

## **DRAFT**

### **Summary Minutes and Record of Decisions**

#### **November 15 & 16, 2023 Board Meeting**

A regular meeting of the Colorado Water Conservation Board (CWCB) convened at the Marriott in Westminster and virtually on zoom. The meeting was called to order by Chair Greg Felt. 9 voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: Greg Felt, Robert Sakata, Paul Bruchez, Barbara Vasquez, Jaclyn Brown, Lorelei Cloud, Steven Anderson, Jessica Brody (arrived after the call to order), 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: Phil Weiser, Attorney General; Robert Harris, Colorado Parks and Wildlife; Kate Greenberg, Department of Agriculture; Kevin Rein, State Engineer, Becky Mitchell, IBCC Director, and Lauren Ris, 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. 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, Barbara Vasquez, Robert Sakata, Greg Felt, Lorelei Cloud, 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: Robert Harris, Colorado Parks and Wildlife; Kevin Rein, State Engineer, and Lauren Ris, Colorado Water Conservation Board Director. Counsel to the Board, Jen Mele was also in attendance.

**Wednesday, November 15, 2023**

**1 Review and Approve Agenda**

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

**2 Review and Approve 2023 Board Meeting Minutes**

**2a** A motion to approve the August 2023 Board minutes with amended language was made by Robert Sakata, which was seconded by Nathan Coombs. The motion was approved unanimously (10-0).

**2b** A motion to approve the September 2023 Board minutes was made by Robert Sakata, which was seconded by Nathan Coombs. The motion was approved unanimously (10-0).

**3 Approve and/or Remove Consent Agenda Items**

A motion to approve the Consent Agenda Items CA 1a -5a was made by Robert Sakata, which was seconded by Barbara Vasquez. The motion was approved unanimously (10-0).

**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. 22CW3010 (Water Division 5): Application of Sopris Mountain Ranch Homeowners' Association, Inc.

**2. Change to Water Supply Reserve Fund Grants**

*Water Supply Planning Section*

- a. Shaw Reservoir Rehabilitation Project - Change of Grantee
- b. Beaver Park Reservoir Seepage Mitigation Study - Change of Grantee

**3. Floodplain Designations**

*Watershed and Flood Protection Section*

- a. "Flood Insurance Study, Archuleta County, Colorado, and Incorporated Areas", by FEMA, dated October 5, 2023

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | <p>b. “Flood Hazard Area Delineation City Park Channel Upstream of Main Street and South Tributary to City Park Channel”, by Loewen Engineering, Inc., dated April 2023</p> <p><b>4. Change to Water Plan Grants</b><br/> <i>Administration &amp; Operations Section</i></p> <p>a. San Luis Valley Rye Resurgence Project - Change of Grantee<br/> b. Rio Grande Basin Snow Measurement Enhancement - Change of Grantee</p> <p><b>5. Change to Existing Loan</b><br/> <i>Finance Section</i></p> <p>a. Triview Metropolitan District - Stonewall Springs Reservoir Complex</p> |
| <b>4</b>   | <b>Directors’ Reports</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>4a.</b> | DNR Executive Director/IBCC Director - Dan Gibbs                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>4b.</b> | CWCB Director – Lauren Ris                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>4c.</b> | IBCC Director – Becky Mitchell                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>4d.</b> | Agriculture Commissioner – Kate Greenberg                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>4e.</b> | State Engineer - Kevin Rein                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>4f.</b> | Colorado Parks and Wildlife Director – Robert Harris                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>4g.</b> | Water Resource and Power Development Authority – Keith McLaughlin                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>5</b>   | <p><b>Shoshone Power Plant Water Rights Background Information</b><br/> <i>Stream and Lake Protection Section</i></p> <p><b>Action:</b> Report by CWCB staff member Jen Mele. Peter Fleming and Caleb Foy with Colorado River District addressed the Board.<br/> <i>This is an informational item with no Board action required.</i></p>                                                                                                                                                                                                                                       |
| <b>8</b>   | <b>Attorney General’s Report, Legal Briefing, and Executive Session</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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|           | <p><b>Action:</b> 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 Paul Bruchez, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>9</b>  | <p><b>Executive Session</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>9a</b> | <p>Colorado River Post 2026 Negotiations</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>9b</b> | <p>Case Nos. 21CW3085 and 21CW3086 (Water Division 5): Application of Elk Run Ranch Aspen Holdings, LLC and 4303 Snowmass Creek, LLC</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>10</b> | <p><b>Report from Executive Session</b></p> <p><b>Action:</b> Report by Counsel to the Board, Jen Mele. A motion to come out of Executive Session was made by Jessica Brody, which was seconded by Barbara Vasquez. The motion was approved unanimously (9-0).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>6</b>  | <p><b>WOTUS Updates</b><br/><i>Interstate, Federal, and Water Information</i></p> <p><b>Action:</b> Report by CWCB staff member Amy Ostdiek and Andy Nicewicz with the Attorney General’s Office.</p> <p><i>This is an informational item with no Board action required.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>7</b>  | <p><b>System Conservation Pilot Program and Conservation Projects Funded Through Bipartisan Infrastructure Law Funds</b><br/><i>Interstate, Federal, and Water Information</i></p> <p><b>Action:</b> Report by CWCB staff member Amy Ostdiek. A motion to approve the staff recommendation for the System Conservation Pilot Program was made by Nathan Coombs, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).</p> <p><b>Staff Recommendation:</b> Staff recommends the Board approve the Upper Colorado River Commission’s System Conservation Pilot Program.</p> <p><b>Action:</b> Report by CWCB staff member Amy Ostdiek. A motion to approve the staff recommendation for the Conservation Projects Funded Through Bipartisan Infrastructure Law Funds was made by Barbara Vasquez, which was seconded by Lorelei Cloud. The motion was approved unanimously (9-0).</p> |

**Staff Recommendation:** Staff recommends the Board approve Colorado conservation projects funded through Bipartisan Infrastructure Law Funds as Water Conservation Projects under to C.R.S. §§ 37-92-103(2) and 37-92-305(3)(c).

**11 Colorado River Updates**

*Interstate, Federal, and Water Information Section*

**Action:** Report by CWCB staff members Amy Ost diek and Michelle Garrison.

*This is an informational item with no Board action required.*

**12 Upper Colorado and San Juan Recovery Program Updates**

*Interstate, Federal, and Water Information Section*

**Action:** Report by CWCB staff member Kara Scheel.

*This is an informational item with no Board action required.*

**13 Request for Authorization to Proceed to Trial in Opposition Case:**

*Stream and Lake Protection Section*

**Action:** Report by CWCB staff member Colin Watson. A motion to approve the staff recommendation was made by Paul Bruchez, which was seconded by Nathan Coombs. The motion was approved unanimously (9-0).

**Staff Recommendation:** Pursuant to ISF Rule 8.j., Staff recommends that the Board authorize Staff to proceed to trial to protect its instream flow water rights in the event that Staff and the Attorney General's office are unable to reach a settlement with Applicants before trial, or if CWCB settles before trial, to defend its stipulation at trial if necessary.

**14 Notice of 2024 Instream Flow and Natural Lake Level Recommended Appropriations in Water Divisions 1, 2, 4, and 6**

*Stream and Lake Protection Section*

**Action:** Report by CWCB staff member Brandy Logan.

*This is an informational item with no Board action required.*

**15 Financial Matters – Construction Fund and Severance Tax Perpetual Base Fund**

*Finance Section*

**Action:** Report by CWCB staff member Kirk Russell.

- a. Financial Projections and Cash Management Report**
- b. Fiscal Year 2023 Financial Statements**
  - 1. Construction Fund
  - 2. Severance Tax
- c. Two Rivers Water & Farming Company, and Two Rivers Farms F-2, Inc. – Loan Delinquency**

*This is an informational item with no Board action required.*

**CA6 CWCB Policy #4 - Update to the Water Project Loan Programs Financial Ratios**  
*Finance Section*

**Action:** Report by CWCB staff member Cole Bedford. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Barbara Vasquez. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends the Board approve the adoption of new ratios for use by the CWCB Water Projects Loan Program for the purpose of assessing the strength of prospective borrowers. This action will modify CWCB Policy #4: *Construction Fund and Severance Tax Trust Fund Perpetual Base Account Borrower Creditworthiness and Financial Need Determinations*. The new ratios are shown in Table 1 and the proposed updated CWCB Policy #4 is attached.

**16 Water Project Loans**  
*Finance Section*

**a. Last Chance Ditch Company – Measurement Structure Reconstruction 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 Paul Bruchez. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends the Board approve a loan not to exceed \$197,960 (\$196,000 for project costs and \$1,960 for the 1% service fee) to the Last Chance Ditch Company for costs related to the Measurement Structure Reconstruction Project, from the Construction Fund. The loan term will be 30 years at an interest rate of 4.50% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

**b. Montezuma Valley Irrigation Company – Beaver Creek Ditch Repairs**

**Action:** Report by CWCB staff member Joshua Godwin, Brandon Johnon addressed the Board. 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).

**Staff Recommendation:** Staff recommends the Board approve a loan not to exceed \$1,414,000 (\$1,400,000 for project costs and \$14,000 for the 1% service fee) to the Montezuma Valley Irrigation Company for costs related to the Beaver Creek Ditch repair, from the Severance Tax Perpetual Base Fund. The loan term will be 30 years at an interest rate of 2.10% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

**c. Orchard City Irrigation District – Fruitgrowers Reservoir Gates Replacement**

**Action:** Report by CWCB staff member Joshua Godwin, Suzie Bilberry addressed the Board. A motion to approve the staff recommendation was made by Paul Bruchez, which was seconded by Nathan Coombs. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends the Board approve a loan not to exceed \$505,000 (\$500,000 for project costs and \$5,000 for the 1% service fee) to the Orchard City Irrigation District for costs related to the Fruitgrowers Reservoir Gates Replacement, from the Severance Tax Perpetual Base Fund. The loan term be 30 years at an interest rate of 2.20% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

**17**      **2024 Projects Bill**  
*Finance Section*

**17a**      **Non-Reimbursable Project Investments “En-Bloc” Approval**

- 1. Floodplain Risk Management (Continue)**
- 2. Litigation Fund (Refresh)**
- 3. Weather Mod (Continue)**
- 4. Colorado Mesonet (Continue)**
- 5. Satellite Monitoring/Maintenance (Continue)**
- 6. UCRC Modeling & Technical Analyses (Continue)**
- 7. Water Forecasting Partnership (Continue)**

**Action:** Report by CWCB staff member Kirk Russell. 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).

**Staff Recommendation:** Staff recommends the Board approve funding for all of the Non-Reimbursable Investments listed below from the Construction Fund for inclusion in the 2024 Projects Bill.

|     |                                              |           |           |
|-----|----------------------------------------------|-----------|-----------|
| (1) | Floodplain Risk Management<br>(Continuation) | Statewide | \$500,000 |
|-----|----------------------------------------------|-----------|-----------|

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|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|-------------|-------------|
|            | (2)                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Litigation Fund<br>(Budget of<br>\$1,970,000) - Refresh           | Statewide   | \$2,000,000 |
|            | (3)                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Weather Modification<br>Permitting Program<br>(Continuation)      | Statewide   | \$500,000   |
|            | (4)                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Colorado Mesonet<br>Enhancements<br>(Continuation)                | Statewide   | \$200,000   |
|            | (5)                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Satellite<br>Monitoring/Maintenan<br>ce Program<br>(Continuation) | Statewide   | \$380,000   |
|            | (6)                                                                                                                                                                                                                                                                                                                                                                                                                                                             | UCRC Modeling &<br>Technical Analysis<br>(Continuation)           | Statewide   | \$500,000   |
|            | (7)                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Water Forecasting<br>Partnership Project<br>(Continuation)        | Statewide   | \$2,000,000 |
|            | Total                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                   | \$6,080,000 |             |
| <b>17b</b> | <b>Non-Reimbursable Project Investments – Presentations</b>                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                   |             |             |
| <b>1.</b>  | <b>Drought Resilience Investment (New)</b>                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                   |             |             |
|            | <p><b>Action:</b> Report by CWCB staff member Kat Weismiller. A motion to approve the staff recommendation was made by Paul Bruchez, which was seconded by Lorelei Cloud. The motion was approved unanimously (9-0).</p> <p><b>Staff Recommendation:</b> Staff recommends the Board approve \$4,000,000 in funding for the Drought Resilience Investment from the Construction Fund for inclusion in the 2024 Projects Bill.</p>                                |                                                                   |             |             |
| <b>2.</b>  | <b>Statewide Diversion Telemetry Project (New)</b>                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                   |             |             |
|            | <p><b>Action:</b> Report by Division of Water Resources staff member Matt Hardesty. 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><b>Staff Recommendation:</b> Staff recommends the Board approve \$1,827,500 in funding for the Statewide Diversion Telemetry project from the Construction Fund for inclusion in the 2024 Projects Bill.</p> |                                                                   |             |             |
| <b>3.</b>  | <b>Southern High Plains Groundwater Study (New)</b>                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                   |             |             |

**Action:** Report by Division of Water Resources staff members Tracy Kosloff and Blake Gourley. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Paul Bruchez. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends the Board approve \$250,000 in funding for the Southern High Planes Groundwater Study Update from the Construction Fund for inclusion in the 2024 Projects Bill.

#### 4. **Turf Replacement Funding (New)**

**Action:** Report by CWCB staff member Jenna Battson. A motion to approve the staff recommendation was made by Paul Bruchez, which was seconded by Lorelei Cloud. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends the Board approve \$2,000,000 in funding for Turf Replacement Funding from the Construction Fund for inclusion in the 2024 Projects Bill.

#### 17c1 **Water Plan Implementation Cash fund - Appropriation**

**Action:** Report by CWCB staff member Anna Mauss. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Paul Bruchez. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends the Board support an appropriation of \$23.3 million from the Water Plan Implementation Cash Fund to support the Water Plan Grant Program in the 2024 Projects Bill.

#### 18 **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 Barbara Vasquez, which was seconded by Paul Bruchez. 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, 2024.

**Thursday, November 16, 2023**

**19 Basin Directors' Reports**

- 19a** City and County of Denver Director's Report – Jessica Brody
- 19b** Rio Grande River Basin Director's Report – *Nathan Coombs*
- 19c** Yampa-White River Basin Director's Report – Absent
- 19d** Colorado River (Mainstem) Basin Director's Report – *Paul Bruchez*
- 19e** San Juan/San Miguel-Dolores River Basin Director's Report – *Lorelei Cloud*
- 19f** Gunnison River Basin Director's Report – *Steve Anderson*
- 19g** North Platte River Basin Director's Report – *Barbara Vasquez*
- 19h** South Platte River Basin Director's Report – *Robert Sakata*
- 19i** Arkansas River Basin Director's Report – *Greg Felt*

**20 Project Bill Loans**

**a. Northern Colorado Water Conservancy District, Municipal Subdistrict-Windy Gap Firming Project**

**Action:** Report by CWCB staff member Cole Bedford and Jonathon Hernandez with Northern Colorado Water Conservancy District. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends the Board include this Water Project Loan increase of \$65,650,000 in the 2024 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 not to exceed \$155,650,000 (\$154,108,911 for Project costs and \$1,541,089 for the 1% service fee) to the Municipal Subdistrict, Northern Colorado Water Conservancy District, acting by and through the Windy Gap Firming Project Water Activity Enterprise, for costs related to the Windy Gap Firming Project, from the Construction Fund. This is an increase of \$65,650,000 (\$65,000,000 for Project costs and \$650,000 for the 1% service fee). The loan term shall remain 30 years at 2.08% per annum.

**b. Northern Colorado Water Conservancy District – Northern Integrated Supply Project**

**Action:** Report by CWCB staff member Cole Bedford and Stephanie Cecil with Northern Colorado Water Conservancy District. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Paul Bruchez. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends the Board include this Water Project Loan request of \$101,000,000 submitted by the Northern Colorado Water Conservancy District, Northern Integrated Supply Project Water Activity Enterprise for costs related to the Northern Integrated Supply Project in the 2024 CWCB Projects Bill for consideration by the Bill sponsors, from the Severance Tax Perpetual Base Fund.

Additionally, staff recommends the following condition of approval:

If passed by the General Assembly and signed by the governor, the request will require submission of a loan application and loan feasibility study by the borrower. Prior to execution of a loan contract, these must be reviewed by CWCB staff and approved by the Board.

**21 Operational Planning Update**

**Action:** Report by CWCB staff members Anna Mauss and Russ Sands.

*This is an informational item with no Board action required.*

**22 Water Supply Reserve Fund Applications**

*Water Supply Planning Section*

**Basin** – Gunnison

**Applicant** – Delta County

**Name of Water Activity** – Miners Trail Short Ditch Extension Pipe Project

**Action:** Report by CWCB staff member Ben Wade. Wendell Koontz with Delta County addressed the Board. A motion to approve the staff recommendation was made by Paul Bruchez, which was seconded by Robert Sakata. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends approval of up to \$35,000 from Gunnison Basin Account & up to \$105,000 from the Statewide Account. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs identified by staff.

**23**

**Action:** Report by CWCB staff members Kat Weismiller and Kevin Reidy. A motion to approve the staff recommendation was made by Barbara Vasquez, which was seconded by Paul Bruchez. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends the board formally approve the proposed updates to the 1051 database to match the mandatory water loss reporting requirements in the 1051 criteria guidelines.

**ADJOURN**

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