

**UPPER ARKANSAS WATER
CONSERVANCY DISTRICT**

Regular Meeting of the Board of Directors

**November 11, 2021
1:30 P.M.**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, November 11, 2021, 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 10, 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
Robert B. (Bill) Donley	Mike Shields	Albert Eggleston

DIRECTORS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Richard Hilderbrand	Robert B. (Bill) Donley
Mannie Colon	

DIRECTORS ABSENT

Franklin J. (Jay) Moore, (Honorary)	Mike Shields
Gregory Felt	Tim Payne

DISTRICT OFFICIALS/STAFF MEMBERS PRESENT

Ralph L. (Terry) Scanga, General Manager	Kendall Burgemeister, Attorney
Jord Gertson, Hydrologist	Jennifer A. Scanga, Administrative Assistant
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	

DISTRICT OFFICIALS ABSENT

Ken Baker, Consultant
Chris Manera, Engineer

STATE OFFICIALS PRESENT

None

STATE OFFICIALS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

None

STATE OFFICIALS ABSENT

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

EX-OFFICIO REPRESENTATIVE PRESENT

None

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

None

EX-OFFICIO REPRESENTATIVES ABSENT

Brian Berger, Poncha Springs Administrator

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Tom Flower, Custer County Commissioner
Dwayne McFall, Fremont County Commissioner
Dave Schneider, Round Mountain Water and Sanitation District Manager
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

Erik Young CPA, Stotler & Young PC

GUESTS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERNING)

Joe Stone, Heart of the Rockies Radio
Joel Benson, Town of Buena Vista

PLEDGE OF ALLEGIANCE

Chairman Canterbury led attendees in the Pledge of Allegiance.

INTRODUCTION OF GUESTS

Guests were asked to introduce themselves.

A Veteran's Day video was presented honoring all American Veterans and current service men and women.

MINUTES OF THE MEETING OF October 14, 2021

The minutes of the meeting of October 14, 2021 were approved upon motion by Director French with second by Director McMurry.

FINANCIAL REPORTS

Upon motion by Director Goodwin with second by Director Eggleston, the Board approved the monthly financial reports dated October 31, 2021.

PROGRAM PRESENTATIONS

None

EX-OFFICIO REPORTS

There were no ex-officio reports

PROJECT MANAGEMENT REPORT- Gracy Goodwin

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

Ice Lake Outlet and Spillway:

- The measuring device for the outlet structure and the stilling well has been completed.
- A final report will be submitted this month for reimbursement of remaining grant.
- Final billing for costs with HOA for outlet.

DeWeese Enlargement Feasibility Study:

- The final report is in the draft stage.
- Performing estimate of final cost.
- A geological reconnaissance to prepare geologic maps in underway.

DeWeese Dye Ditch Gaging Project:

- A proposal to DeWeese for the gaging project has been submitted.

Water Balance Study-Phase 2:

- The United States Geological Survey (USGS) is finalizing portions of report and data.
- The Colorado State University (CSU) report has been completed.

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Manager Scanga asked what portion CSU had to do? PM Goodwin stated they did the irrigation modeling portion and certain lands were checked for Evapotranspiration calculations were being developed on pivot systems.

Round Mountain Reservoir Feasibility Study:

- The geotechnical fieldwork, Water Balance study and operations is finished.
- Completion of 75% of the conceptual design.
- There is work in progress on the environmental permitting review.

Chairman Canterbury asked how long the environmental permitting will take?

PM Goodwin answered that it should be completed more quickly and easily than the DeWeese Enlargement Study because Round Mountain owns the property. She said there are two types of grasses to check in the area and she is waiting for more detail on what type of permitting is needed to move forward.

CONSULTANT REPORT & LEGISLATIVE UPDATES – Richard Brown

Legislative Consultant Brown reported on current legislative updates. A legislative report was made available to all Board members prior to the meeting.

Mr. Brown stated that there is a Bill in drafting that Senator Dennis Hisey representing Southwestern El Paso County is working on legislation regarding ponds and how potential ponds might be useful bodies of water for fighting wildfires. Mr. Brown said the bill title will be filed with drafting on December 1st and when the draft is released to him, he will share it with Manager Scanga and Consultant Baker.

Mr. Brown said he contacted Senator Cleave Simpson from the Rio Grande Basin concerning a bill he is sponsoring that would create a new fund in the State Treasury to receive and distribute monies in advancement of compact compliance and groundwater resource sustainability and conservation. He added that the fund would be administered by the Colorado Water Conservation Board (CWCB) and would be subject to annual appropriation.

Director Goodwin asked if the Supreme Court approved redistricting? Mr. Brown stated that it has been approved for the Congressional Districts but there is no conclusion on the Senate or House Maps.

Manager Scanga asked if there is an update on the proposed legislation for water speculation and which legislators are pushing for it and why? Mr. Brown answered that the working group with the Department of Natural Resources (DNR) was charged with looking at the existing statutory remedies or interventions to prevent speculation in water. The conclusion was no conclusion and no recommendations. Mr. Brown said Montrose Senator Don Coram was not satisfied with the work of the groups, so Senator Coram brought the issue to the Water Resources Review Committee (WRRRC) and after discussion, Senator Coram drafted a bill. He stated that the problem is the balance between a farmer/rancher landowner who has water rights and may want to retire from farming someday. The farmer might decide to market their valuable asset and avoid compromising the effort or what they choose to do with the water while opening a door for what the legislators believe is really profiteering by large financially held groups, hedge funds and others who seek to commoditize water, and “sit” on the water until the value goes up to the point that they want to sell. Mr. Brown explained that the other group they are concerned about are the straw buyers that allege they are the true buyers but are actually a front for another group that would flip the water in less than a year. He said the problem is the debate over determination of intent. Mr. Brown expressed that it is an extremely hard thing for the courts to deal with. He added that there are several exemptions, including municipal water suppliers. Mr. Brown stated that the most troubling part is the goal to interdict and interrupt these types of negotiations. He said the bill contains an effective date that would apply after the first of next year and the people in Southern Colorado are concerned about the water that is proposed to be exported from the San Luis Valley up to the Southwestern suburbs of Denver. Mr. Brown expressed that he does not think it will have any affect on it.

Manager Scanga commented that water in Colorado must be beneficially used to be retained and maintain a property interest. He said that secondly, water must be used in Colorado and cannot be used or sold across the state line. Manager Scanga explained that you cannot “sit” on water and a use must be identified.

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Atty Burgemeister expressed that he feels the bill is a bad idea. He said that trying to fight over someone's intent at the time they purchase a ranch with water rights tied to it is a fraud and a waste of time. He added that the State Engineer has more important things to give his attention to then to sue someone over a ranch transaction.

Mr. Brown expressed that the first case brought under this would be either unleashing a pandora's box or the death knell of the entire concept and defining intent would be almost impossible. He added that it changes the role of the State Engineer and puts him into a position where he could bring these challenges in his own name as well as participating in challenges brought by other parties. Mr. Brown expressed that he feels it moves the State Engineer away from the administration of water rights and into a more assertive management and advocacy type role.

Manager Scanga stated that some of the concern is that an investment company would come in and buy a water right and then sell it to somebody in California. He remarked that a bill could be passed stating that water cannot be sold outside the state of Colorado affirming that point. Manager Scanga explained that would mean the death knell of demand management.

COMMITTEE REPORTS

None

RESUME REVIEW COMMITTEE

The November Resume was unavailable at time of meeting.

MANAGER'S REPORT – Terry Scanga

2:00 pm BUDGET HEARING

The budget hearing began with Manager Scanga inviting Erik Young of Stotler & Young PC to review the budget process. Mr. Young remarked that not much had changed in the budget since the last meeting and offered highlights for both 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 0.398 mills but there will be an increase in revenue based on an increase in property values.

Manager Scanga explained that the mill levy was incorrectly cited on the resolution and is 0.398 mills. Guests were then invited to comment or ask any questions as part of the budget hearing. Hearing none, Manager Scanga read the proposed 2022 Budget Resolution.

Mr. Young stated that there are no major changes to the 2022 budget over the prior year and said that the balancing figure for the General Fund is capital outlay for water rights acquisitions. There being no questions about the General Fund, Mr. Young proceeded to review the Enterprise Fund budget.

Mr. Young reminded the Board that the only revenue restriction for the Enterprise is that it cannot receive more than 10% of its revenue from local or state grants. He said that District money does not qualify under that definition because the funds are designated. Schedule C was provided by Manager Scanga for further detail and explanation. Mr. Young said that the balancing figure for the Enterprise is for water rights acquisitions. He said that our beginning fund balance is carried over for next year's budget and because expenditures are down approximately 8%, the number is higher. Mr. Young then asked if there were any questions from the Board.

There being no questions or comments from the public, a motion was made by Director Donley and seconded by Director Goodwin to adopt the 2022 Budget and Resolution. It was unanimously approved by the Board.

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

Engineer Ryan gave updates on current engineering projects.

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She stated that the expert report for the Hoosier Ditch Case was completed, and a response was received but no concerns were addressed.

Engineer Ryan further stated that she will be working on the DeWeese needs assessment with various stakeholders and the enlargement study and finishing up water rights and exchange analysis for the Round Mountain Reservoir.

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.

UAWCD Applications:

21CW3059: Chalk Creek Exchange

- Developments: Application filed
- Status: Waiting for statements of opposition and consultation report.

21CW3060: Cherry Creek Exchange

- Developments: Application filed
- Status: Waiting for statements of opposition and consultation report.

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

- Developments: Initial status conference held. Received consultation report.
- Status: Proposed ruling and response to consultation report due November 30th.

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

- Developments: No significant developments
- Status: Proposed ruling due December 3rd.

19CW3089: Change of Cottonwood Irrigating Ditch

- Developments: Received opposer comments and participated in status conference.
- Status: Before the Referee until May 31, 2022. UAWCD revised proposed ruling due December 17th.

Applications UAWCD is Opposing:

21CW3044

- Developments: No significant developments.
- Status: Waiting for consultation report, and initial proposed ruling and engineering.

19CW3061

- Developments: UAWCD submitted expert report and Applicant submitted rebuttal report.
- Status: Before the Water Court. Trial scheduled for March 2022.

Atty Burgemeister stated that a revised draft of the Employee Personnel Policy was given to Manager Scanga for review. The revised policy includes health insurance changes that were of concern by some directors.

Chairman Canterbury stated the policy will be available for Board members to review prior to the January 2022 meeting.

CHAIRMAN AND DIRECTOR REPORTS

Chairman Canterbury led a discussion regarding having a Board & staff Holiday celebration.

There was discussion of the use of counsel by individual directors. Director Hilderbrand stated that he had some questions about how a breach of duty of the Manager's contract would be handled given a policy that board members are not allowed to individually contact the legal counsel except through a board meeting? Attorney Burgemeister explained that individual board members could contact the chairman or ask for an executive session to discuss with the legal counsel such an issue. Otherwise, most ordinary legal questions could be directed through the General Manager or the Chairman. It was clarified that the legal counsel represents the Board not each director individually. Director Goodwin encouraged Board members to call the General Manager and reach out to him for answers to District questions.

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NOTICES & MEETINGS

None

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 2:30 pm.

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RECORD OF PROCEEDING

Respectfully submitted.


Ralph L. Scanga, Jr., General Manager

absent - no signature
Thomas Goodwin, Treasurer


Timothy C. Canterbury

absent - no signature
Richard Hilderbrand

approved remotely - no signature
Mannie Colon

absent - no signature
Albert Eggleston

approved remotely - no signature
Robert B. Donley

approved remotely - no signature
Warren Diesslin


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

approved remotely - no signature
Mike Shields