

# RECORD OF PROCEEDINGS

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**UPPER YAMPA WATER CONSERVANCY DISTRICT  
BOARD OF DIRECTORS MEETING AND RETREAT  
SEPTEMBER 16, 2015 8:00 AM  
SHERATON STEAMBOAT RESORT, 2200 VILLAGE INN CT., 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 Sam Haslem, Ken Brenner, Webster Jones, and Ron Murphy. General Manager Kevin McBride, District Engineer Andy Rossi, Office Manager Karina Craig, Administrative Assistant Barbara Wilson and General Counsel Bob Weiss were also present. Board member Tom Sharp was absent at the start of the Meeting but joined the meeting at approximately 11 AM as shown below.

Other persons present included Joe Messina, consultant to the District; Erin Light, Division Engineer, Colorado Division of Water Resources; David Hallford, Attorney, Balcomb & Green; Scott Fifer, Consultant, Resource Engineering; and Dan Birch, General Manager, Colorado River District.

The following agenda was proposed:

## **AGENDA**

- I. Board of Directors Meeting .....8:00 AM
- II. Board of Directors Retreat: Master Planning .....1:00 PM
  - (1) 8:00 am - Establishment of Quorum and Call to Order;
  - (2) 8:05 am - Consent Agenda;
    - a) Approval of Disbursements action item
  - (3) 8:10 am - Approval of Agenda for Meeting; action item
  - (4) 8:15 am - Approval of the minutes of the July 15, 2015 and September 3, 2015 Board Meetings; and ratification of the August 6, 2015 Executive Committee minutes; action item
  - (5) Public Input and Comment;
  - (6) 8:20 am - Financial Report; action item
    - a) Budget Comparison
    - b) Preliminary 2016 Budget
    - c) Motion to Pay Off Bond action item
  - (7) 9:00 am - Report of the General Manager;
    - a) YVEA Power Purchase Agreement
    - b) Elk River Augmentation Plan
    - c) Yamcolo Irrigators Association Contract Extension
    - d) Compensation Review (MSEC)
  - (8) 10:00 am - Report from District Engineer
    - a) Reservoir water status

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- (9) 11:00 am - Report from General Counsel;
  - a) Stahl Update
  - b) Add and Include
- (10) Executive Session with Bob Weiss, legal Counsel, under CRS § 24-6-402(4)(b) to discuss legal issues on Stahl Litigation and YVEA 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).
- (11) New Business;
- (12) Adjournment.

**Consent Agenda** Director Jones moved to approve the consent agenda, Director Murphy seconded the motion which was unanimously approved.

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

**Meeting Minutes** Director Jones moved to approve the July 15, 2015 and September 3, 2015 Board Meetings and to ratify of the August 6, 2015 Executive Committee Meeting minutes. Director Colby seconded the motion, which was unanimously approved.

**Public Comment** There were no comments from the public at this time.

### **Financial Report**

**Budget comparison** – The Budget Comparison report was reviewed. Engineer Rossi stated that the Stagecoach reservoir shed was almost complete. The Encumbered funds were discussed; Engineer Rossi stated compliance with the Corp of Engineers wetland requirements has been reached at an estimated 95%. Once the project is reaches completion, related funds will no longer be encumbered. Mr. Rossi does not expect that to extend beyond a year.

**Preliminary 2016 Budget** – Manager McBride reviewed the draft 2016 budget. Manager McBride also discussed the office location and possibly modifying the arrangements or moving to a different location. He discussed space needs, including the possibility of having the master plan modelling consultant, Joe Messina working at the District’s office. Director Brenner stated this may be a good time to formalize the District’s rental relationship with Mount Werner Water, in terms of expectations, parking, and infrastructure.

Routt County long term plans for improvements to CR14 were discussed. Director Jones requested that the details for the budget draft be provided for the next 2016 Budget review. Manager McBride confirmed they would be provided at the November Board meeting.

Manager McBride suggested that a Compensation Committee or the Executive Committee review the employee compensation data before the next scheduled board meeting. Director Brenner suggested that the Executive Committee could do that. Director Brenner also was in favor of an additional half day position for the District especially as the District moves forward with public

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outreach and the state water plan. Salary ranges were adjusted by CPI, 1%, in the draft 2016 budget. Manager McBride discussed a proposed re-structuring of the budget for the year 2017, the alignment of our filing system with the budget, and enterprise accounting. Director Colby requested that staff add a column to the budget comparison report showing what remains available in the budget at year end.

Motion to Pay Off Bond – Director Brenner moved to pay off the existing Refunding Bond Series 2005A and 2005B Bond, bringing the principal balance to zero on November 15 2015. Director Colby seconded the motion, which was unanimously approved.

### *Report of the General Manager*

YVEA Power Purchase Agreement –Mr. McBride referred to the Stagecoach Power contract, which will be expiring at the end of October this year. It appears that the current contractee, Xcel Energy, is not interested in exercising their right of first refusal. Staff and District Counsel have been working on the negotiation of a power agreement with the local utility YVEA. Different provisions of the proposed agreement were discussed; wheeling charges, a 6 cents per kilowatt hour price, the marketing of green power for an additional one cent per kilowatt hour, and the interest expressed by Steamboat Ski & Resort Corporation (Ski Area use of the green energy produced by the District to operate the gondola at the ski area). Counsel Weiss said that the proposed contract contemplates a floor of 6 cent per kilowatt hour, with annual adjustments following the cost of power purchased by YVEA from XCEL. Also in this proposed arrangement a green power premium of one cent per kilowatt hour would be paid to the District through YVEA for the right to subscribe for Stagecoach local green power. Director Jones asked if the Ski Area would do the marketing, or the District. Counsel Weiss replied that the marketing be a collaborative effort including YVEA. The Ski Area may subscribe to a quarter of our average power production capacity. Director Brenner suggested the District send a letter to local entities informing them of what the District has available to sell.

Director Murphy and Engineer Rossi discussed the point of delivery and safety equipment associated with power generation and transmission activities at Stagecoach Powerhouse.

Renewable Energy Certificates (RECs) were discussed. The District's original power contract with Public Service did not include RECs, as those tradable commodities had not been invented yet. A PUC ruling gave RECs to the contractee of power generation, not the generator. When John Fetcher was District Manager, the District began litigation with Public Service as the District's position was the RECs belonged to the generator (the District). However, the cost of litigation became exorbitant and the suit was dropped.

Pricing and negotiation of pricing of renewable power was discussed. Director Jones stated his opinion that the real value of the green power would be in the public relations. Director Jones suggested the District issue a press release once the contract is signed. Mr. Jones commended staff for achieving this. He inquired if the proposed contract would cause any change in operation when compared with the contract presently in effect. Engineer Rossi explained that with this new contract,

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operation of the power house will change slightly and become easier. Counsel Weiss said we are about ready to finalize the contract and that YVEA seems very enthusiastic about the contract.

Director Jones moved to authorize Manager McBride to sign the YVEA Power Purchase Agreement that is substantially in accordance with that presented to the Board in the Term Sheet. Director Brenner seconded the motion which was unanimously approved.

Elk River Augmentation Plan – There was a discussion; there was general agreement that the proposed Elk River Augmentation plan would likely elicit interest in the community and it could solve a lot of problems. Livestock water uses, instream flows, possible way of operating the program were discussed. Manager McBride stated his understanding that when the Elk River goes on call, typically due to instream flow, Colorado Division of Parks and Wildlife (CDPW) would release water the District would have under contract, supervised by Engineer Light, to replace the out of priority depletions. Engineer Light explained that the releases would probably be aggregated into weekly or biweekly larger releases; she further clarified the discussion on how the plan would operate would probably take place the summer before the plan is approved.

Manager McBride stated the District will write the contracts and inform Engineer Light. CDPW would operate the releases per direction from Colorado Division of Water Resources (CDWR). Manager McBride pointed out the District is still in initial discussion with CDPW and foresees a lot of work still to do. Division Engineer Erin Light stated she did not see an active opposition from her office for the augmentation plan; she said she thinks all parties involved want this plan to happen.

Counsel Weiss informed the board that the District would file the plan as the applicant because the District is the holder under contract of the water that will be the source of the augmentation plan. The District has engaged the help of Scott Fifer to work on this.

Board Member Tom Sharp entered and joined the Board Meeting at approximately 11 AM.

Yamcolo Irrigator Association Contract Extension – The Yamcolo Irrigator Association (YIA) contract extension, currently in effect, was presented for reference. A new price needs to be negotiated for 2016. Manager McBride proposed extending the contract until 2019, the year in which several other contracts expire. Director Brenner suggested the proposed extension include language clearly expressing that 2019 pricing would be a function of reservoir operational costs.

Director Haslem moved to continue the appointment of Director Sharp and Director Brenner for the Yamcolo Irrigators Association contract negotiations. Director Murphy seconded the motion, which was unanimously approved.

Director Sharp expressed his vision of 2019 contract negotiations: 20 separate direct delivery contracts of water released from Yamcolo, each for 200 AF per year, each having a separate and sequential contract term from 1 year to 20 years so that every year another 200AF contract ends. The 20 separate contracts would likely be issued to existing irrigators in the Five Pine Mesa area, but the

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ability of the District to reissue 200 AF every year would allow the District flexibility regarding changes in storage water demand over time. Director Colby inquired if this model would add administration and legal cost. In Director Sharp's opinion, it would not, but rather the proposed staggered end term dates would improve the District's ability to deal with an annual salable volume of 200AF, as well as to address re-pricing and re-allocation on a long term basis, and cost-based pricing. Different pools in Yamcolo and their order of delivery priority were discussed. Director Colby stated his opinion that a premium on pricing terms ought to be assigned to first priority water increments out of Yamcolo. Director Sharp also mentioned that one of the benefits of implementing his vision of 20 separate contracts starting in 2019 would be that the holders of such contracts would not hold re-sale premium advantage as is now the case with Colorado-Big Thompson contracts that have been sold by the allottees from irrigation to municipal and industrial users. In other words, the UYWCD would control the re-assignability of storage water contracts out of Yamcolo as storage demand changes over time, instead of such control resulting in great speculative financial benefit in the contract allottees.

*Compensation Review* – Staff has been working with Mountain States Employers Council (MSEC) to have current salaries ranges evaluated. Manager McBride said information will be available in time to discuss it with the Executive Committee before the November budget review. Director Jones stated his opinion that total compensation data from the Special District Association could be used for reference, and also from others such as the City of Steamboat, the County, or State agencies.

### *Report from the District Engineer*

*Stagecoach* –The Stagecoach Reservoir water status was discussed. Engineer Rossi described current water storage levels in Stagecoach and the 2015 water year hydrograph.

The Colorado Water Trust (CWT) contracted water out of Stagecoach and releases began in August. The CWT releases will continue through September and into early October.

The FERC Safety and Operations Inspection of Stagecoach Dam was conducted on September 15, 2015. No major concerns were found.

Director Sharp inquired if there are still plans to repair the broken stem guides at Stagecoach Dam. Engineer Rossi confirmed and explained that first, the stem guide assembly brackets have to be redesigned for manufacture. Given expected design and manufacture time, hardware installation and repair is planned for the spring of 2016.

On October 19, 2015 the generator will be disassembled for annual maintenance and all directors are invited to visit if they wish to see the process. The 2016 budget includes cost for the replacement of the wicket gates in the turbine.

Director Sharp inquired if the Stagecoach re-fill water right had been used this year that could be made into Absolute water rights. Engineer Rossi said that the refill right was used in 2015 and will check with

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Counsel Weiss to see if they could be made Absolute. Director Sharp also inquired if the re-fill rights come up for diligence. Manager McBride stated that Scott Hallford recommends the water rights reconciliation and accounting to be done all at one time during the diligence proceedings.

Yamcolo – Engineer Rossi discussed the current storage levels at Yamcolo Reservoir and the 2015 water year hydrograph.

Engineer Rossi discussed historical fill and re-refill practices at Yamcolo. Engineer Rossi stated that historical data is been used as a guide to manage the reservoir for winter and early spring refilling.

Director Sharp asked about Five Pine Mesa Ditch maintenance. Engineer Rossi stated that work has been performed efficiently and in a timely manner this summer by our two seasonal ditch riders.

Director Sharp asked if the Five Pine Mesa Ditch users still pay an annual contribution towards the maintenance of the ditch. Office Manager Craig stated that ditch shareholders currently pay a price per share adjusted annually by CPI, with price based on operational costs, repairs and maintenance not entering into effect until 2020, per contract.

The long term Special Use Permit for Yamcolo is still being negotiated with the United States Forest Service. The long term negotiations are due to questions and concerns raised by the Colorado Division of Parks and Wildlife about the minimum release requirements for Yamcolo. The current Special Use Permit for Yamcolo expires at the end on 2015.

### *Report from General Counsel*

Director Sharp inquired about the proposed water lease agreement out of Steamboat Lake, and if there is certainty that the water to be leased includes augmentation use; he expressed concern about water that is decreed and not decreed for augmentation use. David Hallford reviewed the document with Director Sharp; Mr. Hallford stated his opinion that it was clearly stated that the water to be leased would be derived from augmentation water rights.

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. All present left the room, except Directors, the General Manager, the District Engineer, Counsel Weiss and Mr. Hallford.

Director Haslem made a motion to enter into Executive Session. Director Colby 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 litigation and YVEA Stagecoach power contracting. Counsel Weiss stated David Hallford could attend. 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).

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Director Haslem moved to come out of Executive Session. Director Colby seconded the motion which was unanimously approved. The Executive Session commenced at 12:15 PM and concluded at 1:00 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.

**Determination of future meetings** The scheduled date for the next Board meeting is Wednesday November 18, 2015 at 1:30 PM, at the District's office.

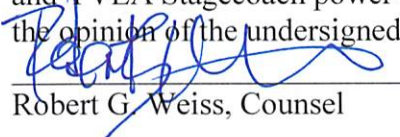
The meeting was adjourned.

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

  
Kevin McBride, District Secretary/Manager

### 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 YVEA Stagecoach power contracting constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

  
Robert G. Weiss, Counsel

Date: 11-19-2015

### 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: 1/5/2016