

**UPPER ARKANSAS WATER
CONSERVANCY DISTRICT**

Regular Meeting of the Board of Directors

**December 9, 2021
1: 00 P.M.**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, December 9, 2021, commencing at 1:00pm 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 December 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
Tom French
Gregory W. Felt

DIRECTORS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Mannie Colon	Tim Payne	Warren Diesslin
Robert B. (Bill) Donley	Brett McMurry	
Tony Telck	Mike Shields	

DIRECTORS ABSENT

Franklin J. (Jay) Moore, (Honorary) Albert Eggleston
Richard Hilderbrand
Thomas Goodwin

DISTRICT OFFICIALS/STAFF MEMBERS PRESENT

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

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

Richard Brown, Legislative Consultant	Chris Manera, Engineer
Kendall Burgemeister, Attorney	

DISTRICT OFFICIALS ABSENT

None

STATE OFFICIALS PRESENT

None

STATE OFFICIALS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERENCING)

Will Scott, Commissioner District 12

STATE OFFICIALS ABSENT

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

EX-OFFICIO REPRESENTATIVE PRESENT

None

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

Dwayne McFall, Fremont County Commissioner

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EX-OFFICIO REPRESENTATIVES ABSENT

Brian Berger, Poncha Springs Administrator
Tom Flower, Custer 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

Kevin Day, Custer County Commissioner, District 2 and Gayla Day

GUESTS PRESENT (BY REMOTE VIDEO AND AUDIO CONFERNING)

Joel Benson, Town of Buena Vista

PLEDGE OF ALLEGIANCE

Chairman Canterbury led attendees in the Pledge of Allegiance.

INTRODUCTION OF GUESTS

Guest were asked to introduce themselves

MINUTES OF THE MEETING OF November 11, 2021

The minutes of the meeting of November 11, 2021, were approved upon motion by Director French with second by Director Payne.

FINANCIAL REPORTS

Upon motion by Director Payne with second by Director Felt, the Board approved the monthly financial reports dated November 30, 2021.

PROGRAM PRESENTATIONS

None

EX-OFFICIO REPORTS

There were no ex-officio reports

PROJECT MANAGEMENT REPORT- Gracy Goodwin

None

CONSULTANT REPORT – Ken Baker & Richard Brown

A Legislative update was made available to Board members prior to the meeting date. No formal report was presented by Legislative Consultant Richard Brown.

Director French expressed that he found the redistricting portion of the update interesting and he thanked Mr. Brown for his detailed explanation.

Consultant Baker commented on the function of the General Assembly committee meeting concerning term limits. He mentioned a case in particular involving Senator Sonnenberg regarding term limits. He expressed that it was very bothersome because the Colorado Doctrine of Prior Appropriation is complex and is learned from years of experience. Consultant Baker gave an example of an article written by former Justice Gregory Hobbs on the 1969 Water Right Determination and Administration Act. Justice Hobbs pointed out that people who helped form this monumental piece of legislation were administrators, professional engineers, water attorneys and members of the General Assembly who had businesses in the water community for a number of years. Mr. Baker expressed that it is disturbing how a system of term limits with individuals who have learned by institutional knowledge a concept that took from 1882 until present date to understand its operation. He quoted one of the statements made by the former Justice of the Supreme Court; “The hallmark of the Colorado Doctrine of Prior Appropriation is

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beneficial use.” Mr. Baker said that historical consumptive use is something that happens on an annual basis by people who use their water rights toward irrigation of land, water administration, and water law.

Consultant Baker indicated from Mr. Brown’s report under proposed legislation on speculation, that he is in favor of the exclusion of water conservation/conservancy districts. He said it is important because beginning with the time in history in the Arkansas River basin when the UAWCD began to develop an augmentation plan there was no speculation on water. Mr. Baker stated that what the District does is through water court and use of the legal system as it applies under the Colorado Doctrine of Prior Appropriation. He added that if other Districts had the same type of augmentation plan this would not be an issue.

Director Colon asked Consultant Baker if there will be water moved from the San Luis Valley to the Denver area? Consultant Baker answered that there have been several movements by politicians in the Denver area to move water by some form or other from the San Luis Valley to the Denver area. He expressed that his observations are that underground water in the San Luis Valley began to diminish when the aquifers disappeared and water became more under control of the Rio Grande compact producing little opportunity to move water without causing injury. He said if water is physically taken from the San Luis Valley the only route it can take is over Poncha Pass into the Arkansas River in which case there are numerous barriers inhibiting movement from the Arkansas River not excluding the 1041 legislation mentioned earlier. Mr. Baker stated that there is no viable way to take water from the eastern canals or any other upstream exchange. He added that the person or persons proposing this do not understand water law and the same proposals were raised two years ago by a former legislative member in Denver. Mr. Baker said that if most the water is transported over Poncha Pass into the Arkansas it must be exchanged upstream in canals that have been utilized by Aurora for a number of years and into vessels in the northern part of South Park, and then pumped into another creek flowing into the Denver area. He conveyed that he sees many reasons why this cannot and will not happen, but the main issue today is the Rio Grande Compact because that water is under extremely strict regulations that occurred in the last few years after the last attempt to take water out of the San Luis Valley.

Director Felt stated that the proposal he has seen recently from Douglas County in conjunction with Renewable Water Resources is to pipe the water all the way from Hwy 285 to the South Platte. He said that he does not think water coming through a pipe into Chaffee County would be part of the District’s water jurisdiction. Mr. Felt expressed that it is worrisome and added that the funding from American Recovery Plan Act is huge and they consider water their number 2 priority and are allocating \$20 million for the project.

Consultant Baker stated that considering the geography, the San Luis Valley is approximately 7,000 feet and if water is brought out of the North from 8,000-9,000 feet, the water would need to be pumped up to the Poncha Springs mountains and then go downhill and pumped up again to other locations including Trout Creek Pass. He said water would be pumped for 250 miles and he questioned the type of operational tools needed for that. He added that it is an impractical idea.

Manager Scanga commented that after he read the Douglas County proposal, he noticed two things that stood out. One is that the Denver basin aquifer can no longer be used to supply water so augmentation from that basin is not available but he thinks they could use some of Parker’s capacity in their reservoir. He said the other thing that jumped out of the report is there is no identification of augmentation sources and that every bit of water taken out has to be augmented. Manager Scanga stated that there are no fully consumable water rights being purchased yet. He expressed that once that becomes known, the District needs to be vigilante and see what those are especially due to the large amount of agriculture that would be taken out in an intensive agricultural area. Manager Scanga added that it will require hundreds of millions of dollars not including the purchase of water rights. He noted that if there is enough money and water rights to augment while complying with the requirements of the Rio Grande Compact and following state law in terms of augmentation of every drop of water pumped, it may be accomplished.

Director Felt remarked that UAWCD can only effectively object in a water court case by demonstrating water right injury and questioned how it works in a case involving another water basin? Manager Scanga expressed that he thinks it could set a precedent as to what people can do and added that the idea has

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already been laid to rest in the Coffin v. Left Hand Ditch case in terms of moving water from one basin to another.

Atty Burgemeister responded stating that as a technical matter the UAWCD or anyone can file a statement of opposition and hold the applicant to a burden of proof but in order to prevail in the case you would need to be able to convince the court that the applicant has met burden of proof which in the instance of a water rights case includes the prevention of injury. If there is not a water right that can be alleged as injured, a case can be made but in a practical sense, the question is whether you are adding any value to the process or not. He said as a legal matter, there is no reason water cannot be transported because there are a lot of trans basin diversions. Atty Burgemeister added that the Rio Grande Compact as written is a delivery obligation based on measured inflows and the more water flowing into the basin from precipitation the greater the delivery obligation. Water users deal with that by replacing water from out of priority depletions that their ground water pumping might cause to the Rio Grande system. He noted that one way it is working in the applicant's favor is under the ground water rules that were passed in the San Luis Valley by use of a mod flow model that calculates ground water depletions on a basin wide level. Atty Burgemeister stated that the up shock of that approach is that ground water users within that model domain have stream depletion replacement obligations that are a very small fraction of their consumptive use from ground water pumping. Atty Burgemeister commented that it is not like in the upper Arkansas basin where augmented ground water depletions are 1:1. He said the depletions are more around 5-10%. In conclusion he said that it works out great for the water users that use ground water for irrigation but it is a double edge sword because it will make it easier to replace stream depletions from their proposed export project.

COMMITTEE REPORTS

None

RESUME REVIEW COMMITTEE

Manager Scanga reviewed with Board members Case No. 2021CW3058, Tri-View Metropolitan District from the October Resume. He explained that it is an exchange case that includes exchanges from other storage vessels that includes water from the Tri-View change of the Arkansas Valley Ditch that diverts from Cottonwood Creek. We are presently in that change case and this case is, in part, associated with it. He recommended the District enter a statement of opposition.

Director Felt stated that he would be abstaining from voting due to Chaffee County's potential interest in the case and as a member of the Board of Chaffee County Commissioners, (BOCC).

Upon motion made by Director French, with a second by Director Telck, the Board unanimously approved being opposers in the Tri-view Metropolitan District Exchange Case No. 2021CW3058.

MANAGER'S REPORT – Terry Scanga

Manager Scanga presented the Auditor Engagement Letter for the 2021 audit. He asked for approval from the Board to engage Hancock Froese & Company for the 2021 audit report.

Upon motion by Director French, seconded by Director Felt, the Board approved the Auditor Engagement for the 2021 Audit with Hancock Froese & Company LLC.

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

None

LEGAL REPORT – Law of the Rockies, Kendall Burgemeister

EXECUTIVE SESSION: 1:33PM

A motion made by Director Donley, seconded by Director Colon for consideration of an executive session pursuant to C. R. S. 24-6-402(a)(b) and (e), to receive legal advice regarding Case No. 19CW3061 and to determine positions relative to matters that may be subject to negotiations, and to develop strategy for negotiations regarding potential settlement of Case No. 19CW3061.

END OF EXECUTIVE SESSION:

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Upon motion by Director Felt, seconded by Director French, the Board exited executive session at 1:59pm.

CHAIRMAN AND DIRECTOR REPORTS

Chairman Canterbury reminded Board and staff of the upcoming Holiday Dinner on Thursday, December 16th.

NOTICES & MEETINGS

None


ADJOURN


There being no further business to come before the Board or Enterprise and upon motion by Director Colon, seconded by Director Donley and approval of the Board, the meeting adjourned at 2:00pm.

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Respectfully submitted,


Ralph L. Scanga, Jr., General Manager


Thomas Goodwin, Treasurer


Timothy C. Canterbury



Richard Hilderbrand


Mannie Colon


Albert Eggleston



Robert B. Donley


Warren Diesslin


Gregory W. Felt


Tim Payne


Tom E. French


Tony Telck


Brett A. McMurry


Mike Shields