

**UPPER ARKANSAS WATER  
CONSERVANCY DISTRICT**

**Regular Meeting of the Board of Directors**

**February 11, 2021  
1:30 P.M.**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, February 11, 2021, commencing at 1:30pm at the District offices, 339 East Hwy 50, Salida, Colorado, following the Water Activity Enterprise committee meeting, notice having been given by posting of Notice and Agenda on February 10, 2021 at the offices of the Upper Arkansas Water Conservancy District, 339 East Hwy 50, Salida, Colorado.

**DIRECTORS PRESENT (IN PERSON)**

Tim C. Canterbury                      Thomas Goodwin  
Franklin J. (Jay) Moore  
Tom E. French

**DIRECTORS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)**

Tim Payne (joined at 1:25pm)      Gregory W. Felt                      Warren Diesslin  
Robert B. Bill Donley              Tony Telck                              Brett McMurry  
Mannie Colon                          Mike Shields                          Rich Hilderbrand

**DIRECTORS ABSENT**

None

**DISTRICT OFFICIALS/STAFF MEMBERS PRESENT**

Ralph L. (Terry) Scanga, General Manager      Ken Baker, Consultant  
Jord Gertson, Hydrologist                          Jennifer A. Scanga, Secretary  
Chris Manera, Engineer

**DISTRICT OFFICIALS/STAFF MEMBERS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)**

Kendall Burgemeister, Attorney                      Richard Brown, Legislative Consultant  
Gracy Goodwin, Projects Manager

**DISTRICT OFFICIALS ABSENT**

None

**STATE OFFICIALS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)**

Bill Tyner, Division Engineer  
Brian Sutton, Augmentation Coordinator  
Will Scott, Water Commissioner, District 12  
Dan Henrichs, Water Commissioner, District 11

**STATE OFFICIALS ABSENT**

None

**EX-OFFICIO REPRESENTATIVES PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)**

Tom Flower, Custer County Commissioner  
Dwayne McFall, Fremont County Commissioner  
Bob Hartzman, Canon City Water Superintendent

**EX-OFFICIO REPRESENTATIVES ABSENT**

Brian Berger, Poncha Springs Administrator  
Michael Patterson, Florence City Manager  
John Roorda, Chaffee County Planning Manager  
Shawn Williams, Buena Vista Public Works Director

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Dave Schneider, District Manager, Round Mountain WSD  
Philip Puckett, Buena Vista Town Administrator

### **GUESTS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERNING)**

Joe Stone, Heart of the Rockies Radio  
Joel Benson, Town of Buena Vista  
Cathy Garcia, Southern Colorado Regional Director  
Clarice Navarro, Colorado State Coordinator for US House Representative, Lauren Boebert

### **PLEDGE OF ALLEGIANCE**

Chairman Canterbury led attendees in the Pledge of Allegiance.

### **INTRODUCTION OF GUESTS**

Guests were asked to introduce themselves.

### **MINUTES OF THE MEETING OF January 14, 2021**

The minutes of the meeting of January 14, 2021, were approved upon motion by Director Felt with second by Director Colon.

### **FINANCIAL REPORTS**

Upon motion by Director Goodwin with second by Director French, the Board approved the monthly financial reports dated January 31, 2021. Director Felt asked why some of the augmentation purchases are not whole units? Manager Scanga answered that it is due to additional augmentation purchases per the new policy that states that customers who continually over-pump must purchase additional augmentation. He added that some of the additional augmentation purchased are only partial units instead of full units which is why they show up as sub-unit amounts. Also, the purchase policy is simply that the initial purchase of augmentation must be a minimum of 1 unit but additions above that may be in less than 1 unit increments.

### **PROGRAM PRESENTATIONS**

None

### **EX-OFFICIO REPORTS**

There were no ex-officio reports

### **PROJECT MANAGEMENT REPORT- Gracy Goodwin**

Projects Manager Goodwin presented the February Projects update.

#### **DeWeese Enlargement Feasibility Study:**

- The January progress report has been submitted and a grant reimbursement has been requested for \$23,250.
- Colorado River Engineering has begun the hydrology and water right analysis.

#### **Round Mountain Reservoir Feasibility Study:**

- Colorado River Engineering has begun the hydrology and water right analysis.

#### **Lake Ranch Conservation Gardens:**

- PM Goodwin stated that this is a new project and is still in the early stages. She said she is looking into grants and is considering the possibility of a partnership with Colorado Mountain College (CMC) regarding designs and help with the gardens.

#### **Water Balance Study – Phase 2:**

- A grant extension has been submitted for a June 2022 deadline.
- The United States Geological Survey (USGS) is anticipating delays on getting the final report publication due to COVID. A request for agreement modification for a no-cost extension will be submitted.

#### **Trout Creek Park Alluvial Storage:**

- An update is being submitted to the Colorado Water Conservation Board (CWCB).
- PM Goodwin is working with Manager Scanga to schedule meetings with landowners.

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- A proposal is being compiled for recharge pits.

Manager Scanga commented that he has received information from the Colorado Department of Corrections (DOC) on scheduling a meeting regarding Trout Creek Park Alluvial Storage. He said they would like to schedule the meeting for Monday, February 22<sup>nd</sup>.

### **CONSULTANT REPORT – Richard Brown**

Legislative Consultant Brown reported on legislative updates.

He stated that the General Assembly convened on January 13<sup>th</sup> and the logistics of the system are still unknown, but the legislature is working hard to find as many ways possible to be open for the public so people can participate in the decision making and monitoring of current events. The delay was in hoping the COVID vaccine initiative would be further along at this time. Consultant Brown said there is the expectation of approximately 250 Bills to be released next week. Some have a couple modifications from last month's meeting. He stated that the legislative leadership is working on including the public on decision making.

### **Legislative and Capitol Update**

Consultant Brown discussed the House Bill, HJR21-1002 that was introduced and assigned to House Agriculture, Livestock & Water. A copy of the water Bill was given to Board Members to review prior to the meeting. Consultant Brown explained that it is an annual resolution that approves various projects to be funded through the Colorado Water Resources & Power Development Authority. He said the resolution was introduced because state law requires the list to be submitted to General Assembly by the 15<sup>th</sup> of January each year. The resolution is sponsored by Representative Arndt and Senator Donovan and is primarily a ceremonial action since the resolution has seldom been modified after introduction. Consultant Brown stated that Representative Arndt has not scheduled the resolution for hearing, however there is some belief that it could be heard in committee on February 18<sup>th</sup>. The schedule will not be official until the legislature reconvenes on February 16<sup>th</sup>.

### **Draft Proposals**

#### **Aquifer Storage & Retrieval:**

Consultant Brown explained in his report that Eastern Colorado Representative Richard Holtorf and Senator Jerry Sonnenberg have a bill to review reports and analyses to study regarding the potential for the use of aquifer storage and retrieval as a mechanism to increase water storage throughout Colorado. He said that Representative Holtorf argues that Colorado loses a lot of water each year to the downstream states, particularly Kansas and Nebraska, and because Colorado does not have a way to capture the water, store it inside the state, and extract runoff that is not otherwise committed to established water uses.

Another revised draft discussed briefly in Consultant Brown's report is a bill that falls under the responsibility of the CWCB. Brown stated that the CWCB in collaboration with the State Engineer would contract with a Colorado institution of higher education to accomplish the study. He said that the bill sets forth what the study will include, and the revised draft no longer states that a higher education institution will select a contractor to do the work. However, the draft does not preclude the retaining of a consultant.

Consultant Brown added that the study is to be completed with a report submitted to the Water Resources Review Committee, (WRRC) by August 1, 2022. The WRRC has significant discretion in addressing the study and proposing any legislation.

### **Mutual Ditch Corporations**

Consultant Brown explained that this bill is still a work in progress and Water Congress held an open forum earlier in the month for advocates and interested parties. The meeting gave the chief legal advocate, Andy Jones an opportunity to explain the history leading up to a determination that the bill is appropriate. Mr. Brown expressed that unfortunately the discussion was not well focused and tended to shift to other side issues, leaving it difficult to track the central premise of the actual bill. He added that Engineer Kevin Rein provided a thorough report on the issue of "turnback structures" and he was careful to not endorse or criticize the bill but indicated that it would be helpful if the legislature clarified the turnback issue. The result was a showing of little support but no strong opposition either.

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Consultant Brown stated that at the request of Representative Arndt, Water Congress hosted another open forum, February 10<sup>th</sup> for work on other issues in this bill. Future meetings will be held every Wednesday, so it is unlikely that a bill will be ready for introduction until March. Mr. Brown added that Representative Arndt did not seem in support of the bill.

### **Commission on Uniform State Laws**

Consultant Brown briefly discussed the Uniform Probate Code, stating that Colorado has a standing committee of legislators and attorneys who review these proposed model acts to determine whether they should be enacted in Colorado. Mr. Brown said these acts are typically technical in nature and usually not controversial.

He further discussed that the Colorado Commission received a model act that deals with easement relocations and has it under consideration. The committee has no meetings scheduled but the bill has a file number issued to the Legislative Legal Services and no draft is yet available.

### **Alternative Transfer Methods**

Consultant Brown discussed a proposal prepared by a staff person at CWCB that set forth potential revision to the issue of alternative transfer methods for freeing up agricultural water for other uses. Mr. Brown stated that part of the proposal suggested that it might be beneficial to restructure lease-fallowing and interruptible water supply agreements into a combined administrative procedure. Attempts to contact this staff person were unsuccessful. Mr. Brown said it has been reported that this individual will be providing a briefing on the concept at the next Interbasin Compact Committee (IBCC) meeting.

### **Money Issues**

Mr. Brown stated that tax revenues have been way down this past year and since severance tax is a very volatile and unpredictable revenue source, the only thing that can be accurately said about them is that every single forecast has been wrong.

Mr. Brown commented that to complicate the severance tax revenue problem further, President Biden shut down a considerable amount of federal land to any mining, petroleum, and gas production. Since the government collects revenues from leases on those federal lands and shares a portion with the affected states, this action by President Biden may have a negative impact on those federal mineral lease transfers. The potential decline in those transfers would worsen the low severance tax revenues.

Consultant Brown added that there is better news. He stated that sports betting seems to be showing some stability and growth and these are revenues made available when sports betting was approved by voters in 2019. Mr. Brown said that due to COVID, startup was slow, but many sports are coming back and the most recent reports from the Colorado Department of Revenue are showing collections of over \$3 million for the half year since being enacted.

Mr. Brown discussed how the Joint Budget Committee (JBC) has tentatively agreed to provide an additional \$4 million to the CWCB to mitigate watershed damage that resulted from last year's wildfires. Also, the JBC has initially set aside about \$6 million for forest restoration. Mr. Brown said that even though this is good news, the next revenue forecast will not be released until March 20<sup>th</sup>, and a lot will depend upon those numbers. He continued that the March forecast is critically important because that is the forecast that the JBC uses to finalize the budget numbers for next year's budget allocations.

### **Aquatic Nuisance Species**

Mr. Brown stated in his report that The Division of Wildlife (DOW) has reported great success with its program to interdict watercraft that might be transporting zebra and quagga mussels. Mr. Brown stated that the Division is considering a new initiative for watercraft inspection which involves the State Patrol and CDOT to interdict and inspect the watercraft along the highways before they reach a body of water. He added that the Division is working on a concept to establish a pilot project to see if the idea is feasible.

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Consultant Brown discussed in his report other potential bills. He stated that Representative Don Valdez for the San Luis Valley is working on a bill that would restrict water exports out of the San Luis Valley. A similar bill was presented last year but due to COVID shutdown was ditched. Mr. Brown also reported on a bill Representative Brianna Titone of Arvada is working on to motivate consumers of urban water to do more conservation with respect to water saving appliances and landscaping. He added that Rep. Titone is reportedly working with Rep. Arndt on reviving an unsuccessful bill from 2020 that called for a study of advanced technology that could be used in water supply management. The last session's bill (HB20-1072) passed the house but collapsed due to the COVID-19 shutdown.

Consultant Ken Baker expanded a bit on the Aquifer Storage and Retrieval Proposal. He explained that it deals with the underground storage capacity in each division within the state of Colorado. Mr. Baker said that 30 years ago the state of Kansas objected to the way the State Engineer Hal Simpson was administering the Arkansas River City under the 48 Compact between Kansas and Colorado. Kansas was not receiving a fair share of return flows. Consultant Baker continued stating that when lawsuit was completed, the Special Master ruled in favor of Kansas and therefore the Engineer Simpson created the amended rules and regulations for well pumping in the Arkansas. This regulation was approved by the Water Court and the rules and regulations specified that the retrieval of underground return flows must be limited to those who have a water right or those who have augmentation. Mr. Baker said that due to this the UAWCD was formed. Consultant Baker explained further that the problem with the proposed bill is that there is no identification for what to do when there are very strict state regulations. The idea in mind of the lawsuit between Kansas and Colorado was to make sure that it was done in accordance with the law. He said that this is an issue that will continue to affect water in the Arkansas and greatly reduce the ability to do underground storage. If underground storage can be accomplished, there is already a statute in place, the 1969 Act, and the majority of the UAWCD's augmentation system is operated under that Act.

Consultant Baker briefly discussed the South Platte River. He stated that the river is generally considered under appropriated, meaning that water is available to flow out of the state into Kansas and Nebraska. Underground storage in the South Platte can be accomplished under the 69 Act. Mr. Baker said that in his opinion, he thinks the bill as proposed has no real merit to law as there is already law in place and does not need to be changed.

Consultant Baker also gave some discussion concerning Mutual Ditches. He said in his experience with Colorado Water Congress (CWC) some attorneys in the past that represented mutual ditches have gone to court and found that what they were proposing for their clients was not necessarily what the Water Court judge determined to be the accurate position of law. So now some legislators introduce a bill to change the law opposed to what the Water Court determined. Mr. Baker said that after reviewing the bill and the arguments presented, he found them to have little merit and the only way it could be put into effect would be in the South Platte.

Director Felt addressed Manager Scanga concerning a house bill that he recalled being mentioned at a previous meeting. He said there were concerns about the bill regarding Alternative Transfer Methods (ATM's), administrative decision making, quantifying impacts and consumptive use. Mr. Felt said it sounded like the bill had been pushed out another year by DNR and he was questioning whether that was the case and what had become of the bill. Consultant Brown answered by stating that he received a memo from Manager Scanga written by Alex Funk, Agricultural Water Resources Specialist at the CWCB about the bill, but it was unclear exactly what was being proposed. He said it looked as though they were trying to streamline some of the procedures for ATM's and interrelate those with interruptible supply agreements. He added that it appeared in the memo that there might be some thought regarding efficiencies if they were able to incorporate some of the administrative processes. Consultant Brown said he has attempted to contact Mr. Funk via phone calls but has been unable to reach him. He said he heard that Mr. Funk will be making a presentation at the next IBCC meeting this month and will be discussing the proposed bill in more detail.

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Manager Scanga stated that he has not seen an updated agenda regarding the upcoming IBCC meeting but anticipated receiving it within the next week. He added that he received a CWCB staff survey request concerning changing the name of ATM to some other name due to the confusion over the term.

Manager Scanga said he is opposed to changing the name since it is a familiar acronym that has been used for many years and only people in the water world know and use the term. He stated that he feels as though it is an effort to expand the focus of ATM's to include interruptible water supplies and many other conservation types of temporary transfers. One conservation type involves giving up your water right for a time to accommodate instream flows and attempting to put everything under the same umbrella. He commented that he is guessing this is due to grant financing, expanding the umbrella of alternative transfers to include other types of transfers to be able to purchase a water right and permanently move the water right to a new use. He added that he has not yet heard the outcome of the survey.

Chairman Canterbury stated that Alex Funk has also reached out to the Cattlemen's Association asking for their input. He said he feels there will be a lot more future discussion.

Director Colon said after attending the Ditch and Reservoir Company Alliance (DARCA) meeting that morning, it was his understanding no decisions will be made this year, but it is still a work in progress.

### **COMMITTEE REPORTS**

None

### **RESUME REVIEW COMMITTEE**

Nothing of significance for the District in the Resume.

### **MANAGER'S REPORT – Terry Scanga**

Nothing further to be discussed.

### **ENGINEER'S REPORT – Chris Manera, Colorado River Engineering (CRE)**

Engineer Manera updated the board on current water cases. He said that since the last Board meeting there has been some follow up work completed with the hydrogeologist and staff of the Division of Water Resources on the Augmentation Expansion Case (18CW3076), and the requested information has been submitted regarding aquifer characteristics that were quantified in the engineering report. Engineer Manera said he was happy to report that he received a positive and favorable response.

Engineer Manera also reported on the Cottonwood Irrigating Ditch Case (19CW3089) associated with the Ludwig property. He stated that he received comments from one of the objectors regarding where run off is being directed. Mr. Manera said he provided information showing that the surface run off is being directed to the Arkansas River. He said he made a field visit to verify that the mapping is correct, and it was very evident that the water flows to the south toward the Arkansas River.

Engineer Manera informed the Board that there is an expert report deadline scheduled for the following week that combined Young Life Application for the Change and Change of Water Rights and Exchange. He added that he had a meeting with one of the objector's engineer, Steve Kastner. Mr. Manera said they discussed operations on Cottonwood Creek and how the plan would work as far as exchanging Silver Creek Ronk water up the middle fork past the objector's head gates to Cottonwood and Rainbow Lakes. He said there were no additional engineering issues that either of them could identify that have not already been covered legally in the plan. Mr. Manera stated that he will be preparing the expert report for next week.

### **LEGAL REPORT – Law of the Rockies, Kendall Burgemeister**

Attorney Burgemeister reported on the status and developments of several UAWCD applications.

#### **19CW3089: Cottonwood Irrigating Ditch-**

The case has gone before the referee and a recent substitution of counsel for the Sailor Investments with Triview Metro District located near Monument near Colorado Springs. He stated that the reason for this substitution is due to the purchase of property by Cottonwood Creek that was formerly owned by Sailor Investments who had been an opposer to the case. Mr. Burgemeister added that they have also

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substituted into the Young Life Case but he has not had the opportunity to speak with their attorney to see what other concerns they may have that were not previously raised by Sailor Investment's attorney. He said he anticipates that at some point that there will be a water rights case by Triview to utilize the irrigation rights within their service area on Fountain Creek.

### **18CW3076: Augmentation Expansion Case-**

Attorney Burgemeister stated that there are continuing discussions with remaining opposers and the case has gone before the water judge. He stated that there are four stipulations to approve. The requested Board action is for approval of stipulations with Buena Vista, Penrose Water District, Arkansas Valley Ditch Association, and Lawrence Family Ranch Corporation. All four stipulations are the same version that have been previously approved in many other instances. The version of the proposed decree they are stipulating is the September 29, 2020 draft which was the version circulated with the expert disclosure and which was included in the Colorado Springs Utilities Stipulation that has already been submitted and approved by the court.

Atty Burgemeister said that his suggested form of action is to approve the proposed stipulations between UAWCD, acting through the Water Activity Enterprise, and Penrose Water District, Town of Buena Vista, AVDA, and Lawrence Family Ranch Corporation.

Director Colon made a motion to approve all four stipulations of the UAWCD, acting under the Enterprise Committee, seconded by Director Telck. The Board unanimously approved the stipulations by a vote of "Aye."

### **18CW3048: Joint application to change Silver Creek-Ronk Ditch Water-**

Atty Burgemeister reported that applicants' expert reports are due Wednesday, February 17<sup>th</sup>, and the substitution of Triview Metro District. The case is before the Water Judge and a trial is set to begin on October 25, 2021.

Atty Burgemeister discussed a legal issue regarding the CWCB. He said that due to irreconcilable differences that at this point there is a good chance it will be presented to the court for a decision. Mr. Burgemeister stated that the CWCB's position argues that UAWCD must replace historical return flows in the exact location, time, and amount where they historical hit the stream, regardless of the call location. Mr. Burgemeister commented that there are approximately twenty-five different Supreme Court cases that clearly establish that the obligation is to replace return flows at the point that prevents injury to other water rights. He said an example here is if the only call is from below Pueblo Reservoir, we should be able to meet our return flow obligation with a release out of Pueblo Reservoir. Mr. Burgemeister stated that the CWCB position is that the UAWCD needs to meet that return flow obligation on North Cottonwood Creek even if they are not calling for their instream flow right even though they are fully satisfied. He said it is a position that both he and Young Life's attorney feel strongly about and there have been many discussions with CWCB's attorney over the last year and they are not "seeing the light."

Atty Burgemeister updated the Board on the status and developments of applications UAWCD is opposing.

### **19CW3061: Application of Tom Smith-**

Atty Burgemeister said there are no significant developments regarding this case. The UAWCD response to latest propose ruling and engineering is due February 22<sup>nd</sup> and the case is before the Referee.

Director Felt asked for clarification on the CWCB's position regarding historical return flows and asked if the AG's office is the one raising the issue? Atty Burgemeister said he is not sure who is heading it. Director Felt asked if this is regarding the Blue Line Case or the Silver Creek Ronk Case? Atty Burgemeister answered that it primarily is coming up in context of the Silver Creek Ronk Case.

Manager Scanga added that it is a huge issue and needs to be nipped in the bud and the District needs to be prepared for the direction it will go. He added that it is less costly at this stage and if necessary, should be brought to the Supreme Court. He stressed the importance of this issue.

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Commissioner Flower asked when a trial date is set in Blue Line Court Case? Atty Burgemeister answered that it is set to begin on June 1, 2021 for five full weeks. Mr. Burgemeister stated that the status conference scheduled for last week had to be rescheduled and one of the items of discussion for the status conference was the setting of trial dates. He added that the trial date will mostly likely be decreased to less than five weeks and he will keep everyone updated as he finds out more information.

Commissioner Flower asked if the four stipulations that the Board voted on during this meeting were concerning the Blue Line Expansion Case or a different case? Atty Burgemeister confirmed that they were a part of the Blue Line Case. Mr. Burgemeister added that out of all the opposers listed on his Legal Report only two submitted expert disclosures, the CWCB and Public Service Company, and along with the expert reports, settlement offers were received. He said they appear to be very resolvable and promising. He noted that the engineers have not filed an expert report and that the District engineers have been working extensively with the engineers after the District's expert report has been filed and it appears to have resolved all of their technical concerns with the application. He added that he is hopeful more stipulations will be submitted, and the case will be finalized soon.

Director Hilderbrand asked Chairman Canterbury if the return flow question required a motion to be turned over to a water judge? Chairman Canterbury answered that we are not at that point yet and Atty Burgemeister will let us know when that time comes.

### **RECESS TO THE ENTERPRISE MEETING**

The board recessed to the enterprise meeting to consider executive meeting items.

### **RECONVENE FROM THE ENTERPRISE MEETING**

The board reconvened from the Enterprise meeting at 2:57 p.m.

### **CHAIRMAN AND DIRECTOR REPORTS**

Director Felt informed the Board that Jim Broderick received the Wayne Aspinall Award for 2020. Director Felt expressed his congratulations regarding Mr. Broderick's achievement.

### **NOTICES & MEETINGS**

The IBCC meets on Tuesday, February 23<sup>rd</sup> at 8:00 a.m.

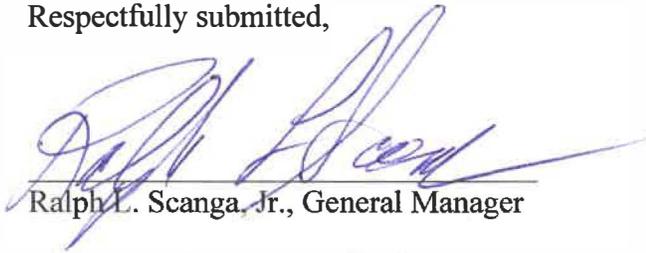
### **ADJOURN**

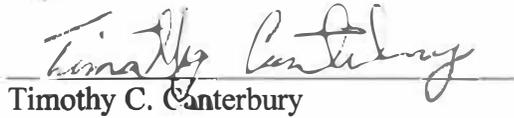
There being no further business to come before the Board or Enterprise and upon motion by Director Donley, seconded by Director Colon and approval of the Board, the meeting adjourned at 2:59 pm.

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Respectfully submitted,

  
Ralph L. Scanga, Jr., General Manager

  
Timothy C. Canterbury

~~approved remotely - no signature~~  
Mannie Colon

~~approved remotely - no signature~~  
Robert B. Donley

~~approved remotely - no signature~~  
Gregory W. Felt

  
Tom E. French

~~approved remotely - no signature~~  
Brett A. McMurry

~~approved remotely - no signature~~  
Thomas Goodwin, Treasurer

  
Richard Hilderbrand

  
Franklin J. Moore

~~approved remotely - no signature~~  
Warren Diesslin

~~approved remotely - no signature~~  
Tim Payne

~~approved remotely - no signature~~  
Tony Telck

  
Mike Shields