

RECORD OF PROCEEDINGS

UPPER YAMPA WATER CONSERVANCY DISTRICT BOARD OF DIRECTORS MEETING JULY 15, 2015 1:30 PM 3310 CLEAR WATER TRAIL, STEAMBOAT SPRINGS

MINUTES

Chairman John Redmond called the meeting to order and declared a quorum present. In addition to Chairman Redmond, the Board members present were Stephen Colby, Tom Sharp, Doug Monger, Sam Haslem, Ken Brenner, Greg Herman, Webster Jones, and Ron Murphy. General Manager Kevin McBride, Office Manager Karina Craig, and General Counsel Bob Weiss were also present. Members of the public present included Joe Messina, consultant to the District; Erin Light, Division Engineer, Colorado Division of Water Resources; Kelly Heaney, Water Resources Manager, City of Steamboat Springs.

The following agenda was proposed:

- (1) Establishment of Quorum and Call to Order;
- (2) Consent Agenda; action item
 - a) Approval of Disbursements
 - b) Augmentation Applications
- (3) Approval of Agenda for Meeting; action item
- (4) Approval of the minutes of the May 20, 2015 Board Meeting and ratification of the June 26, 2015 Executive Committee meeting minutes; action item
- (5) Public Input and Comment;
- (6) Financial Report;
 - a) Acceptance of 2014 Financial Audit action item
 - b) Budget Comparison action item
- (7) Report of the General Manager;
 - a) Master Planning
 - i) State Water Plan/Roundtable/IBCC
 - (1) IBCC 7 points
 - (2) UYWCD letter to CWCB - Outline
 - b) Elk River Augmentation Plan
 - i) Letter from CPW
 - ii) Cost Estimates for Aug plan
 - c) Power Purchase Agreement Update
 - d) Fetcher Scholarship
 - e) Stagecoach Water Quality Update
- (8) Report from District Engineer
 - a) Reservoir water status
 - b) Facilities update
- (9) Report from General Counsel;
 - a) Stahl
 - b) Add and Include issue
- (10) Executive Session with Bob Weiss, legal Counsel, under CRS § 24-6-402(4)(b) to discuss legal issues on Stahl litigation and YVEA Stagecoach Power. Mere presence or participation of an attorney at an executive session of the local politic body is not sufficient to satisfy the requirements of this subsection (4).
- (11) New Business;
- (12) Adjournment.

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Consent Agenda Director Brenner recused himself and abstained from voting in regards to the submitted Water Augmentation applications. Director Monger moved to approve the consent agenda, which included the Report of Disbursements and augmentation water applications from Yampa Realty Holdings LLC and the Buku Land Co. Director Murphy seconded the motion; it was unanimously approved.

Meeting Agenda Director Haslem moved to approve the proposed agenda. Director Monger seconded the motion which was unanimously approved.

Meeting Minutes Director Brenner referred to the Upper Yampa Water Conservancy District (the District) written position statement relating to the State Water Plan. Director Brenner pointed out that the May 20, 2015 and June 26, 2015 meeting minutes should be amended to reflect that said letter will be addressed to the Colorado Water Conservation Board (CWCB); and a copy will be sent to Interbasin Compact Committee (IBCC) and other industry entities.

Director Brenner moved to approve the May 20, 2015 Meeting Minutes and to ratify the June 26, 2015 Executive Committee Meeting Minutes, as amended. Director Sharp seconded the motion which was unanimously approved.

Financial Report The financial report was reviewed and discussed.

Audit – Director Monger moved to accept the 2014 Fiscal Audit and the Management Analysis. Director Hermann seconded the motion which was unanimously approved.

Budget Comparison – Director Sharp moved to accept the Budget Comparison. Director Jones seconded the motion, which was unanimously approved.

Report of the General Manager

Master Planning – State Water Plan/Roundtable/IBCC – Manager McBride discussed the modeling that is being used as a planning tool to evaluate how the Yampa River (River) will operate under administration. One important consideration is that the model represents reasonably accurately what has been experienced in recent memory. Staff has looked at results of modeling and compared that to what actually occurred in 2002 drought hydrology. In 2002 the Maybell Gage recorded flows as low as 2 cfs without administration occurring on the River. With 2002 hydrology, and with the assumption that headgates are repaired and in a physical condition allowing a call, modeling indicates administration with a 1905 date.

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A graphic showing modeling results was presented and some of the assumptions of the input discussed. Evaluating an individual month of output from the model is complex and essentially entails the understanding of the hydrology, water uses, and administration of the River at a point in time. Joe Messina is putting together a GIS platform to aid in evaluating model output.

Division Engineer Erin Light clarified it may be adjudicated in 1905, with appropriation in 1886.

A discussion on how this modeling will be used to evaluate the District's water rights ensued. Director Sharp asked if it would be likely that anyone would improve a diversion structure to make a call.

Manager McBride responded that it was prudent to plan on an administered river, based in hydrology that is likely to occur. Manager McBride assumes that the Division Engineer was looking for a prudent engineering analysis of the River under administration. Director Monger explained current practice can put temporary structures and a water dam across the river with a temporary permit, without a 404 permit. Director Sharp agreed this is the most conservative position and that administration should be planned for. Director Monger stated his opinion that this shows that at times there is no excess water in the river.

There was some discussion about The Colorado River Basin, with Director Brenner asking what percentage of years is the Yampa not able to deliver to Lake Powel. Manager McBride responded that our modeling is not prepared to answer that question that this is a question of how Colorado deals with obligations under the compact. Manager McBride expressed his opinion that the IBCC was put together to answer that question.

The discussion moved to the Framework the IBCC had developed.

The IBCC draft Conceptual Framework was reviewed and discussed. Manager McBride stated the IBCC adopted the framework at their last meeting. The Board had Directed Mr. McBride to draft a letter stating the District's position and addressed to CWCB. Manager McBride presented a draft for review and discussion.

Director Sharp requested changes to the original final paragraph as follows: line 2, change "supported" to "urged"; lines 8 and 9, change as needed so that they read "the Yampa River Basin for the future in-basin development, and firm protection of existing absolute Yampa River water rights from curtailment. Without such an agreement, the UYWCD Board asserts that the apportionment of the Yampa River by Article XIII of the 1948 Upper Colorado River Compact precludes curtailment of the existing absolute Yampa River Rights."

Director Brenner requested that an additional paragraph be added at the end, as follows: "In conclusion, the UYWCD remains very skeptical of the intent of the seven points of the Conceptual Framework. For example: 'Principle 1: East Slope water providers are not looking for firm yield from a new TMD and the project proponent would accept hydrologic risk for that project', but any water right would be administered by the State Engineer's Office as a water right. Another example: 'Principle 3: In order to

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manage when a new TMD would be able to divert, triggers are needed'; these triggers are not in statute, have no legal standing and are conceptual at best. Therefore, the UYWCD cannot agree to use the seven points of the Conceptual Framework as any more than topics for discussion."

Director Sharp moved that the proposed letter, with the amendments proposed by himself and Director Brenner, be sent as soon as possible to CWCB, with copies to IBCC and other industry entities as Manager McBride sees appropriate. Director Monger seconded the motion, which was unanimously approved.

Elk River Augmentation Plan –

Director McBride introduced the subject; the Board had directed staff to work and seek consultants as needed with the goal of producing a draft of an Augmentation Plan at the Elk River. The Upper Yampa Water Conservancy District (District) would lease water from Colorado Parks and Wildlife (CPW), develop an augmentation plan for the Elk River area, and manage the plan by selling and contracting augmentation water with individual applicants.

A letter from the CPW to the District, discussing the proposed plan, was reviewed and discussed.

In regards to the development of the program, Mr. McBride presented the Board with a scope of legal work from Balcomb and Green (B&G); including CPW contracting, Application preparation, Water Court Process, Preparation of a Proposed Decree and Negotiations, for an estimated \$35,000. Additionally, an Engineering Scope of Work by Resource Engineering (Resource); with an estimated cost of \$42,986.

Director Sharp stated his opinion that the cost of developing an Augmentation plan at the Elk River ought to be lower than that incurred in developing the existing District Augmentation plan, which encompasses a different and much larger geographical area. Mr. Sharp then inquired if there was a potential for the plan to include areas above the Elk, specifically above the Willow Creek confluence.

Ms. Light, who was present, indicated there is an instream flow above Willow Creek, which would preclude the area proposed by Mr. Sharp from being included in the plan. Director Haslem brought attention to the fact that documents from Resource incorrectly referred to Elk Creek, instead of Elk River.

Willow Creek, related instream flows, stock water and exchanges were discussed.

Director Sharp proposed that staff work together with Resource Engineering and legal counsel including General Counsel Weiss to bring to the board a plan draft. He also asked staff to find out what the purchase price and length of the contract would be, to determine if the District would want to proceed and have staff and consultants work further on developing the plan.

Counsel Weiss stated Mr. Hallford of Balcomb & Green, PC has negotiated with CPW for another client and in that case CPW had agreed to a 40 year lease term. Mr. Weiss clarified that on an annual basis the

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District would propose that the District be liable to pay to CPW only for water the District had contracted to augmentation plan contractees; water the District had available for sale, but had not yet contracted under the augmentation plan, would not be payable to CPW.

Director Sharp moved to delegate consideration of contract issues, as needed, to the Executive Committee. Director Monger seconded the motion and it was unanimously approved.

Power purchase agreement – The District has called for a meeting with the Steamboat Ski & Resort Corporation (Ski Corp.) and Yampa Valley Electric Association (YVEA) to discuss the proposed power agreement. The District has already met with Ski Corp; YVEA requested to meet with the District individually and a meeting has been scheduled for July 17th at 1:30 pm.

Ski Corp. has expressed it values purchasing power from the Stagecoach Powerhouse, in particular considering that the average production of power at Stagecoach can cover, on average, the power needed to operate the gondola.

Director Monger moved to delegate the negotiation for the power purchase agreement to the Executive Committee. Director Colby seconded the motion which was unanimously approved. Director Sharp excused himself from the vote and discussion.

Fetcher Scholarship – Information about the Fetcher Scholarship candidate, Josie Rossi, was presented. The District continues to work with Reagan Waskom, Director of the Colorado Water Institute/Water Center at Colorado State University. Dr. Waskom provided the District with a ranking of applicants. If possible, the first consideration is given to qualified applicants who live within our district, second who live on the Western Slope, and third who live elsewhere in Colorado.

There was agreement to award the 2015 John Fetcher Scholarship to Josie Rossi in the requested amount of \$3,000.

Stagecoach Water Quality Update – Water quality issues in Stagecoach Reservoir continue to be discussed. Stagecoach Reservoir is a eutrophic lake. Manager McBride wrote a letter to CPW regarding the issue; with the intent to clarify that there is no direct connection between Morrison Creek Water and Sanitation District operations and the current Stagecoach Reservoir water quality issues.

Director Colby thanked Manager McBride for his work and he stated he thinks it is important that District staff and directors are involved in the discussion.

Report from the District Engineer

Reservoir Water Status – The District Engineer, Andy Rossi, was absent; Manager McBride presented in his absence.

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The Reservoir Water Status memo written by Engineer Rossi were presented and discussed. Both reservoirs, Stagecoach and Yamcolo, are full.

The Yamcolo reservoir water level was dropped to allow for the drainage repair project. There is a question in regards to water accounting, specifically if all of the Yamcolo Enlargement water is available. The expectation was that Yamcolo reservoir would be able to fill before July 15th, however, the river went back on call, shifting the water accounting. Other issues considered in reservoir water level management are Pike and avoiding spilling.

Also regarding Yamcolo water; the District has sent a Water Use Agreement to the Colorado Water Trust (CWT). A sublease agreement may be developed with the City of Steamboat Springs. There is interest in an outreach effort, and it is being coordinated by the three agencies.

Facilities Update – The 2015 Facilities Maintenance memorandum written by Engineer Rossi was reviewed. District hired an underwater drone to perform the visual inspection of Stagecoach Dam and stem guides. It was found that two stem guide/bracket assemblies on the bottom intake gate stem are broken. Repairs are planned for 2016.

Director Jones asked how many stem guides there are, discussion followed. The penstock was discussed as well. The stem guides will be designed and custom made. Director Hermann requested that Engineer Rossi speak with Chad Phillip about the repairs. The repairs are expected to be expensive, and will be included in the 2016 budget.

Report from General Counsel

Stahl – There is nothing new to report on the Stahl PCA and Marina case; we are waiting on the Supreme Court decision on our application for review, which is still pending.

The case regarding the Rule and Regulation has been set for trial for three dates in January 2016. The District has made the initial disclosures. There will be more activity expected on this case between now and the date of the trial.

Add and Include Issue – The District has sent a letter to the State Engineer and we expect to have further conversations and a response on that matter.

Director Brenner made a motion to enter into Executive Session. Director Haslem seconded the motion. Director Sharp excused himself and left the room. It was unanimously agreed to go into Executive Session under provision C.R.S. §24-6-402(4) (b) to discuss with counsel legal issues relating to YVEA Stagecoach power legal issues. The Stahl litigation topic was excluded. Mere presence or participation of an attorney at an executive session of the local public body is not sufficient to satisfy the requirements of this subsection (4). The Executive Session commenced at 3:50 PM and concluded at 5:00 PM.

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Determination of future meetings The scheduled date for the next Board meeting and Annual Board Retreat was confirmed, being Wednesday September 16, 2015 at 8:00 am, at the Sheraton Steamboat Resort.

The meeting was adjourned at 5:00 PM.

I certify that the foregoing constitutes a true and correct summary of the proceedings at the above referenced meeting.



Kevin McBride, District Secretary/Manager

STATEMENT FROM ATTORNEY REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned Robert G. Weiss hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that the portion of the executive session that was not recorded and which related to the YVEA Stagecoach legal issues constituted a privileged attorney-client communication in the opinion of the undersigned attorney.



Robert G. Weiss, Counsel

Date: 11-19-15

STATEMENT FROM CHAIR OF EXECUTIVE SESSION REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned chairman hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that all of the executive session was not recorded and was confined to the topics authorized for discussion in an executive session pursuant to subsection (4) of CRS Section 24-6-402.



John Redmond, Chairman

Date: 9/22/15