

RECORD OF PROCEEDINGS

**UPPER YAMPA WATER CONSERVANCY DISTRICT
BOARD OF DIRECTORS MEETING
MARCH 11, 2020 11:30 AM
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 Brenner, the Board members present were Bob Woodmansee, Doug Monger, Jim Haskins, John Redmond, Ron Murphy, Lyn Halliday, Tom Sharp, and Webster Jones. General Manager Kevin McBride, District Engineer Andy Rossi, Marketing/Communication Manager Holly Kirkpatrick, Chief Accountant Karina Craig, Business Manager Deb Bastian, General Counsel Bob Weiss (by video conference), and retiring Director Steve Colby were also present. Members of the public present included Erin Light and Scott Hummer, Colorado Division of Water Resources; Kelley Romero-Heaney and Jon Snyder, City of Steamboat Springs; and Mr. Gerry Smith.

The following agenda was proposed:

AGENDA

- (1) Establishment of Quorum and Call to Order;
- (2) Approval of Agenda for Meeting; action item
- (3) Succession Planning;
- (4) Consent Agenda; action item
 - a) Financial Reports;
 - i) Approval of Disbursements;
 - ii) Budget Comparison;
 - iii) Budget update for WSRF Funds;
 - b) Approval of the minutes of the January 15 Board Meeting;
- (5) Public Input and Comment;
- (6) Board Member Recognition;
- (7) Report of the General Manager;
 - a) Water Quality Standards Consulting;
 - b) Pricing discussion; action item
 - c) Board meeting calendar; action item
 - d) Risk Study modeling;
- (8) Report from District Engineer;
 - a) Reservoir Water Status;
 - b) Inflow Forecasting;
- (9) Report from Public Information Manager;
 - a) Summary Update;
 - i) Diversion Infrastructure Improvement Project;
 - ii) Web Site Redesign;
 - iii) Public Information Schedule;
 - iv) Yamcolo Individual Irrigator Marketing Update;
- (10) Report from General Counsel;
 - a) Water Resumes;
 - b) Status of other Water Cases, if any;
 - c) Board Appointments;

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- d) Water Contracts;
- (11) 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).
- (12) Board Member Reports;
- (13) Next Meeting Agenda;
- (14) Adjournment.

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

General Manager McBride introduced the District's new Business Manager, Deb Bastian. Chairman Brenner announced the retirement of Director Steve Colby. Director Colby's term at the Board ended on March 8, 2020 and he had announced his retirement. Chairman Brenner introduced incoming Director Lyn Halliday. Director Halliday introduced herself and updated the Board on her professional background.

Succession Planning

Chairman Brenner stated General Manager McBride had announced his retirement and thanked him for his service to the District over the years. General Manager McBride described some of the more salient District accomplishments and District milestones reached during his tenure and thanked the Board for the opportunity.

Director Brenner referred to the current job description for the position. He proposed the Governance Committee review and updated it, then bring it to the Board for review, before it be posted publicly.

Director Monger thanked General Manager McBride for the flexible offboarding schedule he offered the District and stated his opinion that it would be best to establish a well-defined timeline. Director Monger proposed an RFP be issued and commented Routt County had recently gone through the process of hiring a new County Manager. Five firms had been recruited in the search effort and they might be a good resource for the District as well. Additional resources were mentioned, such as Employers Council and the International City Manager Association. An Executive Committee was scheduled for Wednesday March 18; Director Sharp suggested the Executive Committee take on the responsibility of finding such firms. General Counsel Weiss clarified the District could choose to, but was not required to, issue an RFP for personnel matters. There was general agreement that the process outlined above would be a good approach.

Consent Agenda Director Sharp made a motion to approve the consent agenda (approval of January 15, 2020 minutes, Budget Updated and Comparison Report, Cash Disbursement Report), Director Haskins seconded the motion, which was unanimously approved.

Public Comment The Chairman asked the public present if there were any questions or comments; there were none.

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Board Member Recognition

General Manager McBride recognized and thanked retiring Director Colby for his many years of service at the District. The sentiment was echoed through the room. Director Colby expressed his gratitude for the opportunity, recognized the work achieved by the District in the past fifteen years and wanted to wish the District all the best in the future.

Report of the General Manager

Water Quality Standards Consulting – General Manager McBride handed a letter from Leonard Rice Engineers (LRE) to the District. He discussed work being carried out by LRE in water quality standards for Stagecoach Reservoir. Director Monger inquired about timelines; General Manager McBride said he saw early summer for a general timeline.. There was a discussion about the standards.

Pricing Discussion –

The General Manager provided a general overview of pricing of current contracts. He then referred to pricing methods the District has used to capture costs of each facility. He spoke of the new water contracts, and different ways to bring a price for new contracts for municipal water.

Jon Snyder, Public Works Director of the City of Steamboat Springs, was invited to speak. He discussed rate study strategies, including full cost recovery, which he supported. He described pricing components; ongoing operations, a rainy-day fund, and capital maintenance. He commented capital improvement plans can be very variable, and encouraged recovery of % 100 of operating costs, commented he typically keeps a rainy-day fund equivalent to that of about 25% of operating costs. He requested that details of proposed water pricing could be made publicly available soon.

Chairman Brenner asked members of the public present if there were any comments; there were none.

The topic of firmness of water relative to pricing was discussed. Director Sharp inquired what might or might not be appropriate to discuss in open session relative to pricing of contracts that are currently under negotiation. General Counsel Weiss said with respect to existing contract interpretation and instructions to negotiators should be discussed in executive session. He said pricing related to new water contracts could be discussed in open session.

Chairman Brenner asked Directors to express their opinions. Director Sharp referred to a pricing matrix he was proposing, with water pricing varying with volume of water to be contracted, and length of contract term. Director Jones proposed pricing varying based on type of water use, recognizing four categories: agricultural, ERC, municipal and industrial. He discouraged the signing of long-term contracts, commenting perpetuity is a long time. He had a broader range of prices, he commented. Director Woodmansee discussed risk, and whether a firming project would be needed. He stated his opinion that \$125.00/AF would be too high of a price. Director Haskins stated he had the same thought

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initially. However, he said, the firming project might indeed be needed, and it should be kept on the table. He referred to comments about pricing sensitivity and noted that pricing of water is much higher in other basins. He clarified this was the case for water in general, and particularly for environmental water.

Director Monger discouraged the District to enter into new perpetual contracts. He was advocating for cost recovery pricing and the consideration of firmness of yield. The community wishes for the District to save money for new projects, and to have some reserves, he expressed. ERC water might be sold for a lower price, but it might not be there when needed. Director Redmond stated he would like to see no new perpetual contracts, and he'd like to see contracts be simplified in the future. Director Halliday commented there are numerous variables contributing to pricing, especially considering changes to climate and other unknowns.

Director Jones spoke; he said there is no set protocol in pricing as there is in retail municipal water. The District hired an accounting firm with background. Calculated prices are educated estimates, which come close to the actual costs. As a District, he said, we are not able to recover all of the cost. There is a subsidy, because not all of the water is under contract. He was suggesting Directors pick a number they feel comfortable with, that reflects the values of the District. He further commented, the City of Steamboat Springs has a capital-intensive budget, while the District's situation is different, with capital expenditures that are not as unpredictable. He felt comfortable with the method developed by the District, he concluded.

Director Brenner stated he did not see a current need for agricultural water pricing at Stagecoach. He could empathize with other governments who will continue to serve their constituents in the long term and asked if there was a provision or terms that could give further assurance for long term planning. He recognized firmness ought to be a factor in pricing considerations. He stated the cost recognition through an enterprise fund model had its value, while he was aware that not all costs could be recovered, and water would be subsidized. He added, he was in agreement of avoiding any new perpetual contracts.

Director Murphy stated he liked the pricing matrix proposed by Director Sharp; however, he added, it would drastically complicate pricing for staff. He did not believe in perpetual contracts, and in his opinion, contracts should have a term of 20 years or less.

Chairman Brenner invited the public to comment. Gerry Smith commented that under applicable rules what will be discussed in Executive Session must be listed or otherwise it could not be discussed. General Counsel Weiss responded and clarified; there are two types of Executive Sessions. They can be for legal advice, or for contract negotiations. For the latter, there is a recording, and the District holds it for 90 days, per State law.

Board Meeting Calendar – The annual 2020 Board meeting schedule was reviewed. Some of the scheduled meetings are on the same dates as with the Yampa White Green Basin Roundtable. Some of the Roundtable Committee meetings overlap not only in date, but in time. There was a proposal to adjust

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the District calendar so that District staff and Directors may attend to both meetings. Director Monger moved to keep the April 8, 2020 1:30 PM Board meeting as scheduled, and to adjust the monthly Board meetings for the remaining months of 2020 to the third Thursday of the month, with a start time of 12:00 PM. Director Woodmansee seconded the motion, which was unanimously approved.

Risk Study Modeling – General Manager McBride presented a Big River Committee Summary. The Big River Committee is a sub-committee of the Yampa White Green Basin Roundtable which is focused on the RT’s positions of the group.; the chair of that group has put out a document for comment: **Goals, Focus, and Policy Recommendations**. This was briefly discussed.

As part of the Colorado River District sponsored “Risk Study” the BOD’s previously approved funding with the provision that the “Yampa Doctrine” and “equitable apportionment” possibilities for administration of the Yampa River were considered. A YRWCD Equitable Apportionment spreadsheet document was presented, reviewed and discussed. The conversation included allocation of reduced depletion volumes for different basins through a variety of processes. Directors expressed interest in continuing to receive updates on the information presented.

Report from the District Engineer

Reservoir Water Status – Engineer Rossi presented and discussed in detail several graphs with water storage data for Yamcolo and Stagecoach Reservoirs, for the years 2019, and 2020-to-date.

Inflow Forecasting – Engineer Rossi presented a Yamcolo Inflow Forecast Worksheet, a Stagecoach Inflow Forecast Flowsheet, SNOTEL data sheets, and CBRFC inflow forecasts. He explained the data used, and the methodology. He then referred to pike, an introduced species present in Stagecoach Reservoir, and stated the District works in communication with other agencies actively involved in pike management.

Report from Public Information Manager – Summary Update

Diversion Infrastructure Improvement Project – Public Information Manager Kirkpatrick updated the Board on the project. She referred to budgeting and clarified the District won’t be issuing funds until after they are received from other participating agencies. Effectively and in terms of cash-flow, the expenditures will be a pass-through.

Website Redesign – Manager Kirkpatrick shared with the Board that the District’s website will be updated, both in presentation and content. She is currently working with consulting firm Hive180. She estimated the updated website would be launched in mid-May. She stated she would like the website to include an event calendar easily accessible to the public, as well as to staff and Directors.

Public Information Schedule – Manager Kirkpatrick updated the Board on different events and publications were District related materials have or will appear. She asked Directors to share with her

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any other events or publications that might be useful for her to know about. Director Brenner shared some events from Friends of the Yampa.

Yamcolo Individual Irrigator Marketing Update – The Public Information Manager presented and reviewed an Individual Irrigators Water Allotment Contract Timeline. Contract applications have been mailed out to prospective contractees. Several people have reached out and several applications have been received. Friday March 13, 2020 is the deadline for all applicants to submit their applications. Soon after, contracts will be mailed out for signature. Contracts are expected to be received by April 1, 2020.

Report from General Counsel

Water Resumes and Status of other Water Cases – General Counsel Weiss reported Scott Grosscup had reviewed the Water Resumes for Water Divisions 5 and 6 for water court filings in January and he had not identified any water applications that would impair or injure the District’s water rights. Counsel Weiss presented and reviewed an update on cases 17CW3043, 18CW3020, 19CW3005 and on the Million’s project involving the Utah Division of Water Rights prepared by Scott Grosscup.

Director Sharp asked Counsel Weiss if he could take some time and give some thought to the pros and cons of taking an active role on a certain water case involving Tri-State diligence. There was a discussion about some historical water rights, as well as about water matters currently active in the Legislature.

Board Appointments – General Counsel Weiss updated everyone present on the process and results of the new Board appointments. The terms of Directors Haskins, Brenner and Colby expired on March 8, 2020. Publications were carried out in compliance with statutes. Applications were received by the February 7, 2020 deadline. The Chief Judge appointed Directors Haskins, Brenner, and Halliday. The terms are for four years and will be expiring on March 8, 2024.

Water Contracts – Counsel Weiss updated the Board on several contracts. A proposed amendment to the YIA includes changes involving pricing provisions until the year 2041. The proposed amendment provides for a \$13/AF pricing for 2020, with annual CPI increases, through 2041. Afterwards, pricing would be calculated based on costs. A proposed amendment for the 2005 Stillwater Ditch Agreement Amendment was presented. Counsel Weiss was explaining the amendment proposes a \$0.74 price per share fee for the year 2020, to be adjusted by CPI on an annual basis, through 2041. The District had agreed at a previous meeting to reimburse to former shareholders those legal fees incurred during negotiations, up to a maximum of \$11,000.

A proposed Carriage Contract for Individual Irrigators and YIA members who wish to use the Stillwater Ditch was presented and discussed. The proposed starting price is \$1.84 per acre foot of water currently under contract. The price would be adjusted by CPI, and a credit would be applied according to use, for those shareholders who hold capacity in the original 36.3 cfs in the Ditch.

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Finally, the 3,500 AF YIA contract was discussed. A proposed application and form of non-renewable allotment contract and carriage contract was presented and reviewed. The proposed price was \$11 AF with a sideboard CPI adjustment. The District had agreed to reimburse attorney's fees up to \$2,000. The re-contracting process was outlined through a Resolution adopted by the Board in January 2020 and revised at the February meeting. Director Sharp moved to authorize as a District an extension of the arbitration of the YIA contract for 60 days, provided the YIA also agree and sign said extension. The motion was seconded by Director Woodmansee and unanimously approved.

Executive Session

Robert Weiss, as counsel for the District, stated that in his opinion discussion of the matter announced to go into executive session constitutes a privileged attorney/client communication. He was therefore recommending that no further record be kept of the executive session.

At 4:00 PM Director Sharp moved, Director Monger seconded, and 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 Water Resumes and Water Cases, and provision C.R.S. §24-6-402(4) (e) for instructions to negotiators. 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). Director Sharp moved, Director Haskins seconded, and it was unanimously approved to go out of Executive Session at 5:05 PM.

Director Sharp moved to advise the City of Steamboat Springs of a water price of \$124.23/AF, to be adjusted by CPI, with a right of first offer and a term ending in the year 2041. The motion was seconded by Director Haskins. The motion was also supported by Directors Murphy, Redmond and Monger. Directors Jones, Woodmansee and Brenner did not support the motion. Director Halliday abstained. The motion passed with five in favor, three opposed and one abstention.

Board Member Reports – Chairman Brenner asked Directors if they had had time to review certain documents he had sent out. Director Monger commented he had been championing transitioning from coal, and he now had an understanding of the concerns from community members about the loss of coal production in the region.

Determination of future meetings The scheduled date for the next Board meeting was confirmed, being Wednesday April 8, 2020 at 1:30 PM.

Director Sharp moved to adjourn the meeting. The motion passed and the meeting adjourned at 5:20 PM.

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

Kevin McBride G.M.
Kevin McBride G.M. (Apr 17, 2020)

Kevin McBride, District Secretary/Manager

Date: Apr 17, 2020

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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 and Water Cases constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

Robert Weiss
Robert Weiss (Apr 18, 2020)

Robert G. Weiss, Counsel

Date: Apr 18, 2020

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.

KBanner
Ken Brenner (Apr 18, 2020)

Ken Brenner, Chairman

Date: Apr 18, 2020

UYWCD - Signature Required - 2020 Minutes 03-11-20-Final

Final Audit Report

2020-04-18

Created:	2020-04-17
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