

**UPPER ARKANSAS WATER
CONSERVANCY DISTRICT**

Regular Meeting of the Board of Directors

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

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

DIRECTORS PRESENT (IN PERSON)

Tim C. Canterbury	Rich Hilderbrand
Franklin J. (Jay) Moore	Mike Shields
Tom E. French	

DIRECTORS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Tim Payne	Gregory W. Felt	Warren Diesslin
Robert B. Bill Donley	Tony Telck	Brett McMurry
Thomas Goodwin	Mannie Colon	

DIRECTORS ABSENT

None

DISTRICT OFFICIALS/STAFF MEMBERS PRESENT

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

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

Wendy Ryan, Engineer	Richard Brown, Legislative Consultant
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DISTRICT OFFICIALS ABSENT

None

STATE OFFICIALS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Brian Sutton, Augmentation Coordinator
Will Scott, Water Commissioner, District 12
Dan Henrichs, Water Commissioner, District 11

STATE OFFICIALS ABSENT

Bill Tyner, Division Engineer

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

Tom Flower, Custer County Commissioner
Dwayne McFall, Fremont County Commissioner
Bob Hartzman, Canon City Water Superintendent
Dave Schneider, District Manager, Round Mountain WSD

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
Philip Puckett, Buena Vista Town Administrator

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GUESTS PRESENT

None

GUESTS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERNING)

Joe Stone, Heart of the Rockies Radio

Joel Benson, Town of Buena Vista

Greg Peterson, Executive Director from Colorado Ag Water Alliance

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 February 11, 2021

The minutes of the meeting of February 11, 2021, were approved upon motion by Director Hilderbrand with second by Director Shields.

FINANCIAL REPORTS

Upon motion by Director Goodwin with second by Director Payne, the Board approved the monthly financial reports dated February 28, 2021.

PROGRAM PRESENTATIONS

Greg Peterson, Executive Director from the Colorado Agricultural Water Alliance, reported to the Board and guests about opportunities to fund infrastructure projects with combined state and federal funds, through grant writing. Mr. Peterson explained that he has begun working with organizations on obtaining federal and non-profit funding by helping with the grant application process. He stated that the agricultural community does not typically have grant writers on hand and that is a service they are now providing throughout the State of Colorado.

A second item of discussion by Mr. Peterson concerned Regulation 85. Mr. Peterson said that Reg 85 was passed in 2012 by the Colorado Department of Public Health and Environment (CDPHE) and focuses on point sources, such as wastewater plants, and non-point sources (agriculture) throughout the State of Colorado. Mr. Peterson stated that wastewater plants were hit hard due to very strict regulations. Mr. Peterson further explained that Reg 85 began with a 10-year period where non-point sources were encouraged to implement best management practices (BMP's) that reduce nutrient pollution. If voluntary measures are deemed ineffective, regulations for agriculture will be implemented in 2022. Mr. Peterson stated that there was a hearing last October 2020 that went well, and the Department of Ag is optimistic about the commission deciding to continue with this same approach in 2022 until it is up for review again in another 5 years. Mr. Peterson explained that the specific nutrients in non-point sources are specifically focused on nitrogen and phosphorus. He said there have been significant improvements in management of those nutrients in the past 20 years, especially in the row crop world. Mr. Peterson further explained that this is not just for the sake of water quality but for a productive, efficient, and well-run operation. He stated that a lot of the irrigated livestock operations are very low input operations and the agriculture community is aware of this, but the problem is how to communicate that with the CDPHE and other organizations because telling them how these specific agricultural entities manage nutrients is not enough and data is needed. He added that up until a few years ago, Colorado did not have any data at all on sites specific within the state of what these different practices do in terms of managing nutrients. Mr. Peterson said there are some larger modeling studies being conducted providing a basin-wide scale using data from the National Resources Conservation Service, (NRCS) showing the impacts from nitrogen and phosphorus. He added that a lot of effort is being put into looking at irrigated pastures and collecting baseline data to demonstrate what is expected to be a low input of these operations, and trying to identify a few practices that are not only beneficial for nutrient management but also beneficial to the producer. He added that the collection of site-specific data and large aggregate data and modeling will show past, future, and present improvements. Mr. Peterson answered the question, "What does regulation look like for an irrigated operation?" He stated that either farms and ranches would be regulated as a confined animal feeding operation (CAFO) and have a discharge permit

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or it would be basin or sub-basin wide requiring certain limitations on nutrients and that those limitations would be applied across that sub-basin. He remarked that those are situations to be avoided and unnecessary due to the improvements that have been put into effect.

Chairman Canterbury asked Mr. Peterson about the effects of Reg 85 on the Colorado State University (CSU) wind erosion study and if it has been resolved? Mr. Peterson answered that the study in question uses what is called the clean tool, which models a field study on a specific area. He said the tool is used to collect data from a county wide analysis from the edge of a field instead of using a larger aggregate that includes everything else.

Manager Scanga asked about the enforcement from a non-point source and how Mr. Peterson foresees the type of enforcement action that could or might take place? Mr. Peterson answered that one of the advantages is that a non-point source regulation enforcement is like trying to meter every city block in the Denver area. He said he thinks the CDPHE realizes what a nightmare that would be and that it would be too difficult to enforce. He explained that a few years ago a bill was passed to help expand the Colorado Ag ground and surface water monitoring which is funding part of the work CSU is doing. He added that it also gives the perception to the CDPHE that this is a problem they do not have to deal with as often if the department of Ag is stepping in. He further expressed that he does not have a good answer as to what it would look like and feels the CDPHE probably does not either. He added that he feels it would be beneficial to maintain the voluntary approach.

Manager Scanga commented on support of the department of Ag's grant writing effort and stated that the District works with a lot of entities as cost share partners in grant projects through the water supply reserve account and that there are usually quite a few grant projects in progress. He stated that he feels there are opportunities for the District to work with people in the area that need assistance. He said many times agricultural projects are of interest to the water District. Mr. Scanga added that PM Goodwin, who oversees the District's grant writing, could offer help and support.

Mr. Peterson stated that some of the more recent, effective projects deal with inventories that have been conducted on areas where without larger ditches and many users. He said that outside of the infrastructure is the water quality world and more funding is going towards projects smaller projects such as sprinkler systems or flood irrigation. Mr. Peterson added that if the Ag department can show a benefit to nutrient management, more funding will be made available.

Manager Scanga explained that it is a double edge sword for the District. He stated in order to do an irrigation improvement project on the Arkansas basin, it is a violation of the improvement rules and a calculation of how much irrigated acreage you have to reduce irrigating in order to put in a sprinkler. Mr. Peterson said that a new project in the works on the Western Slope where there are concerns with return flow especially in areas dominated by irrigated pastures, addresses what to do about changing irrigation so that these operations will be more successful and less likely to run into water quality issues.

EX-OFFICIO REPORTS

There were no ex-officio reports

PROJECT MANAGEMENT REPORT- Gracy Goodwin

Projects Manager Goodwin presented the March Projects update.

Ice Lake Outlet Structure:

Grant extension request to be completed by the end of summer for an extension to add extra time for the design and construction.

PM Goodwin stated she is working with Lakewood HOA on a proposal to replace as opposed to rehabbing the total outlet structure and spillway.

Round Mountain Reservoir Feasibility Study:

PM Goodwin explained that Engineer Lamp Rynearson is anticipating the geotechnical engineering to start in the next few weeks and that Colorado River Engineering is working on the hydrology and water rights analysis.

Trout Creek Park Alluvial Storage:

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An update has been submitted to the Colorado Water Conservation Board (CWCB) and there are continued discussions regarding the concept design which has been submitted to the Department of Corrections in Buena Vista. PM Goodwin said she is working closely with Manager Scanga on scheduling meetings with landowners.

Lake Ranch Conservation Gardens:

There is ongoing work with layout and conceptual design and exploring partnering entities.

CONSULTANT REPORT – Ken Baker & Richard Brown

Consultants Brown and Baker reported on legislative updates and bills of interest to the District. A copy of the Legislative Consultant report prepared by Mr. Brown was made available for the Board to review prior to the meeting.

Mr. Baker discussed two proposed bills that were recently presented to the assembly.

He said one deals with water management and changing the law to allow more latitude to the corporate ditch owner of the right of way and to water the flows within the ditch. Mr. Baker stated that people involved in irrigation understand the diversion of water through a head gate. He added that the bill is unique to Division One.

Consultant Baker discussed a second bill proposed by a Representative from the eastern part of the river valley that involves a law concerning underground water storage. The Rep. has asked the matter to be taken up by a group of people from CSU to consider the impact. Mr. Baker stated that the motivation behind the bill is to keep water in Colorado and not let it flow out of the state into another state. Mr. Baker explained that except for the South Platte River, all rivers in the state of Colorado are appropriated and therefore no water is left to be appropriated. Mr. Baker continued stating that each of these rivers is part of a compact between Colorado and the state to which the water flows. He added that in the case of the Arkansas River, which is the District's mainstem, water flows into the state of Kansas. Mr. Baker said that in each of these cases, the matter has come back for future litigation. He stated rules have already been established to save water from flowing into another state and the governor cannot sign a law that will change those compact rules. Mr. Baker expressed that the reason the matter was brought to the Board's attention is since the water the District manages is fully consumable and is stored, managed, and can be replaced under the district's augmentation plan.

Legislative Consultant Brown included more information concerning Mr. Baker's discussion on aquifer storage. He said he is skeptical that it will go much further in the legislature and added that when it went before the committee not a lot of discussion took place regarding the technology behind aquifer storage or about the governess of the water but seemed to be most concerning was the \$155,000 fiscal amount. Mr. Brown stated that the sponsor did not indicate a source of revenue, which by default would probably be combined with the Colorado Water Conservation Board (CWCB) construction bill. He added that people seemed uncomfortable with the idea without prior discussion. Mr. Brown continued, stating that the committee took a recess and the sponsor met with some people and returned with an amendment to take the money out of the Proposition DD (Sports Betting). This only caused other legislatures to become uneasy on the premise that the money that was dedicated to water needs was essentially dedicated to the implementation of the state water plant. Mr. Brown said after a lot of give and take Representative Arndt suggested that perhaps the bill should go to the finance committee. Mr. Brown confirmed that is where the bill ended up and expressed that he feels there will not be any reconciliation on the what the source of the money will be, and it will mostly likely fail to be dealt with. Consultant Brown added that the quarterly revenue estimate will be released on Friday, March 19th and is important because it is the one the Joint Budget Committee (JBC) uses to establish the money for all line items for all state agencies for next year's budget. He said it will give the District some indication as to what will be made available through the CWCB, back to the round tables, and the water supply reserve accounts as well as any other implementation of projects that the Colorado Water Congress (CWC) is looking at. Consultant Brown explained that severance tax is always a big issue and always hard to predict. He stated that after the 19th the JBC will be working hard to finalize the budget and submit it to the Senate. The Senate will take a few days to make any changes and no other action will take place before handing it over to the House for further consideration.

Mr. Brown discussed another bill that came out of the uniform commissions of state law. He said it is a national commission that considers potential, model bills to be adopted by all states to gain

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uniformity with states on any number of things, such as the probate code that is reviewed every five years. He stated that one of the bills this year deals with clarifying easements and it is a complex bill that has been introduced and there is concern in the agriculture and water communities because there has not been enough research from knowledgeable attorneys and engineers on what it might mean. Mr. Brown said a lot of the people he has talked to are concerned with the number of court decisions on easements that the bill might interfere with. He added that there is some motivation to ask that the bill be killed this year so it can be considered. He said the reason for bringing the bill to the Board's attention besides the obvious interest about easements, is because it is assigned to the senate agricultural committee which is chaired by Senator Donovan who represents the Upper Ark, and it may be something the Board and Manager Scanga are interested in contacting Senator Donovan suggesting that the bill be withdrawn this year and that some sort of working group be appointed under the Water Resources Review Committee and specifically look at what it might mean for the agricultural and water community. Consultant Brown said he has looked over a lot of model bills over the years and a lot are good but tend to be very generic and every state has its own individual needs. He added that he has never seen any bills that have been an emergency so therefore it would be wise to take the time to research the bill.

Chairman Canterbury reiterated Mr. Brown thoughts on having the bill looked at. He suggested the Board move forward with kicking the bill over to the Water Resources Review Committee to review and send a letter to Senator Donovan.

Director Donley asked about the type of easements the bill is referring to and if it concerns conservation easements? Mr. Brown said he thinks the bill is referring to every type of easement such as easements across residential properties and utility easements. He added that he thinks it is a broad and general look at easements. Atty Burgemeister answered that the bill specifically excludes conservation easements.

Manager Scanga said it is important to know what impact it would have on a prescriptive easement and ditch right of ways and things of that nature. He said he does not know if this bill is applicable to it or not and that more research is needed.

Atty Burgemeister stated that ditch easements in Colorado because of the Roaring Fork St. Jude case from 20 years ago the Supreme Court ruled with respect to ditch easements that if the burdened land owner move a ditch that crosses your property has to have the consent of the ditch owner or get a court order that states that the easement will not increase the burden of the ditch owner. He added that the requirement to obtain a court order already exists for ditch easements. He said that this bill appears to impose the same requirement on any type of easement, not just ditch easements which would have less impact on ditch easements since there is already a law in place.

Manager Scanga asked what if a ditch owner wanted to move their ditch over the burdened land and what recourse would the landowner have? Atty Burgemeister said that is an interesting question since that is not addressed in the Roaring Fork Case. He stated that when it is the ditch owner that wants to do the relocation it would be going outside the scope of easement and there is no default right to do that. He added that this specific statute only addresses relocations by landowners and does not contemplate an action by the easement owner.

Manager Scanga recollected a past situation where a person wanted to move their ditch across the subservient land and the owner of the land rejected them moving of the ditch because he had trees he didn't want damaged and prohibited the ditch owner from moving the ditch.

Atty Burgemeister discussed a case during the flood of 2013 that caused the flooding of several streams to the point that the streams were moved up to a mile away from where they once were which caused the head gates to be relocated. Mr. Burgemeister stated that there is a statute that gave the authority to do that and the statute was modified due to the result of what had to be done because of the flooding. He said that the statute now reads that ditch owners have the right to relocate their head gates and move their easements but may have to pay just compensation to do that. PM Goodwin asked Atty Burgemeister if consent from the landowner gives the ditch owner the right to move the ditch? Atty Burgemeister answered that consent, whether verbal or written is always ok.

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Manager Scanga recommended a letter be sent to Senator Donovan for information of the proposed bill. The Board authorized moving forward with a letter to Mr. Donovan and review of the proposed bill.

Manager Scanga also discussed the proposed ballot initiative regarding animal cruelty, the Colorado State Ballot Initiative to Protect Animals from Unnecessary Suffering and Exploitation, and stated that he feels it will wipe out agriculture as we know it if it is passed in this state. He added that he feels it ties to the District's area of protection of water rights and agricultural lands and how the two fit together and recommended to oppose the ballot initiative as a resolution of the Board.

Chairman Canterbury stated that he agrees with Manager Scanga and that it would be detrimental to agriculture. He added that he has never seen a more detrimental initiative that is absolutely ludicrous and will definitely affect agriculture and water rights to the point where there will not be a ranch left in Colorado and the state cannot live under the guidelines presented.

Director Hilderbrand pointed out that the performance horse industry relies on AI (artificial insemination) and this initiative would wipe out the industry.

Director Felt expressed his agreement with Manager Scanga and the importance of taking a stand. He stated that without the strong agricultural element to the area encompassed by the District boundaries, there might as well not be a District or an augmentation plan to allow for economic development and growth and protect senior water rights by depletions caused by that growth if this initiative is passed. He added that he is in support of the Board's position of opposing the initiative.

Manager Scanga asked Director Felt if the county will have a similar stand on the initiative? Director Felt answered that they have not yet taken a formal stand, but they are putting forward a proclamation in support of agriculture and the county's agricultural economy. He added that he has no problem putting forward a position for the Chaffee County Board of Commissioners on the initiative but was waiting until he was sure it was going to be put on the ballot.

Director French stated that because of this initiative's effect on ranching, agriculture, and water rights he made a motion to oppose the initiative. The motion was seconded by Director Payne and unanimously approved by the Board.

COMMITTEE REPORTS

None

RESUME REVIEW COMMITTEE

Nothing of significance for the District in the Resume.

MANAGER'S REPORT – Terry Scanga

The ratification of the Cottonwood Irrigation Ditch (CID) Water Right Acquisition Agreement already approved in the Enterprise meeting and moved to the District meeting.

Upon motion made by Director Payne, seconded by Director Hilderbrand the Board approved to ratify the CID water Acquisition Agreement. The agreement was unanimously approved by the Board with a vote of "Aye".

Manager Scanga pointed out Demand Management discussions taken place between the CWCB and Interbasin Compact Committee (IBCC) and the round tables and mentioned a question asked of him by Mr. Broderick concerning Manager Scanga's report during the IBCC meeting. Mr. Broderick asked if the IBCC had discussed the 2026 guidelines? (The guidelines in question were provided by Mr. Scanga to the Board prior to the meeting). Mr. Scanga said that the 2026 guidelines do not exist yet but they are anticipated to be adopted on the Colorado River dealing with the Drought Contingency Plan (DCP) and how the reduction of Lake Mead and Lake Powell will be addressed in the future. He stated that in 2007 the states compact got together and adopted some interim guidelines. Mr. Scanga explained that Colorado must provide a certain amount of water to Lake Powell per year, (75 million in a ten-year

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period). Manager Scanga said that historically there has always been a surplus of water used by the lower basin states, but the problem is they cannot draw water down below the hydro power level. He added that the primary purpose of a reservoir is the production of power. Mr. Scanga read a statement made by the compact administrator, Amy Haus (Executive Director of the Colorado Compact Commission) that stated, "Meanwhile Lake Mead elevations have not increased under the guidelines due in large part to the over use of the lower basin, also known as the structural deficit. The issues must be addressed in the post 2026 operational criteria." Manager Scanga said that what Colorado is trying to do is sustain a minimum of our compact obligation and if we continue with recurrent drought there will no longer be a surplus of water for lower basin states. Manager Scanga said he feels it is of interest to the Board and wanted to bring it to the Board's attention for further research and clarity. He stated that what we are trying to do is maintain the levels in those lakes and not that we are not going to be able to meet our future or current obligations but more so because we have not continued the surpluses to the extent they have been in the past.

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

Engineer Ryan updated the board on current water cases. She stated that there is not much to report at this time but there is still work in progress on the Blue Line Augmentation Case and the second review of experts was completed last month and a joint statement was produced of ongoing issues between the engineers.

LEGAL REPORT – Law of the Rockies, Kendall Burgemeister

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

19CW3089: Change of Cottonwood Irrigating Ditch

No significant developments and is before the Referee.

18CW3076: Augmentation Expansion

There have been continuing settlement discussions with remaining opposers and participation in status conference. It is now before the Water Judge

Atty Burgemeister recommended the Board approve to amend 19CW3089 to include the purchase of a water right between UAWCD, acting through the Water Activity Enterprise.

Upon motion by Director Colon, seconded by Director French, the Board approved to amend case 19CW3089 to include the contract of the purchase of a water right.

18CW3048: Joint application to change Silver Creek-Ronk Ditch water

The expert report has been filed and it is before the Water Judge. A trial is set to begin October 25, 2021.

UAWCD Opposing Applications:

19CW3061: Application of Tom Smith

Comments were provided on Applicant's proposed ruling and participation in status conference and engagement in settlement discussions with Applicant's counsel. It is now before the Referee.

EXECUTIVE SESSION: 2:54pm

Upon motion made by Director Shield and seconded by Director Donley the Board moved into Executive Session pursuant to C.R.S. 24-6-420(4)(b) for the purpose of a conference with the attorney for the Water Activity Enterprise to receive legal advice on specific legal questions regarding the terms of proposed stipulations in Case No. 18CW3076

RECONVENE FROM EXECUTIVE SESSION:

The Board reconvened from Executive Session at 3:20pm

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Upon motion by Director Payne, seconded by Director French the Board approved the proposed stipulations between the State and Division Engineers, San Isabel Land Protection Trust, Mountain Front Ranch, Fairview Cemetery Association, Inc., and Public Service Company of Colorado. Atty Burgemeister stated that they all use a standard form of stipulation, but all reference a different form of a proposed decree.

CHAIRMAN AND DIRECTOR REPORTS

None

NOTICES & MEETINGS

None

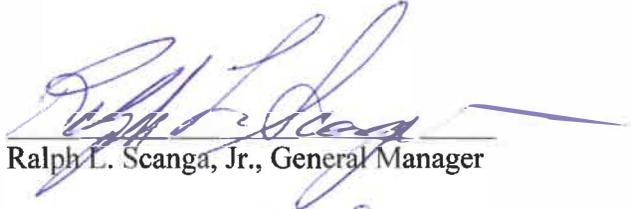
ADJOURN

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 3:23 pm.

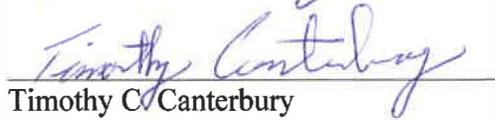
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Respectfully submitted,


Ralph L. Scanga, Jr., General Manager


Thomas Goodwin, Treasurer


Timothy C. Canterbury


Richard Hilderbrand

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Mahn timer Colon


Franklin J. Moore

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

~~approved remotely - no signature~~
Warren Diesslin

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Gregory W. Felt

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Tim Payne


Tom E. French

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