

**CUPPER ARKANSAS WATER  
CONSERVANCY DISTRICT**

**Regular Meeting of the Board of Directors**

**October 8, 2020  
1:30 P.M.**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, October 8, 2020, 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 October 7, 2020 at the offices of the Upper Arkansas Water Conservancy District, 339 East Hwy 50, Salida, Colorado.

**DIRECTORS PRESENT (IN PERSON)**

Tim C. Canterbury	Thomas Goodwin	Mike Shields
Franklin J. (Jay) Moore	Tom E. French	

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

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

**DIRECTORS ABSENT**

None

**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	Wendy Ryan, Engineer
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**DISTRICT OFFICIALS ABSENT**

None

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

Bill Tyner, Division Engineer  
Brian Sutton, Augmentation Coordinator/Water Commissioner  
Rachel Zancanella, Division 2 Engineer

**STATE OFFICIALS ABSENT**

None

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

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  
Tom Flowers, Custer County

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

Joe Stone, Heart of Rockies Radio News  
Joel Benson, Town of Buena Vista  
Jay Printz, Custer County

### **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 SEPTEMBER 10, 2020**

The minutes of the meeting of September 10, 2020, were approved upon motion by Director Donley with second by Director Telck.

### **FINANCIAL REPORTS**

Upon motion by Director Goodwin with second by Director Moore, the Board approved the monthly financial report dated September 30, 2020.

Manager Scanga reviewed the Quarterly Balance Sheets, reporting that approximately 90% of the tax revenue has been received.

### **PROGRAM PRESENTATIONS**

Andy Lerch from Arkansas River Watershed Collaborative, (ARWC) presented to the Board the Monarch Forest Health Project.

Mr. Lerch displayed slides showing photos of the Monarch Project area on the steep slopes of Monarch Mountain Ridge, Monarch Pass and Monarch Ski area. The focus of the project as explained by Mr. Lerch, is to reduce the extent of insect infestation, improve forest and watershed health, reduce fuel loading, protect infrastructure, and provide for firefighter and public safety.

Mr. Lerch explained that many options for repairing the mountain had been explored and the most cost efficient and safe approach is using specialized logging equipment. Mr. Lerch stated that the equipment, have special tracks and cables that allow them to maneuver through the steep, rugged mountain slopes employing extra traction without rutting the soil and permitting operation in places usually considered inoperable. Mr. Lerch added that no large landing areas have needed to be cleared for wood space, all wood is decked right there on the mountain and that the specialized trucks that are able to turn with only 35 feet of space, requiring a small footprint on the hillside. He said that the main goals are protection of water, a healthy forest, public safety, and infrastructure, the utilization of timber and promotion of local economy.

Hydrologist Gertson asked Mr. Lerch about the Quality Assurance plots and which trees are being removed. Mr. Lerch answered that all specifications in the contract between the Forest Service and ARWC are being followed and compliance is being maintained. Requirements outlined are the removal of all trees larger than 8 inches. Mr. Lerch said the trees being removed are mostly dead and insect infested Spruce trees and some Fir trees.

Director Hilderbrand asked how the removal of trees is being monitored by the Forest Service or ARWC? Mr. Lerch answered that the monitoring is done through a plan called Designation by Prescription, meaning that the equipment operator follows the prescription of removing dead Firs and any Spruce tree larger than 8 inches. The removal is not done through tree paint markings. Mr. Lerch added that with the removal of more trees than trees being left, the cost savings is significant.

### **EX-OFFICIO REPORTS**

There were no ex-officio reports

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

Project Manager Goodwin gave an update on current projects and grants in process.

- **DeWeese Enlargement Feasibility Study:**

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- Inflow Design Flood (IDF) draft report has been sent to Mark Perry for review and comments.
- **St. Charles Mesa Water District CID2:**  
The construction for the Augmentation Station is to begin within the following week.  
Tree clearing and equipment mobilization has been completed.
- **Round Mountain Reservoir Feasibility Study:**  
CWCB granted approval of study.  
Contract is pending.
- **Trout Creek Alluvial Storage:**  
A site visit took place to explore potential corners and water delivery options for the Department of Corrections (DOC) and adjacent lands.  
Several possible locations were discovered for a recharge site.  
A proposal is in the works for DOC.
- **Ice Lake:**  
A proposal is needed for earthwork on current outlet structure to clean out the over-grown ditch.  
Hydrologist Gertson and Engineer Manera are working on final design.

### **CONSULTANT REPORT – Ken Baker**

Consultant Baker reported on the Doctrine of Navigability, regarding rivers in Colorado. Baker explained that The Doctrine of Navigability is a legal issue that was addressed by the Supreme Court to the United States. The case of Roger Hill as an example. Roger Hill was a fisherman wading in the Arkansas River in western Fremont County. The owner of the property Hill was standing on, asked fisherman Hill to leave, being, that he was standing on private property. The fisherman argued that the river was public property and that he had a right to be there. Due to the dispute and the argument that resulted caused Mr. Hill to file a complaint in the Fremont County District Court, asking for relief under the doctrine of navigability.

In 1842, the Supreme Court declared that the people of each State, based upon the principle of sovereignty “hold the absolute right to all their navigable water and the soils under them.” This right of ownership was extended to each State.

Consultant Baker explained how the SCOTUS case of PPL Montana, LLC v. Montana, defined navigability as: “Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used or are susceptible of being used, in their ordinary conditions as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.” The Judge in the Hill cause acknowledged the doctrine of equal footing which may have declared a Colorado water to be navigable and dismissed the complaint filed by Roger Hill based on lack of jurisdiction and “with prejudice”.

Consultant Baker ended his report with a brief discussion on early water rights and US patents before and after 1862 stating that individuals who owned land adjoining the bank of a natural stream would own the bank and to the middle of the stream.

Manager Scanga asked Consultant Baker if a landowner owned land on both sides of a river does it follow that this property owner would hold ownership to the land on both banks and entire middle portion of the river.

Consultant Baker gave a confirmed yes, that all middle land is considered private property and owned by that property owner.

### **COMMITTEE REPORTS**

None

### **RESUME REVIEW COMMITTEE**

No Resume available at time of meeting.

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

#### **Presentation of the 2021 Budget:**

Eric Young, CPA of Stotler & Young, PC, presented to the Board the 2021 Budget Report.

Mr. Young reviewed 3 years of the Enterprise and General Fund Budget. He stated that amounts from tax revenue were estimated due to the pandemic and final numbers are expected by October 13, 2020 and he would make the final adjustments at that time.

Mr. Young reported an increase in 3<sup>rd</sup> quarter revenue and said he anticipated the numbers to decline in the 4<sup>th</sup> quarter.

Mr. Young reported on two major changes to General Fund Budget.

1. Project Manager Expenditure moved to Enterprise Budget
2. New Category added for Legislative Consultant

Manager Scanga added that the budget contains a 3% cost of living increase in wages and stated that there is a 3.1% increase in consumer price index (CPI) from year to year as of the most recent reported quarter. He then covered all the revenue and expense schedules for the enterprise budget which are the sources for the final account categories.

Manager Scanga displayed a graph showing percentages of combined Enterprise and District budget and budget comparisons between the 2020 to 2021 budget. For 2021 budget year, the majority of budgeted expenditures are for investments in capital outlay and water rights acquisition. Together these account for 64% of the budgeted expenditures in 2021. Generally, there are increases in all categories over the 2020 budget except for office expenditures and salaries where there are moderate decreases in 2021.

There was discussion among Board members regarding scheduling of the Budget Hearing. A motion was made by Director Payne, seconded by Vice-Chairman Felt to schedule the Budget Hearing for Thursday, November 12, 2020 at 2:00 p.m. It was approved unanimously by the Board.

#### **Canon City Urban Renewal Authority (URA) Agreement:**

The Canon City Urban Renewal Authority (URA) Agreement was summarized by Atty Burgemeister. Atty Burgemeister discussed some of the language used in the Agreement for Board members. Chairman Canterbury asked for clarification on how we would be indemnified if after the term of the agreement the District had issues with TABOR limitation? Attorney Burgemeister stated that based upon Canon City's legal counsel's letter to him that he felt assured that there would be no issues with TABOR and that in discussions with our accountant we could account for the loss of revenue as an expense to the District or at least a negative revenue account line in the budget.

Director Payne stated that he will serve as representative for the special districts on the URA due to his association with the Canon City Fire District.

Motion for approval of the agreement was made by Director Goodwin, seconded by Director French with all directors voting, "Aye".

#### **Arkansas Basin Roundtable Update:**

Manager Scanga updated board on the Arkansas Basin Implementation plan update. The recent remote meeting that Mr. Scanga joined was to update the basin contractors on projects to be included in the plan for the Upper Basin. Mr. Felt moderated this meeting. The basin contractors are compiling data for the state water plan contractor, so the Arkansas Basin is accurately included in the water plan update. A major part of the plan is the inclusion of all projects, current and anticipated future projects, from all the entities in the basin. The UAWCD has a majority of the project listed to date.

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

Engineer Ryan reported that the Blue Line Augmentation Case and the Cottonwood Irrigating Ditch Case (CID1) are still in progress. She stated that she would have more information at next month's Board meeting.

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

#### **18CW76 UAWCD Blue Line Expansion Case:**

Attorney Burgemeister reported on current stipulations for the Blue Line Augmentation Expansion Case. UAWCD filed and served its expert report. Proposed stipulations for the City of Aurora, and Widefield Water and Sanitation District were finalized. The statement of opposition of 2R Land Holding was dismissed.

Attached to Atty Burgemeister's report was the pertinent text from the proposed stipulations between UAWCD and the Widefield Water and Sanitation District and the City of Aurora. The language in these is essentially the same as previously approved for past stipulation approved by the board. Upon motion by Director Colon, with second by Director French, the Board approved ratification of both the City of Aurora, and the Widefield Water and Sanitation District stipulations.

#### **19CW3048 UAWCD-Young Life Silver Creek Ronk Case:**

Atty Burgemeister reported that all parties in the joint application to change Silver Creek-Ronk Ditch have filed initial disclosures. The trial is scheduled to begin, October 25, 2021.

#### **UAWCD Opposition - 19CW3061 Smith-Hoosier Change Case:**

Also reported by Atty Burgemeister were applications opposed by UAWCD. Burgemeister said he received responses to comments and a revised ruling in the Application of Tom Smith. Comments from the District are due on October 30, 2020 and a status conference is scheduled for November 6, 2020.

#### **Miscellaneous:**

There was some discussion regarding a potential meeting date for a Board workshop to review the Employment Policy. Manager Scanga suggested the workshop be scheduled after the final draft has been reviewed. It is anticipated that a meeting could be scheduled in late October or mid-November.

### **CHAIRMAN AND DIRECTOR REPORTS**

Photos were displayed from Vice-Chairman Felt showing the groundbreaking for The Arkansas Valley Conduit. The conduit provides a means of getting clean water to farming communities along the Arkansas River, eliminating exposure to uranium and selenium.

Manager Scanga summarized his article written for publication in local newspapers, regarding Nestle and the benefits of water augmentation, and water rights in the community.

Director Goodwin expressed concern about bandwidth and internet connection issues from his home in Canon City at a recent meeting with the SECWCD. Director Colin said his connection in Canon City at his office does not experience these issues and offered to Director Goodwin that he may attend these meetings at his office in the future if he liked.

### **NOTICES & MEETINGS**

The Arkansas Basin Round Table Meeting is set for Wednesday, October 14, 2020.

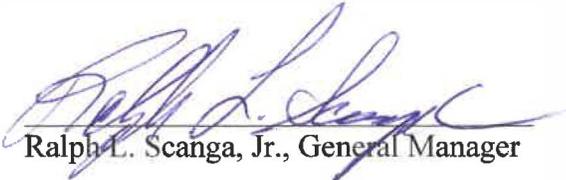
### **ADJOURN**

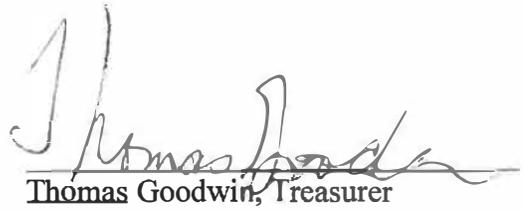
There being no further business to come before the Board or Enterprise and upon motion by Director Donley, seconded by Director Colon and approval of the Board, the meeting adjourned at 4:11 pm.

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Respectfully submitted,

  
Ralph L. Scanga, Jr., General Manager

  
Thomas Goodwin, Treasurer

  
Timothy C. Canterbury

approved remotely - no signature  
Richard Hilderbrand

approved remotely - no signature  
Mannie Colon

  
Franklin J. Moore

absent from meeting - 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

  
Mike Shields