

**UPPER ARKANSAS WATER
CONSERVANCY DISTRICT**

Regular Meeting of the Board of Directors

**May 12, 2022
1:30 P.M.**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, May 12, 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 May 11, 2022, at the offices of the Upper Arkansas Water Conservancy District, 339 East Hwy 50, Salida, Colorado.

DIRECTORS PRESENT (IN PERSON)

Gregory W. Felt (acting Chair)	Mannie Colon	Albert Eggleston
Tom French	Robert B. (Bill) Donley	
Thomas Goodwin	Brett McMurry	
Rich Hilderbrand	Tony Telck	

DIRECTORS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Tim C. Canterbury
Tim Payne
Mike Shields

DIRECTORS ABSENT

Franklin J. (Jay) Moore, (Honorary)
Warren Diesslin

DISTRICT OFFICIALS/STAFF MEMBERS PRESENT

Ralph L. (Terry) Scanga, General Manager	Chris Manera, Engineer
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
Richard Brown, Legislative Consultant

DISTRICT OFFICIALS ABSENT

Jord Gertson, Hydrologist

STATE OFFICIALS PRESENT

None

STATE OFFICIALS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Will Scott, Water Commissioner District 11
Dan Henrichs, Water Commissioner District 12

STATE OFFICIALS ABSENT

Brian Sutton, Augmentation Coordinator
Bill Tyner, Division Engineer

EX-OFFICIO REPRESENTATIVE PRESENT

Tom Flower, Custer County Commissioner

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

None

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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 CONFERRNCING)

Joe Stone, Heart of the Rockies Radio News
Joel Benson, Town of Buena Vista

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 April 14, 2022

The minutes of the meeting of April 14, 2022, were approved upon motion by Director Colon with second by Director Donley.

FINANCIAL REPORTS

Upon motion by Director Goodwin with second by Director Telck, the Board approved the monthly financial reports dated April 30, 2022.

PROGRAM PRESENTATIONS

None

EX-OFFICIO REPORTS

There were no ex-officio reports

PROJECT MANAGEMENT REPORT- Gracy Goodwin

Project Manager Goodwin gave a brief update on the District's Lake Ranch and Poncha Springs Water infrastructure and water management tour during the Arkansas River Basin Water Forum (ARBWF) last month. She presented a short overview of the tour and expressed how impressed she was with how well the presentation went and the decent turn-out of interested parties particularly due to the high-winds experienced that day.

Mr. Flower asked if the Round Mountain Project proposed reservoir site is still in the works? PM Goodwin stated that nothing has changed on the location for the project.

CONSULTANT REPORT – Richard Brown

A current Legislative Update was provided to Board members for review.

Consultant Baker commented on the fire suppression bill, SB22-114 and summarized the process for approving the bill while giving a brief history and legislation of water in the Upper Arkansas Basin. Mr. Baker also explained historical consumptive use. He expressed his issues with the bill and the negative impacts.

Legislative Consultant Brown touched on several items in his Legislative Report. He said that adjournment *sine die* ended at midnight, Wednesday, May 11.

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Mr. Brown expressed that the biggest issue he has with the fire suppression bill is that it paralyzes the State Engineer. When the State Engineer receives a request from a county, the State Engineer would be statutorily barred from issuing an order for the pond to be drained or backfilled unless the dam presents a public safety issue. Mr. Brown explained that the bill states that the State Engineer can only approve ponds that meet certain statutory criteria, such as that any number of ponds may be designated if none are greater than 6 acres in surface area and the aggregate number of surface acres in each county does not exceed 30 acres. He added that the State Engineer took no position on the legislation.

Legislative Consultant Brown reported that the Colorado Water Conservation Board (CWCB) put a hard stop on the Demand Management concept. He said they are not pursuing it at all pending a lot of developments with the upper basin states.

Mr. Brown informed the Board that he will be putting together a final report on major legislation that was enacted.

Consultant Baker asked why the promoters of the fire suppression bill are so reluctant to use augmentation water and allow augmentation? Mr. Brown explained that several attempts were made to amend the bill to establish a preference for augmentation. He said that the Colorado Counties (CCI) who are promoters of the bill, flat out rejected it without discussion or a chance to present it. Mr. Brown stated that the two arguments given were that some of the areas with ponds didn't have water available for augmentation and that even if there was water available it was too expensive. He added that Senator Simpson made a valid point in the beginning stating that water/augmentation isn't cheap for anyone. Mr. Brown further expressed that legislation is throwing millions of dollars into wildfire related issues and watershed protections and his argument was that it would not be that difficult to dedicate some of those millions of dollars to assist a county experiencing financial stress in order to do a plan of augmentation. He said that the idea was dismissed without further discussion or explanation. Legislative Consultant Brown said his biggest concern was the huge support for this legislation from large water entities in Colorado and powerful water user organizations throughout the state that testified in support of the legislation knowing that it was a complete override for any controls over out of priority diversions.

Atty Burgemeister stated that when the sports gambling tax was legalized there was a tax associated with it that was ear-marked for demand management. He asked if it was broad enough that if demand management goes away there might be a pool of money available for other projects such as projects the UAWCD might be interested in?

Mr. Brown said that it was structured so a portion of those revenues would go into funds the state planned. He expressed that he is unsure if the demand management concept would affect the money that goes to the CWCB for the state plan.

Vice Chairman Felt clarified that the concept of Demand Management was shelved but not killed and was a unanimous decision made by CWCB. He stated that funding was for implementation of the Colorado Water Plan and demand management would fall within that plan. He added that Colorado was so far ahead of Utah and Wyoming in looking into demand management that there was no point in expending more resources until the other states caught up. Mr. Felt expressed that there was a lot of skepticism from board members about how to move from a theory to practicing the concept. He reiterated what Mr. Brown stated regarding the large amount of funding for the project. Vice Chairman Felt said that it hasn't been permanently done away with, but it is on a hard pause.

Director McMurry stated that concerning the fire suppression bill and being a property and water rights owner he was informed by the Chaffee County fire protection and Park County Fire Protection that if a fire breaks out he has no property right to stop the fire department from using his water to put out fires and with the proposed use of ponds for fire suppression he said he feels he should be able to charge the county for use of his water. He asked if that is what is being proposed in the bill? Mr. Brown stated that he doesn't think the pond changes ownership but will be designated by the county to be used for the replenishment of firefighting equipment when necessary. He added that there is a provision that if private properties adjacent to the pond might need to be crossed or accessed in order for the fire

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department to get to the pond, the county will need a written approval from property owners. Mr. Brown further added that he believes whoever owns the pond still retains ownership of the pond.

Atty Burgemeister stated that he feels no owner of a pond is going to allow the pond to be designated unless they are okay with the idea that maybe once every 20 years the fire department comes and takes 5000 gallons of it. He expressed that he doubts whether monetary compensation would become a problem. Atty Burgemeister clarified for Director McMurry that there is nothing in the bill that changes it from a legal standpoint and technically an owner is entitled to compensation if someone comes and takes water without this legislation. He added that water will be taken from the most practical location and historically, people have just let counties use their water because of the public benefit and no legislation was ever needed.

Manager Scanga stated that there is no prohibition against charging for use of water for a fire. He reiterated that historically no legislation was required, and most people understand the benefit of being able to use an existing water source to protect adjacent properties. Mr. Scanga stated that the UAWCD has always donated the use of the District's water and there have been one or two instances where water was leased for firefighting use. He added that the difficulty is the logistics and having the water in the right place at the right time for the fire.

Director Payne stated his concern with this legislation setting a precedent for out of priority diversions. Mr. Brown noted a decreasing grasp of water law in the legislature and expressed that as we lose more senior people in agriculture it becomes more centered on urban and suburban areas not in their frame of reference which creates a lack of understanding about out of priority diversions and plans of augmentation. He stated that his biggest concern is the lesser commitment to overall water law and the whole concept of prior appropriation within the water community itself which is a reflection of urbanization of water providers and fewer people that have a firm grasp of irrigation and water rights. Mr. Brown added that there seems to be more willingness in the water community to be mostly focused on what they want and the willingness to sacrifice the institutional structure.

Legislative Consultant Brown stated he works with The Colorado Civil Justice League that watches liability issues and within this group is a working committee made up of attorneys who specialize in amicus filings with the court of appeals and State Supreme Court that monitor all the District Courts throughout the state of Colorado for identification of any problematic decisions that come out of trial courts. He suggested creating a similar type of surveillance network to be aware of what is being filed and coming out of the water courts instead of waiting for things to hit the Supreme Court.

Director Felt expressed that he concurs with Mr. Brown's description of the committee hearings and said he was stunned by some of the questions and comments made by legislators on specialized committees that revealed an ignorance and misunderstanding of the basics of water law.

COMMITTEE REPORTS

None

RESUME REVIEW COMMITTEE

The April Resume was not available at time of meeting.

MANAGER'S REPORT – Terry Scanga

A Manager's report/memorandum was available for all Board members to review prior to meeting.

Wenke Pond

Manager Scanga explained the District's agreement with Mr. Wenke is evaluation of the pond/structure as a source of augmentation water storage for use above the Taylor/Grape Creek Confluence in Case No. 18CW3076. He stated that the District will need to file an application in this case to add this structure as a source of water and the Board will need to authorize the filing. Mr. Scanga added that eventually, he anticipates partnering with Round Mountain on its new proposed reservoir for an additional and more robust source for this reach. He requested action from the Board to authorize the District's legal staff to

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file an application to add the Wenke Pond as a source of water to Case No. 18CW3076 to be filled by exchange from water already owned by the District.

Director Donley asked how the pond is filled? Engineer Manera explained that the pond is fed by a small stream from a spring. He said it is a surface type tributary adjacent on east side of Grape Creek. Engineer Manera stated that the pond is 2.2 acres when full and approximately 10 feet of depth. He further explained that the plan would be to install an Agri-drain and outlet valve so that water from the pond could be maintained at a certain elevation by stop logs in the drain to control the elevation in the lake and with discharges straight into Grape Creek.

Engineer Manera clarified for Director Donley that before the pond existed there was a small tributary running into Grape Creek. He further clarified that the pond was built in the 1970's and is currently under administration and part of an agreement with Mr. Wenke. Manager Scanga said that Mr. Wenke was required to augment the pond in order to make it legal. He added that part of the agreement with UAWCD was to pay a certain amount of money in exchange for storage. Manager Scanga explained that the pond is filled under legal exchange.

Director Shields provided further clarification for Director Donley on the location and brief details about the creation of the structure.

Upon motion by Director French, seconded by Director Colon, the Board approved the filing of an application to add the Wenke Pond as a new source of water in Case no. 18CW3076. All Directors voted "Aye" except Director Donley who opposed the motion.

Buena Vista Water Agreement:

Manager Scanga explained the Buena Vista Agreement stating that since 2006 the District has worked with Buena Vista to develop several integrated water supply plan agreements. He said that we provide up to 10 acre feet of storage in Cottonwood Lake, augment their well number three for over 30 acre feet per year for a combination of public field irrigation and domestic uses, and are working together for a renewed U.S. Forest Service SUP for Cottonwood Lake to enable the use of usable space within the reservoir that is not currently cited in the existing permit and additional space that would become available with a new spillway and outlet structure. Manager Scanga further explained that Buena Vista is interested in a long-term integrated water supply plan wherein UAWCD would provide as much as 50 acre feet of additional future augmentation. He said that this would be augmentation with impacts to the Arkansas River and currently we are developing a draft agreement to accomplish this further integrated planning which will help both Buena Vista and the District meet water needs on the Cottonwood drainage.

USGS Groundwater Studies:

Manager Scanga reported that Vice Chairman Felt informed him of available funding in Chaffee County for a groundwater resiliency study. He said Chaffee County is interested in the study due to significant growth in the area and concern over available groundwater resources. Manager Scanga mentioned in his memo other studies the District has completed in past years. He explained that one of the more recent studies conducted by USGS hydrologists quantified annual contributions to ground water using a method using a water balance study that assessed the annual gains of base flow in the Arkansas River. The study indicated that the average is between 107 and 140 thousand acre-feet per year. Manager Scanga stated that is as close as you will get in water balance to how much water becomes available in the groundwater in the alluvial area of Chaffee County. He said an additional concern of the county is that those studies are close to 10 years old and they would like to get a more current status and maybe apply scenarios of increased demands on the watershed and reduction in supply due to potential changes in the hydrology. Manager Scanga further stated that Chaffee County has contacted him and is interested in participating with funding to determine what we have collectively learned from the 2005 and 2014 reports, specifically if the results from these studies are still valid today, or if conditions have changed as well as what is the impact on water supplies and demands in the Granite to Wellsville region of the Upper Basin? He suggested that the District move forward with Chaffee County to learn more about what the aquifer looks like and what kind of sustainability and resiliency it might have. He further suggested to develop some water supply scenarios based on three hypothetical events: unanticipated reduced supply, greater than past anticipated

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increases in demand, and a combination of both. Manager Scanga said he has contacted Suzanne Paschke, Associate Director for Hydrologic Studies of USGS, to set up a meeting between the District and Chaffee County to discuss further.

Vice Chairman Felt stated that one of the mitigation measures with Blue Triton Brands' 1041 renewal permit included a \$90,000 upfront payment to Chaffee County for groundwater sustainability study as well as \$10,000 a year for the next 9 years. He said the county is committed to leveraging that money with grant money and possible grant money acquired from UAWCD. He added that there is enough money to move forward with the studies.

Director Hilderbrand asked if there are studies that cover the Fremont County area and is it possible for Fremont to be included in the study? Manager Scanga stated that USGS concentrated mountain front and head water areas where most of the water comes from. He added that a lot of the water resources in Fremont County flow out of Chaffee and Custer counties.

Manager Scanga clarified that before moving forward on anything there needs to be discussion with USGS to inform them of what the District and Chaffee County is looking for to put together a scope of work. He said that once the scope of work is available, then there will be a better understanding of what entities will be able to utilize the report from the study.

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

Engineer Manera gave a brief update on current projects and stated that there has been substantial progress on the Cottonwood Lake dam design.

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.

Atty Burgemeister stated that the Cherry Creek Exchange Decree was finally entered and the case closed and no significant developments on other applications.

He said there were some comments received from the CWCB on the 04CW96 exchange. Atty Burgemeister explained some technical errors in some of the descriptions of the exchange terminology from the original decree. He said they included in the application the technically correct description. He added that there is a water court rule that states you cannot combine a diligence application with any other type of application so a combined application for diligence plus change of point of diversion without first filing the application and then gaining permission from the Court to combine them. He said it was discussed at the last status conference filing an amended application that includes a claim to correct the points of diversion and most likely re-publication would not be required.

Atty Burgemeister reported that an extension was granted for responses from the UAWCD until July 20, 2022, the Change of Cottonwood Irrigating Ditch Case No. 19CW3089 and opposer comments have been received.

Atty Burgemeister reported that he has been communicating with CCI and State Engineer's office working on amendments to the fire suppression bill, SB22-114.

Atty Burgemeister gave a brief update on the fisherman case, Hill vs. Warsewa, stating that the Court of Appeals ruled for and against Mr. Warsewa. He stated that the Court ruled that he doesn't have standing to bring an action to declare that the state of Colorado owns the banks of the river or to seek a declaratory judgment that when he fishes on the river, owners do not have a right to kick him off because it is navigable. He further stated that he is unsure if the state will petition the Supreme Court to review the decision of the Court of Appeals.

CHAIRMAN AND DIRECTOR REPORTS

Several comments were made from Board members regarding the 2022 ARBWF.

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NOTICES & MEETINGS

None

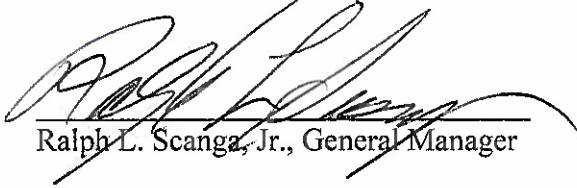
ADJOURN

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 2:54pm.

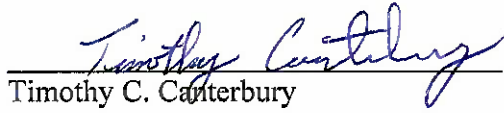
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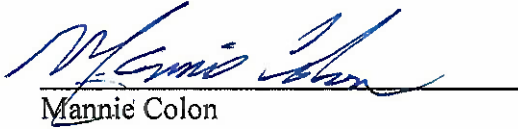
Respectfully submitted,


Ralph L. Scanga, Jr., General Manager

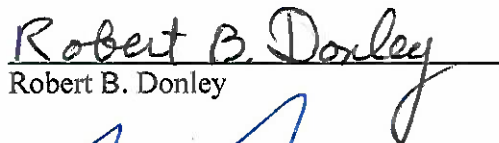

Thomas Goodwin, Treasurer

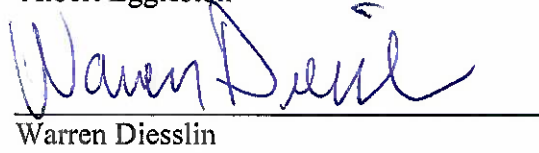

Timothy C. Canterbury

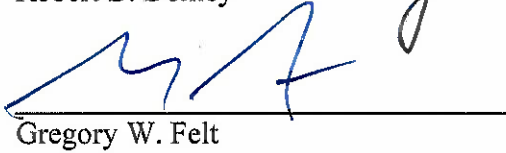
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Richard Hilderbrand


Mannie Colon

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Albert Eggleston


Robert B. Donley

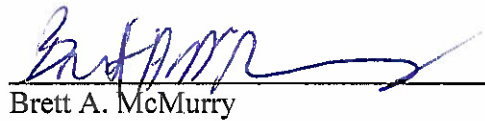

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