

# RECORD OF PROCEEDINGS

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## UPPER YAMPA WATER CONSERVANCY DISTRICT BOARD OF DIRECTORS MEETING WEDNESDAY, MAY 19, 2021 (12:00 PM)

### ONLINE MEETING:

[HTTPS://ZOOM.US/J/93363916720?PWD=Nkd0WnDSMLVpBgTWSTh3Vi9rVjhzZz09](https://zoom.us/j/93363916720?pwd=Nkd0WnDSMLVpBgTWSTh3Vi9rVjhzZz09)

### 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, 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, General Counsel Bob Weiss and Special Counsel Scott Grosscup were also present. Members of the public present included Alyson Gould and Mickey O'Hara, Colorado Water Trust; Erin Light, Colorado Division of Water Resources; Kelly Romero-Heany, City of Steamboat Springs; Kelly Watson and Zachary Yeoman, Watson Coon Ryan, CPA; Guthrie Lowe, Division of Natural Resources; Tim Sullivan, Yampa Valley Sustainability Council; Billy Mitzelfeld, Routt County Planning Commission; Kevin McBride 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  
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. Approval of the Minutes for March 17, 2021 Board Meeting and Acceptance of April 14, 2021 CPW Negotiating Committee Meeting minutes
  - b. Financials
    - i. Approval of Disbursements
    - ii. Budget Comparison
- (5) **12:20 PM** Report from Chief Accountant **Action item**
  - a. Budget Amendment **Action item**
  - b. Audit **Action item**
- (6) **12:40 PM** District Engineer Report
  - a. Reservoir Water Status
- (7) **12:50 PM** Report of General Manager
  - a. Coal Creek Project Update
  - b. Stagecoach State Park Lease Agreement Update

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- c. Yampa Basin and State Affairs Update
- d. ERC Agreement **Action item**
  - i. ER Contract Form for Inclusion in SC Water Marketing Policies
  - ii. Proposed ERC Agreement(s) with CWT
- (8) **2:05 PM** Public Information Updates
  - a. Yampa River/Walton Creek Confluence Restoration Grant Funding Request **Action item**
  - b. Approval of Augmentation Contract, Water Marketing Policy, and Disclaimer Language **Action item**
  - c. Augmentation Contracting Update
- (9) **2:35 PM** Board Member Reports
- (10) **2:45 PM** Pending Water Cases
  - a. Water Resumes
  - b. Status of Other Water Cases **Action item**
- (11) **3:05 PM** New Business (Limited to emergency matters that came up During the course of the meeting) **Action item**
- (12) **3:15 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.
- (13) **3:35 PM** Board Actions in Regard to Executive Session
- (14) **3:40 PM** Determination of Next Meeting Agenda
- (15) **3:50 PM** Adjournment.

Chairman Brenner established a quorum and called the meeting to order at 12:08 PM.

**Meeting Agenda.** General Manager Rossi requested an addition to the agenda of item 6.b. Review of New Abatement Criteria for Yamcolo Reservoir. Director Monger moved to approve the agenda as amended. Director Halliday 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 Monger moved to approve the consent agenda as presented. Director Jones seconded the motion which was unanimously approved.

### **Report from Chief Accountant.**

**Budget Amendment.** Chief Accountant Karina Craig provided an overview of the proposed budget amendment and resolution. Director Monger moved to approve Resolution 2021-3 – Resolution for Amended Budget and Appropriation for the Upper Yampa Water Conservancy District, Colorado and all seven “Be It Resolved” items. Director Sharp seconded the motion which was unanimously approved.

**Audit.** Chief Accountant Karina Craig reviewed the audit process. Kelly Watson of Watson Coon Ryan, CPA’s, reviewed and provided an overview of the audit report. She noted that there are no significant changes or

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adjustments from the previous year and the District has a strong net position. She further stated that the District is doing well at designing internal controls and checks and balances with its processes. Director Sharp moved to accept the audit report as presented. Director Jones seconded the motion which was unanimously approved.

### ***District Engineer Report.***

Reservoir Water Status. District Engineer Emily Lowell provided an update on the reservoir water status. Emily noted that the Bear River went under administration on Monday, May 17, 2021. The Board reviewed and discussed the materials presented.

Yamcolo Reservoir Abatement. General Manager Rossi reminded the Board about the new Yamcolo Reservoir agricultural water storage agreements. He provided a review of the language and a corresponding chart showing the Yamcolo Reservoir storage abatement for 2021.

General Manager Rossi informed the Board that Neal Obray has been hired as the new Facilities Operator to replace Matt Blankenship.

### ***Report of General Manager.***

Coal Creek Project Update. General Manager Andy Rossi reviewed the plan and schedule and noted that staff will proceed with the technical analysis required for the District to develop a clear estimate of the potential for a Coal Creek Diversion to accomplish the intended project purposes.

Stagecoach State Park Lease Agreement Update. General Manager Rossi recapped the April 14, 2021 Negotiating Committee Meeting with CPW. Guthrie Lowe from CPW provided a presentation of the logistics and future capital improvement plans for Stagecoach State Park.

Yampa Basin and State Affairs Update. General Manager Rossi reviewed the current bill status sheet and provided a recap of the presentations to the Moffat County Commissioners regarding the over-appropriation request.

ERC Agreement. General Manager Rossi provided an overview and discussed the intended use of the draft water supply contract form for environmental instream and recreational storage at Stagecoach Reservoir. Director Sharp moved that the UYWCD Board of Directors adopts the proposed environmental instream and recreational water storage contract form for new Stagecoach Reservoir water contracts with the inclusion of the following suggested edits as provided in the CWT's proposed draft 1 year contract :

1. Section 2.1, 1<sup>st</sup> paragraph, line 4, Page 4 – approve addition of “**minus any releases made ...July 15, 202\_.**”
2. Section 2.1, 1<sup>st</sup> paragraph, line 5, Page 4 – approve the change of date from July 15<sup>th</sup> to **June 15<sup>th</sup>.**
3. Section 2.1, 2<sup>nd</sup> paragraph, Page 4 – not approve the addition of the paragraph “**Contractor may request to contract for additional volumes....subject to the terms and conditions of this Contract.**”
4. Section 2.6, line 2, Page 6 – not approve the change from “**Contractor shall use...**” to “**Contractor may use...**”
5. Section 2.6, line 3, Page 6 – not approve the removal of “**environmental/and or recreation and/or instream flow beneficial...**”
6. Section 2.6, line 7, Page 6 – not approve the removal of “**with Reuse Contractors...**”
7. Section 2.6, line 10, Page 6 – not approve the removal of “**occur within the boundary of the Upper Yampa and...**” or the addition of “**be...**” to replace the requested strike out.
8. Section 2.7, line 5, Page 6 – approve the correction of typographical errors.
9. Section 3.2, line 5, 6, & 7, Page 7 – approve the correction of capitalization.

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10. Section 3.2, Line 13, Page 7 – approve the addition of “**and prior approval of the ... forth in Section 2.6, above...**”
  11. Section 3.2, Line 14 & 15, Page 7 – approve the correction of “**Stored Water**” to “**Contracted Water**”.
  12. Proposed Exhibit A, Page 14 – not approve of this form.
- Director Jones seconded the motion.

Alyson Gould of the Colorado Water Trust provided background on the sections of the form not approved as part of the motion. The Board discussed. Director Sharp revised his motion to add “**and/or municipal**” to “**Contracted Water for environmental and/or recreation and/or instream flow..**” in Section 2.6, line 3, Page 6. Director Jones was no longer available to second the amended motion, therefore Director Monger seconded the amendment. After further discussion, Director Sharp rescinded his amended motion.

Alyson Gould discussed the limitations on uses and reuse contractors in Section 3.2. During discussions it was recommended that the District look to add municipal as a contracted use. Director Sharp amended his motion to include “**and/or non-consumptive and non-augmenting municipal**” to Section 2.6, line 2 on Page 6. Director Monger seconded the amendment. Directors Brenner, Monger, Sharp, Halliday, Seltzer and Haskins voted in favor. Director Jones was no longer present at the meeting. The motion passed.

General Manager Rossi asked the CWT representatives to provide an overview of their proposals for the 1 year and 10-year ER contracts. The Board reviewed the 1-year proposal and discussed the added language in 2.1 and the amount of water they would be contracting for in Part D of page 2. The CWT stated that they would be contracting for 1000 AF and any additional calls would be up to another 1000 AF. The Board asked staff if the timeframe noted in Section 2.1 of “**Within three (3) days of such request**” would be attainable. General Manager Rossi requested that timeframe be changed to seven (7) business days. The CWT agreed with this change.

Director Monger moved to approve the proposed 1-year contract based on the changes agreed upon. Director Halliday seconded the motion. Director Sharp asked for additional wording to be added to section 2.1 insert that states “**the additional amount to be contracted would not exceed 1000 AF.**” Director Monger accepted the amendment. Directors Brenner, Monger, Sharp, Halliday, Seltzer and Haskins voted in favor. Director Jones was no longer present at the meeting. The motion passed. The Board, General Counsel and staff applauded the sincere and earnest efforts of the CWT during this process.

The Board reviewed the 10-year contract and was reminded that this is a working outline and that the Board is accepting the document in principal and will continue to work with the CWT to finalize the contract. Alyson Gould noted she had two areas of change she wanted to address with the Board. First, is where seepage is applied – all volumes or just leave for first. General Manager Rossi stated that he would like to keep our policy statements consistent and follow the adopted fill and release policy language to evaporation and seepage to any contracted volume out of Stagecoach. Second is the highlighted text in Section 6.2.2 – Releases that states “**in the event Upper Yampa does not... third-party’s demand**”. The CWT does not want to delete this clause as it is the primary difference between Volume 2 and 3 and that the UYWCD would have a potential buyer. The Board agreed with keeping the clause.

Director Monger moved to approve in concept the draft 10-year ERC as provide and to come back to the Board for further review. Director Halliday seconded the motion. Alyson Gould also noted that she wanted the Board to review CWT’s request to delete Section 14. Indemnification as they have concerns that this deletion would allow them to be named in a lawsuit related to UYWCD operations. General Counsel Weiss stated he would need to review the request further. Directors Brenner, Monger, Halliday, Seltzer and Haskins voted in favor.

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Director Monger moved to adjourn the meeting at 5:11 PM. Director Sharp 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 Rossi, District Secretary/Manager

Date: 7/22/21

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Director Sharp opposed the motion. Director Jones was no longer present at the meeting. The motion passed with a 5 to 1 in favor.

### ***Public Information Updates***

Yampa River/Walton Creek Confluence Restoration Grant Funding Request. Public Information and External Affairs Manger Holly Kirkpatrick introduced Kelly Romero-Heaney and Tim Sullivan who provided a presentation on the restoration plan development project and grant request. Director Seltzer moved to approve the grant request of \$5,000. Director Monger seconded the motion. Directors Brenner, Monger, Sharp, Halliday, Seltzer and Haskins voted in favor. Director Jones was no longer present at the meeting. The motion passed.

Approval of Augmentation Contract, Water marketing Policy, and Disclaimer Language. Public Information and External Affairs Manger Holly Kirkpatrick discussed the review of and changes to the augmentation contract language that would ensure the appropriate procedures for approving augmentation contracts. Director Sharp moved to approve the suggested change to the contract and changes to the policy as outlined. Director Monger seconded the motion. Directors Brenner, Monger, Sharp, Halliday, Seltzer and Haskins voted in favor. Director Jones was no longer present at the meeting. The motion passed.

Augmentation Contracting Update. Public Information and External Affairs Manger Holly Kirkpatrick commented that the District is receiving more inquiries and application for augmentation plans and the approval process for these contracts was reviewed. After discussion, the Board requested for the next Board meeting that staff provide suggestions of when notice of an augmentation application is to be given to the Board.

***Board Member Reports.*** Director Brenner noted the reports provided in the packet.

### ***Pending Water Cases.***

Water Resumes. General Counsel Weiss stated that per Special Counsel Grosscup's memo there were no applications that would impact the District's water rights.

Status of Other Water Cases. General Counsel Weiss give a brief overview of the summary provided by Special Counsel Grosscup on the Lake Catamount case. Since further information was requested, General Counsel Weiss suggest that this item be tabled to an Executive Committee meeting. Director Sharp moved to table the item to an Executive Committee meeting. Director Monger seconded the motion. Directors Brenner, Monger, Sharp, Halliday, Seltzer and Haskins voted in favor. Director Jones was no longer present at the meeting. The motion passed. General Manager Rossi clarified that the next Executive Committee meeting scheduled is June 16<sup>th</sup>.

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

***Executive Session.*** It was determined that an Executive Session was not warranted.

***Board Action Regarding Executive Session.*** There was not Executive Session.

***Determination of Next Meeting Agenda.*** The agenda for the July 21, 2021 Board Meeting was reviewed. The Board requested the following additions to the agenda:

- Governance Committee Report
- Augmentation Application Notice to Board