

**UPPER ARKANSAS WATER  
CONSERVANCY DISTRICT**

**Regular Meeting of the Board of Directors**

**May 9, 2019  
1:30 PM**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, May 9, 2019, 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 May 8, 2019, 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	Robert B. (Bill) Donley	Thomas Goodwin
Tom E. French	Gregory W. Felt	Timothy C. Canterbury
Richard Hilderbrand	Mannie Colon (phone)	John H. Sandefur
Jeff Ollinger (phone)		

**DIRECTORS ABSENT**

**DISTRICT OFFICIALS/STAFF MEMBERS PRESENT**

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

**DISTRICT OFFICIALS ABSENT**

None

**STATE OFFICIALS PRESENT**

Brian Sutton, Water Commissioner

**EX-OFFICIO REPRESENTATIVES PRESENT**

Tom Flower, Custer County Commissioner

**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  
George Medaris, District Manager, Round Mountain WSD  
Philip Puckett, Buena Vista Town Administrator  
Bob Hartzman, Canon City Water Superintendent  
Council Representative, Salida City Council

**GUESTS PRESENT**

Joe Stone, Friends of Browns Canyon  
David Schneider, Round Mountain Water and Sanitation District  
Tony Telck, Fremont County Resident  
Jay Printz, Custer County Commissioner  
Richard Shea, Penrose  
Valda Terauds, San Isabel Land Protection Trust

**PLEDGE OF ALLEGIANCE**

Chairman Senderhauf led attendees in the Pledge of Allegiance.

**INTRODUCTION OF GUESTS**

## RECORD OF PROCEEDING

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Guests were asked to introduce themselves.

### **MINUTES OF THE MEETING OF April 11, 2019**

The minutes of the meeting of April 11, 2019, were unanimously approved upon motion by Director Canterbury with second by Director Hilderbrand.

### **FINANCIAL REPORTS**

Upon motion by Director Goodwin with second by Director Felt, the Board unanimously approved the monthly financial report dated April 30, 2019.

### **PROGRAM PRESENTATIONS**

Brian Berger, Administrator for the town of Poncha Springs, provided a report to the Board on the town's water infrastructure improvement project. He said that municipalities have two concerns when it comes to water, water rights and water distribution. Mr. Berger said that the town has 4 municipal wells and 2 storage tanks to service the community and provided background on the need's assessment conducted in 2016 which highlighted the need for additional capacity and redundancy. Mr. Berger said that the two storage tanks, one installed in 1983 and one installed in 1999, both connect to the same distribution grid which was installed in 1983. This created a single failure point condition in an aging system.

Details of the improvement project were presented to the Board, which includes a 5800 linear foot 12 inch trunk line, 2 new high production wells, an elevated 400,000 gallon storage tank, and a treatment facility. Mr. Berger said that there were several hurdles and roadblocks to getting the project off the ground and that the process involved many steps. Included in the tank and well site process was a subdivision exemption from Chaffee County, the need for land and easements, and a variance from the Board of Adjustments relating to tank height. The proximity of the proposed tank site to the airport also presented a challenge and the location had to be moved to receive FAA approval. A geotechnical report was completed for the storage tank foundation, a test well was drilled which confirmed 120 GPM, and bid documents were completed for six separate tasks.

Mr. Berger provided information on the water supply agreement between the District and the town of Poncha Springs, which was finalized on April 17, 2017. The water supply agreement provided an augmentation solution for new wells that are tributary to the mainstem of the Arkansas. The water supply agreement includes integrated water accounting, reduces duplicative efforts in South Arkansas water cases, and reduces the financial impact of the project.

Regarding the financial details of the infrastructure improvement project, Mr. Berger said initial projections were for a cost of nearly \$3 million, totaling over \$5 million with interest expenses over time. These projections far exceeded the resources available and would require a significant rate increase. As a result, several options and alternatives were evaluated and considered. After conducting outreach to 10 different Boards and 9 different cities, securing cost share partners, applying for and receiving various grants, securing a \$2.4 million 0% interest loan from the State Revolving Fund, and receiving loan forgiveness in both 2018 and 2019, the total cost of the project was dramatically reduced. After receipt of all grants Mr. Berger reported that the only remaining cost was the approximately \$500,000 down payment, which has already been paid for by tap fees from 2016 to present. In summary, there was a total project savings of \$4,528,705 and there was no cost to any resident/house built prior to 2016.

Mr. Berger then highlighted various things that would be accomplished through the water infrastructure improvement project. These include fire suppression capacity for all residents, the creation of redundancies throughout the system, the alleviation of several identified risks, a reduction in the need for water restrictions, increased capacity to allow for additional growth, and minimal expense for future expansion projects, such as additional wells and storage tanks.

Director Goodwin asked if there was a fund established for additional future costs and Mr. Berger said that funds were allocated but that increased cost in operations and maintenance should be minimal. Materials were selected based on durability, such as welded steel, and the ability to interchange components between systems.

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Following Mr. Berger's presentation, Consultant Baker provided historical information about the acequia ditch that flows through Poncha Springs. He also offered comments and suggestions regarding development options for the town, including a possible change in the point of diversion for Denison water.

As a follow up to the water infrastructure presentation Director Felt asked if the new wells, being tributary to the mainstem, not only created challenges for Poncha Springs, but also alleviated pressure on the South Arkansas. Manager Scanga said that a real benefit has been provided to the town of Poncha Springs and pressure has been alleviated on the South Arkansas through, what is essentially, a trans-basin diversion and integrated water management.

### **EX-OFFICIO REPORTS**

There were no ex-officio reports.

### **CONSULTANT REPORT – Ken Baker**

Consultant Baker said that materials have been provided for at home review and he provided a brief report on a few specific topics highlighted in the legislative update. He called the Board's attention to HB 19-1218 and HB 19-1271 concerning the Colorado Water Conservation Board and instream flows and said that, following communication between Manager Scanga and promoters of these bills, both were postponed indefinitely. It was determined that the augmentation statute cannot be used to create instream flows and divert water to other locations at the same time.

Consultant Baker also highlighted HB 19-1327, the sports betting bill, and said that votes from Boulder and Denver will carry the outcome.

A letter written by Doug Kemper concerning Waters of the United States was included in the Board's binders. Consultant Baker offered his opinion that there may come a time when the remote basins may have to look to the Waters of the United States for protection, especially as water is being moved to the front range.

### **COMMITTEE REPORTS**

None

### **Resume Review Committee**

Manager Scanga said that there were two diligence cases noted in the resume, one for Round Mountain Water and Sanitation District and one for Colorado Springs Utilities. He said he made a recommendation to the committee not to file any statements of opposition in those cases and the committee agreed.

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

Manager Scanga reported that a request had been received to file an amicus brief and said that, because of the legal issues involved, he would like to defer this issue to Attorney Burgemeister's report.

Manager Scanga offered an update on work that is being done with the Colorado Water Conservation Board instream flow staff. He reiterated Consultant Baker's comments about HB 19-1271 being postponed indefinitely. The bill proposed using augmentation water to enhance or help protect instream flows, but Manager Scanga pointed out that when you release water for augmentation it is available to the next downstream appropriator. The water goes to anyone that has their head gate open and is in priority. Manager Scanga said that he visited with CWCB staff and suggested they work with the Upper District on where we release water for augmentation by releasing water to specific locations. He referenced the agreement with the USFS to enhance stream flows with augmentation releases in a way that benefits everyone. Manager Scanga said that its important that we retain the ability to exchange to refill and that it would be good to talk further about helping instream flows while also meeting our augmentation obligations.

Manager Scanga announced tours of North Fork, O'Haver, and Cottonwood taking place on July 18<sup>th</sup> and 19<sup>th</sup>.

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Manager Scanga informed the Board that he was recently contacted by Joe Stone who is now working for the Friends of Browns Canyon National Monument providing public education and outreach regarding the Monument's Management Plan. Manager Scanga said that he told Mr. Stone about the Board's reluctance on the Monument due to the potential for interference with our operations on the Arkansas River. Mr. Stone asked if he could come and share information about the Management Plan and answer questions about the report and upcoming public comment period and Manager Scanga added him to the meeting's agenda.

Mr. Stone told the Board that a report was released on April 1<sup>st</sup> and is available on the BLM website. He offered to send a link to the report for everyone's benefit. Mr. Stone said that a public comment period will soon be opened and encouraged comments about issues that may be of particular interest to this Board, including federally reserved water rights and grazing allotments. According to the original proclamation that created the Monument no federal reserve water right would be sought and Mr. Stone said that this is confirmed in the preliminary report. Mr. Stone said that it is very important that anyone with an interest in the Monument check out the report and submit comment. He said that, at this point, everything is preliminary, but under the current administration the Management Plan has to be completed in 1 year. The usual time frame is 2-3 years but, with the accelerated completion order, the clock starts ticking once the notice of intent is placed. Mr. Stone said that he would keep the Board informed about the start of the 30-day comment period, which could be as soon as Monday.

Director Goodwin asked if it was worth entertaining a motion to provide Manager Scanga, Engineer Manera, and Attorney Burgemeister the authority to put together comments from the Board, considering the brief comment period.

Manager Scanga offered comments about the Monument and the Board's history with its designation. Manager Scanga said that when the Monument was first proposed by Senator Udall the District was in conversation with staff and helped craft language in the act stating that a reserve water right would not be sought. Language also stated that the Monument would not involve the river and would be limited to lands above the high water mark. Manager Scanga said that proponents of the Monument did not trust the congressional process and did an end run with the presidential process. The question now is if the proclamation includes language that prevents the seeking of a federal reserve water right in the future. Manager Scanga suggested communication with other entities that use the river, including Southeastern Colorado Water Conservancy District, City of Aurora, Colorado Springs Utilities, AHRA, and the Board of Water Works Pueblo. He said that the Monument provides access to land for recreation but the proclamation needs to be understood from a water rights standpoint.

Director Felt said that it is smart to ask Southeastern to weigh in on federally reserved water rights. He said that the contract exchange issue being addressed right now is not likely to be sorted out in the next 30 days and a federally reserved water right could create a bigger problem. Mr. Stone interjected and said that the proclamation says that the Voluntary Flow Management will not be affected. He said that the BLM and USFS are doing a series of public meetings, including one in Salida and one in Buena Vista, and encouraged attendance.

Director Donley asked why only 30 days were given for the public comment period. Mr. Stone said that, under the current administration, the process has been accelerated. There is also a 150 page limit to the Management Plan and the process is not nearly as in depth as it was previously.

Director Canterbury asked if there was funding allocated for the Monument and it was confirmed that there is funding for the Management Plan but not for the Monument. Manager Scanga added that the presidential resolution did not create funding. Director Canterbury said that there were a handful of Monument Management Plans that got funded, including Browns Canyon, San Juan Islands, Bears Ears, and Grand Staircase-Escalante.

Director Felt contributed comments on river management and said that the management of the river remains with the Arkansas Headwaters Recreation Area and that the water in the river is not a part of the Management Plan.

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Director Donley asked Director McMurry if there were potential challenges to the McMurry's operations. Director McMurry responded by saying that they continue to submit comments about irrigation springs and grazing allotments. They have stated that they should retain the ability to maintain and develop these resources as they have been historically used.

Manager Scanga suggested having Attorney Burgemeister put together a letter addressing water rights in the monument and the ability to utilize, develop, and manage those resources. Upon motion by Director Goodwin and second by Director French, the Board unanimously approved a motion granting Attorney Burgemeister the authority to submit a letter on behalf of the Board as described by Manager Scanga.

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

Engineer Manera reported that he has been assisting engineers with the town of Buena Vista on measurements, the calculation of pumping amounts, and a formula to quantify depletions for their well #3.

Engineer Manera said that an annual update of the projection tool is being worked on, which is required every year. The update is based on increased demands and includes the Young Life project and other projects that are coming online. Engineer Manera said that he is happy to report that there is plenty of water to meet the District's demands and nothing has come up to raise any concern about supply versus demand.

Regarding operations and maintenance for Conquistador Reservoir, Engineer Manera reported that he and Hydrologist Gertson have been working together on an inspection and upgrades. The upper bay has been drained and a below water inspection revealed the need for replacement of the slide gate that controls releases out of the reservoirs. The frame that supports the gate needs to be replaced and the area right around the inlet that houses the slide gate has sediment built up. Engineer Manera said that they are formulating a plan to replace the slide gate and are also planning to inspect the outlet point so that the slide gate and outlet point project can take place at the same time.

Engineer Manera said that study continues for the blue line expansion application, including the examination of aquifer characteristics to support the engineering report.

Committee member Donley asked if it looks like Pueblo Reservoir will spill. Committee member Goodwin says he believes water is being managed well enough that it is not going to. The question on the table is how much native water we are going to be dealing with. The Bureau of Reclamation is projecting 84,000 acre feet of Project water, though that number does not include the most recent storm. Committee member Goodwin added that they are doing everything they can to avoid a spill. Manager Scanga suggested that a spill at John Martin Reservoir may be more of an issue, though right now it is preparing for inflow. Committee member Felt said that the greatest spill potential may be in July and that as things get closer to full the number one priority is Project water, meaning that people could end up losing water to excess capacity water. Manager Scanga added that excess capacity accounts have lower priority in Project space and that water would get converted to Project water.

Committee member Felt contributed thoughts on snowpack projections for this side of the Divide. He said that projections are looking like 2011 when the river was at 3000 cfs for three months.

### **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 reported that there were no statements of opposition to the diligence filing for North Fork Reservoir and they will proceed to drafting a ruling.

In the blue line augmentation expansion case Attorney Burgemeister reported that the end result of the May 6th status conference is that the case is going to stay before the referee until 2020.

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In case 18CW3048, the joint application to change Silver Creek-Ronk ditch water, Attorney Burgemeister reported that comments have been received from all opposers and those comments have been shared and are being evaluated.

Attorney Burgemeister added that there have been no significant developments on applications the District is opposing.

Attorney Burgemeister then proceeded to offer a general summary of the issue in the Hill V. Warsewa case, which is approximately a year and a half old. A fisherman, Mr. Hill, was wading in the Arkansas River by Texas Creek and brought a lawsuit against the adjacent landowner who asserted that the fisherman was trespassing. The fisherman claims that the river is navigable and was being used in ordinary commerce at the time of statehood, therefore it is public property and he is entitled to be on that property. Attorney Burgemeister said that the case has been back and forth in both state and federal court and it has been dismissed for lack of standing, the court stating that Mr. Hill as a private individual does not have title to the state's land. In other words, an individual cannot usurp the state's interest for personal use. Attorney Burgemeister explained that the issue before the court of appeals is not that the Arkansas River is navigable, but rather does Mr. Hill have standing to make that statement. Attorney Burgemeister provided this background and asked the Board if there was interest in filing an amicus brief or joining the Colorado Water Congress in their filing which supports the landowner. Discussion followed on the topic of filing an amicus brief separately or joining the Colorado Water Congress in their filing.

At this time Manager Scanga asked for a few moments to shift topics and invited Office Manager Linda Cook into the meeting. Manager Scanga announced that Linda will be retiring from the District on May 31<sup>st</sup>, after 25 years of service. He invited everyone to attend a retirement party taking place on Friday, May 31<sup>st</sup> from 12 p.m. to 2 p.m. at the Salida Legion Hut and said that rsvp's should be sent to Kimberly. Manager Scanga presented Linda with a card and flowers and offered words of gratitude for all she has contributed to the District, its operations, its facilities, and to him personally as Manager and friend.

Following the announcement a motion was made by Director Donley to file an amicus brief to support the landowner in the Hill V. Warsewa case. The motion was seconded by Director Goodwin and unanimously approved by the Board. Manager Scanga offered clarification that the motion is to join with Colorado Water Congress in their filing and not file a separate amicus brief.

### **CHAIRMAN AND DIRECTOR REPORTS**

Director Hilderbrand brought to the Board's attention that this would be Director Sandefur's last meeting. He thanked Director Sandefur for all he has done in service to the District.

Director Goodwin added his appreciation and remarked that he would not be on this Board if it wasn't for Director Sandefur. He thanked Director Sandefur for his leadership, especially through the inclusion of Fremont County, and said that he would be missed.

Manager Scanga added that Director Sandefur was instrumental in getting the inclusion done and Director French offered additional comments of gratitude and appreciation. Chairman Senderhauf thanked Director Sandefur for his time and effort and expressed his hope that Custer County would follow in the steps of Fremont County.

Chairman Senderhauf offered thoughts on the blue line expansion application and reminded everyone that we have water stored in Lake DeWeese, water that we own, that could be used to support water needs in Custer County. He remarked that the District has been accused of stealing water and attempting to sell water out of the District. Chairman Senderhauf refuted these accusations and said that, while the District is able to lease water, it cannot sell water out of the District. Chairman Senderhauf said he wants to see the opportunity to provide augmentation for Custer County protected, along with the ability to support and protect Round Mountain Water and Sanitation District who supplies water and sewer for 40% of Custer County. He added that he wants to see the District positioned to support the over 20 individual augmentation plans in Custer County, should those augmentation plans fail. Chairman Senderhauf said that providing support in these instances is the duty of the District and there is no other entity positioned to do so. He said that, regardless of the opposition coming from Custer County

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Commissioners and others in the community, the District should continue on with the project and go forward under all circumstances. Chairman Senderhauf concluded by saying that there has been a lot of misinformation in Custer County and that the majority of negative information has come from a few specific people. He said that the District needs to keep moving forward and he hopes that, in the future, there will be support from the entire Board.

### **NOTICES & MEETINGS**

- SEO Contract Exchange Meeting - Tentative Week of May 20<sup>th</sup>, Pueblo
- Linda Cook Retirement Party, 12 Noon, May 31, 2019, American Legion Lodge, 252 West 10<sup>th</sup> Street, Salida
- ABRT Meeting – 12:00 pm, June 12, 2019 – PCC, Pueblo

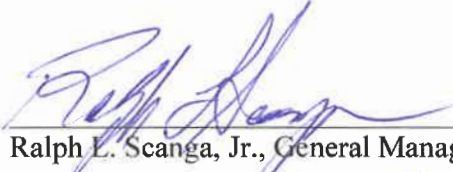
### **ADJOURN**

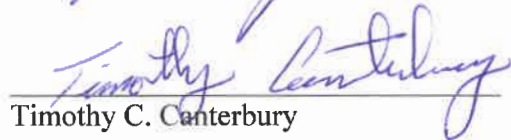
There being no further business to come before the Board, upon motion by Director Donley, second by Director Payne and unanimous approval of the Board, the meeting adjourned at 3:25 pm.

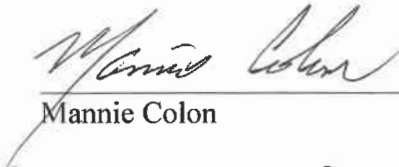
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RECORD OF PROCEEDING

Respectfully submitted,

  
Ralph L. Scanga, Jr., General Manager

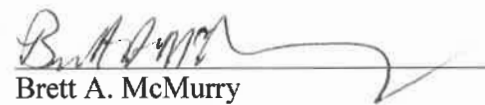
  
Timothy C. Canterbury

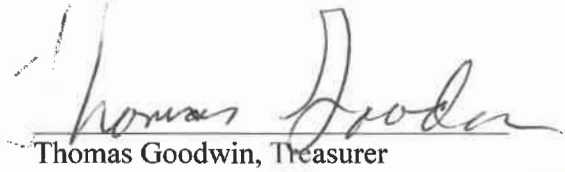
  
Mannie Colon

  
Robert B. Donley

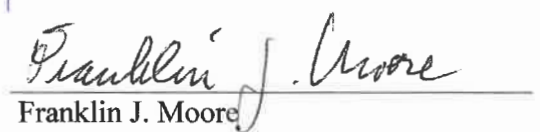
*Absent for Approval - No Signature*  
Gregory W. Felt

  
Tom E. French

  
Brett A. McMurry

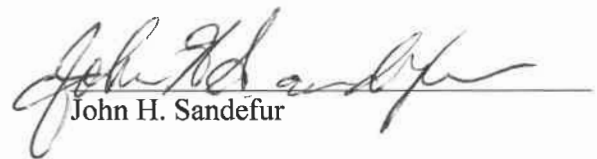
  
Thomas Goodwin, Treasurer

  
Richard Hilderbrand

  
Franklin J. Moore

*Absent for Approval - No Signature*  
Jeff Ollinger

  
Tim Payne

  
John H. Sandefur

*Absent for Approval - No Signature*  
Robert M. Senderhauf