

DRAFT

Summary Minutes and Record of Decisions

July 19 & 20, 2023 Board Meeting

A regular meeting of the Colorado Water Conservation Board (CWCB) convened at the Elevation Hotel in Crested Butte and virtually on zoom. The meeting was called to order by Chair Greg Felt. 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, Jaclyn Brown, 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 Lauren Ris, Colorado Water Conservation Board Acting 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. 10 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, Barbara Vasquez, Robert Sakata, Greg Felt, Lorelei Cloud, Jaclyn Brown, 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 Lauren Ris, Colorado Water Conservation Board Acting Director. Counsel to the Board, Jen Mele, was also in attendance.

Wednesday, July 19, 2023

1 Review /Approve Agenda

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

2 Review and Approve May 17 & 18, 2023 Board Meeting Minutes

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

3 Approve and/or Remove Consent Agenda Items

A motion to approve the Consent Agenda Items was made by Steve Anderson, which was seconded by Nathan Coombs. The motion was approved unanimously (9-0).

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. 23CW0005 (Water Division 4): Application of Halo Ranch LLC
- b. Case No. 23CW3053 (Water Division 5): Application of Tabernash Meadows Water and Sanitation District

2. Water Supply Reserve Fund Application Grant

Water Supply Planning Section

- a. Basin - Colorado
Applicant - Grand County Irrigated Land Company
Name of Water Activity - Vail Ditch Conservation & Efficiency Project
- b. Basin - Yampa/White/Green
Applicant - Town of Oak Creek
Name of Water Activity - Sheriff Dam - Outlet Gate Replacement

3. Clear Creek Whitewater Park - Change of Fiscal Agent

Watershed and Flood Protection Section

4	Directors' Reports
4a.	DNR Executive Director/IBCC Director - Dan Gibbs
4b.	CWCB Director – Lauren Ris
4c.	Agriculture Commissioner – Kate Greenberg
4d.	State Engineer - Kevin Rein
4e.	Colorado Parks and Wildlife Director – Robert Harris
4f.	Water Resource and Power Development Authority – Jim Griffith
5	Wild and Scenic Rivers Update and Fund Annual Review <i>Interstate, Federal, and Water Information Section</i> <p>Action: Report by CWCB staff members Brandy Logan and Andrew Rickert. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Barbara Vasquez. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation:</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.
6	CASM Update <i>Interstate, Federal, and Water Information Section</i> <p>Action: Report by CWCB staff member Erik Skeie, Jeff Deems with Airborne Snow Observatories, Inc, and Taylor Winchell with Denver Water.</p> <p><i>This is an informational item with no Board action required.</i></p>
7	Best Practices for Boards and Commissions (HB 18-1198) <p>Action: Report by Attorney General staff member Jen Mele.</p> <p><i>This is an informational item with no Board action required.</i></p>

8 Water Supply Reserve Fund Applications

Water Supply Planning Section

Basin – Arkansas

Applicant – Upper Arkansas Water Conservancy District

Name of Water Activity – Chaffee County Groundwater Study Phase 3

8d Action: Report by CWCB staff member Ben Wade. A motion to approve the staff recommendation was made by Jackie Brown, which was seconded by Nathan Coombs. Greg Felt recused himself from the vote. The motion was approved unanimously (8-0).

Staff Recommendation: Approval of up to \$65,000 from the Arkansas Basin Account and up to \$325,000 from the Statewide Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

8a Basin – Arkansas

Applicant – Colorado City Metropolitan District

Name of Water Activity – Engineering Design of Lake Beckwith Dam Rehabilitation

Action: Report by CWCB staff member Ben Wade. James Eccher, Neil Elliot, and Mike Garber addressed the Board. 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: Approval of up to \$65,000 from the Arkansas Basin Account and up to \$263,100 from the Statewide Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

8b Basin – Arkansas

Applicant – Huajatolla Valley Estates

Name of Water Activity – HVE Infrastructure Plan

Action: Report by CWCB staff member Ben Wade. 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: Approval of up to \$13,266 from the Arkansas Basin Account and up to \$92,864 from the Statewide Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

8c Basin – Arkansas

Applicant – Purgatoire Watershed Partnership

Name of Water Activity – Concrete Ditch Lining of the Baca-Picketwire Ditch

Action: Report by CWCB staff member Ben Wade. Julie Knudson addressed the Board. 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: Approval of up to \$182,090 from the Arkansas Basin Account and up to \$315,045 from the Statewide Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

8e

Basin – Gunnison

Applicant – Town of Crested Butte

Name of Water Activity – Coal Creek Dam

Action: Report by CWCB staff member Ben Wade. Carolyn deGroot addressed the Board. 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: Approval of up to \$150,000 from the Gunnison Basin Account and up to \$350,000 from the Statewide Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

8f

Basin – Rio Grande

Applicant – Costilla County Conservancy District

Name of Water Activity – Culebra Watershed Partnership 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 Steve Anderson. The motion was approved unanimously (9-0).

Staff Recommendation: Approval of up to \$204,500 from the Rio Grande Basin Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

8g

Basin – Rio Grande

Applicant – San Luis Valley Water Conservancy District

Name of Water Activity – Beaver Park Reservoir Seepage Mitigation Study

Action: Report by CWCB staff member Ben Wade. Heather Dutton addressed the Board. 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: Approval up to \$50,000 from the Rio Grande Basin Account and up to \$120,000 from the Statewide Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

8h

Basin – Rio Grande

Applicant – Trout Unlimited

Name of Water Activity – Divide Ranger District Toilet Replacement Project

Action: Report by CWCB staff member Ben Wade. Tanner Dutton and Kevin Terry addressed the Board. 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: Approval of up to \$281,750 from the Rio Grande Basin Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

8i

Basin – Yampa/White/Green

Applicant – CO Division of Water Resources

Name of Water Activity – Data Logger/Telemetry Installation Project: Bear River & Sarvis Creek, District 58 (Division 6)

Action: Report by CWCB staff member Ben Wade. Mendi Figueroa and Erin Light addressed the Board. 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: Approval of up to \$25,200 from the Yampa-White-Green Basin Account and up to \$132,300 from the Statewide Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

9

2023 Instream Flow (ISF) Appropriations

Stream and Lake Protection Section

9a

Request for Final Action on Uncontested ISF Water Rights on Cottonwood Creek, Monitor Creek, and Potter Creek (Water Division 4)

Action: Report by CWCB staff member Rob Viehl. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Barbara Vasquez. 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 instream flow (ISF) water right listed in Table 1.

(1) Determine, pursuant to section 37-92-102(3), C.R.S., that for the ISF appropriations 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 appropriation; and

(c) Such natural environment can exist without material injury to water rights.

(2) Pursuant to ISF Rule 5f., establish July 19, 2023 as the appropriation date for these ISF water rights.

(3) Include in this appropriation and in future water court applications and decrees the terms and conditions agreed upon between the CWCB and the Colorado River Water Conservation District and contained in paragraphs 3.A-3.I of the attached stipulation and agreement (Attachment A).

(4) Include in this appropriation and in future water court applications and decrees the

water development allowance identified for each appropriation as identified in Tables 2-5 and in the attached SGM Report (Attachment B).

(5) 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

Stream	Watershed	County	Length (miles)	Upper Terminus	Lower Terminus
Cottonwood Creek (Increase)	Lower Gunnison	Delta, Montrose	23.3	Hawkins Ditch headgate	Confluence Roubideau Creek
ISF protection initiates at 183 cfs and protects all unappropriated streamflow until flow rates recede to the existing 3.6 cfs ISF rate or 9/30, whichever occurs first.					
Monitor Creek (Increase)	Lower Gunnison	Montrose	8.29	Confluence Little Monitor Creek	Confluence Potter Creek
ISF protection initiates at 111 cfs and protects all unappropriated streamflow until flow rates recede to the pending ISF of 4.6 cfs (4/1 - 5/31), 3.6 cfs (6/1 - 6/30) or 3.6 cfs if outside of these times or until 9/30, whichever occurs first.					
Potter Creek (Increase)	Lower Gunnison	Montrose	8.10	USFS property boundary	Confluence Monitor Creek
ISF protection initiates at 177 cfs and protects all unappropriated streamflow until flow rates recede to the existing ISF of 4 cfs (4/1 - 6/15), 1.8 cfs (6/16 - 7/31), 1.4 cfs (8/1 - 2/29), or until 9/30, whichever occurs first.					
Potter Creek (Increase)	Lower Gunnison	Montrose	1.72	Confluence Monitor Creek	Confluence Roubideau Creek
ISF protection initiates at 225 cfs and protects all unappropriated streamflow until flow rates recede to the existing ISF of 4 cfs (4/1 - 6/15), 1.8 cfs (6/16 - 7/31), 1.4 cfs (8/1 - 2/29), or until 9/30, whichever occurs first.					

Table 2. Cottonwood Creek Water Development Allowance

WDA Uses	Annual Amount	Diversion Amount	Uses
	(AF)	(cfs)	
Water Use on Private Parcels ⁽¹⁾	557.2	2.06	Irrigation, domestic, stock watering, recreation, wildlife, piscatorial, fire protection, and storage
BLM	2.0	0.22	
USFS	2.0	0.22	
CPW	1.0	0.1	
Total	562.2	2.6	

Notes:

(1) Assumes a total new water demand associated with residential, livestock, and irrigation for 87, 35-acre parcels. Only 65 of those parcels would require new irrigation water supply.

Table 3. Monitor Creek Water Development Allowance

WDA Uses	Annual Amount	Diversion Amount	Uses
	(AF)	(cfs)	
Future Irrigation ⁽¹⁾	1,623.1	6.85	Irrigation, domestic, stock watering, recreation, wildlife, fire protection, and storage
BLM	2.0	0.22	
USFS	2.0	0.22	
Total	1,627.1	7.29	

Notes:

(1) The total amount for irrigation includes a 15-percent ditch loss and overall irrigation efficiency of 50-percent. This total volume could also be stored in relatively small irrigation ponds throughout the runoff to help extend the water availability to meet the irrigation water requirement. No additional storage amount was allocated above the total diversion demand.

Table 4. Upper Potter Creek Water Development Allowance

WDA Uses	Annual Amount	Diversion Amount	Uses
	(AF)	(cfs)	
Water Use on Private Parcels ⁽¹⁾	0.5	0.001	Irrigation, storage, recreation, wildlife, fire protection, domestic, and stock
BLM	2.0	0.22	
USFS	2.0	0.22	
Total	4.5	0.441	

Notes:

(1) – Assumes a total new water demand associated with residential, livestock, and irrigation for one, 5-acre parcels.

Table 5. Potter Creek Water Development Allowance

WDA Uses	Annual Amount	Diversion Amount	Uses
	(AF)	(cfs)	
Future Irrigation ⁽¹⁾	1,623.1	6.85	Irrigation, domestic, stock watering, recreation, wildlife, fire protection, and storage
BLM	4.0	0.44	
USFS	4.0	0.44	
Total	1,631.1	7.73	

Notes:

(1) The total amount for irrigation includes a 15-percent ditch loss and overall irrigation efficiency of 50-percent. This total volume could also be stored in relatively small irrigation ponds throughout the runoff to help extend the water availability to meet the irrigation water requirement. No additional storage amount was allocated above the total diversion demand.

10a Fish and Wildlife Mitigation and Enhancement Plan

Action: Report by CWCB staff member Rob Viehl, Katie Birch and Karlyn Armstrong with CO Parks and Wildlife, and Donnie Dustin with City of Fort Collins. A motion to approve the staff recommendation was made by Dan Gibbs, which was seconded by Nathan Coombs. Barbara Vasquez abstained from the vote. The motion was approved unanimously (8-0).

Staff Recommendation: The Board adopt the Halligan Water Supply Project Fish and Wildlife Mitigation and Enhancement Plan, without modification, as the official State position on the mitigation actions required for the Project.

10b Request to Inundate CWCB ISF on North Fork Cache la Poudre River Case No. 85CW0430 (Water Division 1)

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

Staff Recommendation: The Board:

- Determine that the natural environment can continue to be preserved to a reasonable degree despite the inundation of a portion of the instream flow water right (“ISF”) decreed in Case No. 85CW430 on the North Fork Cache la Poudre River, so long as the conditions described in the mitigation and enhancement plan are followed; and
- Approve with conditions Fort Collins’ request to inundate pursuant to ISF Rule 7 for Inundation of ISF Rights.

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

11a Financial Projections and Cash Management Report

Action: Report by CWCB staff member Kirk Russell.

This is an informational item with no Board action required.

11b Two Rivers Water & Farming Company, and Two Rivers Farms F-2, Inc. – Loan Delinquency

Action: Report by CWCB staff member Kirk Russell. 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: Direct staff to issue a Notice of Default to Two Rivers Water & Farming Company (f/n/a Two Rivers Water Company) and Two Rivers Farms F-2, Inc. (f/n/a Two Rivers Farms F-2 LLC) should they fail to make the delinquent 2023 annual loan payment for Loan Contract #C150328A (CT2015-164) by September 1, 2023. The Notice of Default will inform the Borrower that

	<p>failure to make the payment within a thirty-day cure period will result in the entire outstanding loan principal balance, interest and late fees becoming immediately due and payable. This recommendation is consistent with CWCB Policy #3 “Loan Delinquency, Loan Restructuring and Collection” regarding the 180-day “past due” period before taking action to cure a loan delinquency.</p>
12	<p>Update on Existing Project Loans <i>Finance Section</i></p>
12a	<p>Water Infrastructure and Supply Efficiency (WISE) Project</p> <p>Action: Report by CWCB staff member Cole Bedford and Luis Tovar, General Manager with the Cottonwood Water Sanitation District.</p> <p><i>This is an informational item with no Board action required.</i></p>
13	<p>Change to Existing Project Loans <i>Finance Section</i></p>
13a	<p>Cottonwood Water and Sanitation District – Water Infrastructure and Supply Efficiency (WISE) Project</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 Lorelei Cloud. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$1,690,740 (\$1,674,000 for project costs and \$16,740 for the 1% service fee) to the Cottonwood Water and Sanitation District, acting by and through its water activity enterprise, for costs related to the WISE Phase 2 Infrastructure Project, from the Construction Fund. The loan term will remain 30 years at an interest rate of 3.00% per annum. This is an increase of \$563,580 (\$558,000 for Project costs and \$5,580 for the 1% service fee) to CWCB Loan Contract CT2015-0105. Security for the loan shall be in compliance with CWCB Financial Policy #5.</p>
13b	<p>Inverness Water and Sanitation District – Water Infrastructure and Supply Efficiency (WISE) Project</p> <p>Action: Report by CWCB staff member Cole Bedford. A motion to approve the staff recommendation was made by Nathan Coombs, which was seconded by Barbara Vasquez. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$2,126,050 (\$2,105,000 for project costs and \$21,050 for the 1% service fee) to the Inverness Water and Sanitation District for costs related to the WISE Phase 2 Infrastructure Project, from the Construction Fund. The loan term will remain 20 years at an interest rate of 2.75% per annum. This is an increase of \$698,920 (\$692,000 for Project costs and \$6,920 for the 1% service fee) to CWCB Loan Contract CT2015-0119. Security for the loan shall be in compliance with CWCB Financial Policy #5.</p>

13c	<p>Amity Mutual Irrigation Company – Queen Reservoir Rehabilitation</p> <p>Action: Report by CWCB staff member Joshua Godwin. A motion to approve the staff recommendation was made by Lorelei Cloud, which was seconded by Dan Gibbs. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$2,626,000 (\$2,600,000 for Project costs and \$26,000 for the 1% service fee) to the Amity Mutual Irrigation Company for costs related to the Queen Reservoir Dam Rehabilitation, from the Severance Perpetual Base Tax Fund. The loan term will remain 30 years at an interest rate of 3.10% per annum. This is an increase of \$1,282,700 (\$1,270,000 for Project costs and \$12,700 for the 1% service fee). Security for the loan shall be in compliance with CWCB Financial Policy #5.</p>
14	Basin Directors' Reports
14a	Yampa-White River Basin Director's Report – <i>Jackie Brown</i>
14b	Colorado River (Mainstem) Basin Director's Report – <i>Paul Bruchez</i>
14c	San Juan/San Miguel-Dolores River Basin Director's Report – <i>Lorelei Cloud</i>
14d	Gunnison River Basin Director's Report – <i>Steve Anderson</i>
14e	North Platte River Basin Director's Report – <i>Barbara Vasquez</i>
14f	South Platte River Basin Director's Report – <i>Robert Sakata</i>
14g	Arkansas River Basin Director's Report – <i>Greg Felt</i>
14h	City and County of Denver Director's Report – <i>Jessica Brody</i>
14i	Rio Grande River Basin Director's Report – <i>Nathan Coombs</i>

Thursday, July 20, 2023

15 Operational Planning

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

This is an informational item with no Board action required.

16 Demand Management Feasibility Investigation

Interstate, Federal, and Water Information Section

Action: Report by CWCB staff member Amy Ostdiek. A motion to approve the staff recommendation with this addition “the board asks CWCB staff to assist them in putting together a letter from the Board to all task force members and sponsors, that politely asks for a presentation from the CWCB earlier in the meeting process and includes an update from this Board on our position of pause on Demand Management” and an amendment for Jackie Brown that states, “at this time the Board continues to believe that the best use of Colorado Water is in Colorado”, was made by Paul Bruchez, which was seconded by Nathan Coombs. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends that the resources, research, and materials documenting the Colorado Water Conservation Board’s expansive Demand Management Feasibility Investigation to date, including this memo, be conveyed to the Colorado River Drought Task Force created by Senate Bill 23-295.

17 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.

18 Colorado River Communications and Outreach

Interstate, Federal, and Water Information Section

Action: Report by CWCB staff members Emily Zmak and Katie Weeman.

This is an informational item with no Board action required.

19 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 Lorelei Cloud. The motion was approved unanimously (9-0).

20 Executive Session

20a CWCB Director Interviews

Report from Executive Session

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

22 CWCB Director Vacancy Next Steps

Action: A motion to move forward candidates B & C to the next phase of the interview process for CWCB Director was made by Jackie Brown, which was seconded by Steve Anderson. The motion was approved unanimously (9-0).

ADJOURN

A motion to adjourn the July 2023 Board meeting was made by Steve Anderson, which was seconded by Barbara Vasquez. The motion was approved unanimously (9-0).