

MINUTES
UPPER YAMPA WATER CONSERVANCY DISTRICT
BOARD OF DIRECTORS MEETING
WEDNESDAY, MAY 20, 2015 (1:30 PM)
UPPER YAMPA WATER CONSERVANCY DISTRICT OFFICE
3310 CLEAR WATER TRAIL

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 McBride joined by phone for part of the meeting. District Engineer Andy Rossi, Office Manager Karina Craig and Counsel Weiss were also present. Members of the public included Frank Alfone from Mount Werner Water, Liz Schackenberg from US Forest Service and Erin Light of the Division 6 Engineer's Office.

The following agenda was proposed:

1. Establishment of Quorum and Call to Order;
2. Consent Agenda; action item
 - a. Approval of Disbursements;
3. Approval of Agenda for Meeting; action item
4. Approval of the minutes of the March 18, 2015 Board Meeting
5. and ratification of the April 10, 2015 Executive Committee meeting minutes; action item
6. Public Input and Comment;
7. Financial Reports; action item
 - a. Budget Comparison
 - b. Audit
8. Report of the General Manager;
 - a. Master Planning
 - i. Yampa/White Roundtable IBCC position
 - ii. Yampa River Modeling
 - iii. Letter Regarding the State Water Plan
 - b. Ski Area Water Lease
 - c. Miles/Lay contract approval action item
 - d. CWT lease
 - e. Water Quality Issue at Stagecoach
 - f. CWC Public Trust Doctrine Contribution
9. Report from District Engineer;
 - a. Reservoir Water Status
 - b. List of Projects
10. Report from General Counsel;
 - a. Stahl Litigation
 - b. Stagecoach Power Contracting
11. Executive Session with Bob Weiss, legal Counsel, under CRS § 24-6-402(4)(b) to discuss legal issues on Stahl Litigation and Stagecoach Power Contracting. 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).
12. New Business;
13. Adjournment.

Consent Agenda Director Monger moved to approve the consent agenda. Director Brenner seconded the motion, which was unanimously approved.

Meeting Agenda Director Haslem moved to approve the proposed agenda. Director Colby seconded the motion, which was unanimously approved.

Meeting Minutes Director Brenner moved to approve the March 18, 2015 Board Meeting minutes and accept the April 10, 2015 Executive Committee meeting minutes. The motion was seconded by Director Monger and unanimously approved.

Public Input and Comment Liz Schnackenberg, hydrologist for the USDA Forest Service (FS) introduced herself. She made reference to Steamboat Ski & Resort Corporation's (Ski Corporation) lease of water from the District for use as part of their operations on FS land. Ms. Schnackenberg stated that to her knowledge the water rights to be used in the proposed lease are conditional water rights, which upon use through the lease would become absolute. She expressed the desire of the FS to support Ski Corporation and their interest in securing water for future operations. However, the local FS office is concerned about the following scenario, however unlikely; if the lease goes forward and sometime in the future Ski Corporation ceases to operate, the District would own permanent water rights with a point of diversion on FS land, without an authorization to use them there.

As a solution, she proposed that if Ski Corporation were to cease operations and related water use on FS land, the water rights then be assigned an alternate point of diversion, outside FS land. She further stated the District had stored water at Stagecoach Reservoir with those water rights in the past, and that the FS would agree with such point of diversion as the alternative that she was proposing. She offered that FS attorneys could draft an outline of the proposal as described and asked the Board if it would consider or be interested in the idea.

Ms. Schnackenberg continued and stated a second concern from the FS; that a third party be involved in the water right lease; she expressed interest in the water right being owned jointly by the District and the FS.

Director Sharp stated Ski Corporation had approached the District with interest in leasing water for their operations at the ski mountain; the District agreed to assist and partner with Ski Corporation providing water to address their water needs for operation, offering them an allotment agreement. Also, Mr. Sharp noted, some of those Four Counties water rights presently fill Fish Creek Reservoir and are being allocated for public use. Director Sharp pointed that on the other hand, the proposal brought forward by Ms. Schnackenberg of a change in point of diversion in the event that Ski Corporation ceased operations would represent a change case. Mr. Sharp was uncertain that the District could go through a change that would be purely speculative, and whether or how a contract could be drafted to include the terms proposed by Ms. Schnackenberg.

Director Monger stated he understood Ms. Schnackenberg's request; he pointed out, however, a need to be clear on what the objectives are.

Ms. Schnackenberg noted the FS would find it the easiest if it owned the water rights, however, the FS understood the District is not interested in selling them. She reiterated the FS' concern that if the Ski Area stopped operating an absolute water right residing in FS land would remain, without an authorization of the water right owner to use it there. In contrast, she said, there is an authorization for municipal use and a long term permit in place for the Four Counties rights currently being used to fill Fish Creek Reservoir. It is the practice of the FS to issue permits in relation to structures, occupancy, use and ability to use a structure; the FS is concerned that that is lacking in this case. Ms. Schnackenberg asked if there was a way to address the FS' concerns with all parties involved working together.

Director Sharp said the District is indeed interested in working together. He pointed out that the water rights in question are very valuable, in particular as they can be used and re-used to extinction, for fully consumptive use within the basin. Director Sharp expressed concern that under the FS proposal the District could face losing those valuable rights should the Ski Area cease to operate. Director Sharp expressed interest in finding a solution, however he was uncertain what that may be.

Director Brenner asked Ms. Schnackenberg if she could provide a written summary of the FS' proposal, listing some options, including a statement of purpose. Director Sharp suggested the Ski Area's legal counsel be consulted, as the intent of everyone's efforts is to respond to their water use needs. Ms. Light agreed the proposal is a conundrum; the District would own water rights but would not be able to use them. Ms. Schnackenberg asked Ms. Light for an opinion on the submittal of water right application such as Ms. Schnackenberg had described, an application including an alternative point of diversion. Ms. Light confirmed her office would deem such request to be speculative.

There was general agreement by all present of a shared interest to find a solution, and that the proposed FS solution was not feasible.

Ms. Schnackenberg noted that if Ski Corporation were to cease operations sometime in the future on the forest land they currently use; the FS would face two options; to tear down the existing buildings, whereupon water needs at that site would cease completely, or keep the buildings and find a use for them. Director Sharp suggested that in the event that the Ski Area ceased to operate and need water, and if the FS decided to keep and use the existing buildings and therefore need water, the District would be delighted to contract water with the FS, moreover, Mr. Sharp noted, such use would agree with the District's intent and purpose, of addressing in-basin water use.

Ms. Schnackenberg expressed another concern; that the FS' water rights at the Rendezvous well would become junior, if the lease and the establishment of the permanent status of the Four Counties water rights were to proceed. She asked if there could be any consideration of their well right being first in priority, and of the other rights being left second in priority. Director Monger inquired if it was known that there was injury. Ms. Light stated that if the Four Counties rights became absolute, the Rendezvous rights would probably never be used and those rights would be abandoned.

Director Sharp stated that if rights were selectively subordinated, the District could risk losing the re-use of its rights, a scenario the District would not entertain. He stated similar cases have occurred in the State of Colorado; water rights cannot be subordinated selectively for one user without subordinating all other users, and therefore it would be highly detrimental to the value of the water right. The District must abide by the rules, Mr. Sharp concluded.

Ms. Light noted that Ms. Schnackenberg is right to have concerns, yet Mr. Sharp was indeed correct, the proposed terms would constitute selective subordination.

Ms. Schnackenberg noted the FS wishes to work out the problems up-front and asked the Board that if it would be willing to review general ideas if drafted by the FS, and to contribute to them. Mr. Sharp proposed that conceptual ideas would be preferred, while detailed legal terms may be premature at this point as a feasible solution has not been outlined yet. Director Monger suggested that the FS work closely with the Division 6 District Engineer's office, to find a solution that is achievable. The District is trying to meet its objectives and help the Ski Area, and in doing so the District is flexible, but it still has to work within state and water law.

Frank Alfone, of Mount Werner Water District (MWW) introduced himself and was welcomed by the Board. Mr. Alfone is the new General Manager of MWW, as Jay Gallager will be retiring.

Financial Report

Budget Comparison – Office Manager Karina Craig presented the Budget Comparison report, with financial information up to April 30, 2015. Income and Expenses are progressing as expected and budgeted. A few items from 2014 actuals were reviewed; the 2014 financial books are now closed and audited. Director Monger asked about Yamcolo Enlargement water. The water will be offered for sale in the next few days, as Yamcolo reservoir has now filled. Director Monger made a motion to accept the financial report as presented. Director Murphy seconded the motion, which was unanimously approved.

Audit – Auditor Chris Catterson presented a draft of the 2014 audit and provided a brief overview of the audit process. Mr. Catterson stated that one of the auditor's goal is to assess and verify whether or not the District's financial statements are fairly stated and that they follow U.S. Generally Accepted Accounting Principles (GAAP). While auditing statements, the auditor is required to review financials with professional skepticism, and if needed, the auditor requests adjustments and corrections to comply with GAAP.

Mr. Catterson presented and reviewed the Statement of Net Position. The biggest risks in what pertains to that report would be if assets not owned were reported, if accounts were not reconciled or if cash were missing. Mr. Catterson has been in direct communication with the pertinent banks and confirmed all liquid assets are accurately accounted. Depreciation has been recorded correctly and consistently with prior years; and assets have been removed as needed. He then made reference to liabilities; the auditor makes sure financial statements correctly represent long term debts and that they aren't underrepresented. The audit reports on current

litigation and related financial risks. Mr. Catterson confirmed current liabilities have been verified and reconciled.

The auditor also verifies that the ratio of liabilities and total assets is healthy, and it is. All accrued expenses have been accounted in the correct fiscal year. Next Mr. Catterson spoke of reserved funds and funds allocated for the Stagecoach Raise wetland mitigation. Engineer Rossi commented the District has partially completed mitigation requirements, everything is going well; some final checks will be done this coming summer.

Mr. Catterson continued with the review of expenditures; vendor services were audited randomly, and verified.

Mr. Catterson concluded there were no concerns; internal controls for every day financial operations by staff are in place; budget comparison reports are presented and undergo regular board oversight.

Director Monger inquired about Tax income net of fees, and specifically two figures reported in the audit. Mr. Catterson clarified one is cash basis, the other accrual.

There was agreement to accept the audit draft, and that it be submitted to the State together with the Manager's Report, once it's available.

Report of the General Manager

General Manager Kevin McBride was unavailable and Mr. Rossi reported on his behalf.

Master Planning –Yampa/White Roundtable IBCC position

Engineer Rossi presented the Brief History of the Colorado River Compacts and the YWG BIP/IBCC Positions. Items reviewed and discussed included the Prior Appropriation Doctrine, Senior and Junior water right diversions and calls, relative junior and senior position of different States, the Colorado River Compact, the Upper and Lower Colorado basins, the 1948 Upper Basin Compact, management by the State of Colorado of the Colorado River Compact, negotiated equitable apportionment, current water use estimates for the Colorado Western Slope, and shortages in the Maybell Canal area based on modelled drought periods.

A graph representing Western Slope Flow allocations, with estimated future pre and post-compact depletions and remaining river flows by basin was also reviewed and discussed. Director Brenner expressed concern that future depletions are not accurately represented. Other topics discussed were trans-mountain diversions, administration based on strict appropriation and by equitable apportionment.

Letter Regarding the State Water Plan – Directors Brenner and Monger proposed a written position statement be issued on behalf of the Board stating the District's concerns as described above and strongly and clearly supporting equitable apportionment, and that the statement be sent to the Colorado Water Conservation Board (CWCB) and copied to the IBCC and other industry entities as appropriate.

Yampa River Modeling – Engineer Rossi continued and made reference to Erin Wilson of the Wilson Water Group, which is consolidating a single set of models to be published, so the various entities using water models start with the same model.

The model being developed by the District was discussed, Scott Fifer joined the discussion by phone. Nodes, water right implications and priorities of different nodes were discussed. Director Webster stated all the District's efforts go quite a way to show diligence.

Ski Area Water Lease – Counsel Weiss excused himself and did not participate in discussion. Director Monger inquired and Ms. Light explained the Ski Area has filed an application. It was opposed as the well rights did not support use year round. Counsel Grosscup is representing the District, an opposition will be filed.

Miles Lay contract approval– The Board had discussed general terms in the previous Board meeting regarding a possible contract for the purchase of the Miles Lay property, and delegated further action to the Executive Committee (EC). The EC directed staff to proceed; an appropriate price was determined with the assistance of a realtor and reduced by the life estate value as estimated. A contract offering \$255,000 has been signed. The contract has been submitted to the lender, the foreclosure has been postponed until June, and the District is waiting to see what happens. Director Monger inquired and Counsel Weiss clarified that the contract is with the two owners, and could be finalized provided that the lender grants approval.

Director Jones inquired about the strategic value of the property. Engineer Rossi explained the property would facilitate access to the proposed Morrison Creek reservoir, and might avoid the need to negotiate access through properties presently owned by other parties. He further clarified that none of the property would be inundated by the proposed reservoir, and that the point of diversion of one of our rights is on this property.

Counsel Weiss stated a \$200 earnest money payment has been deposited, and there are a series of inspections that could result on a termination of the offer. The foreclosure has been postponed until June.

Director Sharp made a motion to ratify the agreement; Director Monger seconded the motion, which was unanimously approved.

CWT Lease – A lease proposed by Colorado Water Trust (CWT) was presented. Engineer Rossi stated CWT has expressed interest in purchasing 1,000AF of water storage, perhaps more as they may be partnering with a third party. Manager McBride stated CWT's funding is progressing as expected. Counsel Weiss asked the Board whether or not it is inclined to proceed with the requested water storage sale and if it deemed the price, adjusted from 2013 by CPI, appropriate. He commented that the 2013 sale had been under the water lease statutory provision, while the current sale would not be. Director Sharp expressed his opinion that the District ought to proceed with the sale, that the offered price was low, and his concern of possibly creating false expectations from other and future parties of a similar pricing. He also discussed the possible re-sale of the water by CWT as farther downstream as possible, that at the last sale Catamount was

the farthest point to which the Division 6 Engineer's office was able to escort the water, instream flows, and the District's interest in supporting healthy river flows. He then referred to release rates; he did not seem to think the subject would represent a problem and the CWT and the District ought to be able to reach a mutual agreement in regards to release rates. He noted many of the contracts currently in effect have a flow rate cap, so that large variation in release rates from one day to another are avoided, as well as any turbine and dam operational problems that would otherwise occur.

Director Sharp made a motion to authorize staff to proceed and enter into contract with Colorado Water Trust as requested for the year 2015 with the following conditions and amendments to the proposed agreement: a volume of 1,000 AF of water storage, with a maximum of up to 4,000 AF if and considering that CWT may wish to contract over 1,000AF, and that water volume amounts be allocated to the Reservoir pools in the same way as they were allocated in the prior contract between CWT and the District. The motion was seconded by Director Brenner and unanimously approved.

Water Quality in Stagecoach – Mr. Rossi reported that a toxin test at Stagecoach Reservoir has tested positive. Summer testing protocols are being developed by the EPA. Colorado Department of Public Health & Environment is being requested to help, they are trying to determine protocols depending on what toxins are found and their abundance. He stated the worst possible scenario would be people are not allowed to get into the reservoir, and drinking of the water would not be allowed. Colorado Parks and Wildlife (CPW) is assessing the situation. The Total Inorganic Nitrogen (TIN) was discussed. Director Colby noted that Morrison District's discharge is minor relative to the non point releases upstream. Mr. Rossi indicated Manager McBride has contacted the local CPW office and requested that all the non point contributors get included.

CWC Public Trust Doctrine Contribution – A letter from the Colorado Water Congress (CWC) requesting the District to support the Colorado Water Stewardship Project (CWSP) was presented and reviewed. The project encompasses the tracking and monitoring of proposed Public Trust Doctrine Initiatives. The overall project budget is \$50,000 and CWC is asking the District to contribute \$1,000. Director Sharp made a motion, and director Haslem seconded, to sponsor the 2015/16 efforts of the CWSP with \$1,000; the motion was unanimously approved.

The Great Divide Film – In 2014 the District contributed financially towards The Great Divide, a film project by Colorado Humanities that explores various water issues. Five tickets are available for the premier of the film on August 6, 2015 in Denver; and Directors were invited to attend.

Other matters – Counsel Weiss commented that Catamount has submitted a petition to surrender their Hydropower permit application to the FERC, as they have decided not to proceed with their hydropower project.

Executive Session Robert Weiss, as counsel for the District, stated that in his opinion discussion of the matter announced to go into executive session constitutes a privileged attorney/client communication. He was therefore recommending that no further record be kept of the executive session.

A motion was made by Director Monger and seconded by Director Haslem, and 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 Stahl Litigation and Stagecoach Power Contracting. 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).

Director Sharp excused himself and was not present during the Executive Session part that pertained to Stagecoach Power Contracting. The Executive Session commenced at about 4:10 PM. and concluded at about 5:45 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.

Report from the District Engineer

Reservoir Water Status – Stagecoach and Yamcolo reservoirs are full, and we are trying to minimize spilling.

List of Projects – Engineer Rossi provided a list of projects to take place at the District’s facilities this summer. The project list was reviewed and discussed.

Engineer Rossi updated the Board regarding new seasonal ditch riders who will help this summer season with the Five Pine Mesa Ditch maintenance efforts.

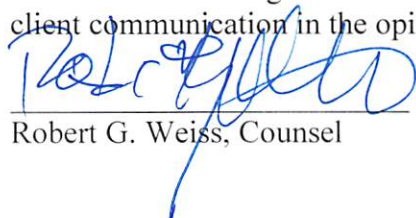
Director Murphy asked about wetlands in Stagecoach. Engineer Rossi explained that the work has long been finished and the majority of success criteria have been met. Completion is pending on a five year term or until certain criteria have been met. The Army Corp of Engineers has agreed to most of them, a final inspection is expected to occur once rainy weather conditions cease.

Determination of future meetings The scheduled date for the next Board meeting was confirmed, being Wednesday July 15, 2015 at 1:30 PM, at the District’s office.

Adjournment Director Haslem made a motion to adjourn the meeting; there was unanimous consent. The meeting was adjourned at 5:50pm.

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 to Stahl Litigation and Stagecoach Power Contracting constituted a privileged attorney-client communication in the opinion of the undersigned attorney.


Robert G. Weiss, Counsel

Date: 7/15/2015

**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 that was not recorded 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: 7/15/15