

**UPPER ARKANSAS WATER  
CONSERVANCY DISTRICT**

**Regular Meeting of the Board of Directors**

**June 11, 2020  
1:00 P.M.**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, June 11, 2020, commencing at 1:00pm 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 June 10, 2020 at the offices of the Upper Arkansas Water Conservancy District, 339 East Hwy 50, Salida, Colorado.

**DIRECTORS PRESENT**

Franklin J. (Jay) Moore

**DIRECTORS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)**

Tim Payne	Brett A. McMurry	
Robert B. (Bill) Donley	Thomas Goodwin	
Tom E. French	Gregory W. Felt	Timothy C. Canterbury
Richard Hilderbrand	Mannie Colon	Tony Telck (Joined -1:19pm)
Warren Diesslin		

**DIRECTORS ABSENT**

Mike Shields

**DISTRICT OFFICIALS/STAFF MEMBERS PRESENT**

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

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

Kendall K. Burgemeister, Attorney	Chris Manera, Engineer
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**DISTRICT OFFICIALS ABSENT**

None

**STATE OFFICIALS PRESENT**

None

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

Tom Flower, Custer County Commissioner

**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  
Philip Puckett, Buena Vista Town Administrator  
Bob Hartzman, Canon City Water Superintendent

**GUESTS PRESENT**

Joe Stone, Heart of Rockies Radio News  
Cheston Hart, Hydrographer, Colorado Division II water resources

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### **PLEDGE OF ALLEGIANCE**

Chairman Canterbury led attendees in the Pledge of Allegiance.

### **INTRODUCTION OF GUESTS**

Guests were asked to introduce themselves.

### **OATH OF OFFICE FOR NEWLY APPOINTED DIRECTORS**

Director Payne was re-appointed to a new 4 year term representing Division 5, Seat A, Fremont County School District RE-1. He took the oath of office earlier in the week at the District Office since he would not be physically present during this meeting. He was congratulated by the board for his re-appointment.

### **ELECTION OF OFFICERS**

Election of Officers: Chairman, Vice Chairman, Secretary, Treasurer, & Assistant Secretary-Treasurer

Manager Scanga pointed out to the board that he has listed the current officers in the agenda for convenience. They are as follows:

Chairman – Tim Canterbury

Vice Chairman – Greg Felt

Secretary – Tom French

Treasurer – Tom Goodwin

Assistant Secretary-Treasurer – Terry Scanga

Re-Appointment of Enterprise Committee – All directors, Consultant Baker, & GM Scanga

Director Payne made a motion to leave officers as is and this motion was seconded by Director Donley. This motion was unanimously approved by the board.

Chairman Canterbury introduced Jennifer Scanga, the new District Secretary to replace Kimberly Griffin.

***THE BOARD OF DIRECTOR MEETING RECESSED AT 1:04PM***

***MEETING RECONVENED AT 1:22PM***

### **MINUTES OF THE MEETING OF May 14, 2020**

The minutes of the meeting of May 14, 2020, were approved upon motion by Director Felt with second by Director Hilderbrand.

### **FINANCIAL REPORTS**

Upon motion by Director Goodwin with second by Director Telck, the Board approved the monthly financial report dated May 31, 2020.

### **PROGRAM PRESENTATIONS**

None

### **EX-OFFICIO REPORTS**

There were no ex-officio reports

### **PROJECTS MANAGER REPORT-Gracy Goodwin**

Project Manager Goodwin presented the projects update pertaining to grants in progress. Goodwin referenced the Feasibility study for the Deweese Storage Feasibility project stating that the survey would be completed within the next week and the need to schedule an assessment meeting with stakeholders. Goodwin commented on the Ice Lake Project and discussed submitting a progress report in June for reimbursement for the grant and the design being finalized for the outlet structure. Director Payne requested that Project Manager Goodwin present an update on the Water Balance Phase 2 study to the Fremont county commissioners sometime this summer. PM Goodwin ended by speaking of possible new grants for Round Mountain and the Mesa McKenna Mutual Ditch Piping Project.

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### **CONSULTANT REPORT – Ken Baker**

Consultant Baker summarized the proposed legislation regarding the State Dredge and Fill Water Program. Baker reported that the proposal is part of a larger political scheme connected with the new federal rule with respect to Waters of the United States “WOTUS”. He spoke about how the Bill establishes a State Dredge and Fill permit program in the Colorado Department of Public Health and Environment “CDPHE” to protect state waters that would not be otherwise protected by a federal permitting program. A letter from the Colorado Water Congress addressed to the house Speaker asking to delay the Dredge and Fill legislation was attached to Consultant Baker’s report for directors to review.

Consultant Baker reported about an action by the Colorado Attorney General published by a local newspaper – The Mountain Mail. Manager Scanga responded to the staff writer on the publication, advising that he had included information in his article about past US Supreme Court rulings that were not accurate but in fact the rulings were the opposite of what he had written. The writer stated that this was a comment made to him from the State AG’s office. Manager Scanga stated this is important because the new promulgation of rules in the Federal Register clearly state and elucidate the decisions of the Supreme Court over the course of nearly 50 years and these decisions underpinned the new WOTUS definitions promulgated in the Register. The staff writer will be following up on it.

Manager Scanga commented that we do not need a new dredge and fill bill. He expressed that many activities that do not require a permit under WOTUS would now be required under the new Colorado Bill and if it indeed were enacted, would put a strain on agriculture in Colorado. Manager Scanga suggested that board members read the federal register on the reason for the change of the WOTUS definition and Colorado’s adoption of regulations under CDPHE. Manager Scanga believes the new WOTUS definition will be a huge sigh of relief for water users in Colorado. Director Felt interjected clarifying that the executive order is from the administration regulatory body and not from Congress. Manager Scanga agreed.

Consultant Baker summarized an article written by Gregory J. Hobbs (now Justice Hobbs) featuring the history of the 1969 Water Rights Determination and Administration Act. Consultant Baker explains that the “69 Act” has a special meaning to the Upper Arkansas Conservancy District. Baker continued to discuss how the Board Members of UAWCD decided to develop an Augmentation Plan a few years after the organization began under the rules and guidelines of the “69 Act”. Then the State of Kansas commenced an action against the State of Colorado, asserting that the State Water Engineer was administering the diversion of waters of the Arkansas River in violation of the 1948 Kanas-Colorado Compact. Consultant Baker cited the University of Denver Law Review that highlights the 69 Act and encouraged the Directors to review this and also the District’s brochures that explicate the current District’s projects and activities.

Another point of discussion Consultant Baker summarized was an article included in his report written by Christine Arbogast and Patrick O’Toole of the National Water Resources Association, “NWRA”. Baker reflects on the message in the article stressing the importance of water during a national crisis, such as the coronavirus and the importance of water infrastructure as a powerful investment in our economy, communities, and health.

### **COMMITTEE REPORTS**

None

### **RESUME REVIEW COMMITTEE**

Case number 20CW2030 regarding the Angel View subdivision in Lake County was briefly discussed and the committee concluded this case was not of concern to the district. There were no other cases of concern to the committee.

### **MANAGER’S REPORT – Terry Scanga**

### **Lake County Augmentation Administration**

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Manager Scanga has been communicating with Commissioner Mudge from Lake County to proceed with development of an augmentation administration service agreement for Lake County's umbrella augmentation plan. Manager Scanga asked Attorney Burgemeister to review the decree and get an idea about an administrative service plan for Lake County. Manager Scanga stated that since the Lake County decree is complex it will take time to review the decree and put together a structure and plan. He suggested creating an agreement upfront for the services for review and then a more detailed agreement once we have an administrative plan concept. Director Felt commended and thanked Manager Scanga for working with Lake County and Commissioner Mudge. Director Felt said it was a great first step.

### **Augmentation Database**

Manager Scanga gave an update on the new Augmentation Database he has been working on with Kirk Kennedy for the past several months. He stated that the current augmentation database is based on Excel and the scripts are written in Visual Basic. He characterized it as a souped up hybrid spreadsheet and that the new database will be a more powerful system than the current one. The current database runs on a visual basic platform with an excel spreadsheet but has a limitation size which causes problems. Manager Scanga said it should be completed by the end of summer. Director Colon requested clarification on the new database. Manager Scanga explained that visual basic is part of the scripting in Excel.

### **South Arkansas River Stream Management Plan**

Manager Scanga's final topic was The South Arkansas River Stream Management Plan being proposed by ARWC, the Upper Arkansas "Soil" Conversation District, and River Science. Manager Scanga stated that these types of plans fall more under stream restoration or enhancement, instead of stream management and that the District operates their augmentation plan, exchanges, and raw water accounting with extensive telemetry and gaging stations on the South Arkansas. Manager Scanga believes that as a District whose responsibility is to protect water rights, we do not want to see the flows attenuated especially during peaks of flow, when junior water right owners come into priority. If those peak times are changed or delayed, it would injure junior water rights. Also, Manager Scanga expressed how onstream pools/ponds built to attenuate flows, cause depletions by creating more surface area which increases evaporation. He gave a specific example of a stream enhancement project at Friend's Ranch that damaged a District gaging station and an on stream pond on the North Fork of the South Arkansas that required augmentation after an enhancement project.. GM Scanga agreed that putting one little pool here or there for the fishery might not have much impact, however, when many pools or changes are made to the stream, it will cause depletions on the system. Scanga added that changes that can cause impacts are planting willows along the banks since they consume more water, as well as any structural interference. Manager Scanga stated that he understands how some stream restoration work could have benefits but his concern is on the effect of water rights.

Manager Scanga goes on to explain reasons for push backs and ARWC's interest in working with the Upper Arkansas "Soil" Conservation District. Manager Scanga explained why the Soil Conservation District was originally created and their original objective. Those concerns were expressed at the recent Arkansas Basin Round Table meeting regarding the so called stream management and restoration plans. He continued that restoration plans should not be done without taking important first steps and a prior full evaluation to check for potential impacts before any funding of such projects. Director Felt stated that he would like to explore some questions he has and would like to engage Engineer Manera to gain clarification about attenuating flows and the impact it has on the stream.

A further discussion ensued regarding ARWC's process of including the district in these types of stream management projects. Manager Scanga detailed the process that grants go through including a needs assessment review for some types but that it is not required for Water Plan Grants. Chairman Canterbury commented that the district should continue to work with ARWC and for Project Manager Goodwin to be the lead and address any concerns to her. Also discussed was limited grant funding this year and the need to prioritize what type of projects receive funding. Manager Scanga stressed the importance of staying on top of it. In response, Director Colon expressed his opinion that the Arkansas Basin Roundtable has \$400,000 of funding remaining and that he believes infrastructure projects should carry a heavier weight for funding priority.

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

Engineer Manera brought up two items for discussion. The first item was a follow up to Project Manager Goodwin's DeWeese enlargement feasibility study. He states that a report has been completed in draft

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form and a more detailed report will be completed in the near future. Engineer Manera also discussed a key point to the structure of a dam; IDF- Inflow design flood - the design spillway and freeboard required to pass inflow.

Mr. Manera discussed the new State Dam Safety Regulations. He discussed a key point to the structure of a dam; IDF- Inflow design flood -the design spillway and freeboard which needs to be sufficient enough to pass flood event inflows.

Second topic of discussion by Engineer Manera was the Cottonwood Irrigating Ditch Change Case "CID". Engineer Manera showed a diagram of the Cottonwood Irrigating ditch and the water rights by priority. The diagram showed the change amount of being 68% of Ludwig original ownership. Engineer Manera also showed models of the return flows and how they go back to the Arkansas and not Cottonwood Creek. The model showed where augmentation takes place and where the district owns water rights on Cottonwood Creek. The recommendation presented by Engineer Manera is an augmentation station at the historic diversion point with ditch loss to remain in the ditch and the net return flow and the consumptive use portion returning to Cottonwood Creek. He also pointed out the Historic Use Analysis for the interest of UAWCD as a consumptive use of 23.12 acre-feet per year.

Engineer Manera also discussed the Bypass limitations, stating that historic return flows are the function of the Bypass Diversion and quantified CU. The quantified return flows are owed to the Arkansas River and can be made with other fully consumable water available to UAWCD from sources on the main stem.

Director Colon directed a question to Director McMurry asking if he had any irrigating ditches off of Cottonwood. Director McMurry answered with no, he did not. Director Colon then asked McMurry if he was in support of the District's interest in the Cottonwood Change Case, to which Director McMurry answered with a firm yes in support of the change case.

Director Hilderbrand asked for clarification on how the 68% was calculated. Mr. Manera clarified the 68% is the portion of the Ludwig ownership that represents the interest transferred to the District.

Manager Scanga asked the question of Engineer Manera if there was a possibility of storing water from the Ludwig CID change in the Silver Creek Ronk alluvial storage fields. Engineer Manera said it was a definite possibility and could be done.

### **LEGAL REPORT – Law of the Rockies, Kendall Burgemeister**

Opposition updates and transactional matters are included in the Law of the Rockies legal report in the Board's binders

Attorney Burgemeister reported on developments in two cases for UAWCD.

The first case, 19CW3089: Change of Cottonwood Irrigating Ditch is scheduled for a status conference on August 28. This is in response to the consultation report on May 29, 2020.

The second case, 18CW3076, The Augmentation Blue Line Expansion.

Attorney Burgemeister discussed two new Stipulations to the Augmentation Expansion case. These stipulations are Southeastern Colorado Water Conservancy and Round Mountain Water and Sanitation District.

The proposed decree regarding Southeastern, explained by Attorney Burgemeister, includes terms and conditions to protect the Upper Arkansas Voluntary Flow Management Program, VFMP. UAWCD's agreement provides for augmentation releases from Pueblo Reservoir to be curtailed when the Bureau of Reclamation is making VFMP releases and make augmentation releases from upstream storage sources. Under the agreement UAWCD will be able to utilize the same methods it has historically used to replenish its upstream reservoir storage, which includes exchanges under 04CW96 and reservoir trades with the Bureau of Reclamation of Project Water into Twin Lakes Reservoir. The intent is that the issuance of a final decree will not change such practices and that Southeastern will support those practices in the future.

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Director Felt asked Attorney Burgemeister if we gained extra flexibility with SE and Bureau in terms of getting project water into Twin Lakes? He used the example of taking project water from Turquoise to Pueblo Reservoir. Attorney Burgemeister answered stating, not explicitly in the context of discussion but we got all we were able to with Southeastern, in terms of support and cooperation.

Manager Scanga responded to Director Felt, saying that we could move water from Pueblo Reservoir and by contract exchange/reservoir trade to our storage account in Twin Lakes. Manager Scanga also gave a couple other ways of moving water through a physical or live exchange or a 3-way reservoir trade. Manager Scanga stated that he feels the district is being treated unfairly by Southeastern. UAWCD should be treated differently regarding the VFMP, instead of with boilerplate language on If and When and excess capacity master contracts. He believes that the UAWCD should receive special consideration since our exchanges do not take water out of the basin and there is no recognition for that in these contracts.

Director Felt commented that he supports the boilerplate language. Manager Scanga replied saying, we make an exchange and water doesn't leave the basin so entities that do not take water out of the basin, like UAWCD, the City of Salida, Buena Vista and the Town of Poncha Springs, should be treated differently with language exceptions, since the water is being used to operate their systems more efficiently and therefore should be allowed to make some kind of limited exchange.

Attorney Burgemeister requested a motion on the two stipulations.

Director Felt recused himself from both the Round Mountain and Southeastern stipulation motions because he is a Chaffee County Commissioner and Chaffee County is an objector in the Blue Line Expansion case and he is also a SECWCD Director. Director Goodwin recused himself from the motion on the stipulation for Southeastern District since he is a SECWCD Director.

Director Payne made a motion to move forward with the Stipulation for Southeastern, seconded by Bill Donley, motion was unanimously agreed on.

Director Colon made a motion to move forward with the stipulation for Round Mountain, seconded by Director Goodwin and unanimously agreed upon.

### **CHAIRMAN AND DIRECTOR REPORTS**

Chairman Canterbury brought up a discussion of developing a white paper on district employment practices. Director Payne elaborated that the board would like the district staff to come up with a list of pro and cons of employment policies and practices.

Director Colon made a motion for the district staff to develop a pro/con sheet on employment policies and practices and provide that to the board. This was seconded by Director Payne and unanimously agreed upon.

Director Felt stated his concern that when an entity deviates away from standard policies in tax funded institutions that it casts a negative light on the board. He urged the board members to think about the optics.

Consultant Baker stated that as he developed this district over the years, and there has never been a concern about a person's race, gender, or where they came from and who they were born to. His goal has always been to hire competent people and build a team with great staff and nothing should change that now. He characterized Director Felt's comments as nothing but politics.

### **NOTICES & MEETINGS**

None

### **ADJOURN**

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There being no further business to come before the Board or Enterprise and upon motion by Director Colon, seconded by Director Donley and approval of the Board, the meeting adjourned at 3:32 pm.

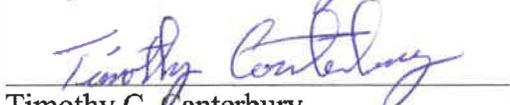
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Respectfully submitted,

  
Ralph L. Scanga, Jr., General Manager

  
Thomas Goodwin, Treasurer

  
Timothy C. Canterbury

approved remotely - no signature  
Richard Hilderbrand

  
Mannie Colon

  
Franklin J. Moore

approved remotely - no signature  
Robert B. Donley

approved remotely - no signature  
Warren Diesslin

approved Remotely - no signature  
Gregory W. Felt

approved remotely - no signature  
Tim Payne

  
Tom E. French

approved remotely - no signature  
Tony Telck

approved remotely - no signature  
Brett A. McMurry

approved remotely - no signature  
Mike Shields