

**UPPER ARKANSAS WATER
CONSERVANCY DISTRICT**

Work Session of the Board of Directors

**February 6, 2019
2:00 PM**

A work session of the Board of Directors of the Upper Arkansas Water Conservancy District was held Wednesday, February 6, 2019, at the Rancher's Roost Conference Room, 25 Main St, Westcliffe, CO, notice having been given by posting of Notice and Agenda on January 28, 2019, at the offices of the Upper Arkansas Water Conservancy District, 339 East Hwy 50, Salida, Colorado.

DIRECTORS PRESENT

Robert M. Senderhauf	Tim Payne	Richard Hilderbrand
Robert B. (Bill) Donley	Thomas Goodwin	Timothy C. Canterbury
Tom E. French	Gregory W. Felt	

DIRECTORS ABSENT

Franklin J. (Jay) Moore	Jeff Ollinger	Brett A. McMurry
Mannie Colon	John H. Sandefur	

DISTRICT OFFICIALS/STAFF MEMBERS PRESENT

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

DISTRICT OFFICIALS ABSENT

Chelsey Nutter, Projects Manager

STATE OFFICIALS PRESENT

Jerry Livengood, Water Commissioner

EX-OFFICIO REPRESENTATIVES PRESENT

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

GUESTS PRESENT

See Attached Guest List

INTRODUCTION OF UAWCD BOARD OF DIRECTORS

Chairman Senderhauf provided an overview of the manner in which Directors are appointed to the Board of the Upper Arkansas Water Conservancy District, saying that Directors are appointed by District judges to represent their school districts. Directors, consultants, and staff then introduced themselves and highlighted their roles with the District and within their communities.

Chairman Senderhauf made mention of former Custer County Commissioner Joe Reid and said that his leadership was critical in the original request to have Custer County included in the District's augmentation plan.

RECORD OF PROCEEDING

Chairman Senderhauf proceed to explain the structure of the meeting saying that Attorney Burgemeister and Engineer Manera would provide an overview of augmentation and an explanation of the blue line expansion. Director Canterbury would then facilitate a question and answer session. A guest that was present inquired if this meeting is a waste of time or if there is still an opportunity to object. He was assured that this meeting is valuable and the door is open for inquiry or objection.

LEGAL & ENGINEERING CONSULTANTS PRESENTATION

Blue Line Augmentation Expansion

Attorney Burgemeister began his presentation with an overview of augmentation plans, describing what they are and how they work. He provided handouts to accompany his power point presentation. Attorney Burgemeister explained that an augmentation plan is a water court approved plan to increase the supply of water available for beneficial use by providing a substitute supply of water to replace water that is going to be used. He highlighted that a plan shall be approved so long as it causes no injury to water rights and that depletion replacements can be made by time, amount, and location. Attorney Burgemeister offered the basic scenario of drilling a well to serve a new residence. He said that the well would pump water for its uses and the diversion minus that which goes back into the stream is the depletion. The depletion is what has to be replaced through an augmentation plan in an over-appropriated basin, like the Arkansas, so that water rights will not be injured. The timing, amount, and location of those replacements are determined by engineers and incorporated into an augmentation plan.

Attorney Burgemeister then defined blanket augmentation plans, otherwise known as regional or umbrella plans. These are generally operated by a local government entity and cover a broad but defined geographic area. Sources of replacement water are included, along with the method to determine the time, amount, and location of depletions. Mechanisms to add new sources of replacement water are also included in blanket plans. The 1st umbrella augmentation plan was put in place in the San Luis Valley in 1985 and there are now umbrella plans in all water divisions in Colorado and in more than 20 counties. The District's blanket augmentation plan was approved in 1994 and, since that time, additional cases have added to the geographic territories covered by the plans.

Attorney Burgemeister described the requirements for operation of a blanket augmentation plan. To make sure supply is available to make replacements, a projection tool is used to look at demand and supply and a projection of availability into the future. Weekly accounting is done by a hydrologist and an accounting database is kept up to date showing depletions versus replacements. Additionally, an annual report for augmentation is submitted, which shows a summary of all water transactions. Another requirement is that participants in the plan furnish meter readings to ensure that no more than the allocated amount of water is being diverted.

The process for adding structures to be covered by an umbrella plan was explained by Attorney Burgemeister. Property owners file an application with the District with information including their well location and types of use. Those could be in house uses, outside irrigation, livestock watering, and/or commercial operations. Based on that information, depletions are calculated using engineering that is generally accepted and generally conservative. The District then reviews the application according to its requirements and the application is sent to the Division Engineer. In the case of wells, the application is also sent to the State. Attorney Burgemeister then explained that throughout this process there is the opportunity for any individual to get notice and submit comment. Individuals can also ask for a de novo review by the water court if they are concerned about approval. In summary, Attorney Burgemeister expressed that there is no less protection to existing water users because of an augmentation plan. He then added that in 95% or more of augmented structures there is no controversy and that enrollment in an augmentation plan is more cost effective than individuals going to court by themselves.

It was asked if we could augment every exempt well in Custer County and Attorney Burgemeister clarified that the plan does not cover all of Custer County, only a small portion. Attorney Burgemeister then explained the difference between exempt and non-exempt wells. He said that the exempt well

RECORD OF PROCEEDING

statute allows for uses of water in remote areas where a legal supply of water is not readily available. Exempt wells are exempt from administration within the prior appropriation system. They are typically on parcels that are 35 acres or larger and are set up to serve in house uses for up to three dwellings, the watering of one acre of home lawns and gardens, and the watering of domestic animals. Non-exempt wells are administered within the prior appropriation system and, in over-appropriated areas such as Division 2, a plan for augmentation is required.

Addressing concerns that were brought up during the January Board meeting about proper administration and the actual release of water in accordance with the decree, Attorney Burgemeister provided more detail on the annual report of augmentation that is submitted by the District each year. Attorney Burgemeister said that the District does in fact comply with the decree and highlighted the monthly storage report and monthly replacement summary, noting the water sources the District has to meet its obligations. Attorney Burgemeister explained the accounting system used by the District, which is much like a ledger showing all debits and credits. Water is released on a daily basis to replace out of priority depletions, which is shown in the annual report. As an example, Attorney Burgemeister highlighted transactions showing water that was exchanged into storage in DeWeese during the high water season. That water was then released by the District during the low flow season for the benefit of the fishery and captured in Pueblo reservoir for augmentation purposes. For those that would like more information, Attorney Burgemeister said that a full copy of the annual report can be requested.

During Attorney Burgemeister's presentation there were repeated comments and questions from a member of the audience. Commissioner Flower asked the community to respect the format of the presentation and to please hold off on questions for the time being.

Attorney Burgemeister addressed another concern from January's meeting, that there are other augmentation plans in the valley that are failing and that the District's plan will be just like those other plans. Attorney Burgemeister said that the District has been operating its plan for approximately 25 years and it is not broken. He said that staff from the Division of Water Resources would say that the District's plan is operating quite well. He also said that, in areas where the District has existing plans, the District has played a critical role in fixing broken plans. Attorney Burgemeister then described the scenario typical of broken augmentation plans. A real estate developer wants to do a subdivision but needs a legal supply of water. The developer gets a plan for augmentation, which generally involves the need to build a pond to serve as supply, but the pond is never built. The administration of the plan, construction of the pond, and the releasing of water becomes the responsibility of the HOA. Unlike the District, which has the experience, along with an engineer, a hydrologist, and other paid professionals to administer the plan, subdivision HOA's do not have the capacity or resources for proper administration. Attorney Burgemeister said that these plans often fail because releases for replacements are not being made and that causes injury to water rights.

After providing the background on augmentation and the District's operations, Attorney Burgemeister presented a map showing the District's existing plan area, proposed expansion area, and proposed area 2. He explained that the blue line refers to the geographic extent of the proposed plan for augmentation and that the blue line is the area within which the District can augment structures year round. The red line area, or area 2, is an area where the District can only augment on a temporary basis and for part of the year. In this area domestic use wells could not be augmented because they would be upstream of a water right that has the potential to place a call at some time in the year. Attorney Burgemeister provided an example of one use that would be allowed in the red line area, which is Fremont County's need for water for road construction and dust control operations. If Fremont County uses water during a time of year when there is no call, we can supply the replacement to the controlling call and no injury will result from that new use of water.

Attorney Burgemeister then zoomed in on the map to show the blue line within Custer County. He explained that the upstream boundary of the plan area is the head gate on the tributary that has the potential to sweep the creek. He then mentioned various structures that the District cannot augment above.

RECORD OF PROCEEDING

Attorney Burgemeister said that the last time the District filed an application for a plan for augmentation in Custer County was in 2009. That plan was much more aggressive and was dependent on the building of new reservoirs to provide supply. Attorney Burgemeister said that the application filed this time is more contained geographically and is much more conservative. There is no reservoir expansion proposed as a source of supply to meet demand.

Engineer Manera offered additional explanation about the geographic area and the analysis involved in determining the location of the blue line, which included the identification of all controlling water rights with the potential to sweep the stream.

Following the presentation by Attorney Burgemeister and Engineer Manera, Director Canterbury spoke to those present at the meeting. In an effort to move forward, Director Canterbury said that it is important that everyone understands the basics and asked if there was any confusion about augmentation. He then asked if there were any questions about exchanges and how they work and if additional information was requested.

Attorney Burgemeister addressed the topic by first dispelling a rumor that the blue line expansion is a plan by the District to sell water to Denver. He said that it is, in fact, the exact opposite. This plan is not about acquiring any new water rights like the H2O Ranch, but is about using the water that is in the District's portfolio as sources for augmentation. It is about taking water we already have to replace depletions of potential new uses of water in the Wet Mountain Valley. One such water source is the A. Katzenstein ditch which land it historically irrigated was dried up and the water right changed in the past and that water could now be used to augment structures in Custer County.

To explain exchanges, Attorney Burgemeister said that the reason water the District owns from, for example, Twin Lakes or Friend Ranch, is able to replace depletions in the Wet Mountain Valley is because the District has storage space in DeWeese Reservoir. Grape Creek runs to the mainstem of the Arkansas River and the District can capture water in DeWeese and then replace it to the mainstem to satisfy the downstream calling water right. Augmentation by exchange takes place when replacement water for pumping on an out of priority well comes below the point of depletion but above the calling water right.

A question was asked about lease fallowing and the drying up of irrigated land, where the water that would have been consumed below Pueblo Reservoir is stored in Pueblo Reservoir. Attorney Burgemeister said that, while the District helped sponsor a lease fallowing pilot project, those operations are being done by the Lower Arkansas Valley Water Conservancy District. The consumptive use has to be calculated and you still have to go to water court to make that change.

Moving forward, Director Canterbury asked if everyone understood the difference between exempt and non-exempt wells. Clarification was requested and Attorney Burgemeister offered further information. He said that if you don't meet the strict criteria in the statute for small capacity exempt wells, which typically have requirements related to flow rate, lot size, and type of use, you have a non-exempt well that has to be administered according to the prior appropriation system with augmentation plans required for over-appropriated areas. Attorney Burgemeister said that for parcels less than 35 acres that were created before 1972, you can get an exempt well for in house use only. These rules were created by Senate Bill 35.

When a question was posed about water leaving the H2O Ranch, Director Canterbury said that the situation was a classic buy and dry and that, because he believes firmly in private property rights, he stands behind the man that had the right to sell his water, though he hated to see the water leave the valley. Director Canterbury further added that the District was an opposer in the case. When the case came about the District reviewed the resume and did not think the engineering related to the amount of consumptive use was accurate. Originally there was a claim of 800 acre-feet of water available and, through the District's involvement, that number was reduced to approximately 200 acre-feet. Director Canterbury said that we saved Custer County a boat load of water and that we get involved in cases to protect water rights. He said that the mission of the District is to protect water rights in the Upper Basin and that is what augmentation does. Furthermore, Director Canterbury said that we are here to

RECORD OF PROCEEDING

offer a service for Custer County and do it correctly by putting water back into the stream to keep water rights whole. In an effort to dispel rumors about the District's operations, Director Canterbury said that the District has the authority to complete water works and facilitate the beneficial use of water. Private property rights, which includes water rights, were established by the Colorado Constitution.

A question was asked about the reason for changing the plan from the version filed in 2009. In 2009 the water rights and storage vessels to provide replacements were not owned by the District. There is assurance in this plan that structures can be augmented with existing supply. The example of a new bed and breakfast was offered, which would need augmentation to replace its out of priority depletions. They could either attempt to get their own augmentation plan and administer it or enroll in the District's plan and have the assurance that replacements will be made by time, amount, and location.

A community member expressed their belief that, through augmentation, the water for the bed and breakfast would come from agriculture. Attorney Burgemeister disagreed with the statement and said that the District's portfolio of water rights is broad. There are water rights that were once used in agriculture, but the District acquired those water rights when agricultural operations were scaled back. The District also has water in Twin Lakes and, at times, that water is stored in Conquistador.

Engineer Manera expressed his perspective that an umbrella plan will actually slow down the need to draw water from the agricultural supply.

Director Felt, in an effort to describe the benefits of a blanket augmentation plan, offered the analogy of a grocery store in a rural area. He said that without a grocery store in Custer County citizens would be eating only what they could produce themselves. A grocery store gives flexibility and variety. Director Felt, who as Chairman of the Board of Chaffee County Commissioners also deals with land use planning, said that a blanket plan offers potential and gives Commissioners flexibility. Commissioners could choose to allow a new bed and breakfast, ponds, or higher density construction, all of which cause depletions to the system. By augmenting those depletions, injury from those depletions is prevented, and the protection of senior water rights is ensured. A blanket augmentation plan provides an economic and efficient method to cover the impacts of new uses. In closing, Director Felt said that the option to allow those uses is still in the hands of the Commissioners, as they are the local land use authority.

Custer County Commissioner Tom Flower expressed gratitude and appreciation to the District for coming and for presenting more information on augmentation and for being available to answer questions. He said that it was helpful to learn about the difference between consumption and depletion and how augmentation covers depletions. Commissioner Flower then presented some specific questions to the District. He asked how much water the Upper Ark owns in Conquistador and DeWeese.

Attorney Burgemeister and Hydrologist Gertson explained that the District owns 30 acre-feet of firm storage space in Conquistador. The District also has an interest in the A. Katzenstein ditch, which amounts to approximately 98 acre-feet of water per year, which can be stored in Conquistador or in other vessels. Other water sources can also be stored in Conquistador, including water from Transmountain diversions. As for DeWeese, the District has 10 acre-feet of firm storage space and 50 acre feet of If & When space.

Commissioner Flower asked if there are still shares of Twin Lakes water available for purchase. It was confirmed that there are Twin Lakes shares available and they cost \$35,000 to \$45,000 for one share, which amounts to an average yield of 0.9 acre-feet of water. The base price for augmentation water, which is sold in 0.10 acre-foot increments, is about the same cost as 0.10-acre feet from a share of Twin Lakes water. District staff explained the difference with buying Twin Lakes water versus augmentation through the District. When you buy Twin Lakes water you still must have a decreed plan of augmentation and provide the measurements and administration of that plan, which includes providing storage and making releases. These services are provided through the District's blanket augmentation plan.

RECORD OF PROCEEDING

Commissioner Flower announced that a statement of opposition had been filed by the Custer County Commissioners so that they will be privy to every document that is released regarding the case.

A gentleman asked what the worst case scenario could be under human control or the control of an organization.

Attorney Burgemeister said that the requirement of every plan for augmentation is that depletions are replaced by time, location, and amount. If unable to do so, the plan is curtailed. Speaking to the hypothetical, Attorney Burgemeister said that, if the District could not replace depletions, people registered under the plan would not be able to divert water. This would ensure no injury to senior water rights.

Referencing Director Canterbury's statement, that he would not support the plan unless he could guarantee no injury, a gentleman in the audience asked if the District had done aquifer mapping and if it had proof that it could make replacements.

Engineer Manera responded that individual applications would show location in relation to surface and alluvial areas and that general, conservative, and accepted engineering has been used in determining the boundaries of the plan. He said that no isotope or ground water mapping has taken place, but the District is part of a study with the USGS to look at groundwater resources in the Wet Mountain Valley.

Concern about aquifer knowledge was expressed and Engineer Manera said that standard engineering is set up per the type of aquifer. He then explained the process for approval of a well permit, which has two parts. The District evaluates the application to make sure it meets criteria for inclusion and it is then submitted to the Division of Water Resources for approval or denial. Throughout the process there is an opportunity to submit comment or oppose the application.

Commissioner Canda remarked that, just because a well is within the blue line, that does not mean that the well can be augmented. There is a process in place but determination is up to the State. The guarantee for no injury comes through the replacement process. No matter where the call is on the stream, water still has to be released to the stream to cover depletions.

A question was asked about Round Mountain Water and Sanitation District and if the boundary location of the blue line would obligate Round Mountain to buy water or work with the District. The answer was no, but it was mentioned that Round Mountain asked if they could be included in the plan.

An individual inquired about the option for a rancher to buy additional water from the District and the cost involved. The response was yes, that is an option, and the rate is approximately \$50 per acre-foot.

George Medaris from Round Mountain Water and Sanitation District remarked that they have filed a statement of opposition, not because they are opposed to the case, but because they want to be at the table. He invited anyone that has concerns to come and speak to him directly. Mr. Medaris also noted that Round Mountain was a part of the H2O fight and that they are trying to protect water rights in the valley. They are also participating in the water balance study with the District and the USGS. Mr. Medaris said that he has taken a look at the plan for augmentation and he believes there are a lot of opportunities to utilize the District's resources instead of drying up additional farm water.

Confusion was expressed about physical exchanges and paper exchanges and the lack of a pipeline between the river and storage reservoirs. Additional information was provided. It was highlighted that the District cannot augment anything above the calling priority on a creek. As for helping the owners of existing water rights, the possibility of leasing water in a super dry year was mentioned. In terms of injury, if a rancher is called out of priority by a downstream user, there is no injury caused by augmentation. Augmentation puts water back into the stream. However, if you have a well user that is pumping water out of priority and there is no augmentation plan, that can cause injury to water rights owners. An augmentation plan guarantees replacements for depletions by time, location, and amount.

RECORD OF PROCEEDING

A community member commented directly to reporters present in the room. She asked that they not report that everyone is filing a complaint because they are opposed to the case, but that they are doing so in an effort to get every bit of information available. She remarked that concepts around water are difficult to understand and that everyone needs clear understanding.

Director Donley interjected and mentioned his role on both the District's Board of Directors and the Board for San Isabel Land Protection Trust. He asked if this would be considered a conflict of interest and Chairman Senderhauf said that the topic could be discussed at the District's next Board meeting.

Going back to the topic of exchanges and the lack of a pipeline to provide supply, Director Felt said that there are actually two significant pipelines in the area, Texas Creek and Grape Creek. He said that in the winter, or at times of high flow, an exchange allows you to turn down the valve that is letting water out so that water can be kept in storage. This is a physical means to keep water up high so that it can be used to augment the beneficial uses that have been referenced in this meeting.

Commissioner Flower commented that the District demonstrated openness to questions, comments and concerns from the people of Custer County. He invited the community to a work session taking place on February 11th at 6:30 p.m. and said that it would be an opportunity to ask additional questions, which would then be taken to the Upper Ark Board.

Ken Baker, former Manager and current Consultant for the District, offered a historical perspective on the purpose and operations of the District. He explained that water was not being delivered to Kansas in the manner and amount required despite a treaty signed in 1948 saying there could be no change to irrigation practices. Changes to these practices resulted in an insufficient amount of water being delivered and the UAWCD was organized because things were not being done correctly. Kansas won the lawsuit against Colorado, requiring a specific amount of water to be delivered. During this time the District applied for an augmentation plan and the District's help was requested by the State Engineer. An order was drawn up that included new rules for administration and irrigation rules and regulations were amended. Everyone had to divert under the prior appropriation system, which required an augmentation plan for out of priority depletions. At that time former Commissioner Joe Reid led Custer County Commissioners in a request to allow Custer County to join the District. Consultant Baker said that Custer has been and will continue to be a partner with the District.

A question was asked about the flow of A. Katzenstein water into Conquistador. Water Commissioner Jerry Livengood said that the decree has diversion limits that are both monthly and annually and that historic irrigation practices are mirrored. Regarding water stored in DeWeese Reservoir, the right to store water is pursuant to two separate agreements. Any water that can get to DeWeese legally and physically can be stored there, including A. Katzenstein water or Twin Lakes water that is exchanged up Grape Creek into DeWeese Reservoir.

Chairman Senderhauf thanked everyone for coming to the work session and said that the District has monthly meetings that are open to the public. He said that the meeting today is not the final answer and that this process will be continuing through the courts for a couple of years. Chairman Senderhauf reminded the community that he has presented to numerous groups in an effort to provide information about water and he hopes these conversations will continue. It was also mentioned that ex-officios have been set up to represent their communities and that these ex-officios are meant to be communication liaisons between the District and their organizations. Custer County Commissioner Tom Flower and George Medaris from Round Mountain Water and Sanitation District are both ex-officios and are regularly present at the monthly Board meetings. Chairman Senderhauf highlighted Round Mountain's involvement in the H2O Ranch case and said that they were one of the last organizations to get out of the fight. He applauded Round Mountain's willingness to spend the money and time to protect water rights. Chairman Senderhauf said that the District reviews the resume every month to see if there is a water rights issue requiring their involvement. In closing, Chairman Senderhauf encouraged people to look at the District's website for more information and asked if any Board members had any comments.

RECORD OF PROCEEDING

Director French said that he could not even count the number of ways that augmentation water has helped Fremont and Chaffee Counties and specifically mentioned schools, restaurants, gravel pit operations, and dust control operations.

Director Goodwin said that he is just outside of the blue line and wished that he was in, as there are multiple benefits to being included in an area that the District can serve.

A member of the audience inquired if an entity like Colorado Springs is still subject to calls when they buy water. The response was yes and the role of the water commissioner in the administration of water rights was referenced.


ADJOURN

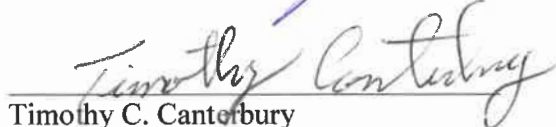
The work session adjourned at 4:30 p.m.

[The remainder of this page is intentionally left blank.]

RECORD OF PROCEEDING

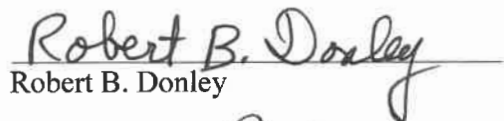
Respectfully submitted,


Ralph L. Scanga, Jr., General Manager



Timothy C. Cantorbury

Absent- No Signature

Mannie Colon

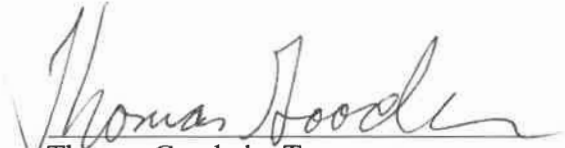

Robert B. Donley

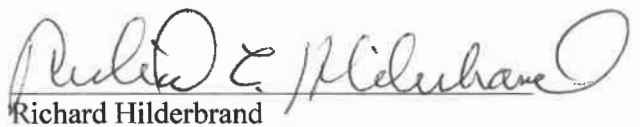

Gregory W. Felt


Tom E. French

Absent- No Signature

Brett A. McMurry


Thomas Goodwin, Treasurer


Richard Hilderbrand

Absent- No Signature

Franklin J. Moore

Absent- No Signature

Jeff Ollinger


Tim Payne

Absent- No Signature

John H. Sandefur


Robert M. Senderhauf