

RECORD OF PROCEEDINGS

UPPER YAMPA WATER CONSERVANCY DISTRICT
EXECUTIVE COMMITTEE MEETING
FRIDAY, JULY 16, 2021 (2:00 PM)
MOUNTAIN VALLEY BANK COMMUNITY ROOM
2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO
ONLINE MEETING:

[HTTPS://US06WEB.ZOOM.US/J/82602601189?PWD=VMQvDEdKOEHlK0lJUNh2YThMOEtIZz09](https://us06web.zoom.us/j/82602601189?pwd=VMQvDEdKOEHlK0lJUNh2YThMOEtIZz09)

MINUTES

Chairman Ken Brenner called the meeting to order and declared a quorum present. In addition to Chairman Brenner, the Committee Members present were Doug Monger, John Redmond, Tom Sharp and Webster Jones. Board Members present Director Lyn Halliday. General Manager Andy Rossi, Business Manager Deb Bastian, General Counsel Bob Weiss. Special Counsel Graham Gilbert and Doug Farr representing the District in the Water Horse Resources case were also present.

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) **2:00 PM** Establishment of Quorum and Call to Order
- (2) **2:00 PM** Approval of Agenda for Meeting **Action item**
- (3) **2:05 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) **2:10 PM** Water Horse State of Utah Court Case
- (5) **2:30 PM** Executive Session
 - a. Executive session under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, Contract Negotiations and Water Horse State of Utah Court Case. 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.
- (6) **2:55 PM** Committee actions in regard to Executive Session
- (7) **3:00 PM** Adjournment.

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Chairman Brenner established a quorum and called the meeting to order at 2:05 PM.

Meeting Agenda. Director Jones moved to approve the agenda. Director Monger 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.

Water Horse State of Utah Court Case. General Counsel Weiss informed the committee that Water Horse has filed a Summary Judgement motion in Utah asking the District Court to reverse the administration action denying its application and awarding the water right. He further noted that this could happen without a trial and would be based on motions and briefs filed with the court and that there is a short timeframe of 14 days from July 13th to respond to the Summary Judgement motion. Special Counsel Gilbert stated that Water Horses' arguments are that the Upper Basin compact implements the Colorado River compact which then requires Utah to approve their application regardless of the various grounds of denial of their application by the Utah State Engineer in November of 2020. Water Horse wants the court to order the State Engineer to approve the application. Since the District was only a protestor in the administrative proceeding this does not make the District a party in the litigation. Therefore, the District would need to get involved in litigation as a party by intervening and then reply to the Summary Judgement; and this cannot be done in 14 days. The District would need to ask to intervene and ask for an extension simultaneously so there would be time for the court to allow the District to be a party and then reply. Special Counsel Gilbert noted areas of interest to the District would be that Water Horse argues that Colorado has no discretion whether its application gets accounted for under Colorado's compact entitlement. So, this would take an additional 55,000 af from Colorado's compact entitlement. And that Water Horse states Colorado has ample compact entitlement available. General Manager Rossi asked Special Counsel Gilbert to confirm that if Water Horse is successful in the filing, they will get a 2018 priority conditional right in the state of Utah and that Water Horse has attempted approval of this project in the states of Wyoming and Colorado previously. Special Counsel Gilbert stated that Water Horse has a pending application in Wyoming now and they had a previous application that failed in Wyoming and in 2010 they started a federal permitting process with the Army Corp. of Engineers that failed due to failure to prosecute. However, he is not aware of any process in Colorado.

Executive Session. At 2:27 PM Director Sharp moved, Director Jones 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 the Water Horse State of Utah court case in the 8th Judicial District in and for Daggett County, State of Utah, Case No. 210800001. 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.

At the conclusion of the Executive Session 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.

Director Sharp moved that the Executive Committee not make a recommendation on how to proceed on Water Horse but defer to any action that may be taken by the full Board at next week's Board meeting on Wednesday, July 21, 2021, and request the full board and Counsel have an Executive Session to discuss this matter at the Board meeting. Director Jones seconded the motion which was unanimously approved.

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The meeting adjourned at 3:00 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: _____

9/16/21

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 the Water Horse Resources case in the State of Utah constituted a privileged attorney-client communication under CRS Section 24-6-402(4)(b).



Robert G. Weiss, Counsel

Date: _____

9-15-2021