



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 January 25 & 26, 2021 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, 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; Dan Prenzlou, 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 Vice Chair Jessica Brody. Eight 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; Celene Hawkins joined the meeting after the Instream Flow Hearing. 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.



Monday, January 25, 2021

1 Review and Approve Agenda

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

2 Review and Approve November 18 & 19, 2020 Board Meeting Minutes

A motion to approve the November 2020 Board minutes was made by Jessica Brody, which was seconded by Jim Yahn. 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 Jessica Brody, which was seconded by Heather Dutton. The motion was approved unanimously (9-0).

1. Statements of Opposition

Stream & Lake Protection Section

- a. Case No. 20CW3145 (Water Division 1): Application of Angling Aquatics
- b. Case No. 20CW3014 (Water Division 3): Application of Blanca Ranch Holdings, LLC and Trinchera Ranch Holdings, LLC
- c. Case No. 20CW3044 (Water Division 6): Knott Land and Livestock Company, Inc.

2. Colorado Watershed Restoration Program - Grant Funding Recommendations

Watershed and Flood Protection Section

- a. Spanish Peaks – Purgatoire River Conservation District - Purgatoire River Watershed Riparian Rehabilitation Project, Phase V – Arkansas Basin
- b. Town of Carbondale - Crystal River Restoration and Weaver Ditch Efficiency Project – Colorado Basin
- c. Northern Colorado Water Conservancy District – Ecosystem Restoration of Select Sites in the Kawuneeche Valley – Colorado Basin
- d. Trout Unlimited – Stewart Mesa Canal Diversion Modification and Restoration Project – Gunnison Basin
- e. Upper Gunnison River Water Conservancy District – Upper Gunnison Water, Forest and Range Resiliency – Gunnison Basin
- f. Adams County – South Platte River Vision and Implementation Plan – South Platte Basin
- g. Fourmile Watershed Coalition - Forested Headwaters: A Landscapes and Communities Assessment – South Platte Basin
- h. Conservation Legacy – Animas River Invasive Phreatophyte Removal, Stewardship and Continued Restoration – Southwest Basin
- i. Blue River Watershed Group – Blue River Integrated Water Management Plan, Phase II – Colorado Basin
- j. Middle Colorado Watershed Council – Middle Colorado Integrated Water Management Plan Implementation, Phase I – Colorado Basin

3. Flood Plain Designations

Watershed and Flood Protection Section

- a. "Flood Insurance Study, Jefferson County and Incorporated Areas", by FEMA, dated December 2019
- b. "Flood Insurance Study, Clear Creek County and Incorporated Areas", by FEMA, dated December 2019
- c. "Flood Insurance Study, Jefferson County and Incorporated Areas ", by FEMA, dated January 2021
- d. "Flood Insurance Study, Larimer County and Incorporated Areas", by FEMA, dated January 2021

4 Directors' Reports

Colorado Parks and Wildlife Director – Dan Prenzlow

4a.

CWCB Director - Rebecca Mitchell

4b.

IBCC Director - Russell George

4c.

Agriculture Commissioner – Kate Greenberg

4d.

State Engineer - Kevin Rein

4e.

Water Resource and Power Development Authority - Keith Laughlin

4f.

DNR Executive Director - Dan Gibbs

4g.

5 Financial Matters – Construction Fund and Severance Tax Perpetual Base Fund and Severance Tax PBF

Finance Section

5a. Financial Projections and Cash Management Report

Action: Report by CWCB staff member Kirk Russell.

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

6 Water Project Loans

Finance Section

6a. North Sterling Irrigation District – Outlet Canal Automation Phase II Project

Action: Report by CWCB staff member Cole Bedford. Jim Yahn recused himself from the vote on this agenda item because his employer is North Sterling Irrigation District. A motion to approve the staff recommendation was made by Heather Dutton, which was seconded by Jackie Brown. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$395,920 (\$392,000 for Project costs and \$3,920 for the 1.0% service fee) to the North Sterling Irrigation District for costs related to the Outlet Canal Automation Phase II Project, from the Construction Fund. The loan terms shall be 20 years at a reduced blended interest rate of 0.90% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

7	Loan Delinquency Action <i>Finance Section</i>
7a.	Two Rivers Water & Farming Company, and Two Rivers Farms F-2, Inc. Action: Report by CWCB staff member Kirk Russell. It was decided to add this item into today's executive session. This is an Information Only Item: Staff will 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.
8	2021 Projects Bill Summary <i>Finance Section</i>
	Action: Report by CWCB staff member Kirk Russell. <i>This is an informational item with no Board action required.</i>
9	Colorado River Updates <i>Interstate, Federal, and Water Information Section</i>
	Action: Report by CWCB staff members Amy Ost diek and Michelle Garrison. <i>This is an informational item with no Board action required.</i>
10	Draft CWCB Conservation Easement Grant Policy <i>Interstate, Federal, and Water Information Section</i>
	Action: Report by CWCB staff member Alex Funk. 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). Staff Recommendation: Staff recommends the Board approve Policy 24 – Conservation Easement Grant Policy.
11	Demand Management Feasibility Investigation Update <i>Interstate, Federal, and Water Information Section</i>
	Action: Report by CWCB staff members Greg Johnson, Amy Ost diek, and Michelle Garrison. <i>This is an informational item with no Board action required.</i>
12	Colorado Water Plan Status Update
	Action: Report by CWCB staff member Russ Sands. <i>This is an informational item with no Board action required.</i>
13	Attorney General's Report, Legal Briefing, and Executive Session

	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 Curran Trick, which was seconded by Gail Schwartz. The motion was approved unanimously (9-0).
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.	Demand Management Feasibility Investigation Step II Update
14c.	2026 Guidelines
14d.	Database and Document Production – Removed from agenda
14e.	Two Rivers Water & Farming Company, and Two Rivers Farms F-2, Inc.
14f.	Discussion on the ISF Rulemaking Hearing (Celene Hawkins recused herself from this item and ISF staff and counsel left the room)
15	Report from Executive Session
	Action: Report by Counsel to the Board, Deputy Attorney General Amy Beatie. A motion to go out of Executive Session was made by Gail Schwartz, which was seconded by Jackie Brown. The motion was approved unanimously (9-0)
16	Request for Authorization to Proceed to Trial – Case No. 1-17CW3212 (Water Division 1): Application of City of Lafayette, City of Boulder, and the Colorado Water Conservation Board <i>Stream and Lake Protection Section</i>
	Action: Report by CWCB staff member Kaylea White. Jessica Brody recused herself from this agenda item. A motion to approve the staff recommendation was made by Jim Yahn, which was seconded by Gail Schwartz. The motion was approved unanimously (8-0).
	Staff Recommendation: Pursuant to ISF Rule 8j. Staff recommends that the Board authorize Staff to proceed to trial to protect its interest and its existing instream flow water rights in the event that Staff and the Attorney General’s Office are unable to reach a settlement with all parties before trial.
17	2021 Instream Flow Appropriations in Water Divisions 1, 4, 6, and 7 <i>Stream and Lake Protection Section</i>
	Action: Report by CWCB staff member Robert Viehl and Julie Nania with HCCA was available for questions. Kendall Burgemeister, an attorney representing the Trappers Crossing at Crested Butte Association, addressed the Board. A motion to approve the modified staff recommendation was made by Jim Yahn, which was seconded by Gail Schwartz. The motion was approved unanimously (9-0).
	Staff Recommendation: Staff recommends that, pursuant to ISF Rule 5d., the Board declare its intent to appropriate an ISF water right on each stream segment listed on the attached Tabulation of Instream Flow Recommendations with the exception of Watson Creek and Wildcat Creek, and direct staff to publicly notice the Board’s declaration of its intent to appropriate.
	Tabulation of Instream Flow Recommendations

Div	Stream	Watershed	County	Length (miles)	Upper Terminus	Lower Terminus	Flow Rate, cfs/Timing
1	Dry Gulch	Clear Creek	Clear Creek	2.83	headwaters	confluence Clear Creek	0.67 (01/01 - 04/30) 5.4 (05/01 - 07/31) 2 (08/01 - 09/30) 0.85 (10/01 - 12/31)
1	North Fork Little Thompson River	Big Thompson	Larimer	3.77	confluence Hell Canyon Creek	confluence Little Thompson River	5 (04/25 - 06/10) 2 (06/11 - 06/30)
1	Redstone Creek	Big Thompson	Larimer	16.3	headwaters	confluence Buckhorn Creek	6.2 (05/01 - 06/15)
4	Elk Creek	East-Taylor	Gunnison	2.66	headwaters	confluence Coal Creek	0.2 (08/16 - 04/30) 1.5 (05/01 - 07/10) 0.65 (07/11 - 08/15)
7	Rincon La Vaca Creek	Upper San Juan	Hinsdale	4.47	headwaters	confluence Los Pinos River	1.2 (11/01 - 04/30) 2.8 (05/01 - 10/31)

18 Plan for Augmentation to Augment Stream Flows on the Cache la Poudre River (Water Division 1)

Stream and Lake Protection Section

Action: Report by CWCB staff members Linda Bassi and Kaylea White. 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).

Staff Recommendation: Determine that the flow rates recommended by CPW and set forth in Table 2 in this memo, which will be included in the water court application are appropriate to preserve and improve the natural environment to a reasonable degree within the Subject Reach of the Cache la Poudre River as set forth in Table 2; and • Direct Staff to work with the Attorney General's Office and the Co-Applicants to file a water court application for “approval of a plan for augmentation to augment stream flows” in accordance with 37-92-102(4.5), the new statute governing the CWCB’s water court applications for plans for augmentation to augment stream flows.

18a. 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

Action: Report by CWCB staff member Kaylea White. A motion to approve the staff recommendation was made by Jim Yahn, which was seconded by Jackie Brown. The motion was approved unanimously (9-0).

Staff Recommendation: Conclude that use of the water under the proposed Fort Collins seed water rights acquisition is appropriate to preserve and improve the natural environment of the Cache la Poudre River to a reasonable degree up to the flow rates recommended by Colorado Parks and Wildlife set forth in Table 1 herein, and would be best utilized by

protecting the water through the specified segments of the Subject Reach, consistent with the terms and conditions in the underlying decrees, and consistent with terms and conditions in the ultimate augmentation plan decree; • Accept the interests in water and authorize the CWCB Director to execute the seed water “Water Delivery Agreement” in a form substantially similar to the drafts attached to the board memos; and • Direct Staff to work with the Attorney General's Office and the Co Applicants to include this seed water right in the water court application for “approval of a plan for augmentation to augment stream flows” in accordance with 37-92-102(4.5), the new statute governing the CWCB’s water court applications for plans for augmentation to augment stream flows.

18b. 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

Action: Report by CWCB staff member Kaylea White. A motion to approve the staff recommendation was made by Jim Yahn, which was seconded by Gail Schwarz. The motion was approved unanimously (9-0).

Staff Recommendation: Conclude that use of the water under the proposed Greeley seed water rights acquisition is appropriate to preserve and improve the natural environment of the Cache la Poudre River to a reasonable degree up to the flow rates recommended by Colorado Parks and Wildlife set forth in Table 1 herein, and would be best utilized by protecting the water through the specified segments of the Subject Reach, consistent with the terms and conditions in the underlying decrees, and consistent with terms and conditions in the ultimate augmentation plan decree; • Accept the interests in water and authorize the CWCB Director to execute the seed water “Water Delivery Agreement” in a form substantially similar to the drafts attached to the board memos; and • Direct Staff to work with the Attorney General's Office and the Co-Applicants to include this seed water right in the water court application for “approval of a plan for augmentation to augment stream flows” in accordance with 37-92-102(4.5), the new statute governing the CWCB’s water court applications for plans for augmentation to augment stream flows.

18c. 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

Action: Report by CWCB staff member Kaylea White. 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).

Staff Recommendation: Conclude that use of the water under the proposed Thornton seed water rights acquisition is appropriate to preserve and improve the natural environment of the Cache la Poudre River to a reasonable degree up to the flow rates recommended by Colorado Parks and Wildlife set forth in Table 1 herein, and would be best utilized by protecting the water through the specified segments of the Subject Reach, consistent with the terms and conditions in the underlying decrees, and consistent with terms and conditions in the ultimate augmentation plan decree; • Accept the interests in water and authorize the CWCB Director to execute the seed water “Water Delivery Agreement” in a form substantially similar to the drafts attached to the board memos; and • Direct Staff to work with the Attorney General's Office and the Co-Applicants to include this seed water right in the water court application for “approval of a plan for augmentation to augment stream flows” in accordance with 37-92-102(4.5), the new statute governing the CWCB’s water court applications for plans for augmentation to augment stream flows.

Tuesday, January 26, 2021

19 Rulemaking Hearing to Revise Rules Concerning Colorado’s Instream Flow and Natural Lake Level Program, 2 CCR 408-2

Hearing Officer Amy Beatie

The Board held a rulemaking hearing and adopted revisions to the Instream Flow Rules. Information pertaining to this proceeding can be found at <https://cwcb.colorado.gov/instream-flow-rules-revisions-hb-20-1157>.

20 Basin Directors’ Reports

20a. Arkansas River Basin Director’s Report – Greg Felt

20b. City and County of Denver Director’s Report – Jessica Brody

20c. Rio Grande River Basin Director’s Report – Heather Dutton

20d. Yampa-White River Basin Director’s Report – Jaclyn Brown

20e. Colorado River (Mainstem) Basin Director’s Report – Gail Schwartz

20f. San Juan/San Miguel-Dolores River Basin Director’s Report – Celene Hawkins

20g. Gunnison River Basin Director’s Report – Steve Anderson

20h. North Platte River Basin Director’s Report – Curran Trick

20i. South Platte River Basin Director’s Report – Jim Yahn

21 Grant Evaluation Review

Action: Report by CWCB staff member Lauren Ris.

This is an informational item with no Board action required.

ADJOURN

A motion to adjourn the January 2021 Board meeting was made by Jackie Brown, which was seconded by Jim Yahn. The motion was approved unanimously (9-0).