

DRAFT

Summary Minutes and Record of Decisions

November 16 & 17, 2022 Board Meeting

A regular meeting of the Colorado Water Conservation Board (CWCB) convened at Denver Water in Denver and virtually on zoom. The meeting was called to order by Chair Jackie Brown. 7 voting members were present at the call to order, so a quorum was present (at least 6 required). Voting members present were: Robert Sakata, Paul Bruchez, Greg Felt, Celene Hawkins (joined at 10a.m.), Steven Anderson, Jessica Brody, and 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: Scott Steinbrecher, Attorney General's Office; Robert Harris, 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. 8 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, Robert Sakata, Greg Felt, Celene Hawkins, Jaclyn Brown, and Heather Dutton. Kelly Romero Heaney, represented for the Executive Director's office, Department of Natural Resources. Non-voting ex officio members present or represented were: Robert Harris, Colorado Parks and Wildlife; Kate Greenberg, Department of Agriculture; and Rebecca Mitchell, Colorado Water Conservation Board Director. Counsel to the Board, Jen Mele, was also in attendance.

Wednesday, November 16, 2022

1 Review /Approve Agenda

A motion to approve the agenda was made by Robert Sakata, which was seconded by Steve Anderson. The motion was approved unanimously (7-0).

2 Review and Approve September 20 & 21, 2022 Board Meeting Minutes

A motion to approve the September 2022 Board minutes was made by Steve Anderson, which was seconded by Paul Bruchez. The motion was approved unanimously (7-0).

3 Approve and/or Remove Consent Agenda Items

A motion to approve the Consent Agenda Items CA1a – 4a was made by Greg Felt, which was seconded by Paul Bruchez. The motion was approved unanimously (7-0). Consent agenda item 5a was moved to the beginning of the agenda on day 2 for more discussion.

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. 22CW3033 (Water Division 3): Application of United States of America, Department of the Interior, Bureau of Land Management
- b. Case No. 22CW3077 (Water Division 5): Application of Spring Falls Ranch, LLC
- c. Case No. 22CW3082 (Water Division 5): Application of NamuRanch, LLC

2. Floodplain Designation

Watershed and Flood Protection Section

- a. **Flood Hazard Area Delineation, Clear Creek", by ICON Engineering, Inc., dated September 2022**

3. Updated Water Projects Loan Program Guidance

Finance Section

4. Loan De-authorization

Finance Section

- a. **Taylor & Gill Ditch Company**

4	Directors' Reports
4a.	DNR Executive Director/IBCC Director - Dan Gibbs
4b.	CWCB Director - Rebecca Mitchell
4c.	Agriculture Commissioner – Kate Greenberg
4d.	State Engineer - Kevin Rein
4e.	Colorado Parks and Wildlife Director – Robert Harris
4f.	Water Resource and Power Development Authority – Keith McLaughlin

5 Financial Matters – Construction Fund and Severance Tax Perpetual Base Fund – Finance 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 required.

5b Fiscal Year 2022 Financial Statements

- 1. Construction fund**
- 2. Severance Tax Perpetual Base Fund**

Action: Report by CWCB staff member Kirk Russell.

This is an informational item with no Board action required.

6 Water Project Loans Finance Section

6a Special Improvement District No. 3 of the Rio Grande Water Conservation District – Alpha Hay Farms Augmentation Project

Action: Report by CWCB staff member Cole Bedford. Leroy Salazar, Nathan Coombs, and Amber Pacheco addressed the Board. A motion to approve the staff recommendation was made by Heather Dutton, which was seconded by Robert Sakata. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$2,580,550 (\$2,555,000 for project costs and \$25,550 for the 1% service fee) to the Special Improvement District No. 3 of the Rio Grande Water Conservation District, operating by and through its water activity enterprise, for costs related to the Alpha Hay Farms Augmentation Project, from the Severance Tax Perpetual Base Fund. The loan term will be 30 years at an interest rate of 2.50% per annum. Security for the loan shall be in compliance with CWCB Financial Policy #5.

6b Groundwater Management Subdistrict of the Trinchera Water Conservancy District – Alpha Hay Farms Augmentation Project

Action: Report by CWCB staff member Cole Bedford. Monty Smith, Jason Lorenz, and Judy Lopez addressed the Board. A motion to approve the staff recommendation was made by Heather Dutton, which was seconded by Jessica Brody. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve a loan not to exceed \$2,251,290 (\$2,229,000 for project costs and \$22,290 for the 1% service fee) to the Groundwater Management Subdistrict of the Trinchera Water Conservancy District, acting by and through its water activity enterprise, for costs related to the Alpha Hay Farms Augmentation Project, from the Severance Tax Perpetual Base Fund. The loan terms 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.

2023 Projects Bill

15b7 Finance Section

b. Non-Reimbursable Project Investments

7. Southeast Colorado Water Conservancy District - Arkansas Valley Conduit (Continue)

Action: Report by CWCB staff member Kirk Russell. Bill Long, Jim Broderick, Chris Woodka, and Christine Arbogost with Southeast Colorado Water Conservancy District addressed the Board. A motion to approve the staff recommendation was made by Greg Felt, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve the transfer of \$20,000,000 from the Severance Tax Perpetual Base Fund to the Construction Fund to fund the design and construction of the Arkansas Valley Conduit delivery lines and spurs and inclusion in the 2023 Projects Bill for appropriation. The funding will be made available to Otero County for its intended use by the Southeastern Colorado Water Conservancy District
Staff also recommends the Board approve a modification to HB20-1403 Section 17. Frying Pan-Arkansas project loan authorization – transfer & appropriation paragraphs to replace the Southeastern Colorado Water Conservancy District with Otero County as the recipient of the \$10M grant.

7 Hydrology Update Colorado River Basin
Interstate, Federal, and Water Information Section

Action: Report by CWCB staff members Amy Ostdiek and Michelle Garrison.

This is an informational item with no Board action required.

8 Colorado Airborne Snow Monitoring (CASM) Update
Interstate, Federal, and Water Information Section

Action: Report by CWCB staff member Erik Skeie and Emily Carone with Northern Colorado Water Conservancy District and Scott Griebing with Saint Vrain Left Hand Water Conservancy District.

This is an informational item with no Board action required.

10 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 Heather Dutton, which was seconded by Paul Bruchez. The motion was approved unanimously (8-0).

11 Executive Session

11a Assisting Basin Roundtables

11b Colorado River Drought Resilience

11c Save the Colorado v. U.S. Dep’t of the Interior, Case No. 3:19-CV-o8285-MTL (D. Ariz.)

12 Report from Executive Session

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 (8-0)

13 Colorado Water Plan Update

Water Supply Planning Section

13a Water Plan Update Finalization Approach

Action: Report by CWCB staff members Russ Sands, Katherine Weismiller, and Lauren Ris. A motion to approve the staff recommendation was made by Jessica Brody, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Colorado Water Conservation Board (CWCB) Board approve the identified sideboards and approach for addressing comments and finalizing the 2023 Colorado Water Plan by late December 2022. The plan would be formally adopted at the January 24, 2023 Board Meeting.

13b Water Plan Board Letter

Action: Report by CWCB staff members Russ Sands, Katherine Weismiller, and Lauren Ris. Josh Kuhn, Christine Jauhola, Cody Perry, Joshua Herr, Hattie Johnson, and Alex Kim addressed the Board during public comment.

Staff Recommendation: *No vote at this time, it has been tabled until the January 2023 board meeting.*

Thursday, November 17, 2022

14 Basin Directors' Reports

14a City and County of Denver Director's Report – *Jessica Brody*

14b Rio Grande River Basin Director's Report – *Heather Dutton*

14c Yampa-White River Basin Director's Report – *Jackie Brown*

14d Colorado River (Mainstem) Basin Director's Report – *Paul Bruchez*

14e San Juan/San Miguel-Dolores River Basin Director's Report – *Celene Hawkins*

14f Gunnison River Basin Director's Report – *Steve Anderson*

14g North Platte River Basin Director's Report – *Absent*

14h South Platte River Basin Director's Report – *Robert Sakata*

14i Arkansas River Basin Director's Report – *Greg Felt*

CA 5. Technical Assistance for Federal Cost-Share (TAFC) Grant

item *Water Supply Planning Section*

- 5a** a. Applicant - Boulder Valley Conservation District
Name of Water Activity - Pre-Development: Leggett Ditch
Total Request - \$55,292

Action: A motion to approve the staff recommendation was made by Jessica Brody, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends approval of up to \$55,292 from the Technical Assistance for Federal Cost-Share Grant to help fund the "Pre-development work: Leggett Ditch" project.

9 Information Update on the Platte River Recovery Implementation Program

Interstate, Federal, and Water Information Section

Action: Report by CWCB staff member Kara Scheel.

This is an informational item with no Board action required.

15 **2023 Projects Bill**
Finance Section

15a. **Non-Reimbursable Project Investments “En-Bloc” Approval**

- 1) Floodplain Risk Management (Continue)
- 2) Litigation Fund (Refresh)
- 3) Weather Modification Permitting Program (Continue)
- 4) Colorado Mesonet Enhancements (Continue)
- 5) Satellite Monitoring/Maintenance Program
- 6) Fish & Wildlife Resource Fund (Continue)
- 7) Colorado Watershed Restoration Program (Continue)
- 8) Reservoir Enlargement Assessment Project (Continue)
- 9) Colorado Water Plan Grant Supplemental Funding (Continue)

Action: Report by CWCB staff member Kirk Russell. A motion to approve the staff recommendation was made by Paul Bruchez, which was seconded by Steve Anderson. The motion was approved unanimously (8-0).

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 2023 Projects Bill.

1	Floodplain Risk Management (Continuation)	Statewide	\$500,000
2	Litigation Fund (Refresh)	Statewide	\$2,000,000
3	Weather Modification Permitting Program (Continue)	Statewide	\$500,000
4	Colorado Mesonet Enhancements (Continue)	Statewide	\$150,000
5	Satellite Monitoring/Maintenance Program	Statewide	\$380,000
6	Fish & Wildlife Resource Fund (Continue)	Statewide	\$2,000,000
7	Colorado Watershed Restoration Program (Continue)	Statewide	\$500,000
8	Reservoir Enlargement Assessment Project (Continue)	Statewide	\$1,000,000
9	Colorado Water Plan Grant Supplemental Funding (Continue)	Statewide	\$2,000,000
		Total	\$9,030,000

15b. **Non-Reimbursable Project Investments - Presentations**

15b1 **Water Forecasting Partnership Project (Continue)**

Action: Report by CWCB staff member Kirk Russell. A motion to approve the staff recommendation was made by Greg Felt, which was seconded by Robert Sakata. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve \$1,000,000 in funding from the Construction Fund for the Water Forecasting Partnership Project for inclusion in the 2023 Projects Bill.

15b2 2023 Water Plan Action Advancement (New)

Action: Report by CWCB staff member Kirk Russell. A motion to approve the staff recommendation was made by Paul Bruchez, which was seconded by Robert Sakata. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve \$2,000,000 in funding from the Construction Fund for the 2023 Water Plan Action Advancement efforts in the 2023 Projects Bill.

15b3 DWR Mobile Field Data Collection App (New)

Action: Report by CWCB staff member Brian Macpherson and Jason Ullmann with DWR. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends that the Board approve \$800,000 in funding from the Construction Fund in the 2023 Projects Bill to be allocated to the Division of Water Resources (DWR) to develop the DWR Mobile Field Data Collection App.

15b4 Platte Recovery Implementation Program (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 Paul Bruchez. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve \$19,000,000 in funding from the Severance Tax Perpetual Base Fund for the Platte River Recovery Implementation Program for inclusion in the 2023 CWCB Projects Bill.

15b5 UCR & SJR Recovery Programs (Continue)

Action: Report by CWCB staff member Michelle Garrison. A motion to approve the staff recommendation was made by Paul Bruchez, which was seconded by Heather Dutton. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve \$15,000,000 in funding from the Severance Tax Perpetual Base Fund and inclusion in the 2023 CWCB Projects Bill for the Upper

Colorado River Endangered Fish Recover Program and San Juan River Basin Recovery Implementation Program (Recovery Programs) to fulfill pending program obligations to interstate and federal partners.

15b6 Central Colorado Water Conservancy District

Action: Report by CWCB staff member Kirk Russell, Randy Ray with Central CO Water Conservancy District (CCWCD) addressed the Board. Robert Sakata disclosed that his farm has contracts with CCWCD but he would not benefit financially from this project. A motion to approve the staff recommendation was made by Robert Sakata, which was seconded by Jessica Brody. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve \$3,000,000 in funding from the Construction Fund for the Groundwater Management Subdistrict of the Central Colorado Water Conservancy District - Augmentation Efficiency Project for inclusion in the 2023 Projects Bill.

15c Miscellaneous

15c1 Water Plan Grant Implementation Cash Fund – Appropriation

Action: Report by CWCB staff member Kirk Russell. A motion to approve the staff recommendation was made by Heather Dutton, which was seconded by Robert Sakata. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board support an appropriation of \$12.6 million from the Water Plan Implementation Cash Fund to support the Water Plan Grant Program in the 2023 Projects Bill.

15c2 Colorado Parks & Wildlife – Appropriation to Purchase Orphan Shares in Chatfield Reservoir Reallocation

Action: Report by CWCB staff member Kirk Russell. A motion to approve the staff recommendation was made by Heather Dutton, which was seconded by Paul Bruchez. The motion was approved unanimously (8-0).

Staff Recommendation: Staff recommends the Board approve the sale of a minimum of 924AF of Orphan Shares in the Chatfield Reservoir Reallocation Project and allow CPW to appropriate its funding for the purchase in the 2023 Projects Bill.

16 Fish and Wildlife Resources Fund – Criteria Updates

Watershed and Flood Protection Section

Action: Report by CWCB staff member Chris Sturm. Matter tabled for action at a later meeting.

17 Proposed Improvements to Reynolds Landing Park

Watershed and Flood Protection Section

Action: Report by CWCB staff member Andrea Harbin Monohan. David Skoudas addressed the Board.

This is an informational item with no Board action required.

18 Notice of 2023 Instream Flow Appropriations

Stream and Lake Protection Section

Action: Report by CWCB staff member Rob Viehl.

This is an informational item with no Board action required.

19 Proposed Acquisitions for Instream Flow Use

Stream and Lake Protection Section

19a Proposed Renewable Temporary Lease of Direct Flow Water Rights for Instream Flow Use on Tomichi Creek, Water Division 4 (Gunnison County) (1st Meeting)

Action: Report by CWCB staff member Pete Conovitz.

This is an informational item with no Board action required.

19b Proposed Water Use Agreement with Colorado River District to Lease Ruedi Reservoir Water for Winter Instream Flow Use in the Fryingpan River, Water Division 5 (Pitkin and Eagle Counties) (2nd Meeting)

Action: Report by CWCB staff member Pete Conovitz. A motion to approve the staff recommendation was made by Heather Dutton, which was seconded by Robert Sakata. The motion was approved unanimously (7-0).

Staff Recommendation: The recommendation is for the Board to direct Staff to move forward with the proposed lease including: 1) authorizing Staff to execute a renewable Water Use Agreement with the Colorado River Water Conservation District regarding the potential annual lease of water from Ruedi Reservoir for ISF Use, and 2) authorizing an expenditure of up to \$222,753.25 for the first annual lease under the Water Use Agreement to be implemented during the 2022-2023 Winter season. Pursuant to Rule 6b of the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program (“ISF Rules”), the Board’s initial consideration of this proposal at the September 2022 meeting initiated the 120-day Board review period. No public requests to hold a hearing on the proposed lease have been received, and therefore the Board may take action and direct staff to “move forward” with the proposed lease and Water Use Agreement at this November 2022 meeting.

20 Colorado Water Trust Presentation on Instream Flow Acquisition Contract

Stream and Lake Protection Section

Action: Report by CWCB staff member Rob Viehl. Andy Schultheiss addressed the Board.

This is an informational item with no Board action required.

21 Proposed Expenditures for Costs of Water Acquisitions for Instream Flow Use

Stream and Lake Protection Section

Action: Report by CWCB staff member Rob Viehl. A motion to approve the staff recommendation was made by Greg Felt, which was seconded by Heather Dutton. The motion was approved unanimously (7-0).

Staff Recommendation: Staff recommends that the Board authorize staff to initiate a selection process to contract with an entity to assist CWCB with evaluations of proposed acquisitions of water for instream flow use, and for monitoring the use of acquired water. The contract would be for a term of four years in the amount not to exceed \$600,000, which would be funded from the Construction Fund, as authorized by section 37-60-123.7, C.R.S.

22 Proposed Name Changes to Decreed Instream Flow Water Rights Consistent With Actions of Colorado Geographic Naming Advisory Board

Stream and Lake Protection Section

Action: Report by CWCB staff member Rob Viehl.

This is an informational item with no Board action required.

23 Table Topic - Forest Health and Wildlife Mitigation

Christina Burri with Denver Water, David Sayles with Tri State, and Madeline McDonald with Denver Water presented to the Board on Forest Health and Wildlife Mitigation.

This is an informational item with no Board action required.

ADJOURN

A motion to adjourn the November 2022 Board meeting was made by Robert Sakata, which was seconded by Heather Dutton. The motion was approved unanimously (6-0).