

## **DRAFT**

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

#### **May 17 & 18, 2022 Board Meeting**

A regular meeting of the Colorado Water Conservation Board (CWCB) convened at the Doubletree Hotel in Breckenridge and virtually on zoom. The meeting was called to order by Chair Jackie Brown. 9 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, Celene Hawkins, Steven Anderson, Jessica Brody, Heather Dutton, 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: Scott Steinbrecher, Attorney General's Office; Reid Dewalt, Colorado Parks and Wildlife; Kate Greenberg, Department of Agriculture; Kevin Rein, State Engineer, and Rebecca Mitchell, 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 Jaclyn Brown. 9 voting members were present at the call to order, so a quorum was present (at least 6 required). The voting members present were: Jessica Brody, Steven Anderson, Curran Trick, Robert Sakata, Greg Felt, Celene Hawkins, Jaclyn Brown, Heather Dutton, and Ex-officio voting member Dan Gibbs, Executive Director of the Department of Natural Resources. Non-voting ex officio members present or represented were: Reid DeWalt, Colorado Parks and Wildlife; Kevin Rein, State Engineer; Kate Greenberg, Department of Agriculture; and Rebecca Mitchell, Colorado Water Conservation Board Director. Counsel to the Board, Jen Mele, was also in attendance.

**Tuesday, May 17, 2022**

**1 Board Appointments**

Paul Bruchez was appointed to the Board as the Colorado River (Mainstem) Basin Director.

**2 Review /Approve Agenda**

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

**3 Review and Approve March 15 & 16, 2022 Board Meeting Minutes**

A motion to approve the March 2022 Board minutes was made by Jessica Brody, which was seconded by Steve Anderson. The motion was approved unanimously (9-0).

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

A motion to approve the Consent Agenda Items 1a-b, 2a, 3, 4, and 5a was made by Dan Gibbs, which was seconded by Greg Felt. The motion was approved unanimously (9-0).

**1. Statements of Opposition**

*Stream & Lake Protection Section*

*Staff recommends the Board ratify CWCB's filing of the following Statements of Opposition:*

- a. Case No. 22CW3014 (Water Division 5): Application of The Town of Eagle
- b. Case No. 22CW3017 (Water Division 5): Application of MC McLain Flats LLC

**2. Change to Existing Grant**

*Stream & Lake Protection Section*

- a. Water Plan Grant Revision to Scope of Work - Upper Rio Grande Environmental Restoration and Recreation Infrastructure Improvements by the Rio Grande Watershed Emergency Action Coordination Team (RWEACT)

**3. HB1051 Reporting Guidelines**

*Water Supply Planning Section*

**4. Diane Hoppe Memorial Scholarship**

*Administration & Operation Section*

	<p><b>5. Floodplain Designation</b>  <i>Watershed and Flood Protection Section</i></p> <p>a. "Flood Insurance Study, Gilpin County, Colorado, and Incorporated Areas", by FEMA, dated April 6, 2022</p>
<b>5</b>	<b>Directors' Reports</b>
<b>5a.</b>	DNR Executive Director/IBCC Director - Dan Gibbs
<b>5b.</b>	CWCB Director - Rebecca Mitchell
<b>5c.</b>	Agriculture Commissioner – Kate Greenberg
<b>5d.</b>	State Engineer - Kevin Rein
<b>5e.</b>	Colorado Parks and Wildlife Director – Reid DeWalt
<b>5f.</b>	Water Resource and Power Development Authority – Jim Griffiths
<b>6</b>	<b>Financial Matters – Construction Fund and Severance Tax Perpetual Base Fund</b> <i>Finance Section</i>
<b>6a.</b>	<b>Financial Projections and Cash Management Report</b>
	<p><b>Action:</b> Report by CWCB staff member Kirk Russell. Christin Bronson, Director of Public Works Breckenridge addressed the Board.</p> <p><i>This is an informational item with no Board action required.</i></p>
<b>7</b>	<b>New Loan</b>
<b>7a</b>	<b>City of Grand Junction – Kannah Creek Flowline Replacement</b>
	<p><b>Action:</b> 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 Steve Anderson, which was seconded by Paul Bruchez. The motion was approved unanimously (9-0).</p> <p><b>Staff Recommendation:</b> Staff recommends the Board approve a loan not to exceed \$3,232,000 (\$3,200,000 for Project costs and \$32,000 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 Kannah Creek Flowline Replacement Project, from the Severance Tax Perpetual Base Fund.</p>

The loan terms shall be 20 years at a reduced low-income municipal interest rate of 1.65% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

**8 Change to Existing Loan**

*Finance Section*

**8a. City of Grand Junction – Carson Reservoir Dam Rehabilitation**

**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 Steve Anderson, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

**Staff Recommendation:** Staff recommends the Board approve a loan not to exceed \$4,343,000 (\$4,300,000 for Project costs and \$43,000 for the 1% service fee) to the City of Grand Junction for costs related to the Carson Reservoir Dam Rehabilitation Project, from the Severance Tax Perpetual Base Fund. This is an increase of \$1,313,000 (\$1,300,000 for Project costs and \$13,000 for the 1% service fee). The loan term shall remain 10 years at 1.00% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

**9 Severance Tax Operational Fund Approvals**

*Finance Section*

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

**Staff Recommendation:** Staff recommends that the Board approve the funding requested for each of the items listed in Table 1 from the Severance Tax Operational Fund for fiscal year 22/23.

**10 Severance Tax Operational Fund – Policy 18**

*Finance Section*

**Action:** Report by CWCB staff member Kirk Russell. A motion to approve the staff recommendation was made by Jessica Brody, which was seconded by Paul Bruchez. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends approval of the revised Policy 18 - Approval and Prioritization of Funding From The Severance Tax Trust Fund Operational Fund

**11 WSRF Grant Applications**

*Water Supply Planning Section*

**Water Supply Reserve Fund Application Grants  
at the May 2022 CWCB Board Meeting**

Basin	Applicant	Name of Water Activity	Total Request
North Platte	Owl Mountain Partnership	Jackson County Structures for Water Control	\$203,718

**Action:** Report by CWCB staff member Ben Wade. A motion to approve the staff recommendation was made by Curran Trick, which was seconded by Steve Anderson. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends approval of up to \$203,178 from the North Platte Basin Account to help fund the project: Jackson County Irrigation Infrastructure Improvement Project. Project approval is contingent upon the applicants' abilities to resolve issues and additional needs discussed below.

**Water Activity Summary:** If approved, the applicant proposes to use WSRF funds for the installation and/or replacement of the following water control structures: • Replace the old, dilapidated pipe headgate that currently exists on the Leonard Ditch. The Illinois River is the water source for this structure. • Replace the old dilapidated headgate and diversion structures that currently exist on the Seymour No.1 Ditch. Grizzly Creek is the water source for this structure. • Replace an old, dilapidated wood headgate that currently exists on the Nairin Ditch. Little Grizzly Creek is the water source for this structure. The applicant believes the upgrades will provide an estimated 10% efficiency savings in the control and use of 60 cfs that is utilized for irrigation purposes. The applicant states another measurable result from the proposal includes 250 feet of pipe/canal built or improved.

## 12 Water Plan Grant, Environmental and Recreation Category Criteria Update

*Watershed and Flood Protection Section*

**Action:** Report by CWCB staff member Chris Sturm. A motion to approve the staff recommendation was made by Greg Felt, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends the Board approve the revised guidance for the Environment and Recreation Category of the Water Plan Grant program.

## 13 South Platte River – South Metro Fire District Easement

*Watershed and Flood Protection Section*

**Action:** Report by CWCB staff member Kevin Houck. A motion to approve the staff recommendation was made by Jessica Brody, which was seconded by Paul Bruchez. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends approval of South Metro Fire District's request for a 25-year nonexclusive easement for an existing storage unit, fencing, and pavement that are

encroaching on CWCB-owned land in Littleton, Colorado. Using Method II of the attached 2005 Fee Structure, staff recommends collecting a fee of \$5,645.

#### 14 FY 22-23 Funding for Water Plan Grant Categories

##### *Operations Section*

**Action:** Report by CWCB staff member Anna Mauss. A motion to approve the staff recommendation was made by Greg Felt, which was seconded by Heather Dutton. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends budgeting the \$8.2M Projects Bill appropriation for Water Plan Grants as follows:

- Agriculture - \$1.5M
- Engagement & Innovation - \$500K
- Environment and Watershed Health - \$4.2M
- Water Storage & Supply - \$2M

#### 15 2022 ISF Appropriations

##### *Operations Section*

#### 15a Final Action on Uncontested 2022 Instream Flow Appropriations: Italian Creek and Lottis Creek (Water Division 4), Kinney Creek (Water Division 5), and Watson Creek (Water Division 6)

**Action:** Report by CWCB staff member Rob Viehl. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Jessica Brody. 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 the Bureau of Land Management and High Country Conservation Advocates, and in staff's memo and oral presentation provided at the January 24, 2022 Board meeting. (1) Determine, pursuant to section 37-92-102(3), C.R.S. (2022), 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 24, 2022 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
4 Italian Creek (Increase)	East-Taylor Gunnison	2.42	Confluence South Italian Creek	confluence Taylor River	0.7 (04/01 - 10/31)
4 Lottis Creek (Increase)	East-Taylor Gunnison	10.33	headwaters confluence Taylor River	2.1 (04/01 - 10/31)	
5 Kinney Creek (Increase)	Colorado headwaters	Grand	6.31	headwaters confluence McQueary Creek	0.7

(05/01 - 07/15) 6 Watson Creek Upper Yampa Routt 5.86 confluence Moody Creek  
Hardscrabble Ditch headgate 1.1 (08/16 - 03/31) 1.9 (04/01 - 06/21)

**15 Final Action on Uncontested 2022 Instream Flow Appropriations: Spruce Creek (Water Division 6)**  
**b**

**Action:** Report by CWCB staff member Rob Viehl. A motion to approve the staff recommendation was made by Paul Bruchez, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff requests that the Board make the following determinations and take the following actions on the Spruce Creek appropriation identified in Table 1. The information necessary to support these determinations is contained in this memo, the recommendation letter and documentation submitted by the Bureau of Land Management, and in staff's memo and oral presentation provided at the January 24, 2022 Board meeting. (1) Determine, pursuant to section 37-92-102(3), C.R.S. (2022), that for the 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 appropriation; and (c) Such natural environment can exist without material injury to water rights. (2) Pursuant to ISF Rule 5f., establish January 24, 2022 as the appropriation date for this water right. (3) Accept the provisions in the Galloway, Inc., d/b/a Blue Valley Ranch ("BVR") Stipulation and agree to include them in any subsequent Water Court application, filings, and decree. (4) Request staff to work with the Attorney General's office to file an application for this water right 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 5 Spruce Creek (Increase) Blue Grand Summit 3.54 headwaters a location just above the Hoagland Canal headgate 0.4 (04/15 - 06/30)

**15 Case No. 19CW3112 (Water Division 5): Application of Highland Investment Co., LLC**  
**c**

**Action:** Report by CWCB staff member Rob Viehl.

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

**16 Proposed Renewal of Ute Water Conservancy District Lease of Ruedi Reservoir Water for Instream Flow Use on the 15-Mile Reach (Water Division 5)**  
*Stream and Lake Protection Section*

**Action:** Report by CWCB staff member Pete Conovitz. A motion to approve the staff recommendation was made by Paul Bruchez, which was seconded by Jessica Brody. The motion was approved unanimously (9-0).

**Staff Recommendation:** Staff recommends that the Board approve: (1) a one-year renewal of the existing Water Lease Agreement to lease up to 12,000 acre-feet of water stored in Ruedi Reservoir from the Ute Water Conservancy District at a cost of \$20 per acre-foot, and (2) an

expenditure of up to \$240,000 from the Species Conservation Trust Fund, subject to the following conditions:

1. Operation of 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 with Colorado Parks and Wildlife staff on proposed releases to minimize any impacts to the fishery on the Fryingpan River below Ruedi Reservoir.

## 17 Water Education Colorado's Work Plan - Annual Allocation

*Water Supply Planning Section*

**Action:** Report by CWCB staff member Kaylea White. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Robert Sakata. The motion was approved unanimously (7-0).

**Staff Recommendation:** Staff recommends the Board approve the proposed Fiscal Year 2023 Scope of Work for Water Education Colorado (WEco).

## 18 Attorney General's Report, Legal Briefing, and Executive Session

**Action:** Report by Attorney General staff member Scott Steinbrecher and Counsel to the Board, Jen Mele. A motion to go into Executive Session was made by Jessica Brody, which was seconded by Greg Felt. The motion was approved unanimously (9-0).

## 19 Executive Session

19a Litigation Fund Request

19 Colorado River Interstate Matters  
b

19c Conflicts of Interest

19 South Platte River Matters  
d

**Report from Executive Session**



20

**Action:** Report by Counsel to the Board, Jen Mele. A motion to go out of Executive Session was made by Greg Felt, which was seconded by Heather Dutton. The motion was approved unanimously (9-0)

**21 FY 23 Litigation Fund Request**

**Action:** Report by CWCB staff member Amy Ostdiek. A motion to approve the staff recommendation was made by Steve Anderson, which was seconded by Robert Sakata. The motion was approved unanimously (7-0).

**Staff Recommendation:** CWCB Staff recommends that the Board authorize the expenditure of a total of \$1,955,000 for litigation-related activities in FY 2022-23 as follows: 1) Colorado River Basin: \$1,020,000 2) Republican River Basin: \$105,000 3) South Platte River Basin: \$205,000 4) Rio Grande Basin: \$590,000 5) Arkansas River Basin: \$35,000 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).

**22 Colorado River Updates**

*Interstate, Federal, and Water Information Section*

**Action:** Report by CWCB staff member Michelle Garrison.

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

**Wednesday, May 18, 2022**

**24 Basin Directors' Reports**

**24a** Colorado River (Mainstem) Basin Director's Report – *Paul Bruchez*

**24b** San Juan/San Miguel-Dolores River Basin Director's Report – *Celene Hawkins*

**24c** Gunnison River Basin Director's Report – *Steve Anderson*

**24d** North Platte River Basin Director's Report – *Absent*

**24e** South Platte River Basin Director's Report – *Robert Sakata*

**24f** Arkansas River Basin Director's Report – *Greg Felt*

**24g** City and County of Denver Director's Report – *Jessica Brody*

**24h** Rio Grande River Basin Director's Report – *Heather Dutton*

**24i** Yampa-White River Basin Director's Report – *Jackie Brown*

**25 Water Plan Update**

*Water Supply Planning Section*

**Action:** Report by CWCB staff member Russ Sands.

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

**26 Colorado Water Plan and Water Resiliency Workshop**

**Action:** Report by CWCB staff members Russ Sands and Amy Ostdiek.

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

**ADJOURN**

A motion to adjourn the May 2022 Board meeting was made by Greg Felt, which was seconded by Heather Dutton. The motion was approved unanimously (9-0).

