

RECORD OF PROCEEDINGS

**UPPER YAMPA WATER CONSERVANCY DISTRICT
BOARD OF DIRECTORS MEETING
WEDNESDAY, MAY 17, 2023 (12:00 PM)
MOUNTAIN VALLEY BANK COMMUNITY ROOM
2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO
ONLINE MEETING:**

<https://us06web.zoom.us/j/86438342291?pwd=MXM4dURKSjFjL0d0ZmoxSXVWdUtnZz09>

MINUTES

Chairman Doug Monger called the meeting to order and declared a quorum present. In addition to Chairman Monger, the Board Members present were Ken Brenner, Jim Haskins, John Redmond, Ron Murphy, Lyn Halliday, Tom Sharp, Webster Jones and Nicole Seltzer. General Manager Andy Rossi, District Engineer Emily Lowell, Public Information and External Affairs Manager Holly Kirkpatrick, Business Manager Deb Bastian, Finance Manager Karina Craig and General Counsel Bob Weiss were also present. Special Counsel Scott Grosscup was present over Zoom for a portion of the meeting. Members of the public present for some portion of the meeting included Erin Light, Colorado Department of Water Resources; Kelly Watson, Watson, Coon & Ryan, CPAs; Angela Schenk, Leonard Rice Engineers; Adam Monchak, Kimley Horn; Geovanny Romero, Morrison Creek Water & San District; Chris Wittemyer, Stagecoach Mountain; Mike Smith, Brownstein; Jeremy Pfile, Discovery Land Company; Bob Woodmansee and Geoff Blakeslee.

This meeting was held in person and by videoconference utilizing Zoom. The meeting agenda included instructions to the public describing the process to participate in the meeting and comment on agenda items.

The following agenda was proposed:

AGENDA

- (1) **12:00 PM** Establishment of Quorum and Call to Order
- (2) **12:00 PM** Approval of Agenda for Meeting **Action item**
- (3) **12:05 PM** Public Input and Comment
The Board will make no decision nor take action, except to direct the General Manager. Those addressing the Board are requested to identify themselves by name, organization, if any, and address. Comments shall not exceed three (3) minutes.
 - a. Update from CDWR – TBD
- (4) **12:10 PM** Board Member Reports
 - a. Water Quality Update – Director Halliday
 - b. Board Governance Committee Report
- (5) **12:30 PM** Consent Agenda **Action item**
 - a. Approval of the Minutes March 15, 2023, Board Meeting
 - b. Financials
 - i. Approval of Disbursements
 - ii. Budget Comparison
- (6) **12:40 PM** Stagecoach Ski Area Development Group Presentation

RECORD OF PROCEEDINGS

- (7) **1:10 PM** Report of Finance Manager
- a. Financial Asset Management Update
 - b. 2022 Financial Audit – Final Report **Action item**
- (8) **1:40 PM** District Engineer Report
- a. Update on Reservoir Water Status
 - b. Capital Improvements Schedule
 - c. Yampa River Basin Data Dashboard
- (9) **2:10 PM** Report of General Manager
- a. General Manager Report
 - b. Resolution to Amended Open Records Request Charges **Action item**
 - c. Stagecoach UYWCD – State of Colorado Lease Agreement **Action item**
 - d. Routt County Planning Stagecoach PUD **Action item**
 - e. Yamcolo Reservoir Land Use Fee Waiver Request **Action Item**
 - f. Augmentation Plan Contracts Updates
- (10) **3:25 PM** Public Information Updates
- a. Grant Disbursements
 - b. New Grant Applications **Action item**
- (11) **3:45 PM** Report of General Counsel
- a. Augmentation Contracts Term and Renewal **Action item**
- (12) **4:00 PM** Pending Water Cases
- a. Water Resumes
 - b. Status of Other Water Cases
- (13) **4:15 PM** New Business (Limited to emergency matters that came up during the meeting) **Action item**
- (14) **4:20 PM** Executive Sessions:
- a. Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, Contract Negotiations and _____ (insert description) . Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded.
 - b. Executive session under CRS § 24-6-402(4)(e)(I) for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators with respect to _____ (insert brief description). This session will be recorded, and a copy of the recording maintained for not less than 90 days.
- (15) **4:45 PM** Board Actions in Regard to Executive Session
- (16) **4:50 PM** Determination of Next Meeting(s) Agenda(s), including start time determination
- (17) **5:00 PM** Adjournment.

Chairman Monger established a quorum and called the meeting to order at 12:13 PM.

Meeting Agenda. Director Brenner moved to approve the agenda. Director Jones seconded the motion which was unanimously approved.

Public Input and Comment. Chairman Monger invited members of the public to comment on items not otherwise scheduled on the agenda. There was no public comment.

Update from CDWR. Erin Light, Division Engineer, Colorado Division of Water Resources (CDWR) provided an update on the measurement rules and the approval for additional staffing in the Western Slope and in the CDWR Steamboat office.

RECORD OF PROCEEDINGS

Board Member Reports. Director Halliday provided an update on protecting water quality in the sub-basin project and reviewed the NASA develop technical project report. Director Brenner updated the Board on current activities of the Interbasin Compact Committee (IBCC) and the Colorado Water Congress (CWC). Director Seltzer informed the Board of the grant funding provided by the Yampa River Fund.

Directors Seltzer and Brenner presented their recommendation to engage with Ryan Golten of Consensus Building Institute, Inc. to draft a Scope of Work to create a draft Board Governance and Strategic Planning Committee Charter and amendments to the District Bylaws. The Board discussed.

Director Sharp moved to approve the request for up to \$10,000 to work with Ryan Golten of Consensus Building Institute, Inc. to draft a Scope of Work to draft a committee charter and bylaws amendments for a Board Governance and Strategic Planning Committee and to include a draft charter and bylaws amendment for the Executive Committee. Director Brenner seconded the motion which was unanimously approved.

Consent Agenda. Director Brenner moved to approve the consent agenda as presented. Director Haskins seconded the motion which was unanimously approved.

Stagecoach Ski Area Development Group Presentation. Director Sharp noted that he is the General Counsel for the Morrison Creek District which is meeting and consulting with the Stagecoach Ski Area Development Group. However, he does not regard this as a conflict with his role as a Board Member of the District. General Manager Andy Rossi commented that General Counsel Weiss has previously declared a conflict and it is Andy's recommendation that General Counsel Weiss step out of the meeting during the presentation and discussion. The Stagecoach Ski Area Development group provided an overview of the developments plans and noted that the purpose of the meeting is to start a dialogue with the District and to understand the questions and concerns provided in the ART response.

Report of Finance Manager.

Financial Asset Management Update. Finance Manager Karina Craig provided an update to the Board on the District's portfolio of CD's and transactional accounts.

2022 Financial Audit – Final Report. Kelly Watson from Watson, Coon & Ryan, CPAs presented the final draft of the District's 2022 audit report. The Board discussed. Director Sharp moved to approve the 2022 financial audit as presented and accept the financial report with the removal of the footnote that references the commitment of \$500,000 to Routt County for construction costs for reconstruction improvements to be made to Routt County Road #14 in the future. Director Redmond seconded the motion which was unanimously approved.

District Engineer Report.

Update on Reservoir Water Status. District Engineer Emily Lowell provided an update on the reservoir water status and on the upcoming penstock inspection.

Capital Improvement Schedule. District Engineer Emily Lowell discussed the ongoing facilities improvements and maintenance projects and reviewed the task and planning chart. Emily discussed the difficulties in getting contractors to submit bids and for the bid amounts not to exceed the project budget for the Union Ditch headgate and Yamcolo control building modification and generator projects using the public bidding process. She further informed the Board that contractors that did not go through the public bidding process are interested and have provided estimates that are close to the project budget. General Counsel Weiss noted that there is

RECORD OF PROCEEDINGS

nothing in the Bylaws or the Water Conservancy Act to prevent staff from accepting bids outside of a public bidding process. General Manager Rossi stated that the District will continue to use a public bidding process for future projects. However, the District may use direct bidding as needed.

Yampa River Basin Data Dashboard. District Engineer Emily Lowell provided an overview of the work being undertaken with Leonard Rice Engineering (LRE) in building an operations dashboard to assist District staff in easily viewing the status of each of our facilities as well as other water related metrics throughout the basin.

Report of General Manager.

General Manager's Report. General Manager Andy Rossi provided the Board with an update on the current and ongoing District activities.

Resolution to Amended Open Records Request Charges. General Manager Rossi reviewed the Resolution Adopting Charges for Search, Retrieval and Reproduction of Public Records adopted by the Board on July 23, 2014. The Resolution stated that the fee would be adjusted starting on July 1, 2019, and every 5 years thereafter by CPI. The proposed amended Resolution (No. 2023-3) updates the research and retrieval request fee per CPI from July 23, 2014, to July 23, 2019, to \$33.62/hour. Director Sharp moved to approve Resolution 2023-3 as presented. Director Brenner seconded the motion which was unanimously approved.

Stagecoach UYWCD – State of Colorado Lease Agreement. General Manager Rossi reviewed the updated draft lease with the Board. The Board discussed. Director Brenner moved to direct staff to offer the draft lease with the proposed edits as presented and additional modifications to the depreciation schedule for the new Visitors Center Building. Director Sharp seconded the motion which was unanimously approved.

Routt County Planning Stagecoach PUD. General Manager Rossi provided an update on the final PUD document for the Stagecoach Reservoir property. The document was transmitted to the Routt County Planning Department on May 1, 2023, and is currently under review. District staff will inform the Board BOD when the PUD document is accepted by Routt County and/or Routt County request any substantive changes to the document.

Yamcolo Reservoir Land Use Fee Waiver Request. General Manager Rossi recapped the current Special Use Permit (SUP) for the Yamcolo Dam and Reservoir, the annual Land Use Fee charged, and staff's review of the Land Use Fees charged to the District. The Board will discuss this issue in an Executive Session.

Augmentation Plan Contracts Update. The Board reviewed the current augmentation plans contract summary document.

Public Information Updates.

Grant Disbursements. Public Information and External Affairs Manger Holly Kirkpatrick updated the Board on grant disbursements.

New Grant Applications. Public Information and External Affairs Manger Holly Kirkpatrick informed the Board that the City of Steamboat Springs withdrew their application for grant funding for the smart irrigation central control system and that they will likely resubmit the application at a later date.

Report of General Counsel. General Counsel Weiss discussed the Yampa and Elk River Basin augmentation plans and the areas identified by staff for potential action. The Board directed General Counsel Weiss to:

1. Extend current contracts up to 40 years from today and provide a 35-year renewal provision.

RECORD OF PROCEEDINGS

2. Contracts should terminate on a fixed date rather than 40-year staggered terms.
3. Amend the Elk River Augmentation Plan to make District performance contingent on the availability of source water under the augmentation plan.

General Counsel Weiss will provide the Board with the proposed amendments for review at the July 12, 2023, Board Meeting.

Pending Water Cases.

Water Resumes. Special Counsel Grosscup commented that there were no water court applications filed in the month of March or April of concern to the District.

Status of Other Water Cases. Special Counsel Grosscup reviewed Case No. 22CW3002 regarding the District's filing of an application for finding of reasonable diligence or to make absolute for the Yamcolo Reservoir Second Filling water right on January 24, 2022. He provided the Board with a proposed settlement agreement with the US Forest Service to recognize the development of Coal Creek as a source to fill this water right. Director Sharp moved to approve the proposed stipulation for Case No. 22CW3002 as presented. Director Brenner seconded the motion which was unanimously approved.

Special Counsel Grosscup discussed Case No. 22CW3102 regarding the opposition to water measurement rules. He proposed a settlement agreement with the State and District Engineers to allow the District to remain and monitor the case for further amendment or modification of the rules. Director Redmond moved to approve the proposed stipulation for Case No. 22CW3102 as presented. Director Jones seconded the motion which was unanimously approved.

Special Counsel Grosscup also discussed Water Court **Case No. 20CW3019 & 3020** (Diligence application filed by Public Service Company of Colorado 52.5 cfs decreed to the Wessels Canal Hinman Park Reservoir and the Saddle Mountain Pump Station), **Case No. 21CW3046** (Tri-State's diligence application for the Craig Station Ditch and Pipeline), **Case No. 21CW0023** (South Routt Cemetery), **Case No. 21CW3053** (Dean and Jim Rossi), **Case No. 22CW3018** (Pleasant Valley Reservoir Rights at Yamcolo Reservoir), **Case No. 22CW3023** (Yamcolo Reservoir Objection to Abandonment), **Case No. 22CW3107** (Diligence on Yampa River Augmentation Plan), **Case No. 22CW3108** (Little Morrison Diversion), and Water Horse Resources case in the Utah courts which is being monitored by the District.

New Business. There was no new business.

Executive Session. At 4:21 PM Director Monger moved, Director Brenner seconded, and it was unanimously agreed to go into Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, Contract Negotiations and **Tri-State proposed settlement agreement**. Mere presence or participation of an attorney at an executive session is not sufficient to satisfy the requirements of CRS § 24-6-402(4)(b). Executive sessions to discuss legal matters are not recorded. The Board also agreed to go into Executive session under CRS § 24-6-402(4)(e)(I) for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators with respect to **US Forest Service fee waiver**. This session will be recorded, and a copy of the recording maintained for not less than 90 days.

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 concern for the record. No one stated concerns.

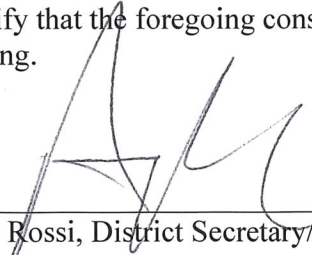
RECORD OF PROCEEDINGS

Board Action Regarding Executive Session. Director Monger stated that direction was provided to staff regarding Tri-State proposed settlement agreement and the draft letter to the USFS regarding a request for a Land Use Fee waiver.

Determination of Next Meeting Agenda. The agenda for the July 12, 2023, Board Meeting was reviewed. The start time for the July 12, 2023, Board meeting will be 10:00 AM and an update on the Board Strategic & Governance and Executive Committee scopes of work will be added to the agenda.

The meeting adjourned at 5:16 PM.

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



Andy Rossi, District Secretary/Manager

Date: 7/18/23

STATEMENT FROM ATTORNEY REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned Robert G. Weiss, legal counsel for the District, 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 **Tri-State proposed settlement agreement** constituted a privileged attorney-client communication under CRS Section 24-6-402(4)(b).



Robert G. Weiss, Counsel

Date: 7/18/2023