

RECORD OF PROCEEDINGS

UPPER YAMPA WATER CONSERVANCY DISTRICT BOARD OF DIRECTORS MEETING MAY 16, 2018, 1:30 PM 3310 CLEAR WATER TRAIL, STEAMBOAT SPRINGS

MINUTES

Chairman Ken Brenner called the meeting to order and declared a quorum present. In addition to Chairman Brenner, the Board members present were Bob Woodmansee, Doug Monger, Ron Murphy, Stephen Colby, and Tom Sharp. 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 were Erin Light, Division Engineer, Colorado Division of Water Resources; Lou Dequine, property owner in Morrison Creek; Frank Schaffner, Andy Schaffner, and Rick Milway, Yamcolo storage contract holders; Jerry Smith; Craig Preston, Stagecoach State Park Manager; Scott Hummer, Water Commissioner, Colorado Division of Water Resources; and Chris Catterson, Catterson & Company, P.C.

Scott Grosscup, Attorney, Balcomb & Green, special counsel to the District; Jackie Brown, Natural Resource Policy Advisor, Tri-State Generation & Transmission; Zach Smith, Attorney, and Mickey O'Hara, Water Resources Engineer, Colorado Water Trust 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) Consent Agenda;
- (3) Approval of Agenda for Meeting; action item
- (4) 1:35 pm Approval of the minutes of the March 22, 2018 Board Meeting and ratification of the April 27, 2018 Executive Committee Meeting; action item
- (5) Public Input and Comment;
- (6) 1:40 pm Stagecoach Water and Five Pines Mesa Ditch: Rick Milway;
- (7) 1:50 pm Financial Report; action item
 - a) Approval of Disbursements
 - b) Budget Comparison
 - c) 2017 Fiscal Year Audit
- (8) 2:30 pm Report of the General Manager;
 - a) CO Parks and Wildlife Update and Lease Amendment Request: Craig Preston
 - b) Colorado Water Trust 2018 Update
 - c) Four Counties Water Rights Tour Reschedule
 - d) Office Space Update
 - e) Morrison Creek: RFQ Process Summary and Schedule
 - f) Stagecoach Water Storage Contract Form

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- g) Steamboat Ski Area Water Storage Contract action item
- h) Tri-State Water Storage Contract Negotiations
- i) External Affairs
- (9) 3:45 pm Report from District Engineer;
 - a) Reservoir Water Status
 - b) 2018 Facilities Capital Projects
- (10) 4:05 pm Report from General Counsel;
 - a) Stillwater Reservoir Operations Contract with Bear River Reservoir Co. action item
 - b) Stillwater Ditch Special Use Permit Update
 - c) Response to Division Engineers Comments Master Plan Diligence
 - d) Misc. Updates
- (11) 4:35 pm Busk Ivanhoe Statute;
- (12) Executive Session with Bob Weiss, legal Counsel, under CRS § 24-6-402(4)(b) to discuss legal issues on Contract Negotiations. Mere presence or participation of an attorney at an executive session of the local politic body is not sufficient to satisfy the requirements of this subsection (4)
- (13) New Business;
- (14) Adjournment.

Meeting Agenda Director Monger moved to approve a modified agenda where 10(a) and 10(b) are moved to be included with item 6 of the agenda. Director Sharp seconded the motion which was unanimously approved.

Meeting Minutes Director Colby requested the March 22, 2018 Board Meeting minutes be changed to reflect that he was not in attendance. Director Brenner requested that the April 27, 2018 Executive Committee Meeting minutes be amended to change: “Counsel Weiss did not participate in the discussion regarding Steamboat Ski & Resort Corporation contracting” to “Counsel Weiss recused himself due to conflict of interest.”

Director Sharp moved to approve the March 22, 2018 Board of Directors meeting minutes with the changes as discussed and ratify the April 27, 2018 Executive Committee meeting minutes with the changes as discussed. Director Monger seconded the motion which was unanimously approved.

Public Comment No comments at this time.

Director Sharp inquired about the status of the Bobby George grant application. Manager McBride reported that Mr. George has postponed his application to the Board until the fall.

Director Sharp made a motion for the Bobby George grant application topic to be postponed indefinitely until a new request is presented. Director Monger seconded the motion which was unanimously approved.

Stagecoach Water and Five Pines Mesa Ditch: Rick Milway

10 (a) Stillwater Reservoir Operations Contract with Bear River Reservoir Co. –

Rick Milway spoke: In May 2016 Mr. Milway first came to the Board expressing concern about water contracts renewing in 2019 and he wanted to initiate communication regarding 2018. Mr. Milway said the irrigators need to make plans for the future.

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Mr. Milway stated he had a list of questions for the Board, as follows:

- 1) What would be the cost of reservoir water per share?
- 2) Will the ditch assessment be included in the per share costs after 2020?
- 3) What is the status of the question of combining the Stagecoach and Yamcolo water into one pool?
- 4) If some contracts did not renew, would that water become available to other irrigators, be it on the river or on the ditch?
- 5) Would there be a guarantee that a portion of the water be allocated for agricultural water?
- 6) If a large block of water contract was not renewed, would there be a possibility of writing a 10-year contract rather than a 5-year?

Andi Schaffner spoke next, and asked how water would be allocated in the ditch in the future, in particular, whether there would be a possibility for water users to lease space within the ditch, if the water being carried through that lease were not Yamcolo stored water. Additionally, she inquired about future ditch costs possibly reflecting staff costs from seasonal ditch riders to year-round full time employees.

Director Sharp spoke and stated contract negotiations ought not to take place during board meeting, prior to the designated committee meetings with the proper representative's present. He also stated that it is not appropriate for the Board to discuss contract negotiations outside of Executive Session; however, it is appropriate to receive input. Director Brenner agreed and said he wants to hear from each party. He added that since there are contracts that are perpetual, and others that are not, two meetings have already been scheduled with the respective parties, to receive their input.

Frank Schaffner expressed that he would like a perpetual contract. Rick Milway said he was not looking for a perpetual contract but for some assurance that a portion of the water would be earmarked as agricultural water. Mr. Milway also said he has received inquiries from other irrigators expressing interest in the same matter.

Director Sharp reviewed that the District needs to have flexibility to respond to changing circumstances and to changing water needs. The process is going to be slow, methodical and there could be some difficult matters to resolve. Cost was discussed. Director Sharp stated that the District will not provide a fixed cost that will remain unchanged for 20 years and that the District is prepared to adjust the cost annually.

Director Woodmansee stated he needed background information on the list of questions presented before he would be able to discuss the subject further. Director Colby expressed he understood the irrigators desire for certainty, but he also understands it is a complex issue and thus it needs further discussion. Director Brenner re-iterated that these are complicated issues and that this is going to take time. Director Monger requested that the May 31st contract negotiation meetings be focused.

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Counsel Weiss presented a draft Agreement for Limited Services for Stillwater Reservoir. Engineer Rossi stated that this is an agreement to formalize operations of the District employees at the Stillwater Reservoir.

Director Sharp noted some typographical corrections were needed.

Director Monger made a motion to approve of the Agreement for Limited Services for Stillwater Reservoir as amended. Director Woodmansee seconded the motion which was unanimously approved.

10(b) Stillwater Ditch Special Use Permit Update –

Counsel Weiss reviewed the history of the Five Pines Mesa Ditch and the Special Use Permit (SUP). The Ditch existed prior to the Forest Service and the District. In 1986 the District applied for a SUP and then re-applied in 1997. The Forest Service has never acted on the application. One question to be addressed is whether government immunity applies to the Stillwater Ditch & Reservoir Company? Counsel Weiss will provide additional information at the next scheduled Board of Directors meeting. Engineer Rossi added that this is an important question because it applies to who submits the permit, the District or the Reservoir Company. Director Sharp stated that in his opinion the application should be submitted by the District since it is the District who expanded the Ditch. Manager McBride stated that the District's plan to install a better measuring device on the Ditch is driving the immediate need to complete the permit process.

Financial Report

2017 Fiscal Year Audit – Chris Catterson presented the 2017 audited Financial Statements. He described the audit process, assessment of risks and findings. There were negligible adjustments and proper procedures towards risk mitigation are in place. Mr. Catterson described risk mitigation procedures in regards to receipt of income and disbursements for expenses. He described the ratio of unrestricted net position to annual operating expenses, legal expenditures over time and reserves. Restricted funds were discussed.

Director Sharp moved to accept the audit with the changes to page 10 of the notes. Director Colby seconded the motion which was unanimously approved.

Approval of Disbursements – Director Sharp inquired about the USGS Streamgaging service cost; discussion followed. Director Monger moved to accept the disbursements. Director Sharp seconded the motion which was unanimously approved.

Budget Comparison – Manager McBride discussed the Budget Comparison report and a chart of the legal expenses was presented and reviewed.

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Director Monger spoke of the Specific Ownership Tax implications for the District.

Report of the General Manager

CO Parks and Wildlife Update and Lease Amendment Request –

Craig Preston presented: Colorado Parks and Wildlife (CPW) would like to begin discussion on the lease renewal between CPW and the District at Stagecoach Reservoir. CPW won't be able to fund any capital projects with only six years remaining on the current lease. Director Brenner requested a letter from CPW with this request so a formal process can begin.

Engineer Rossi reviewed that there are currently two proposals from CPW. One is a parking lot and the other is a trail. The parking lot proposal is moving forward and CPW will present this proposal to the District in the future. The trail proposal involves approximately a ¼ mile of trail that gains access to adjacent Bureau of Land Management (BLM) land. This trail is part of the District's FERC license. There was general support of public access to BLM land but not necessarily support of motorized access as that might require an amendment to the FERC license.

Colorado Water Trust 2018 Update – Zach Smith and Mickey O'Hara with the Colorado Water Trust (CWT) and Scott Grosscup with Balcomb and Green were present via phone. Manager McBride reviewed the lease history and the three out of five years clause. Discussion followed. Zach Smith said the CWT projections are that their request for water release will be approximately the same as last year's. The question is could the water be provided from other water rights? Manager McBride proposed that the District move forward with trying to sell water to the CWT with CWT covering the transactional costs. There was general agreement from the Board of Directors to proceed.

Four counties Water Rights Tour Reschedule – The previous tour was cancelled due to weather. The General Manager will reschedule the tour to occur near the date of the next scheduled Board of Directors meeting.

Office Space Update – Director Sharp recused himself due to a conflict of interest and left the room.

Manager McBride will arrange a date to visit the Yampa Valley Electric Association (YVEA) office space that may be for lease and communicate with the assigned Board members, Directors Monger and Brenner. Director Monger stated he does not need to visit the space. Director Brenner pointed out that Manager McBride is also working with realtor Loui Antonucci to look for office space. Manager McBride stated Mount Werner Water is proceeding with design plans that exclude renters.

Morrison Creek: RFQ Process Summary and Schedule – Manager McBride has been making progress on the RFQ working with General Counsel. Director Monger commented that the District

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will be asking the Yampa/Green Roundtable for \$100,000 to help pay for permitting work to firm the supplies of Stagecoach Reservoir.

Stagecoach Water Storage Contract Form – Manager McBride stated that as the District works on contracts, further conversations are needed regarding firmness of pools and the District’s policies. Special Counsel Grosscup and District Counsel Weiss have been working on this.

Counsel Grosscup spoke about the contract form which was previously reviewed by the Executive Committee. Director Sharp discussed the contract with the Board so he could represent the Board accurately in his role as part of the Contract Negotiating Committee.

Steamboat Ski Area Water Storage Contract – Counsel Weiss recused himself due to a conflict of interest and left the room.

The Board of Directors requested more time to review the contract before sending it to the Ski Area. The Ski Area is curious about it but they are not in need of the contract at this time.

Report from the General Counsel

Response to Division Engineers Comments Master Plan Diligence – Special Counsel Grosscup updated the Board on the case which is scheduled for trial in April 2019.

Misc. Updates – Counsel Scott Grosscup updated the Board on the Elk River Augmentation plan. There are changes proposed by the Colorado Water Conservation Board which Mr. Grosscup needs to review. Information has been sent and a signature from the Water Referee is expected soon.

Report of the General Manager (cont.)

Tri-State Water Storage Contract Negotiations – Jackie Brown with Tri-State was present by phone.

Director Sharp suggested that the Board appoint a negotiating committee to help the General Manager as he meets with Tri-State to discuss the water storage contract. Director Sharp expressed that the negotiations could be complex.

Director Sharp moved that the Board designate a negotiation committee with respect to the Tri-State contract negotiations and appoint Director Brenner and himself. Director Monger seconded the motion which was unanimously approved.

External Affairs – Manager McBride presented information discussed at industry meetings he participated in. Meeting handouts were reviewed and discussed.

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Report from the District Engineer

Reservoir Water Status – District Engineer Andy Rossi presented an update on the current water volume status and inflow forecasts for Stagecoach and Yamcolo Reservoirs. Stagecoach reservoir is full and Yamcolo Reservoir is within approximately 300 AF of full.

Water Commissioner, Scott Hummer, and Division Engineer, Erin Light, discussed uses, releases, and diversions in the upper Bear River.

2018 Facilities Capital Projects – Engineer Rossi stated the Five Pines Mesa ditch flow measuring device work is ready to begin but there is potential for the work to be held up due to the Special Use Permit (SUP) with the United States Forest Service (USFS). Counsel Weiss advised the District to ask the Forest Service if the work could be done independently of the SUP.

Director Sharp moved that the SUP application finalization and approval for submittal to the USFS be delegated to the Executive Committee. Director Woodmansee seconded the motion which was unanimously approved.

Busk Invanhoe Statute

Director Sharp discussed HB 17-1291 and the Supreme Court's Busk Ivanhoe decision. Director Sharp asked the Board to give some thought to if the District should follow through with implementing the new statute by notification to the Division Engineer to permit stored water in Yamcolo for M&I use to be released and administered down to re-storage in space available in Stagecoach Reservoir, for later release to the contract allottees the District has below Stagecoach Reservoir. Discussion of the District contracts ensued.

Executive Session for Legal Matters. 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.

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 on 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 about 5:25 PM and concluded at about 5:50 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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Determination of future meetings The scheduled date for the next Board meeting will be Wednesday July 25, 2018 at 1:30 PM, at the District's office.

Director Brenner proposed that the date of the next Executive Committee meeting be June 21, 2018 at 12:00 pm with lunch provided.

The meeting was adjourned at 5:50 PM.

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

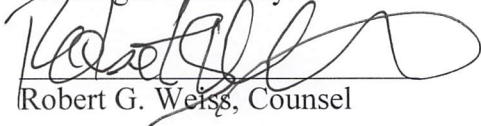


Date: 7/26/2018

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 Contract Negotiations constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

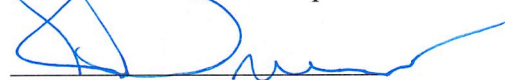


Date: 8-9-18

Robert G. Weiss, Counsel

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.



Date: 7/25/18

Ken Brenner, Chairman