

DRAFT

Summary Minutes and Record of Decisions

May 19 & 20, 2021 Board Meeting

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

Wednesday, May 19, 2021

1	Review /Approve Agenda A motion to approve the agenda was made by Greg Felt, which was seconded by Celene Hawkins. The motion was approved unanimously (9-0).
2	Review and Approve March 10 & 11, 2021 Board Meeting Minutes A motion to approve the March 2021 Board minutes was made by Steve Anderson, which was seconded by Gail Schwartz. 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 Robert Sakata. The motion was approved unanimously (9-0).

1. Statements of Opposition

Stream & Lake Protection Section

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:

- a. Case No. 21CW3018 (Water Division 1): Application of St. Vrain & Left Hand Water Conservancy District
- b. Case No. 21CW3013 (Water Division 5): Application of The Robert and Cheryl Balgley Living Trust Dated February 3, 2017
- c. Case No. 21CW3014 (Water Division 5): Application of Q4 Snowmass Ranch LLC
- d. Case No. 21CW3021 (Water Division 5): Application of Biscayne Trust

2. Water Supply Reserve Fund Application Grants

	Basin	Applicant	Name of Water Activity	Amount
a.	Southwest	Montezuma School to Farm Project	Water Education: Addressing the Middle School Gap	\$25,000

3. Flood Plain Designations

Watershed and Flood Protection Section

- a. "Flood Insurance Study, Logan County and Incorporated Areas", by FEMA, dated May 2021
- b. "Flood Insurance Study, Morgan County and Incorporated Areas", by FEMA, dated May 2021
- c. "Flood Insurance Study, Sedgwick County and Incorporated Areas", by FEMA, dated May 2021
- d. "Flood Insurance Study, Washington County and Incorporated Areas", by FEMA, dated May 2021
- e. "Flood Hazard Area Delineation, Plum Creek, East Plum Creek, West Plum Creek", by Enginuity Engineering Solutions, dated November 2019

4. Limited Use License – The Pint Room

Watershed and Flood Protection Section

4	Directors' Reports
4a.	DNR Executive Director - Dan Gibbs
4b.	CWCB Director - Rebecca Mitchell
4c.	IBCC Director - Absent

4d.	Colorado Parks and Wildlife Director – Robert Harris
4e.	Agriculture Commissioner – Kate Greenberg
4f.	State Engineer - Kevin Rein
4g.	Water Resource and Power Development Authority - Keith Laughlin
5	<p>Public Comment on 2021 Instream Flow Appropriations in Water Divisions 2 and 4</p> <p><i>Stream and Lake Protection Section</i></p> <p>Action: Report by CWCB staff member Rob Viehl. Aaron Hilshorst with Climax Molybdenum Company addressed the Board.</p> <p><i>This is an informational item with no Board action required.</i></p>
6	<p>Final Action on Uncontested 2021 Instream Flow Appropriations in Water Divisions 1 and 4</p> <p><i>Stream and Lake Protection Section</i></p>

Action: Report by CWCB staff member Rob Viehl. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Celene Hawkins. 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 of the appropriations identified in Table 1. The information necessary to support these determinations is contained in this memo, the recommendation letters and documentation submitted by Colorado Parks and Wildlife (CPW) and High Country Conservation Advocates (HCCA), and in staff’s oral and written presentations provided at the January 25, 2021 Board meeting.

- (1) Determine, pursuant to section 37-92-102(3), C.R.S. (2021), that for each ISF appropriation 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 appropriations; and
 - (c) Such natural environment can exist without material injury to water rights.
- (2) Pursuant to ISF Rule 5f., establish January 25, 2021 as the appropriation date for these water rights.
- (3) Request staff to work with the Attorney General’s office to file applications for these water rights in water court by the end of the calendar year.

Table 1.

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 Contested 2021 Instream Flow Appropriation in Water Division 7

Stream and Lake Protection Section

Action: Report by CWCB staff member Rob Viehl. A motion to approve the staff recommendation was made by [redacted], which was seconded by Gail Schwartz. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends that the Board designate Deputy Attorney General Amy Beatie as the Hearing Officer for the contested instream flow appropriation on Rincon La Vaca Creek and set the hearing date to be held in conjunction with the Board's September 15-16, 2021 meeting.

8 Renewal of Ute Water Conservancy District Lease of Ruedi Water for Instream Flow Use in the 15-Mile Reach (Water Division 5)

	<p><i>Stream and Lake Protection Section</i></p> <p>Action: Report by CWCB staff members Linda Bassi and Kaylea White. A motion to approve the staff recommendation was made by Gail Schwartz, which was seconded by Celene Hawkins. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends that the Board approve: (1) a one-year renewal of the Water Lease Agreement to lease up to 12,000 acre-feet of Ruedi Water from the Ute Water Conservancy District for \$20.00 per acre-foot, and (2) an expenditure of up to \$240,000 from the Species Conservation Trust Fund, subject to the following conditions:</p> <ol style="list-style-type: none"> 1. Releases of Ruedi water under the Water Lease Agreement shall not cause releases out of Ruedi Reservoir to exceed 300 cfs and shall not cause flows in the Fryingpan River below Ruedi Reservoir to exceed 350 cfs. Staff shall coordinate with the Bureau of Reclamation to ensure meeting this condition. 2. CWCB staff shall consult and coordinate weekly with Colorado Parks and Wildlife staff on proposed releases to minimize impacts to the fishery on the Fryingpan River below Ruedi Reservoir.
<p>12</p>	<p>Loan Delinquency Action</p> <p>Two Rivers Water & Farming Company, and Two Rivers Farms F-2, Inc.</p> <p><i>Finance Section</i></p> <p>Action: Report by CWCB staff member Kirk Russell.</p> <p><i>This is an informational item with no Board action required.</i></p>
<p>9</p>	<p>Attorney General’s Report, Legal Briefing, and Executive Session</p>

	<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 Celene Hawkins, which was seconded by Greg Felt. The motion was approved unanimously (9-0).</p>
10	Executive Session
10a.	Case No. 1-18CW3195 (Water Division 1): Application of City of Brighton – Stream and Lake Protection Section
10b.	Colorado Litigation Fund
10c.	Colorado River Update
10d.	Two Rivers Water & Farming Company, and Two Rivers Farms F-2, Inc. – Finance Section
11	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 Heather Dutton, which was seconded by Greg Felt. The motion was approved unanimously (9-0)</p>
13	<p>Request for Authorization to Proceed to Trial – Case No. 1-18CW3195 (Water Division 1): Application of City of Brighton</p> <p><i>Stream and Lake Protection Section</i></p>

	<p>Action: Report by CWCB staff members Linda Bassi and Kaylea White. A motion to approve the staff recommendation was made by Gail Schwartz, which was seconded by Jaclyn Brown. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Pursuant to ISF Rule 8j., Staff recommends that the Board authorize Staff to proceed to participate at trial to the extent needed to defend CWCB’s stipulation in this case.</p>
<p>14</p>	<p>Request for Authorization to Proceed to Trial – Case No. 2-18CW3076 (Water Division 2): Application of City of Upper Arkansas Water Conservancy District</p> <p><i>Stream and Lake Protection Section</i></p> <p>Removed from the agenda</p>
<p>15</p>	<p>Colorado River Litigation Fund</p> <p><i>Interstate, Federal, and Water Information Section</i></p> <p>Action: Report by CWCB staff member Amy Ostdiek. A motion to approve the staff recommendation was made by Gail Schwartz, which was seconded by Jaclyn Brown. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: CWCB Staff recommends that the Board authorize the expenditure of a total of \$1,520,000 for litigation-related activities in FY 2021-22 as follows:</p> <ul style="list-style-type: none"> 1) Colorado River Basin: \$940,000 2) Republican River Basin: \$105,000 3) Rio Grande Basin: \$475,000 <p>Staff also recommends that the Board: 1) Direct the CWCB Director and Staff to expend these funds consistent with the request by the Office of the Attorney General; and, 2) Direct the CWCB Director, CWCB Staff, and Office of the Attorney General to comply with the annual reporting requirements as specifically provided for in Section 37-60-121(2.5).</p>

<p>16</p>	<p>Colorado River Updates</p> <p><i>Interstate, Federal, and Water Information Section</i></p> <hr/> <p>Action: Report by CWCB staff members Greg Johnson, Amy Ostdiek, and Division of Water Resources staff member Kevin Rein.</p> <p><i>This is an informational item with no Board action required.</i></p>
<p>17</p>	<p>Demand Management Feasibility Investigation Update</p> <p><i>Interstate, Federal, and Water Information Section</i></p> <hr/> <p>Action: Report by CWCB staff members Amy Ostdiek, Sara Leonard, and Division of Water Resources staff member Kevin Rein.</p> <p><i>This is an informational item with no Board action required.</i></p>
<p>18</p>	<p>Update on the State Line Delivery Pilot Reservoir Release</p> <p><i>Interstate, Federal, and Water Information Section</i></p> <hr/> <p>Action: Report by CWCB staff members Amy Ostdiek and Greg Johnson. Pat Wells with Colorado Springs Utilities addressed the Board.</p> <p><i>This is an informational item with no Board action required.</i></p>
<p>19</p>	<p>Financial Matters – Construction Fund and Severance Tax Perpetual Base Fund</p> <p><i>Finance Section</i></p> <hr/> <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 required.</i></p>

<p>20</p>	<p>Water Project Loans</p> <p><i>Finance Section</i></p>
<p>20a.</p>	<p>Redmesa Reservoir and Ditch Company – Redmesa Reservoir Rehabilitation Engineering</p> <p>Action: Report by CWCB staff member Matt Stearns. Mardi Gebhart addressed the Board. A motion to approve this item was made by Celene Hawkins, which was seconded by Robert Sakata. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$184,830 (\$183,000 for Project costs and \$1,830 for the 1.0% service fee) to the Redmesa Reservoir and Ditch Company for costs related to the Redmesa Reservoir Rehabilitation Engineering, from the Construction Fund. The loan terms shall be 10 years at an interest rate of 0.05% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.</p>
<p>20b.</p>	<p>South Platte Ditch Company – Diversion Structure Rehabilitation</p> <p>Action: Report by CWCB staff member Cole Bedford. Dave Kautz addressed the Board. A motion to approve this item was made by Robert Sakata, which was seconded by Steve Anderson. The motion was approved unanimously (9-0).</p> <p>Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$1,075,650 (\$1,065,000 for Project costs and \$10,650 for the 1.0% service fee) to the South Platte Ditch Company for costs related to the Diversion Structure Rehabilitation, from the Severance Tax Perpetual Base Fund. The loan terms shall be 30 years at an interest rate of 1.10% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.</p>
<p>21</p>	<p>Change to Existing Loan</p> <p><i>Finance Section</i></p>

Orphan Wells of Wiggins – Kiowa Creek Dam Rehabilitation

Action: Report by CWCB staff member Rachel Pittinger. Steve Bruntz with Orphan Wells of Wiggins addressed the Board. A motion to approve this item was made by Robert Sakata, which was seconded by Greg Felt. The motion was approved unanimously (9-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$373,700 (\$370,000 for Project costs and \$3,700 for the 1% service fee) to the Orphan Wells of Wiggins, LLC for costs related to the Kiowa Creek Dam Rehabilitation, from the Severance Tax Perpetual Base Fund. This is an increase of \$225,230

(\$223,000 for Project costs and \$2,230 for the 1% service fee). The loan term shall remain at 30 years at an interest rate of 1.15% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

22 Proposition DD Presentation (Department of Revenue)

Action: Presentation was given by Dan Harman with Department of Revenue

This is an informational item with no Board action required.

23 Grant Recommendations

Action: Report by CWCB staff members Lauren Ris and Anna Mauss. A motion to approve this item was made by Jackie Brown, which was seconded by Celene Hawkins. Heather Dutton had to leave the meeting before this item was voted on. The motion was approved unanimously (8-0).

Staff Recommendation:

A. Structural Changes

1. Incorporate ATM grants into Water Plan Grants
2. Incorporate Water Efficiency Grant Program into Water Plan Grants
3. In July 2022, incorporate majority of Watershed Restoration Grant Program into Water Plan Grants
4. Reinstate two Water Plan Grant cycles (July 1 and December 1)

B. Criteria & Guidelines

1. Adopt amended Water Plan Grant Criteria and Guidelines

	<p>2. Schedule Board review cycle</p> <p>C. Board Approval</p> <p>1. Adopt grant approval policy</p> <p>2. Board notification of grants in bains</p>
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24	<p>Chatfield Shares</p> <p><i>This agenda item was removed</i></p>
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<p>Thursday, May 20, 2021</p>

25	Basin Directors' Reports
25a.	Arkansas River Basin Director's Report – <i>Greg Felt</i>
25b.	City and County of Denver Director's Report – <i>Jessica Brody</i>
25c.	Rio Grande River Basin Director's Report – <i>Heather Dutton</i>
25d.	Yampa-White River Basin Director's Report – <i>Absent</i>
25e.	Colorado River (Mainstem) Basin Director's Report – <i>Gail Schwartz</i>
25f.	San Juan/San Miguel-Dolores River Basin Director's Report – <i>Celene Hawkins</i>
25g.	Gunnison River Basin Director's Report – <i>Steve Anderson</i>
25h.	North Platte River Basin Director's Report – <i>Curran Trick</i>

25i.	South Platte River Basin Director’s Report – <i>Robert Sakata</i>
26	<p>Dam Safety Branch</p> <p><i>Finance Section</i></p> <p>Action: Report by CWCB staff members Megan Holcomb and Kevin Houck.</p> <p><i>This is an informational item with no Board action required.</i></p>
27	<p>Floodplain Rules and Criteria Manual Update</p> <p><i>Watershed and Flood Protection Section</i></p> <p>Action: Report by CWCB staff members Kevin Houck and Terri Fead.</p> <p><i>This is an informational item with no Board action required.</i></p>
28	<p>Water Plan and BIP Update Status</p> <p><i>Water Supply Planning Section</i></p> <p>Action: Report by CWCB staff members Russ Sands, Sam Stein, and Kat Weismiller.</p> <p><i>This is an informational item with no Board action required.</i></p>
29	<p>Evaluating Conserved Consumptive Use in the Upper Colorado River Project Update</p> <p><i>Interstate, Federal, and Water Information Section</i></p> <p>Action: Report by CWCB staff member Alex Funk. A presentation was given by Aaron Derwingson, Perry Cabot, and Paul Bruchez.</p> <p><i>This is an informational item with no Board action required.</i></p>

ADJOURN

A motion to adjourn the May 2021 Board meeting was made by Gail Schwartz, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).