

**UPPER ARKANSAS WATER  
CONSERVANCY DISTRICT**

**Water Activity Enterprise Committee**

**May 9, 2019  
1:00 P.M.**

The Upper Arkansas Water Conservancy District Water Activity Enterprise committee held its regular meeting Thursday, May 9, 2019, at the District offices, 339 East Hwy 50, Salida, Colorado, commencing at 1:00 P.M., 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.

**COMMITTEE MEMBERS PRESENT**

Ralph L. (Terry) Scanga	Ken Baker	Robert M. Senderhauf
Franklin J. (Jay) Moore	Timothy C. Canterbury	Tim Payne
Robert B. (Bill) Donley	Gregory W. Felt	Brett A. McMurry
Tom E. French	Richard Hilderbrand	Mannie Colon (phone)
John H. Sandefur	Jeff Ollinger (phone)	Thomas Goodwin

**COMMITTEE MEMBERS ABSENT**

None

**DISTRICT OFFICIALS/STAFF MEMBERS PRESENT**

Jord Gertson, Hydrologist	Kendall K. Burgemeister, Attorney
Chris Manera, Engineer	Kimberly Kerschke, Secretary
Gracy Goodwin, Projects Manager	

**DISTRICT OFFICIALS/STAFF MEMBERS ABSENT**

None

**STATE OFFICIALS PRESENT**

Brian Sutton, Water Commissioner

**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  
Tom Flower, Custer County Commissioner

**CHAIRMAN'S INTRODUCTION**

Introduction of guests will be held over to the Board meeting.

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

The minutes of the meeting of April 11, 2019, were unanimously approved upon motion by committee member Donley with second by committee member Sandefur.

**TREASURER'S REPORT**

Upon motion by committee member Felt with second by committee member Goodwin, the committee unanimously approved the financial report dated April 30, 2019.

Committee member Donley inquired about storage and maintenance payments and Manager Scanga said that approximately 85% of fees have been paid.

**MANAGER'S REPORT – Terry Scanga**  
**Augmentation Report**

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Manager Scanga reported that the District is working with the town of Buena Vista to increase augmentation for additional outside irrigation. The expansion will be under a separate certificate and separate well permit and everything will be metered. Buena Vista will be using Fry-Ark Project water, which will be booked over to our account to cover additional depletions. Manager Scanga said that this is another example of the efficiency of integrated water management.

Manager Scanga displayed the augmentation report for March and April. As of the end of April total State approvals for augmentation were 624.38 acre-feet. Replacements for the month were 36.72 acre-feet including transit loss.

### **HYDROLOGIST REPORT**

#### **Reservoir Storage**

Hydrologist Gertson reported that in our Twin Lakes account, we have 5.6 acre-feet of native water, 4.0 acre-feet of Twin Lakes, Transmountain water, and 61.7 acre-feet of project carryover. Pueblo reservoir has 540.0 acre-feet of project carryover and 1,000 acre-feet of project water. Total storage is at 3535.2 acre-feet.

Hydrologist Gertson noted the addition of Friend Ranch Reservoir to the storage report. Though the water in the reservoir belongs to the town of Poncha Springs and the District has no water in the reservoir, we are doing the accounting as part of an agreement with Poncha Springs. Committee member Canterbury asked if there was any space in the reservoir and Hydrologist Gertson said that there is space but the District does not have a contract for that space. Committee member Hilderbrand asked who owns Friend Ranch and Hydrologist Gertson said that a developer owns the land and the town of Poncha Springs owns the water rights.

Hermit Basin Lodge was also added to the spreadsheet showing reservoir contents by owner for their share of ownership in Conquistador Reservoir.

Hydrologist Gertson reported that North Forth Reservoir is spilling at a rate that is approximately equal to the amount of inflow it is receiving, which is normal for this time of year. He estimated about 1-2 cfs per day and noted that those estimates are based on previous measurements. Engineer Manera added that the spillway was enlarged for safety purposes and is approximately 75 feet wide. Hydrologist Gertson said that it will be some time before a site visit is possible due to the amount of snow on the road and an avalanche that is estimated at 300 yards wide with 50 feet of piled up debris.

Hydrologist Gertson closed his report with comments about the three month outlook for above average precipitation. For the benefit of those in attendance, slides were on display at the start of the meeting highlighting the three month precipitation and drought outlooks.

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

Deferred to next meeting

### **LEGAL REPORT - Kendall Burgemeister, Law of the Rockies**

Deferred to District Board meeting

### **OTHER BUSINESS**

Committee member Ollinger, via conference call line, brought up the Augmentation Blue Line Expansion committee meeting that was held in April. He asked if there is a policy regarding members of the Board who attend a committee meeting, if they are not members of the committee. Committee member Ollinger said that he was asked to leave the committee meeting when it went into an executive session and requested clarification on that decision. Chairman Senderhauf responded that the decision was his, that since committee member Ollinger was not a member of the Augmentation Blue Line Expansion committee and an executive session was being commenced, he felt it was appropriate to exclude Committee member Ollinger.

Committee member Canterbury questioned the decision and also asked for clarification. He expressed his feeling that Board members seeking to educate themselves through committee meeting attendance

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should be free to do so. He also remarked that no vote can come out of a committee meeting, only a recommendation to the Board.

Manager Scanga responded that the issue at hand is not committee meeting attendance and said that anyone can attend a committee meeting. The question on the table is whether or not an individual that is not a committee member should be present in an executive session when legal advice is being received.

Committee member Canterbury remarked that this same thing could have happened to him and that if he took the time to educate himself and was asked to leave he would have severe heartburn. He asked for reconsideration of this protocol.

Committee member Payne said that he sought input from a Fremont County attorney that has experience with special districts. The attorney said that, because it was a committee that was asked to come together, Chairman Senderhauf was well within his rights to exclude a non-committee member from an executive session.

Committee member Felt commented that the Southeastern Colorado Water Conservancy District Board functions a little differently and that committees meet every month, with much of the work taking place in committee. He said that Board members are encouraged to attend all they can but added that executive sessions take place in committees such as the Colorado River committee, of which he is not a member.

Committee member Goodwin echoed comments made by Committee member Felt and added that executive session attendance is restricted to an official pre-identified list.

Committee member Colon remarked that he struggled quite a bit with this issue and has done some research and talked with people on other Boards. He expressed his feeling that, should a Board member attend a meeting, they have every right to listen in and learn. He questioned exclusion from a committee meeting since committees only make recommendations to the Board and non-committee members are still members of the Board. Committee member Colon recommended a policy and added that it would offer support to Chairman Senderhauf. He said that having the opinion of persons not on a committee allows for balance and the ability to have a proper recommendation toward the issue at hand. In closing, Committee member Colon said that the action taken felt like a slap against a Director.

Committee member Ollinger said he was not familiar with any other Board member having been asked to leave a committee meeting or executive session. He said he has been on the Board for 18 years and has never heard of that happening. He added that, in the absence of a Board approved policy, he felt the action was discriminatory and unethical.

Chairman Senderhauf offered a final comment and said that it was his decision at that particular time to ask Committee member Ollinger to leave the meeting. He said that there was sensitive information being discussed and legal counsel was being sought and he felt it was appropriate to ask a non-committee member to leave the executive session. Chairman Senderhauf said that the issue could be taken up in a Board meeting for further discussion.

Attorney Burgemeister commented with regards to the particular instance being discussed and said that he gave the recommendation to only allow committee members in the room for the executive session. He said that he agrees with the attorney from Fremont County and that committees, under open meeting law, are entitled to invite any guests they choose. He said that it is completely at the discretion of the committee as to who is and is not invited. Attorney Burgemeister said that he has zero doubt that what was done was proper and, while the Board can make a policy and has the prerogative to do so, it is not something he recommends.

As for why Attorney Burgemeister does not recommend a policy, the conflict of interest discussion that took place at a former meeting was referenced. Attorney Burgemeister said that members of the Board can have a direct conflict of interest with the subject matter and it can be appropriate to exclude

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a Board member from the executive session of a committee if the purpose of the executive session is to receive attorney client privilege information. He added that it is not always appropriate in an instance of direct conflict for all information to be on the table. Attorney Burgemeister closed in saying that comments about conflict of interest and exclusion from executive session are not directed at Committee member Ollinger and were only meant to explain further his thoughts on a policy. He said that the Board could take a crack at a written policy, but he would encourage that policy to not be completely open.

Committee member Payne remarked that this should be an agenda item in the future and Chairman Senderhauf agreed that they should take it up as a Board at a future date.

Committee member Ollinger said that he had comments on a different topic. He announced that he would be submitting a letter of resignation from his Director position effective July 1<sup>st</sup> and said that the June meeting would be his last meeting. Chairman Senderhauf responded with acceptance of Committee member Ollinger's resignation and said he would await the resignation letter.

Committee member Colon asked, in light of the upcoming committee meeting, if a policy should be discussed and decided upon in advance.

Custer County Commissioner Flower asked if the Board granted powers to committees to meet in executive session. When asked by Chairman Senderhauf how things were handled in Custer County, Commissioner Flower said that he would not allow executive sessions in committee meetings and thinks that is reserved for Boards.

Manager Scanga followed up saying that a formal discussion would take place with an opportunity to discuss the fine points.

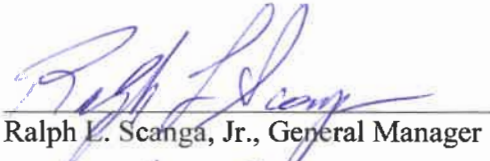
### **ADJOURN**

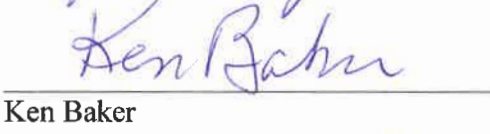
No further business to come before the committee, the meeting adjourned at 1:45 p.m.

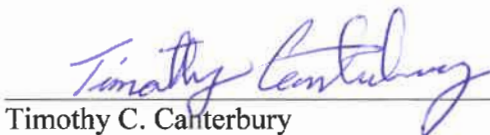
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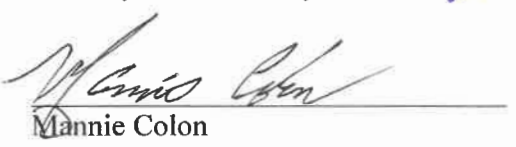
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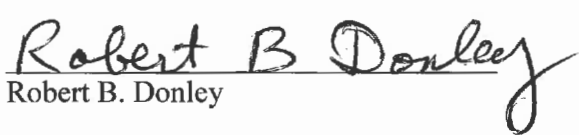
Respectfully submitted,

  
Ralph E. Scanga, Jr., General Manager

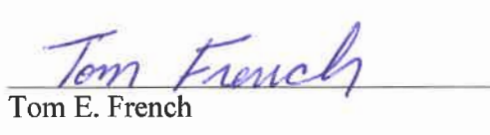
  
Ken Baker

  
Timothy C. Canterbury

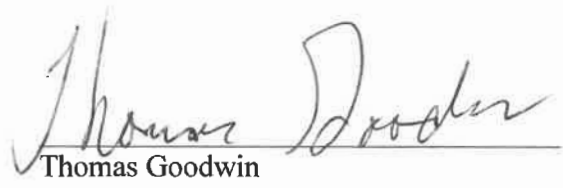
  
Mannie Colon

  
Robert B. Donley

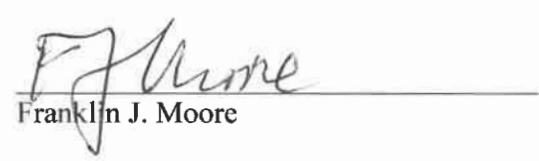
*Absent For Approval - No Signature*  
Gregory W. Felt

  
Tom E. French

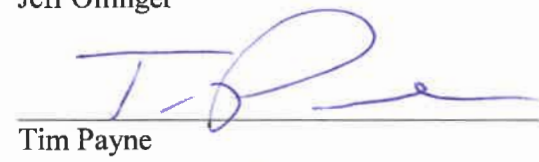
  
Brett A. McMurry

  
Thomas Goodwin

  
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