

RECORD OF PROCEEDINGS

UPPER YAMPA WATER CONSERVANCY DISTRICT BOARD OF DIRECTORS MEETING SEPTEMBER 19, 2018 1:30 PM 3310 CLEAR WATER TRAIL, STEAMBOAT SPRINGS

MINUTES

Chairman 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, Jim Haskins, John Redmond, Ron Murphy, 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 Erin Light, Division Engineer, Colorado Division of Water Resources; Claire Sollars, Attorney, Colorado Water Matters; Jerry Smith; and Frank Alfone, General Manager, Mount Werner Water District.

Scott Grosscup, Attorney, Balcomb & Green, Special Counsel to the District; and Graham Gilbert, Attorney, Snell & Wilmer, Special Counsel to the District joined part of the meeting by phone.

The following agenda was proposed:

AGENDA

- (1) 1:00 pm Establishment of Quorum and Call to Order;
- (2) Consent Agenda;
- (3) Approval of Agenda for Meeting; action item
- (4) 1:05 pm Approval of the minutes of the July 25, 2018 Board Meeting and Approval of the August 15, 2018 Special Board Meeting; action item
- (5) Public Input and Comment;
- (6) 1:10 pm Yampa River Call Description (Erin Light)
- (7) 1:40 pm Financial Report;
 - a) Approval of Disbursements action item
 - b) Budget Comparison action item
 - c) Preliminary Draft 2019 Budget
- (8) 2:00 pm Report of the General Manager;
 - a) Stagecoach Firming Consultant Selection action item
 - b) Office Update – Introduce Tom Scrimgeour
 - c) Steamboat Ski Area Stagecoach Contract Update action item
 - d) Five Pine Ditch Ownership Transfer Proposal Update
 - e) Contract Negotiation Update

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- f) External Affairs
 - i) Roundtable Basin Implementation Plan
 - ii) Yampa Water Fund
 - iii) Steamboat Stream Management Plan
 - iv) Integrated Water Planning Process
 - v) Water Education Colorado
 - vi) IBCC
- g) Review of Retreat Agenda
- (9) 3:30 pm Report from District Engineer
 - a) Reservoir Water and Ditch Water Status
 - b) Capital Projects Update
- (10) 3:45 pm Report from Counsel;
 - a) Yampa River Call (Scott Grosscup)
 - b) Water Rights Cases (Scott Grosscup)
 - c) Water Horse Resources Application (Graham Gilbert)
- (11) Executive Session with Bob Weiss, legal Counsel, under CRS § 24-6-402(4)(b) to discuss legal issues on Yampa River Call, Water Rights Cases and Water Horse Resources Application. Mere presence or participation of an attorney at an executive session of the local politic body is not sufficient to satisfy the requirements of this subsection (4).
- (12) New Business;
- (13) Adjournment.

The Chairman declared a quorum present and the board meeting started at 1:20 PM. Chairman Brenner invited Ms. Erin Light, Colorado Division of Water Resources (CDWR) Div. 6 Engineer, to update the Board on the recent and first time ever water call on the Upper Yampa river, which had taken place a few days prior.

Ms. Light said the property owner at Lily Park had contacted the CDWR on August 20 asking whether they could turn on their water pumps. Ms. Light discussed other details and a process that ultimately concluded in the call of the river being in effect, for the first time in the history of the Upper Yampa. Manager McBride and Andy Rossi commented on water releases from the Stagecoach Reservoir that followed the call. Water was released for Tristate, Colorado Water Trust, and for the District's Yampa River Augmentation Plan.

Chairman Brenner asked Engineer Light if the call meant the Upper Yampa river was deemed over-appropriated, and what the implications of this call might be into the future. Ms. Light indicated she was in the process of determining that.

Other related topics were discussed: estimated time it takes for water to travel from the Stagecoach Reservoir to Craig and regarding water measuring and water control devices, the approximately 550 devices that are out of compliance for proper administration that are located within the District's boundary.

Director Sharp suggested the amount reimbursed to applicants through the mini-grant program be adjusted by CPI, to better respond to current costs of water measuring and water control devices.

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Engineer Rossi reviewed a hydrograph and pointed out releases through the Colorado Water Trust and the Tri-State contracts; and flows over time at Steamboat Springs, Hayden, Craig, Maybell and Deerlodge, Colorado.

Consent Agenda There were no items in the consent agenda.

Meeting Agenda There was a discussion followed by agreement to move items 8 a) 8 b) and 8 c) earlier in the agenda, in this way omitting time and cost related to consultants waiting. Director Sharp moved to approve of the modified agenda. Director Woodmansee seconded the motion, which was unanimously approved.

Meeting Minutes Director Monger moved to approve the July 25, 2018 and the August 15, 2018 Meeting Minutes. Director Sharp seconded the motion, which was unanimously approved.

Public Comment Chairman Brenner invited members of the public present to speak; there was no public comment.

Financial Report The Cash Disbursement report was reviewed and discussed. It included regular operating expenses, engineering and legal services, a payment for streamgaging, and a capital expenditure for concrete work at Stagecoach dam. Director Monger moved to approve the Cash Disbursement report. Director Murphy seconded the motion; it was unanimously approved.

Office Manager Karina Craig presented the budget comparison report for the period ending August 31, 2018. Salient points were discussed. Director Monger motioned to accept the budget comparison report. Director Woodmansee seconded the motion; it was unanimously accepted.

The preliminary draft of the 2019 budget was presented. Salient points had been communicated through a memorandum and were reviewed. The 2019 budget draft will be refined further; it will be reviewed and discussed at the October 10 board meeting and retreat, and at the regularly scheduled Board meeting on November 14, 2018.

Report from Counsel

Report of the General Manager: Steamboat Ski Area Stagecoach Contract Update – Scott Grosscup, Special Counsel for the District, joined the meeting by phone. He summarized recent progress resulting in the contract for 250AF of Stagecoach water storage that was being presented to the Board at the meeting. Mr. Grosscup had been in frequent communication with the Ski Corporation; it had requested clarifications and some minor changes. Mr. Grosscup asked the Board if the proposed contract could be forwarded to Tri-State, per contract requirements, and if, upon response from Tri-State, the Board could authorize the proposed contract between Ski Corp and the District to be fully executed.

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There was discussion. Director Sharp commented that this newly developed contract could be used as a base for future new contracts, as some older contracts will be expiring in the next few years. He pointed out that section three of the contract, which refers to water use of snowmaking, would have to be modified in other contracts. There was discussion about releases of water from Stagecoach reservoir. Engineer Rossi commented that winter releases of water from the Stagecoach reservoir should generally not represent a problem. Office Manager Craig pointed out that the Denver-Boulder-Greeley Consumer Price Index (CPI) indicated in the contract is no longer in use. The Bureau of Labor Statistic's new geographical area for the CPI is referred to as Denver-Aurora-Lakewood. The new index will be released more frequently; it will be measured six times annually.

Director Sharp moved to approve the proposed contract, with the amendment of the language referring to the aforementioned CPI index; to authorize staff to present the contract to Tri-State, and to then execute the contract with the appropriate party. The motion was seconded by Director Redmond and unanimously approved.

Yampa River Call, Water Rights Cases – Special Counsel Grosscup discussed recent developments in various water right cases. He discussed water accounting, the Four Counties water rights, the Coal Creek case, expert disclosures that were filed, and continuing communication with the State. A memorandum was presented, reviewed and discussed. New and further updates will be presented at the November board meeting, as the cases continue to progress.

Report from the District Manager

Stagecoach Firing Consultant Selection – Director Redmond recused himself and left the room. Director Monger summarized the Board had met with the two project applicants and heard their presentations. Director Monger stated his opinion that both proposals were very qualified. Director Jones stated his opinion that AECOM fully understood the project, while Applegate seemed to clearly understand the process; in his perception, there was a distinct difference in the approach of each applicant. Director Sharp stated AECOM had in the past gone through the FERC application process, and he deemed such experience as very valuable. Applegate, he commented, did not have that experience. He further commented the fact that AECOM had teamed with Resource Engineering, which has a lengthy experience with water rights specific to the Yampa Valley. He believed Applegate may be more experienced in other geographical areas of the State. Director Brenner commented he was impressed at the depth of experience AECOM had displayed at their presentation; he stated his opinion that they were clearly better qualified for the project.

Director Monger moved to select AECOM to be the contractor for the Stagecoach Firing Project. Director Jones seconded the motion; it was approved unanimously. Director Brenner requested staff to draft letters to both applicants.

The discussion about the project continued. Director Brenner made reference to grant monies. Manager McBride clarified that while a contractor had been selected, a full scope of work would have to be

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delineated. Manger McBride stated staff did not have enough resources to further accelerate the process. Director Monger said AECOM could be tasked with drafting a grant application. Manager McBride clarified that the deadline to apply for grant monies is in the month of February; preparing the grant application would be no small task and meeting the deadline might not be feasible. General Counsel Bob Weiss stated the Contract scope of work could be drafted based on the Contractor's response to the RFQ. It was his opinion that a contract could be brought before the Board for its consideration at the November Board meeting. Manager McBride proposed to include the writing of a grant application within the scope of work and stated the work will be done as quickly as possible.

Office Update – Manager McBride introduced Mr. Tom Scrimgeour, Architect. Mr. Scrimgeour, upon Manager McBride's request, had developed a space needs plan that would address the District's requirements of four offices, reception, restrooms and a boardroom. The plan would prove useful as a reference, to assess suitability of available spaces. McBride has provided information to Mr. Scrimgeour for him to evaluate; he was in the process of cataloguing the available spaces. Manager McBride said he'll continue communicating with Directors as new information arises. He requested Office Manager Craig to gather data and develop a financial analysis. Mr. Scrimgeour spoke and inquired about some specifics; Directors Monger and Brenner offered their availability to meet with Mr. Scrimgeour. Manager McBride made reference to timeframes; he proposed a proposal should be narrowed by the November Board meeting. He commented the current space must be vacated by May 1st, 2018.

Five Pine Ditch Ownership Transfer Proposal Update – Director Redmond rejoined the meeting. He referred to the proposal the Board had provided to the Five Pine Ditch (Ditch) former owners in response of their expressed interest of re-acquiring ownership of the Ditch. Mr. Redmond reported there was concern among shareowners about the District's proposed water contract for 3,500 AF, which would be entered between the entity owning the Ditch, and the District. The concern, he stated, was in acquiring a contractual obligation for the Yamcolo water storage as a contracting unit, while interest in contracting water would vary from year to year among different land owners. He also commented not all parties interested in contracting water storage would need to use the Ditch, and instead, some of them would request their water be delivered through the Yampa river. The interest of the shareholders, he concluded, was to acquire ownership of the Ditch as a Ditch Company limited to conveyance of water. Shareholders were indeed interested in water storage contracts, albeit entered separately and individually with the District.

A discussion ensued. Several topics were discussed: how much water were the shareholders interested to contract; implications of different contract scenarios on other Yamcolo water storage contractees, such as the Yamcolo Irrigators Association (YIA); the enterprise fund model for the facility; and water flow rights and types of water typically carried by the Ditch. The Ditch conveys water stored at Yamcolo, direct water rights, and water stored at smaller reservoirs upriver, such as the Stillwater and the Bear Lake reservoirs.

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Director Sharp inquired how long it would take for shareholders to discuss and determine a volume of water they would be interested in contracting. Director Redmond stated such information could be developed over the winter. Director Sharp stated entering into contract with a single entity would simplify administration of the contract, and pricing, significantly. However, he continued, a price could not be determined before knowing what volume of water would be contracted. Manager McBride commented that Mr. Rick Milway had spoken in past meetings in representation of individual water irrigators, expressing their desire to renew their soon to expire water storage contracts. There is a significant overlap in ownership of Ditch Company shares and ownership of Yamcolo water storage contracts. A possible meeting with upper river users was discussed. There is an annual meeting generally taking place in the fall, organized by CDWR. Finally, Director Brenner stated, it would be useful to the District to receive a written response from the shareholders to the District's Ditch Transfer Proposal. Director Murphy clarified the response the District wishes to receive is from the Ditch Irrigators; water users who have laterals from the Ditch.

Engineer Rossi clarified that entering into a storage contract with an entity comprised of several water users, while it may simplify other aspects of contract administration, it would *not* simplify the task of releasing water. As an example, he commented that he receives numerous water delivery requests from YIA individual members instead of from one representative of YIA.

Contract Negotiation Update – Manager McBride referred to a summary table that was presented earlier to the Board containing all current water contracts, term end-dates and prices set by contract. For those cases applicable, there will be letters sent to contractees offering an extension. Mr. McBride reported there were no new updates from YIA and that he would contact the negotiating committee to set up an appropriate meeting schedule.

External Affairs – Manager McBride had provided materials to the Board regarding events and meetings he participates in, in representation of the District. He mentioned the Roundtable Basin Implementation Plan, the Yampa Water Fund, the Steamboat Stream Management Plan, the Integrated Water Planning Process, Water Education Colorado, the IBCC, Colorado Water Congress, Friends of the Yampa, the Watershed Group and the Community Ag Alliance. Director Brenner discussed the strategic work that has been developed by The Friends of the Yampa Board, of which he is a member. Manager McBride was inviting the Directors to review the strategic work and to provide feedback. Director Brenner stated his opinion that the District's Board should perform similar strategic planning and, among other things, discuss and further define subjects of interest to the District and the financial resources it would allocate towards them.

Review of Retreat Agenda – Manager McBride introduced, and Director Brenner commented on, the draft agenda for the October 10, 2018 Board Retreat. Director Brenner stated one item might be added to the draft agenda; how the District would manage a seamless transition into the next generation. Director Monger said he was not in favor of succession planning of staff. Director Redmond commented on addressing issues, and their quality of urgent versus important.

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Report from the District Engineer

Reservoir Water and Ditch Water Status – District Engineer Andy Rossi discussed the drought and its effect on the Yampa River. He then presented an update on the current water volume status of Yamcolo Reservoir and Stagecoach Reservoir.

Capital Projects Update – Engineer Rossi reported that the concrete repair work at Stagecoach Reservoir powerhouse was complete and under budget. The spillway erosion repair project at Yamcolo Reservoir was also completed.

Engineer Rossi reviewed the progress of the flow measuring device repairs ordered by the Colorado Division of Water Resources (CDWR) in 2017. The USFS has authorized the repair of the outflow measuring device at Yamcolo Dam. The Stillwater Ditch does not have a current Special Use Permit. Therefore, the repairs of the Stillwater Ditch measuring device will be delayed until the Special Use Permit is issued. The Stillwater Ditch measuring device repairs were planned to start on October 1, 2018 and were included in the 2018 approved budget. Mr. Rossi reported that the re-arrangement of capital projects will cause a re-arrangement of facilities capital expenditures. The aggregate effect of the re-arranged capital expenditures in 2018 result in an approximately \$150,000 increase in the Yamcolo capital projects expenditures. This increase in Yamcolo capital expenditures will be partially offset by less capital expenditures at other facilities with a net increase of approximately \$10,000 to the projected overall UYWCD facilities capital expenditures in 2018.

Director Monger suggested the Board authorize the expenditure now and to amend the budget in November or after the year is finished.

Director Jones moved to authorize the District Capital budget to be increased \$10,000 and the monies reallocated as needed within the budget. While some capital line items will be under budget, the Yamcolo Flow Control and Monitoring Equipment capital line item changing from \$50,000 to \$200,000. Director Sharp seconded the motion which was unanimously approved.

Report from Counsel (continued)

Water Horse Resources Application – Special Counsel Graham Gilbert joined the meeting by phone. Mr. Gilbert discussed Utah and Colorado state laws and updated the Board on the Water Horse Resources application, against which the District has filed a protest. He reported the Utah Division of Water Resources contacted the Colorado Division of Water Resources (CDWR) stating that the 55,000 AF concerning the application might be deducted from the Colorado Compact Entitlement. The CDWR stated they would review that, Counsel Gilbert reported. The state of Utah has decided to proceed with the application review. Counsel Gilbert was asking the Board what level of involvement it wished the District to have an upcoming hearing, scheduled for November 7, 2018. He presented two possible paths. They were discussed.

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Director Jones moved to defer the matter to the Executive Committee and to approve the Scope of Work presented and the expenditure as needed, approximately eight thousand dollars. The motion was unanimously approved.

Executive Session

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

Director Sharp made a motion to go into executive session. It was seconded by Director Monger 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 Yampa River Call, Water Rights Cases and Water Horse Resources Application. 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 4:32 PM and concluded at about 4:50 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.

Determination of future meetings The scheduled date for the next regularly scheduled Board meeting was confirmed, being Wednesday November 14, 2018 at 1:30 PM, at the District's office.

The meeting was adjourned at 5:20 PM.

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

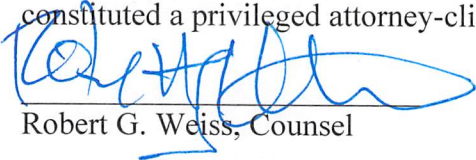


Date: 11/26/18

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 Yampa River Call, Water Rights Cases and Water Horse Resources Application. contract negotiations constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

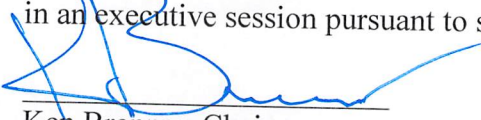


Date: 11-14-2018

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: 11/26/18

Ken Brenner, Chairman