

RECORD OF PROCEEDINGS

UPPER YAMPA WATER CONSERVANCY DISTRICT BOARD OF DIRECTORS MEETING MARCH 16, 2016, 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, Bob Woodmansee, Ken Brenner, Webster Jones, and Ron Murphy. General Manager Kevin McBride, District Engineer Andy Rossi, Office Manager Karina Craig, and General Counsel Bob Weiss were also present.

Members of the public present included Erin Light, Division Engineer, Colorado Division of Water Resources; Jason Turner, Senior Counsel, Colorado River Water Conservation District; Frank Alfone, General Manager, Mount Werner Water District; Tyler Jacox, Wildlife Technician, Colorado Parks and Wildlife; Skidge Moon, D&D Inc.; Gary Clyncke, Tyler Snyder, Todd Hagenbuch, and Bill Gay, land owners in South Routt County; and Bruce Enever, representing Green Creek Ranch.

Joining the meeting by phone were Scott Fifer, President Resource Engineering; David Hallford, Attorney, Balcomb & Green, PC.; and John Currier, Chief Engineer, Colorado River Water Conservation District.

The following agenda was proposed:

PROPOSED AGENDA

- (1) *1:30 pm* Establishment of Quorum and Call to Order;
- (2) *1:35 pm* Consent Agenda;
 - a) Augmentation application action item
 - b) Peabody Seneca Stagecoach water contract transfer action item
- (3) *1:45 pm* Approval of Agenda for Meeting; action item
- (4) *1:50 pm* Approval of the minutes of the February 10, 2016 Board Meeting and ratification of the February 19, 2016 Executive Committee meeting minutes; action item
- (5) Public Input and Comment;
- (6) *2:00 pm* Financial Report; action item
 - a) Approval of Disbursements
 - b) Budget Comparison
- (7) *2:15 pm* Report of the General Manager;
 - a) Master Planning/WRMP

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- b) Salary survey with Employee Manual and Bylaw changes action item
- c) Yampa Irrigators Association
- d) Elk River Aug Plan
- e) Legislative Bills for CWC State Affairs Committee
- f) New Board Member
- (8) 3:30 pm Report from District Engineer
 - a) Reservoir Water Status
 - b) Yamcolo Special Use Permit Update
 - c) Facilities update
 - i) Stagecoach Grazing Lease update
- (9) 4:00 pm Report from General Counsel;
 - a) Consideration of Stahl settlement documents action item
 - b) Consideration of contract cancellation request, SWEPI action item
- (10) Executive Session with Bob Weiss, legal Counsel, under CRS § 24-6-402(4)(b) to discuss legal issues on Stahl Litigation. 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 Monger moved to approve the consent agenda, which included the augmentation water application from Susan Stempel and Peabody Seneca Stagecoach water contract transfer. Director Brenner seconded the motion which was unanimously approved.

Meeting Agenda It was proposed to move the 7(d) Elk River Augmentation Plan to after 7(a) Master Planning, and to add “YIA contract negotiations” to item 10.

Director Sharp moved to approve of the revised agenda. Director Colby seconded the motion which was unanimously approved

Meeting Minutes Director Monger moved to approve the February 10, 2016 Board meeting minutes and ratify the February 19, 2016 Executive Committee meeting minutes. Director Jones seconded the motion which was unanimously approved.

Public Comment No comments were made by the members of the public present at this time.

Financial Report The financial report was reviewed and discussed. Director Jones moved to approve the financial report, Director Sharp seconded the motion which was unanimously approved.

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Report of the General Manager

Master Planning/WRMP

Manager McBride made reference to the District's master plan draft that was prepared by Resource Engineering. Scott Fifer and David Hallford joined by phone. There was a mention of a meeting with Tri-State Generation and Transmission, a major water contractee and water user in the basin, regarding some of the modelling assumptions associated with water deliveries to Tri-State (Craig Power Plants). At the meeting were Mike Sorensen, George Fosha and Jackie Brown and we came to an understanding of some of the assumptions used in the model run included in the master plan.

Assumptions in various model runs used as part of the Master Plan were discussed. The Statewide Water Supply Initiative (SWSI 2012) was used as the basis for demands. The basis for "non-consumptive" use in the City of Steamboat Springs, specifically temperature was mentioned. Manager McBride related that it was his understanding that the range of flow based water quality parameters was something the City is looking into and Division Engineer Light interjected that the City had so far discussed only temperature issues with her office. Mr. McBride reminded the Board that the UYWCD had been instrumental in water quality issues within the District's boundaries by funding the startup of the local watershed group and Engineer Rossi was active in that groups pursuit of water quality planning as well. David Hallford responded that this evaluation of the City's use of contracted water for municipal use for in stream water quality concerns was likely to evolve over time, but was useful in describing potential uses of the District's stored water for municipal use and thus its water rights.

Mr. Fifer discussed the paleo record's use as a long term data set and specifically the three dry periods shown in the results. The three dry periods include years leading up to and after droughts so that the entrance to and recovery from strong drought periods can be evaluated. One recent period used in this report is 1998 to 2012 and is generally recognized as a reasonable planning situation. Use of the Paleo Record confirms that these types of intense droughts do occasionally occur and this was not a singular event.

Results of the modeling on levels in Stagecoach Reservoir under different scenarios were discussed. These included the SWSI demands with and without a Morrison Creek Reservoir and then adding a non-consumptive release through the City of Steamboat Springs. He spoke of General Findings on page 17 and that under baseline conditions, except for agricultural demands, there isn't a lot of shortages shown, but when we look into the future we do see additional shortages. In pages 22 through 24, a snapshot of each of the different scenarios is shown.

Director Sharp asked about two different study periods, and the differential between them, and what was causing the differential in performance and shortages. Mr. Fifer described some modeling details particularly regarding non-consumptive flows. Director Jones asked about the selection of the three dry periods and the recurrence interval of these. Scott Fifer responded that they don't represent the driest year, but they do represent some of the driest five consecutive years in the record. He does not know

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what the recurrence interval is but he'll get that information. Matters regarding the statistics of recurrence intervals and public policy were discussed.

Director Sharp discussed the use of the model results with respect to water rights, pointing out that the District needed to be sure it did not abandon water rights that could be needed because, if they are abandoned, the District cannot get them back. Director Woodmansee questioned the assumptions used in the modelling and their apparent justification for Morrison Creek Reservoir. A discussion of the District's history and path to evaluating the Morrison Creek projects followed. General Manager McBride discussed that we are using assumptions from the SWSI in order to be in line with assumptions used in other State studies and that the paleo record was well established in scientific literature. The graphs being presented show water elevations from releases from the reservoirs to modeled needs downstream. These releases have multiple benefits. He suggested the need to take a broader look at River conditions and use under these different scenarios prior to making any final decisions on construction of projects. Staff can bring that information to the Board. The Board should consider its options in moving forward regarding this master plan and particularly the Water Rights Master Plan. He related some statistics from the recent past, which the Yampa had flowed at only 17 cfs in the City in 2002 but augmented these flows with the Colorado Water Trust (CWT) lease in 2012 thus maintaining much higher flows during the that drought. Also, in 2002, storable inflow was approximately 2,000 af so the limited nature of available storage in Stagecoach was well documented in drought situations.

Scott Fifer discussed the current water rights portfolio, their use in our operations, water rights to be made absolute and made some assessments as to water rights that might be considered for abandonment. The seniority of some of the water rights and their hydrologic availability were discussed. Recommendations regarding key decision points are included in the draft report. The connection between these water rights and the District's accounting spreadsheet were discussed. Absolute and conditional parts of the Four Counties, Feeder Canal, Bear Reservoir, Pleasant Valley Reservoir water rights were all considered. Yamcolo water rights conditional and absolute including second fill and Coal Creek were discussed. Additional work on Coal Creek will be presented at the next Board meeting.

David Hallford, the District's water attorney, stated that they were already preparing the necessary filings for May. The question arose regarding the Boards vote on the Water Right filings which would be slated for May. Director Monger related that he did not think he had the necessary information to make decisions. Mr. McBride suggested an additional April meeting dedicated to the master planning efforts. Council Weiss asked Division Engineer Erin Light what her process would be. Ms. Light said she would review the report along with the State Engineers office. Counsel Weiss asked about the process of working with the District on the reports as it is developed as Stipulated. Ms. Light made reference to questions she had relayed to Scott Fifer of Resource Engineering. Dates and timelines were discussed.

Director Sharp moved to have a special Board of Directors meeting at 1:30 April 20, 2016. Director Brenner seconded the motion which was unanimously approved.

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Elk River Augmentation Plan

Manager McBride reviewed the lease that is being sought with CPW for 500 AF from Steamboat Lake to support an augmentation program out in the Elk River.

There was a meeting in December regarding the initial contract from CPW that contained terms unacceptable to both the District and the Division Engineer. At that meeting we agreed to changes and CPW committed to revising the contract and get it back to the District. The District has not received that to date. The CPW is supportive of the proposed Willow Creek ISF flow increase and displeased at the District's decision to contest the ISF increase. The District's concern is potential problems that the increased instream flow could affect the firmness of the water we would contract from Steamboat Lake. CPW's representative has expressed the opinion that that is not the case, and that we should not contest the CWCB instream flow filing. UYWCD's previous letter suggested the District would drop contesting the increase once an augmentation decree for the Elk River is adjudicated. Timing then became the issue. Manager McBride discussed a path forward. That would include that stipulations regarding the augmentation plan with CWCB and CPW would be in place prior to the CWCB meeting in Steamboat in June and the District would withdraw contesting the ISF.

Director Sharp thinks that is useful because the District made it very clear we want to have this contract done for our augmentation plan and if we agree on stipulations that would be satisfactory to both parties that would suffice. Scott said the district has legitimate reason to be concerned about the reliability of the contract.

Items related to rules for contesting an ISF were discussed. Manager McBride said this is the solution proposed, we'll try to finalize it by May 1st.

Salary survey with Employee Manual and Bylaw changes

Manager McBride summarized: The Board previously set salary ranges for the District's job descriptions and set the general manager's salary for the year. The general manager has met with employees and set salaries for each. The Board had requested the manager to bring forward criteria for which all employees would be assigned within the ranges. A written document outlying criteria was presented, reviewed and discussed.

Director Brenner said this seemed consistent with what was discussed in previous meetings. Director Monger requested the word "policy" be changed by the word "intent." The issue of a contract guidance for the General Manager position, but as the board was disinclined to do that, thus the proposed bylaw revision. Director Sharp spoke of the 65% figure had been chosen based on the river district's policy.

Director Sharp moved to approve the proposed text with the amendment described above, and that a final sentence be added as follows: "The above is a guideline for the District Board and does not vest any particular level for any particular employee." Director Monger seconded the motion which was unanimously approved.

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Yampa Irrigators Association

Director Sharp reported to the board on meetings he and Director Brenner had with YIA representatives Gary Clyncke and Tyler Snyder.

A notification was sent to YIA with a price of \$12.33. We supplemented the notification with a proposal that we would arbitrate to find the allowable cost centers under the contract. If we entered into arbitration agreement to answer these questions, then we would recommend to the full board, that the board authorize the payment of all the three arbitrators cost. Formally, in the last few days the response that has come back to us from YIA, they do not want to agree to that proposal, and they want to negotiate a price of \$8/AF. Director Sharp would like to have a motion that if we reached an arbitration agreement we would pay for the arbitrators but not the attorney's fees. Director Brenner said he would like to add that both parties came and negotiated in good faith and not too long into the meeting it became clear there were differences in what was perceived to be fair expenditures to be charged for the reservoir.

Director Jones moved to authorize the Board of Directors to offer YIA to pay three arbitrators in the Yamcolo water pricing negotiations if the parties can agree on arbitration procedures and issues. Director Woodmansee seconded the motion which was unanimously approved.

Legislative Bills for CWC State Affairs Committee

House Bill 16-1005 (Rain Barrel bill)

The "Rain Barrel Bill" was discussed.

Director Monger moved that the District monitors the Rain Barrel bill. Director Brenner seconded the motion which was unanimously approved.

Senate Bill 16-145(Subdistrict bill)

Jason Turner from the Colorado River District was introduced to discuss Senate Bill 16-145. It would enable a new method in which the river district could set up a subdistricts to accomplish specific objectives for constituents who would directly benefit from projects funded by a subdistrict.

With the water plan published and all the basin implementation plans included, this is an alternative method to set up a subdistrict would be advantageous to its constituents. Currently the River District can set up a subdistrict with the signatures of 50% of land owners within it. This would be very hard to achieve in areas where there are many absentee land owners like Summit County. The proposed bill would require a unanimous vote of the River District board, then there would be a petition, requiring 10% or 200 whichever would be less of the landowners in proposed subdistrict's boundaries. Then it would be put to a vote in a general or special election. If there were a mill levy there would be a separate vote on that. Director Brenner, asked, and attorney responded, indeed they sought to lower the standard to get on the ballot.

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Director Sharp expressed his concern and asked about the potential for a provision that a conservancy district could opt out or partially opt out. That apparently was not workable from the River District, their view that the Board member appointed from the area to their Board would be a check on that. The Board discussed pros and cons of the potential issues with the bill. Jason related that the River District anticipated this as a way to create taxing areas the area where the benefits would be realized. He gave some examples of projects they are helping with; it could assist in areas where there is no tax base for a conservancy district.

Manager McBride asked if there was any discussion of a subdistrict being created in the Yampa Basin. Director Monger mentioned that we are part of the River District currently and a reason to support this bill is that the River District could fund more localized projects within its boundaries appropriately. He does not want Routt county being part of a taxing district for a project that provides no benefits to our county.

Jason stated that the River District received support this week from water congress and other conservancy district's and would really appreciate support from the Upper Yampa Water Conservancy District.

Director Sharp moved to support the Senate bill 16-145, concerning an alternative mechanism for creating a sub-district of the Colorado River Water Conservation District. Director Brenner seconded the motion which was unanimously approved.

Report from the District Engineer

Reservoir Water Status

Engineer Rossi updated the board of directors on the current storage levels in Stagecoach and Yamcolo Reservoirs.

Stagecoach Grazing Lease

Engineer Rossi proposed moving the item of grazing lease up in the agenda in consideration of public present. Tom abstained from discussion and vote, as he has and is representing some of the parties involved. Ken also disclosed he's been a friend of the Gay family for a long time.

Public: Bruce Enever, Tyler Jaycox (CPW), Todd Hagenbuch, Bill Gay

Engineer Rossi recounted the background information for the Grazing lease at Stagecoach.

Several parties are interested in obtaining the Grazing Lease at Stagecoach from the UYWCD. The letters documenting that interest were presented to the board.

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A letter from the CPW offering to assume responsibility for managing the Grazing Lease at Stagecoach was also presented to the board.

Engineer Rossi read language from the Rule and Regulation of the UYWCD regarding utilization of property of the UYWCD by third parties.

There was a discussion of the Grazing Lease lands extents and adjacent grazing leases.

Tyler Jaycox from CPW spoke. Mr. Jaycox presented the CPW's desire to manage the grazing practices at Stagecoach. Mr. Jaycox answered questions and provided clarification on the letter from CPW presented to the board.

District Manager Kevin McBride said from staff's perspective we are a water agency and the UYWCD staff does not have expertise in managing grazing practices on public lands. He also said it's useful for us to have a single point of contact within the CPW and asked if Craig Preston could be our single point of contact.

There was a discussion of the CPW's proposed changes to the grazing management.

There was a discussion of the springs located within the Grazing Lease area.

There was a discussion of the criteria the CPW and other agencies use to award grazing lease contract on other public lands.

Director Woodmansee proposed to get the stakeholders together and find a solution.

Engineer Rossi asked if the district wanted to lease the land this year. Director Monger stated his opinion the District does.

There was a discussion of how the income from the grazing lease would be managed and accounted for.

Counsel Weiss proposed to not amend the conservation easement, but to delegate the management of the grazing lease to the CPW, for three to five years, then determine if the results were positive, then determine whether or not to commit to an agreement with the CPW irrevocably.

Director Jones asked when does the potential date, when is the drop dead date that they need to know. Todd Hagenbuch said the current lease agreement states cattle cannot be there earlier than June 15.

Director Brenner inquired and Bob Weiss confirmed that the UYWCD can include in the agreement with CPW that the use is only for grazing, and other specifics, including the criteria to be used of whom be chosen.

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Director Monger moved to delegate the management of the grazing lease to the CPW for a three-year period, and work out an interim agreement, fair rent charged, money goes back in the property, no administration fees to be included, with CPW doing a consensus building process with neighboring owners and potential lessees, and provide accounting process, and that is grazed this year. Unanimous approval. Director Sharp and Redmond abstained from voting.

Yamcolo Special Use Permit Update

Engineer Rossi presented background information regarding the Yamcolo Special Use Permit (SUP). Two outstanding issues under discussion for the re-issue of a long-term SUP for Yamcolo are peak flow release and minimum release requirements.

Engineer Rossi presented a Memo and analysis of the proposed minimum flow and peak flow release requirements to the board. There was a discussion of these proposed flow requirements.

Manager McBride stated the District's main concern is that we be held to requirement that we do not control.

There was further discussion of the proposed release requirements and the potential duration for the new long term SUP.

The board directed Engineer Rossi to request from the USFS a new short-term SUP, extending until 2020, containing the same minimum and peak flow release requirements as the previous SUP that expired in 2011.

Report from General Counsel

Consideration of Stahl settlement documents –

Counsel Weiss presented background information on the Stahl and Stagecoach Reservoir boundary. It is his opinion that an agreed upon boundary with all parties would be beneficial for avoiding problems in the future.

Skidge Moon, Surveyor and owner of D&D Inc., presented his findings and submitted a memo for the District to review. Mr. Moon explained that there are numerous maps, deeds, conveyances, inconsistencies, and errors which will require further investigation. Mr. Moon also presented a map of the FERC boundary which was reviewed. There was discussion about an amendment to the FERC license if the boundary line were to change.

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.

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Director Brenner made a motion to go into executive session; it was seconded by Director Woodmansee. 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 YIA contract negotiations. 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 approximately 5:30 PM. and concluded at approximately 6:10 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.

Director Sharp moved to approve all the settlement documents provided by counsel, to complete the settlement, authorize counsel to non-material changes as necessary to consummate the settlement, and any material changes from those documents may be approved by the Executive Committee, other than the dollar amount being paid. Director Monger seconded the motion which was unanimously approved.

Director Sharp moved to authorize the District manager to send a letter of demand of arbitration to YIA, according to YIA contract provisions, and that said letter be sent no sooner than April 6, 2016; to add an agenda item in the April 20 2016 Board Meeting for the election of an arbitrator to represent the District in contract negotiations with YIA. Director Monger seconded the motion, which was unanimously approved.

Director Monger suggested Dan Strnad, accountant for the county, as an arbitrator.

Director Sharp moved to approve Southwestern Energy Production (SW) request to terminate their water storage contract, conditional to SW's payment of \$40,000 and conditional to their forfeiting and not using of water storage in the current year. Director Brenner seconded the motion which was unanimously approved.

Determination of future meetings The scheduled date for the next Board meeting was confirmed, being Wednesday April 20, 2016 1:30 pm at the District office.

The meeting was adjourned at 6:15 PM.

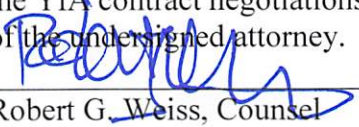
I certify that the foregoing constitutes a true and correct summary of the proceedings at the above referenced meeting.


Kevin McBride, District Secretary/Manager

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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 Litigation and the YIA contract negotiations constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

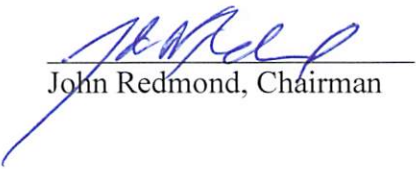


Robert G. Weiss, Counsel

Date: 6-24-2016

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: 7/27/16