

**UPPER ARKANSAS WATER
CONSERVANCY DISTRICT**

Regular Meeting of the Board of Directors

**September 9, 2021
1:30 P.M.**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, September 9, 2021, commencing at 1:30 p.m. 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 September 8, 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
Tom French	Thomas Goodwin	Warren Diesslin
Gregory W. Felt	Tim Payne	Richard Hilderbrand

DIRECTORS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Mike Shields
Robert B. (Bill) Donley
Mannie Colon

DIRECTORS ABSENT

None

DISTRICT OFFICIALS/STAFF MEMBERS PRESENT

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

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

Richard Brown, Legislative Consultant	Wendy Ryan, Engineer
Denise Sanchez, Office Manager	
Kendall Burgemeister, Attorney	

DISTRICT OFFICIALS ABSENT

Chris Manera, Engineer

STATE OFFICIALS PRESENT

None

STATE OFFICIALS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Will Scott, Water Commissioner, District 12

STATE OFFICIALS ABSENT

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

EX-OFFICIO REPRESENTATIVE PRESENT

Dwayne McFall, Fremont County Commissioner

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

None

RECORD OF PROCEEDING

EX-OFFICIO REPRESENTATIVES ABSENT

Brian Berger, Poncha Springs Administrator
Tom Flower, Custer County Commissioner
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 CONFERNING)

Joe Stone, Heart of the Rockies Radio

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 August 12, 2021

The minutes of the meeting of August 12, 2021
were approved upon motion by Director Felt with second by Director French.

FINANCIAL REPORTS

Upon motion by Director Goodwin with second by Director Telck, the Board approved the monthly financial reports dated August 12, 2021.

PROGRAM PRESENTATIONS

The video, "California's Drought Fix" was shown to the Board from an Epoch Times Interview with Brett Barbre, General Manager of Yorba Linda Water District, and former District 1 representative of the Metropolitan Water District of Orange County Board of Directors. Mr. Barbre explains how California needs to work on the supply side of its water crisis. He says that "California is considered the breadbasket of the world, but water is key." He added that California doesn't have a shortage of water, but it is not being stored.

EX-OFFICIO REPORTS

There were no ex-officio reports.

PROJECT MANAGEMENT REPORT- Gracy Goodwin

PM Goodwin gave an update on the progress of September projects.

Ice Lake Outlet and Spillway:

- The Cofferdam was positioned
- The spillway structure has been poured
- Dirt backfilled
- Completion of the angle iron and stop logs
- A flume will soon be added and replacement of the final culvert.

Round Mountain Feasibility Study:

- Engineering Analytics finished the DRAFT feasibility study (a proposed layout was displayed).
- The proposed layout alternatives are being compared and analyzed for advantages and disadvantages.
- Round Mountain selected the option that would provide 1.50 AF with a single bay.

RECORD OF PROCEEDING

DeWeese Enlargement Feasibility Study:

- Finalizing drawings for the dam raise study
- Design drawings are being used to develop cost estimate.

DeWeese Dye Ditch Gaging Project:

- A draft memo displaying engineering and cost estimates has been received.
- A meeting will be scheduled to discuss the gaging project and UAWCD involvement.

Director Donley asked if the gaging point is in Canon City? PM Goodwin said that it is in Canon City and water comes out of Grape Creek and DeWeese Dye Ditch.

PM Goodwin displayed a design map of the Round Mountain Reservoir proposed layout.

CONSULTANT REPORT – Ken Baker & Richard Brown

Legislative Consultant Brown and Consultant Baker reported on current legislative updates.

Consultant Baker gave a brief review of the UAWCD Plan of Augmentation and Water Activity Enterprise.

Mr. Baker explained that during the early years of development of the Upper Arkansas Water Conservancy District, the Board of Directors acquired a few shares of Twin Lakes Reservoir And Canal Company stock, and a few CFS of decreed and diverted irrigation water from the South Arkansas River. This water was shared annually with diverters under the Division Engineer's administration. He said that about twenty-five years ago the Board decided to apply to water court for a plan of augmentation under the rules and guidelines of the 1969 Water Appropriation and Administration Act.

Consultant Baker stated that preliminary to applying to the water court, he represented the public water users and administrators by sharing the new proposal with attorneys. He said that Division Water Engineer, Steve Witte and State Water Engineer, Hal Simpson were interested in the proposal. Mr. Baker explained that the State of Kansas had sought a ruling regarding the return flow administration of the Arkansas River, and the Special Master ruling required amended rules and regulations for the river be approved by the court. He said that some water well pumpers without decrees or without augmentation to replace depletions in the river may have to discontinue the water use. He added that if augmentation were available, the use could continue.

Mr. Baker further explained that the SEO scheduled a meeting in his office with Board representatives, Terry Scanga and Denzel Goodwin, and a representative of the Attorney General's office, Jennifer Gimble. The SEO outlined what he considered a workable augmentation plan and suggested that the Upper District apply for such plan. Mr. Baker stated that Jennifer Gimble concurred and the UAWCD Board approved the plan. An application for the augmentation plan was filed with the Water Court and a decree was approved by the Court without opposition.

Consultant Baker indicated that at approximately the same time, the Colorado voters approved a Constitutional Amendment called Taxpayers Bill of Rights. He said that this amendment provided for the authority of a governmental agency to form a business-like entity called an Enterprise. Mr. Baker explained that in response to this amendment, the General Assembly passed a new law called Water Activity Enterprise that would operate within government agencies administering water to the public. The first such Enterprise approved by the Secretary of the State was for the Upper Arkansas Water Conservancy District.

Mr. Baker expressed that one of the most significant developments was the new management of Upper District when he retired. He acknowledged that and Ralph L. (Terry) Scanga, a lifetime irrigator, a business owner, and a computer specialist managed the development of the numerous Upper District water storage and water augmentation projects that are represented in the Enterprise budget.

Legislative Consultant Brown gave status updates on legislative issues.

RECORD OF PROCEEDING

He stated that “all the oxygen has been taken out of the room” because of the 2022 election and that people have neglected to think about the election coming up in November. Mr. Brown said the odd year elections are referred to as Tabor Elections because they tend to be affecting finances, taxes, and things of that nature. He added that there are three ballot issues certified by the Secretary of the State and one that concerns custodial funds for the State of Colorado. He explained that custodial funds come from outside the State of Colorado, such as the Cares Act, where congress appropriated money because of the Covid situation which didn’t come directly through the State general fund but went to certain state agencies or to other parties and didn’t fall within the process of the long bill and the appropriation. Mr. Brown said that some disgruntled citizens think it is not a good way of doing things nor does it offer enough transparency, so they have a ballot issue that requires those type of funds to first go through the general fund and the Joint Budget Committee, “JBC” for appropriation. He indicated that it doesn’t sound important, but it has implications for a state agency if those funds are being given for a special purpose it could put several weeks or months delay into the process before agencies are granted the money to put to use. He added that it applies to any money from any source, not only federal money, but such also as the opioid settlement agreement that states are working on with pharmaceutical companies.

Mr. Brown stated that the blue book that goes with elections was approved by legislative leadership last week but the official fiscal impact analysis from legislative council is not yet available. He added that they will most likely be available next week. He declared that the Water Resources Review Committee, “WRRC” meeting is schedule for the 16th and the agenda has not been announced but typically is announced 24-48 hours beforehand. Mr. Brown stated that this will most likely be the meeting where members of WRRC announce legislation that they would like to see drafted and brought forward through the WRRC but there is no word yet on what they are seeking. He explained the reason the WRRC is important in the process is because bills that come through the WRRC are exempt from the number of bills legislature can sponsor. Mr. Brown said he is expecting Senator Don Coram to ask for a bill to be drafted to tighten up some of the statutes on anti-speculation doctrine. He added that the 66 page report from the working group has been issued and they did not come up with any conclusions or recommendations for legislation. They agreed that there are issues with groups that move quickly into the agricultural community and seek to pay a premium price for land and water to flip in a short period of time or to hold long enough to make a profit. He stated that the problem was recognized by the working group and trying to deal with those exploitation ventures could also capture long-standing family farms owned by a 4th generation when there is a depreciation of value over time, and the farm owners are ready to retire and want to sell their property and water rights.

Mr. Brown pointed out that the first appointees from legislature have been established to the newly created commission, which will be looking at how to divvy up the federal stimulus that will come along with the infrastructure package. He said that members on the democratic side have been appointed and the republicans have not been appointed. Mr. Brown added that there are a number of non-legislative members with backgrounds in finance and economics that will be appointed and have not yet been announced.

COMMITTEE REPORTS

None

RESUME REVIEW COMMITTEE

Manager Scanga discussed a case in the August resume. He suggested that the Board file a statement of opposition in Case No. 21CW3044, Triview Metropolitan District on Cottonwood Creek. He stated that it is decreed for 18.05 CFS and is not a senior water right but could have impacts to Cottonwood Creek. He said it is a change in the type and place of use from irrigation to municipal and industrial use, augmentation, storage, and exchange. He added that one of the interesting things is that it talks about augmentation and replacement of supplies for Arkansas River tributaries. Upon motion by Director Goodwin, seconded by Director Payne, the Board unanimously approved to file a statement of opposition.

RECORD OF PROCEEDING

MANAGER'S REPORT – Terry Scanga

Manager Scanga reported on the Preliminary Budget for 2022. A copy was given to each Board member for review.

Manager Scanga explained that the District available revenues are forecast to increase substantially over the previous fiscal year. He said that this trend is reflected in the estimated beginning fund balance outlay expense account. Over the past several years the estimated beginning fund balance has increased year to year and the 2021 fiscal year reductions in actual expenses resulted in a larger than normal fund balance. During this fiscal year Ad Valorem revenues will rise slightly with an additional increase of the beginning fund balance compared to previous years.

Manager Scanga further explained that revenues have increased due to increases in property valuations. Although In-kind Revenues are no longer being budgeted the district continues to provide in-kind services valued annually at approximately \$36,000.

Manager Scanga said that the major mission of the District is to act as a monitor of legal activities and legislative actions that have the potential to affect water rights in the District. Legal expenditures reflect district project activities, litigation expenses dealing with the continued vigilance needed due to increases in demand from municipal interests outside the upper basin for water acquisition changes in water rights that could potentially cause injury to basin vested rights as well as acquisition and changes of district water rights and work on existing and new filings of augmentation plans. He added that major expenditures will continue to be legal engineering /hydrology, project management and IT services and monitoring of state legislation that may threaten water rights in our basin, or which may assist the District in the optimal utilization of the resource.

Manager Scanga concluded that historically the District budgets funds for standard expenses and budgets any excess funds as Capital Outlay so these funds could be expended if an opportunity arises for water purchases or for equipment needs. He added that in 2022, the amount available for Capital Outlay has increased significantly. Director Hilderbrand asked where benefits reside in the budget? Manager Scanga explained that there is a schedule of benefits on the summary sheet under pension contributions.

Manager Scanga displayed a flow chart of current UAWCD projects and gave a brief power point presentation of projects and operations updates. Manager Scanga explained that projects can be divided into three major areas: Structural, Non-Structural, and Water Studies. He said there are some projects that involve all three types, such as planning and construction of storage facilities. Manger Scanga stated that integrated water management has been a hallmark of Enterprise management, both from a legal and hydrologic perspective. He specified that work with Buena Vista, Poncha Springs, and Fremont County will continue and more recently and continuing is an evaluation of Colorado Parks and Wildlife water right portfolio with the goal of achieving maximum utilization of their resources and provision of augmentation of their structures as needed. He added that work with private entities have been able to engage the Enterprise for integration of resources such as Ice Lakes Preserve, Yale Lakes Estates, Hermit Basin Lodge, and Young Life. Manager Scanga expressed that this work will continue into 2022 and is reflected throughout the budget from administration, operations, project management, water accounting, legal and engineering. This integration, he emphasized will bring many benefits and opportunities to the District in terms of optimal and more efficient utilization of collective and respective water resources and will provide multiple benefits to the Upper Arkansas Basin.

Director Payne asked if the Hydraulic as well as the Union Ditch Shares with Fremont County is still something to consider for the future? Manager Scanga stated that yes, it is, and it is something to look at more closely for viability.

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

Engineer Ryan presented the engineering report.

She gave a quick update on the Cottonwood Irrigation Ditch case stating that they are responding to opposer comments. She added that there is work in progress on various other water rights research.

LEGAL REPORT – Law of the Rockies, Kendall Burgemeister

RECORD OF PROCEEDING

Attorney Burgemeister reported on the status and developments of several UAWCD applications. A copy of the legal report was provided to Board members prior to the meeting.

UAWCD Applications

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

- One statement of opposition filed by the City of Aurora.
- Waiting for Division Engineer's consultation report.

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

- No Developments
- Waiting for Division Engineer's consultation report.

19CW3089: Change of Cottonwood Irrigating Ditch:

- UAWCD provided revised ruling and responses to opposer comments.
- Before the Referee until May 31, 2022.

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

- Stipulations with CWCB and Rooks, Woolmington and Kelly Ranch approved by UAWCD Board. Work in progress on finalization of stipulations with the opposers.

Applications UAWCD is Opposing:

19CW3061: Application of Tom Smith:

- Served initial disclosures
- Before the Water Court. Trial scheduled for March 2022. UAWCD expert report due November 1, 2021.

CHAIRMAN AND DIRECTOR REPORTS

Chairman Canterbury mentioned work in progress on contract negotiations with the General Manager and stated that once all changes and updates have been made to the contract it will be presented to the Board for review and approval.

Director Colon informed the Board of Canon City Water Superintendent, Bob Hartzman's retirement.

Chairman Canterbury and several Board members extended a big thank you to Director French for hosting the staff BBQ last month.

NOTICES & MEETINGS

CWCB Board Meeting-9:00 am, September 15 & 16-Denver & virtual

CWCB Demand Management Equity in Water Workshop- 8:00 am-4:30 pm, September 30-virtual

Arkansas Basin Roundtable-October 13, 2021, 12:30 pm, Pueblo & virtual

IBCC Meeting-October 21, 2021, time, and location TBD

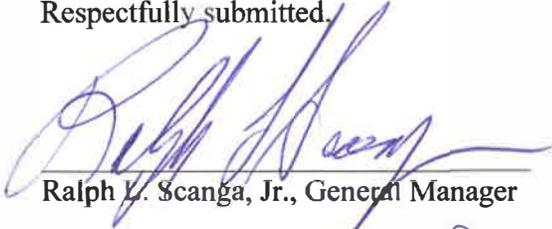
ADJOURN

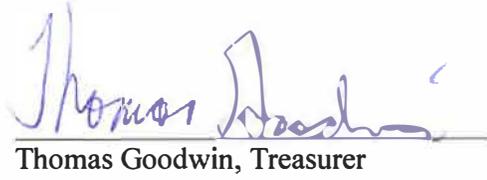
There being no further business to come before the Board or Enterprise and upon motion by Director Donley, seconded by Director Colon and approval of the Board, the meeting adjourned at 4:14 pm.

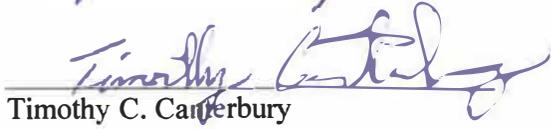
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RECORD OF PROCEEDING

Respectfully submitted,

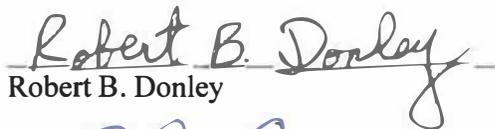

Ralph L. Scanga, Jr., General Manager

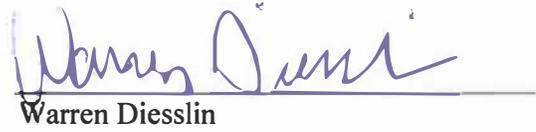

Thomas Goodwin, Treasurer


Timothy C. Canterbury


Richard Hilderbrand

approved remotely - no signature
Mannie Colon


Robert B. Donley


Warren Diesslin


Gregory W. Felt

approved remotely - no signature
Tim Payne


Tom E. French

absent - no signature
Tony Telck


Brett A. McMurry


Mike Shields