

**UPPER ARKANSAS WATER
CONSERVANCY DISTRICT**

Regular Meeting of the Board of Directors

**February 10, 2022
1:30 P.M.**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, February 10, 2022, 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 9, 2022 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	Mike Shields
Gregory W. Felt	Mannie Colon	Warren Diesslin
Tom French	Tim Payne	Albert Eggleston
Thomas Goodwin	Brett McMurry	

DIRECTORS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Robert B. (Bill) Donley

DIRECTORS ABSENT

Franklin J. (Jay) Moore, (Honorary)
Tony Telck

DISTRICT OFFICIALS/STAFF MEMBERS PRESENT

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

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

Denise Sanchez, Office Manager

DISTRICT OFFICIALS ABSENT

Richard Brown, Legislative Consultant

STATE OFFICIALS PRESENT

None

STATE OFFICIALS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

None

STATE OFFICIALS ABSENT

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

EX-OFFICIO REPRESENTATIVE PRESENT

Travis Payne, Canon City Water Superintendent

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

Dwayne McFall, Fremont County Commissioner
Dave Schneider, Round Mountain Water and Sanitation District Manager

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EX-OFFICIO REPRESENTATIVES ABSENT

Brian Berger, Poncha Springs Administrator
Tom Flower, Custer County Commissioner
Michael Patterson, Florence City Manager
John Roorda, Chaffee County Planning Manager
Shawn Williams, Buena Vista Public Works Director
Philip Puckett, Buena Vista Town Administrator

GUESTS PRESENT

Kevin Day, Custer County Commissioner, District 2

GUESTS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERNING)

Joe Stone, Heart of the Rockies Radio
Sarah Mudge, Lake County Commissioner
Bobby Banham, Pueblo West Utilities

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 13, 2022

The minutes of the meeting of January 13, 2022, were approved upon motion by Director Felt with second by Director Colon.

FINANCIAL REPORTS

Upon motion by Director Goodwin with second by Director Colon, the Board approved the monthly financial reports dated January 31, 2022.

PROGRAM PRESENTATIONS

None

EX-OFFICIO REPORTS

There were no ex-officio reports

PROJECT MANAGEMENT REPORT- Gracy Goodwin

Project Manager Goodwin reviewed the February 2022 projects update.

Round Mountain Reservoir Feasibility Study:

- The draft feasibility study for Engineering Analytics has been received
- The draft is being reviewed internally by Round Mountain, the UAWCD and the District's engineers and attorneys for comments and questions.
- A meeting will be scheduled for all parties and engineers to discuss the best alternative.

DeWeese Enlargement Feasibility Study:

- A progress report has been submitted and reimbursement requested
- The draft report by GEI will be completed by the end of the month.

Water Balance Phase 2-Wet Mountain Valley:

- USGS modeling has been completed.
- Study is in the internal review process.
- A draft for the review will be completed by March.

Conservation Garden:

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- A committee meeting will be scheduled within the next few weeks to put specs together, create material lists and review contractor recommendations

PM Goodwin added that she will be exploring new grant opportunities to determine where the funding is coming from.

CONSULTANT REPORT – Ken Baker

A Legislative Report was provided to Board members for review. Consultant Baker presented the Legislative Update for Legislative Consultant Richard Brown in his absence. Due to the comprehensiveness of the report, Mr. Baker touched on a few separate issues listed in the report.

Consultant Baker said there are 165 House Bills and 126 Senate Bills and several of the relevant water bills were listed in the report. One item highlighted by Mr. Brown concerns the term limit of Senator Leroy Garcia, President of the Senate from Pueblo, CO which is effective February 23rd. He stated that Senator Garcia has been appointed by President Biden to be the Special Assistant to the Assistant Secretary of the Navy for Manpower and Reserve Affairs at the Pentagon.

Another item discussed by Consultant Baker listed on Mr. Brown's legislative update was the Nebraska Water Gambit. Mr. Brown reported that the Nebraska legislature considered a bill on February 9th that went before the Natural Resources Committee. According to the telegraph bill report the bill would set aside \$500 million to complete the Perkins Canal and the Nebraska bill followed the introduction of a Colorado bill (SB22-126) to prioritize storage projects along the South Platte River.

A bill discussed by Consultant Baker and listed under "Bills of Interest" in Mr. Brown's update, SB22-115 is not a typical water bill. Mr. Brown explained that it is a premises liability bill and its provisions would touch the land associated with a water related activity. He said it is a unique bill that has one direct purpose; to reverse a recent and problematic Colorado Supreme Court decision. Mr. Brown defined that in 1986 the General Assembly enacted a premises liability statute as part of a broad package of bills referred to as "tort reform" which provided property owners with protections against frivolous, but common, civil actions referred to as "slip and fall" cases. He said that the foundation of this law was a reasonableness test to determine whether the owner (in a reasonable manner) failed to exercise care to protect a person from a known or foreseeable hazard or danger on the property. Mr. Brown explained that the law worked for many years until 2015 when a heavily armed and deeply committed man attacked a Planned Parenthood clinic in Colorado Springs. The assailant breached security and made an indiscriminate attack against people in the clinic. Several were killed and many wounded in the rampage and the assailant, Robert Dear surrendered to police.

Mr. Brown further explained that litigation was brought against Planned Parenthood by some of the surviving victims and survivors of those killed and the claim was they were invitees under the Colorado Premises Liability Act. During trial, the court concluded that Planned Parenthood may have contributed to the injuries sustained by the victims. It was determined by trial court that the actions such as those conducted by Mr. Dear could not have been reasonably foreseen. The Court of Appeals determined that the issue should have gone to the jury to decide whether Planned Parenthood knew, or should have known that there was a potential for violent attacks to be launched against their facilities and had failed to provide adequate security. Mr. Brown conveyed that the issue really came down to foreseeability and to what lengths a property owner might be required to go to first to anticipate and then to construct a defense and security against such an act. The Colorado Supreme Court sided with the Court of Appeals and the issue of predominant cause was a matter for a jury rather than the court and the burden of demonstrating that fell on Planned Parenthood.

The final item discussed by Consultant Baker from the legislative report was bill SB22-114. This bill addresses the availability of water supplies that could be accessed by firefighters to refill tanks on firefighting equipment. Mr. Brown noted in his report that the issue addressed has both supply issues and water rights issues and will focus on local ponds in existence that could potential be used for fighting fires. He stated that the bill focuses largely on the process to be used to identify fire suppression ponds and to seek that designation from the State Engineer. It was explained in the report that the process would begin with the board of county commissioners consulting with local fire protection districts to

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identify the ponds and conduct an evaluation of the potential for the ponds to be used as fire suppression ponds. The evaluation would be conducted within criteria established under rules endorsed by the Division of Fire Prevention and Control. Mr. Brown added that an important provision in the bill is that while a designation is pending, the State Engineer is barred from issuing an order to drain or backfill the pond or to continue forward with an order that has been issued. It was also mentioned by Legislative Consultant Brown that it appears that one of the motivations for the bill is that the State Engineer has intervened and caused some ponds without an associated storage right to be drained because the evaporation from the ponds was determined to be harmful to other water rights owners.

Mr. Baker stated that the main issue involved is that in some river districts, the county commissioners have authority to permit subdivisions to exist with proper fire protection being addressed. He said that this means there are not water tanks or underground water storage vessels available in the event of a fire. He added that in the event of a forest fire near subdivisions built next to a forest where there is no water, this bill intends to create "ponds" so water will be available for fire protection. Mr. Baker stated that the ponds may have a more primary use which is for owners within those subdivisions to be able to use the ponds as they wish for recreational benefits. He added that water being stored underground for fire protection is more practical and water can be purchased and made available in other areas.

Mr. Baker mentioned another bill stated in Mr. Brown's report. Mr. Brown explained that this bill addresses the prioritization of water storage projects along the South Platte River. Under the current law, the Colorado Water Conservation Board (CWCB) establishes priorities for projects that will enhance or increase the beneficial use of undeveloped water that is subject to compacts. Mr. Brown stated that the bill seeks to stratify such priorities in such a way that projects associated with the South Platte River are given a certain preference and part of the motivation for structuring the priorities is to reduce reliance on transmountain diversions.

Consultant Baker stated that per Mr. Brown there is a lot of opposition to this pond bill and the proponents are very critical of the State Water Engineer. Mr. Baker said that the city of Colorado Springs has an issue that should be addressed regarding pond evaporation and water replacement and that the evaporation of water from ponds that sit for several years until needed for fire protection, belong to someone else under appropriation.

Director Colon commented on a new bill being drafted called RIVR Legislation that has not yet been completed or discussed at Colorado Water Congress (CWC) and appears to be an instream flow program to allow communities to lease water for recreational events. He stated that it is a questionable bill.

Consultant Baker stated that several years ago the city of Aurora entered into agreements to try and exchange water upstream to an area North of Buena Vista to transport the water to Aurora. He said that there were several agreements regarding exchanges upstream and particularly in this area for use of recreational boating. He added that during this time the county commissioners adopted some Recreational in Channel Decrees (RICD) which had very junior dates for application and when they tried to use them they were useless and a lot of money had been spent to acquire them.

Manager Scanga said since the bill has not yet been drafted, he does not know too much about it except that it is an enhancement of already existing RICD's. He stated that it is not a new concept and he does not feel legislation is needed. Mr. Scanga added that what is needed is cooperation among water right owners from fully consumable, stored water to correspond release operations with recreational events on stream segments. He expressed that it is a good use of a resource when there are multiple uses of a water right. He further expressed that the Voluntary Flow Management (VFM) program is a good example. Manager Scanga stated that when you start to get a decree or get legislation to allow a decree, there could be unintended consequences and maybe damage a relationship between parties that would otherwise be willing to cooperate with one another to enhance the utilization of a resource.

COMMITTEE REPORTS

None

RESUME REVIEW COMMITTEE

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Manager Scanga discussed case number 21CW3079 from the December 2021 resume. He said that case No. 21CW3079- Rockcliffe Ditch which is a water right in Chaffee County. He said he has discussion scheduled for consideration of an executive session. Manager Scanga explained that it is a water right that diverts out of a gulch above Salida and it is an 1880's version of an existing water right of a ½ CFS limited to irrigation of 15 acres. He said that this case proposes to expand that water right and increase it by 1.5 CFS. He added that the unique concept of the existing water right is that historically it has been operated and administered as a futile call to the river and therefore has not been called out. He added that it was junior in priority. The proposal also tries to adjudicate some storage and increase from 15 acres to 157 acres of irrigated land. Manager Scanga expressed that he feels that is an extreme amount. He stated that he thinks there are other issues he wants to discuss and get some legal advice in the executive session before the board makes a of decision of whether the District should be in the case or not. He further added that he feels it wouldn't hurt to be in the case due to the futile call issue because if there is a 2021 water right for an additional 1.5 CFS to irrigate 157 acres, being administered as a futile call with storage vessels involved, these vessels could prevent water from reaching the stream which could be an injury issue.

MANAGER'S REPORT – Terry Scanga **Lindner/South Forty Long-term Lease Extension:**

Manager Scanga discussed that South Forty asked for a year long term lease extension. The amount of water is 5-acre feet and it carries a 3.5% annual escalation clause. The lease price for 2022 is \$787.83 per acre foot. Manager Scanga recommended approval of the lease.

Upon motion by Director Payne, seconded by Director French, the Board unanimously approved to extend the South Forty Water Lease.

Personnel Policy:

Director Colon asked for more time to review the policy before voting on approval. Atty Burgemeister reiterated to Director Colon the changes made to the policy were discussed at last month's meeting. Director Colon suggested going into an executive session during next month's meeting, after receiving more time to review the policy. Atty Burgemeister explained the requirements for discussions in an executive session. He stated that entering an executive session to just discuss the policies is not appropriate for an executive session and must be addressed again outside of executive session during the public meeting.

Upon motion by Director Colon, seconded by Director French, the Board approved to table the vote and consider and discuss the policy during the March meeting.

Manager Scanga explained that the opt out provision supports the District financially. He stated that without the opt out provision, it would cost the District 3x's as much to keep employees on the insurance plan which costs the taxpayer more.

ENGINEER'S REPORT – Wendy Ryan, Colorado River Engineering (CRE)

Engineer Ryan stated that there is work in progress on the grant project for Round Mountain Reservoir and reviewing the engineering analytic design.

LEGAL REPORT – Law of the Rockies, Kendall Burgemeister

A copy of the Legal Report was made available to all Board members prior to the meeting.

UAWCD Applications:

21CW3059: Chalk Creek Exchange

- Participated in meeting with Division Engineer's Office.
- Waiting for consultation report.

21CW3060: Cherry Creek Exchange

- Participated in meeting with Division Engineer's Office.
- Waiting for consultation report.

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21CW3033: Application to make 04CW96 exchanges absolute in part and for finding of diligence:

- Received opposer comments and participated in status conference.
- Will provide revised proposed ruling and response to comments by end of February.

19CW3089: Change of Cottonwood Irrigating Ditch

- Received opposer comments
- Before the Referee until May 31, 2022.

Applications UAWCD is opposing:

21CW3086: Poncha Springs change of Acequia Ditch and plan for Augmentation

- UAWCD filed statement of opposition
- Waiting for statement of opposition deadline by end of February

21CW3058: Triview Exchange

- No significant developments
- Before the Referee. Waiting for consultation report, and initial proposed ruling and engineering.

21CW3044: Triview Change of Arkansas Valley Irrigation Canal

- Applicant served initial disclosures.
- Trial set to begin April 3, 2023. Waiting for initial engineering and proposed ruling. UAWCD initial disclosures due March 1, 2022.

19CW3061: Application of Tom Smith

- Stipulation between UAWCD and Applicant approved.
- Anticipate that a final decree will be entered shortly.

Executive Session: 2:30pm

A motion was made by Director Colon for consideration of an executive session pursuant to CRS 24-6-402(4)(b) to receive legal advice regarding a draft DWR memorandum regarding Water Exchange Projects in Plans for Augmentation and legal advice on the potential of filing of a Statement of Opposition in Case 2021CW3079. The motion was seconded by Director Goodwin and approved by Board.

Out of Executive session: 3:25pm

Upon motion by Director Goodwin, seconded by Director Hilderbrand, the Board approved filing of a statement of opposition in case 2021CW3079. Director Felt and Director Eggleston abstained from voting due to perceived conflicts of interest.

CHAIRMAN AND DIRECTOR REPORTS

None

NOTICES & MEETINGS

Director Colon informed Board Members of the upcoming Ditch and Reservoir Company Alliance (DARCA) convention.

Chairman Canterbury notified Board members of the upcoming Arkansas River Basin Water Forum (ARBWF) in April on the 28th and 29th. He advised Board members to contact Jennifer at the District office if any Director plans on attending.

Director Felt expressed to Board members that the CWC Convention he attended was informative and a good experience and he particularly liked the venue in Aurora, Colorado.

Director French expressed that he thoroughly enjoyed the articles shared by Director Hilderbrand with Board members demonstrating what it was like during his time as a smoke jumper.

ADJOURN

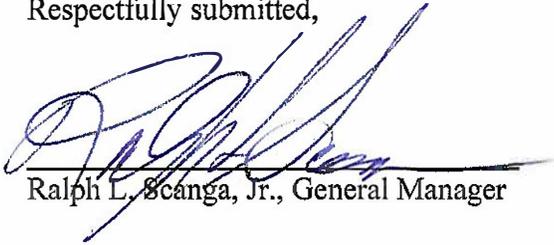
There being no further business to come before the Board or Enterprise and upon motion by Director Donley seconded by Director Colon and approval of the Board, the meeting adjourned at 3:36pm.

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Respectfully submitted,


Ralph L. Scanga, Jr., General Manager


Thomas Goodwin, Treasurer

~~approved remotely - no signature~~
Timothy C. Canterbury

~~approved remotely - no signature~~
Richard Hilderbrand

~~approved remotely - no signature~~
Mahné Colon


Albert Eggleston

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


Warren Diesslin


Gregory W. Felt

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Tim Payne


Tom E. French


Tony Telok


Brett A. McMurry

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Mike Shields