

**UPPER ARKANSAS WATER
CONSERVANCY DISTRICT**

Regular Meeting of the Board of Directors

**November 12, 2020
1:30 P.M.**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, November 12, 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 November 11, 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
Franklin J. (Jay) Moore	Mike Shields
Tom E. French	

DIRECTORS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Tim Payne	Gregory W. Felt	Brett A. McMurry
Richard Hilderbrand	Tony Telck	Warren Diesslin
Mannie Colon		

DIRECTORS ABSENT

Robert B. (Bill) Donley

DISTRICT OFFICIALS/STAFF MEMBERS PRESENT

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

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

Wendy Ryan, Engineer

DISTRICT OFFICIALS ABSENT

None

STATE OFFICIALS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Bill Tyner, Division Engineer

STATE OFFICIALS ABSENT

Brian Sutton, Augmentation Coordinator/Water Commissioner

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

None

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 Flower, Custer County Commissioner
Bob Hartzman, Canon City Water Superintendent

RECORD OF PROCEEDING

GUESTS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERRNCING)

Joe Stone, Heart of Rockies Radio News

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 OCTOBER 8, 2020

The minutes of the meeting of October 8, 2020, were approved upon motion by Director French with second by Director Telck.

FINANCIAL REPORTS

Upon motion by Director Goodwin with second by Director Telck, the Board approved the monthly financial report dated October 31, 2020.

PROGRAM PRESENTATIONS

Hydrologist Gertson displayed a video presentation of an underwater view of O'Haver Reservoir and Boss Lake. The video illustrated the outlet and staff gage at O'Haver Reservoir and the rock wall which protects the inflow pipe at Boss Lake. Hydrologist Gertson said the inflow pipe should be free of rock and debris.

Another video of North Fork Reservoir was also displayed. This video depicted the hydraulic gate with significant amounts of rust and corrosion. Hydrologist Gertson explained the repairs needed with the gate and valve and said the repairs would most likely be completed next summer when the days are longer and warmer. He said the lower valve would be closed and a diver would go in and clean the gate and inspect the extent of the repairs and identify any other problems, before determining the best method for repair or replacement. PM Goodwin asked if the gate could be repaired or replaced underwater. Hydrologist Gertson said repairs and /or replacement could be accomplished underwater. He added that the cost for total replacement of the gate and hydraulic system is \$8000 for the equipment. Manager Scanga asked what the cost is for a dive? Hydrologist Gertson answered that the cost of one dive is \$4000 a day and feels replacement of the gate would require multiple dives. More discussion pursued among the Board to determine the most cost-effective way to repair and the best way to proceed. Director Hilderbrand suggested the use of more than one diver at a time to speed up the process. Director French added that a new gate would also solve the corrosion problem. Manager Scanga said he feels the most beneficial and cost-effective way to proceed and best long-term solution would be a replacement of the gate and entire hydraulic system and the new gate would allow for remote operation.

EX-OFFICIO REPORTS

There were no ex-officio reports

PROJECTS MANAGER REPORT-Gracy Goodwin

Project Manager Goodwin presented the projects update on Grants in Progress.

- **DeWeese Enlargement Feasibility Study:** Stakeholder meeting was held to review grant progress.
- **St. Charles Mesa (SCM) Water District CID2 Augmentation Station:** Construction of the head gate and flume are completed. An upcoming walk-through has been scheduled and new equipment for the telemetry station has been gathered. Photos were displayed showing work in progress.
- **Trout Creek Alluvial Storage:** A proposal is being developed for the Department of Corrections.
- **Ice Lake:** Hydrologist Gertson and Engineer Manera are working on a final project design and the outlet ditch has been cleared of overgrowth and debris.
- **Round Mountain Reservoir Feasibility Study:** The Colorado Water Conservation Board (CWCB) has approved the study and we are awaiting on a contract.

RECORD OF PROCEEDING

Consultant Baker asked PM Goodwin if she was planning on putting together a video of UAWCD's Projects for the Colorado Water Congress as was done in the past. PM Goodwin answered that she did not have any plans to do so but asked if he had a particular project in mind and she was open to the idea. Consultant Baker explained the reason for the video, stating that many people are interested in what UAWCD does and he feels it is important for the public to understand the District's main objective and mission, which is preserving the property rights for people and how UAWCD accomplishes that. He added that the video could be a conglomeration of the District's augmentation program and water projects. PM Goodwin said she would be happy to formulate a video exhibiting the current project at St. Charles Mesa for example.

Director Hilderbrand asked if the river flows at flood stage would breach the head gate and wondered why a flood control berm was not constructed as part of the project. PM Goodwin stated that this was not a concern of SCM and was not taken into consideration in the budget for the project. Hydrologist Gertson stated that it is typical that high flood flows over top the diversion structure nearly every year.

It was questioned why the head wall was not constructed higher. PM Goodwin stated that the height was reduced due to landowner's preference for aesthetics. Goodwin stated that most of the water will pass over it anyway and will not be a concern. Scanga commented that all diversion structures require annual maintenance. Total project cost was \$185,000.00

CONSULTANT REPORT – Ken Baker

Consultant Baker provided a summary of the study of jobs lost under demand management programs and also gave a brief history of the organization of the Colorado River Compact in 1922 as written by Mr. Jay Adams. The article included a number of photographs of storage projects created after the Compact was signed. Consultant Baker went on to explain how the Compact was negotiated during an epic high snow period in the western part of the United States. Baker added that historically the Colorado River was an abundant water source. The Compact allocated the amount of Colorado River water that Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming could legally use as a water supply.

Consultant Baker discussed a short article written by Michael Cox, defining some of the purposes and principles of Demand Management. Consultant Baker explains that the article does not define the role of the State Water Engineer and the administration of water rights diversion, or the role of the professional engineer's calculation of historic consumptive use of water being transferred to an alternate use. Baker states that Compact compliance may be a valid beneficial use of a water right, but the transfer from the historic consumptive use to an alternative beneficial use requires Water Court approval. Consultant Baker added that if the lawful owner of a right to divert irrigation water does not choose to divert, the water remains in the river and may be diverted by another diverter based upon date of priority to be administered by the Division Water Engineer. This rule of water law is not addressed in the article.

Another article discussed by Consultant Baker and written by Heather Sacket regarded concepts of New York investors participating in the purchase of irrigated land with the intent to transfer water rights downstream to satisfy Compact obligations. Consultant Baker emphasized that fact that the article along with the previous one, failed to include the State Water Engineer, professional engineer analysis and Water Court approval of transfer.

Consultant Baker included in the Board's binders the early history of the Colorado Water Congress from 1957-1958, for reference and review. He added that the activities of the Colorado Water Congress have been the focus of most of his reports. Baker also spoke of the ongoing concern for future ditch owners.

Director Goodwin asked Vice-Chairman Felt, the Arkansas Basin Representative on the Colorado Water Conservation Board (CWCB), if he intends to support established Colorado Water Laws as it deals with establishing a Demand Management program dealing with changes of use of water rights.

Vice-Chairman Felt answered that at this time nothing has been established with how CWCB would administer a Demand Management Program whether through the water courts, or through an administrative process. Also, he continued, that the main objective of the Demand Management Program

RECORD OF PROCEEDING

is to protect water rights in the event of a compact call. Further, if there were a compact call then the state engineer would be compelled to administer the call and curtail diversion that would be out of priority. Mr. Felt said that at this point the CWCB is trying to find the best alternative, to be pro-active, and define now what we do in case of a compact call instead of simply doing nothing and be subject to whatever may come. The CWCB is trying to do the best of a very tough situation. He added that he thinks there are a lot of issues that need to be addressed. Vice-Chairman Felt stated that he has only been involved with this since March and a lot of discussion preceded his association with the CWCB. In any case, there is a lot of work to be done along with a lot of work to develop a Demand Management Program and it is coming very slowly. The subject deserves much debate and thought, and the questions you ask are valid and even this discussion unfolds many good ideas that deserve discussion. Mr. Felt stated that for him the "Jury is still out" but this idea is a good pursuit. The pursuit is worth it instead of doing nothing and then facing a potential curtailment of junior water rights from a compact call.

Division Engineer Bill Tyner commented that Mr. Felt's description is good. In case of a compact call the State Engineer and Division Engineers would have to administer the call by curtailing the diversion of junior water rights. A complicating factor is that some areas adjudicated their water rights much later than other areas such as in the Yampa division. Furthermore, a big part of the fear of a purely priority administration is that a compact call has the potential to shut down an entire basin. Engineer Tyner stated that Kevin Rein has been working on formulating tentative plans in the case of a call and it is good that he has some time to prepare for a potential call. For instance, Mr. Tyner added, the State has been requiring ditches that had no defined head gates to establish head gates and measuring devices so priority administration could be enforced in the case of a compact call.

Manager Scanga commented that he agrees with Greg and Bill but that is really not the question that Mr. Baker is raising. He said, it is rather the concern of the methods being considered for a demand management program that is by using a presumptive number, to establish the transferrable consumptive use of the water rights that would be used in a program. Or, in the alternative Manager Scanga continued, do we go through an exhaustive engineering process to calculate the historic and true consumptive use of the water rights that would be considered for a demand management program, and once this is done where do we store this water. In Lake Powell where we lose a lot of water to evaporation and transit loss. For instance, Manager Scanga said, "If you had 100,000- or 300,000-acre feet of water per year that you send down to Lake Powell, how much water would you have in storage at the end of 50 years?" "Is there a better alternative to this?"

He added that Mr. Felt and he have discussed this. Manager Scanga continued, asking if it would not be better to explore an alternative plan to store the water in Colorado and use it to establish a base flow, or store the water in an alluvial storage location coupled with traditional above ground storage, and use some of this water for temporary uses in Colorado. Manager Scanga said he agreed with Mr. Felt that it is a long way from being figured out and that those are the burning questions. He added that Mr. Baker hit on the one, which was: "What is the method of calculating how much water each water right owner actually owns and was used by the rights being considered?"

He continued, I hope and I have confidence that Vice-Chairman Felt sitting there as our representative will push for using a method that we know works, and everyone knows that water rights are protected from injury. Manager Scanga emphasized that the system we have been using we need to embrace because we know it works, instead of saying, lets just do it administratively because it is quick and easy and it costs less to do it. Manager Scanga expressed that he believes it is not going to be an inexpensive process but the sooner we put these plans out there, the better it is. He said he looked at the Lake Powell inflows and they really do not show a major trend. He added that the biggest inflow years were in 1984 and the lowest were in 1964 and therefore he sees no real trend. Manager Scanga asserted that he does think the one recent trend is that we have a few more drought years a bit more frequently but who knows whether this will continue, no one knows that.

Consultant Baker commented that when water is diverted from the river to be used on a particular piece of land only a portion of the water diverted is consumptively used. He stated that the estimates are between 40 and 50 percent of the total diverted is consumed, with the balance returning to the river and then appropriated by another person downstream. Consultant Baker explained that when they (CWCB)

RECORD OF PROCEEDING

state that they are going to take someone's water downstream to Lake Powell, they do not state what they are taking. They have no provision for how they determine what they are taking. He added that Mr. Tyner will tell you that they can only take that portion that was historically consumed.

Vice-Chairman Felt stated that he did not disagree with Manager Scanga or Consultant Baker. He stated that when you take into consideration the effort, time and expense that you would have to go to for calculating the historic consumptive use of each water right that might be then temporarily, voluntarily, and compensated to put into Lake Powell to forestall a compact call, you are talking about a lot of money we are going to have to generate as a State, and also to compensate the agricultural water right owner for foregoing the use of their water. He said he questions whether the people of Colorado would necessarily be in support of this. And then if you think of spending all this money and then put the water into a bank account that will evaporate; "I do not think this is going to fly."

Mr. Felt added that he believes Manager Scanga has it right and that we need to at least avoid evaporation by alluvial storage or negotiating a different kind of deal, such as not being charged evaporation in Lake Powell. He said he feels it is an extremely complex problem and one that requires continued discussion. He remarked that he will continue to keep the Board apprised and knows Manager Scanga works with this with the IBCC.

Director French asked if the CRWCD tax question passed. Consultant Baker informed the board that it did pass.

Director Hildebrand stated that he thought Greg had an interesting point about storing water under the surface to avoid evaporation. He added that charging evaporation will be a big factor on the success of this concept. He asked Vice-Chairman Felt's thoughts.

Director Felt answered that we are doing this to prevent a compact call and added that another factor is that the lower basin would have to be able to get the water delivered in case of a call.

Manager Scanga included that we must not forget transit loss which is probably larger. He said Lake Powell is actually quite efficient as a storage vessel.

COMMITTEE REPORTS

RESUME REVIEW COMMITTEE

Manager Scanga stated that there were no applications that he felt would require an entry of an objection. However, he did point out that Director Goodwin questioned the potential impact of case 2020CW3063 an instream flow appropriation on Iowa Gulch in Lake County. Director Goodwin made a motion to notify Lake County and Parkville Water District regarding the Iowa Gulch Instream Flow (ISF) Water Right to verify that they are aware of this and determine what impact this may have on them. Furthermore, if we learn that there will be negative impacts to them, and the basin authorize staff based upon this contingency to enter an objection. Director French seconded the motion and the Board unanimously voted "Aye".

MANAGER'S REPORT – Terry Scanga

2:00 P.M. BUDGET HEARING

The budget hearing began with Manager Scanga inviting Erik Young, CPA from Stotler & Young to review the budget process and the budget resolution. Mr. Young provided highlights from the General Fund and the Enterprise Fund. He stated one change in the General Fund from the last meeting. He reported that the mill levy has been temporarily reduced to 0.445 mills but there will be an increase in revenue based on an increase in property values. Manager Scanga asked Mr. Young how revenue is affected with the passing of the Gallagher Amendment? Mr. Young answered that it would allow tax revenue to grow over time. There being no questions concerning the General Fund, Mr. Young proceeded with the Enterprise Fund stating there were no significant changes from the prior meeting.

RECORD OF PROCEEDING

Guests were then invited to comment or ask questions as part of the budget hearing. Director Payne asked why water rights acquisition expenditures were \$103,000 in 2020 and yet are budgeted in 2021 at \$3,118,000? He wanted to know if the District was expecting an increase in water acquisitions. Chairman Canterbury said it was budgeted at \$2,900,000 in 2020 but only \$103,000 was used. Manager Scanga clarified by explaining that all available revenue is budgeted. He said, after standard operational expenses are established, the excess revenue is budgeted for water rights acquisitions. Manager Scanga added that this way there is always reserve revenue available to purchase future water shares, if necessary.

Following questions and comments, a motion was made by Director Goodwin and seconded by Director French to adopt the 2021 Budget and Resolution. It was unanimously approved by the Board.

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

Engineer Ryan gave a brief update on the Smith Hoosier Ditch Case, stating that a response to the opposition was made last month. She also informed the Board that the first expert meeting for the Blue Line Augmentation Case is scheduled for the following day, Friday, November 13, 2020.

LEGAL REPORT – Law of the Rockies, Kendall Burgemeister

Oppositional updates and transactional matters were included in the Law of the Rockies legal report provided by Attorney Burgemeister in advance of the meeting.

UAWCD Applications:

Change of Cottonwood Irrigating Ditch:

- UAWCD provided revised ruling and responses to opposer comments
- Opposer comments are due December 18, 2020- Status conference is January 6, 2021

Blue Line Augmentation Expansion:

- Status conference held- Several parties have filed statements of opposition.
- The next step is first meeting of experts, scheduled for November 13, 2020

Joint application of change Silver Creek-Ronk Ditch water:

- All parties have filed initial disclosures. Trial is scheduled to begin October 25, 2021.
- Status: Before the Water Judge

UAWCD Oppositions:

Application of Tom Smith:

- UAWCD provided additional comments to the Applicant.
Status: Before the Referee

Fremont County DOT Augmentation Agreement (from Enterprise Meeting)

A brief discussion continued regarding the Fremont County Augmentation Agreement discussed during the Enterprise meeting. Director Shields asked about the Area 2 disclaimer and the minimum and maximum amount of augmentation water to be provided. Manager Scanga and Attorney Burgemeister explained that the reference to Area 2 simply clarified the distinction that exists in our augmentation expansion application, so the agreement conformed to the new proposed augmentation area. The minimum and maximum amounts are listed so it allows Fremont County to be able to expand their uses based upon their anticipated water supplies. Director Colon asked about the potential change of the Hydraulic Ditch Shares and who will expend effort on analyzing or changing this water right. Atty Burgemeister stated that the County wished to include all its water rights in the agreement in the future event these may be used for augmentation water supply. Who might change these or do the engineering analysis would have to be determined at the time that were to occur.

A motion was made by Director French to approve the agreement, seconded by Director Hilderbrand.

RECORD OF PROCEEDING

As a result of the majority of the Board voting in favor of the agreement, approval was granted. Director Payne and Director Colon abstained from voting.

CHAIRMAN AND DIRECTOR REPORTS

There was some discussion from Board members regarding having a Christmas party in December. Due to social restrictions in the community regarding the COVID-19 pandemic, it was determined that a Staff and Director party should be postponed for a later date. The next Board Meeting will be scheduled for January 2021.

NOTICES & MEETINGS

None

ADJOURN

There being no further business to come before the Board or Enterprise and upon motion by Director French, seconded by Director Colon and approval of the Board, the meeting adjourned at 3:26 pm.

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RECORD OF PROCEEDING

Respectfully submitted,


Ralph L. Scanga, Jr., General Manager


Timothy C. Canterbury

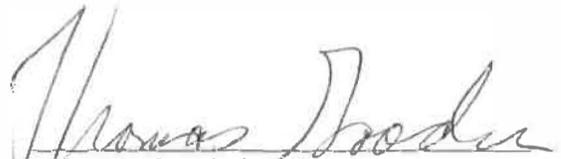
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Robert B. Donley

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Gregory W. Felt


Tom E. French

absent - no signature
Brett A. McMurry


Thomas Goodwin, Treasurer


Richard Hilderbrand


Franklin J. Moore

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Warren Diesslin

approved Remotely - no signature
Tim Payne

approved Remotely - no signature
Tony Telck


Mike Shields