



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

Jared Polis
Governor

Dan Gibbs
DNR Executive Director

Rebecca Mitchell
CWCB Director

DRAFT

Summary Minutes and Record of Decisions November 18 & 19, 2020 Board Meeting

A regular meeting of the Colorado Water Conservation Board (CWCB) convened virtually. The meeting was called to order by Chair Celene Hawkins. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: Jim Yahn, Greg Felt, Heather Dutton, Celene Hawkins, Steven Anderson, Jaclyn Brown, Gail Schwartz, Jessica Brody (arrived at 11 a.m.), and Curran Trick, and ex-officio voting member Dan Gibbs, Executive Director of the Department of Natural Resources. Non-voting ex officio members present or represented were: Phil Weiser, Attorney General; Robert Harris, Colorado Parks and Wildlife; Kate Greenberg, Department of Agriculture Commissioner; Kevin Rein, State Engineer; Russell George, Director of Compact Negotiations; and Rebecca Mitchell, Colorado Water Conservation Board Director. Counsel to the Board, Deputy Attorney General Amy Beatie, was also in attendance.

On the second day, the meeting was called to order by Chair Celene Hawkins. Nine voting members were present at the call to order, so a quorum was present (at least 6 required). The voting members present were: Jaclyn Brown, Gail Schwartz, Jessica Brody, Steven Anderson, Curran Trick, Jim Yahn, Greg Felt, and Heather Dutton. Ex-officio voting member Dan Gibbs, Executive Director of the Department of Natural Resources was not present. Non-voting ex officio members present or represented were: Robert Harris, Colorado Parks and Wildlife; Kevin Rein, State Engineer; Russell George, Director of Compact Negotiations; and Rebecca Mitchell, Colorado Water Conservation Board Director. Counsel to the Board, Deputy Attorney General Amy Beatie, was also in attendance.



Wednesday, November 18, 2020

1	Review and Approve Agenda A motion to approve the agenda was made by Jackie Brown, which was seconded by Jim Yahn. The motion was approved unanimously (9-0).
2	Review and Approve September 16 & 17, 2020 Board Meeting Minutes A motion to approve the September 2020 Board minutes was made by Jim Yahn, which was seconded by Jackie Brown. 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 Jim Yahn, which was seconded by Gail Schwartz. The motion was approved unanimously (9-0). 1. Statements of Opposition <i>Stream & Lake Protection Section</i> <i>The Board will be asked to ratify Statements of Opposition that have been filed by staff to protect instream flow and natural lake level water rights and to protect CWCB's exclusive authority to hold instream flow water rights in the following water court cases:</i> a. Case No. 20CW3031 (Water Division 6): Application of The Yellow Jacket Water Conservancy District 2. Floodplain Designations <i>Watershed and Flood Protection Section</i> a. "Flood Insurance Study, Arapahoe County and Incorporated Areas", by FEMA, dated September 2020 b. "Flood Insurance Study, City and County of Denver", by FEMA, dated September 2020 c. "Flood Insurance Study, Douglas County and Incorporated Areas", by FEMA, dated September 2020 3. Loan De-authorizations <i>Finance Section</i> a. Water Project Loan De-authorizations
4	Directors' Reports
4g.	Water Resource and Power Development Authority - Keith Laughlin
4a.	DNR Executive Director - Dan Gibbs
4b.	CWCB Director - Rebecca Mitchell
4c.	IBCC Director - Russell George
4d.	Agriculture Commissioner - Kate Greenberg
4e.	State Engineer - Kevin Rein
4f.	Division of Parks and Wildlife Director - Robert Harris
5	Financial Matters – Construction Fund and Severance Tax Perpetual Base Fund and Severance Tax PBF <i>Finance Section</i>

5a.	<p>Financial Projections and Cash Management Report</p> <p>Action: Report by CWCB staff member Kirk Russell.</p> <p><i>This is an informational item with no Board action is required.</i></p>
6	<p>Water Project Loans <i>Finance Section</i></p>
6a.	<p>City of Glenwood Springs, System Redundancy and Pre-Treatment Improvements (Wildfire Impact Emergency)</p> <p>Action: Report by CWCB staff member Cole Bedford. Matt Langhorst with City of Glenwood Springs addressed the Board. A motion to approve the staff recommendation was made by Gail Schwartz, which was seconded by Jim Yahn. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$8,080,000 (\$8,000,000 for Project costs and \$80,000 for the 1% service fee) to the City of Glenwood Springs acting by and through its water and sewer enterprise fund for costs related to the System Redundancy and Pre-Treatment Improvements Project, from the Severance Tax Perpetual Base Fund. The loan terms shall be 3 years of no interest followed by 27 years at the middle-income municipal rate of 1.80% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.</p>
6b.	<p>City of Grand Junction, Carson Reservoir Dam Rehabilitation</p> <p>Action: Report by CWCB staff member Cole Bedford. Randi Kim with City of Grand Junction addressed the Board. A motion to approve the staff recommendation was made by Gail Schwartz, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$3,030,000 (\$3,000,000 for Project costs and \$30,000 for the 1.0% service fee) to the City of Grand Junction acting by and through its water activity enterprise for costs related to the Carson Reservoir Dam Rehabilitation Project, from the Severance Tax Perpetual Base Fund. The loan terms shall be 10 years at a reduced low-income municipal interest rate of 1.00% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.</p>
6c.	<p>Lookout Mountain Water District, Upper and Lower Beaver Brook Dam Rehabilitation</p> <p>Action: Report by CWCB staff member Rachel Pittinger. Kyle Schroeder with Lookout Mountain Water District and Dean Snyder with LMWD addressed the Board. A motion to approve the staff recommendation was made by Jim Yahn, which was seconded by Gail Schwartz. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$3,535,000 (\$3,500,000 for project costs and \$35,000 for the 1% service fee) to the Lookout Mountain Water District for costs related to the Upper and Lower Beaver Brook Dam Rehabilitation, from the Severance Tax Perpetual Base Fund. The loan</p>

	term will be 30 years at a high-income municipal interest rate of 2.05% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.
6d.	<p>Orphan Wells of Wiggins – Kiowa Creek Dam Rehabilitation</p> <p>Action: Report by CWCB staff member Rachel Pittinger. A motion to approve the staff recommendation was made by Jim Yahn, which was seconded by Heather Dutton. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$148,470 (\$147,000 for Project costs and \$1,470 for the 1% service fee) to the Orphan Wells of Wiggins, LLC for costs related to the Kiowa Creek Dam Rehabilitation, from the Severance Perpetual Base Tax Fund. The loan term will be 30 years at an agricultural interest rate of 1.15% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.</p>
7	<p>Loan Delinquency Action <i>Finance Section</i></p>
7a.	<p>Two Rivers Water & Farming Company, and Two Rivers Farms F-2, Inc.</p> <p>Action: Report by CWCB staff member Kirk Russell. No vote was needed for this agenda item, the Board decided that the staff recommendation that was voted on and unanimously approved at the September 2020 Board meeting would still stand.</p> <p>Staff Recommendation: Staff recommends the Board continue delinquency action against Two Rivers Water & Farming Company and the Two Rivers Farms F-2, Inc, as approved at the September 2020 CWCB Board meeting. This includes notifying the Borrower on December 1, 2020 that the entire loan obligation, including late fees and interest, is due by March 1, 2021, if the current annual obligation plus fees and interest are not paid prior to December 1, 2020.</p>
8	<p>2021 Projects Bill <i>Finance Section</i></p>
8a.	<p>Non-Reimbursable Project Investments “En-Bloc” approval</p> <ol style="list-style-type: none"> 1. Satellite Monitoring – Continuation 2. Colorado Floodplain Map Modernization Program – Continuation 3. Litigation Fund (Budget for AG’s) – Refresh 4. Technical Assistance for Federal Cost Share – Continuation 5. Weather Modification Permitting Program - Continuation <p>Action: Report by CWCB staff member Kirk Russell. A motion to approve the staff recommendation was made by Greg Felt, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve the Non-Reimbursable Investments listed below for inclusion in the 2021 Projects Bill. (1) Satellite Monitoring System Maintenance Program - Continuation Statewide \$100,000 (2) Colorado Floodplain Map Modernization Program - Continuation Statewide \$500,000</p>

	<p>(3) Litigation Fund – Budget est. \$1.5M (Refresh up to \$2M) Statewide \$2,000,000 (4) Technical Assistance for Federal Cost-Share - Continuation Statewide \$300,000 (5) Weather Modification Permitting Program - Continuation Statewide \$350,000 Total \$3,250,000</p>
8b.	<p>Non-Reimbursable Project Investments – Presentations</p> <p>1. San Luis Valley – Confined Aquifer Recovery Project</p> <p>Action: Report by CWCB staff member Kirk Russell. Emma Reesor with the Colorado Rio Grande Restoration Foundation and Nathan Coombs with Conejos Water Conservancy District addressed the Board. A motion to approve the staff recommendation was made by Heather Dutton, which was seconded by Gail Schwartz. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a Non-Reimbursable Investment to the Colorado Rio Grande Restoration Foundation for the purchase of the North Star Farm as part of the Confined Aquifer Recovery Project for inclusion in the 2021 Projects Bill.</p> <p>(1) San Luis Valley – Confined Aquifer Recovery Project Rio Grande \$3,000,000</p>
9	<p>Colorado River Updates <i>Interstate, Federal, and Water Information Section</i></p> <p>Action: Report by CWCB staff member Amy Ostdiek.</p> <p><i>This is an informational item with no Board action required.</i></p>
10	<p>Demand Management Feasibility Investigation Update <i>Interstate, Federal, and Water Information Section</i></p> <p>Action: Report by CWCB staff member Amy Ostdiek. Ed Millard addressed the Board. A motion to approve the staff recommendation was made by Jackie Brown, which was seconded by Heather Dutton. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends that the Board adopt the Demand Management Feasibility Investigation Step II Work Plan, attached hereto. For additional information about Demand Management and work to date on Colorado’s feasibility investigation, please see the July 2020 update to the Board.</p>
11	<p>Draft CWCB Conservation Easement Grant Policy <i>Interstate, Federal, and Water Information Section</i></p> <p>Action: Report by CWCB staff member Alex Funk. Gail Schwartz disclosed that she is a Board Member for Colorado Open Lands. Jessica Brody asked to table this item for a vote until the January 2021 Board meeting. A motion to table this item was made by Jessica Brody, which was seconded by Greg Felt. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve Policy 24 – Conservation Easement Grant Policy.</p>

12	Grant Evaluation Review
	<p>Action: Report by CWCB staff member Lauren Ris. Jackie Brown recommended we begin putting the grants on the Consent Agenda starting at the January 2021 meeting. A motion to approve the recommendation was made by Jackie Brown, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).</p> <p>This informational agenda item will provide an update on the Grant Evaluation Work Plan presented to the CWCB Finance Committee in September 2020. In accordance with that work plan, this update will include information gathered on grants provided to assist with planning efforts, studies, and drought. This includes the following grant programs:</p> <ul style="list-style-type: none"> • Water Efficiency Grants • Technical Assistance for Federal Cost Share Grants • Operational Account Grants • Feasibility Study Grants • Weather Modification Grants • Agricultural Emergency Drought Response Grants
13	Attorney General’s Report, Legal Briefing, and Executive Session
	<p>Action: Report by Attorney General Phil Weiser and Counsel to the Board, Deputy Attorney General Amy Beatie. A motion to go into Executive Session was made by Jim Yahn, which was seconded by Greg Felt. The motion was approved unanimously (9-0).</p>
14	Executive Session
14a.	Case No. 1-17CW3212 (Water Division 1): Application of City of Lafayette, City of Boulder, and the Colorado Water Conservation Board (Jessica Brody recused herself from this item).
14b.	Draft Report of the Review of the 2007 Interim Guidelines (7.D. Review)
14c.	Lake Powell Pipeline
14d.	Demand Management Feasibility Investigation
14e.	Hearing Officer Update on ISF Rulemaking (Celene Hawkins recused herself from this item and CWCB Instream Flow Section staff members and counsel to CWCB staff from the Attorney General’s office were not present for this item).
15	Report from Executive Session

	<p>Action: Report by Counsel to the Board, Deputy Attorney General Amy Beatie. A motion to go out of Executive Session was made by Jim Yahn, which was seconded by Jackie Brown. The motion was approved unanimously (9-0)</p>
16	<p>South Platte River Easement – City of Englewood <i>Watershed and Flood Protection Section</i></p> <p>Action: Report by CWCB staff member Andrea Harbin Monahan. Steve Simon with City of Englewood and Ben Nielsen a consultant on the project addressed the Board. A motion to postpone voting on this agenda item until the end of the day on Thursday, November 19, 2020 was made by Gail Schwartz, which was seconded by Jim Yahn. The motion was approved unanimously (9-0). A motion to approve the staff recommendation was made by Jim Yahn, which was seconded by Heather Dutton. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends approval of the City of Englewood’s request for a 25-year nonexclusive easement for the Big Dry Creek Diversion Structure Project in Englewood, Colorado. Using Methods II and III of the attached 2005 Fee Structure, staff recommends collecting a fee of \$40,425.</p>
<p>Thursday, November 19, 2020</p>	
17	<p>Basin Directors’ Reports</p>
17a.	South Platte River Basin Director’s Report – Jim Yahn
17b.	Arkansas River Basin Director’s Report – Greg Felt
17c.	City and County of Denver Director’s Report – Jessica Brody
17d.	Rio Grande River Basin Director’s Report – Heather Dutton
17e.	Yampa-White River Basin Director’s Report – Jaclyn Brown
17f.	Colorado River (Mainstem) Basin Director’s Report – Gail Schwartz
17g.	San Juan/San Miguel-Dolores River Basin Director’s Report – Celene Hawkins
17h.	Gunnison River Basin Director’s Report – Steve Anderson
17i.	North Platte River Basin Director’s Report – Curran Trick
18	<p>Colorado Water Plan 5-Year Anniversary <i>Water Supply Planning Section</i></p> <p>Action: Report by CWCB staff member Russ Sands.</p> <p><i>This is an informational item with no Board action required.</i></p>
19	<p>WSRF Grant Applications <i>Water Supply Planning Section</i></p>
19a.	<p>Basin: North Platte Applicant: Michigan River Water Conservancy District Name of Water Activity: Meadow Creek Reservoir Capacity Study</p> <p>Action: Report by CWCB staff member Ben Wade. A motion to approve the staff recommendation was made by Curran Trick, which was seconded by Jim Yahn. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends approval of up to \$11,342 from the North Platte Basin Account to help fund the project: Hydrographic Survey of Meadow Creek Reservoir.</p>
19b.	<p>Basin: Colorado Applicant: Lateral Ditch ML47 Inc. Name of Water Activity: Lateral Ditch ML47 Lateral Ditch Improvement Project</p>

	<p>Action: Report by CWCB staff member Kathryn Weismiller. A motion to approve the staff recommendation was made by Curran Trick, which was seconded by Jim Yahn. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends approval of up to \$18,000 from the Arkansas Basin Account, and up to \$180,000 from the Statewide Account to help fund the project: Headgate 199 Lining.</p>
20	<p>Notice of Recommended 2021 Instream Flow Appropriations in Water Divisions 1, 2, 4, 6, and 7 <i>Stream and Lake Protection Section</i></p> <p>Action: Report by CWCB staff member Rob Viehl.</p> <p>This is an informational item that provides notice of recommended stream segments that staff may bring to the Board in January 2021 with a recommendation that the Board form its intent to appropriate ISF water rights. No Board action is required.</p>
21	<p>Final Action on Contested Trout Creek Instream Flow Appropriation (Water Division 6) <i>Stream and Lake Protection Section</i></p> <p>Action: Report by CWCB staff member Rob Viehl. Roy Smith with the BLM also addressed the Board. A motion to approve the staff recommendation was made by Jackie Brown, which was seconded by Gail Schwartz. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends that the Board make the following determinations and take the following actions on the Trout Creek instream flow (ISF) appropriation described in Attachment 1, based on the information contained in this memo, associated attachments, and the information presented by staff both in writing and orally at the January 29, 2019 Board meeting:</p> <ol style="list-style-type: none"> (1) Determine, pursuant to section 37-92-102(3), C.R.S. (2020), that for the ISF appropriation on Trout Creek at the flow rates of 1.1 cfs (11/01-03/31), 5.7 cfs (04/01-06/30), and 5.0 cfs (07/01-10/31): <ol style="list-style-type: none"> (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 appropriations; and (c) Such natural environment can exist without material injury to water rights. (2) Pursuant to ISF Rule 5f., establish January 29, 2019 as the appropriation date for this water right. (3) Accept the terms and conditions in the Stipulation and Agreement with Knott Land and Livestock Company, Inc. (KLL) (Attachment 2), and with Twentymile Coal, LLC (Twentymile) (Attachment 3). (4) Direct staff to request the Attorney General's Office to file the necessary water right application for this ISF appropriation and to include the terms and conditions agreed upon with Twentymile in the water court application and resulting decree.
22	<p>Lease of Ruedi Reservoir Water for Instream Flow Use on the Fryingpan River and 15-Mile Reach of the Colorado River (Water Division 5) <i>Stream and Lake Protection Section</i></p> <p>Action: Report by CWCB staff member Linda Bassi. A motion to approve the staff recommendation was made by Gail Schwartz, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).</p>

	<p>Staff Recommendation: Staff recommends approval of up to \$8,000 from the Colorado Basin Account to help fund the project titled: Lateral Ditch ML47 lateral Improvement Project.</p>
23	<p>Plan for Augmentation to Augment Stream Flows on the Cache la Poudre River (Water Division 1) <i>Stream and Lake Protection Section</i></p> <p>Action: Report by CWCB staff member Kaylea White. Greg Sullivan with Spronk Water Engineers inc., Katie Birch with Colorado Parks and Wildlife, Kate Ryan with Colorado Water Trust, and Dan Brown with Cache La Poudre Water Users Association addressed the Board.</p> <p>The Board’s consideration of this proposal at this meeting will initiate a 120-day period for Board review. No formal action is required at this time.</p>
23a.	<p>Proposed Acquisition of Contractual Interest in City of Fort Collins “Seed Water Rights” for Use in Plan for Augmentation to Augment Stream Flows on the Cache la Poudre River</p> <p>Action: Report by CWCB staff member Kaylea White. Eric Potyondy with City of Fort Collins, Greg Sullivan with Spronk Water Engineers Inc , Katie Birch with Colorado Parks and Wildlife, Kate Ryan with Colorado Water Trust, and Dan Brown with Cache La Poudre Water Users Association addressed the Board.</p> <p>The Board’s consideration of this proposal at this meeting will initiate a 120-day period for Board review. No formal action is required at this time.</p>
23b.	<p>Proposed Acquisition of Contractual Interest in City of Greeley “Seed Water Rights” for Use in Plan for Augmentation to Augment Stream Flows on the Cache la Poudre River</p> <p>Action: Report by CWCB staff member Kaylea White. Jennifer Petrzelka with City of Greeley, Greg Sullivan with Spronk Water Engineers Inc, Katie Birch with Colorado Parks and Wildlife, Kate Ryan with Colorado Water Trust, and Dan Brown with Cache La Poudre Water Users Association addressed the Board.</p> <p>The Board’s consideration of this proposal at this meeting will initiate a 120-day period for Board review. No formal action is required at this time.</p>
23c.	<p>Proposed Acquisition of Contractual Interest in City of Thornton “Seed Water Rights” for Use in Plan for Augmentation to Augment Stream Flows on the Cache la Poudre River</p> <p>Action: Report by CWCB staff member Kaylea White. Emily Hunt with City of Thornton, Greg Sullivan with Spronk Water Engineers Inc, Katie Birch with Colorado Parks and Wildlife, Kate Ryan with Colorado Water Trust, and Dan Brown with Cache La Poudre Water Users Association addressed the Board.</p> <p>The Board’s consideration of this proposal at this meeting will initiate a 120-day period for Board review. No formal action is required at this time.</p>
ADJOURN	

A motion to adjourn the November 2020 Board meeting was made by Jim Yahn, which was seconded by Gail Schwartz. The motion was approved unanimously (9-0).