

RECORD OF PROCEEDINGS

**UPPER YAMPA WATER CONSERVANCY DISTRICT
BOARD OF DIRECTORS MEETING
JUNE 19, 2019 1:30 PM
MOUNTAIN VALLEY BANK COMMUNITY ROOM
2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO**

MINUTES

Chairman Ken Brenner called the meeting to order and declared a quorum present. In addition to Chairman Redmond, the Board members present were Bob Woodmansee, Doug Monger, Jim Haskins, Ken Brenner, Ron Murphy, Stephen Colby, Tom Sharp, and Webster Jones. General Manager Kevin McBride, District Engineer Andy Rossi, Office Manager Karina Craig, and General Counsel Bob Weiss were also present.

Members of the public present included Eleanor Hasenbeck, Billy Mitzelfeld, and Erin Light.

The following agenda was proposed:

AGENDA (REVISED)

- (1) *1:30 pm* Establishment of Quorum and Call to Order;
- (2) Consent Agenda; action item
 - a) Approval of Disbursements
 - b) Budget Comparison
 - c) Resolution to Open New Bank Account
- (3) Approval of Agenda for Meeting; action item
- (4) Public Input and Comment;
- (5) *1:40 pm* Report of the General Manager; action item
 - a) Elk River Augmentation Plan
 - b) West Slope Roundtable "Summit"
 - c) New Position Interviews
 - d) 360 Assessment Update
 - e) Forest Service Land Swap
- (6) *3:15 pm* Report from District Engineer;
 - a) Reservoir Water Status
 - b) Capital Projects Update
- (7) *3:45 pm* Report from General Counsel;
 - a) Water Resumes
 - b) Status of other Water Cases, if any
 - c) ERC Legal Discussions
 - d) Bear Lake Colorado Parks and Wildlife Agreement action item
 - e) Proposed Tri-State NDA action item
- (8) *4:30 pm* Executive Session with Bob Weiss, legal Counsel, under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, and Contract Negotiations. 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).
- (9) New Business;
- (10) Adjournment.

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Consent Agenda Director Jones made a motion to approve the Consent agenda. Director Woodmansee seconded the motion which was unanimously approved.

Meeting Agenda Director Brenner proposed starting the Executive Session to 3:00 pm due to some Board members needing to leave early. In addition, move (7) e) to become (8) b). Move (5) a) to 3:00 pm.

Director Monger moved to approve the agenda as amended. Director Haskins seconded the motion which was unanimously approved.

Counsel Weiss has concerns about privacy using a conference phone during Executive Session. Director Monger suggested the teleconference package called Zoom. Manager McBride staff would look into it.

Public Comment No public comments at this time.

Report of the General Manager

West Slope Roundtable "Summit"– Discussion followed about the Summit and the Board had questions about the modeling.

New Position Interviews – General Manager McBride reviewed that there were 44 resumes submitted, nine were sent to the Hiring committee, seven have been chosen for short phone interviews with Manager McBride. Three applicants will be chosen for interviews prior to the July Board Meeting.

360 Assessment Update – Counsel Weiss was asked by the 360 Committee to review their draft of the Mission, Policies, and Goals document (MPG). Mr. Weiss reported that in general, he did not see anything in the draft that was not within the legal authority of the District. Counsel Weiss said statements appearing in planning and policy documents are very unlikely to ever generate a legal challenge as being outside the District's authority. If such a question were ever to arise it would most likely occur in a District financing when a legal opinion from a Bond attorney might be required.

Director Brenner thanked Director Sharp for his effort in editing the MPG and Mr. Brenner reviewed the process of the 360 Committee. Two documents, the MPG and Board Governance, would be sent to the Board for input from the Board if they choose to participate.

Director Sharp suggested that on page 3 of the MPG, the water pricing should not be included. He believes there should be a separate pricing policy. The 360 Committee agreed.

Director Monger pointed out that the Board Governance document had no reference to sub-committees or the committee process and that the Board needs to know what is going on in the committee meetings. Counsel Weiss said he will provide notes for negotiating committee meetings he attends. Minutes are

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provided to the Board for formal subcommittees such as the 360 committee. Director Monger reiterated the need for the 360 Committee to add the ability for the Board to create committees to their document. There was general agreement.

Forest Service Land Swap – Manager McBride asked the Board if the District should begin the conversation with the Forest Service about the potential land swap. Discussion followed. Directors Monger and Brenner suggested that this discussion was premature. Manager McBride confirmed that the land swap discussion would not be pursued at this time.

Report from the District Engineer

Reservoir status – District Engineer Rossi updated the Board on the current level of storage in Stagecoach and Yamcolo Reservoirs. Also, water deliveries have started, the Division of Dam Safety has placed a fill restriction on Stillwater Reservoir and Mr. Rossi expects a dynamic runoff this spring.

Director Redmond inquired about the work being done on the Smith Basin Lateral of the Stillwater (Ditch). Engineer Rossi clarified that the District is under contract to maintain the Ditch and a consultant has been hired to look at options to fix recurring maintenance problems.

Engineer Rossi invited the Board to join him for a tour of the Stillwater Ditch to better understand the issues surrounding the Ditch.

Colorado Division of Water Resources Division Engineer, Erin Light, was invited to speak. She stated she is accepting the new rating table for the Stillwater Ditch.

Capital Projects Update – Engineer Rossi reviewed the capital projects and discussion followed. Mr. Rossi informed the Board that the Yamcolo work done last year weathered the winter well but there is some cleanup work to be done. The Stagecoach Reservoir Part 12 FERC inspection is schedule in July.

Report from General Counsel

Elk River Augmentation Plan – Special Counsel Scott Grosscup, Balcomb and Green, joined the meeting by phone. The Marketing Policy for the Elk River Augmentation plan was discussed. Counsel Grosscup requested direction from the Board on pricing and abatement policies.

Pricing was discussed. Director Sharp thought there was no good reason for the pricing to be different between the Yampa River Augmentation and the Elk River Augmentation. Counsel Grosscup said the pricing between the two is the same and stated that in the Elk River Augmentation the District keeps the application fee and gives half of the annual collection fees to Colorado Parks and Wildlife. Director Monger reminded the Board that the Augmentation plans are a community service; the District does not recoup its costs. There was general agreement to not have a different pricing structure for the Elk Augmentation plan.

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Director Sharp suggested wording changes: make sure everyone understand they pay even if they don't take and remove the reference to Tri-State.

Clarification on the annual pricing set by the Board was reviewed.

Director Brenner asked if General Manager McBride had any change requests, administratively, to make the application process easier. Mr. McBride thought there was not more the District could do. Office Manager Craig pointed out that the application fee amount for the small contracts is not correct, discussion followed. It will be made the same as the Yampa plan. Division Engineer expressed that the one-acre minimum cost was very reasonable.

Director Sharp moved to approve the Water Marketing Policy for the Elk River and the proposed Augmentation Contract form submitted by Scott Grosscup; Balcomb and Green P.C. Law Firm with the following changes to such Policy and Contract Form:

Water Marketing Policy for the Elk River

- Remove subsection 6 b. Tri-State Right of First Refusal
- Change subsection 5 d. ii to read: Annual Rates for Classes of Users: The annual user price for each type of water contract shall be reviewed and set annually by the Board of Directors. The price is a "take or pay" price and is payable with respect to the maximum allotted contract amount allotted to the user, whether or not in any year such user in fact takes and uses all of the contracted water. The annual price may be adjusted by the Board of the District from time to time for any future year. The initial approved pricing per acre foot of water for the current Project Year is as follows:
- Change subsection 5 d. ii Supply Pricing box: all applications the same amount at \$204.75 AF/year
- Change subsection 5 d. iii \$200 to \$204.75.

Augmentation form contract

- Add at the end of subsection 4 a.: The price is a "take or pay" price and is payable with respect to the maximum allotted contract amount allotted to the Applicant, whether or not in any year such Applicant in fact takes and uses all of the contracted water.

Director Monger seconded the motion which was unanimously approved.

Water Resumes – Counsel Grosscup recommended no opposition statements be filed; no questions from the Board.

Status of Water Cases – Counsel Grosscup informed the Board that the final decree was obtained for the District's water right portfolio and he thanked Division Engineer Erin Light and her office. Other water cases were reviewed.

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ERC Legal Discussions – Counsel Grosscup reviewed his memorandum to the Board about legal mechanism available to the District to release water for Environmental and/or Recreational purposes. In his view, it is important to keep in mind that water law is not very supportive of leaving water in the streams, it is designed more for removal and application of water for beneficial use.

Director Brenner asked Mr. Grosscup to elaborate and he thought it was good that Division Engineer Light was present.

- The 3 in 10 year option: Counsel Grosscup's view is it was intended for irrigation water and it doesn't really contemplate water stored in reservoirs. Limitations were discussed. Director Brenner said the District should plan on participating in the Interim Water Committee meeting at the Colorado Water Congress Summer conference in August.
- Loan/Lease: The Colorado Water Conservation Board can acquire water rights for instream flow purposes. Director Jones reminded the Board that the Colorado Water Trust met with the Board and expressed interest in a substitute water supply. Mr. Grosscup replied that this would be considered a temporary change in stored water for ISF purposes and the State Engineer would need to sign off on this. However, it is not a long-term solution since it would be limited to 5 years and subject to court approval.
- Augmentation Plan: The District has water for Augmentation purposes but there needs to be discussion and clarification with the Colorado Division of Water Resources to see how it would be administered and operated. Division Engineer Light added that this topic has come up on the Poudre River. This type of proposal would need to be considered by the State Engineer on a statewide basis. .

Director Sharp moved to table further discussion on the Environmental Recreation Contracts until the next Board meeting. Director Monger seconded the motion which was unanimously approved.

Bear Lake Colorado Parks and Wildlife Agreement – Director Sharp made a motion to approve the Bear Lake Administration Agreement between the State, Colorado Parks and Wildlife and the District relating to Bear Lake as presented to the Board by Counsel. And to authorize the General Manger to sign the agreement. Director Monger seconded the motion which was unanimously approved

Executive Session

Director Sharp made a motion to go into executive session. It was seconded by Director Jones and 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 Water Resumes, Water Cases, and Contract Negotiations. 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 about 4:30 PM and concluded at about 5:00 PM.

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The Chairman then announced that if any person who participated in the executive session believed that any substantial discussion of any matters not included in the motion to go into executive session occurred in the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, that such person state their concerns for the record. No one stated concerns.

Determination of future meetings The scheduled date for the next Board meeting will be Wednesday July 24, 2019 at 1:30 PM, at Mountain Valley Bank Community Room, 2201 Curve Plaza, Steamboat Springs, CO.

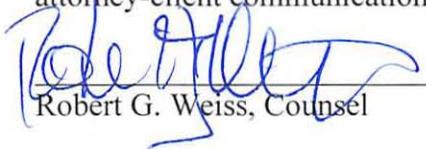
The meeting was adjourned at 5:00 PM.

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

 Date: 7/24/2019
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 Water Resumes, Water Cases, and Contract Negotiations contract negotiations constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

 Date: 7-24-2019
Robert G. Weiss, Counsel

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.

 Date: 7.29.19
Ken Brenner, Chairman