

**UPPER ARKANSAS WATER  
CONSERVANCY DISTRICT**

**Regular Meeting of the Board of Directors**

**January 12, 2023  
10:30 A.M.**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, January 12, 2023, commencing at 10:30 am 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 January 11, 2023, at the offices of the Upper Arkansas Water Conservancy District, 339 East Hwy 50, Salida, Colorado.

**DIRECTORS PRESENT (IN PERSON)**

Tim C. Canterbury	Richard Hilderbrand	Tony Telck
Gregory W. Felt	Thomas Goodwin	Warren Diesslin
Tom French	Brett McMurry (joined late)	Albert Eggleston
Mannie Colon	Tim Payne	

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

Mike Shields

**DIRECTORS ABSENT**

Franklin J. (Jay) Moore, (Honorary)  
Robert B. (Bill) Donley

**DISTRICT OFFICIALS/STAFF MEMBERS PRESENT**

Ralph L. (Terry) Scanga, General Manager	Kendall Burgemeister, Attorney
Ken Baker, Consultant	Gracy Goodwin, Projects Manager
Jord Gertson, Hydrologist	Jennifer A. Scanga, Administrative Assistant
Chris Manera, Engineer	Wendy Ryan, Engineer

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

Denise Sanchez, Office Manager  
Richard Brown, Legislative Consultant

**DISTRICT OFFICIALS ABSENT**

None

**STATE OFFICIALS PRESENT**

Dan Henrichs, Water Commissioner, District 12  
Will Scott, Water Commissioner, District 11  
Rachel Zancanella, Division Engineer

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

None

**STATE OFFICIALS ABSENT**

Brian Sutton, Augmentation Coordinator

**EX-OFFICIO REPRESENTATIVE PRESENT**

None

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

Dwayne McFall, Fremont County Commissioner

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### **EX-OFFICIO REPRESENTATIVES ABSENT**

John Roorda, Chaffee County Planning Manager  
Brian Berger, Poncha Springs Town Administrative Officer  
Shawn Williams, Buena Vista Public Works Director  
Dave Schneider, Round Mountain Water and Sanitation District Manager  
Drew Nelson, City of Salida Administrator  
Bill Canda, Custer County Commissioner  
David Lady, City of Salida Public Works Director

### **GUESTS PRESENT**

Talon Canterbury, Deputy Water Commissioner, District 12  
Jerry Livengood, Water Commissioner, District 13  
Lauren Dunkin, Colorado Water Conservation Board  
Travis Payne, Canon City Water Superintendent  
Ashleigh Cogan, Deputy Water Commissioner, District 11  
Lisa Hines, Guest from Canon City

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

Joe Stone, Heart of the Rockies Radio  
Dwayne McFall, Fremont County Commissioner

### **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 November 10, 2022**

The minutes of the meeting of November 10, 2022, were approved upon motion by Director Colon with second by Director Telck.

### **FINANCIAL REPORTS**

Upon motion by Director Goodwin with second by Director French, the Board approved the monthly financial reports dated November 30, 2022.  
Upon motion by Director Goodwin, second by Director Colon, the Board approved the monthly financial reports dated December 31, 2022.

### **PROGRAM PRESENTATIONS**

None

### **EX-OFFICIO REPORTS**

None

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

PM Goodwin provided a summary of grants in progress via a power point presentation. She gave an update on January 2023 projects which included Round Mountain Reservoir Feasibility Study, DeWeese Enlargement Feasibility Study, Trout Creek Park Alluvial Storage, USGS Study Phase 3, and the Trout Creek Park Intra-Ditch Exchange.

PM Goodwin stated that the District must update its aging infrastructure on the existing 14 data collection platform (DCP) stations with updated transmitters and data loggers to comply with new requirements.

She said the UAWCD plans to further expand its network and install three new data collection platforms throughout the district. The new platforms will be installed at the Thompson Ditch Augmentation Station, Wenke Pond, and Silver Creek Ronk Augmentation Station. She further stated that she will be submitting the WSRF grant application February 1, 2023.

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Chris Manera gave an engineering update on the Trout Creek Company Ditch Intra-Ditch Exchange project. He said the decree allows for up to 2 CFS and originally wells were to be drilled closer to the Trout Creek Ditch and decided it would be too difficult to get the correct yield so a spot was chosen closer to the river. He stated that the casings are expensive due to the size of the boulders and trying to drill through those requires specialized equipment. Engineer Manera is hoping for a 450 gallons a minute from each well but it could be higher. He added that he is aiming for large well casings and as much capacity as possible.

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

A current Legislative Update was presented by Legislative Consultant Brown. He provided a written update of status of Bills of interest, newly enacted laws, status of the Water Resources Review Committee (WRRC) annual water conference, Joint Budget Committee, the revenue forecast, inflation and recession, and economic indicators.

Consultant Baker discussed the California water crisis and the flooding taking place and the lack of reservoirs to put the water in. He also stated that there have been over 200 inches of snow in Steamboat Springs and how it will add to issues on the Yampa River. Mr. Baker stated that the Colorado Water Congress addressed the lack of the ability for other water divisions to manage water during a drought period. He used the Rio Grande River as an example.

Mr. Brown stated that there are new bills introduced and he mentioned two that came out of the Water Resources Review Committee (WRRC). He said one is a procedural change to the operations of the WRRC to remove it from the interim committee to the standing committee for legislature and eliminates the limitations on meetings and field trips. He explained that the other bill concerns a task force to be created to look into high altitude water storage and the bill specifies a number of tasks to accomplish during a specific time period. Mr. Brown also mentioned a bill in drafting that will allow some sort of stream restoration outside of the priority system. He said DNR could not summarize or explain the bill but stated that they are working on it and a draft will be available soon.

Manager Scanga explained the stream restoration process discussed at the latest Colorado Water Congress (CWC) meeting. He said that the UAWCD is involved in the Van Norman stream restoration project to demonstrate what can be done and Luke Javernick of River Science, heading the project, submitted a current report regarding pole assisted structures for restoration. Manager Scanga stated that the legislature is trying to find a way to avoid the prior appropriation system and exempt stream restoration projects from priority administration. Manager Scanga further stated that he offered to work with DWR to find a way for projects to be done without causing depletions to the stream, and providing a robust summary of the Van Norman Project to give an idea of what the District has encountered while working on the project. He said it could determine whether legislation is needed.

Director Hilderbrand expressed his concern with the ESG, Environmental Social Justice business and asked Mr. Brown to track the movement and the water organization in Colorado. Mr. Brown stated that the ESG philosophy is permeating almost every organization and he will be looking into any concerns.

### **COMMITTEE REPORTS**

None

### **RESUME REVIEW COMMITTEE**

Nothing of significance in the November 2022 Resume.

### **December 2022 Resume:**

Manager Scanga recommended that the Board take action on Case No. 22CW308-Geroux Spring/Application of Darell & Twila Geroux. He said it is an application regarding a source of water from a spring tributary to Grape Creek the flow from which crosses Mr. Geroux's adjoining land. He stated they have filed on an application for a water right and he recommended the Board be active in the case to protect the District's interests. Manager Scanga further stated that it involves livestock watering,

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15 GPM with a 1969 priority date. This spring flow provides water to Wenke Pond. He said he wants to make sure the source of water continues to go the Wenke Pond property.

Upon motion by Director Hilderbrand, seconded by Director Goodwin the Board approved to file an opposition in the case.

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

A Manager's Report was made available to all Directors prior to meeting date.

### **Adoption of 2023 Official Posting Place:**

Upon motion by Director French with second by Director Felt, the Board approved to keep the website and lobby as official posting places.

### **Chelsey Nutter- LLC Personal Services Agreement:**

A PSA was prepared for Ms. Chelsey Nutter to obtain her services to move forward and seek State and Federal Grants for the Alluvial Storage Project. The agreement was attached to the Manager's Report for review and approval of the Board.

Upon motion by Director Felt, with second by Director Telck, the Board approved the agreement. Manager Scanga clarified that the term of agreement is one year.

### **Authorization to engage Hancock Froese & Company LLC for 2022 Audit:**

Chairman Canterbury expressed his thoughts on the possibility of looking into other auditors and checking cost differences. Manager Scanga expressed that the benefit of engaging the current auditors is because they know the District's operations well and have been the District's auditors in past years. Upon motions by Director French and Hilderbrand the Board voted to approve the engagement of Hancock and Froese.

### **Cash management Service Agreement with Bank of the West:**

Manager Scanga explained that due to remote banking, the agreement provides another mode of security with Bank of the West. He said that every transaction is cataloged on a spreadsheet and into a data base with the Bank. Upon motion by Director Payne, seconded by Director Telck the Board approved the Cash Management Service Agreement with Bank of the West.

### **Surplus Water Leasing**

Manager Scanga recommended an executive session to discuss terms for a proposed Surplus Water Lease Agreement.

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

Chris Manera gave a brief update on projects in progress. He stated that in December complete draft drawings were completed for the Cottonwood Lake dam and submitted to the Forest Service. He further stated that there were discussions with applicants of the Acequia Change Case, 21CW3086 concerning maintenance and return flows

The Acequia discussion regarding return flows and applicant responses.

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

Opposition updates, transactional matters, applications, and updates were included in the Law of the Rockies legal report made available to all Board members prior to the meeting.

### **UAWCD Applications:**

Upon motion by Director Goodwin, seconded by Director French, the Board approved to ratify the filing of application to add Wenke Pond as a storage structure and source of augmentation water.

Upon motion by Director Telck, with a second by Director Hilderbrand, the Board approved the ratification of the stipulation with Triview Metropolitan District.

Upon motion by Director French, seconded by Director Goodwin, the Board approved to file notice in case number 06CW32 to add Cottonwood Irrigation Ditch (CID) water as a source of augmentation.

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### **Oppositional actions:**

Atty Burgemeister stated that he received a revised proposed decree from the Timber Creek Ranch and Rock Cliff Ditch Application. He said it involves an alleged futile call and diversion of water from the structure historically under futile call scenarios. He said the District asked for some standard language recognizing that even if a water right is adjudicated based on historical futile call that it is not an acknowledgement or finding that such diversions can be made in the future under futile call and it is determined on a case by case basis by the Division Engineer's office. Atty Burgemeister further explained that the application requires the applicant to have permission from the water commissioner before they divert going forward. He stated that based on conversations with the State Engineer's council, the understanding is that they don't anticipate recognizing futile call. Atty Burgemeister added that if they continue to divert under futile call, there are remedies the District can pursue to prevent that from happening. He said that in terms of the case, the District received the language requested to protect the District's water rights.

Director Felt asked if Timber Creek's Rock Cliff Ditch were allowed to divert water during the past as a futile call? Atty Burgemeister said that no matter what happened in the past with the small water right, when the appropriation date is set, this is a 2021 water right and will hardly ever be in priority. Atty Burgemeister stated that if they divert going forward it is almost certain to be under a futile call, but the chances of a futile call are slim. He stated that the District's position is that it shouldn't be under futile call given the magnitude of water amount being claimed and the extent of the hydrological connection between the place of use and the Arkansas River.

As far as establishing a date of priority based upon historic futile call use, Atty Burgemeister explained a policy from the DWR that states that they would recognize or consent to adjudications of new water rights when the water was diverted under a futile call scenario. However he said it was learned at a status conference that the AG may be revising the policy so if you divert under a futile call, you are not necessarily entitled to an adjudicated water right with that priority based on that operation.

Division Engineer Zancanella explained that a historical futile call scenario existed where water on the surface was infiltrating into the ground. She said the water commissioner decided that there wasn't a likely chance wet water would get down to a senior water right because of the conditions of the stream. She explained that they would allow an upstream diverter to take water out of priority under the futile call determination to support the idea of making beneficial use of water. She said that has been relayed in decrees and statutes in different ways and there are rare cases where futile call determination is in the decree. In those situations, it is recognized that it is *res judicata* and administered as such. She further explained that when Dick Wolfe was the State Engineer he came out with a written instruction on how to administer futile calls. One of the key lines in the instruction was that underflow should be taken into consideration. Engineer Zancanella stated that in respect to the Arkansas River, we are over-appropriated and always are and have been since 1890. She expressed that it is unlikely the condition will change. She said that she has questioned how to apply this by taking into account *res judicata* decrees. Engineer Zancanella stated that the consensus is since there is no unappropriated water in the Upper Arkansas Basin, the best recourse is no water right without a plan for augmentation. She further stated that without a plan for augmentation, then no futile call determination. Engineer Zancanella said that language is being added to the instruction and order to state that unless the futile call determination comes in an engineering analysis that shows it is hydrologically disconnected from the system it isn't futile, it is tributary.

Chairman Canterbury expressed his concern with drilling more exempt wells and he thinks that is where the issue will come in. He said that it will be intact augmentation plans that will be responsible for getting water to Kansas. He further expressed his concern with failing augmentation plans and Division Engineers interpreting what water courts say without upholding the decree. Engineer Zancanella explained that at the end of the day, it's important to look at quantity of acre feet. She stated that looking at exempt wells have less impact than non-exempt wells.

Atty Burgemeister asked if the intention is to not honor a futile call in regard to Timber Creek Ranch, Rock Cliff Ditch application? Engineer Zancanella said that is the case unless it is *res judicata*.

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Director Felt questioned why we would approve the stipulation unless it is for pragmatic reasons? He stated that some of the principles articulated concerning incremental impacts from out of priority depletions, connectivity issues with stream restorations projects, it doesn't make sense to approve the stipulation. Atty Burgemeister explained that if the Division Engineer were to change the policy about whether a futile call operation is enough to justify a water right, and whether the court may or may not agree with that, there is still the possibility to divert under free river conditions. He said there are questions about burdens of proof, but the applicant believes they have the evidence to show they have consistently diverted this water right going back to the original appropriation date.

Manager Scanga stated that the goal is to make sure the application doesn't cause injury to water rights and that the language in the stipulation prevents it from happening.

Upon motion by Director Goodwin, Seconded by Director Telck, the Board approved the stipulation with Timber Creek Ranch, Rock Cliff Ditch Application.

### **Triview Metro Case 21CW3044:**

Manager Scanga explained that Tri-View has filed an amendment to this case in the Arkansas Valley Irrigation Canal Change of Use. He said that the historically irrigated lands are located south of Buena Vista and water is diverted from Cottonwood Creek and topographically it is apparent that the return flows do indeed flow to the Arkansas River. Manager Scanga stated that Tri-View maintains that at a minimum the deep percolation accrues to Cottonwood Creek. This amended application adds recharge ponds on the irrigated lands that propose and claim return flows and consumptive use credits to Cottonwood Creek. Mr. Scanga expressed that this would be problematic and would negatively impact the District's water rights on Cottonwood Creek. He further explained that in December Atty Burgemeister and he met with representatives of Tri-View and encouraged them to re-assess the claim of deep percolation returns to Cottonwood Creek. He said they seemed reluctant to change their claim subject to the results of more ground water studies they intend to complete. Manager Scanga said that to better inform the District's consultants, and with the advice of Engineer Manera and Atty Burgemeister, he engaged the services of Hydros Consulting to provide an analysis of ground water flow patterns in the subject area of concern to support our beliefs that the ground water flow path is to the Arkansas River.

Upon motion by Director Felt, seconded by Director French, the Board approved to oppose the amended application.

### **Executive Session 11:50am:**

Upon motion by Director Payne, seconded by Director Telck the Board approved the consideration of executive session to determine positions relative to pending district water right applications filing of water right change applications, and water right change application objections and strategies for negotiation of surplus water sales all pursuant to CRS 24-6-402 (4) (a), (b), & (e).

### **Out of Executive Session: 12:11am**

Upon motion by Director Colon, seconded by Director French, the Board moved to end executive session.

There were no actions taken after the executive session.

### **CHAIRMAN AND DIRECTOR REPORTS**

Director Goodwin expressed concern with the Colorado River issues.

Director Felt thanked Manager Scanga for a good discussion regarding the USGS Groundwater Study and expressed his satisfaction with the meeting.

Director McMurry expressed his thoughts on virtual fencing regarding restoration of watershed after a natural disaster such as a land fire or erosion. Manager Scanga stated as part of a water shed management aspect, the District would support it. Director Felt gave his thoughts on it from his view as a county commissioner.

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**NOTICES & MEETINGS**

January 18, 1:30 PM, UAWCD Boardroom-USGS Phase 3 Ground Water Study Meeting

January 25<sup>th</sup> – 27<sup>th</sup> Colorado Water Congress Annual Convention, Hyatt Regency Aurora-Denver Conference Center; 13200 E 14th Place, Aurora, Co.

February 8, 12 Noon, Arkansas Basin Round Table Meeting, Pueblo Community College

February 23<sup>rd</sup> - 24<sup>th</sup>, Family Farm Alliance Annual Convention, Reno, Nevada

April 25<sup>th</sup> & 26<sup>th</sup> Arkansas River Basin Water Forum, Colorado Springs, Hilton Doubletree

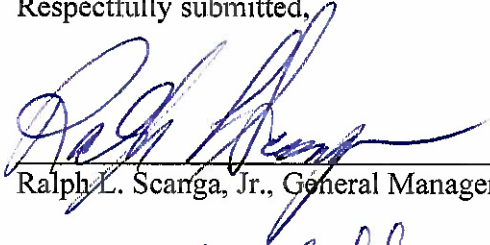
**ADJOURN**

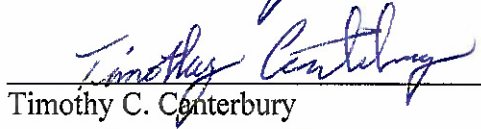
There being no further business to come before the Board or Enterprise and upon motion by Director Colon seconded by Director Telck and approval of the Board, the meeting adjourned at 12:34pm.

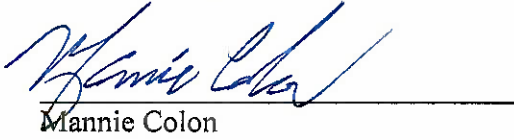
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Respectfully submitted,

  
Ralph L. Scarga, Jr., General Manager

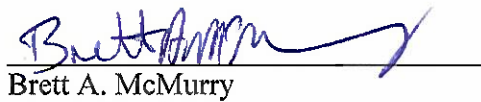
  
Timothy C. Canterbury

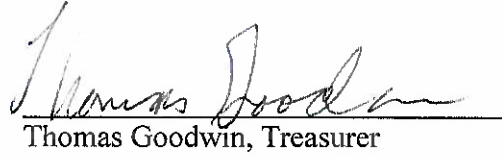
  
Mannie Colon

*approved remotely - no signature*  
Robert B. Donley

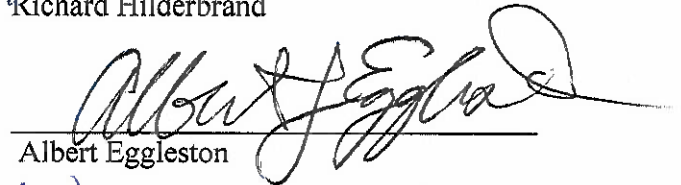
  
Gregory W. Felt

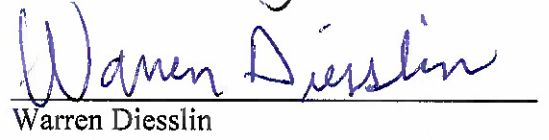
  
Tom E. French

  
Brett A. McMurry

  
Thomas Goodwin, Treasurer

  
Richard Hilderbrand

  
Albert Eggleston

  
Warren Diesslin

*approved remotely - no signature*  
Tim Payne

  
Tony Telck

  
Mike Shields