

RECORD OF PROCEEDINGS

UPPER YAMPA WATER CONSERVANCY DISTRICT BOARD OF DIRECTORS MEETING MARCH 18, 2015 1:30 PM 3310 CLEAR WATER TRAIL, STEAMBOAT SPRINGS

MINUTES

Chairman John Redmond called the meeting to order and declared a quorum present. In addition to Chairman Redmond, the Board members present were Stephen Colby, Tom Sharp, Doug Monger, Sam Haslem, Ken Brenner, Greg Herman, Webster Jones, and Ron Murphy. General Manager Kevin McBride, Office Manager Karina Craig, and General Counsel Bob Weiss were also present. Members of the public present included Steve Williams, Glas Deffryn property owner; Doug Allen, Vice President of Mountain Operations, Steamboat Ski & Resort Corporation; Erin Light, Division Engineer, Colorado Division of Water Resources; Kelly Heaney, Water Resources Manager, City of Steamboat Springs; Tom Ross, Steamboat Today; Craig Preston, Stagecoach State Park/CPW; Mike Havens, Colorado Parks and Wildlife; Zach Smith, Colorado Water Trust; Mark Boling, Development Solutions, Southwestern Energy. Scott Grosscup with Balcomb & Green, PC and District Engineer Andy Rossi joined the meeting by phone.

The following agenda was proposed:

AGENDA

- (1) 1:30 pm - Establishment of Quorum and Call to Order;
- (2) 1:35 pm - Approval of Agenda for Meeting; action item
- (3) 1:40 pm - Approval of the minutes of the January 22, 2015 Board Meeting and ratification of the February 11, 2015 Executive Committee meeting minutes; action item
- (4) Public Input and Comment;
- (5) 1:45 pm - Union Ditch/Glas Deffryn negotiation action item
- (6) 2:05 pm - Ski Area Water Lease action item
- (7) 2:25 pm - Bio Application
- (8) 2:45 pm - Financial Report; action item
 - a) Approval of Disbursements
 - b) Budget Comparison
- (9) 3:00 pm - Report of the General Manager;
 - a) Master Planning
 - b) Board Meeting/Retreat Calendar change action item
 - c) Elk River – Development of Area Wide Augmentation Plan action item
 - d) Add and Include Issue
 - e) Potential Land Purchase
 - f) Drug and Alcohol Testing Policy action item
 - g) Peabody Trout Creek Update
- (10) 4:00 pm - Report from District Engineer
 - a) Reservoir Water Status

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- (11) 4:15 pm - Report from General Counsel;
 - a) Water Rights Diligence
 - b) Stagecoach Power Contracting
 - c) Stahl Litigation Update
 - d) Director appointment update
- (12) Executive Session with Bob Weiss, legal Counsel, under CRS § 24-6-402(4)(b) to discuss legal issues on Stahl litigation matters and Glas Deffryn negotiations. Mere presence or participation of an attorney at an executive session of the local politic body is not sufficient to satisfy the requirements of this subsection (4).
- (13) New Business;
 - a) Southwestern Energy with the Colorado Water Trust
- (14) Adjournment.

Meeting Agenda Director Sharp moved to approve of the modified agenda that was handed out to the Board Members. Director Haslem seconded the motion which was unanimously approved.

Meeting Minutes Director Colby moved for approval of the minutes of the January 22, 2015 Board Meeting and ratification of the February 11, 2015 Executive Committee meeting minutes. Director Murphy seconded the motion which was unanimously approved.

Public Comment

Union Ditch/Glas Deffryn Negotiation – Manager McBride presented a map showing the area surrounding the north boundary of Stagecoach Reservoir shaped and for convenience described as “the Boot”. Mr. Williams, the land owner, is pursuing a conservation easement; The Upper Yampa Water Conservancy District (the District) surveyed the area; Mr. McBride showed on the map the location of fences, property lines, the Union Ditch location on Mr. Williams’ property, and the easement owned by the District to access the river headgate. The District made Mr. Williams an offer to purchase the Boot, while granting him an easement to access the river and offering to relinquish any adverse claim in regards to the property line.

Mr. Williams spoke about his property and his family’s wish to keep the land; he therefore declined the offer. He described to the Board the proposed conservation easement; he is working with Yampa Valley Land Trust, the Gates Foundation, and Great Outdoor Colorado. Mr. Williams stated he had no objection to any work being done on the ditch and that he would prefer to allow access to the District by continuing the current easement arrangement. He would be happy to work with the District on this and he would appreciate access from the entrance of his ranch to the Boot area through the two-track.

Director Sharp inquired and Mr. McBride clarified that work has been done on the head gate in the past, using the existing prescriptive easement. Mr. Sharp stated the District has a historic claim along the fence line, and that he was uncertain whether or not the District could grant access to wetland areas without involving other governmental institutions such as FERC, Colorado Parks & Wildlife, and the County; granting a license may be something the District is unable to do. Mr. Sharp stated the District has a prescriptive easement under Colorado law;

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therefore if the river moves the District is entitled to move the easement according to the movement of the river.

Director Brenner inquired if the conservation easement could represent an impediment if a catastrophic event occurred. Director Monger stated that in such instance the District may have to get permission or inform Yampa Valley Land Trust of the District's rights.

Director Colby asked Mr. Williams if he anticipated any public access. Mr. Williams said public access is currently very limited, and it is for fishing and bird watching activities only. He did not foresee any increase of public access in the future.

Director Monger summarized that the current easement agreement worked in the past; in going forward the District was interested and proposed purchasing the property; the District indeed has a prescriptive right, and the District would not move the fence or incur any related costs if it were not part of an agreement to acquire the property.

Director Monger moved to not pursue a property line claim at this time, to write a letter supporting the conservation easement, to grant a revocable access license to Mr. Williams on the condition that it does not negatively affect permits with FERC and Colorado Parks & Wildlife. Director Sharp seconded the motion, which was unanimously approved.

Manager McBride stated that the District will take no action regarding the property line, the District won't move the fence, the District will grant a revocable license for access, and the staff will write a letter of support of the conservation easement. All of this will be completed after staff determines this will not affect any permits.

Ski Area Water Lease – Scott Grosscup of Balcomb & Green, representing the District, joined the meeting by phone. Counsel Weiss excused himself and did not participate in the discussion. Doug Allen from Steamboat Ski & Resort Corporation spoke. Ski Corporation is looking for additional water rights to support future restaurant development. Additionally, it has recently been brought to Ski Corporation's attention that certain of the water rights it currently holds do not provide for any summer water use, something they need for their normal operations. Mr. Allen proposed to the District amending Exhibit A of the existing agreement between the Corporation and the District, the agreement text does not preclude summer use, however, the annual use schedule detailed in its Exhibit A does not currently include summer months either. The proposed amended Exhibit A would not change the contracted annual volume of water use, rather it would modify the use schedule to include summer use. Also, Mr. Allen brought to attention a second issue. Ski Corporation has submitted an application for water change use; the District, owner of the water right, was a co-applicant. As a courtesy, Ski Corporation sent a copy of the application to the Forest Service. The Forest Service strongly opposed the presence of a third party name in the application. Mr. Allen reported local Forest Service officials expressed concern about deeded conditional water rights, which may become absolute, belonging to a third party, in Forest Service land. There was a discussion. Mr. Allen stated that

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Forest Service representatives at a National Level had not expected the application would be opposed, and there are precedents of co-applicants submitting water rights applications for use in Forest Service lands in other areas. Mr. Allen explored options; he proposed two of interest to Ski Corporation; to purchase water rights from the District, and to apply for the water right use without the District as a co-applicant.

Director Sharp discussed the possibility of the District deeding a portion of the water rights to Ski Corporation, with a clause to revert the water rights to the District, should Ski Corporation no longer operate in the area or should the agreement be no longer in effect otherwise. Mr. Grosscup stated the agreement controls the ownership of the water right, with said ownership being held by the District. In his opinion Ski Corporation could proceed to apply, he also expressed he did not understand the Forest Service's concern because whether or not the District is a co-applicant, the application does not grant the District use of that water on Forest Service land. He proposed a path he had observed in other water conservancy districts; Ski Corporation could proceed as a sole applicant; the District would file a statement of opposition reflecting its water rights ownership and establishing that the District is not party of the lease agreement with the Forest Service and that those water rights would revert to the District should Ski Corporation stop their water use at the Mount Werner. Ski Corporation would recognize the water use is limited to specific uses.

Director Sharp made a motion to proceed as outlined above, following Ski Corporation's filing without the District as a co-applicant, to oppose the filing in Court, reflecting the District's ownership of the water rights, reflecting that the District is not a party to the lease agreement with the Forest Service, stating that the water rights would revert to the District if Ski Corporation stopped their operations in Mount Werner, to amend the current lease between the District and Ski Corporation, Exhibit A, to provide for water use in the summer months. Director Hermann seconded the motion, which was approved by all Directors except Director Jones, who as a part time Ski Corporation employee abstained from voting.

Director Sharp asked if the proposed arrangement would create an issue with the current location of the gage, at the end of the ditch. Erin Light, who was present, expressed her understanding that at this point the current gage location at Fish Creek is acceptable. Mr. Grosscup further clarified that the agreement between the District and Ski Corporation includes a provision stating that if a relocation of the gage were needed, Ski Corporation would cover related expenses.

Bio Application – Craig Preston, of Stagecoach State Park/Colorado Parks & Wildlife and Mike Havens, Engineer with Colorado Parks and Wildlife (CPW), were present.

Mike Havens spoke; Stagecoach State Park (the Park) needs to remove the bio-solids, or sludge, and replace the liners from the wastewater treatment plant in order to comply with permits and for continued operation of the Park. The Park received a single bid for the project, the cost was triple of the budgeted amount. The Park is requesting permission from the District to apply the

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sludge on land owned by the District. The beneficial use of the bio-solid, enhancing the soil productivity, is a process regulated by the EPA. Stagecoach Park would like to request the District's, land owner, permission to proceed with the proposed plan. The Park would also need a letter from the District documenting its approval, to present to the Health Department, as part of the approval process. Mr. Havens proceeded to point out the proposed application location on a map.

Director Sharp suggested the Park coordinate sludge disposal with Morrison Creek Water and Sanitation District. Director Colby stated Morrison Creek Sanitation may or may not dispose of sludge next year. Director Monger agreed with Parks cleaning the system, but expressed concern about the proposed land application, in particular he felt it would be problematic to perform a land application near a lake which has sometime in the past displayed a nutrient rich environment. Director Hermann brought attention to possible concerns from FERC regarding the proposed application.

There was a discussion and general agreement that the proposed bio-solid application should not proceed.

Financial Report The financial reports, including the Disbursement Report and the Budget Comparison Reports, were presented, reviewed and discussed. The prepayment of the US Bank Bond was discussed. Director Sharp moved to accept the Disbursement Report. Director Murphy seconded the motion, which was unanimously approved.

Report of the General Manager

Master Planning – Mr. McBride spoke of the modelling the District is undertaking. The model being developed by the Yampa/White/Green Roundtable (YWG) includes a scenario of the basin with high future demands and a dry hydrologic regime. The District will use the high future demands but will examine the hydrology known as “Direct Paleo” which includes individual drought years more severe than the “dry” hydrology in previous simulations. The model simulates the river under strict administration. We will be evaluating model results to determine how the administration is likely to occur and thus evaluate its implications on the District's water rights portfolio.

Meetings pertaining the State Water Plan were discussed, including the West Slope Caucus. Discussions included the differing positions of the various Roundtables and have centered in finding a common footing in the Western Slope in ongoing discussions with the Eastern Slope. Discussions are being framed on two things; the administration of the Colorado River Compact, and attempts to reduce demands on Lake Mead.

A memo by the Colorado River District (the River District) on Colorado River water use by river basin was presented and discussed. Director Sharp asked the Board if there was consensus to have staff request the River District work with the District in vetting the information in the analysis. This would include depletions considering the Yampa River Programmatic Biological Assessment (PBO)

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and uses in the YWG Basin Implementation Plan (BIP) based in part on Statewide Water Supply Initiative (SWSI) studies. Director Monger stated we ought to advise the River District to treat everybody equally by river basin. Manager McBride stated the BIP will be published with a disclaimer that all data is preliminary. Director Monger stated the round table will go back out with a request for qualifications; he further suggested the District would be an appropriate fiscal agent and perhaps a project manager for that. Director Brenner suggested the District continue to remind them of the importance of the Colorado River Compact. The combination of the drought in California and our Compact obligations are very important and should be one of the most important items in the water plan.

Director Sharp asked Manager McBride to write a brief letter to Eric Kuhn explaining that their figure is in need of revision; their amount is based on averages while we ought to be also be planning for the worst case scenario. Director Brenner feels we should state the plan does not accurately reflect the extent of the State's compact obligations.

Board Meeting/Retreat Calendar change – Manager McBride proposed to move the annual Board of Directors retreat to a date after most of the information regarding the Basin Implementation Plan is available. There was agreement to move the retreat to the September 16th Board Meeting; Director Brenner requested an update be presented at the July Board Meeting.

Elk River – Development of Area Wide Augmentation Plan – The subjects of an increased Instream Flow (ISF) and a proposed Augmentation Plan at the Elk River were discussed. The Colorado Water Conservation Board and the Bureau of Land Management have proposed an increase in the amount of instream flow below Steamboat Lake. The District will support the proposal once the District has an augmentation source and plan approved.

Director Sharp expressed his opinion that the District should prepare a water rights application for the master augmentation plan for the Elk River by the December 31, 2015 deadline. Several water rights were discussed, it's unclear which one would be utilized for a 500 AF contract to the District for an augmentation plan. In addition, there is a question about water decreed for augmentation in that area so Director Sharp suggested that a change case be filed concurrently. Director Monger inquired about the letter sent to CPW on this topic in February. Manager McBride stated they have met with Xcel so it is moving, albeit slowly. Counsel Weiss believes that we should have the courtesy to inform CPW of our intent to develop an augmentation plan in the Elk River. Director Monger and Brenner agreed and stated we should send a letter to CPW and communicate clearly what we are doing and our reasons. Potential costs to develop the augmentation plan were discussed.

Director Sharp moved that the District authorize the engagement of Scott Fifer, Resource Engineering, Inc.; and Scott Grosscup and David Hallford with Balcomb & Green, PC to begin preparation of a master augmentation plan for the Elk River Valley, with the purpose of preparing a water rights application for the augmentation plan by December 31, 2015. Director Monger seconded the motion, which was unanimously approved.

The Stock Water issue on the Elk River was discussed. The Colorado Cattlemen's Association had brought their concerns before the Board in 2014, about the historical use and understanding that stock

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watering was included in irrigation rights; and a more recent departure from that interpretation apparently expressed by the Division No. 6 Engineer. A letter was submitted to Dick Wolfe, State Engineer and Director, Colorado Division of Water Resources, and a reply was received. The letter from Engineer Wolfe was presented and discussed. The District's request to have an administrative solution is not possible and people will have to apply individually for stock water rights.

Different options to solve the stock watering issue were discussed. Director Sharp suggested that we could include this use in the District's decree for a new augmentation plan. Counsel Weiss suggested there could be a solution if there is proof that there was stock water use prior to the instream flow rights. Director Sharp pointed out each person would have to hire a lawyer and would cost a lot of money and time. Director Brenner inquired what the District's role could be in finding a solution. Director Sharp stated our augmentation plan would not be enough to cover the stock water need. Possible legislative solutions were discussed. Director Sharp noted that the District should not be the lead agency at this stage; it will require legislative change.

Add and Include issue – There has been ongoing discussions between the Division Engineer and the District regarding the accounting for storage and use of water rights that were decreed with both “original” water uses and additional uses decreed in 2001. The District disagrees with the Division Engineer that the District must maintain separate accounts for original decreed uses and augmentation uses. A draft letter from David Hallford, Balcomb & Green, was presented and discussed. Director Sharp agreed with the analysis and General Counsel Weiss stated that it reflects the District's position in the matter. There was general agreement that the letter was good and ready to be sent to the Division Engineer.

Potential Land Purchase – Owners of a property adjacent to the District's proposed reservoir on Morrison Creek have contacted the District communicating their interest in selling their property, which may undergo a foreclosure sale in April, 2015. A letter was sent by the District to the seller's attorney about possible intent to purchase the land. The Board reviewed the correspondence and the District has not yet received a response. Directors Brenner and Sharp asked the Directors if they still felt comfortable having the Executive Committee make any decision regarding the purchase of the property since the Board is not meeting again until May. There was general agreement that the Executive Committee has the authority to decide whether to proceed or not and how to proceed.

Drug and Alcohol Testing Policy – The District's proposed Drug and Alcohol Policy was presented and reviewed. Mountain States Employers Counsel assisted the District in creating the policy and General Counsel Weiss reviewed the document. Director Monger moved to approve the change in the Personnel Guidelines section 6.30 and approve the Drug and Alcohol Policy. Director Hermann seconded the motion which was approved by all of the Directors present.

Peabody Trout Creek update – A Memo referencing the Peabody Trout Creek Reservoir Project Interim Study Plan Progress Report (the Report) was presented and discussed. The Report was published in February 27, 2015. The District has not performed a full analysis of the report, additional staff would be required to perform such task. Director Monger believes there is possibly 10 years to go before the project gets permitted.

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Potential Water Lease – Zach Smith of Colorado Water Trust (CWT) was present. CWT leased water from the District in 2012 and 2013, through a change of water use that had been approved by the Division Engineer's office. CWT is exploring the possibility of another lease in 2015. He was asking the Board if it authorized staff to work with CWT. Mark Boling, of Southwestern Energy, spoke of his company; they have drilling operations in Moffat and Routt Counties, have further future operations planned and have set themselves the goal of being water use neutral as well as to bring a positive impact in the watersheds in which they operate. SW Energy and CWCB are considering a partnership in water use. There was discussion about consumptive and non-consumptive needs, partnership with the City of Steamboat Springs, target flows, municipal, uses, instream flows, short term and long term contracts, and the City RICD.

Director Sharp made a motion that staff meet with the CWT for negotiation of a contract for one year, and that the Executive Committee be authorized to direct staff on the development of the contract, which would then be brought to the Board on May 20th for review. Director Jones seconded the motion, which was unanimously approved.

Report from the District Engineer – Reservoir water status

District Engineer Andy Rossi was no longer present by phone; Manager McBride reported in his stead.

Graphs of reservoir elevations were presented and reviewed. The District is trying to estimate how much water will be available this year. The Snotel sites are reflecting data that may not be accurately represent water storages throughout the Stagecoach basin, the data resulting from the Snotel sites available may be a little too optimistic. It is not certain yet whether or not Stagecoach Reservoir will fill. The presence of ice and the potential for ice spilling is preventing further water storage at the moment. Besides avoidance of ice spillage, the CPW would prefer current reservoir levels are maintained to diminish the chance for Pike to spawn. Mr. McBride stated he expected the District should be able to store water in approximately two weeks, as spring conditions continue to progress.

Report from General Counsel In reference to the opposition to due diligence filed by Stahl, Director Sharp asked Scott Grosscup to explain what makes the right conditional. Discussion followed.

Water Rights Diligence –The District has filed Water Rights Diligence cases. Stahls have filed statements of opposition.

Stagecoach Power Contracting – Counsel Weiss spoke about the contract that is currently in effect for the sale of power generated at the Stagecoach Powerhouse. The contract is with Xcel and expires in October 2015. Yampa Valley Electric Association (YVEA) has expressed interest in buying Stagecoach power. Counsel Weiss reported that the meeting with YVEA, Manager McBride, Engineer Rossi, General Counsel, and Karl Kumli with Dietz and Davis, PC. was very productive.

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There was agreement to begin work on a term sheet. Manager McBride reported that the ski area has also expressed interest in buying power from Stagecoach. Director Sharp encouraged that the District pursue a new contract with a sense of urgency.

Stahl Litigation Update – Counsel Weiss briefly summarized the status of pending cases. The dismissal of the marina case was partially reversed by the Court of Appeals; the District asked the Court of Appeals to reconsider the dismissal. On January 22, 2015, the Court of Appeals denied the District's request for reconsideration. The District now has submitted a certiorari petition to the Supreme Court.

Anticipating the possible need for Rule 26 disclosures in the pending litigation, the District is locating and collecting all relevant documentation.

The second case regarding the District's Rules and Regulations was discussed. The District has responded to part of the complaint, and requested a dismissal of the remaining items in the complaint. No response has been received yet.

Director Appointment Update – Counsel Weiss reported that incumbent directors Monger, Jones, and Hermann were re-appointed by the Court.

Determination of future meetings The scheduled date for the next Board meeting is Wednesday May 20, 2015 at 1:30 PM, at the District's office.

Director Sharp made a motion to enter into Executive Session. Director Brenner seconded the motion. It was unanimously agreed to go into Executive Session under provision C.R.S. §24-6-402(4) (b) to discuss with counsel legal issues relating to the Stahl opposition on water rights matters. The Glas Deffryn negotiations were excluded. Mere presence or participation of an attorney at an executive session of the local public body is not sufficient to satisfy the requirements of this subsection (4). The Executive Session commenced at 5:21 PM and concluded at 5:30 PM.

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 concerns for the record. No one stated concerns.

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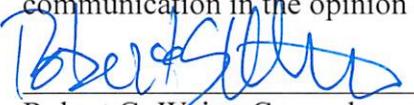
I certify that the foregoing constitutes a true and correct summary of the proceedings at the above referenced meeting.


Kevin McBride, District Secretary/Manager

Date: 6/19/2015

STATEMENT FROM ATTORNEY REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned Robert G. Weiss 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 Stahl opposition on water rights matters constituted a privileged attorney-client communication in the opinion of the undersigned attorney.


Robert G. Weiss, Counsel

Date: 7/6/2015

STATEMENT FROM CHAIR OF EXECUTIVE SESSION REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned chairman hereby attests, pursuant to CRS Section 24-6-402(2)(d.5)(II)(B), that all of the executive session was not recorded and was confined to the topics authorized for discussion in an executive session pursuant to subsection (4) of CRS Section 24-6-402.


John Redmond, Chairman

Date: 5/20/15