

RECORD OF PROCEEDINGS

UPPER YAMPA WATER CONSERVANCY DISTRICT BOARD OF DIRECTORS MEETING SEPTEMBER 20, 2017, 1:30 PM 3310 CLEAR WATER TRAIL, STEAMBOAT SPRINGS

MINUTES

Vice President Doug Monger called the meeting to order and declared a quorum present. In addition to Director Monger, the Board members present were Bob Woodmansee, Jim Haskins, Ken Brenner, Stephen Colby, Tom Sharp, and Webster Jones. 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 Ryan Jarvis, Attorney, and Ben Coomer, Hatt Ranch; Andrea Schaffner, Frank Schaffner, and Rick Milway, members of the Yamcolo Irrigators Association; Erin Light, Division Engineer, Colorado Division of Water Resources (CDWR); Glen Light, Water Commissioner, CDWR; Brian Romig, Water Commissioner, CDWR; Scott Hummer, Water Commissioner, CDWR; Margaret O'Donnell, Attorney; Claire Sollars, Attorney, Cantafio Hammond; Kelly Romero-Heaney, Water Resources Manager, City of Steamboat Springs; Julie Taulman, Executive Director of Steamboat Adaptive Recreational Sports (STARS); and TK Wright, STARS Board of Director President. Scott Grosscup, Attorney, Balcomb & Green joined part of 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 July 26, 2017 Board Meeting; action item
- (4) 1:45 pm Public Input and Comment;
- (5) 1:50 pm Stagecoach Fill and Release Policy Review with City of Steamboat Springs;
- (6) 2:20 pm STARS Augmentation Contract; action item
- (7) 2:40 pm Financial Report; action item
 - a) Approval of Disbursements
 - b) Budget Comparison
- (8) 2:50 pm Preliminary Budget;
- (9) 3:10 pm Future Contracting – Issues/Timelines;
 - a) Facilities Update and Long Term Capital Needs
- (10) 3:40 pm Executive Session with Bob Weiss, legal Counsel, under CRS § 24-6-402(4)(b) to discuss legal issues regarding Stagecoach Contract Extensions. Mere presence or participation of an attorney at an executive session of the local political body is not sufficient to satisfy the requirements of this subsection (4).
- (11) 4:10 pm Report from Special Counsel;
 - a) Water Case Updates
 - b) Elk River Augmentation, Stipulation with Xcel action item

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- (12) 4:20 pm Report of the General Manager;
 - a) Morrison Creek District Augmentation Plan
 - b) Misc. Updates
 - i) Office Space action item
 - ii) Ski Area Contracting from Stagecoach
 - iii) YVEA Green Power
 - iv) External Affairs
 - v) Survey
 - vi) Retreat: Catamount Lake House October 18, 2017 8:30 am – 5:00 pm
- (13) 4:50 pm Report from District Engineer;
 - a) Reservoir Water Status and Bear River Administration
- (14) New Business;
- (15) Adjournment.

The meeting was called to order.

Meeting Agenda Manager McBride referred to item 5, Stagecoach Fill and Release Policy. He stated that Jason Lacy City Councilman from the City of Steamboat who was planning to attend and address the Board regarding that agenda item, was unexpectedly sick and unable to attend. Thus, some of the expected discussions including participation from the City would not be taking place today. It was requested that to accommodate the schedule of some of the attendees present, item (12) (a) Morrison Creek Augmentation, be moved in the agenda to be (11) (b). Director Sharp moved to approve the agenda as amended. Director Jones seconded the motion which was unanimously approved.

Meeting Minutes Director Woodmansee moved to approve the July 26, 2017 Meeting Minutes. Director Brenner seconded the motion which was unanimously approved.

Public Comment Ms. Andy Schaffner, recently retired water commissioner for the CDWR, spoke. Ms. Schaffner started her career as a ditch rider at the Five Pine Mesa ditch and worked in the area over the years, in different roles, including as ditch rider for the District and as a water commissioner. She handed out and discussed a document she had written to outline the history of the ditch, to the best of her knowledge. She spoke of historical relationships between the ditch, Yamcolo and Stagecoach reservoirs. She stated she wished to present her view of the historical information to the Board, for reference in future contract negotiations of Stagecoach Enlargement water.

Other longtime residents who had been involved with the ditch over the years were present and were introduced: Ben Coomer, Ryan Jarvis and Mr. Schaffner. Mr. Jarvis handed out a proposed legal agreement. Ms. Schaffner asked that an agenda item be added for the next regularly scheduled Board meeting, so the Board could respond in regards to the proposed agreement.

Ms. Erin Light was present and asked if, in order to accommodate members of the public present, the agenda item pertaining the Augmentation Plan in the Morrison Creek District could be advanced in the agenda so as to take place earlier and before the Executive Session. Director Sharp moved to change the agenda (11) (b) Morrison Creek District Augmentation Plan be prior to item (10) Executive Session. Director Brenner seconded the motion which was unanimously approved.

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Engineer Erin Light spoke about two orders issued to the District about measurement of the ditch and Yamcolo reservoir. Ms. Light pointed out that there is potential of mini-grant requests in regard to additional orders being issued by the Division in South Routt. Her agency is encouraging people to have higher level of responsibility of water use by repairing/replacing headgates and measuring devices.

Stagecoach Fill and Release Policy Review with the City of Steamboat Springs

General Manager McBride presented and discussed a Memorandum regarding the Stagecoach Fill and Release Policy. He discussed contract releases, legal requirements, legal abilities to store, the current year contract with the Colorado Water Trust and inflows and outflows of Stagecoach Reservoir in the current year, including water called by the City of Steamboat Springs, and minimum release regulatory requirements. The General Manager described communications with the City, expectations of outflows in the following dates. He then invited Ms. Kelly Romero-Heaney from the City of Steamboat Springs, who was present, to comment. Ms. Romero-Heaney asked if the conversation could be deferred to regularly scheduled Board meeting in November, when additional staff from the City could join the conversation. Engineer Rossi showed a graph with inflows and outflows of the Stagecoach reservoir, which directors had available on paper as well. Manager McBride clarified the District operated the power house in such a way that the river had an extra 1,000 AF while other contracted releases were also taking place. Ms. Romero-Heaney expressed desire to better understand the meaning of the District's policy in relation to non-consumptive uses.

STARS Augmentation Contract

Julie Taulman, Executive Director of Steamboat Adaptive Recreational Sports (STARS) and TK Wright, STARS Board of Director President were present. Ms. Taulman presented STARS' plan to build a 32-bed ranch facility for people with disabilities from across the United States. The project would be completed in phases over 3 to 5 years depending on donations. She reported that 100% of all permitting has been completed except for the well permit. Margaret O'Donnell, attorney for STARS, explained that the State would not grant a well permit without an augmentation contract. Director Monger explained that the building department would not allow construction without a well permit. STARS is requesting that their augmentation application be considered and expedited. Ms. Taulman requested that the District write a letter for STARS reflecting the availability of augmentation water to be contracted by STARS, to help in their permitting efforts.

Director Sharp moved that the Board delegate the review and approval of the augmentation plan submitted by STARS and the contract from the District to the Executive Committee (EC). Upon approval by the EC, the contract may be signed by the Chair, and that the General Manager send a letter to STARS indicating the augmentation procedure and the availability of water. Director Brenner seconded the motion which was unanimously approved.

Counsel Weiss asked the record to reflect he did not participate in the discussion; he stated he had done some work for STARS in the past.

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Financial Report The financial report was reviewed and discussed.

Director Jones moved to approve the expense report and accept the budget comparison report. Director Colby seconded the motion which was unanimously approved.

Preliminary Budget The 2018 budget was reviewed. Director Brenner spoke of the Gallagher Amendment and Director Monger inquired about capital maintenance projects. Rent in the draft 2018 budget is the same as 2017, but it is likely to change.

Future Contracting – Issues/Timelines

Counsel Weiss made reference to water storage contracts becoming due in the next few years. He stated some of the counter parties in these contracts have parties that have connections to our Board. He felt disclosure of potential conflicts should be made, and suggested that perhaps this would be an appropriate time to discuss that. Director Monger commented that the Board is not considering individual contracts, but rather discussing all contracts together. Director Sharp stated, as a matter of disclosure, that he has been an attorney with Mount Werner Water and Morrison Creek Metropolitan District, which have Stagecoach water contracts. Director Colby stated he is the General Manager of Morrison Creek Metro District. Director Woodmansee stated he is the President of Morrison Creek Metro District. Director Haskins stated he is part of the Hayden Town Board. The Town of Hayden has a Stagecoach water contract. Counsel Weiss expressed his opinion, and Director Sharp agreed, that there is no conflict with Directors Colby, Woodmansee and Sharp, since the Morrison Creek Metro contract will be unaffected with those negotiations. Director Brenner asked the three of them if they would feel comfortable with participating in discussions in general terms on Stagecoach water pricing. Director Sharp clarified the Morrison Creek contract has stipulations about specific fixed pricing and no pricing adjustments will occur. The pricing discussions, he clarified, are therefore not relevant to Morrison Creek, but they are relevant to Mount Werner Water and the Town of Hayden. He asked if it would be acceptable to the Board for directors Sharp and Woodmansee to have a part in general discussions, that are not particular to Mount Werner Water nor the Town of Hayden.

Director Brenner requested that the record reflect that the subject was discussed. He commented that we don't have representatives from all of our contractees, and asked if that was fair to all, even if the meetings are public and the minutes reflect discussions. Director Monger commented that if their pricing would be preferred, they would get the same treatment as other contractees. Director Woodmansee stated this is a small community such that if everyone who may have a potential conflict of interest were excluded, it would be hard to develop a quorum, precisely because this is a small community and there isn't a large pool of people to draw from. He further commented it was a precedent that he experienced before in this geographical area, but not in the Front Range. Director Jones stated his opinion that it is imperative to have all Board members contribute at the general policy level, and for all to be aware and alert to conflicts when discussions have to do with specific contract negotiations. Director Monger added that, if anything, it could be detrimental to

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the District, as someone may have an interest to have a lower price, rather than a higher price. Director Colby spoke, and said he thought the other contracting entities would welcome participation of all Board members at this stage in the process. Director Haskins said it's good for him to have the discussions as part of the Board, to help him understand how the District functions. He felt he is still learning, and said he'd be fine sitting out some of the discussions if the Board so desired; he also said he'd rather sit out rather than to have someone be uncomfortable about it. Director Colby echoed the same. Director Sharp commented that he has disclosed his conflicts of interest with those two entities for decades, and if other Board members collectively agree he should not participate or vote, he'll follow that, until then he'll continue to exercise his discretion as he has so far, excusing himself from discussions that he perceives could be a potential conflict of interest. Director Brenner thanked everyone for the discussion.

Future Contracting – Issues/Timelines

Facilities Update and Long-Term Capital Needs – Engineer Rossi presented a table of long term capital maintenance, and a table with long term replacement costs for Stagecoach Dam and Reservoir.

Report of the General Manager

Morrison Creek District Augmentation Plan -

Director Sharp spoke about Morrison Creek Metro District, describing its historical development and water available for use in that area. General Manager McBride said a map is being developed, and the District is working with the Division Engineer and with Routt County to determine which areas that the District can service through its augmentation plan, in the Morrison Creek District. Manager McBride stated it was his understanding that Morrison Creek has a moratorium in place. Director Monger inquired about proactive measures being pursued by the District. Manager McBride stated District staff is working with Resource Engineering. Division Engineer Light commented that if a lot sits within Augmentation sub-area A1, it has to use the augmentation plan, and the well itself must be built within the boundaries of the augmentation area. Ms. Light stated she tells people whether or not they fall within area A1 or not.

Director Sharp made reference to existing conflicts for certain Morrison Creek residents in securing water, past and current practices and challenges. He first made reference to a permit that when issued it is signed by Morrison Creek. Without that signature, he stated, the Routt County Planning Department would not issue a building permit. Morrison Creek, he added, is no longer signing land owner agreements as they can't deliver a promise that they will have a well permit. Director Sharp stated that if a lot was approved by June 1 1972, they could have water even if outside of area A1. If the lot was approved afterwards, and it is located within sub-area A1, then they can't have water.

Scott Hummer, Water Commissioner, CDWR, introduced himself. There was discussion about how different entities could work together to solve the issue at hand.

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Engineer Rossi made the point that a GIS map that could be available together with the Routt County assessors GIS map would be useful for most citizens assess if their properties are clearly within or without the augmentation area, at a minimum, and to trigger contacting the District should they be near the border of the program boundary in order to inquire whether or not their property could access augmentation water.

Director Colby stated that the amount of homes that can be built in the unserved subdivisions on well and vault is approximately 550. Director Sharp said there are about 2,000 lots. So a small percentage could be built. Director Sharp explained, and Div. Engineer Light agreed, if an owner consolidates his or her lots into a five acres property, then they don't need to purchase water through the Metro district. They can apply for a well directly with the State's Office. If they are entitled to the exempt well permit, then they can have a well. Otherwise they need an augmentation plan. And if they are outside of the augmentation area, they can't have water.

Director Brenner asked if a map could be provided in the future. Director Colby asked if a well was required for a building permit. Director Monger stated water hauling is not being approved for building nor for new subdivisions. Some properties, Director Monger said, have a well in place, and haul water in a short period of time during which they don't have enough water.

Report from Special Counsel

Scott Grosscup, Special Counsel, joined the meeting by phone. Counsel Weiss asked Counsel Grosscup if the Board should go into Executive Session.

Scott Grosscup, as Special 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.

Director Sharp made a motion to go into executive session. It was seconded by Director Haskins and 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 pending cases including the stipulation with Xcel Energy. 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 about 4:00 PM and concluded at about 4:20 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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Director Sharp moved to ratify the stipulation between the District and Xcel Energy in case 15CW3058, with the Public Service Company of Colorado, a subsidiary of Xcel Energy. Director Woodmansee seconded the motion which was unanimously approved.

Report of the General Manager cont.

Misc. Updates

Office Space – Director Sharp recused himself and left the room. Director Monger reported that Director Brenner, Manager McBride and himself met with Dan Berkey, Board member of Mount Werner Water District (MWW) to discuss office options. A letter from MWW requesting a financial commitment towards the remodel and a lease was presented and discussed.

Manager McBride proposed that Loui Antonucci, real estate agent, be hired as a consultant to analyze the costs for purchase and remodel. Discussion followed. There was general agreement to hire Mr. Antonucci. Counsel Weiss said his and Manager McBride's recommendations are to table this discussion for now and discuss it at the Board Retreat. They recommend that Mr. Antonucci prepare an analysis of what office space is available, compare it with the MWW offer, and then review it in Executive Session at the Board Retreat.

Director Brenner moved to table the subject, and to follow the strategy described by Counsel Weiss, and to review it in Executive Session at the Board Retreat in October. Director Woodmansee seconded the motion which was unanimously approved.

Ski Area Contracting from Stagecoach – Steamboat Ski & Resort Corporation (Ski Area) subcontracts water from MWW. There has been mutual agreement that it may be better for the Ski Area to contract directly with the District. Manager McBride is going to meet with the new Ski Area Vice President of Mountain Operations, Dave Hunter to discuss.

YVEA Green Power - Manager McBride reported meeting with representatives of YVEA. The opportunity to sell licensing for the Green Power was discussed.

External Affairs - Andy Mueller will be replacing the current General Manger, Eric Kuhn, at the Colorado River District. Also, a new public relations person has been hired, who is working with External Affairs Manager, Chris Treese. Mr. McBride indicated Dan Birch will be retiring from the River District at the end of the year.

Endangered Fish Program – Manager McBride presented a document about the Endangered Fish Program which is scheduled to expire in 2023. Discussion followed.

Survey – The Survey results are being worked on and the results will be presented at the Annual Board Retreat in October.

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Retreat – The agenda for the Board Retreat will include finalizing contract and pricing negotiations, Morrison Creek, budget, and the General Manager review in Executive Session.

Director Monger spoke about assessment considerations in regards to Morrison Creek District Augmentation plan as some lots will be not buildable. He then spoke about the 2A tax money Peter Van de Carr applied for.

Report from District Engineer

Reservoir Water Status and Bear River Administration - Engineer Rossi presented and discussed a chart describing Stagecoach Reservoir operations for the 2017 water year.

Engineer Rossi discussed the operations at Yamcolo. Engineer Rossi informed the board that the Colorado Division of Water Resources (CDWR) had issued letters ordering water users on the Bear River to fix their measuring devices.

Bob 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.


Director Sharp made a motion to go into executive session. It was seconded by Director Colby and 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 Stagecoach Contract Extensions and Yamcolo Contract Provisions. 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 about 5:25 PM and concluded at about 6:00 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 was confirmed, being Wednesday November 15, 2017 at 1:30 PM, at the District's office.

The meeting was adjourned at 6:05 PM.

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

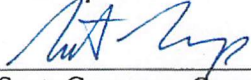


Kevin McBride, District Secretary/Manager

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STATEMENT FROM ATTORNEY REGARDING ATTORNEY-CLIENT PRIVILEGE

The undersigned Scott Grosscup 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 pending cases including the stipulation with Xcel Energy constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

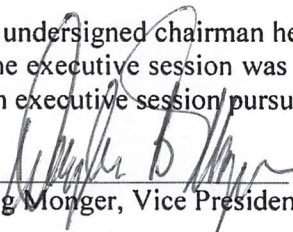


Scott Grosscup, Counsel

Date: 11/27/2017

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.

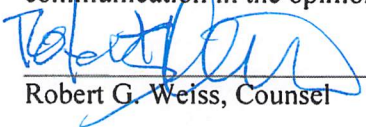


Doug Monger, Vice President

Date: 12/15/17

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 Stagecoach Contract Extensions and Yamcolo Contract Provisions. constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

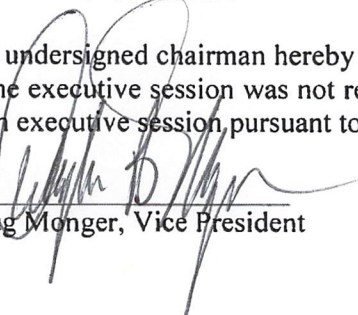


Robert G. Weiss, Counsel

Date: 1-31-2018

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.



Doug Monger, Vice President

Date: 12/5/17