

**UPPER ARKANSAS WATER  
CONSERVANCY DISTRICT**

**Regular Meeting of the Board of Directors**

**July 9, 2020  
1:30 P.M.**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, July 9, 2020, 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 8, 2020, at the offices of the Upper Arkansas Water Conservancy District, 339 East Hwy 50, Salida, Colorado.

**DIRECTORS PRESENT**

Franklin J. (Jay) Moore	Tom E. French
Thomas Goodwin	Timothy C. Canterbury
	Mannie Colon

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

Mike Shields	Tim Payne	Brett A. McMurry
Richard Hilderbrand	Robert B. (Bill) Donley	Tony Telck
Warren Diesslin	Gregory W. Felt	

**DIRECTORS ABSENT**

None

**DISTRICT OFFICIALS/STAFF MEMBERS PRESENT**

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

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

Kendall K. Burgemeister, Attorney  
Wendy Ryan, Engineer

**DISTRICT OFFICIALS ABSENT**

None

**STATE OFFICIALS PRESENT**

None

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

Tom Flower, Custer County Commissioner	Joel Benson, Town of Buena Vista
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  
Philip Puckett, Buena Vista Town Administrator

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

Joe Stone, Ark Valley Voice  
Patrick Hancock, CPA, Hancock Froese & Company LLC

## RECORD OF PROCEEDING

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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.

### **MINUTES OF THE MEETING OF June 11, 2020**

The minutes of the meeting of June 11, 2020, were approved upon motion by Director Colon with second by Director French; Director Goodwin moved to strike the last sentence with the removal of the sentence in the Chairman and Directors comments section stating, "He characterized Director Felt's comments as nothing but politics."; Directors Colon and French concurred with the amended motion. Motion for approval of minutes as corrected was approved unanimously by the Board.

### **FINANCIAL REPORTS**

Upon motion by Director Colon with second by Director Goodwin, the Board approved the monthly financial report dated June 30, 2020. The scheduled Quarterly Financial Report will be held over to next month's meeting.

### **ANNUAL AUDIT REPORT**

The Annual Financial Audit Report was presented by Patrick Hancock CPA of Hancock Froese & Company LLC. 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, 2019, and the respective changes in financial position and as applicable the cash flows for the year.

Upon motion to approve audit by Director Goodwin, seconded by Director Colon, the Board approved the Annual Financial Audit Report.

### **PROGRAM PRESENTATIONS**

The Round Mountain Feasibility Study was presented by Program Manager Goodwin. Goodwin gave a project overview for a new Off-Channel Reservoir on Grape Creek, south of Westcliffe in Custer County. PM Goodwin discussed grants in progress for the development of a dam and reservoir design and stated that the overall goal is 3-5 years for construction and would allow for 150 acre-feet of additional storage. PM Goodwin explained that the new reservoir would complement the DeWeese Reservoir Enlargement Feasibility Study already in effect.

PM Goodwin explained the benefits of this expansion, stating that it will provide more storage, augmentation, water supply, a gauging station, maintaining the protection of water rights and the ecosystem as well as having CWCB, Round Table, and local support.

A map was displayed showing the inflow and release of the proposed site. PM Goodwin stated that \$170,500 of the total cost would be obtained from the Statewide and Basin Water Supply Reserve Account grant funds.

Director Colon asked what Commissioner Flower thought of the project. Flower responded by stating that he was not aware of it and asked why Silver Cliff was involved. PM Goodwin answered that Round Mountain is Silver Cliff's water supplier and the project will increase the overall water supply in Custer County. Commissioner Flower stated that he thinks this is a great project and is in support of it but would like to see it completed in less than five years. Director Shields asked for clarification on the planned location of discharge from the reservoir and commented that he felt the proposed area was a good idea. It was also his opinion that it would be without any environmental or water right injury. Director Colon made the comment that five years is very optimistic. Manager Scanga replied that is why the Dam and Engineering Design was added to the study. Manager Scanga provided clarification to Director Felt that the project is for augmentation only. Director Felt asked if the Reservoir would permit boating or fishing. Manager Scanga answered that it probably would not be possible due to size and necessity of draw down at times for augmentation.

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### **EX-OFFICIO REPORTS**

There were no ex-officio reports.

### **CONSULTANT REPORT – Ken Baker**

Consultant Baker summarized several water bills passed by the General Assembly.

**House Bill-1157:** CONCERNING THE COLORADO WATER CONSERVATION BOARD'S AUTHORITY TO USE WATER THAT A WATER RIGHT OWNER VOLUNTARILY LOANS TO THE BOARD FOR INSTREAM FLOW PURPOSES.

**House Bill-1159:** CONCERNING THE AUTHORITY OF THE STATE ENGINEER TO CONFIRM THE EXTENT OF USES OF WATER IN EXISTENCE ON THE DATE OF AN INSTREAM FLOW APPROPRIATION.

**House Bill- 1095:** CONCERNING THE AUTHORITY OF A LOCAL GOVERNMENT'S MASTER PLAN TO INCLUDE POLICIES TO IMPLEMENT STATE WATER PLAN GOALS AS A CONDITION OF DEVELOPMENT APPROVALS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

**House Bill- 1037:** CONCERNING THE COLORADO WATER CONSERVATION BOARD'S AUTHORITY TO AUGMENT STREAM FLOWS WITH ACQUIRED WATER RIGHTS THAT HAVE BEEN PREVIOUSLY DECREED FOR AUGMENTATION USE.

**Senate Bill-025:** CONCERNING AUTHORIZATION OF THE BOARD OF DIRECTORS OF A CONSERVANCY DISTRICT TO PARTICIPATE IN CERTAIN PROJECTS WITHIN THE DISTRICT, AND, IN CONNECTION THEREWITH, AUTHORIZING SUCH A BOARD TO CONSIDER SUCH PARTICIPATION A CURRENT EXPENSE OF THE DISTRICT.

**Senate Bill-048:** CONCERNING A STUDY TO CONSIDER THE STRENGTHENING OF THE PROHIBITION ON SPECULATIVE APPROPRIATIONS OF WATER.

Consultant Baker discussed the Drought Plan and Task Force activated by Governor Polis. A memorandum concerning this plan was attached to Baker's report. The article touched on Phase 2 of the drought plan and an initial assessment of the physical and economic impacts and the opportunity for incident mitigation.

Consultant Baker also discussed an article attached to his Consultant report regarding the new Trump WOTUS rule. This rule led Democrat states and environmental groups to seek active court challenges and preliminary injunctions that argue the new rule is "arbitrary and capricious" and violates the Clean Water Act, pointing to a 2006 Supreme Court Case decision. California Judge Seeborg, wrote, "As compelling as those arguments may be, they do not provide a sufficient basis for a court to substitute its judgment for the policy choices to the Agency." A copy of the Court action from the United States District Court that grants the State of Colorado a stay of agency action and invalidates the new Federal regulation under the Clean Water Act is available upon request. Consultant Baker writes that, "Colorado remains the only State under with the new regulation is not currently enforceable."

Consultant Baker touched on the Colorado Abandonment Rule. The historical rule of the State Water Engineer is to require Division Engineers to maintain a record of decreed water use within each water division. If the water right owner of any decree failed to use the water when available during a ten-year period, a note of abandonment could be issued to the owner. The State Water Engineer now has directed the Division Engineers to no longer enforce this historical rule. Director Donley asked Consultant Baker why the State Engineer changed his mind. Consultant Baker answered, stating that he was not sure why the decision was made but he has complete confidence in the State Engineer and Division Engineers and felt they must have had a good reason. Consultant Baker continued that he was certain that this decision was based upon some good, solid information otherwise they would not have made this decision. Director Felt added that he thought there was some concern that declaring an abandonment of these rights could put Colorado in a less favorable position when dealing with

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Colorado Compact negotiations. Manager Scanga inserted that this would only make sense on the Colorado River Basin but not the other basins. Consultant Baker thought there is a possibility it could be related to the Demand Management effort being pushed by the legislature and CWCB.

### **COMMITTEE REPORTS**

None

### **RESUME REVIEW COMMITTEE**

Nothing of significance for the District in the Resume.

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

Manager Scanga presented a new long-term lease agreement for Royal Gorge Ranch and Resort. The lease is a 30 year agreement using Twin Lakes Water diverted at the Canon City Raw Water Intake. The changes to the terms of the lease permit a minimum of 25 acre-feet of water per year with a maximum of 75 acre-feet per year. The lease also allows for the possibility of other sources of legally available District Consumable Water to meet the Water Supply Plan. The total cost of the lease was also changed to \$34,700 for the first year, upon execution of the lease. Director Felt asked for clarification on the acre-feet changes. Manager Scanga stated that the old numbers were a minimum of 5 acre-feet of water and 25 acre-feet maximum and the new numbers are 25 acre-feet minimum and 75 acre-feet maximum per year. Manager Scanga added the reason for the change allowed the developer to phase his project and have a committed amount of water for all phases. Director Shields asked for clarification of the difference between the two rates charged. Manager Scanga explained that the lessee has to pay for water storage at one rate for the maximum amount and a water fee for the actual amount used each year. Whether water in any given year is not used the maintenance and storage per acre foot fee of \$264.00 must still be paid. When water is used the per acre foot fee of \$396.00 per year is due too. Director Donley asked if 75 acre-feet of Twin Lakes water is a lot to commit to with only 122 shares of Twin Lakes owned by the District. Manager Scanga explained that we carry a lot of Twin Lakes water in reserve and presently have over 1100 acre-feet in storage as well as the ability to enroll the Canon City Water Intake into our pending augmentation plan and then use any consumable water available to meet this demand as specified in the lease. Scanga added that it can be approved under an augmentation plan. Director Felt asked if project water could be used. Manager Scanga answered that no project water could be used since the resort is not in the SECWCD, but that all other available sources of water could be used. Director Donley voiced his concerns regarding having enough water to meet the terms of the lease. Manager Scanga reiterated the reason for having water in storage. Scanga added that UAWCD has plenty of water in reserve to meet the water supply demands.

Director French motioned to approve the new Royal Gorge Ranch and Resort Lease Agreement, Director Goodwin seconded the motion, the lease was unanimously approved by the Board.

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

Engineer Ryan reported that the Blue Line engineering report is still in progress and is due in August. Ryan also reported that the Hoosier Ditch case is ready and was due July 10, 2020.

### **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 two stipulations in the 18CW3076 Augmentation Expansion case for the Board's consideration. One was with Linn Van Norman and the other, the Stermer Family Investments. They are proposing the same terms as Round Mountain and Southeastern stipulations approved by the Board last month. Director Donley asked which stipulation the Linn Van Norman case is proposing? Atty Burgemeister answered that it is the same as the Round Mountain and the Southeastern Stipulation in Area two. Director Colon motioned to approve the stipulations, seconded by Director Telck. Both stipulations were approved by the Board. Atty Burgemeister added that oppositions in both cases were due that day.

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Atty Burgemeister also reported on case 19CW306, the Application of Tom Smith for a change of his Hoosier Ditch water rights. UAWCD consultants and staff completed a site visit ditch and formerly irrigated lands and reviewed the proposed ruling and engineering. The deadline for UAWCD to provide initial comments on engineering and proposed ruling was July 10, 2020.

### **Executive Session**

A motion for consideration of an executive session to receive legal advice on an Employment Practices Policy from the District's attorney pursuant to CRS 24-6-402 (4)(b) was made by Director Colon which was seconded by Director Telck. Motion was approved by all directors voting aye.

### **Report out of Executive Session**

After some discussion among the Board of Directors, a motion was made by Director Hilderbrand for Attorney Burgemeister and Manger Scanga to develop an Employee Policy and Manual. The motion was seconded by Director Colon. Motion was approved unanimously by the Board.

### **CHAIRMAN AND DIRECTOR REPORTS**

None

### **NOTICES & MEETINGS**

None

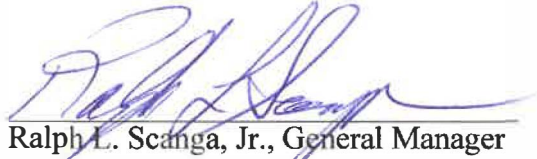
### **ADJOURN**

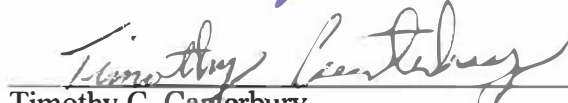
There being no further business to come before the Board, upon motion by Director Donley, second by Director Colon and French and approval of the Board, the meeting adjourned at 4:14 pm.

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RECORD OF PROCEEDING

Respectfully submitted,

  
Ralph L. Scanga, Jr., General Manager

  
Timothy C. Canterbury

approved Remotely - no signature  
Mannie Colon

approved Remotely - no signature  
Robert B. Donley

approved Remotely - no signature  
Gregory W. Felt

  
Tom E. French

approved Remotely - no signature  
Brett A. McMurry

approved Remotely - no signature  
Thomas Goodwin, Treasurer

  
Richard Hilderbrand

approved Remotely - no signature  
Franklin J. Moore

  
Warren Diesslin

approved Remotely - no signature  
Tim Payne

approved Remotely - no signature  
Tony Telck

approved Remotely - no signature  
Mike Shields