

**UPPER ARKANSAS WATER
CONSERVANCY DISTRICT**

Regular Meeting of the Board of Directors

**January 14, 2021
1:30 P.M.**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, January 14, 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 January 13, 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	Mike Shields
Tom E. French	Richard Hilderbrand

DIRECTORS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Tim Payne	Gregory W. Felt
Robert B. Bill Donley	Tony Telck
Mannie Colon	

DIRECTORS ABSENT

Brett A. McMurry
Warren Diesslin

DISTRICT OFFICIALS/STAFF MEMBERS PRESENT

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

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

Chris Manera, Engineer	Kendall Burgemeister, Attorney
Gracy Goodwin, Projects Manager	

DISTRICT OFFICIALS ABSENT

None

STATE OFFICIALS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Brian Sutton, Augmentation Coordinator/Water Commissioner
Bill Tyner, Division Engineer

STATE OFFICIALS ABSENT

None

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

Tom Flower, Custer County Commissioner
Dwayne McFall, Fremont County Commissioner

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
Dave Schneider, District Manager, Round Mountain WSD
Philip Puckett, Buena Vista Town Administrator
Bob Hartzman, Canon City Water Superintendent

RECORD OF PROCEEDING

GUESTS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERNING)

Richard Brown, Denver, Colorado
Joe Stone, Heart of the Rockies Radio
Joel Benson, Town of Buena Vista

PLEDGE OF ALLEGIANCE

Chairman Canterbury led attendees in the Pledge of Allegiance.

INTRODUCTION OF GUESTS

Chairman Canterbury introduced guest Richard Brown of Denver, Colorado. Mr. Brown was presented as the candidate for the position of Legislative Consultant for the District.

MINUTES OF THE MEETING OF November 12, 2020

The minutes of the meeting of November 12, 2020, were approved upon motion by Director Telck with second by Director Donley.

FINANCIAL REPORTS

Upon motion by Director Goodwin with second by Director Hilderbrand, the Board approved the monthly financial reports dated November 30, 2020 and December 31, 2020.

Manager Scanga discussed the Audit Engagement letter received from the District's previous years auditors, Hancock Froese & Company, LLC and recommended that the Board sign the engagement letter for the 2020 audit. Director French made a motion to accept auditors, seconded by Director Goodwin. The Board approved the engagement of auditors, Hancock Froese and Company, LLC with a unanimous, "Aye."

PROGRAM PRESENTATIONS

Tom Flower, Custer County Commissioner informed the Board that Kevin Day is the newly elected Custer County Commissioner for District 2, and Bill Canda was elected as the new Chair for 2021 on the Board of County Commissioners (BOCC).

EX-OFFICIO REPORTS

There were no ex-officio reports

PROJECTS MANAGER REPORT-Gracy Goodwin

Projects Manager Goodwin presented the January Projects update.

DeWeese Enlargement Feasibility Study:

The January 2021 Progress report and reimbursement request is being submitted and Colorado River Engineering will start hydrology and water rights analysis.

St. Charles Mesa Water District CID2 Augmentation Station:

The Construction of the headgate and flume is completed, and the telemetry station will be installed this spring. 85% of the grant funding has been received.

Round Mountain Reservoir Feasibility Study:

Contract has been received and PM Goodwin has met Engineer Lamp Rynearson and Round Mountain to begin project.

Water Balance Study-Phase 2:

UGSG is anticipating delays on getting the final report publication due to COVID and is requesting an agreement modification for no-cost extension to June of 2022.

PM Goodwin stated that the progress report #7 and reimbursement request #5 has been submitted.

Ice Lake and Harvard Lake dry up:

Awaiting on outlet design from the engineer. Work in progress with Atmos to lower the gas line in the spring. Y&K Excavating will be lowering culverts working on outlets in April.

RECORD OF PROCEEDING

CONSULTANT REPORT – Ken Baker

Consultant Baker reported on Colorado River Proposed Administration. He explained that Demand Management as a water administration process, has been the leading promotion of some State and some river basin administrations. Consultant Baker said The Colorado River Water Conservation Board has promoted a tax levy to finance the purchase of irrigation water rights to supply water flow shortages in the Colorado River and to increase the water flows to Lake Powell as required by the 1922 Compact Agreement.

Included in Consultant Baker's report was a recent newspaper article from the New York times and republished by the Denver Post that supports the water administration concept of Demand Management and speculates that river water in the Colorado River shall become a stock market purchase commodity. The New York Times writer offered the opinion that water from Colorado rivers is being unwisely used to irrigate farms and the scribe suggests that river water could be used for more acceptable purposes. Consultant Baker stated that it was obvious to the writer that the New York scribe made no effort to review Colorado water use history. He went on to explain that the garden farms in South Platte Valley, in the lower Arkansas river basin, and in the San Luis Valley are among the nation's most productive garden economies and are supported by irrigation. He added that the eastern states of the United States lie within a rainfall category of 40 inches of rain on an annual basis, and the farms are not irrigated. The parts of Colorado lying west of the Kansas-Colorado meridian receive 16 to 18 inches of rain annually and that irrigation began in Colorado for the land that is adjacent to the Conejos River in 1852. Consultant Baker said that irrigation as a farm practice was the prime principal of the Doctrine of Prior Appropriation that became a Colorado Constitutional right when the State entered the Union.

Consultant Baker continued to discuss Demand Management and said that public administrators who sponsor Colorado river water administration without Water Court decrees and, without State water engineer supervision and administration, are not consistent with the principles of Colorado water law. Mr. Baker explained that during the development of the Demand Management concept, the Colorado Supreme Court issued a decision in the case of Grand Valley Water Users Association vs. Buck-Ivanhoe. In that decision, the Court made a restatement of Colorado Water law with respect to the constitutional basis for appropriation, beneficial use, historical consumptive use, and legal process of transferring historical consumptive use to another beneficial use. He added that Demand Management, as a river water administration concept does not include these principles or procedures.

Consultant Baker also reported on the Department of Natural Resources Legislative Proposal. A copy of the water law changes was included in the electronic report sent to Board Members. The proposal referenced several Bills that have been considered in past sessions which included Alternative Transfer Methods, and Interruptible Water Supply Agreements.

Consultant Baker explained that the legislative proposals represent efforts to authorize the State Water Engineer to interrupt and revise water right decrees to satisfy perceived necessary water uses without Water Court review or approval. He said that these proposals fall within the same realm of proposed regulations as does the proposed use of Demand Management and are subject to the same legal objections as was previously stated. Mr. Baker added that the fundamental principles and historic laws governing the Colorado Doctrine of Prior Appropriation, and wisdom of the decisions of the Colorado Supreme Court contradict the proposals offered by the Department of Natural Resources (DNR).

Consultant Baker also discussed with Board Members the 1969 Act. He explained that in 1969 the Colorado General Assembly created the 1969 Water Rights Determination and Administration Act to prepare water administrators and government officials for a future in which irrigated farms and ranches would be converted to shopping centers and subdivisions.

Mr. Baker expressed that 25 years ago, with the guidance from the State Water Engineer, the Upper Arkansas Water Conservancy District (UAWCD) utilized the 1969 Act to create and umbrella water augmentation plan with Water Court approval and Division Engineer administration. This

RECORD OF PROCEEDING

augmentation plan has been supplemented several times to accommodate current augmentation and water storage needs.

Consultant Baker further discussed that Native water and trans-mountain water flowing in Arkansas River Basin rivers are being shared with individual water users, local institutions, and municipalities within the River Basin. He said the most recent municipal augmentation plan is a new water tank standing a mile north of the community of ranches using ditches created one hundred and fifty years ago.

Consultant Baker concluded his discussion stating that the 1969 Act is a legislative tool to respond to the needs of any river basin to comply with Compact requirements. Water needs that can be satisfied within the existing Doctrine of Prior Appropriation law and State Water Engineer administration.

Director Felt asked for clarification regarding the Colorado Water Conservation Board (CWCB) proposing a tax levy to fund Demand Management. Manager Scanga clarified that it was the Colorado River District not the CWCB that proposed the tax levy.

Legislative Consultant

Chairman Canterbury opened discussion regarding a proposal to engage a Legislative Consultant to work alongside Consultant Baker. Manager Scanga explained that during the District Personnel Committee meeting last fall it was recommended for the District to retain a legislative consultant to aid and fill-in the areas of legislative duty that Consultant Baker used to satisfy as well as travel to state affairs meetings. Discussion during the Personnel Committee meeting concerning the appointing of a legislative consultant, included funding in the budget. Manager Scanga said the committee recommended that the District engage Mr. Richard Brown of Denver, Colorado. Mr. Scanga submitted to the Board via Board binders and through the District website, communications from Richard Brown outlining tasks he would cover as well as a letter summarizing his background, corporate structure, and cost to the District. Manager Scanga expressed that he recommends the Board approve the retention of Richard Brown and feels he will add a lot of quality and value to the Board.

Mr. Brown was available on audio-video conference to answer board member questions. Director Colon commended Consultant Baker on his many years of water knowledge and reporting of legislative material to the Board and voiced his approval for the hiring of Richard Brown as Legislative Consultant. Director Felt stated that he is impressed with Mr. Brown and is in support of retaining him to the Board. Director French added that he agrees with Director Felt and is also very impressed with Mr. Brown and his qualifications and asked Mr. Brown if he felt there may be potential conflicts with other clients and interests, such as his involvement with the Colorado Water Congress (CWC)? Mr. Brown assured Director French and the Board that there are no current conflicts of interest and added that he doesn't anticipate any potential conflicts, but if they should arise, he has an ethical responsibility to bring those conflicts to Management and the Board and have them resolved early on. He conveyed that he views Consultant Baker as a mentor and is looking forward to working with him and learning from his expertise and historical knowledge.

Consultant Baker voiced his full support of the engagement of Richard Brown as the Board Legislative Consultant.

Upon motion by Director Colon, and seconded by Director French, it was unanimously agreed by the Board to approve the contract to appoint Richard Brown as the new Legislative Consultant.

Director Payne asked why a motion was needed to retain Richard Brown instead of Manager Scanga making the decision to hire a Legislative Consultant? Chairman Canterbury answered that Richard Brown is a contract employee so therefore his retention requires approval by the Board.

COMMITTEE REPORTS

None

RESUME REVIEW COMMITTEE

RECORD OF PROCEEDING

Manager Scanga reported that there are no relevant cases to review in the November 2020 resume. Manager Scanga reviewed with the Board two cases in the December 2020 resume.

2020CW3078- Petra Construction Company c/o Norman Lewis-

Manager Scanga explained that this is an augmentation plan for a subdivision with 14 lots. Mr. Scanga said he did not feel it was an issue for the Board but wanted to bring it to the Board's attention so Board Members could discuss it further if necessary.

2020CW3081- Randall T. Rusk and Wendy Rusk-

Manager Scanga said the District has helped provide water through augmentation and water trades with Randy Rusk and Beckwith Ranch. He explained that the District plans to take the water used in the augmentation plan and put it into irrigation. He said that the District would need to make sure the numbers are correct and that there will not be a negative impact. Manager Scanga said that the water will go back on the ground with no increase in draft on the stream as there would have been historically. He added that he feels it would be beneficial to have the District engineers and attorneys review it and he recommended that the District take an interest in it.

Custer County Commissioner Tom Flower expressed that he is excited to see agriculture land coming back into production and applauded the parties involved, and added that he feels it is a positive step for Custer County.

MANAGER'S REPORT – Terry Scanga

Manager Scanga asked for Board Members to vote on the designation of an Official Posting Place. Director Hilderbrand made a motion to keep the current posting place in the front lobby at the District office as well as on the District's website. The motion was seconded by Director Donley, and was approved by the Board with a unanimous, "Aye."

Thompson Ditch Diversion and Measurement Structure

Manager Scanga stated that the District currently has an augmentation station on the Thompson Ditch Diversion. He said that the District has been asked by Mr. Alan Curtis, counsel for John Cogswell, who is planning on diverting his share of .2 CFS of the Thompson Ditch through a pipeline to a pond, to install whatever structures necessary (measuring and recording devices) to make sure it is diverted properly so that water can be pumped out of his pond and onto his land. Manager Scanga said he has asked Hydrologist Gertson to draw up a design of what it might look like and then review the cost to present to Mr. Curtis for Mr. Cogswell so an agreement can be constructed. Manager Scanga expressed that he thinks this is probably a good thing since we have become a major player on the Thompson Ditch, and it fits in with the work the District is already doing. He added that good diversion and measurement structures are extremely important to our augmentation plans and proper administration on Cottonwood Creek. He explained further that the District has acquired the water rights associated with Yale Lakes Estates Subdivision augmentation plan as well as the water rights on the Thompson Ditch and it is imperative that the measurements are accurate since we will want to deposit the additional water into the Districts augmentation plan for future use.

Manager Scanga opened discussion to the Board asking if there were any objections. He further added that there is not yet a written proposal to vote on, but wanted the authority to move forward.

Director French asked about the point of diversion. Manager Scanga answered that at this time it is being diverted out of Cottonwood Creek through an augmentation station. He explained that we must divert our share of the Thompson Ditch through the augmentation station, have it measured and put back into the creek. He added that since the District has acquired the Yale Lakes share it is another piece that goes to Mr. Cogswell. Manager Scanga explained that water would be diverted through a head gate and measured separately from the District water, and then deposited into a ditch or a pipeline. Director French asked if this takes place near the head gate of the Thompson Ditch? Manager Scanga answered that yes, it does take place at the head gate. Hydrologist Gertson added that the augmentation station is slightly upstream of the head gate, located in the wing wall of the original diversion through Thompson Ditch and there is an alternate point of diversion through Thompson Meadow.

Director Donley asked why Mr. Cogswell would need to put water into a pond instead of directly onto his land? Manager Scanga answered that the pond Mr. Cogswell is putting it in is considered to be an old gravel pit and an agreement was made as to the administration of the pond and in order to make it legal since the only water he is allowed to pump out of the pond his irrigation use, is the water he already

RECORD OF PROCEEDING

owns. Manager Scanga stated that the Thompson Ditch water rights Mr. Cogswell owns must be accurately measured in and out of the pond, verifying that he is not drawing out ground water which is not entitled to irrigation.

Director Hilderbrand asked if the District is setting up the return flow system? Manager Scanga answered that we are not in charge of the return flow, only the head gate.

The Board agreed to move forward with the agreement between the District and Mr. Cogswell.

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

Engineer Manera reported on the District's major water right cases.

18CW3076- Blue Line Augmentation Case:

The experts meeting (Engineers meeting) in November 2020 was attended by Wendy Ryan from Colorado River Engineering. Comments from the meeting were provided by the Division of Water Resources Hydrogeology section and since that meeting there has been communication on summarizing the presumptive values in the case associated with various aquifer characteristics, such as aquifer transmissivity, storage yield and storage co-efficient. All these items affect timing of various rivers. Engineer Manera said they have reformatted the numbers from the last engineering report by putting them in a format that groups them by aquifer as opposed to specific location. Mr. Manera added that the information has been provided to the Colorado Division of Water Resources and he is looking forward to hearing back to their responses on the new summary.

Cottonwood Irrigation Ditch Case:

Engineer Manera stated that there have not been many engineer responses and only minor issues on ditch loss administration and location of return flows. He said they are making good process.

18CW3048-Young Life Case:

Engineer Manera reported that the one objector in the case is actually multiple objectors that are irrigation ditch owners with water rights upstream of Cottonwood Creek. The objectors have expressed issues and concerns with exchanging water on Cottonwood Creek. After recent discussion with their engineer, Mr. Manera reported things appear to be going well as far as addressing concerns about impacts to those water rights.

Engineer Manera reiterated what PM Goodwin reported in her projects update concerning the preliminary hydrology and water rights analysis for the DeWeese Enlargement Study and the Round Mountain joint Reservoir development and feasibility study. Engineer Manera gave a background on the role of Colorado River Engineering in the Round Mountain Study. He explained that it is with the supply side, making determinations or estimates of availability of supply. This includes various gage records, historic ditch diversion records, historic call records and putting it all in a format that can be used to predict when and how much water can be stored into the individual storage vessels. This is dependent on call times and how much water is in the stream flow. Engineer Manera continued explaining that once that supply is identified it can be compared to the size of the reservoir and will show how much volume and frequency of water, and how often it would be full. Mr. Manera further explained that the second part of the study is on the demand side. He said that once the reservoirs are filled, the type of yield can be determined to replace water demands. He added that there are water right constraints on the various streams on Grape Creek and knowing when water needs to be released and at what frequency, verifies how much supply can be provided. Engineer Manera concluded by explaining that the purpose of these studies is to provide a primer that shows how much water can be stored and how much of a demand can be supplied.

LEGAL REPORT – Law of the Rockies, Kendall Burgemeister

Oppositional updates and transactional matters were included in the legal report and provided by Attorney Burgemeister in advance of the meeting.

Change of Cottonwood Irrigating Ditch:

- UAWCD revised comments from opposers and will provide responses January 15
- The case is currently before the Referee
- Approval has been received from the City of Aurora (The proposed stipulation and form of the proposed decree were included in each Board Member's Binders)

RECORD OF PROCEEDING

- Atty Burgemeister recommended to Board to approve the proposed stipulation between UAWCD and the City of Aurora, case No. 19CW3089.

Director Colon made a motion to approve the proposed stipulation, seconded by Director Donley, the Board approved the stipulation with the City of Aurora.

Blue Line Augmentation Expansion:

- The first meeting of experts was held and a representative of AVDA, the State and Division Engineer's Offices, CWCB, St. Charles Mesa, Mountain Front Range, and the Public Service Company were in attendance. A supplemental expert disclosure was made and settlement communications with multiple opposers are taking place.
- The case is before the Water Judge. Opposer expert disclosures are due January 26.
- Approval of the stipulation has been received from Colorado Springs Utilities. Atty Burgemeister informed the Board that the form of stipulation is identical to that used in other stipulations in this case. He said the proposed decree is the version that was circulated with UAWCD's expert report. A copy for each Board Member was included in the legal report.
- Atty Burgemeister recommended that the Board approve the proposed stipulation between UAWCD and the Colorado Springs Utilities, Case No. 18CW3076.

Upon motion by Director Payne and seconded by Director Hilderbrand, the Board unanimously approved the proposed stipulation with Colorado Springs Utilities.

Atty Burgemeister added that he foresees very few issues with the case and that good progress is being made and is optimistic that it will be settled without a trial.

Joint Application to change Silver Creek-Ronk Ditch water:

- All parties have filed initial disclosures. The trial is scheduled to begin October 25, 2021.
- The case has gone before the Water Judge.

Applications from Opposers

19CW3061- Application of Tom Smith:

- UAWCD received a revised ruling and engineering comments from the applicant. District response is due February 22, 2021
- The case is before the Referee.

Attorney Burgemeister continued his report with review and discussion concerning the Hill vs. Warsewa Case Amicus Brief. He summarized the case explaining that it involves a fisherman who believed he had the right to stand in the middle of the Arkansas river near the confluence with Texas Creek although it passes through private property. The case commenced in February 2018 and has been pending for almost 3 years. Atty Burgemeister elucidated that the only issue which has been litigated and remains undetermined, is whether this plaintiff has any standing to win the case. Mr. Hill is asking the court to determine that the Arkansas River is navigable, for the fact that the bed and banks of the River are owned by the State of Colorado and therefore he has the right to access it.

The UAWCD participated in Amicus Brief approximately one year ago to the Tenth Circuit Court of Appeals which is the Federal Court of Appeals. The District joined with Colorado Water Congress (CWC), and the Tenth Circuit Court of Appeals voted in Mr. Hill's favor finding that the District Court had erred in determining that he lacked standing on what is known as Prudential Standing Grounds. It then got remanded back to the Federal Trial Court which determined that he still lacked standing under Constitutional Standing Grounds and the result of that under Federal Statute is that it got kicked back to State Trial Court. Atty Burgemeister further explained that in September 2020 the judge determined that Mr. Hill lacked standing to bring his case in State Court and Mr. Hill appealed that ruling to the Colorado Court of Appeals which has now invited Amicus Briefs.

CWC has decided to file another Amicus Brief. Atty Burgemeister stated that he believes the Colorado Springs Utilities will join as supporters to protect their interest in the Antero Pump Station located within the bed and banks of the Arkansas River. He added that another group of riparian landowners who have historically been active in these types of cases will be filing a separate brief. CWC asked if the UAWCD would be interested in getting involved in this Brief.

RECORD OF PROCEEDING

Atty Burgemeister opened discussion to the Board and asked for any questions. Chairman Canterbury asked for clarification from Atty Burgemeister that the question for the Board is approval from the Board and Manager Scanga to agree to signing on as supporters with the other Districts? Atty Burgemeister confirmed that is the question at hand and added that the Brief is due in a week. He said that in a nutshell the CWC's argument is that Mr. Hill is asserting a right of access, known as the Public Trust Doctrine, which recognizes that if State owns the bed and the banks, the public has the right of access. Atty Burgemeister went on to explain how other states, such as California have over time, expanded the idea of Public Trust to go as far as curtail water diversions from streams to the extent that those diversions would result in lowering the level of navigable lakes. He added that Colorado has been presented with several ballot initiatives over the years to try to introduce a Public Trust Doctrine with respect to water rights and those have repeatedly been rejected. Atty Burgemeister said that the argument with the Water Congress is that there is no Public Trust in Colorado and the fact that Mr. Hill has access based on Public Trust is a misunderstanding of Colorado Law.

Director Felt asked if the argument is still a question of standing? Atty Burgemeister answered that yes, that it is a question of standing. Atty Burgemeister further explained that the type of argument where the merits of the argument need to be contemplated, require determining the standing question. He said the issue to whether Mr. Hill has access goes against the merits of his complaint. The only reason Mr. Hill would have any standing to bring the claim is whether the idea that the public has access is a true statement of the law. Atty Burgemeister compared it to a case Consultant Baker has referenced in the past, the famous PPL Montana Case. In this case, the Supreme Court emphasized that whether or not the river is navigable is a question of Federal Law. Once it is determined that it is navigable the scope of the Public Trust Doctrine and public rights, it is a question of state law and is up to the individual states. Colorado's Public Trust Doctrine is a question of Colorado law that has never been clearly addressed. Atty Burgemeister continued explaining that, the Water Congress is siding with some of the opinions that Justice Hobbs has written relating to various ballots initiatives that clearly illustrate no state Public Trust with respect to water rights. Colorado has no Public Trust at all, so the question is almost a completely unrelated issue as to whether there is a public right of access or public easement to navigable water bodies. Atty Burgemeister said he feels the Court of Appeals may not even go that far with the Water Congress. He added that the argument that there is no broad Public Trust with respect to regulation of water rights is rock solid. The argument that there is no Public Trust at all, even for access, is questionable. He said the concerning issue is people questioning whether there is a Public Trust with respect to regulation of water rights. He expressed that due to the severity of the issue he feels it is a wise move for the District and CWC to take an interest.

Director Felt asked Atty Burgemeister who would have standing? Atty Burgemeister answered that he thinks that is a good question because the risk is having individual members of society asserting a broad, generalized, public interest because it is necessary. He used the example of a road that leads to a person's property and the argument is that it is necessary for that person to use the road to get to his property. The courts have said in that case that of course that landowner can claim public right since it is necessary for him to use the road to get to his property, otherwise there is no recourse if we say he does not have any standing. Atty Burgemeister further explained using the example of the People of Emmert Case that dealt with Public Access. He said the direct question that was answered in that case was whether or not a private individual has the right of access over navigable streams. He said there is a quote in the case that states, "We decline to go along with the trend of decoupling the right of access from the issue of ownership." It is almost implied that if there is public ownership then there is public access. Atty Burgemeister expressed that these are a couple reasons why he is skeptical and that there is concern about the outcome, but that is not a reason to give up the fight.

Manager Scanga asked for clarification on a couple issues. He said that Warsewa owns the land on both sides of the river and it was given to his predecessors by the United States Government prior to navigability statutes. With that knowledge, what gives any individual citizen of Colorado the right to trespass? Atty Burgemeister clarified that the U. S. patent of ownership was given to the Warsewa's predecessors prior to statehood. He said that fact is an important point because the ownership of the bed and banks of navigable rivers in the State of Colorado on the admission to the union as a matter of law and if the patent was issued after that point, even if the patent purports to include the bed and banks of the river they may not have been the United States to give away since they had already been transferred to the State of Colorado. He added that he wanted to make it clear that he is skeptical about whether

RECORD OF PROCEEDING

this section of the river is in fact navigable but the question that is being presented is whether Mr. Hill has the standing to make the argument that it is navigable for purposes of ownership.

Manager Scanga asked if it would be worth raising the ownership issue in an Amicus Brief or would it be disadvantageous? Atty Burgemeister answered saying that it may not be disadvantageous, but it would be outside of the scope of what the court is being asked to consider.

Consultant Baker stated that there are many ditches on the Arkansas which predate 1876 and those ditches benefit land riparian to the Arkansas River and those patents were issued prior to 1876. He added that with that being the case, he said the argument would be that you can't have a navigable river that stops being navigable at points along the river where the United States gave absolute title to the riparian property owner. Atty Burgemeister agreed that some of those ditches were appropriated before 1876 but the argument in question is if the United States happen to issue a patent prior to the admission of Colorado to the union, that land owner has a better argument that even if the river were navigable, they still own the bed and the banks because they had not yet been transferred to the State of Colorado. Consultant Baker added that under the Doctrine of Equal Footing when Colorado became a state in 1876, they adopted a constitution which gave the water to the appropriators.

Atty Burgemeister answered that the ownership of water is not in question only the ownership of the bed and the banks of the river and the land under the space where the water flows.

Manager Scanga asked Atty Burgemeister what would be required to join in the Amicus Brief as a supporter? Atty Burgemeister answered that it would require a short paragraph describing the UAWCD's interest in the case and why it is an issue that is important to the District.

Director Felt asked what authority the District has to show any interest in the case as to whether Mr. Hill has any standing or not? Manager Scanga answered that he feels it is extremely important to the District to be a supporter in the case. He explained that it goes back to the Public Trust Doctrine and to water rights the Public Trust doctrine is extremely dangerous in Colorado. He said that from that standpoint preventing any citizen from Colorado from asserting standing on a water issue is even more important. He added that his recommendation and his opinion is to support the Amicus Brief to prevent getting on the slippery slope of the Public Trust Doctrine. Manager Scanga said he thinks there is a lot of support from water right owners being concerned about a Public Trust in Colorado. He commented that a good example is California and the damage Public Trust has done to their water rights.

Atty Burgemeister added that he agrees with Manager Scanga and expressed that it is not an issue of whether the Arkansas River is navigable or whether Mr. Hill has a right of access, it is the issue of whether Mr. Hill as well as other people like him, have the right to bring these types of cases to court. He added that it is also the threat of additional litigation of this nature, and that of Public Trust get expounded and to a point where it will threaten water rights and prior appropriation.

Upon motion by Director Colon and seconded by Director Goodwin the Board unanimously approved joining CWC as a supporter in the Amicus Brief.

CHAIRMAN AND DIRECTOR REPORTS **NOTICES & MEETINGS**

Chairman Canterbury commended Manager Scanga on receiving the Bob Appel Award that was presented to him in December 2020.

Director Hilderbrand and Director French thanked Consultant Baker on all the knowledge and education he has provided to the Board and Board Members for many years.

Director Felt commented on how well written the November 2020 Minutes were and said he felt that they did a great job of capturing the discussion on Demand Management and the status of the CWCB. He also added that he has been meeting with attorneys and other entities as well as Manager Scanga discussing impacts in our basin from any interruption in our trans basin water that comes from the Colorado basin. He said he has been looking at the feasibility of different approaches to the situation. He noted that it is an area of concern that he is taking seriously and feels it is something to contemplate and he will keep the Board posted on any new information and knowledge he gains.

Chairman Canterbury welcomed Richard Brown as the Board's Legislative Consultant.

Director Payne announced the new ex-officio, Dwayne McFall from Fremont County.

Bill Tyner, Division Engineer expressed his appreciation to Manager Scanga for his supporting comments he provided during the Arkansas Basin Roundtable meeting regarding the Pond Management

RECORD OF PROCEEDING

Program being launched. He said the program uses the priority system to protect senior rights as well as treating pond owners fairly but also as any other potential water right owner using the priority system. He thanked Manager Scanga for stepping in and highlighting an important point regarding compact compliance with respect to ponds, stressing the importance of non-injury to senior water rights.

Mr. Tyner announced Will Scott as the new Water Commissioner for Division II.

Hydrologist Gertson asked Mr. Tyner if there is a hierarchy regarding the priority with ponds? Mr. Tyner said the focus has been to deal with ponds in locations that offer the best opportunity to get water to a senior water right. If the pond is augmented to replace water to the senior water right and if the owner chooses not to keep the pond or want it augmented, the diversion to an off channel pond is closed off and not used. If a non-channel pond is breached and the water passes through without being stored or if the pond is dug into ground water and exposes that water, the pond is back filled and no evaporation takes place. He said if any of those remedies happen, then water will get to senior water rights. The first phase of the Pond Management Program strategy is to look at ponds with active senior water rights. He added that they are not going into outgoing areas with dry drainages where there may be unregistered livestock water tanks or erosion control dams. Priority is placed on ponds close to the river or streams without an augmentation plan or a senior water right.

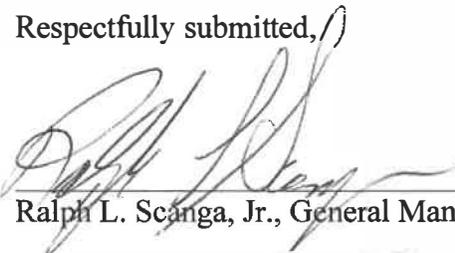
ADJOURN

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 3:24 pm.

[The remainder of this page is intentionally left blank.]

RECORD OF PROCEEDING

Respectfully submitted,

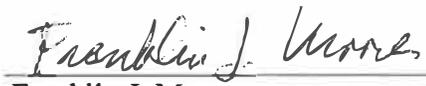

Ralph L. Scanga, Jr., General Manager


Thomas Goodwin, Treasurer


Timothy C. Canterbury

approved remotely - no signature
Richard Hilderbrand

approved remotely - no signature
Mannie Colon


Franklin J. Moore

approved remotely - no signature
Robert B. Donley

approved remotely - no signature
Warren Diesslin

approved remotely - no signature
Gregory W. Felt

approved remotely - no signature
Tim Payne


Tom E. French

approved remotely - no signature
Tony Telck

approved remotely - no signature
Brett A. McMurry

approved remotely - no signature
Mike Shields