

**UPPER ARKANSAS WATER  
CONSERVANCY DISTRICT**

**Regular Meeting of the Board of Directors**

**June 13, 2019  
1:00 PM**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, June 13, 2019, at the District offices, 339 East Hwy 50, Salida, Colorado, notice having been given by posting of Notice and Agenda on June 12, 2019, at the offices of the Upper Arkansas Water Conservancy District, 339 East Hwy 50, Salida, Colorado.

**DIRECTORS PRESENT**

Mike Shields	Tim Payne	Brett A. McMurry
Franklin J. (Jay) Moore	Robert B. (Bill) Donley	Thomas Goodwin
Tom E. French	Timothy C. Canterbury	Richard Hilderbrand
Mannie Colon	Tony Telck	

**DIRECTORS ABSENT**

Gregory W. Felt                      Jeff Ollinger

**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  
Jerry Livengood, Water Commissioner  
Rachel Zancanella, Assistant Division Engineer

**EX-OFFICIO REPRESENTATIVES PRESENT**

Tom Flower, Custer County Commissioner  
Bob Hartzman, Canon City Water Superintendent  
Joel Benson, Town of Buena Vista Senior Policy Advisor

**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  
Council Representative, Salida City Council

**GUESTS PRESENT**

Dick Shea, Penrose  
John Sandefur, Penrose  
Vic Barnes, Custer County  
Valda Terauds, San Isabel Land Protection Trust  
Dave Schneider, Round Mountain Water and Sanitation District  
Robert & Carol Allison, Allison Ranch LLC

**PLEDGE OF ALLEGIANCE**

Vice-Chairman Canterbury led attendees in the Pledge of Allegiance.

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### **INTRODUCTION OF GUESTS**

Guests were asked to introduce themselves.

### **NEWLY APPOINTED DIRECTORS - OATH OF OFFICE**

Notary Public, Denise Sanchez, swore in the newly appointed directors, Timothy C. Canterbury (Division 1), Franklin J. (Jay) Moore (Division 2), Mike Shields (Division 4), and Tony Telck (Division 6, Seat B).

Vice-Chairman Canterbury, acting as Chairman, asked for new Board members to introduce themselves. Director Shields owns and operates San Isabel Ranch in the Wet Mountain Valley and listed his involvement in various civic activities. Director Telck said that he was born and raised in Florence and works the same ground that his grandfather did in 1915.

### **BOARD RE-ORGANIZATION**

#### **Election of Officers**

Vice-Chairman Canterbury proceeded with the election of officers. Director Colon nominated Director Canterbury to the office of Chairman, Director Felt as Vice-Chairman, Director French as Secretary, Director Goodwin as Treasurer and Manager Scanga as Assistant Secretary/Treasurer. The nomination was seconded by Director Donley. There being no further nominations and no nominees declining, the Board unanimously approved the slate of officers as follows:

Chairman	Timothy C. Canterbury
Vice-Chairman	Gregory W. Felt
Secretary	Tom French
Assistant Secretary/Assistant Treasurer	Ralph L. (Terry) Scanga
Treasurer	Thomas Goodwin

At this time, newly appointed Chairman Canterbury continued with the meeting.

### **Appointment of Enterprise Committee**

Chairman Canterbury appointed all Directors, Manager Scanga, and Consultant Baker to the Water Activity Enterprise Committee.

### **1:07 P.M. RECESS TO WATER ACTIVITY ENTERPRISE COMMITTEE MEETING**

### **1:30 P.M. RECONVENE**

### **MINUTES OF THE MEETING OF May 9, 2019**

The minutes of the meeting of May 9, 2019, were unanimously approved upon motion by Director Payne with second by Director Colon.

### **FINANCIAL REPORTS**

Upon motion by Director Goodwin with second by Director French, the Board unanimously approved the monthly financial report dated May 31, 2019.

### **PROGRAM PRESENTATIONS**

Projects Manager Gracy Goodwin provided an update on various District projects for the benefit of the Board.

Phase 2 of the Water Balance Study is moving forward, which was established to evaluate the potential for water storage in the alluvial aquifer in the Wet Mountain Valley. By July of 2019 the USGS is expected to complete the analysis of groundwater and surface water interactions. Between May and July they are conducting aquifer testing, continuing to monitor water levels, and analyzing data. This will help to develop a model that will aid in evaluating the potential for alluvial storage. Projects Manager Goodwin provided a budget summary for the project, highlighting cost share partners and grants received.

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With regards to the Trout Creek Park Multi-Use Project, Projects Manager Goodwin offered a summary of tasks completed, work in progress, and next steps.

Projects Manager Goodwin also provided background on the Ice Lake Preservation and Augmentation Project and brought the Board up to speed on work that has been completed thus far. This includes the installation of a staff gauge, along with a telemetry data collection platform. The telemetry will be integrated into the District's data management system. Additionally, Colorado River Engineering has completed a capacity survey and is developing the design and constructions of the outlet structure for design and repair. Projects Manager Goodwin said that Ice Lake was originally used for ice manufacturing and is now a wetland preserve. The District partnered with the HOA to help take care of evaporation off the lake, to protect senior water rights, and to protect habitat. In exchange, the District is able to utilize storage space in the top 12 inches of the lake.

Engineer Manera provided additional information on the project and the work that has been and is being done. He showed photos of the inflow and outflow points and structures, along with slides highlighting data gathered thus far. A bathometric survey was conducted by Hydrologist Gertson and Luke Javernick to help develop an accurate model of the lake at all elevations, which will help with the administration of releases to cover evaporation. Engineer Manera said that they are also considering replacement or rehabilitation of the exiting outlet structure.

Director Donley asked about evaporation estimates off the lake for last year. Engineer Manera said approximately 70 acre-feet, which equates to 2 ½ feet of depth, or half the depth of the lake. Manager Scanga said that the lake did have a water right, but it was too junior in priority. By acquiring Cottonwood Irrigating Ditch water and being a part of the District's augmentation plan, there is a win-win for the HOA and the District. The lake can now be kept full, which benefits habitat, and the District gains storage that can be used for emergency augmentation on Cottonwood Creek. Most importantly, before this project began, evaporation was not being replaced and senior water rights were being injured. The collaboration on the project has resulted in benefits to all.

Projects Manager Goodwin also provided an update on the Poncha Springs Infrastructure Improvement Project and referenced information that was provided by Town Administrator Brian Berger at a previous meeting.

With regards to the Monarch Pass Forest and Watershed Health Project and the Hayden Pass Fire and Flood Recovery Project, Projects Manager Goodwin said that everything is on track and more information will follow.

Projects Manager Goodwin concluded her presentation with information on the project associated with Grape Creek and DeWeese Reservoir. A past study concluded that more storage is needed in DeWeese Reservoir and an Enlargement Feasibility Study has now been initiated. The feasibility study will investigate the physical, hydrological, environmental, legal, financial, social, and economic feasibility of enlarging DeWeese Reservoir up to 6 feet. The goal of the study is that additional storage could provide additional resources to allow for the development of a flow program that could support agricultural, municipal, recreational and environmental needs.

Projects Manager Goodwin offered background on storage rights in DeWeese Reservoir, which was then clarified by Water Commissioner Livengood. She also summarized the benefits of a multi-use, multi-partnered project, along with the objectives of the grant, and a summary of the project budget.

Director Payne inquired if, hypothetically, another entity could still become involved in the DeWeese Project. Manager Scanga said that an entity could participate if they were interested in future storage space.

### **EX-OFFICIO REPORTS**

Canon City Water Department Superintendent Bob Hartzman provided an update on river conditions in Canon City. He said that the river was still within the banks but has risen to 4770 cubic feet per second. The river remains under the 10 foot limit on the gauge, but above 10 feet could reach the banks. Mr.

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Hartzman said that a flood warning was issued Tuesday at approximately 1:45 p.m. and that the warning was still in effect. Peak was expected around midnight and Mr. Hartzman said that the Royal Gorge is shut down to commercial rafting, being above the 3200 cfs limit.

### **CONSULTANT REPORT – Ken Baker**

Consultant Baker provided a summary of the General Assembly session schedule, which has adjourned for the year. When the General Assembly is not in session, the Colorado Water Congress State Affairs Committee does not hold scheduled meetings. Consultant Baker said that the CWC Executive Board may hold meetings and consider water issues that may affect legislative proposals for the next legislative session. The subject matter of the attachment to Consultant Baker's report is one such issue, which deals with instream flows.

Consultant Baker provided a memorandum directed to the Colorado Water Congress Colorado River Project Executive Committee from Tom Pitts, an Engineering and Planning Consultant. The Planning Consultant proposes a draft objective for the Instream Flow Subcommittee to consider and identify methods acceptable to the Executive Committee for providing long-term protection for instream flows for endangered fish habitat in the Upper Colorado River Basin. The rivers given priority by the Consultant are the Colorado River, Gunnison River, Yampa River, Green River, and White River. The Consultant suggests beginning with the Colorado River and suggests flow augmentation and levels of flow protection. The Consultant does not mention the proposed augmentation bill from the 2019 legislative session, or the requirement that augmentation involves an application to the water court. Consultant Baker said that the current objectives to create instream flow decrees on other Colorado rivers may represent an issue that the UAWCD should offer some response.

Consultant Baker's report also included two attachments related to the issue of demand management. These are documents relating to the investigation of demand management feasibility both in the Upper Colorado River Basin and the Colorado River. The proposals exclude the water court and the applications to the water court for change of use decrees. As planned in the proposed legislation for instream flows to protect fish habitats, the changes of use shall be administered by the CWCB. Consultant Baker added that conversations related to demand management were supposed to take place in open session with open dialogue, but are now being taken behind closed doors and participants are being asked to sign confidentiality agreements. Consultant Baker then asked Manager Scanga and Attorney Burgemeister to explain more.

Manager Scanga said that demand management was supposed to be a method by which the CWCB could operate a drought contingency plan and meet Compact obligations. There was concern that we may not be able to meet Compact obligations in a ten year period, which uses a rolling average. The idea was to create a separate pool in Lake Powell in which additional water could be stored, water that could not be taken by Lower Basin states. Manager Scanga said that demand management was proposed as a way to fill the pool in Lake Powell. People would be paid to voluntarily sell their consumptive use water for a temporary period of time and the CWCB is now investigating this as a possibility. Manager Scanga said the concern is that there are no plans to go to water court to do this and that it would be done as an administrative procedure outside of water court. Manager Scanga questioned how this can be done under Colorado water law and said that legislation would have to be passed to allow this to happen. The issue is now being considered by workgroups meeting in closed session and individuals are being asked to sign confidentiality agreements. Once the workgroups are done they will give recommendations to the CWCB on how to move forward.

The concerns brought forth by Manager Scanga included the quantification of return flows to prevent injury to downstream water rights, the question as to whether or not such a plan is needed if there is no call on the river, and the precedent being set by the CWCB that water rights can be purchased and changed without quantifying the water right and going to water court. Manager Scanga said that it is critical to get such a plan done under Colorado water law to protect water rights.

Director Colon asked why we would set up a pool if we are already giving more water than what is required by the Compact. He also asked how the water in the pool would be identified, calculated, and

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shepherded so that water doesn't get taken by Lower Basin states. Manager Scanga explained that we would be able to keep anything above and beyond our Compact obligations.

Director Payne expressed concern about the issue being discussed behind closed doors.

Attorney Burgemeister said that there are parts of this plan that some people have more concern about than he does. He said that shepherding water is done all the time, like Cottonwood Irrigating Ditch water owned by St. Charles Mesa that has to get to the mainstem. He said that the workgroups have been put in place to figure out the process, there are still a lot of questions to be answered, and the approach being taken by the CWCB is certainly an interesting one. He wonders if those who do not have a seat at the table will still be able to impact the plan and participate in any meaningful way or if the ship will have already sailed by that point in time.

Director Goodwin presented a question for Attorney Burgemeister and asked if there is any legal authority for shepherding water. Attorney Burgemeister said that water commissioners do so all the time, being required to administer the stream to ensure that water goes to where it is supposed to go. Discussion then followed on the calculation of transit loss, water being shepherded past senior deliveries, and deliveries to John Martin Reservoir. Assistant Division Engineer Zancanella said that specific accounts are established to offset delivery charges and that the accounting would be built into the operating agreement for Lake Powell. She also added that water being delivered to the account would be temporary, voluntary, and compensated.

Attorney Burgemeister then brought up the issue of using state funds to pay for water through lease fallowing to get water to Lake Powell, especially when that water is going to evaporate. He asked if this was a concern or the best use of state funds when the amount of water being delivered is only a drop in the bucket when it comes to our Compact obligations. He said that to make more than a blip in the accounting is going to cost a lot of money.

A list of workgroup members was referenced by Attorney Burgemeister and discussion followed on how to best reach out to those who will have influence in the committee process. Director Goodwin suggested talking to Lee Miller about concerns. Director Hilderbrand asked if anything was needed from the Board to initiate conversation with Lee Miller at SECWCD. Attorney Burgemeister said he could draft a letter to send to Lee Miller expressing the District's concerns. Director Hilderbrand then made a motion to give authority to Attorney Burgemeister to draft a letter to Lee Miller regarding demand management and the District's concerns. The motion was seconded by Director French. Consultant Baker added that demand management could show up in a proposed bill and asked that Attorney Burgemeister be allowed to go before the interim water committee to testify. There was consensus from the Board for Attorney Burgemeister to give testimony if necessary. Director Goodwin then asked if the letter being drafted should be sent to anyone besides Lee Miller, including other Eastern Slope entities. Attorney Burgemeister said there was a public workshop taking place in Salt Lake City on the 21<sup>st</sup> and a letter could be sent to CWCB in advance. Jack Goble, Arkansas Basin Roundtable Representative, and Chris Woodka of SECWCD were also suggested. At this time Director Goodwin made a motion to amend the original motion to include anyone that the District felt was appropriate to reach out to. The motion was agreed to with unanimous approval from the Board.

Following the discussion, Commissioner Flower made the announcement that Custer County resident Fred Berry passed away at 1:30 p.m. Prior to leaving the meeting he asked that newly appointed Director Mike Shields be considered for the Blue Line Committee.

### **COMMITTEE REPORTS**

None

### **Resume Review Committee**

Nothing of significance for the District in the Resume.

Manager Scanga reported that a Blue Line Committee meeting took place on May 29<sup>th</sup>. Most of the meeting was dedicated to fielding questions from Custer County objectors. Another meeting is being

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planned and, as requested, a presentation on the Water Balance study will be offered by the USGS on July 24<sup>th</sup> at 10 a.m. in Westcliffe. Director Donley asked if this would be similar to the presentation that was already given at a recent Board meeting and Manager Scanga affirmed that the presentation would be much the same as there is not much new to report. He added that data gathering was expected to be finished by mid-summer and that a final report should not be expected until spring of next year.

Chairman Canterbury then addressed newly appointed Director Mike Shields about possible involvement on the Blue Line Committee. He said that the Committee does not take action, but it does make recommendations back to the Board to take action. Chairman Canterbury said that Committee appointments would be made in July.

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

Manager Scanga reported that District staff will meet with CWCB on July 18<sup>th</sup> and 19<sup>th</sup> to discuss instream flows and reservoir operations. The focus will be operations on Cottonwood Creek and O'Haver Reservoir and a visit to various reservoirs is being considered, if conditions allow. Manager Scanga said they will look at supplementing instream flows and operations that could be more beneficial to Upper Basin streams.

Director Donley inquired if Manager Scanga and Hydrologist Gertson's drone licenses were still active. He asked if drone footage would be helpful to get a better idea of reservoir conditions, specifically North Fork. Manager Scanga said that the issue is with flight time limitations. As for North Fork, a 300 foot wide avalanche and above average snowpack is limiting access. This year it will likely be after July 4<sup>th</sup> when the reservoir will be accessible.

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

Engineer Manera said that he had updates to provide on two significant projects. He said that a substantial amount of time has been spent on the engineering report for the Blue Line augmentation plan. The deadline for submitting the report was May 31<sup>st</sup> and it has been in the works for four years. Engineer Manera said he would provide additional detail on the Blue Line during Attorney Burgemeister's report.

The second significant project has involved work at Conquistador Reservoir. Concerns about the upper bay led to draining the bay and conducting further investigation of the outlet structure. Engineer Manera provided pictures to highlight problems with the upper bay control valve, specifically debris that has accumulated. While the pipe is in good shape, the gate stem needs to be replaced, along with other components. Inspection revealed a bent and rusted gate, along with rusted flanges. Engineer Manera said that the whole slide gate is in need of repair and the best part of the gate is the PVC pipe located inside. He recommended upgrading the box and putting in a new slide gate. He also suggested concrete work around the perimeter to solve the debris problem. Engineer Manera said that its not a big job but involves specialized work. He is now putting together the engineering for the work. Director Colon informed Engineer Manera that he has contacts for pipe and gate distributors.

Chairman Canterbury asked about the down time on the reservoir and Engineer Manera said it would likely be down the entire summer. With the water year we are having he said that time is not an issue and he will present the results of the engineering design and cost estimates when they are available.

### **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 said that there was one matter requiring action from the Board, which is the filing of diligence for the Trout Creek Ditch Company in case 08CW106. Upon motion by Director Goodwin, second by Director Donley and unanimous approval from the Board, Attorney Burgemeister was given authorization to file diligence for case 08CW106.

Attorney Burgemeister said that the engineering report and proposed ruling were submitted in the Blue Line case. He reported that the proposed ruling was mostly consistent with the application but had some additional terms and language that were not included in the original application. Specific language was

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requested by Southeastern Colorado Water Conservancy District, Canon City, Florence, and Round Mountain Water and Sanitation District. In summary, the Blue Line was shrunk down a tiny bit in a few cases based on geology studies and to ensure that well pumping does not cause depletions on adjacent tributaries. Engineer Manera explained that the original Blue Line was based on surface topography and covered surface water rights. A groundwater study plotted 1000's of wells and analyzed groundwater elevations similar to digital elevation models. Engineer Manera said that these models tell which direction the water travels and allowed for the mapping of different groundwater zones. In a couple of places the surface drainage did not match the groundwater drainage, including Texas Creek, Red Dirt Creek, and Oak Creek. This necessitated small changes to the Blue Line location.

Attorney Burgemeister said that opposers have a couple of months to review the engineering report and proposed decree. Conversations will take place with opposers during this review process and revisions will be made where appropriate.

In other matters, Attorney Burgemeister reported that a decree was entered in the Security case and that a comment letter was submitted with respect to the draft plan for the Brown's Canyon National Monument.

In the Hill V. Warsewa case, Attorney Burgemeister said that the parties to the case were granted extensions and the deadline for filing an amicus brief was also extended. Attorney Burgemeister has been working with a Colorado Water Congress attorney on drafting the amicus and is also assisting the defendants, Warsewa and the State of Colorado, to coordinate and analyze their arguments.

In conclusion, Attorney Burgemeister said that the next issue to work on, at Manager Scanga's request, is updating and formalizing a conflicts policy. Additionally, Attorney Burgemeister is developing a complete set of bylaws for Board consideration. He said that both SECWCD and LAVWCD have bylaws and UAWCD bylaws will help address lingering questions, such as the rights and responsibilities of ex-officio members. Attorney Burgemeister said he should have a draft to consider in the next month or two and adoption would follow shortly thereafter.

### **CHAIRMAN AND DIRECTOR REPORTS**

Director French remarked that Director Ollinger announced his resignation by phone during last month's meeting and asked what the status was of that resignation. Manager Scanga said that a resignation letter had been received and notice was posted for filling the remainder of that term.

### **NOTICES & MEETINGS**

- **SEO Contract Exchange Meeting – July 2, 2019, Pueblo**
- **ABRT Meeting – 12:00 pm, July 10, 2019 – PCC, Pueblo**
- **USGS Water Balance Study Presentation, Rancher's Roost Cafe, 10:00 am, July 24, 2019**


### **ADJOURN**

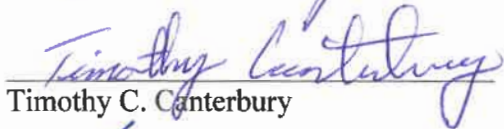
There being no further business to come before the Board, upon motion by Director Donley, second by Director French and unanimous approval of the Board, the meeting adjourned at 2:24 pm.

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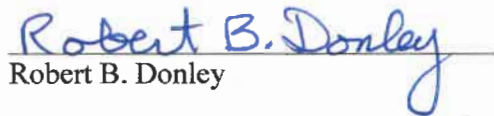
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Respectfully submitted,

  
Ralph L. Scanga, Jr., General Manager

  
Timothy C. Canterbury


  
Mannie Colon

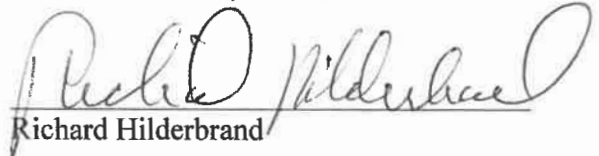
  
Robert B. Donley

**Absent from Meeting- No Signature**  
Gregory W. Felt

  
Tom E. French

  
Brett A. McMurry

  
Thomas Goodwin, Treasurer

  
Richard Hilderbrand

  
Franklin J. Moore

**Absent from Meeting- No Signature**

Jeff Ollinger

*Absent for Approval- No Signature*  
Tim Payne

*Absent for Approval- No Signature*  
Tony Telck

  
Mike Shields