

**UPPER ARKANSAS WATER
CONSERVANCY DISTRICT**

Regular Meeting of the Board of Directors

**April 8, 2021
1:30 P.M.**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, April 8, 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 April 7, 2021 at the offices of the Upper Arkansas Water Conservancy District, 339 East Hwy 50, Salida, Colorado.

DIRECTORS PRESENT (IN PERSON)

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|-------------------------|------------------|
| Tim C. Canterbury | Thomas Goodwin |
| Franklin J. (Jay) Moore | Rich Hilderbrand |
| 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 |
| Mike Shields | Mannie Colon | |

DIRECTORS ABSENT

None

DISTRICT OFFICIALS/STAFF MEMBERS PRESENT

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|--|--------------------------------|
| 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 | Chris Manera, Engineer |
| Richard Brown, Legislative Consultant | |

DISTRICT OFFICIALS ABSENT

None

STATE OFFICIALS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Bill Tyner, Division 2 Engineer
Will Scott, Water Commissioner, District 12

STATE OFFICIALS ABSENT

Brian Sutton, Augmentation Coordinator
Dan Henrichs, Water Commissioner, District 11

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

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

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Philip Puckett, Buena Vista Town Administrator

GUESTS PRESENT

None

GUESTS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERNING)

Joe Stone, Heart of the Rockies Radio

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 March 11, 2021

The minutes of the meeting of March 11, 2021, were approved upon motion by Director French with second by Director Telck.

FINANCIAL REPORTS

Upon motion by Director Hilderbrand with second by Director Payne, the Board approved the monthly financial reports dated March 31, 2021.

PROGRAM PRESENTATIONS

EX-OFFICIO REPORTS

There were no ex-officio reports

PROJECT MANAGEMENT REPORT- Gracy Goodwin

PM Goodwin reported on grants in progress and project updates.

DeWeese Enlargement Feasibility Study

PM Goodwin said that engineers from GEI Consultants is working on new flood routing and layouts.

Lake Ranch Conservation Gardens

PM Goodwin stated that the District is working with Meg Herding of MH Garden Design on a conceptual design for the conservation garden at the Lake Ranch Property. Once the conceptual design is finalized, the District will be seeking out potential partners for the project.

Ice Lake/Harvard Lake Culverts

PM Goodwin discussed work in progress with Colorado River Engineering and a local contractor for replacing 4 deteriorated culverts affecting the Ice Lake outlet ditch and 1 deteriorated culvert affecting the Harvard lake drainage.

Ice Lake outlet and spillway

PM Goodwin explained that the District has discussed replacing the entire outlet/spillway structure instead of repairing the deteriorated outlet portion and then facing the problem of replacing the entire structure after repairs have already been made and paid for in 5 or 10 years.

PM Goodwin displayed photos showing the deterioration of the outlet structure and spillway. She presented pros and benefits for replacement of the spillway. She said it would be more cost effective to replace the spillway while repairing the outlet structure since the degree of deterioration would require replacement in the future. Mrs. Goodwin added that the remaining grant funds from the outlet repair could be put towards a more permanent solution. PM Goodwin explained the benefits of complete replacement versus a structure repair. She said that the District has an agreement for the top 12" of water in the lake, which is approximately 35 acre-feet. The UAWCD's development of the design and control structures would allow the District to have more control of the operations for more effective releases and

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storage. The updated engineering performed for the new proposed spillway ensures the dam and spillway could manage a 100-year flood scenario.

PM Goodwin estimated that the cost of the project at approximately \$30,000. She stated that the District would use the remaining \$6,000 from grant funds and split the remainder with Lakeside HOA, costing the District an estimated \$12,000.

Upon motion by Director Hilderbrand, seconded by Director Payne, the board approved to move forward with the Ice Lake Outlet and Spillway Replacement Project.

CONSULTANT REPORT – Ken Baker & Richard Brown

Consultant Baker gave a brief discussion regarding Manager Scanga's report from the Enterprise meeting concerning the new augmentation plan approved by the Board. He explained how the District's original augmentation plan was created and formed and gave recognition to Manager Scanga for all the work he has accomplished for the District.

Consultant Baker reported briefly on the Mutual Irrigation Legislation, stating that he feels most water users and attorneys from division 1 are in support of the legislation and have good reason to promote the legislation due to a recent unfavorable ruling in a water court case. He stated that the problem lies in using a river basin where water is under-appropriated. He said that water today can be appropriated out of the South Platte which differs with what happens in the Rio Grande Basin or the Arkansas River. He explained that since 1852 the Rio Grande has been operating on the Acequia Administration which is uniquely separate from other districts. The Arkansas River Basin operates on specific rules and regulations, enforced by the state engineer who approved the UAWCD augmentation plan. Consultant Baker stated that when the governor signs House Bill 1260, involving the western slope and demand management, the mutual ditch statute will have little effect.

The second bill discussed by Consultant Baker concerned creating a bank account for a withering climate group through the Department of Agriculture, on a research institution that will predict when the droughts will come to Colorado. Consultant Baker explained that in 1961 during the anniversary of Colorado, two organizations created by the Federal Government, the National Center for Atmospheric Research (NCAR), and the National Oceanic and Atmospheric Administration (NOAA) became worldwide organizations that are currently in operation working on climate and atmosphere and being paid by the federal government and once the bill is signed by the governor, will be paid by the state of Colorado. Mr. Baker added that there is another bill that will be signed by the governor which authorizes a state agency to create a new plan that is a precursor to demand management. Consultant Baker expressed that in the very near future, demand management will eventually eliminate what is now known as the Colorado Doctrine.

Legislative Consultant Brown emphasized several legislative updates. He stated that the General Assembly is almost halfway through their legislative session and once they reconvened in January after recessing, all deadlines were pushed out to June 14, 2021. Mr. Brown said there was more discussion that leadership may push the members to try to get out around Memorial Day.

Legislative Consultant Brown stated that the other issue is what they are going to do with interim committees this summer. Last summer, due to COVID they completely shut down most interim committees except some essential ones for school finance and transportation. He added that the water resources review committee did not meet over the summer or fall, although they attempted it virtually, leadership would not allow them to it. Mr. Brown stated that there is some concern that water resources might be convened for this summer which causes more complications because chairman of the house Ag committee, Representative Jenny Arndt is scheduled to be the chairman of the Water Resources Review Committee for this summer and has to alternate between the two houses, and she was just elected Major of Fort Collins. Mr. Brown expressed that she will most likely be stepping down from her House of Representatives seat within the next month.

Mr. Brown stated that the budget has been introduced and is a senate bill this year. He added that there are about 20 satellite bills that go along with it and the Colorado Constitution does not allow a budget bill to contain substantive law matters. So, if there is a statutory change that is needed to meet budget requirements, that becomes a satellite bill along with it. The senate has the bill and will debate it for

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several hours, possibly into the night while the minority party offers dozens of amendments that will be defeated until one is accepted by the majority party and then is sent to the House where the process begins again. Mr. Brown explained that the Joint Budget Committee (JBC), acts as the conference committee to resolve differences between the houses. The final budget that is revised by the JBC is always very close to the version that was introduced on day one and there are few changes to the original version.

Legislative Consultant Brown explained that the budget bill is extremely hard to track anymore. The budget bill itself is approximately 150 pages of line items. He said the line items are summaries of working papers from the JBC staff and with the satellite bills it becomes harder to know when something appears to be a reduction in appropriation that is actually made up somewhere else in the budget through a work around. This becomes an issue because the federal stimulus money is yet to be materialized in which we think there might be some money coming through the federal stimulus to the state of Colorado that will be designated for water related projects. Mr. Brown said he asked Doug Kemper of the Colorado Water Congress (CWC) if he would invite CWCB Director Becky Mitchell to the state affairs meeting this coming Monday to walk through the budget items; what will be reduced, what will stay the same, and what will show an incremental increase. He added that it is becoming more complex and harder to track what is going on.

Legislative Consultant discussed the ongoing issue of dredge and fill with the Colorado Department of Public Health and Environment (CDPHE). He said last year the CDPHE thought they were going to run a piece of legislation to affect the whole concept of what is going into the non-federal waters of the state of Colorado. They ran into a lot of opposition and protest due to not having done any kind of outreach to the parties that would be affected. Once COVID came along the bill was scrapped and they thought they would be able to do it through rulemaking through CDPHE, however that didn't go anywhere so they are back again this year and they are once again trying to get it put into statute. Mr. Brown said that there is confusion as to what exactly it is that they want to do and more confusion over what the exactly the need is for it. CDPHE has attempted to find sponsors and have been unsuccessful. Rep Arndt said she was skeptical about what they wanted to do and suggested that they might have a rough going in the agriculture committee. Mr. Brown expressed that with her leaving he is unsure what it will do to the dynamic. He stated that he spoke with Doug Kemper and he is thinking about putting together an oversight committee under the CWC to get a broad spectrum of interest into this dredge and fill issue and turn it into a working group. Mr. Brown commented that he feels a working group is a good idea.

Director Colon asked Mr. Brown if there is any funding for the dredge and fill. Mr. Brown answered that he received the same information but is unsure. He stated that it goes back to his observation regarding the budget and that we just don't know where the money is actually going and that is why he wants to get congress to delve more deeply into those numbers. He added that it would affect the Department of Health more than the Department of Natural Resources, so it is important to investigate. He said there is a Zoom meeting planned for tomorrow with the people who have been tracking this the past several months and he will ask the question and get back to Manager Scanga on the results.

Manager Scanga asked if there is a constituency pushing for the Dredge and Fill besides the bureaucrats? He said he does not see a need for it at this time. Legislative Consultant Brown said the Department of Health feels the most compelled to move forward with it and some environmental groups as well. He said it is not clear that all the environmental groups have joined and that the Nature Conservancy has raised some concerns about it and indicated at the last water congress meeting that they are not a part of the effort.

COMMITTEE REPORTS

None

RESUME REVIEW COMMITTEE

No Monthly Resume

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MANAGER'S REPORT – Terry Scanga

Manager Scanga announced that the Director Vacancy Appointments are due to go before Judges by May 1, 2021.

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

Engineer Manera updated the board on current water cases, stating that there has not been any recent engineering needed or completed in the past month.

He explained to the Board, referencing PM Goodwin's report regarding the engineer work being done on the Ice Lake spillway design. He said there is not much of an outlet but essentially a concrete channel through the dam with approximately 1.6 feet of usable water depth, which he originally thought made it a non-jurisdictional dam. Engineer Manera further explained that dam safety in the state of Colorado is overseen by the Division of Water Resources and there are dam safety rules and regulations and a non-jurisdictional dam falls outside of those rules and regulations.

Engineer Manera shared with the Board the criteria for a non-jurisdictional dam. The three criteria consist of:

- A reservoir capacity of one hundred (100) acre feet or less
- A surface area of twenty (20) acres or less
- A jurisdictional height of ten (10) feet or less

Mr. Manera stated the Ice Lake dam structure is under 100 acre-feet, considerably under 10 feet of depth at only 1.6 feet, however, the lake is 35 acres, making it a jurisdictional dam falling under State rules and regulations. He said he has been in contact with the dam safety division and he thinks that although it is a jurisdictional dam, because the water depth is so narrow there is little flood hazard downstream if the dam were to break or start to breach. Engineer Manera explained that the hazard rating of the dam determines the level of the inflow design flood that the spillway design. The hazard rating must be determined before proceeding. Mr. Manera stated that he has completed the preliminary analysis and the existing spillway is only approximately 3-4 feet wide and should pass design flood for tight dams. He further explained that the height of the jurisdictional dam, center of dam to high water line, and the high-water line is controlled by the spillway elevation. He said that jurisdictional height (10 feet) triggers more jurisdictional status than the other two criteria.

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

- Developments: Closure on the purchase of 0.18 cfs from Gary Ludwig and an amendment to Application has been filed. The UAWCD revised draft ruling is due the end of April and opposer comments are due the end of June.
- Status: Before the Referee

18CW3076: Augmentation Expansion

- Developments: There are ongoing settlement discussions with remaining opposers and participation in Status Conference.
- Status: Before the Water Judge. A trial is scheduled to begin May 25 with multiple pre-trial deadlines between now and the next Board meeting, (draft witness and exhibit lists, draft trial management order, trial brief).

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

- Developments: First expert meeting and continued settlement discussions with opposers.
- Status: Before the Water Judge. Trial is scheduled to begin October 25, 2021

Applications UAWCD is opposing-

19CW3061: Application of Tom Smith

- Developments: Received revised proposed ruling from Applicant.
- Status: Before the Referee

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Executive Session: 2:25pm

Upon motion by Director Goodwin, seconded by Director French, the Board approved going into an Executive Session pursuant to C.R.S. 24-6-402(a)(b) and (e), for the purpose of a conference with the attorney for the Water Activity Enterprise to receive legal advice regarding Case No. 18CW3076 and to determine positions relative to matters that may be subject to negotiations, to develop strategy for negotiations and to instruct negotiators regarding potential settlement of remaining opposition in Case No. 18CW3076.

Reconvene from Executive Session: 2:44pm

Upon motion by Director Goodwin, seconded by Director Telck the Board unanimously approved to end the executive session and reconvene to District Board Meeting.

Upon motion by Director Goodwin, seconded by Director Hilderbrand, the Board unanimously approved the proposed stipulations between UAWCD, acting through the Water Activity Enterprise and Highland Land & Cattle in Case No. 18CW3076.

CHAIRMAN AND DIRECTOR REPORTS

Director Felt stated that during a prior Colorado Water Congress (CWC) meeting it was reported that there is a deferential between snowpack and projected stream flow. He said the issue of moisture and ground water recharge is pretty significant right now. Mr. Felt added that the report indicated a projected 85% of stream flow based upon current snowpack regarding native flows in the Arkansas River.

NOTICES & MEETINGS

None

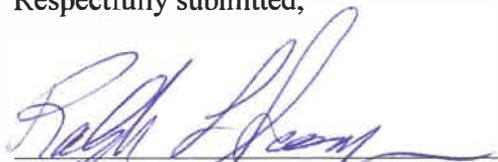
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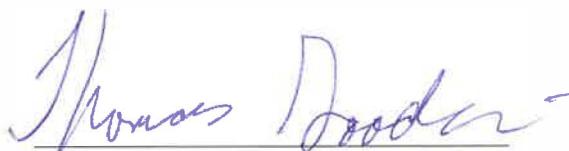
There being no further business to come before the Board or Enterprise and upon motion by Director Donley, seconded by Director Colon and approval of the Board, the meeting adjourned at 3:50 pm.

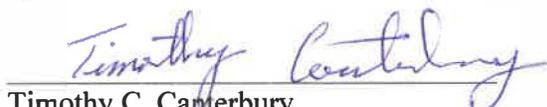
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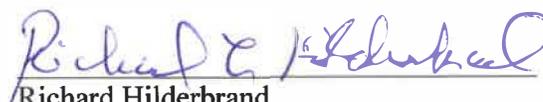
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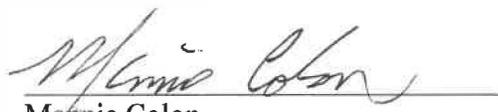
Respectfully submitted,


Ralph L. Scanga, Jr., General Manager


Thomas Goodwin, Treasurer


Timothy C. Camerbury


Richard Hilderbrand


Mannie Colon

absent - no signature
Franklin J. Moore


Robert B. Donley


Warren Diesslin

approved remotely - no signature
Gregory W. Felt


Tim Payne


Tom E. French


Tony Telck


Brett A. McMurry

approved remotely - no signature
Mike Shields