

**UPPER ARKANSAS WATER
CONSERVANCY DISTRICT**

Regular Meeting of the Board of Directors

**August 11, 2022
1:30 P.M.**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, August 11, 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 August 10, 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)	Robert B. (Bill) Donley	Tony Telck
Tom French	Tim Payne	Warren Diesslin
Thomas Goodwin	Brett McMurry	
Richard Hilderbrand		

DIRECTORS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Mannie Colon

DIRECTORS ABSENT

Franklin J. (Jay) Moore, (Honorary)	Timothy C. Canterbury	Albert Eggleston
Mike Shields		

DISTRICT OFFICIALS/STAFF MEMBERS PRESENT

Ralph L. (Terry) Scanga, General Manager	Kendall Burgemeister, Attorney
Ken Baker, Consultant	Gracy Goodwin, Projects Manager
Jord Gertson, Hydrologist	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

Chris Manera, Engineer
Wendy Ryan, Engineer

STATE OFFICIALS PRESENT

None

STATE OFFICIALS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

None

STATE OFFICIALS ABSENT

Brian Sutton, Augmentation Coordinator
Bill Tyner, Division Engineer
Dan Henrichs, Water Commissioner, District 12
Will Scott, Water Commissioner District 11

EX-OFFICIO REPRESENTATIVE PRESENT

None

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

Dwayne McFall, Fremont County Commissioner
Bill Canda, Custer County Commissioner

RECORD OF PROCEEDING

EX-OFFICIO REPRESENTATIVES ABSENT

John Roorda, Chaffee County Planning Manager
Brian Berger, Poncha Springs Town Administrative Officer
Shawn Williams, Buena Vista Public Works Director
Philip Puckett, Buena Vista Town Administrator
Dave Schneider, Round Mountain Water and Sanitation District Manager
Drew Nelson, City of Salida Administrator

GUESTS PRESENT

Erin Minks, Senior Advisor on Rural Affairs and Regional Representative for Senator Mike Bennet
Jerry McDaniel, Water Attorney from Teller County

GUESTS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERNING)

Joe Stone, Heart of the Rockies Radio News
Patrick Hancock, Hancock Froese & Company LLC
Bill Tyner, State Engineer (joined at 1:54 pm)

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 July 14, 2022

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

FINANCIAL REPORTS

Upon motion by Director Goodwin with second by Chairman Telck, the Board approved the monthly financial reports dated July 31, 2022.

PROGRAM PRESENTATIONS

None

EX-OFFICIO REPORTS

None

PROJECT MANAGEMENT REPORT- Gracy Goodwin

PM Goodwin provided a summary of grants in progress for Board members to review. She gave a brief oral update on August projects which included Round Mountain Reservoir Feasibility Study, DeWeese Enlargement Feasibility Study, and The Conservation Garden.

PM Goodwin stated that she sent Round Mountain District a preliminary term agreement and has yet to receive anything back. She said Round Mountain's attorney is still in the process of working on it.

PM Goodwin informed Board members that she attended a meeting with DeWeese Dye Ditch and Reservoir Company to review feasibility study reports from GEI Consulting and Colorado River Engineering (CRE). It was concluded that more studies need to be conducted, including a Hydrologic Hazard Analysis to justify reducing the Inflow Design Flood (IDF) which would cause impacts on structural and geo-tech requirements for raising the dam.

PM Goodwin also discussed DeWeese Feasibility Study Phase 2. She stated that a structural analysis, geo-tech study, and environmental survey on the original dam are scheduled for the spring when the reservoir is full and levels can be checked.

RECORD OF PROCEEDING

PM Goodwin asked Conservation Garden/Lake Ranch committee members to schedule a meeting to discuss putting together a punch list to take to a contractor to determine a scope of work and get an idea of the cost of the project.

CONSULTANT REPORT – Richard Brown

A current Legislative Update was presented by Legislative Consultant Brown. He provided an oral update of status of Bills of interest, newly enacted laws, and the status of the Water Resources Review Committee (WRRC) and that they will be meeting at the CWC summer water conference.

Consultant Baker spoke about the Colorado River crisis and the dispute between the Lower and Upper Basin states. He mentioned a recent article on the topic written by Joe Stone and published in the Pueblo Star Journal. A copy of the article was provided to all Board members. Mr. Baker gave a synopsis of the issue between the basins and commended Mr. Stone on a well written article. He elaborated some as well as pointed out the main points of the article. He expressed that it covers one of the most important issues that has ever affected Colorado water law. The article referenced and quoted points from Manager Scanga's recent article on the subject.

Legislative Consultant Brown reported that the focus right now is on the November election and he said we are within 90 days of the election. He pointed out that the deadline for advocates that want proposals to get on the November ballot has passed. Mr. Brown said that 2 have been approved by the Secretary of State and 2 or 3 are in the signature verification phase. Mr. Brown added that legislative counsel staff have begun the process of drafting the blue book. Mr. Brown further stated that a couple people have withdrawn from the election and vacancy committees are now meeting.

Director Hilderbrand inquired about the irrigation district loan issue. He expressed that he found it interesting that the Board of Directors are allowed to take out a loan without assessing the landowners to raise money to fulfill the payment of the loan.

Mr. Brown stated that it was an early issue that came out of the working group within the irrigation community and it went before Water Congress for revising and amending.

Director Colon commented that he thinks Water Congress went neutral and not necessarily in support of the bill.

Director Hilderbrand clarified that as is written the bill allows the Board of Directors of an irrigation district to borrow money to make loans to shareholders for improvements, and the district is not required to assess shareholders to raise money to fund the loan.

COMMITTEE REPORTS

None

RESUME REVIEW COMMITTEE

Nothing of significance in the July Resume.

MANAGER'S REPORT – Terry Scanga

ANNUAL AUDIT REPORT:

The 2021 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, 2021, and the respective changes in financial position and where applicable the cash flows for the year.

Mr. Hancock referenced the balance sheet for the Enterprise and General Fund totals for assets, liabilities, revenues, and expenditures.

Upon motion by Director Payne, seconded by Director Goodwin, the Board approved the 2021 Annual Financial Audit Report.

RECORD OF PROCEEDING

USGS WATER STUDY:

Manager Scanga stated that a special Board meeting is scheduled for September 22nd between UAWCD and the United States Geological Survey (USGS) to assess the past water studies conducted between Granite and Wellsville.

Manager Scanga informed the Board that he will be presenting to the Interim WRRC at Colorado Congress. He said he will be speaking on stream restoration projects and impacts to water. He referenced the Van Norman restoration pilot project on Oak Creek in Fremont County that the UAWCD is involved in with River Science. Manager Scanga stated that there is a nexus between stream restoration projects and water right impacts. He said a proponent of a project will send a request to the division engineer and ask for comments and there is no authorization for the state engineer to review and authorize stream restoration projects. Manager Scanga explained that what the state has done through several comment letters is to line out all the things you cannot do and if those things do happen after the project, then the state could issue an order. He emphasized that this creates a level of risk for the proponents which prevents them from wanting to go forward with the project. Manager Scanga further stated that techniques (Process Based Restoration) and their potential impacts are being researched with the Van Norman Project. The processes are evaluated based upon their potential to *not* impact water rights and those that *may* impact water rights.

Manager Scanga said that he will present to WRRC what this conundrum looks like and what the potential impacts can be with stream restoration. He said it is important because there is a lot of money being put out in grants to do these types of projects and even though there is a need for these type projects, he feels it is important to the District that there is a process set in place since the District is involved in providing augmentation for many different types of uses that potentially could be injury by a stream restoration. He added that River Science will be presenting with him at the meeting.

Vice Chairman Felt expressed that he thinks it would be opening up a necessary can of worms and is a great place to get everyone together and lay out concerns since many parts of the state are not as appropriated as the Arkansas. He stated that most places do not have the ability to measure or question these projects because there is not the same amount of concern of potential injuries to water rights.

Manager Scanga clarified for Director French that there are many stream restoration projects. Such as restoration from flood damage. With a historical baseline the restoration activities can be assessed in terms of changes to flows and stream depletions. He said a lot of the proposed projects sent for comment to Division 2 are those type of projects that repair what's been there a long time or from recent flooding. Manager Scanga explained that the analysis looks at the stream and tries to duplicate what it was before the damage. He added that some projects focus on water quality and long-standing issues. Manager Scanga stated that it is important to keep in mind that in terms of history we have always had an over-appropriated system, and anything appropriated after 1885 is a junior water right so after that date nearly everything was already appropriated. He said many of the riparian areas did not exist in 1885 and were created by the return flows from irrigation. Thus, most riparian areas were created after 1885. Therefore, the phreatophytes created in these riparian areas were actually stealing water from the downstream water rights. The water consumed by the riparian phreatophytes is water that is subject to the call of the river; so, before going forward with a stream restoration project, one should have an engineering evaluation to find out what the impact is to water rights. He further added that injuries need to be mitigated through an augmentation plan. Manager Scanga concluded that there are many areas within our drainage system that do not have umbrella augmentation available and there are areas in our own District that cannot be augmented under the umbrella plan.

Vice Chairman Felt expressed that an issue that should be addressed is whether there is a distinction drawn between restoring a historic wetland that has ecological function and watershed health function, as opposed to some of the more human focused, recreational type projects. He said that there is still the potential for injury in each of these circumstances and questioned whether a value should be assigned to the benefits and funding of the different types of restoration projects. Vice Chairman Felt added that most of the funding is focused on head water type projects and forest and watershed health.

RECORD OF PROCEEDING

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

No Engineering Report.

LEGAL REPORT – Law of the Rockies, Kendall Burgemeister

Opposition updates, transactional matters, applications, and updates were included in the Law of the Rockies legal report made available to all Board members prior to the meeting.

Atty Burgemeister expressed his appreciation for the excellent article written by Joe Stone. He compared Mr. Stone's article to another article recently published in the Gunnison paper whereas the writer was very critical of the state's response to reclamation stating, that we are not going to do anything else to conserve water during this drought period.

Upon motion by Director Goodwin, seconded by Director Payne, the Board approved the proposed stipulations in Case No. 19CW3089 between UAWCD, acting through the Upper Arkansas Water Activity Enterprise, and the Colorado Department of Corrections and Lakeside Estates Preserve Homeowners Association.

Upon motion by Director Payne, seconded by Director Telck, the Board approved the agreement between John Cogswell and UAWCD.

Atty Burgemeister explained the agreement stating that the terms are consistent with an initial agreement. The agreement lays out Mr. Cogswell's obligations to get his share of the Thompson Ditch water to his place of use and clarifies that the District is not responsible for how he does that. The agreement further prevents Mr. Cogswell from running his water in a way that would potentially irrigate the District's dry up land and it protects the dry up of the Thompson Ditch water.

CHAIRMAN AND DIRECTOR REPORTS

Several Board members expressed their appreciation and commended Joe Stone on a very well written article regarding the Colorado River Crisis and the dispute between the Upper and Lower Basin states.

Erin Minks gave an update on the Inflation Reduction Act bill that was passed by Congress. She said on the Senate side there was a draft package for review just a few short weeks ago appropriating \$4 to 5 billion in new money to focus on drought and the Colorado River and support projects.

When asked to comment by Ms. Minks, Manager Scanga expressed his thoughts on the money passed by Congress. He stated that money is not going to fix the problem. He further stated that you can't "throw money and get water". Manager Scanga said he feels that the state is thinking about the conservation program where you would pay someone to not divert and use their water. He said that was primarily in the Lower Basin. Manager Scanga stated that the amount of water not diverted wasn't enough to make a difference. He referred to the chart in Joe Stone's article from CWCB Director Rebecca Mitchell, which indicated that within a 10-year period the Upper Basin States have significantly reduced water usage whereas the Lower Basin states have not. In fact it reveals that the Lower Basin's usage has continually trended higher with a usage of 9,879,000 acre-feet in 2022. This is more than 2 million acre-fee (maf) per year beyond the 7.5 maf delivered by the Upper Basin states. Manager Scanga expressed that if the Lower Basin states had diverted 7.5 maf there would not be the crisis we are looking at now. He further expressed that the numbers reveal that the conservation program did not work. Manager Scanga commented that he found it interesting in Joe Stone's article the mention of the 600 thousand acres of cotton that received billions of dollars of subsidy over a period of several years.

He stated that he has a problem paying people to live within their means when they should have been doing that all along. He further added that the Upper Basin lives with the run of the river and if the water is there and we are in priority, we are able to legally take it. If the water is not there, the priority system keeps us from taking it. Manager Scanga questioned what the benefit is for the taxpayer and what benefit they going to get out of it? He ended with stating that the problem is mismanagement and throwing money at the problem is not going to fix it.

RECORD OF PROCEEDING

Director Goodwin expressed that he thinks the letter that the Upper Basin sent captured the problem perfectly.

NOTICES & MEETINGS

Colorado Water Congress (CWC) Summer Conference, Steamboat Springs Grand, August 23, 24 & 25
IBCC -Next meeting in October, TBD


ADJOURN

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 2:44pm.

[The remainder of this page is intentionally left blank.]


RECORD OF PROCEEDING


Respectfully submitted,


Ralph L. Scarga, Jr., General Manager

absent - no signature
Timothy C. Canterbury


approved remotely - no signature
Mannie Colon

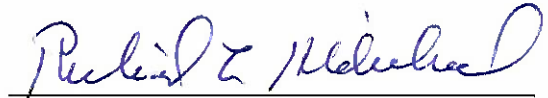

Robert B. Donley



Gregory W. Felt



Tom E. French

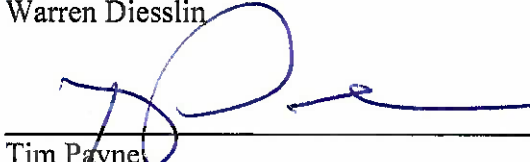

Brett A. McMurry

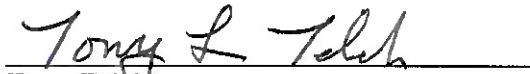

Thomas Goodwin, Treasurer



Richard Hilderbrand


Albert Eggleston


Warren Diesslin


Tim Payne


Tony Telok


Mike Shields