

RECORD OF PROCEEDINGS

**UPPER YAMPA WATER CONSERVANCY DISTRICT
BOARD OF DIRECTORS MEETING
WEDNESDAY, JANUARY 18, 2023 (10:30 AM)
MOUNTAIN VALLEY BANK COMMUNITY ROOM
2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO
ONLINE MEETING:**

<https://us06web.zoom.us/j/86313154160?pwd=bGdDY0FDWkEwT00yUUxGSnU1LzNDZz09>

MINUTES

Vice Chairman Webb Jones called the meeting to order and declared a quorum present. In addition to Vice Chairman Jones, the Board Members present were Ken Brenner, John Redmond, Ron Murphy, Lyn Halliday, Tom Sharp, Doug Monger 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 and Mendi Figueroa, Colorado Department of Water Resources; Craig Preston and Zach Sears, Colorado Parks & Wildlife; Jenny Frithsen, Friends of the Yampa; Katie Soulliere and James Statezny, United States Forest Service.

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) **10:30 AM** Establishment of Quorum and Call to Order
- (2) **10:30 AM** Approval of Agenda for Meeting **Action item**
- (3) **10:35 AM** Executive Session:
 - a. Executive session under CRS § 24-6-402(4)(f)(l) concerning personnel matters except if the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting. This executive session concerns **General Manager Andy Rossi** who has not requested an open meeting. This session will be recorded, and a copy of the recording maintained for not less than 90 days.

11:30 AM LUNCH BREAK

- (4) **12:00 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 Erin Light
- (5) **12:10 PM** Consent Agenda **Action item**
 - a. Approval of the Minutes of the November 16, 2022, Board Meeting

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- b. Financials
 - i. Approval of Disbursements
 - ii. Budget Comparison
- (6) **12:15 PM** Report of General Manager
 - a. General Manager's Report
 - b. Election of Officers, Determination of Committees, and Selection of industry meeting(s) UYWCD participants **Action item**
 - c. 2023 Board of Directors Meeting Schedule **Action item**
 - d. Board of Directors Appointments
 - e. 2023 UYWCD Water Pricing **Action item**
 - f. Augmentation Plan Updates
 - g. Financial Audit Schedule
 - h. Resolution to Approve Posting Place **Action item**
 - i. Town of Oak Creek Sheriff Reservoir Contract Extension **Action item**
 - j. Update on UYWCD Area in Moffat County
 - k. Proposed UYWCD-CPW Stagecoach Lease **Action item**
 - l. Stagecoach Routt County PUD Proposal **Action item**
- (7) **2:15 PM** District Engineer Report
 - a. Update on Reservoir Water Status
 - b. Yamcolo USFS Special Use Permit Fee Adjustment **Action item**
- (8) **3:00 PM** Public Information Updates
 - a. Grants
 - i. Disbursements
 - ii. New Applications **Action item**
- (9) **3:15 PM** Board Member Reports
- (10) **3:30 PM** Report of General Counsel
- (11) **3:45 PM** Pending Water Cases
 - a. Water Resumes
 - b. Status of Other Water Cases (Measurement Rules Protest Filing)
- (12) **4:00 PM** New Business (Limited to emergency matters that came up During the course of the meeting) **Action item**
- (13) **4:05 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 **United States Forest Service increase in land use fees and retroactive payments**. 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 **proposed draft lease agreement with Colorado Parks & Wildlife**. This session will be recorded, and a copy of the recording maintained for not less than 90 days.
- (14) **4:15 PM** Board Actions in Regard to Executive Session
- (15) **4:20 PM** Determination of Next Meeting Agenda
- (16) **4:30 PM** Adjournment.

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Vice Chairman Jones established a quorum and called the meeting to order at 10:37 AM.

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

Executive Session. At 10:39 AM Director Redmond moved, Director Murphy seconded, and it was unanimously agreed to go into Executive Session under CRS § 24-6-402(4)(f)(l) concerning personnel matters except if the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting. This executive session concerns **General Manager Andy Rossi** who has not requested an open meeting. This session will be recorded, and a copy of the recording maintained for not less than 90 days.

Board Action Regarding Executive Session. Director Redmond moved to increase General Manager Andy Rossi's 2023 annual salary by 7.7% cost of living increase and include the movement to the 75% percentile of the published salary range to an annual salary of \$179,293.73 for 2023. Director Murphy seconded the motion which was unanimously approved.

Public Input and Comment. Vice Chairman Jones invited members of the public to comment on items not otherwise scheduled on the agenda. Mendi Figueroa, Water Commissioner, Division of Water Resources (DWR), provided the Board with information on their new project to get data loggers and telemetry installed on the majority of the diversion structures on the Bear River. She indicated that this project would assist in the accuracy of the records and efficiency in administering the river. Mendi will update the Board as the project evolves. Additionally, Erin Light, Division Engineer, Division of Water Resources provided an update on the current status of the measurement rules.

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

Report of General Manager.

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

Election of Officers, Determination of Committees, and Selection of industry meeting(s) UYWCD participants.

Vice Chairman Jones informed the Board that the current President, Doug Monger and Vice President, Webb Jones have indicated their desire to continue in their positions for 2023. Director Sharp moved to cast a unanimous ballot for the existing slate of officers. Director Brenner seconded the motion which was unanimously approved.

The Board reviewed the list of the current Executive Committee members. Vice Chairman Jones asked if there were any other nominations for the Executive Committee. There were none. Director Brenner moved to appoint the existing Executive Committee members for calendar year 2023 that were in place in 2022 – Doug Monger, Webster Jones, Ken Brenner, Tom Sharp and John Redmond. Director Halliday seconded the motion which was unanimously approved.

The Board reviewed and discussed the Industry Meetings/Committees list. Director Brenner moved to approve the list as presented by staff. Director Redmond seconded the motion which was unanimously approved.

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2023 Board of Directors Meeting Schedule. The Board review the proposed 2023 Board meeting schedule. Director Redmond moved to approve the 2023 Board meeting schedule as presented. Director Halliday seconded the motion which was unanimously approved.

Board of Directors Appointments. General Counsel Weiss provided an update and overview of the Board Appointment process and noted that the deadline to submit an application is February 6, 2023.

2023 UYWCD Water Pricing. General Manager Rossi reviewed the current contract pricing process. The Board reviewed the proposed pricing for new water storage contracts presented by staff. Director Sharp moved to approve the changes to the water pricing of Stagecoach Reservoir, Yamcolo Reservoir and the Elk River Augmentation Plan as recommended by staff. Director Brenner seconded the motion which was unanimously approved.

Augmentation Plan Updates. The Board reviewed the current augmentation plans contract summary document. General Manager Rossi informed the Board that the water out of Steamboat Lake for the Elk River Augmentation Plan is leased from Colorado Parks & Wildlife (CPW). The current lease, which is in effect until August 1, 2041, requires the District to pay CPW 50% of our revenues from the contracts. In addition, staff continues to review the Augmentation Water Marketing Plans and Contracts and may have some future recommendations for the Boards consideration.

Financial Audit Schedule. General Manager Rossi provided the Board with the proposed 2023 financial audit schedule.

Resolution to Approve Posting Place. The Board reviewed the proposed Resolution to Approve Posting Place. Director Brenner moved to approve the resolution as presented. Director Sharp seconded the motion which was unanimously approved.

Town of Oak Creek Sheriff Reservoir Contract Extension. General Manager Rossi provided an overview to the Board regarding the Town of Oak Creek's request to amend the UYWCD's original funding contract to extend the project completion date to January 1, 2024, due to the design process taking longer than originally estimated due to prolonged regulator agency interaction. The Board discussed. Director Redmond moved to approve the requested extension to the original contract as presented by staff. Director Halliday seconded the motion which was unanimously approved.

Update on UYWCD Area in Moffat County. General Manager Rossi provided an overview and additional information regarding the Lower Yampa River Basin Augmentation Water Supply Analysis. The Board discussed and asked that staff to keep the Board informed as the process moves forward.

Proposed UYWCD-CPW Stagecoach Lease. General Manager Rossi provided the Board with an overview of the process to date. Colorado Parks & Wildlife (CPW) representatives Craig Preston and Zach Sears gave a presentation to the Board on CPW's recommended changes to the DRAFT Lease Agreement. The Board discussed and will review further in Executive Session and provide direction to staff.

Stagecoach Routt County PUD Proposal. General Counsel Weiss provided an overview of the PUD plan for Stagecoach Reservoir. The Board discussed. Director Brenner moved to direct General Counsel Weiss and staff to prepare a PUD Plan for Board review. Director Redmond seconded the motion which was unanimously approved.

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District Engineer Report.

Update on Reservoir Water Status. District Engineer Emily Lowell provided an update on the reservoir water status and details on the current snowpack.

Yamcolo USFS Special Use Permit Fee Adjustment. General Manager Andy Rossi noted that the discussion is focused on the rent paid on the lease in association with our special use permit for Yamcolo Reservoir and the December 2022 invoice received from the United States Forest Service (USFS). District Engineer Emily Lowell then provided the Board with more detail on the increase in land use fee and the USFS's audit that determined, due to erroneous billing by USFS, the UYWCD also owes an additional \$116,438.07 to the USFS for unpaid fees dating back to 2016. District Engineer Lowell also noted that the District has engaged with outside counsel to thoroughly exam the procedures and policies used by the USFS to determine the increase in fees. USFS representative Katie Soulliere and James Statezny provided the Board with an overview of how the increase in land use fee and unpaid fees was determined. The Board discussed and will review further in Executive Session and provide direction to staff.

Public Information Updates.

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

Grants – New Applications. Public Information and External Affairs Manger Holly Kirkpatrick informed the Board that Friends of the Yampa is requesting \$25,000 in UYWCD Community Grant Funding for the assessment and report of the second segment of the Yampa River to take place in 2023. Jenny Frithsen, Environmental Program Manager, Friends of the Yampa (FOTY), provided the Board with an overview of how the requested funds would be in the Water Education Program. The Board discussed. Director Halliday moved to table this item to no later than May 17, 2023, Board meeting to allow the Board to review FOTY's report on the middle segment of the Yampa River. Director Brenner seconded the motion which was unanimously approved.

Board Member Reports. No Board reports were presented.

Report of General Counsel. General Counsel Weiss did not have a report.

Pending Water Cases.

Water Resumes. Special Counsel Grosscup noted that there were no applications of concern to the District that were filed in Water Division 5 or Division 6.

Status of Other Water Cases. Special Counsel Grosscup provided an update on the status of the water court cases in which the District is an Applicant or Opposer and matters pending before the Utah Division of Water Resources.

New Business. Director Monger informed the Board of the Upper Colorado River Commission's System Conversation Pilot Program. The Board discussed.

Executive Sessions. At 4:22 PM Director Brenner moved, Director Murphy 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 **United States Forest Service increase in land use fees and retroactive payments**. 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.

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The Board further moved 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 the **proposed draft lease agreement with Colorado Parks & Wildlife**. 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.

Board Action Regarding Executive Session. Director Sharp moved that, with respect to the communications and billing from the USFS regarding Yamcolo Reservoir fee obligation for 2023 and the previous 7 years, the Board authorize the engagement of Special Counsel Trout Raley to file an appeal with respect to both the existing bill for 2023 and the back billing with regard to the classification of the land as commercial in lieu of agricultural and with regard to the propriety of back dating billings to 2016 and authorize staff to pay the current year billing of \$37,946.69 under protest on or before the January 31, 2023, deadline. Director Brenner seconded the motion which was unanimously approved.

Determination of Next Meeting Agenda. The agenda for the March 15, 2023, Board Meeting was reviewed. The following topics will be added the March 15, 2023, agenda:

1. Update on Stagecoach Park Lease with CPW
2. Update on the USFS proceedings
3. Scorecard project status
4. PUD document for Board review
5. Presentation by Mendi Figueroa on the data loggers and telemetry project on the Bear River

The meeting adjourned at 5:22 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: Mar 16, 2023

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 **United States Forest Service increase in land use fees and retroactive payments** constituted a privileged attorney-client communication under CRS Section 24-6-402(4)(b).



Robert G. Weiss, Counsel

Date: Mar 20, 2023









0118 2023 Minutes-Final

Final Audit Report

2023-03-20

Created:	2023-03-16
By:	Deb Bastian (dbastian@upperyampawater.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAfPiA1MeB8lalhE4KsJQmeAotqe6jyWFq

"0118 2023 Minutes-Final" History

-  Document created by Deb Bastian (dbastian@upperyampawater.com)
2023-03-16 - 2:43:26 PM GMT- IP address: 63.224.69.143
-  Document emailed to a r (arossi@upperyampawater.com) for signature
2023-03-16 - 2:44:21 PM GMT
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2023-03-16 - 2:45:07 PM GMT- IP address: 67.190.149.125
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Signature Date: 2023-03-16 - 2:45:15 PM GMT - Time Source: server- IP address: 67.190.149.125
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2023-03-16 - 2:45:17 PM GMT
-  Email viewed by ROBERT WEISS (bweiss@wvsc.com)
2023-03-20 - 9:04:54 PM GMT- IP address: 71.202.10.241
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