

**UPPER ARKANSAS WATER
CONSERVANCY DISTRICT**

Regular Meeting of the Board of Directors

**November 8, 2018
1:30 PM**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, November 8, 2018, 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 7, 2018, at the offices of the Upper Arkansas Water Conservancy District, 339 East Hwy 50, Salida, Colorado.

DIRECTORS PRESENT

Robert M. Senderhauf	Tim Payne	Brett A. McMurry
Franklin J. (Jay) Moore	Thomas Goodwin	Jeff Ollinger
Tom E. French	Gregory W. Felt	Timothy C. Canterbury
Richard Hilderbrand	Mannie Colon	John H. Sandefur

DIRECTORS ABSENT

Robert B. (Bill) Donley

DISTRICT OFFICIALS/STAFF MEMBERS PRESENT

Ralph L. (Terry) Scanga, General Manager	Ken Baker, Consultant
Chelsey Nutter, Projects Manager	Kendall K. Burgemeister, Attorney
Jord Gertson, Hydrologist	Kimberly Kerschke, Secretary
Chris Manera, Engineer	

DISTRICT OFFICIALS/STAFF MEMBERS ABSENT

None

STATE OFFICIALS ABSENT

Brian Sutton, Water Commissioner

EX-OFFICIO REPRESENTATIVES PRESENT

Harald Kasper, Salida City Council
Tom Flower, Custer County Commissioner
George Medaris, Round Mountain Water & Sanitation District

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
Philip Puckett, Buena Vista Town Administrator
Bob Hartzman, Canon City Water Superintendent

GUESTS PRESENT

Joe Stone, Ark Valley Voice
Wendy Ryan, Colorado River Engineering
Kristie Nackord, Fremont County
Richard Shea, Penrose
David Mau, USGS
Erik Young, Stotler & Young

PLEDGE OF ALLEGIANCE

Chairman Senderhauf led attendees in the Pledge of Allegiance.

BUDGET HEARING

RECORD OF PROCEEDING

The budget hearing began at 2:07 P.M. with a report from Erik Young of Stotler & Young. Mr. Young remarked that nothing had changed in the General Fund since the last meeting and asked if there were any specific questions.

Manager Scanga reported that a few changes were made to the Enterprise Fund budget, including the addition of the Hayden Pass project and an education grant. This changed both revenue and expenditure numbers. Grants also went up by \$25,000.

Director Ollinger initiated conversation on interest income and recommended a goal of 1% return. At this time interest income is budgeted conservatively at .25% and Manager Scanga agreed the number could be higher. Manager Scanga added that not all budgeted numbers are funds available to earn interest and Director Ollinger responded that, in light of our regular expenses, we should not have as much non-interest bearing money in cash reserves. Manager Scanga said that an investment strategy is being compiled for Board consideration and a change in interest income can be anticipated.

Director Payne noted that we are dipping into reserves for the General Fund and highlighted a \$61,000 decrease in the estimated ending fund balance for 2019.

In further discussion, Mr. Young commented that actual valuations are not released until the 1st or 2nd week of December, but he does not anticipate changes to valuations.

Following budget discussion, Manager Scanga read the 2019 Budget Resolution to the Board. Upon motion by Director French with second by Director Moore, and Board unanimously approved the 2019 Budget Resolution. The Resolution was then signed by Chairman Senderhauf, Treasurer Goodwin, and Manager Scanga. Being that this was part of a public hearing, Director Payne asked for input or questions from the public, of which there were none.

INTRODUCTION OF GUESTS

Guests were asked to introduce themselves.

MINUTES OF THE MEETING OF October 11, 2018

The minutes of the meeting of October 11, 2018, were unanimously approved upon motion by Director Felt with second by Director Sandefur.

FINANCIAL REPORTS

Upon motion by Director Goodwin with second by Director Hilderbrand, the Board unanimously approved the monthly financial report dated October 31, 2018.

PROGRAM PRESENTATIONS

None

EX-OFFICIO REPORTS

There were no ex-officio reports.

CONSULTANT REPORT – Ken Baker

Consultant Baker remarked that his report from October reviewed the proposed Bill titled “Deficit Irrigation”. The plan proposed by the Attorney for the Lower Arkansas River Valley Water Conservancy District is one in which an adjudicated appropriation of river water would intentionally not be applied to beneficial use, but the new law would order, through administrative process, a change in water use that could be used at a new location and new use. Consultant Baker said that the Water Resources Review Interim Committee of the General Assembly voted not to support the Bill.

Consultant Baker reported on another similar plan, the Drought Management Plan, which is being promoted in the Colorado River Basin. This proposal, called “Conserved Consumptive Use”, is similar, if not identical, to the Deficit Irrigation plan. Consultant Baker explained that Conserved Consumptive Use is saved water that normally would have been consumptively used, as when an irrigator would forego water for rotational fallowing, and that water goes back to the stream, or in the

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case the River District is making, when the water makes its way to Lake Powell. The River District would create a pool in Lake Powell that can be protected from equalization with Lake Mead under the Interim Guidelines of 2007. The water then has to be protected from diversion by other water users on its way to Lake Powell.

In contrast to the Arkansas River, the Colorado River is not an “over-appropriated” river, and water may be available for appropriation to fill the void left when the irrigator foregoes water for rotational fallowing.

Consultant Baker mentioned the lengthy Drought Management Plan that was shared by Manager Scanga. The CWCB authors of the plan did not define “Conserved Consumptive Use”. The definition used in Consultant Baker’s report is one provided by the River District’s engineer.

Consultant Baker said that, if the plan is presented to the General Assembly and is opened for discussion in the SAC, he will take the same position the District took on “Deficit Irrigation”. Adjudicated appropriations of water diverted from Colorado rivers for irrigation must be applied on lands adjudicated to be irrigated and thus consumed beneficially by such irrigated lands. Failure to irrigate such lands results in zero beneficial use and zero historic consumptive use. Both “deficit irrigation” and “conserved consumptive use” proposals result in zero historic consumptive use and fail to qualify for change of use decrees.

In other matters, the Presidential memorandum concerning Colorado River Drought Contingency Management and Operations was discussed by Consultant Baker. Mr. Baker reported that Attorney Burgemeister has reviewed these documents and believes there is no meaningful impact on this particular District.

Director French asked how much people are being paid to participate in Conserved Consumptive Use, being aware of a particular rancher that benefitted from this arrangement. Consultant Baker was unsure of compensation amounts.

Manager Scanga provided comments on the demand management program being formulated by the State. Though there is a low probability of a Compact Call, the associated risks are high and drought contingency planning is prudent. The delivery requirement for the Upper Basin is 75 million acre-feet over a 10-year period. Manager Scanga said that right now we are at 92 million acre-feet, but conversation followed that the rolling average could drop if we have multiple years of drought. Engineer Manera offered that increase in population and demand could trigger a call and the risk is that anyone with a priority date after 1922 would be cut off. Advance planning could aid a situation when no water could be delivered by trans-basin diversions, such as Project water that has a priority date in the 1930’s.

The question arose as to why we would send more water to Lake Powell when average delivery is meeting compact requirements, especially because that water would be subject to evaporation. Is it prudent to put water in a hole, particularly water from trans-basin diversions that is fully consumable, and how would that affect dependence on native supplies?

Conversation continued about the additional water that is already being sent to Lake Powell by the Upper Basin. Director Felt remarked that water legally available to the eastern slope is being sent to the western slope because we do not have a storage plan to capture water that is in excess of our delivery requirements. This water is then used by California and Arizona. A water bank in Lake Powell that is protected from tapping by Lower Basin states and can only be used to meet Upper Basin obligations is what is being proposed through Conserved Consumptive Use. Entities that use Colorado River water would forgo their water and save it for future use. The issue of Historic Consumptive Use calculation and the requirement of maintaining return flows was also discussed.

PROJECTS MANAGER REPORTS - Chelsey Nutter **Projects and Education**

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Projects Manager Nutter reported that the Monarch Pass Forest and Watershed Health Project is advancing and that Ben Wade with the CWCB has been helpful in moving things along.

Additionally, a \$100,000 grant was approved for the Hayden Pass Fire and Flood Recovery Project and provides support to Fremont County in the Coaldale area. Money was also received from the NRCS Emergency Watershed Protection Fund, though constraints on timing requirements render that money more difficult to use. Projects Manager Nutter reported that Phase 1 of the project is only focused on Big Cottonwood Creek and that Kate Spinelli, formerly with the San Isabel Land Protection Trust, has been instrumental in getting that project off the ground. Ms. Spinelli lives on Big Cottonwood and has been received well by the community. Initial communication with land owners has been positive and Ms. Spinelli has been able to provide good coordination on the ground through the trust that's been established.

While Phase 1 of the project focuses on Big Cottonwood Creek, there are other drainages that have been affected by the Hayden Pass fire. These include Hayden Creek and Sullivan Creek. To help meet additional needs, Projects Manager Nutter applied for another grant through the CWCB, which was due on November 1st. This grant would provide funding for additional land owner coordination, engineering work from Luke Javernick of River Science, and further assessment of areas affected by the Hayden fire. Two years of ongoing monitoring was also written into the second grant application, releasing Fremont County from any ongoing burden. The grant is for approximately \$150,000 and Projects Manager Nutter said that she should know in January if the grant is approved. A presentation of the project will be provided to the Board by Kate Spinelli and Luke Javernick sometime after the first of the year.

Projects Manager Nutter said that having Engineer Luke Javernick in the area is greatly beneficial to the District. Mr. Javernick has experience with drone technology and is committed to involving young people in the use of technology. If the project advances, approximately 40 students from Canon City High School will help with monitoring. Inclusion of students from other school districts was also suggested.

COMMITTEE REPORTS

None

Resume Review Committee

Nothing of significance for the District in the Resume.

MANAGER'S REPORT – Terry Scanga

Manager Scanga reported that the IBCC met in Durango in October. A state drought briefing was provided by a state climatologist and the findings were that this past year was the warmest and driest in the 124 year record.

The funding task group through the IBCC is shifting to the Keystone Group, which is comprised of the Walton Family and Gates Family Foundations. A draft strategy for funding is still being discussed, but funding uses have been decided. These include healthy rivers, water quality, conservation and efficiency, sustainable agriculture, infrastructure, and compact obligations. Potential projects that could utilize funding include multi-use projects, environmental projects, technical innovation for storage, ATM's, reservoir dredging or expansion, and stream gage projects. Potential sources for funding include taxes through ballot initiatives, tourism, container, or sports betting taxes, and a water tax paid by households, commercial, and agricultural water users. Manager Scanga recommended the Board approve an opposition to the water tax.

Manager Scanga also provided information on Master Excess Capacity Contracts and conversation taking place with Southeastern Colorado Water Conservancy District (SECWCD). In order to get a master contract, authorization to do an EIS was needed from SECWCD and all types of water for storage had to be analyzed. Since that time we have added and will continue to add multiple water rights. Attorney Burgemeister is working with attorneys from SECWCD to analyze the process and determine what should be involved. Director Goodwin offered that the process should be simplified for how water gets added in the future, possibly using a Categorical Exclusion (CE) or Finding of No Significant Impact

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(FONSI). Director Felt inquired if the NEPA process is required for storage in Bureau vessels or for all impacts to the river system and suggested containing the process to specific Bureau facilities instead of the broad river system.

Manager Scanga said that we are well positioned to offer a template for how best to handle additional water in master capacity contracts because we have a large portfolio of water rights. Director Goodwin added that the timing is perfect to develop a process because the right people are in the right place.

Conversation moved to the topic of Stout Creek and the courtesy notice and proposed draft sent by the BLM regarding a recommendation to the CWCB for an instream flow on a reach of Stout Creek. The reach includes upstream of the Woods Pasture Ditch into forest lands where it will meet the instream flow already in place on the upper reach of Stout Creek. The numbers in the recommendation were reached using the R2Cross and questions arose on the validity of the numbers, particularly because historical stream flow data was not used and an average of wet and dry years was not considered.

Director Canterbury said that Stout Creek is a very limited stream with some dry reaches. Attorney Burgemeister remarked that, while the numbers may be reasonable, the methodology used to arrive at the numbers is flawed. Director Canterbury expressed concern regarding the process used to arrive at instream flow numbers and recommended questioning that process and requiring the use of definitive scientific methods. Attorney Burgemeister said there are two places to voice concern, at the CWCB Board meeting when the instream flow appropriation is considered and when the application is filed through water court. If the R2Cross method is obsolete and there are better ways to evaluate stream flows, the CWCB should be asked to amend its rules. The other possibility is filing an opposition when the instream flow claim is filed in water court. Engineer Manera said that the R2Cross is more of a hydraulic equation and variability will exist depending on the measurement location. The method used by the Forest Service for Gray's Creek is biologically based and looks at maximizing reproduction in the fish life cycle.

Director Canterbury asked the Board to consider whether the appropriation on Stout Creek could interfere with operations down the road. Conversation followed that it is unlikely, but since future possibilities are unknown, we need to be attentive to the process. Director Felt asked if we are going to allow the continued escalation of instream flow numbers and said that the integrity of the process is important. Manager Scanga asked if it is worth using the instream flow on Stout Creek as an example. Director Goodwin reminded the Board that we are living with the results of overstated instream flows and that we should not allow a broken system to continue.

Conversation followed regarding the base flow of Stout Creek and historical stream flow data. The Board agreed that the impact of an instream flow appropriation on Stout Creek cannot be determined because the data needed has not been provided. Director French suggested comparisons with 2002, 2012, and 2018.

Projects Manager Nutter interjected that we may want to consider helping the CWCB by providing them with a solution. Alternative examples, such as the stream management plan being proposed for Gray's Creek, could provide solutions that meet the objectives and purpose of the instream flow program. Going to the CWCB meeting in January and voicing concerns was suggested.

Manager Scanga said that he suggests starting with the BLM and CPW as a way to raise questions and offer an alternative.

Director Canterbury made a motion that staff, counsel, and engineers look at the process that is being used to come up with instream flow numbers and possibly offer alternative numbers backed by science. With a second by Director Felt and unanimous approval from the Board, the motion was carried.

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

Engineer Manera provided the Board with an update on the blue line augmentation expansion. A meeting is taking place with Division Engineer Bill Tyner on Friday, November 9th in Pueblo. Engineer Manera said that mapping and engineering work was done with the former Division Engineer, Steve Witte, and

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they want to discuss the process with Mr. Tyner prior to filing. The main purpose of the meeting is to make sure they are on the same page with regards to engineering and to figure out what will be incorporated into the engineering for the decree.

Additionally, Engineer Manera said they are approaching deadlines on various grants. He has been working on the Helena Ditch feasibility study and is almost done with the historic use analysis for Lake Ranch. Rotational lease fallowing options are also being investigated at Lake Ranch.

Projects Manager Nutter informed the Board that Kristie Nackord was hired to put together an education plan for Lake Ranch. Costs and partners are being considered and the plan will be completed by February 1st, at which time an update will be provided to the Board.

Engineer Manera also reported that an area capacity survey is being completed for Ice Lake, which will help with sizing pipe and doing hydraulic calculations. A level control box is also being designed to mimic what was done historically.

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.

Attorney Burgemeister informed the Board that the deadline for Statements of Opposition has passed in the change of Silver Creek-Ronk Ditch water rights. Four oppositions were filed and all were anticipated with the exception of the opposition filed by the City of Salida.

In the Friend Ranch case, Attorney Burgemeister reported that the three stipulations presented for Board approval at last month's meeting were finalized and approved by the court. The CWCB is still in the case and communication is taking place between Attorney Burgemeister and Engineer Manera.

Attorney Burgemeister said that there is not much taking place on the opposition side with the exception of the Super Ditch Exchange stipulation that was approved by the court.

With regards to the exchange to Ice Lake to replace evaporation, Attorney Burgemeister summarized the sequence of events and provided additional information. When Hydrologist Gertson attempted the exchange the CWCB was notified by Water Commissioner Sutton and subsequently objected, saying that the exchange should be decreed if it is a pre-existing use. Attorney Burgemeister highlighted that there is a decree and it pre-dates the CWCB instream flow. A letter was sent to Division Engineer Bill Tyner and Water Commissioner Sutton stating that, as a matter of law, the exchange does not need to be decreed, but the decree from the 1950's with an appropriation date in the 1800's speaks for itself. The law states that both decreed and un-decreed uses are senior to the instream flow, therefore, replacements by exchange should be allowed even when there is a shortage to the instream flow.

CHAIRMAN AND DIRECTOR REPORTS

Director Felt reported that he recently assisted Colorado Parks and Wildlife in their efforts to analyze fish numbers and fish health. After shocking various sections along the Arkansas River, it was evident that the area below Big Cottonwood Creek has been severely impacted. This negative impact is attributed to flash flooding in July in the Hayden Pass fire area. In contrast to the section of river near Big Bend, where 700 fish were counted, only 70 were counted in the Coaldale reach. The fish in this reach were also much smaller, measuring between 10-20 cm. The sediment loading in this stretch of river has created a very bad situation and Director Felt said he was thankful that the Hayden project was moving forward, along with other projects focused on fire mitigation.

Director Ollinger offered context as to why he has been continually bringing up the issue of the Enterprise building asset. Though he knows it has been annoying and disruptive to the flow of the meeting, Director Ollinger feels his experience with balance sheet evaluation is important to consider. He said that while we are in the business of water, we are also in the business of the business and he wants everyone to be knowledgeable about the performance of assets.

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Director Ollinger said he has been conducting a systematic evaluation of the major assets and their performance, including the Lake Ranch, the Enterprise building, and the cash assets of the District. With regards to the Lake Ranch asset, Director Ollinger reminded the Board that he brought this up multiple times and now the Lake Ranch is owned by the District and performing well. Having addressed the performance evaluation of the Enterprise building, Director Ollinger is now moving on to the cash assets of the District. He provided the Board with an informational packet regarding surplus asset management and walked through various investment possibilities, along with potential investment policy criteria. Director Ollinger commented that, while funds are currently deposited in a local Bank of the West branch, Bank of the West is a subsidiary of a French Bank. Chairman Senderhauf expressed his commitment to the use of local banks and highlighted that money invested locally recirculates within the community.

Manager Scanga thanked Director Ollinger for the information provided and informed the Board that he is already working with staff to look into various investment options. He has been in touch with Leann Noga at Southeastern Colorado Water Conservancy District and is looking into Colorado Trust. Manager Scanga said he can also look into CSAFE. Additionally, Attorney Burgemeister is analyzing requirements for public entities. Manager Scanga said that three things are necessary regarding investments; liquidity, security, and a good return. His intention is to convene the Personnel and Finance Committee and put together a plan and policy to present to the Board.

Regarding Board policy, Director Ollinger remarked that it provides direction for the General Manager. He believes that investing in policy now will be helpful in the future when we have a new General Manager.

Director Felt suggested a modification to any proposed investment policy. Instead of making it a requirement to utilize local banks he suggested the requirement be that we communicate with upper management of local banks. Director Felt offered that banks do not always want more deposits and alternate investments could potentially ease the burden on local banks.

Board member Colon said that he reviewed the new website and commended the work that has been done. Projects Manager Nutter said that any comments, particularly on the Board member information page, would be greatly appreciated.

Board member French commented on Lake Ranch and that the purchase of that property was a big step for the Board. Water rights were leaving the valley and an opportunity arose to buy a good water right. The value of the land was not considered as heavily as the value of the water, but the value of the water has now outperformed the value of most stocks and bonds.

Manager Scanga informed the Board that the dates for the Arkansas River Basin Water Forum may change due to a scheduling conflict. Also, a Christmas gathering will take place from 3:00 P.M.- 6:00 P.M. at the Steamplant Annex, following an abbreviated Board meeting on Thursday, December 13th. More details will follow from Kimberly and Projects Manager Nutter. Board Member Goodwin said he would not be able to attend due to a meeting for the Colorado River Water Users Association.

NOTICES & MEETINGS

- **SECWCD Board Meeting – November 15, 2018**
- **Arkansas Basin Roundtable Meeting – November 14, 2018**
- **CWC Annual Convention – Jan 30 – Feb 1, 2019**
- **Family Farm Alliance – Feb 21 – Feb 23, 2019**
- **Arkansas River Basin Water Forum – March 14-15 Pueblo Community College**

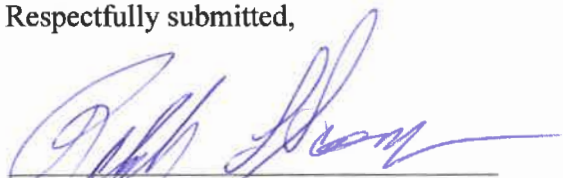
ADJOURN

There being no further business to come before the Board, upon motion by Director Colon, second by Director Hilderbrand and unanimous approval of the Board, the meeting adjourned at 4:50 pm.

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Respectfully submitted,


Ralph L. Scanga, Jr., General Manager

Absent for Approval- No Signature
Thomas Goodwin, Treasurer

Absent for Approval- No Signature
Timothy C. Canterbury


Absent for Approval- No Signature
Richard Hilderbrand

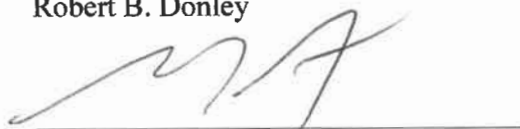

Mannie Colon


Franklin J. Moore


Absent from Meeting- No Signature

Robert B. Donley



Jeff Ollinger


Gregory W. Felt


Tim Payne


Tom E. French


John H. Sandefur


Brett A. McMurry


Robert M. Senderhauf