).

3 Review and Approve March 15 & 16, 2023 Board Meeting Minutes

A motion to approve the March 2023 Board minutes was made by Robert Sakata, which was seconded by Barbara Vasquez. The motion was approved unanimously (9-0).

4 Approve and/or Remove Consent Agenda Items

A motion to approve the Consent Agenda Items was made by Robert Sakata, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).

5 Directors' Reports

5a. DNR Executive Director/IBCC Director - Dan Gibbs

5b. CWCB Director - Rebecca Mitchell

5c. Agriculture Commissioner – Kate Greenberg

5d. State Engineer - Kevin Rein

5e. Colorado Parks and Wildlife Director – Robert Harris

5f. Water Resource and Power Development Authority – Keith McLaughlin

6 Operational Planning Discussion

Action: Report by CWCB staff member Lauren Ris and Greg Bellomo with Government Performance Solutions.

This is an informational item with no Board action required.

7 Chatfield Reallocation Project Environmental Pool Agreement

Lauren Ris

Action: Report by CWCB staff member Lauren Ris. A motion to approve the staff recommendation was made by Barbara Vasquez, which was seconded by Jackie Brown. Jessica Brody recused herself from the vote, her employer Denver Water is party to the project. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve entering into an agreement with the Greenway Foundation and Denver Water, to be signed by the CWCB Director, to secure 500 acre-feet of storage space in the Chatfield Reallocation Project for the Environmental Pool.

8 Fish and Wildlife Resources Fund-Criteria Update

Watershed and Flood Protections Section

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

Staff Recommendation: Staff recommends that the Board approve the Fish and Wildlife Resources Fund grant guidelines and remove Board Policies 15 & 20 from activity.

9 Attorney General's Report, Legal Briefing, and Executive Session

Action: Report by Attorney General staff member Scott Steinbecher and Counsel to the Board, Jen Mele. A motion to go into Executive Session was made by Steve Anderson, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).

10 Executive Session

10b Colorado River – Draft Supplemental EIS

10c Litigation Fund FY24

11

Report from Executive Session

Action: Report by Counsel to the Board, Jen Mele. A motion to come out of Executive Session was made by Steve Anderson, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).

12

Approval of Litigation Fund FY 2024

Interstate, Federal, and Water Information Section

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

Staff Recommendation: CWCB Staff recommends that the Board authorize the expenditure of a total of \$1,970,000 for litigation-related activities in FY 2023-24 as follows:

- 1) Colorado River Basin: \$1,030,000
- 2) Republican River Basin: \$110,000
- 3) South Platte River Basin: \$205,000
- 4) Rio Grande Basin: \$590,000
- 5) Arkansas River Basin: \$35,000

Staff also recommends that the Board: 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).

13

Colorado Weather Modification Program

Interstate, Federal, and Water Information Section

Action: Report by CWCB staff member Andrew Rickert.

This is an informational item with no Board action required.

14

Colorado Snow Survey

Interstate, Federal, and Water Information Section

Action: Report by CWCB staff member Andrew Rickert.

This is an informational item with no Board action required.

15

Colorado River Hydrology and Other Updates

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.

16 Colorado River Draft Supplemental Environmental Impact
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.

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

17a Financial Projections and Cash Management Report

Action: Report by CWCB staff member Kirk Russell.

This is an informational item with no Board action required.

17b 2024 Projects Bill Funding Projections

Action: Report by CWCB staff member Kirk Russell.

This is an informational item with no Board action required.

18 Water Project Loans
Finance Section

18a Crawford Clipper Ditch Company – Crawford Clipper Ditch Improvements

Action: Report by CWCB staff member Joshua Godwin. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$757,500 (\$750,000 for project costs and \$7,500 for the 1% service fee) to the Crawford Clipper Ditch Company for costs related to Crawford Clipper Ditch improvements, 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.

Additionally, staff recommends the following condition to be included in the loan contract:

1. Funds from this loan shall not be disbursed until after all easements necessary for the Project have been secured.

19 Prequalification of Water Project Loan

Finance Section

19a Northern Integrated Supply Project

Action: Report by CWCB staff member Matt Stearns. Carl Brower and Jonathan Hernandez with Northern Water addressed the Board.

This is an informational item with no Board action required.

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

Finance Section

Action: Report by CWCB staff member Kirk Russell. 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: 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, 2023.

Thursday, May 18, 2023

21 Basin Directors' Reports

21a South Platte River Basin Director's Report – *Robert Sakata*

21b Arkansas River Basin Director's Report – *Greg Felt*

21c City and County of Denver Director's Report – Absent

21d Rio Grande River Basin Director's Report – *Nathan Coombs*

21e Yampa-White River Basin Director's Report – *Jackie Brown*

21f Colorado River (Mainstem) Basin Director's Report – *Paul Bruchez*

21g San Juan/San Miguel-Dolores River Basin Director's Report – *Lorelei Cloud*

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|------------|---|
| 21h | Gunnison River Basin Director's Report – <i>Steve Anderson</i> |
| 21i | North Platte River Basin Director's Report – <i>Barbara Vasquez</i> |

22 2023 Instream Flow (ISF) and Natural Lake Level (NLL) Appropriations
Stream and Lake Protection Section

22a Request for Final Action on Uncontested ISF and NLL Water Rights in Water Divisions 1, 4, 5, and 6

Action: Report by CWCB staff member Rob Viehl. A motion to approve the staff recommendation was made by Barbara Vasquez, which was seconded by Robert Sakata. The motion was approved unanimously (8-0).

Staff Recommendation: Staff requests that the Board make the following determinations and take the following actions on each instream flow (ISF) water right listed in Table 1, and on the natural lake level (NLL) water right listed in Table 2. 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 memo and oral presentation provided at the January 24, 2023, Board meeting.

(1) Determine, pursuant to section 37-92-102(3), C.R.S., that for the ISF and NLL appropriations identified in Tables 1 & 2:

- (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 appropriation; and
- (c) Such natural environment can exist without material injury to water rights.

(2) Pursuant to ISF Rule 5f., establish January 24, 2023 as the appropriation date for these water rights.

(3) 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. ISF Water Rights

| Div | Stream | Watershed | County | Length (miles) | Upper Terminus | Lower Terminus | Flow Rate cfs/ Timing |
|-----|----------------------------|-------------|-------------|----------------|----------------|----------------------------|---|
| 1 | Herman Gulch (Increase) | Clear | Clear Creek | 3.64 | headwaters | confluence Clear Creek | 0.4 (04/01 - 04/30) 4 (05/01 - 07/31) 0.7 (08/01 - 8/31) |
| 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 | 1.5 (03/01 - 03/31) 8.5 (04/01 - 07/15) 2.5 (07/16 - 07/31) |
| 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 - 02/29) |
| 4 | Kelly Creek | San Miguel | Montrose | 1.59 | headwaters | confluence Red Canyon Creek | 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 |

22b

Public Comment and conditional Approval of Terms and Conditions for ISF Water Rights in Water Division 4 on Cottonwood Creek, Monitor Creek, and Potter Creek (Montrose & Delta Counties)

Action: Report by CWCB staff member Rob Viehl. Public Comment was presented to the Board by Peter Fleming and Raquel Flinker. A motion to approve the staff recommendation was made by Barbara Vazquez, which was seconded by Nathan Coombs. The motion was approved unanimously (8-0).

Staff Recommendation: Staff requests the Board:

- 1) Conditionally approve the Stipulation and Agreement (Stipulation) between the Colorado River Water Conservation District (River District) and the Colorado Water Conservation Board (CWCB), included here as “Attachment A” for the Cottonwood Creek, Monitor Creek, and Potter Creek instream flow (ISF) appropriations. The terms and conditions for the proposed ISF water rights set forth in the Stipulation and Agreement will be included in the final action for these appropriations at the July 2023 CWCB meeting if these ISF water rights remain uncontested.
- 2) Authorize the Director of the CWCB to sign the aforementioned Stipulation and Agreement on behalf of the Board.

23 Request for Authorization to Proceed to Trial in Stipulated Opposition Case:

Stream and Lake Protection Section

23a Case No. 21CW3026 (Water Division 3): Application of Sustainable Water Augmentation Group, Inc.

Action: Report by CWCB staff member Pete Conovitz. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Barbara Vazquez. Nathan Coombs recused himself from the vote. The motion was approved unanimously (7-0).

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 the Table below.

Table 1:

| Item | Case No. | Applicant | Trial Date (No. of Days) | CWCB Stipulation Date | CWCB Statement of Opposition Date |
|------|--------------------------|---|-------------------------------|-----------------------------|---|
| 23.a | 21CW3026 (Division 3) | Sustainable Water Augmentation Group | July 17, 2023 (25 days) | February 13, 2023* | February 28, 2022 |

*The Motion to Approve the stipulation was filed with the court on this date but the court has not yet issued an order granting the motion.

24 Proposed Acquisition for Instream Flow Use

Stream and Lake Protection Section

Proposed Water Use Agreements with the Ute Water Conservancy District and Garfield County to lease Ruedi Reservoir Water for Instream Flow Use in the 15-Mile Reach (Water Division 5) (2nd Meeting)

Action: Report by CWCB staff member Pete Conovitz. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Jackie Brown. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends that the Board:

1) Direct Staff to execute the proposed Water Use Agreements with a) the Ute Water Conservancy District; and b) Garfield County in a form substantially similar to the attached draft Agreements;

2) Authorize an expenditure of up to \$247,200 to implement and fund the first short-term annual lease under the Agreement with the Ute Water Conservancy District; and

3) Authorize an expenditure of up to \$16,548 to implement and fund the first short-term annual lease under the Agreement with the Garfield County.

Pursuant to 37-92-102(3) C.R.S. and ISF Rule 6b, this meeting is the second of a two-Board meeting process to review, consider any public comment, and approve or reject a proposal for two separate Water Use Agreements that allow for the short-term annual lease of water for instream flow use on the 15-Mile Reach of the Colorado River. No request for a hearing was received following the initial presentation of this proposal at the March 2023 Board meeting. At this meeting, the Board may direct Staff to execute the Water Use Agreements and authorize funding to implement the first short-term annual lease under each Agreement.

25 Water Supply Reserve Fund Applications

Water Supply Planning Section

Basin – Arkansas

Applicant – Upper Arkansas Water Conservancy District

Name of Water Activity – Data Collection Network Upgrade and Expansion

25a Action: Report by CWCB staff member Ben Wade. Jord Gertson addressed the Board. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Jackie Brown. Greg Felt recused himself from the vote. The motion was approved unanimously (7-0).

Staff Recommendation: Staff recommends approval of up to \$50,225 from the Arkansas Basin Account and up to \$80,357 from the Statewide Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

25b Basin – Colorado

Applicant – Colorado River District

Name of Water Activity – Airborne Snow Observatory Snow Mapping in the Colorado River System – Water Years 2023 & 2024

Action: Report by CWCB staff member Ben Wade. A motion to approve the staff recommendation was made by Jackie Brown, which was seconded by Robert Sakata. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends approval of up to \$241,770.47 from the Colorado

Basin Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

25c **Basin** – Colorado
Applicant – Grand Valley Irrigation Company
Name of Water Activity – ML 260 Piping Project

Action: Report by CWCB staff member Ben Wade. A motion to approve the staff recommendation was made by Jackie Brown, which was seconded by Robert Sakata. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends approval of up to \$48,000 from the Colorado Basin Account and up to \$141,950 from the Statewide Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

25d **Basin** – Gunnison
Applicant – Trout Unlimited - Denver
Name of Water Activity – Stewart Mesa Canal Diversion Modification

Action: Report by CWCB staff member Ben Wade. A motion to approve the staff recommendation was made by Jackie Brown, which was seconded by Robert Sakata. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends approval of up to \$39,198 from the Gunnison Basin Account and up to \$265,802 of Statewide Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

25e **Basin** – Southwest
Applicant – Dolores Water Conservancy District
Name of Water Activity – Increased Application Efficiency for Center Pivot Irrigation

Action: Report by CWCB staff member Ben Wade. A motion to approve the staff recommendation was made by Jackie Brown, which was seconded by Robert Sakata. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends approval of up to \$100,000 from the Southwest Basin Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

25f **Basin** – Yampa/White/Green
Applicant – City of Craig
Name of Water Activity – Yampa River Corridor Project

Action: Report by CWCB staff member Ben Wade. A motion to approve the staff recommendation was made by Jackie Brown, which was seconded by Robert Sakata. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends approval up to \$100,000 from the Yampa White Green Basin Account and up to \$100,000 from the Statewide Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

25g

Basin – Yampa/White/Green

Applicant – The Nature Conservancy

Name of Water Activity – Maybell Diversion & Headgate Construction

Action: Report by CWCB staff member Ben Wade. A motion to approve the staff recommendation was made by Jackie Brown, which was seconded by Barbara Vasquez. Lorelei Cloud recused herself from the vote. The motion was approved unanimously (7-0).

Staff Recommendation: Staff recommends approval of up to \$150,000 from the Yampa/White/Green Basin Account and up to \$801,884 from the Statewide Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

26

FY 2023-24 Water Plan Grant Funding by Category

Administration and Operations Section

Action: Report by CWCB staff member Anna Mauss. A motion to approve the staff recommendation was made by Nathan Coombs, which was seconded by Jackie Brown. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends budgeting the \$25.2 M for Water Plan Grants as follows:

- Agriculture - \$5.1 million
- Conservation & Land Use Planning - \$5.7 million
- Engagement & Innovation - \$700K
- Water Storage & Supply - \$5.7 million
- Watershed Health & Recreation - \$8.0 million

The amount listed are target numbers and the board retains flexibility to award grants based on actual demands in each funding category.

27

Diane Hoppe Memorial Scholarship

Administration and Operations Section

Action: Report by CWCB staff member Anna Mauss. A motion to approve the staff recommendation was made by Jackie Brown, which was seconded by Barbara Vasquez. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a \$2,000 scholarship to Student 2.

Action: Report by CWCB staff member Elizabeth Schoder and Jayla Poppleton with WEco. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Barbara Vasquez. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve the proposed Fiscal Year 2024 Scope of Work for Water Education Colorado (WEco).

ADJOURN

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