

RECORD OF PROCEEDINGS

**UPPER YAMPA WATER CONSERVANCY DISTRICT
BOARD OF DIRECTORS MEETING
WEDNESDAY, JULY 21, 2021 (12:00 PM)
MOUNTAIN VALLEY BANK COMMUNITY ROOM
2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO
ONLINE MEETING:**

<https://us06web.zoom.us/j/83870509899?pwd=MXIvL3drVIUvY1Y1MEUxZzVNOFcvZz09>

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, General Counsel Bob Weiss and Special Counsel Scott Grosscup and Graham Gilbert were also present. Members of the public present included Jeff Comstock, Moffat County Natural Resources Director, Alyson Gould, Colorado Water Trust; Billy Mitzelfeld, Routt County Planning Commission; Margaret Hagenbuch, Todd Hagenbuch, Kyle Howe and Bob Woodmansee.

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.
- (4) **12:10 PM** Consent Agenda **Action item**
 - a. Approval of the Minutes for May 19, 2021, Board Meeting, June 3, 2021, Board Governance Committee Meeting and June 16, 2021, Executive Committee Meeting
 - b. Financials
 - i. Approval of Disbursements
 - ii. Budget Comparison
- (5) **12:20 PM** Report of General Manager **Action item**
 - a. Sickles Parcel **Action item**
 - b. CWT Ten-Year Contract for Stagecoach Reservoir Update
 - c. Augmentation Contracts Update
 - d. New Stagecoach Water Storage Contract **Action Item**
 - e. 6-month Review of 2021 Strategic Plan

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- (6) **2:00 PM** District Engineer Report
 - a. Update on Reservoir Water Status
 - b. Update on Capital Projects
- (7) **2:15 PM** Public Information Updates
 - a. UYWCD BOD Field Trip Update
 - b. Grant and Scholarships Update
 - c. Upcoming Events
 - d. New UYWCD Website
- (8) **2:45 PM** Report of General Counsel
 - a. UYWCD – CPW Stagecoach State Park Lease **Action item**
 - b. Augmentation Contract Local Government Addendum **Action item**
- (9) **3:00 PM** Pending Water Cases
 - a. Water Resumes
 - b. Status of Other Water Cases **Action item**
- (10) **3:15 PM** Board Member and Lower Yampa River Basin Entity Reports
 - a. Governance Committee Report
 - b. Moffat County Water Matters Update
 - c. Upper Yampa Watershed Group
- (11) **4:00 PM** New Business (Limited to emergency matters that came up During the course of the meeting) **Action item**
- (12) **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 _____ (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 berecorded, and a copy of the recording maintained for not less than 90 days.
- (13) **4:15 PM** Board Actions in Regard to Executive Session
- (14) **4:20 PM** Determination of Next Meeting Agenda
- (15) **4:30 PM** Adjournment.

Chairman Brenner established a quorum and called the meeting to order at 12:05 PM.

Meeting Agenda. Director Redmond moved to approve the agenda. Director Haskins 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 Brenner requested the budget comparison report and Director Sharp requested the cash disbursement report be pulled from the consent agenda. Director Haskins moved to approve to accept agenda item 4.a. Approval of Minutes of the Consent Agenda. Director Jones seconded the motion which was unanimously approved.

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Director Sharp requested more detail on the expenses paid to Gray Matter Systems. District Engineer Emily Lowell explained that the expenses are for an upgrade to the Stagecoach Powerhouse SCADA system. Chief Accountant Karina Craig provide an overview of the budget comparison date through June 31, 2021. Director Jones moved to approve agenda item 4.b. Financials of the Consent Agenda. Director Redmond seconded the motion which was unanimously approved.

Report of General Manager. General Manager Andy Rossi provided an update of the current and ongoing activities at the district.

Sickles Parcel. Director Monger disclosed that he has a lease with an adjoining property to the Sickles parcel. General Manager Rossi then provided an overview and noted that this issue was previously discussed by the Executive Committee. Public Member and neighboring property owner Margaret Hagenbuch commented they have worked with Trout 123 and the District, and she has no issues with the sale at this point. She does have some questions about the springs that may come up but sees no reason why all can't be cooperative and figure out a solution particularly with regard to the grazing issues they have on the parcel. Public Member Todd Hagenbuch commented that he felt this purchase made sense for the District and may help to clear up issues that might relate to grazing trespass in the future. General Manager Rossi clarified that this 40-acre parcel will not be added to the project boundaries of the Stagecoach project as licensed by FERC but will be public land. General Counsel Weiss noted that a contract has been submitted to the property owner and is still under review by their attorney. He requested that the Board allow the General Manager and General Counsel to make changes to the contract of a non-material nature as requested by the seller so the contract would not have to be brought back to the Board. Director Sharp moved that the Upper Yampa Water Conservancy District approve execution and delivery for purchase of Sickles West property and the Sickles Spring # 1 and future acquisition of Sickles Spring #2 subject to any non-material modifications as may be agreed to by the General Manager and General Counsel. Director Haskins seconded. Directors Brenner, Sharp, Haskins, Jones, Redmond, Halliday, Seltzer and Murphy voted in favor. Director Monger abstained. The motion passed with an 8 to 0 vote in favor.

CWT Ten-Year Contract for Stagecoach Reservoir Update. General Manager Rossi provided an update. The District will continue to work with the Colorado Water Trust (CWT) on moving the contract forward to be included as part of a formal application with the Colorado Water Conservation Board (CWCD) In-Stream Flow Voluntary Loan Program. Comments were solicited form the CWCB and Division of Water Resources (DWR) staff. The DWR has provided comments and the District will work with the CWT on responding to the comments received. Alyson Gould of the CWT noted that it is expected that the CWCB staff will have additional comments in the next few days.

Augmentation Contracts Update. General Manager Rossi provided the Board a refresher on the authorities, definitions and details of the Water Marketing Policy that was approved by the Board and gave an update on the current augmentation contract activity.

New Stagecoach Water Storage Contract. General Manager Rossi presented a new Stagecoach Reservoir Water Storage contract with the Steamboat Springs Cemetery The Board reviewed the contract. Director Sharp moved to approve the contract with Steamboat Springs Cemetery as presented. Director Jones seconded the motion which was unanimously approved.

6-month Review of 2021 Strategic Plan. General Manager Rossi provided a 6-month overview of the Strategic Plan and stated that this will show what is going on now and scheduled for development of the 2022 plan.

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Director Brenner noted that the Board can contact General Manager Rossi at any time with question or to obtain more information on any of the issues.

District Engineer Report.

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

Update on Capital Projects. District Engineer Lowell reviewed the Capital Projects summary and highlighted the work that has been completed and what is scheduled this year.

Public Information Updates.

UYWCD BOD Field Trip Update. Public Information and External Affairs Manager Holly Kirkpatrick reminded the Board of the upcoming field trip to the district facilities on Wednesday, September 1st.

Grant and Scholarships Update. Public Information and External Affairs Manager Holly Kirkpatrick reviewed the list of the grants issued through the Diversion Infrastructure Improvement Project (DIIP) and that there is about \$40,000 of the \$200,000 disbursed to date. It was reported that 42% of the individuals notified of the need to install a measuring device for their diversion still have not completed the installation. The \$160,000 remaining for the DIIP is slated to end in May of 2022. However, there is a Tier 2 project (Gibraltar Ditch) on schedule to be completed this fall which will be a large part of the funding and Clinton Whitten noted that he is working with a couple of other ditches that will have some significant projects. There may be potential to ask for extension of the funding from the Round Table and CWCB so there is available funding for these projects.

It was further reported that the District has disbursed about \$25,000 for our Community Grant Funding program and have \$25,000 remaining for the rest of the year. This is still a loose funding program which the Board has discussed formalizing as we move forward. Additionally, the district issued two \$2,000 scholarships to two local applicants. An overview of the winners is provided in the packet. Director Sharp suggested that during the budget process for 2022 staff consider increasing the funding for the scholarship program from \$4,000 to \$10,000. Also included in the packet are examples of existing community grant funding criteria and framework. This will be discussed further at the Board Retreat in October.

Upcoming Events. Public Information and External Affairs Manager Holly Kirkpatrick reviewed the upcoming events and highlighted that on the evening of August 10th the district will be hosting a reception for the Legislative Drought Tour and a Happy Hour event during the Colorado Water Congress's Summer Conference the evening of August 24th. She also pointed out the Yampa Basin Rendezvous will be held at Colorado Mountain College Steamboat Campus September 8th through 10th.

New UYWCD Website. Public Information and External Affairs Manager Holly Kirkpatrick informed and showed the board the new UYWCD website and asked for the Board to look at the website and provide feedback/comments/suggestions.

Report of General Counsel.

UYWCD – CPW Stagecoach State Park Lease. General Counsel Weiss commented that he has reviewed the Colorado Parks & Wildlife (CPW) lease template and wants to discuss the lease process and how the Board wants to proceed with the negotiations with CPW. The Board discussed. Director Haskins moved to table this meeting to the August 18, 2021, Executive Committee meeting. Director Sharp seconded the motion. Directors Brenner, Sharp, Haskins, Monger, Halliday, Seltzer, Murphy and Redmond voted in favor. Director Jones was no longer present at the meeting. The motion passed.

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Augmentation Contract Local Government Addendum. General Counsel Weiss stated that the City of Steamboat Springs had concerns with the language in the Augmentation Contract. The reason for their concern is that local governmental entities have different limitations. General Counsel Weiss reviewed their concerns and has provided the Board with a proposed addendum. Further, General Counsel Weiss stated that he had an attorney for a private party express some concerns about the Augmentation Contract and he feels that this is a different situation and that the district should not negotiate Augmentation Contracts with private parties on an ad hoc basis but will do a periodic review of the contract to review/address concerns and make changes as needed. Director Sharp moved to approve the Local Government Addendum and to not negotiate with private parties but provide periodic review of the Augmentation Policy. Director Redmond seconded the motion. Directors Brenner, Sharp, Haskins, Monger, Halliday, Seltzer, Murphy and Redmond voted in favor. Director Jones was no longer present at the meeting. The motion passed.

Pending Water Cases.

Water Resumes. Special Counsel Grosscup stated there were no resumes for Division 5 and 6 for May and June.

Status of Other Water Cases. Special Counsel Grosscup provided an update of the active court cases. He noted that in Case No. 20CW3020 there was a status conference meeting today and he is awaiting comment back from Public Service Company. He is not sure how this will play out with their ongoing activities within the Yampa Basin, but there is no action needed by the Board at this time. An update will be provided at next board meeting. Special Counsel Graham Gilbert provided an overview on the Water Horse Resources case and noted that Water Horse has now moved for Summary Judgement and that motion for Summary Judgement has created some urgency in terms of what the UYWCD wants to do and if they want to get involved by filing a motion to intervene to participate in the case and then a memorandum in opposition to Water Horses' motion for Summary Judgement. The Summary Judgement argues that the Upper Basin Compact which is implementing the Colorado River Compact requires Utah to approve Water Horses' application because it supersedes Utah's water export statute, and that Colorado has to account for this 55,000 af application as part of its compact entitlement and that Colorado has plenty of remaining compact entitlement. The Board needs to determine what, if any, further steps to take on this case.

Board Member Reports and Lower Yampa River Basin Entity Reports.

Governance Committee Report. The Governance/Strategic Plan Committee will meet on August 17th from 11:00 AM to 1:00 PM to review the revisions noted at the last Board Governance meeting and to do a preliminary review of the Strategic Plan to propose any updates to the full Board.

Moffat County Water Matters Update. Jeff Comstock, Moffat County Natural Resources Director, provided the Board with a summary update on current water resources management activities in Moffat County which included lower basin over-appropriation designation, augmentation water supply development and potential flow needs in the Yampa River. Director Brenner commented that while the District is not allowed to expend funds outside of its District boundaries, it does support what they are trying to do, and the Directors and staff are available as a resource to help them in their efforts to move to address their issues/concerns. Director Monger requested more information on the District boundaries and what the district can and cannot do outside of its boundaries. Director Brenner requested General Counsel Weiss to research this topic and prepare a memo for Board review.

Upper Yampa Watershed Group. Public Member Bob Woodmansee presented the Board with information and data regarding proposed work the Upper Yampa Watershed Group may pursue on nutrient and sediment management as it relates to watershed health since 2014. Director Seltzer asked if the Board has had a

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presentation by the USGS on the most recent Upper Yampa River Watershed Water Quality study findings. General Manager Rossi stated that he would try to get a summary presentation for the September meeting and then discussion further at the Board Retreat in October.

Public Education Participant Outreach (PEPO) Committee. Director Brenner asked if the Board is okay with his being the PEPO Committee chair for the Yampa-White-Green Basin Round Table. There were no objections.

New Business. There was no new business.

Executive Session. At 3:58 PM Director Redmond moved, Director Haskins seconded, and it was unanimously agreed to go into Executive session under CRS § 24-6-402(4)(b) to discuss legal issues in the Water Horse Resources case in the State of Utah. 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 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 Brenner noted that direction was provided to legal counsel and no formal action will be taken at this time.

Determination of Next Meeting Agenda. The agenda for the August 18, 2021, Executive Committee and the September 15, 2021, Board meeting was reviewed. The August 18th Executive Committee meeting has been split into August 17th and August 18th. On the 17th will be the Board Governance/Strategic Plan Committee meeting. Item 5 – Board Governance Committee and Item 6 – Strategic Plan Committee will be moved to the August 17, 2021, Board Governance/Strategic Plan Committee meeting agenda and an item to discuss the CPW Lease will be added to the Executive Committee agenda. At the September 15th Board meeting General Manager Rossi reminded the Board that the first presentation of the 2022 draft budget. Director Brenner requested that the Existing Municipal Water Storage Contracts item noted for the September 15th Board meeting be included in the August 18th Executive Committee meeting.

Director Sharp moved to adjourn the meeting at 5:16 PM. Director Redmond 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

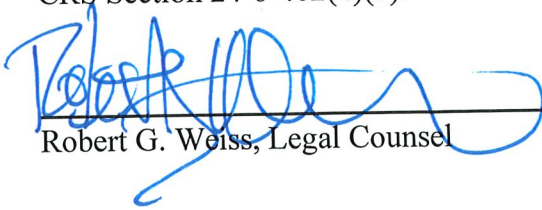
Date: 9/16/21

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

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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, Legal Counsel

Date: 9-15-2021