

# RECORD OF PROCEEDINGS

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## UPPER YAMPA WATER CONSERVANCY DISTRICT BOARD OF DIRECTORS MEETING

WEDNESDAY, JANUARY 20, 2021 (12:00 PM)

ONLINE MEETING:

[HTTPS://ZOOM.US/J/94154472989?pwd=WUVLCU5HCNGZM29ZZU1MVVNRRGPHQT09](https://zoom.us/j/94154472989?pwd=WUVLCU5HCNGZM29ZZU1MVVNRRGPHQT09)

### MINUTES

Chairman Ken Brenner called the meeting to order and declared a quorum present. In addition to Chairman Brenner, the Board Members present were Doug Monger, 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, Chief Accountant Karina Craig, and General Counsel Bob Weiss. Special Counsel Scott Grosscup was also present for the portion of the meeting on pending water cases. Members of the public present included Alyson Gould and Mickey O'Hara, Colorado Water Trust; Jackie Brown, Colorado Water Conservation Board; Frank Alfone, Mt. Werner Water & Sanitation District; Kelly Romero-Heaney, City of Steamboat Springs; Erin Light, Colorado Division of Water Resources; Geovanny Romero, Morrison Creek Water & Sanitation District; Bob Woodmansee, Kevin McBride, Craig Preston and Jerry Smith.

This meeting was held entirely 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  
Items **not** scheduled on the Agenda will be heard under 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.
- (4) **12:10 PM** Consent Agenda **Action item**
  - a. Financials
    - i. Approval of disbursements
    - ii. Budget comparison
  - b. Augmentation Contract
- (5) **12:15 PM** Pending Legislation and State Affairs
  - a. Update on State of Colorado Demand Management Program proceedings – Jackie Brown, CWCB
- (6) **12:45 PM** Resolution to Approve Posting Place **Action item**
- (7) **12:50 PM** Report of General Counsel
  - a. Update on New Director Appointment

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- b. Term limits/Oath of Office for Board Members
- c. Memo on Agreements for Water Deliveries Outside of UYWCD Boundaries
- (8) **1:30 PM** Report of General Manager
  - a. Election of Officers, Determination of Executive Committee **Action Item**
  - b. Schedule Annual Reviews for General Manager and General Counsel
  - c. Stagecoach Water Marketing Policies **Action Item**
- (9) **2:30 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.
- (10) **3:30 PM** District Engineer Report
  - a. Update on Reservoir Water Status
- (11) **3:40 PM** Communications-Marketing Updates
  - a. Selection of industry meeting(s) UYWCD participants
  - b. Request from MC Water for Financial Assistance with Water Quality Study at Stagecoach Reservoir **Action Item**
- (12) **4:00 PM** Board Member Reports
- (13) **4:10 PM** Pending Water Cases
  - a. Water Resumes
  - b. Status of other Water Cases
- (14) **4:30 PM** New Business (Limited to emergency matters that came up during the course of the meeting) **Action Item**
- (15) **4:35 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.
- (16) **5:05 PM** Board actions in regard to Executive Session **Action Item**
- (17) **5:10 PM** Determination of next meeting agenda
- (18) **5:15 PM** Adjournment.

Chairman Brenner established a quorum and called the meeting to order at 12:04 PM.

**Meeting Agenda.** Director Brenner requested a 9.b. be added to the agenda to address any potential action items that may come out of the Executive Session. Director Sharp moved to approve the agenda as amended. Director Redmond seconded the motion which was unanimously approved.

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

**Consent Agenda.** Director Jones moved to approve the consent agenda (cash disbursement, budget comparison and Hubbell augmentation contract) as presented. Director Haskins seconded the motion which was unanimously approved.

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***Discussion of Pending Legislation and State Affairs.*** Jackie Brown, Colorado Water Conservation Board representative provided an update on demand management and anti-speculation committee work. A general update on CWCB was also provided.

***Resolution to Approve Posting Place.*** Director Monger moved to approved Resolution 21-1, Resolution Designating Posting Place as presented. Director Halliday seconded the motion which was unanimously approved.

***Report of General Counsel.***

***Update of New Director Appointment.*** General Manager Andy Rossi recognized and acknowledged past Director Bob Woodmansee for his years of service as a member of the Upper Yampa Water Conservancy Board. General Counsel Bob Weiss welcomed the District's new Director Nicole Seltzer.

***Term limits/Oath of Office for Board Members.*** General Counsel Weiss stated that Board members are not limited to a two-term limit as noted in Colo. Const. art. XVIII, Section 11 since they are appointed by the Court and not elected. Additionally, it was his opinion that any Bylaw amendment purporting to limit the terms of Directors would in effect operate to limit the discretion of the Court and would be outside the authority of the Board. Regarding the Oath of Office, Bob noted that he updated the Oath of Office that is signed by Directors upon appointment to be consistent with the statutory oath.

***Memo on Agreements for water deliveries outside of UYWCD boundaries.*** General Counsel Weiss provide an overview of the law applicable to sale or other use of water stored in the District's reservoirs outside the boundaries of the District.

***Report of General Manager.***

***Election of Officers, determination of Executive Committee.*** General Manager Andy Rossi stated that the Board elects officers at the at the first regular Board meeting of the year. In addition, an Executive Committee, consisting of five (5) persons, all of whom shall be members of the Board of Directors are to be selected by the Board.

**President:** Director Sharp nominated Director Brenner for the 2021 term. Director Monger seconded the nomination. Director Sharp moved to cast a unanimous ballot for Director Brenner as Board President for 2021 term. Director Monger seconded the motion which was unanimously approved.

**Vice President:** Director Jones nominated Director Monger to continue as Vice President for the 2021 term. Director Sharp seconded the nomination. Director Sharp moved to close nominations and elect Director Monger as Vice President by acclamation. Director Jones seconded the motion which was unanimously approved.

**Executive Committee:** Director Monger nominated the existing Executive Committee members of Ken Brenner, Doug Monger, Tom Sharp, Web Jones and John Redmond. Director Haskins seconded the nomination. Director Haskins moved to reappoint the existing Executive Committee for the 2021 term. Director Halliday seconded the motion which was unanimously approved.

The Board discussed if the Negotiating Committee would be appointed, elected or created as an ad-hoc and how it planned to move forward regarding lease discussion with the Colorado Parks and Wildlife (CPW) and future water contracts. Director Sharp moved that the Board of Directors affirm for 2021 a Negotiating Committee consisting of the Chairman Brenner, Vice Chair Monger and Director Sharp. Director Murphy seconded the motion. Director Sharp withdrew his motion and then moved that the Executive Committee of the Board be

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designated as the Negotiating Committee for any future lease negotiations with CPW and any future water pricing negotiations. Director Murphy seconded the motion. Director Halliday asked for clarification on whether the Negotiating Committee would have the authority to vote on a final contract without the full board. Chairman Brenner stated that they would not have this authority and the Bylaws need an amendment to clarify this point. Director Sharp amended his motion to include that when the Executive Committee is meeting as the Negotiating Committee it shall not have the authority to take any final vote or action as a committee on the subject of the negotiations. The motion was unanimously approved.

General Counsel Weiss commented that he will present amended Bylaws at the March 17, 2021, Board meeting that clarify the Negotiating Committee's authority.

Schedule annual reviews for General Manager and General Counsel. The annual reviews for the General Manager and General Counsel will be conducted at the February 10, 2021, Executive Committee meeting.

Stagecoach water marketing policies. General Manager Rossi reviewed the draft policies. Alyson Gould, Colorado Water Trust, reviewed their memo that was submitted to the Board.

Director Jones moved to approve the textual content of the Stagecoach water marketing policies excluding all exhibits. Director Monger seconded the motion. Director Sharp moved to amend the contract terms per the following:

**Amendment 1:**

In Subsection 4-g-i, AMEND the second sentence of the first paragraph to read "The maximum duration or term for delivery of stored water of the District for municipal contracts entered into in 2021 and thereafter shall be from the date of execution of such Contract through the end of the 2041 Project Contract Year"

AND

In Subsection 4-g-i, in the first sentence of the second paragraph, on lines 12 and 13 of such second paragraph, change the phrase "at the end of forty (40) years from the date of execution" to instead read "at the end of the 2041 Project Contract Year"

AND

In Subsection 4-g-i, in the first sentence of the second paragraph, on lines 14 and 15 of such second paragraph, change the phrase "ends before forty (40) years" to instead read "ends before the end of the 2041 Project Contract Year"

AND

In Subsection 4-g-i, in the first sentence of the second paragraph, on line 15 of such second paragraph, change the phrase "in the event that the contract is for 40 years" to instead read "in the event that the final Project Contract Year of the existing contract is the 2041 Project Contract Year"

AND

In Subsection 4-g-i, in the first sentence of the second paragraph, on line 17 of such second paragraph and on line 27 of such second paragraph, change "35" to "20".

There was no second, the motion failed.

Director Sharp moved to amend the contract terms per the following:

**Amendment 2:**

Amend the first paragraph of Subsection 4-g-i to insert the following additional sentence between the third sentence and the fourth sentence of the first full paragraph:

"Each municipal contract whose duration exceeds 20 years (the "20-Plus Contract") shall contain a clause by which the District reserves the right and authority to increase, at its sole discretion, the annual base contract pricing per acre foot of water, in the 2042 Project Contract Year of such 20-Plus Contract, up to a price then

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competitive with the market for similar municipal water supplies in similar quantities in the Yampa River Basin, such competitive pricing to include reference to contracts from the District to others for municipal water supplies which have been executed after the 20-Plus Contract, and thereafter during each year of the 20-Plus Contract beyond the 2042 Contract Year such annual price shall continue to be adjusted by the CPI as provided in Subsection 4-h below.”

Director Jones seconded the motion. The Board discussed the amendment and Director Brenner referred the Board to his memo on Force Majeure. Chairman Brenner asked if there was any public comment. Kelly Romero-Heaney, City of Steamboat Springs, commented that this amendment changes the risk calculus for the City, and they may not be interested in new water contract out of Stagecoach at this time. Director Halliday commented on Director Monger’s point of concern that there may not be any parties that will sign a contract with the policy language regarding revisiting contract pricing after 20 years and asked if there is a way to recraft language relative to that part of the amendment. No further action was taken by the Board. Directors Haskins, Murphy, Sharp, Halliday, Monger, Redmond and Jones voted in favor. Director Brenner opposed the motion. Director Seltzer was no longer present at the meeting. The motion passed with a 7-1 in favor.

Director Sharp moved to amend the contract terms per the following:

**Amendment 3:**

Amend Subsection 4-g-iii by deleting the 3rd sentence of the first full paragraph and inserting the following in lieu thereof: “Longer-term durations for environmental or recreational or in-stream flow enhancement agreements will not extend beyond three (3) Project Contract Years in succession.”

Director Murphy seconded the motion. Chairman Brenner asked if there was any public comment. There was none. Directors Redmond, Sharp and Murphy voted in favor. Directors Jones, Monger, Halliday, Haskins and Brenner opposed the motion. Director Seltzer was no longer present at the meeting. The vote failed with a 5-3 opposed.

Director Sharp moved to amend the contract terms per the following:

**Amendment 4:**

DELETE the following sentences from the second paragraph of Subsection 4-h:

“Given the evolving nature of environmental and recreational water agreement legal authorization(s) and delivery administration in the State of Colorado, the District may consider additional payment terms for environmental and recreational contract agreements. All payment terms for water storage contracts, unless otherwise specified in section 1. b. of this policy, require the authorization of the Upper Yampa Water Conservancy District Board of Directors.”

Director Murphy seconded the motion. Directors Sharp and Murphy voted in favor. Directors Halliday, Monger, Redmond, Jones, Haskins and Brenner opposed the motion. Director Seltzer was no longer present at the meeting. The motion failed with a 6-2 opposed.

Director Sharp moved that the proposed wording from the Water Trust be inserted. Director Jones seconded. The Board discussed. After discussion, Director Sharp withdrew his motion. The Board voted on the marketing policy text as amended excluding the attachments and addendums. Directors Monger, Redmond, Jones, Haskins, Murphy, and Halliday voted in favor. Directors Brenner and Sharp opposed the motion. Director Seltzer was no longer present at the meeting. The motion passed with a 6-2 in favor.

Director Sharp moved to approve the draft of the industrial contract. Director Monger seconded the motion. Directors Brenner, Monger, Sharp, Halliday, Murphy, Redmond, Jones, and Haskins voted in favor. Director Seltzer was no longer present at the meeting. The motion passed.

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General Manager Rossi reviewed the proposed pricing matrix and provided reference to these prices for the Board to consider as they start to consider pricing for new contracts.

Director Sharp moved to approve the Resolution to Adopt Stagecoach Reservoir Fill & Release Policies as presented. Director Monger seconded the motion. Directors Brenner, Monger, Sharp, Halliday, Murphy, Redmond, Jones, and Haskins voted in favor. Director Seltzer was no longer present at the meeting. The motion passed.

Director Brenner requested that an additional column be added to Decreed Uses to include the total amount of water that is available for each of the rows and total acre feet available for each of the uses. General Manager Rossi stated he would review the request.

***Executive Session.*** At 4:50 PM Director Sharp moved, Director Monger seconded, and it was unanimously 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 requested new storage contracts in Stagecoach Reservoir This session will be recorded, and a copy of the recording maintained for not less than 90 days.

The Board came out of Executive Session at 5:35 PM. Chairman Brenner asked the Board 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.*** General Manager Rossi presented the initial recommendation on pricing levels specifically for new contracts out of Stagecoach Reservoir for the categories of new industrial, new municipal, new environmental & recreational and new agricultural. Augmentation pricing has already been set by the Board and will be reviewed on an annual basis. He further stated that pricing recommendations would not be considered for final adoption before the March 17, 2021 Board of Directors meeting.

The Board discussed and provided feedback. The pricing document will be presented in draft form for review by the Board and the public.

Chairman Brenner asked if there was any public comment regarding the proposed pricing for Stagecoach Reservoir. There was none.

***District Engineer Report.*** District Engineer Emily Lowell provided an update on the reservoir water status.

### ***Communications-Marketing Updates.***

*Selection of industry meeting(s) UYWCD participants.* Public Information and External Affairs Manger Holly Kirkpatrick reviewed the list of industry meeting participants and the Board provided input and assignments.

*Request from MC Water for financial assistance with water quality study at Stagecoach Reservoir.* Geovanny Romero, General Manager Morrison Creek Water & Sanitation District, reviewed his request for financial assistance with a water quality study at Stagecoach Reservoir. Director Monger moved to support Morrison Creek's funding request of 50% match totaling \$15,500 for a winter mixing zone study to determine nutrient mixing in Stagecoach Reservoir. Director Seltzer and Murphy seconded the motion which was unanimously approved.

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**Board Member Reports.** Director Brenner provided a recap of the recent Yampa Green White Basin Roundtable meeting.

***Pending Water Cases.***

Water resumes. Special Counsel Scott Grosscup provided a review of the water resumes. Director Sharp moved to delegate the question of whether the District needs to take a position in opposition of Case No. 20CW3019 and Case No. 20CW3020 to the Executive Committee for its February 10, 2021, meeting. Director Monger seconded the motion which was unanimously approved

Status of other water cases. Special Counsel Grosscup reviewed the status of current water cases.

***New Business.*** There was no new business.

***Executive Session.*** There was no further Executive Sessions.

***Board Action Regarding Executive Session.*** There were no actions.

***Determination of Next Meeting Agenda.*** The agenda for the March 17, 2021 Board Meeting was reviewed.

Director Sharp moved to adjourn the meeting at 6:42 PM. Director Monger seconded the motion which was unanimously approved.

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



\_\_\_\_\_  
Andy Ross, District Secretary/Manager

Date: Mar 18, 2021