

**UPPER ARKANSAS WATER
CONSERVANCY DISTRICT**

Regular Meeting of the Board of Directors

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

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, March 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 March 9, 2022, at the offices of the Upper Arkansas Water Conservancy District, 339 East Hwy 50, Salida, Colorado.

DIRECTORS PRESENT (IN PERSON)

Gregory W. Felt	Tony Telck	Albert Eggleston
Tom French	Brett McMurry	
Thomas Goodwin	Warren Diesslin	

DIRECTORS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Tim C. Canterbury	Mannie Colon
Robert B. (Bill) Donley	Tim Payne
Rich Hilderbrand	

DIRECTORS ABSENT

Franklin J. (Jay) Moore, (Honorary)
Mike Shields

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
Chris Manera, Engineer	

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

Denise Sanchez, Office Manager
Richard Brown, Legislative Consultant
Wendy Ryan, Engineer

DISTRICT OFFICIALS ABSENT

None

STATE OFFICIALS PRESENT

None

STATE OFFICIALS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Will Scott, Water Commissioner District 11

STATE OFFICIALS ABSENT

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

EX-OFFICIO REPRESENTATIVE PRESENT

None

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

Tom Flower, Custer County Commissioner

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Dave Schneider, Round Mountain Water and Sanitation District Manager

EX-OFFICIO REPRESENTATIVES ABSENT

Dwayne McFall, Fremont County Commissioner
Brian Berger, Poncha Springs Administrator
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

None

GUESTS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Joe Stone, Heart of the Rockies Radio News
Emily Tracy, Canon City Council Member
Jonathan Paklaian, Director of Arkansas River Watershed Collaborative (ARWC)
Laurel Imer, Candidate for Congress, District 7

PLEDGE OF ALLEGIANCE

Vice Chairman Felt led attendees in the Pledge of Allegiance.

INTRODUCTION OF GUESTS

Guests were asked to introduce themselves.

MINUTES OF THE MEETING OF February 10, 2022

The minutes of the meeting of February 10, 2022 were approved upon motion by Director French with second by Director Goodwin.

FINANCIAL REPORTS

Upon motion by Director Goodwin with second by Chairman Canterbury, the Board approved the monthly financial reports dated February 28, 2022.

PROGRAM PRESENTATIONS

None

EX-OFFICIO REPORTS

There were no ex-officio reports

PROJECT MANAGEMENT REPORT- Gracy Goodwin

Project Manager Goodwin reviewed the March 2022 projects update.

Round Mountain Reservoir Feasibility Study:

- Completion of development of agreements
 - Agreement to Lease Excess Water from Round Mountain Reservoir and Operations Agreement
 - Operations Agreement
- Scheduling draft review meeting

DeWeese Enlargement Feasibility Study:

- Draft of feasibility report received from GEI. The draft is under review by staff engineers.
- Colorado River Engineering submitted their draft feasibility report on the needs assessment and water rights. It is also under review for comments.

Water Balance Phase 2- Wet Mountain Valley:

- Colorado State University report is completed
- United States Geological Survey (USGS) draft report has been received and under review by staff and engineers.

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- The grant closes at the end of March 2022.

Trout Creek Alluvial Storage:

- PM Goodwin met with the Cogan family to discuss storage possibilities on the corners of their property. The Cogan property is located off Hwy 285, just outside of the town of Buena Vista.

AgriSummit Conference:

- PM Goodwin was a presenter at the Land Access Workshop.

Arkansas River Basin Water Forum (ARBWF):

- PM Goodwin announced the upcoming Water Forum conference and tours scheduled for late April. UAWCD will be hosting the Lake Ranch Tour and discussing our integrated management with Poncha Springs.

CONSULTANT REPORT – Richard Brown

A Legislative Report was provided to Board members for review.

Consultant Baker commented on a new recreation bill that would allow certain public entities to create a “recreation in-channel values reach” (RIVR), a stretch of river up to 400 yards long for boaters, anglers, and waders. Holders of this segment could release water which would be sent downstream to boost flows in that 400-yard segment. Mr. Baker stated as a Salida native, he knows that whitewater competition began in Salida after WWII and has been prospering for approximately 75 years. He said that during that time, the State Engineer and the local commissioners have been administering the stream without any competition between the two and this piece of legislation would have no meaning on the Arkansas.

Legislative Consultant Brown explained that the Joint Budget Committee uses the legislative forecast for the final number setting in the long appropriations bill and they have been working with preliminary budget numbers for the next fiscal year. He said that once the report is received from the economists, they will start to finalize the budget and introduce the long bill. Mr. Brown stated that it typically takes approximately 10 days between the House and Senate to get the budget done and off to the Governor.

Mr. Brown discussed a couple legislative issues floating through. He said one is the overturning of the Colorado Supreme court decision of Wagner vs. Wade planned parenthood case. Mr. Brown stated that it passed the State Senate by a unanimous vote.

Legislative Consultant Brown said that the anti-speculation bill that came out of the Water Resources Review Committee (WRRC) is at a standstill and no action has been taken. Mr. Brown expressed that he is doubtful it will move anywhere from where it is.

Mr. Brown further explained that the House completed an expansion of the scope from the WRRC to include agriculture and it is on its way to the Senate. Another bill that went through the Senate is a funding mechanism for compliance with the Republican and Rio Grande River Compact. He added that it has not yet been calendared for the house agricultural committee. Mr. Brown said there is some dispute over how much money is necessary but predominantly it is somewhere between \$80 and \$100 billion for both compact compliances and he presumes the funding source will be federal transfer payments.

Legislative Consultant said a stakeholder meeting for the RIVR bill is being hosted by the water congress for a final understanding of some of the issues.

Mr. Brown briefly discussed the Turf Grass and Retirement Program bill that passed House Agriculture and Water with amendment and is pending House appropriations. Mr. Brown stated that the bill requires the Colorado Water Conservancy Board (CWCB) to develop a statewide program to provide financial incentives for the voluntary replacement of irrigated turf with water-wise landscaping. The bill describes water-wise landscaping as a water and plant management practice that emphasizes using plants with lower water needs. Mr. Brown stated that the problem with the bill is that it provided for voluntary participation buy out and there about a dozen or more communities around the state that have already done something like this. He added that they want \$4 million from the state general fund and the funding

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automatically repeals in one year. Mr. Brown said that it will eliminate 90 acres of blue grass in the state of Colorado.

Legislative Consultant discussed current updates to the Fire Suppression Bill and expressed that it is quite a mess and does not track. He stated that the fundamental issue in the bill is not fire suppression but expressed that he thinks the issue is that it would eliminate the use of pond evaporation as a potential cause of harm to other water rights. He said that it also establishes a presumption of no harm and no material injury and puts the burden on other water right owners for proof that there will be some sort of harm which is quite inconsistent with the way it is typically done.

Commissioner Flower asked if the District has taken an official position on the fire suppression bill? Mr. Brown stated that due to the Colorado Sunshine law, an entity has 72 hours to post on the Secretary of State's website of what kind of position is being taken. He said that he generally takes an amend position, which gives him the flexibility to work with sponsors and other groups on revisions and things of that nature. Mr. Brown stated that if you take a position of support or opposition, it gives you a limited number of options that you must continually go back and revise and amend the information through the Secretary of State. He added that for recording purposes, required by state law, he put in a position of amend because of his work with water congress and stakeholders on several issues and suggesting revisions and such. He recommended not taking a hardline position since things are always changing and mutating.

Commissioner Flower said there will be a second or third round of legislative hearings with Colorado Counties, Inc (CCI) and he believes they have taken a position of support.

Candidate Laurel Imer asked if the two River Compacts need federal grant money? Mr. Brown stated that yes in a sort of compressed way. He said there are two interstate compacts on the Rio Grande, and both are under compliance orders from the federal court. He added that the issue has been that they must retire a fair amount of irrigated federal land as well as several irrigation wells. Mr. Brown explained that this has been going on for approximately 6-8 years and the legislation started out of the Rio Grande water district. He expressed that the hope is that the stimulus money and other sources of federal money coming into Colorado will be used to bring agricultural land in the state into compliance.

Vice Chairman Felt commented that there is a lot of concern and push back within the recreational community regarding the RIVR bill. He reiterated what Mr. Baker stated earlier, that there is already a great system in place and a lot of consumable water to work these programs and he questioned whether the bill has any legs and will continue to be pursued? Mr. Brown answered that he feels it is hard to tell at this time and is unsure as to what the bill is supposed to accomplish. He said that it seems like a lot of resources to commit to something that is presumably transient recreational use. Mr. Brown added that he spoke to the lead staffer for Western Resources Advocates and there is a provision in the draft concept that the maximum length of the area of river to be used is 400 yards and a complimentary piece that states that no segments can be within one mile of one another. Mr. Brown said that his question to them was if a person is kayaking or floating down this stretch, how will they know when they hit the 400th yard and what happens then? He stated that they did not have an answer for that. He further added that after spending a year and a half on the draft, he questions whether it should be pushed to the last 60 days of the session or taken to the WRRC for more work.

Manager Scanga commented that after reviewing the draft RIVR bill he finds it to be nothing more than an instream flow bill being disguised as something else. He said he thinks it is very misguided. He also stated that he feels there are many problems with the fire suppression bill. He elaborated by stating that first and foremost, counties should have more responsibility and require a fire suppression method. He expressed that Chaffee County has a great system and explained that they require cisterns for fire protection. He further explained how a cistern is used underground and stated that there is an actual statute to allow for this and thousands of gallons of water are put into these cisterns. He added that one cistern in a subdivision in Chaffee County holds 65,000 gallons of water which is refreshed by running their water system through these cisterns. Manager Scanga said that many places have multi-thousands of gallons of water available for fire suppression. He added that the inter connections match up with the fire districts' equipment so they can quickly extract water. He continued saying that trying to draft water

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out of a pond is extremely difficult especially in the winter when you must break through ice to get to the water. Manager Scanga further expressed that he thinks the bill is very ill-conceived. He explained that another section in the bill states that a pond can be up to 6 surface acres, which amounts to 18 acre-feet of impact to the stream annually. Manager Scanga concluded by raising the question of whether a person living in the county would want 180 wells depleting the stream, because that is what 18 acre-feet would be under the District's plan. He said it is the impact of a huge subdivision on the water system that would be exempt under this bill and the state won't even allow 1/10th of an acre foot of water from a well to impact the stream. Mr. Scanga expressed that it is ridiculous and if it passes, he recommended to the Board to object to first one in this District that is proposed.

Director Hilderbrand asked what would be augmented for the RIVR bill? Atty Burgemeister stated that there is an option to do a temporary plan through administrative approval or go to water court and get a permanent approval of a plan to provide water for the in-channel value reaches. He explained that step one would be defining the reach to protect and the flow rate to protect, and step two would be to identify the upstream water that will run through the reach to preserve or enhance the flow. Atty Burgemeister said that an interesting thing about the bill is thinking about all the instances where this is already done without legislation. He added that the BLM and the UAWCD are already doing it voluntarily, such as when the District releases water from DeWeese Reservoir to benefit Grape Creek. Atty Burgemeister stated that the reason for the legislation is that without a decree, the DeWeese Dye Ditch could intercept the water the District is releasing out of the reservoir, and provide a substitute supply to the UAWCD downstream, meaning they could exchange against the release. He added that this legislation is aiming to protect these operations so individuals cannot exchange against those releases. Atty Burgemeister said that the augmentation language in the legislation is the idea of going to Water Court and getting permanent approval of this operation of releasing some water from upstream in order to enhance one of these recreational in-channel reaches. He expressed that there are unintended consequences that the drafters of this bill are not taking into consideration.

Manager Scanga explained the agreement with the District's DeWeese program with the BLM is the ability of putting water into storage so that later it can be released when those flows are needed. He stated that this type of legislation would not recognize that or the realities of these stream segments that someone might need an extra amount of water in for various purposes. Manager Scanga said the reality is in order to place more water into that stream, it has to come from somewhere, which means that other operations, such as storage and exchange, has to take place prior to those releases being made. He stated that otherwise it is a command type of situation, meaning after obtaining a decree, these exchanges will not happen, water will just be stored in there and if there is a dry year, there will be no water available for that decree. He further added that looking at it realistically, knowing that there will be dry and wet periods and during wet periods, place it into storage and later on, when the stream is drier, water is available to make those releases for beneficial use. Manager Scanga expressed the need for balance and stated that the type of command situation that this legislation is trying to produce, eliminates the ability of cooperation and balance and realizing that there are multiple uses and you have to provide for all those uses instead of taking a one way street.

Director Hilderbrand asked if it would put the state engineer in a difficult position between requests for river flow? Manager Scanga expressed that water becomes a general subordination under this type of legislation and one cannot selectively subordinate. He stated that typically the administrator does not allow selective subordination and demands that one cannot divert water for beneficial use but once it is done, the water is available for appropriation for anybody in the stream. He added that this bill requires that you abandon your water right to the stream and only select people within that 400-yard stretch can use the water, which precludes the maximization of beneficial use. Manager Scanga said he feels this is where the state would have a problem.

Atty Burgemeister clarified for Vice Chairman Felt that there was a reservoir release statute that allows an individual to enter a contract with an entity to release their water through a direct flow diverter. He gave the example of individuals who own Twin Lakes water shares and run their water down the Arkansas River and under normal circumstances, UAWCD is able to exchange against those flows by diverting and using Twin Lakes water and provide replacement supply at Pueblo Reservoir. Atty Burgemeister further explained that what that legislation did was protect that release.

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Manager Scanga explained about the Agricultural Water Protection Act which creates a special kind of water right. He said the goal of the act is to utilize water by having an irrigator give up diverting while keeping 50% of his decree in the stream to protect water rights. Manager Scanga added that there are many sideboards to this protection act.

Engineer Manera compared a similar approach in Aspen concerning the Salvation Ditch where an irrigator was trying to dedicate flows back to the Roaring Fork river to benefit the minimum flow stretch.

Manager Scanga stated that the CWCB gets the water and controls it and he feels they should be involved in this legislation if they believe it is something that can work.

Mr. Baker commented that in the Arkansas river we have a unique situation to other rivers and that is that the Frying-Pan Arkansas Project has the ability to release water into the Pueblo Reservoir when the river is low due to a dry year and the Southeast District is called upon to release water. He added that the SEWCD released that water willingly and with cooperation. Consultant Baker expressed that there is cooperation here and thus there is no reason to include the Arkansas River in the bill.

Vice Chairman Felt expressed that Pueblo Board of Water Works has also been a great partner releasing water from Twin Lakes or Clear Creek to hit the same flow objectives laid out in the flow program. He said that that is a good example of no decree or legislation only the good fortune of having top of the river reservoirs with stored water and terminal reservoirs that recapture it. Mr. Felt added that he believes if you force legislation onto people it will ultimately be met with less cooperation and corroboration and it should be built through relationships.

Director French commented on the fire suppression bill and stated that a value of using ponds as opposed to cisterns to fight fires is the use of helicopters. He added that a body of water is needed to dip buckets into, and he feels ponds can be used without legislation.

Manager Scanga added that this legislation is not intended for helicopters, it is only intended for trucks.

COMMITTEE REPORTS

None

RESUME REVIEW COMMITTEE

The January and February 2022 Resumes were reviewed.

Manager Scanga recommended the Board enter a statement of opposition in Case No. 22CW3004, Triveiw Metropolitan District out of Monument. He said it is an application for a change of water rights of the Bale Ditches, 1 & 2. Manager Scanga said it includes four water rights and diverts out of the South Arkansas. Manager Scanga stated that two water rights have 1875 appropriation dates, No. 1 is for 1.33cfs and No. 2 is for 1cfs. The other two junior water rights have 1898 appropriation dates, each with 2cfs of water, for a total of 4.33cfs. Manager Scanga further stated that No. 1 irrigates 23 acres and No. 2 irrigates 20.8 acres.

Upon motion by Director Donley, seconded by Director Telck to file a statement of opposition in case No. 22CW3004. It was unanimously approved by the Board.

Nothing of significance in the February Resume.

MANAGER'S REPORT – Terry Scanga

Approval of Personnel Policy:

Before approval of the Employee Personnel Policy, Atty Burgemeister and Manager Scanga clarified for Board members a few of the items in the policy focusing primarily on the opt out clause in the health insurance section of the manual.

Director Hilderbrand asked about company vehicle liability and Manager Scanga explained that company vehicles are covered under the District's insurance plan.

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Manager Scanga clarified for Vice Chairman Felt that to have group insurance policies such as Medicare, there has to be at least 50 in the group and if you fall under that number then there can be implications for other people in the plan. He added that the District does not get close to that threshold and if there were 50 in the group, the cost to the District would be 3.5-4 times greater to include Medicare type policies in a group plan. He said that is why the opt-out provision is in place and it comes down to economics and what is the least cost to the District to provide coverage for these types of plans.

Atty Burgemeister clarified for Director Payne there is only one eligible person on the group health plan who is a part time employee and has been receiving an opt out payment. He explained that under the affordable care act you can make certain distinctions in terms of who you offer participation to and it is legal to include both part-time and full-time employees. He added that the opt-out provision must be offered to all employees that fall under that distinction.

Atty Burgemeister explained to Director Payne that providing someone a reimbursement to incentivize them to go onto Medicare coverage is illegal. He further explained that the idea of providing employees pretax dollars to allow them to go out and buy their own insurance was a popular fringe benefit before the affordable care act was passed and prohibited that practice. He said that since then two separate alternative approaches were designed. Atty Burgemeister said one alternative that the District uses is the cash in, opt out provision. He stated that it must be done where there is a flat fee and not provided as a reimbursement to go out and buy your own insurance. Atty Burgemeister stated the second option would be to not offer a group plan but instead offer a premium expense reimbursement program where you give each employee a stipend to go out and buy their own insurance. He said the idea about the opt-out plan is a cost-saving measure to the District and much more economical.

Several Board members expressed their support of the opt-out provision and the benefit to the District and the importance of offering it to all employees.

Upon motion by Director Telck, seconded by Director Eggleston, the Board approved the Personnel Policy by a roll call vote. The votes were as follows:

Director Colon- abstained from voting

Director Payne- no

Director French-yes

Director Telck-yes

Director Diesslin-yes

Director Donley- yes

Director Hilderbrand-yes

Director McMurry-yes

Chairman Canterbury-yes

Vice Chairman Felt-yes

Director Eggleston-yes

Director Goodwin-yes

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

Engineer Manera reviewed current engineering projects.

Mr. Manera updated Board members on the Cottonwood Lake feasibility study for reposition of the dam. He explained that it is a very small spillway and it is classified as a hazard dam. He further explained the hazard rating and how it changes the engineering design and criteria.

Engineer Manera said that the state has adopted new regulations for hazard ratings and have added a hydrological hazard rating. He said the dam is 2&1/2 feet tall and the approach now is to replace the concrete spillway to keep the hazard rating down and the volume in the lake low while minimizing the surcharge of water.

Manager Scanga asked about the time frame to submit designs to the Division Engineer.

Mr. Manera answered that he is looking at the end of May.

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Engineer Manera announced that he has hired a new engineer to join Colorado River Engineering with 30 years of experience.

Consultant Baker expressed that it is important to keep in mind what happens with hazardous dams.

LEGAL REPORT – Law of the Rockies, Kendall Burgemeister

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

UAWCD Applications:

21CW3059 Chalk Creek Exchange:

- Received consultation report recommending approval of application
- Will file proposed ruling by March 22 deadline.

21CW3060 Cherry Creek Exchange:

- Received consultation report recommending approval of application.
- Will file proposed ruling by March 22 deadline.

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

- Responded to opposer comments. Received signed stipulation from Aurora.
- Status: Before the Referee.

Atty Burgemeister recommended approval of stipulation in Case No. 21CW3033.

Director Goodwin made a motion to approve the stipulation in Case No. 21CW3033 between UAWCD, acting through the Upper Arkansas Water Activity Enterprise, and the City of Aurora. The motion was seconded by Director Donley and unanimously approved by the Board.

19CW3089 Change of Cottonwood Irrigation Ditch:

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

Atty Burgemeister recommended adding a paragraph in a stipulation with Triview in Case 19CW3089 that is identical to a paragraph added in the Silver Creek Ronk case with Young Life. He said that Triview owns the water rights on Cottonwood Creek that the paragraph relates to. Triview asked to have the paragraph added into the stipulation which recognizes that when those senior decreed irrigation rights are in priority, they are entitled to the water from Cottonwood Creek before the District can exchange against those flows.

Upon Motion by Director Colon and seconded by Director French, the Board unanimously approved to add the additional paragraph and the stipulation with Triview.

Applications UACWD is Opposing:

21CW3079 Timber Creek Ranch, Rock Cliff Ditch Application:

- UAWCD filed statement of opposition. Opposition also filed by Salida, CPW, State and Division Engineers, and Fairview Cemetery Association.
- Status: Before the Referee. Waiting for applicant's proposed ruling.

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

- Statements of Opposition filed by THS Investments, State and Division Engineers, SECWCD, Penrose, Mt. Massive Lakes, CWCB, CPW, Salida, and Chaffee County.
- Status: Before Referee. Waiting for applicant's proposed ruling and engineering.

21CW3058 Triview Exchange:

- Re-referred to Water Judge.
- Status: Before the Water Judge.

21CW3044 Triview Change of Arkansas Valley Irrigation Canal

- UAWCAD and other opposers served initial disclosures.
- Trial set to begin April 3, 2023. Waiting for initial engineering and proposed ruling.

19CW3061 Application of Tom Smith:

- Decree entered by Water Judge on February 25.
- Status: Closed

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Atty Burgemeister noted to Board members as a point of interest on the Rockcliffe Ditch Application the Board voted to file a statement of opposition, concerned discussion about whether we are entitled to a futile call if water is not making it to the Arkansas River on the surface and what about the subsurface flows? Atty Burgemeister stated that among the other entities filing statements of opposition, the State Engineers filed oppositions regarding this exact same issue and specified that the applicant needs to prove they are not causing injury to downstream water users since the water being diverted wouldn't make it to the Arkansas River as underground flow.

CHAIRMAN AND DIRECTOR REPORTS

None

NOTICES & MEETINGS

None

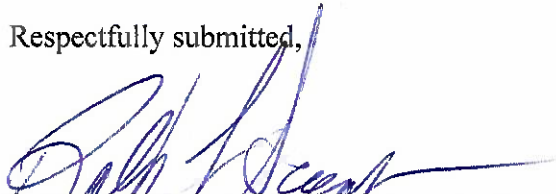
ADJOURN

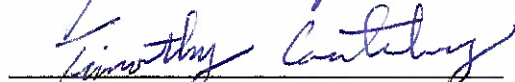
There being no further business to come before the Board or Enterprise and upon motion by Director Donley seconded by Director Colon and approval of the Board, the meeting adjourned at 3:14pm.

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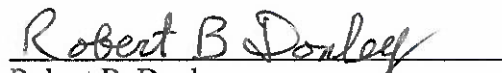
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Respectfully submitted,


Ralph L. Scarga, Jr., General Manager

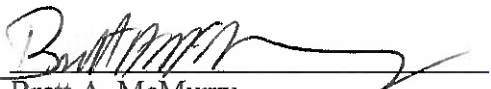

Timothy C. Canterbury

approved remotely - no signature
Mannie Colon


Robert B. Donley



Gregory W. Felt



Tom E. French


Brett A. McMurry



Thomas Goodwin, Treasurer

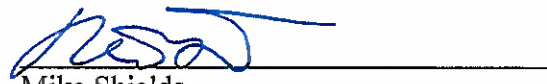
absent - no signature
Richard Hilderbrand


Albert Eggleston


Warren Diesslin

approved remotely - no signature
Tim Payne


Tony Telok


Mike Shields