

**UPPER ARKANSAS WATER  
CONSERVANCY DISTRICT**

**Regular Meeting of the Board of Directors**

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

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

**DIRECTORS PRESENT (IN PERSON)**

Tim C. Canterbury	Tony Telck	Brett McMurry
Franklin J. (Jay) Moore	Tom French	Warren Diesslin
Robert B. (Bill) Donley	Thomas Goodwin	
Richard Hilderbrand		

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

Mannie Colon  
Gregory W. Felt (joined late)

**DIRECTORS ABSENT**

Mike Shields  
Tim Payne

**DISTRICT OFFICIALS/STAFF MEMBERS PRESENT**

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

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

Richard Brown, Legislative Consultant  
Denise Sanchez, Office Manager

**DISTRICT OFFICIALS ABSENT**

Jord Gertson, Hydrologist  
Chris Manera, Engineer

**STATE OFFICIALS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)**

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

**STATE OFFICIALS ABSENT**

Brian Sutton, Augmentation Coordinator  
Bill Tyner, Division Engineer

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

Tom Flower, Custer County Commissioner  
Dave Schneider, District Manager, Round Mountain WSD

**EX-OFFICIO REPRESENTATIVES ABSENT**

Brian Berger, Poncha Springs Administrator  
Bob Hartzman, Canon City Water Superintendent  
Dwayne McFall, Fremont County Commissioner  
Michael Patterson, Florence City Manager

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John Roorda, Chaffee County Planning Manager  
Shawn Williams, Buena Vista Public Works Director  
Philip Puckett, Buena Vista Town Administrator

### **GUESTS PRESENT**

Joe Stone, Heart of the Rockies Radio News

### **GUESTS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERNING)**

Joel Benson, Town of Buena Vista  
Mary Hearing, MH Garden Design  
Patrick Hancock, CPA, Hancock Froese & Company LLC  
Sarah Mudge, Lake County Commissioner

### **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 June 10, 2021**

The minutes of the meeting of June 10, 2021  
were approved upon motion by Director Hilderbrand with second by Director Donley.

### **FINANCIAL REPORTS**

Upon motion by Director Goodwin with second by Director McMurry, the Board approved the monthly financial reports dated June 30, 2021.

### **ANNUAL AUDIT REPORT**

The Annual Financial Audit Report was presented by Patrick Hancock CPA of Hancock Froese & Company LLC via WebEx audio/video conferencing. It was the auditor's opinion that the financial statements presented fairly in all material respects the respective financial position of the governmental and business-type activities, and each major fund of the UAWCD as of December 31, 2020, and the respective changes in financial position and as applicable the cash flows for the year.

Director Donley asked why there was an increase in cash? Mr. Hancock explained the increase in revenue is the cause. He stated that total expenditures were comparable to last year with a slight decrease.

Upon motion to approve audit by Director Goodwin, seconded by Director Felt, the Board approved the Annual Financial Audit Report with a vote of "Aye".

Director Hilderbrand asked if the Blue Line Expansion increases tax? Manager Scanga stated it does not change it at all. Manager Scanga stated that the expansion is an asset and the framework in the decree allows us to serve the public better and may create expenses but also increases income. He added that without the net income the District would be unable to purchase additional water and infrastructure to carry out the goal of the District which is to provide water while protecting water rights and maximize the beneficial use of water.

Director Hilderbrand asked if there is an impact to the general fund with the Blue Line Expansion? Manager Scanga stated that there is an indirect increase to the general fund since the expanding area allows more people the opportunity and feasibility to obtain the use of water through the District's augmentation plan (92CW84) and associated decrees and infrastructure that allow individuals to augment at a lower cost. He added that without this opportunity most people would not be able to feasibly acquire water without spending a lot of time and money developing their own augmentation plan.

Director Hilderbrand asked what the mill levy is set at? Manager Scanga stated that it is .473. He added

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that it is very small and that the growth of the District has taken place not because of the general fund but because of the augmentation plan and its administration of the plan throughout the District and what the District has accomplished since 1992 when the first decree was authorized. He said that without this plan growth would not have happened. Atty Burgemeister added that a 30% increase in property value doesn't translate into a 30% increase in general fund however.

### **PROGRAM PRESENTATIONS**

None

### **EX-OFFICIO REPORTS**

There were no ex-officio reports

### **PROJECT MANAGEMENT REPORT- Gracy Goodwin**

PM Goodwin gave a brief update on grants in progress.

She stated that June was the last month of the fiscal year for the Colorado Water Conservation Board "CWCB" and grant reimbursements for Ice Lake were submitted. She added that the Poncha Springs well grant was closed out.

PM Goodwin introduced guest speaker, Mary Hearing from MH Garden Design. She presented the conceptual design plans for the Water Conservation Garden Project. Ms. Hearing joined the meeting via WebEx audio/video conferencing.

Ms Hearing explained that the project aims to create a conservation garden for the public. She said that the project focuses on plants native to the area, minimizing water use in a high desert climate and will have several educational pieces centered around water conservation and utilize strategic partnerships to help demonstrate how using native plants and grasses reduces a water footprint vs. highwater usage of nonnative plants and grasses. She said the planting plan will highlight various planting solutions to localized problems within the surrounding community in regard to deer, loss of native habitat due to monoculture of lawns and urbanization and understanding the microclimate in order to maximize garden success. Ms. Hearing said that the planting plan will locate test plots to be primarily used for research purposes. The areas will be available for strategic partners to showcase or test grass seed mixes, irrigation requirements, and different scientific hypotheses for educational purposes.

Ms. Hearing further explained that she once lived near the gardens and became familiar with the weather and environment. She displayed a vicinity map with a lay out of the project that indicated the various gardens and gave an initial framework. Ms. Hearing said the project is located at Lake Ranch property which is 3 miles north of Salida, Colorado on County Roads 160 and 164 and covers approximately 160 acres at an elevation of about 7,250 feet. She added that the USDA point hardiness zone is between 3 and 4 depending on the year and gets an average of 10 inches of rain per year. Ms. Hearing stated that the 1 acre of fenced plot is in the southeast corner of the irrigated field.

Several photos of the design and type of plants were displayed. Ms. Hearing stated that native plants do not require soil adjustments and the soil in the area is primarily an alkaline clay sand. She added that she wants to show people what works in this dry climate and the most beneficial type of plant for the area.

Ms. Hearing listed the specific, landscape design approaches to be showcased:

**Birds, Bees and Butterflies Garden**

**Decorative and Native Grasses**

**Deer resistant Garden**

**Edible Garden**

**Everything Evergreen Garden**

**Native Mountain Garden**

**Native Prairie and Windy Garden**

**Street Strip Xeric Garden**

**Xeric Garden**

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### Windscreen Garden

Ms. Hearding commented that when coming up with a design, there were several design principals of plants to consider: texture, color, bloom times, spacing, heights, depth, rhythm, form, scale, and variety.

Ms. Hearding went on to explain that water use for lawns and landscapes is one of the greatest burdens placed on our water resources. Landscape water use accounts for 55 percent of the residential water used across the state of Colorado. Using plant species native to our region are guaranteed to reduce the amount of water intake because they are rightly adapted to our native conditions. Working with natives and adapted natives helps reduce water consumption and cultivating restored habitat.

Ms. Hearding stated that most native plants do not need much maintenance and need the most water while being established. She said that the first 3 weeks after planting are the most crucial for sustainability. Once established, water can be significantly cut back.

Ms. Hearding also explained that providing adequate mulch in the form of rock or bark will help maintain soil moisture and helps to keep weeds out of the gardens. She stated that it is important to limit lawn areas which require more water, fertilizer, and maintenance than a landscape with native plants. Lawns also provide no habitat for birds and pollinators whereas natural landscapes provide more habitat and require less water. She displayed photos of various options for rock and gravel.

Ms. Hearding stated that the design is big since it covers several acres and from the access road to the west is the driveway which will be lined with native adapted trees such as Honey Locus, Cottonwood and Crab Apple that require water to become established. She added that after they have become more established, watering will be cut back each year. The driveway leads to a parking lot containing approximately 30 spaces. Ms. Hearding said that one of the requirements is to have an office to be used for maintenance and utilities storage. A weather station and well head will also be located on the property that can be used for educational purposes. Ms. Hearding commented that the main entrance will be on the North side of the building. She added that the design was made very formal so that everything can be viewed all at once and capable of being wandered through to the various gardens.

Director Donley asked Ms. Hearding why she chose the Honey Locus tree, because it typically has a lot of thorns? Ms Hearding explained that this Honey Locus has no thorns and is the perfect tree for this climate and environment since it is a hardy plant that can hold up against early snows and colder conditions without damage to branches.

Chairman Canterbury asked about the cost of the project and if there is an estimated cost? PM Goodwin said cost estimate is the next step after the design stage. She stated that with all the information Ms. Hearding has put together she will be able to determine the total cost including operational costs. PM Goodwin added that the fences and gates are already in place.

Director Donley asked about the water cost. PM Goodwin stated that the next step is to put together a scope of work to determine that. She added that part of the plan is to find local companies/nurseries as potential partners and collect plant donations from various organizations. PM Goodwin said she has many ideas to further investigate.

Manager Scanga stated that this is a big educational opportunity for the District. PM Goodwin provided several educational ideas including irrigation techniques, how a well works and types of alfalfa. Manager Scanga stated that there are many different educational opportunities, but the next step is to get the core established and gather more information.

Director Colon asked if there was a completed project like this somewhere in or out of the State where ideas can be taken from? PM Goodwin stated that there are other conservation gardens and that Northern Colorado Water Conservancy District has a very large conservation garden and she would be happy to reach out to other sources and feels it is a good idea.

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Director Colon made some comments and presented some of his own ideas for the project. PM Goodwin suggested he join the committee so his suggestions and ideas could be heard and utilized. Chairman Canterbury stated that he felt Director Colon had valid questions and concerns and commended Ms. Hearing and PM Goodwin for their work on the design concept and said he thinks it is a great start.

### **CONSULTANT REPORT – Ken Baker & Richard Brown**

Legislative Consultant Brown and Consultant Baker reported on current legislative updates. A copy of Mr. Brown's Legislative Update was provided to Board members prior to the meeting.

Consultant Baker commended Legislative Consultant Brown on an excellent report and stated that he is astounded by the number of bills passed within the current assembly.

He said he is concerned with the governor's drought proclamation and that the lack of run off from snow on any given year historically means that there isn't enough water to supply the adjudicated appropriators who want to divert water. He said the question is to the governor's proclamation and the two new entities developed by the governor concerning the drought. Mr. Baker said that the issue is there is not enough water coming out of the mountain so what are they going to review and what kind of a response will they give to the general assembly to create something to correct the issue?

Legislative Consultant Brown said he does not have an answer for Mr. Baker since it is a new issue. He said that he was able to get a copy of the proclamation and send it via email to Mr. Baker to review. Mr. Brown clarified that Governor Polis has recreated a drought emergency in several counties in the Western slope and that it appears that it may have more to do with qualification for federal assistance for loans or finance and other assistance but isn't specifically laid out in the proclamation. Mr. Brown stated that the governor also gave some direction to the CWCB to form subordinate working groups. Mr. Brown added that he has not had enough time to review it in its entirety, but it is a priority of his to figure out. Mr. Brown speculated that when the Water Resource Review Committee begins later in the summer that will probably be an area where they will get direct input from CWCB, the Department of Natural Resources "DNR" and others. He added the water engineers will probably have quicker access to what is being contemplated at the Department of Natural Resources "DWR".

Director Colon commented that he feels a lot of the pressure is coming from the farm service agency and if the governor declares certain counties to be in a drought then funds can be distributed to people in agriculture that have taken a hit. Mr. Brown said he agrees and speculates that the Joint Budget Committee "JBC" and legislature are still wrestling with how to allocate some of the federal money. He added that he is aware of some concerns of making sure that money goes to the agricultural sector to offset some of the impacts due to drought conditions. Director Colon noted that he received an email showing the allocation of those funds and will forward it to Mr. Brown for review.

Mr. Brown explained that the legislature is in a transition phase and it was the last day for the governor to act on bills. Mr. Brown stated that the governor has signed 14 bills under the general rubric of health care. He said that in the past he has put together a compendium of new enacted laws by topical area. Mr. Brown added with 500 new laws it will be a very cumbersome document so he has broken it down into smaller pieces and will get started next week.

Mr. Brown said that the governor only vetoed 3 or 4 bills this year and he believes none of those bills were of significance to the water community although he will include any bills the Board deems important.

Chairman Canterbury and Director Goodwin expressed their appreciation to Mr. Brown for a well written report and thanked him for his monthly updates. Chairman Canterbury added that he is looking forward to seeing the number of bills that were enacted and those that may affect the District.

### **COMMITTEE REPORTS**

None

### **RESUME REVIEW COMMITTEE**

Nothing of significance for the District in the May Resume.  
The June Resume was not available at the time of the meeting.

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Manager Scanga discussed with the Board a Substitute Water Supply Plan Change Case. He explained that the Colorado Parks and Wildlife "CPW" has approximately 4cfs from South Arkansas Irrigation diverted by the Harrington Ditch. This water irrigates the Kaess Ranch and travels from the South Arkansas River across the Mesa into Adobe Park above the Fish Hatchery. The irrigation on the Kaess Ranch produces return flows which feed springs that supply water to the hatchery. He stated that the water was leased to Preston Kaess by CPW and he irrigated his fields with that water. This Ranch has recently been sold to an individual interested in putting in a housing development. Manager Scanga said that the land has other water rights including the Kennedy Ditch and the Rock Cliff Ditch that arise in a gulch above the ranch. He added that they are typically administered as futile call junior water rights and those have been developed and used through a pivot irrigation system since the late 1970's.

Manager Scanga further explained that the CPW water was used on the land somewhere and the SWSP Change Case proposes to move the location of use to an adjacent piece of property claiming that they can irrigate up to 150 acres based on the duty of water in the decree of 1 cfs to 50 acres, instead of completing an analysis of what was being irrigated acre for acre. Manager Scanga expressed that in terms of calculation of the consumptive use in the future, it could be problematic if it is precedent setting. He said that after talking with Atty Burgemeister they do not think it is precedent setting and return flows will continue to go into the same location as they have always gone so it will not affect the Arkansas River. Mr. Scanga added that diversions will be the same in the South Arkansas. He stated that in terms of the District's water rights, he does not think it will have a negative impact and the only concern would be if in the future CPW decides to change the water rights and calculate the historical consumptive use "HCU" value based on the duty of water instead of a comprehensive historic use analysis.

Manager Scanga stated that after reviewing everything and discussing it with Atty Burgemeister and Engineer Manera, his recommendation is to not do anything. He added that he does not think it is worth the expense or the process to challenge the SWSP and it is his understanding that they will have to obtain some kind of easement to get across the land to get the water conveyed to the new property.

Director Hilderbrand asked if in the future the District would be able to challenge their calculation of historic consumptive use if there is a change? Manager Scanga answered that yes, it could be challenged. He added that the issue for the District would be if they were to change the use of the water instead of the place of use.

Chairman Canterbury asked the question that if they were able to run the water on 150 acres right next door, could they claim consumptive use off that? Atty Burgemeister answered that they may try by means of the Implied Limitations Doctrine which is if you have water and change it once without a formal quantification and that results in an expansion then you are limited to the quantification based on the original lawful use. He added that if they can increase their consumptive use under the SWSP they would not get credit for that when they permanently change the water in water court. Whatever the change, Atty Burgemeister stated that technically they should be limited to the historical use and limited to the historical use for a one year SWSP in the same way they would be for a permanent change through water court. He added that CPW's ulterior motive is to recharge water to some fish habitat and on paper they may be asking to increase their irrigated acreage which could increase their consumptive use, but in reality maybe they are not wanting to increase their consumptive use.

Director McMurry asked if there is an option for the District to get Harrington Ditch Water to irrigate the Lake Ranch? Manager Scanga answered that the Lake Ranch is too far north so the Harrington water would have to be diverted much further upstream on the South Arkansas.

Manager Scanga expressed that one of the practical matters he is considering is that for the other ditch owners on the Harrington it is beneficial that the 4 cfs stay in that ditch to help with transit loss and is a benefit to ground water supplies. He added that he feels it is extremely important to the development taking place and feels there is a lot of benefit for the water to stay in the same area. He feels it is counterproductive to try to challenge it.

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

Manager Scanga presented the annual Augmentation update Report.

He summarized the augmentation application process and the various application forms used and stated that with the increase in activity and demand he wanted to review it with the Board.

He displayed a list of augmentation procedures, type of plans, decree areas, structure types and calculation sheet. A highlighted section showing the new Blue Line Expansion was also displayed. An outlined copy was provided to Board members prior to the date of the meeting.

Manager Scanga explained that the different zones are displayed via Google Earth and demonstrated to Board members how it works. He stated that each zone has specific irrigation requirements also listed on the calculation sheet. Manager Scanga said Zone D was added, the area south of Custer/Fremont county line and a new standard calculation line for hot tubs.

Manager also explained the transmissivity zones with different lag factors versus steady state areas and displayed them for the Board to view. He added that the rate and amount of replacement can be calculated after locating the transmissivity zone. Manager Scanga explained that once the transmissivity zone is located then a code is assigned to the certificate and the code is transferred to the Access Database and calculated using a specific percentage and put into the glover model tool which then calculates how much needs to be replaced each month.

Manager Scanga displayed the evaporation zones in the new area and indicated the new expanded area on Google Earth. Plan Area 1 is the area from the Eastern Boundary of 92CW84 to the Fremont-Pueblo County Line along the Arkansas and upstream of Grape Creek to the confluence with Taylor Creek upstream of Taylor to Conquistador Reservoir. Plan Area 2 is curtailable uses, areas along Arkansas River Tributaries of Tallahassee Creek, Four Mile Creek and Oak Creek and in Custer County in the areas above the confluence of Taylor and Grape Creek. He added that there are 9 zones plus steady state.

Manager Scanga explained that a state requirement is submitting a construction report for all wells and the state places those in Colorado's Decision Support System "CDSS". The District is adding the receipt ID's for each structure to a website augmentation structures report in a clickable field that link to the CDSS where the construction reports are held.

Manager Scanga clarified for Director Colon that the new area covers a small section of El Paso County. Director Colon asked if there is housing development in that area? Manager Scanga answered that he did not know but structures are there.

Director Colon asked if the overlay on Google Earth and the calculations were completed by our Engineer? Manager Scanga answered that Engineer Manera and Wendy Ryan of Colorado River Engineering provide the overlay for the District and the augmentation calculations. Director Colon asked if the Google Earth is available on the website? Manager Scanga answered that there is a static map available on the website, but it is not as accurate as using live Google Earth.

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

No current engineering updates to report.

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

Attorney Burgemeister reported on the status and developments of several UAWCD applications. Atty Burgemeister stated there was nothing for Board action at this time. A copy of the legal report was provided to all Board members prior to the meeting.

#### **UAWCD Applications:**

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

- Developments: Application filed
- Status: Statements of opposition due at the end of August

##### **21CW3030: Application to make 96 CW17 Exchange absolute in its entirety**

- Developments: Application filed

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- Status: Opposition due at the end of July

**19CW3089: Change of Cottonwood Irrigating Ditch**

- Developments: Received decree comments from opposers
- Status: Before the Referee until May 31, 2022

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

- Developments: Stipulation with Triview Metro District approved. Expert reports filed by CWCB and Rooks, et al.
- Status: Before the Water Judge. Trial scheduled to begin October 25, 2021. UAWCD rebuttal disclosure due July 28<sup>th</sup>.

**Applications UAWCD is Opposing:****19CW3061: Application of Tom Smith**

- Developments: Trial scheduled for March 2022.
- Status: Before the Water Court. UAWCD initial disclosures due August 10, and expert disclosure due November 1, 2021.

**CHAIRMAN AND DIRECTOR REPORTS**

Updated employment contract: approval was given to Chairman Canterbury to negotiate the contract with Manager Scanga.

**NOTICES & MEETINGS**

The Board discussed holding a summer board and staff picnic/BBQ. Board members agreed upon having the picnic following earlier scheduled Enterprise and District Board meetings on August 12, 2021.

Several Board members voiced their appreciation for a well-done audit.

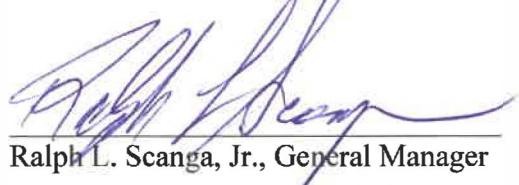
**ADJOURN**

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 3:29 pm.

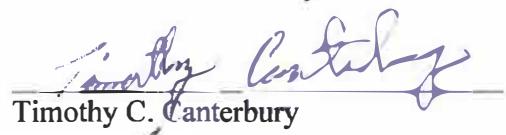
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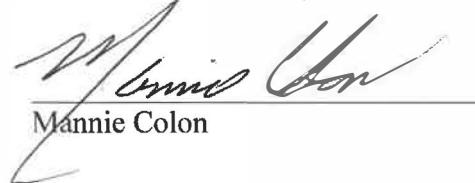
Respectfully submitted,



Ralph L. Scanga, Jr., General Manager



Timothy C. Canterbury



Mannie Colon

Approved Remotely - no signature  
Robert B. Donley



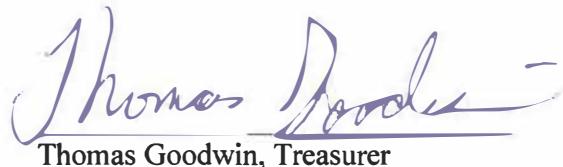
Gregory W. Felt



Tom E. French



Brett A. McMurry



Thomas Goodwin

Treasurer



Richard Hilderbrand

Resigned Director - no signature  
Franklin J. Moore



Warren Diesslin



Tim Payne



Tony Telck

Approved Remotely - no signature  
Mike Shields