

**REVISED - AGENDA**  
**UPPER YAMPA WATER CONSERVANCY DISTRICT**  
**BOARD OF DIRECTORS MEETING**  
**WEDNESDAY, APRIL 8, 2020 (1:30 PM)**  
**ONLINE MEETING: [HTTPS://BLUEJEANS.COM/411279117](https://bluejeans.com/411279117)**

- (1) *1:30 pm* Establishment of Quorum and Call to Order;
- (2) Consent Agenda; action item
  - a) Approval of the minutes of the February 15, 2020; and March 11, 2020 Board Meetings; and March 27, 2020 Special Emergency Board Meeting
- (3) Approval of Agenda for Meeting; action item
- (4) Public Input and Comment;
- (5) *1:40 pm* Report of the General Manager;
  - a) General Manager Search
    - i) Selection of search firm action item
    - ii) Job Description action item
  - b) GM Retirement / appointment of acting GM action item
  - c) Board Manual action item
  - d) Districts Accounts discussion
- (6) *4:05 pm* Report from General Counsel;
  - a) Contract updates
    - i) Yamcolo Irrigators Association (YIA) Amendment action item
    - ii) 2005 Stillwater Ditch Agreement Amendment
    - iii) Individual Irrigation Carriage Contract action item
    - iv) Yamcolo Individual Irrigators
  - b) Ratification of bylaw amendments action item
  - c) Resume report
  - d) Status of other Water Cases, if any;
- (7) Executive Sessions:
  - a) Under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, and Contract Negotiations (not recorded). 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).
  - b) Executive Session under CRS § 24-6-402(4)(e) for Instructions to Negotiators for Water Contracts with City of Steamboat Springs (recorded).
- (8) *5:35 pm* Board Member Reports
- (9) *5:45 pm* Next Meeting Agenda
- (10) Adjournment.



# RECORD OF PROCEEDINGS

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**UPPER YAMPA WATER CONSERVANCY DISTRICT  
BOARD OF DIRECTORS MEETING  
WEDNESDAY FEBRUARY 12, 2019 1:30 PM  
MOUNTAIN VALLEY BANK COMMUNITY ROOM  
2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO**

## 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, Jim Haskins, John Redmond, Ron Murphy, Stephen Colby, Webster Jones, and General Manager Kevin McBride, District Engineer Andy Rossi, Office Manager Karina Craig, and General Counsel Bob Weiss were also present. Members of the public included Ms. Lyn Halliday, Watershed Group; Craig Preston, Stagecoach State Park; and Andi Schaffner.

The following agenda was proposed:

### AGENDA

- 1) Establishment of Quorum and Call to Order;
- 2) Consent Agenda; action item
- 3) Approval of Agenda for Meeting; action item
- 4) Public Input and Comment;
- 5) Approval of Contracts action item(s)
  - i. Yamcolo Irrigators Association
  - ii. Yamcolo Individual Irrigators
  - iii. Stillwater Ditch Amendment to Assignment of Stock and Water Delivery Agreement
  - iv. Stillwater Ditch Carriage Contract
- 6) Amended and Restated Resolution Establishing a Process for the Grant of Allotment Contracts for Yamcolo Reservoir Water for Irrigation and Stock Water Purposes from the Individual Irrigator Pool action item
- 7) Election of Officers (Tabled Item from 01/15/20) action item
- 8) Update on the CDPHE Water Quality Standards Setting action item
- 9) CPW Stagecoach Electrical Upgrades action item
- 10) Pricing Discussion
- 11) Executive Session under CRS § 24-6-402(4)(e) for Instructions to Negotiators for Water Contract Pricing. 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).
- 12) Directors Reports;
- 13) Next Meeting Agenda;
- 14) Adjournment.

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**Consent Agenda** There was a discussion about staff's and board's roles in recommending and approving the selection of a new auditor, and about how different organizations go about that process. There was a suggestion that the District bylaws be updated to clarify the process. Director Jones made a motion to approve the consent agenda (proposal of new auditor), Director Haskins seconded the motion, which was unanimously approved.

**Public Comment** Lyn Halliday from the Watershed Group introduced a work plan. Ms. Halliday invited District staff and directors to an upcoming meeting in the month of March.

Andy Schaffner spoke and ask the Board chair if she would be allowed to comment as the next agenda item proceeded. The Chair responded affirmatively.

### **Approval of Contracts**

Director Redmond stated he is party to some of the agreements that would be discussed in this agenda item and recused himself from comment and discussion.

General Counsel Weiss discussed the four contracts that were presented for review and discussion: Yamcolo Irrigators Association, Yamcolo Individual Irrigators, Stillwater Ditch Amendment to Assignment of stock and Water Delivery Agreement, and Stillwater Carriage Contract. He had received some questions from irrigators, which may require changes to the agreements which are not material in nature, and would be discussed with the negotiating committee. He offered to answer questions from Directors. There were none. Chairman Brenner asked members of the public present if they wished to speak.

Ms. Andi Schaffner spoke in regard to the Stillwater Ditch Amendment to Assignment of Stock and Water Delivery Agreement. Ms. Schaffner had received the proposed amendment from the District's General Counsel, and she had distributed to other water users. She was thankful for the District's efforts and approach towards pricing.

Ms. Schaffner referred next to the Ditch Carriage Contract and discussed several details, including its section 3.2. She referred to language in the contract that she interpreted would limit the capacity of ditch users to comment on ditch uses and policies. She reported prospective ditch users would like such language removed. She also discussed section 4.1 of the proposed agreement, and language that might limit the ability of users to terminate the contract. She was requesting language in the proposed agreement be modified to address those concerns.

Counsel Weiss thanked Ms. Schaffner for her comments. He stated as the four agreements are being developed, some small inconsistencies might exist and they could be worked out, as the agreements are further crafted and finalized. Counsel Weiss asked Ms. Schaffner if written comments could be provided to the District, outlining those concerns and specific requests. Ms. Schaffner responded affirmatively.

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Director Jones moved to approve the proposed Stillwater Ditch Amendment to Assignment of stock and Water Delivery Agreement and the Stillwater Ditch Carriage Contract. Director Redmond abstained. The motion was seconded by Director Murphy and unanimously approved.

### ***Restated Resolution Establishing a Process of Grant Allotment***

Counsel Weiss presented an amended resolution establishing a process for the grant of allotment contracts for Yamcolo Reservoir for irrigation and stock water from the individual irrigation pool. He outlined some proposed minor process changes, including granting the General Manager the establish and adjust deadlines to better accommodate the complexity of the process and the number parties involved. Director Woodmansee moved to approve the proposed resolution. The motion was seconded by Director Redmond and approved unanimously.

### ***Election of Officers***

Details pertaining the election of officers outlined in the District Bylaws were discussed, including the maximum terms outlined there. There was agreement the topic could be further discussed and amended as needed in the future. The current Board Officers are: Director Brenner, President of the Board; Director Monger, Vice President of the Board. The Executive Committee members are: The Board President, the Board Vice-President, Director Jones, Director Redmond and Director Sharp. Director Woodmansee moved to renew the current officer seats. Director Haskins seconded; there was unanimous approval.

### ***Update on the CDPHE Water Quality Standards Setting***

Manager McBride discussed a Memorandum he was presenting to the Board, with background information regarding water quality standards for arsenic and lead, concerning a stream segment of the Yampa River. The Colorado Water Quality Control Commission has proposed a 303d listing, the General Manager reported. A proposal and Scope of Services from Leonard Rice Engineers, including conducting a review of available water quality data for Stagecoach Reservoir, was presented. Mr. McBride indicated the Morrison Creek Water & Sanitation District Board was offering to contribute \$5,000 to the project. He was proposing the District contribute up to \$17,000, to be funded through the District Planning Department budget, with a supplemental appropriation later in the year, if needed. The efforts would fall within the Water Quality goals in the District Strategic Plan draft.

Directors Woodmansee and Colby disclosed they are a Director and staff from the Morrison Metro District, respectively. Counsel Weiss commented the nature of their roles both at the UYWCD and at Morrison Metro were of Public Service, and not private. He was therefore not seeing a conflict of interest in their participation, but invited Directors to express any concerns. There were none.

Chairman Brenner addressed Ms. Halliday; who stated the Watershed Group might be interested in monitoring the data and potentially in asking for some grant funds for the project. Director Redmond cautioned about Water Quality projects in general, in the sense that they could easily snowball in scope and financial needs. Director Haskins echoed the comment. Engineer Rossi

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said he had been in communication with other stakeholders, stating to them that should the project go forward, defined sidebars would be established. Other water quality efforts in the basin were discussed, including those from USGS. Director Haskins moved to approve an expenditure of up to \$17,000 for the Leonard Rice Engineers Water Quality proposal, and to accept the \$5,000 offered by Morrison Metro District for the project. The motion was seconded by Director Redmond, and unanimously approved.

### *CPW Stagecoach Electrical Upgrades*

Engineer Rossi provided background information regarding electrical upgrades at Stagecoach State Park, proposed by CPW. The project would require the granting of an easement from the District to YVEA. The Engineer described the project in detail, provided alternatives, and recommendations. Several detailed electrical plans and maps of the project, as well as a proposed Right-Of-Way Easement and Agreement, were reviewed and discussed. Stagecoach Park Manager Craig Preston was present and available for questions. There were none. Chairman Brenner invited the public to offer comments. There were none. Director Colby moved to approve the proposed project and to authorize the Board President to sign the proposed agreement. The motion was seconded by Director Woodmansee and unanimously approved.

### *Pricing Discussions*

General Manager McBride referred to the pricing structure the District developed, through a restructuring of its budget in 2017. Therefore, the District has data from identified cost centers for several recent years. Director Jones stated rates developed through an enterprise model seek to attempt to recover costs in a fair and equitable form. However, he pointed out, some limitations of cost recovery exist, namely through certain current District contracts that dictate pricing be calculated based off a 15,000 AF denominator. Director Jones discussed the pricing model with recently negotiated contracts. In the model, Stagecoach water firming costs were included in the reservoir's costs, as advised by an external pricing consultant. Counsel Weiss stated water has to be priced within reason, and it is up to the Board to decide what pricing would be offered. Director Jones expressed his opinion that the calculated pricing is fair and defensible, and that the concept of a firming project is reasonable, as well as its inclusion in pricing. Director Haskins agreed that the pricing developed was a good start. Manager McBride was asked to comment. He stated it was important to keep in mind the difference between an enterprise model price, and those of existing contracts that have terms for the life of the reservoir.

A summary table with pricing of current contracts was then presented and reviewed. The different prices were discussed. Counsel Weiss clarified that if the pricing methodology for existing contracts were to be changed, it would have to be by mutual agreement of both parties. Also, he added, under current contract language pricing would have to be set annually. The role of uncertainty in the future was also discussed.

Discussion and comments ensued. Some of the topics discussed included: a set initial price to be adjusted annually by CPI, pricing based on costs to be adjusted annually, present and possible

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future interest from water users to purchase water, future potential water needs, pricing determined through an enterprise model as useful reference information, conditional water rights, long term benefits to the basin, possible future projects, pricing relative to firmness of water, types of water uses, appropriateness of subsidies for certain water uses, availability or a lack thereof, of market rates in our basin, and in other basins, and policy goals in the District's strategic plan.

### *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.

At 4:15 PM Director Jones moved, Director Haskins seconded, and it was unanimously agreed to go into Executive Session under provision C.R.S. §24-6-402(4) (e) for instructions to negotiators relating to Water Contract Pricing. 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). Director Jones moved, Director Redmond seconded, and it was unanimously approved to go out of Executive Session at 5:30 PM.

### *Next Meeting Agenda*

The March 11, 2020 agenda meeting was reviewed.

Director Jones moved to adjourn the meeting; director Redmond seconded the motion. The meeting was adjourned at 5:40 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

Date: \_\_\_\_\_

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**UPPER YAMPA WATER CONSERVANCY DISTRICT  
BOARD OF DIRECTORS MEETING  
MARCH 11, 2020 11:30 AM  
MOUNTAIN VALLEY BANK COMMUNITY ROOM  
2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO**

### 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, Jim Haskins, John Redmond, Ron Murphy, Lyn Halliday, Tom Sharp, and Webster Jones. General Manager Kevin McBride, District Engineer Andy Rossi, Marketing/Communication Manager Holly Kirkpatrick, Chief Accountant Karina Craig, Business Manager Deb Bastian, General Counsel Bob Weiss (by video conference), and retiring Director Steve Colby were also present. Members of the public present included Erin Light and Scott Hummer, Colorado Division of Water Resources; Kelley Romero-Heaney and Jon Snyder, City of Steamboat Springs; and Mr. Gerry Smith.

The following agenda was proposed:

#### AGENDA

- (1) Establishment of Quorum and Call to Order;
- (2) Approval of Agenda for Meeting; action item
- (3) Succession Planning;
- (4) Consent Agenda; action item
  - a) Financial Reports;
    - i) Approval of Disbursements;
    - ii) Budget Comparison;
    - iii) Budget update for WSRF Funds;
  - b) Approval of the minutes of the January 15 Board Meeting;
- (5) Public Input and Comment;
- (6) Board Member Recognition;
- (7) Report of the General Manager;
  - a) Water Quality Standards Consulting;
  - b) Pricing discussion; action item
  - c) Board meeting calendar; action item
  - d) Risk Study modeling;
- (8) Report from District Engineer;
  - a) Reservoir Water Status;
  - b) Inflow Forecasting;
- (9) Report from Public Information Manager;
  - a) Summary Update;
    - i) Diversion Infrastructure Improvement Project;
    - ii) Web Site Redesign;
    - iii) Public Information Schedule;
    - iv) Yamcolo Individual Irrigator Marketing Update;
- (10) Report from General Counsel;
  - a) Water Resumes;
  - b) Status of other Water Cases, if any;
  - c) Board Appointments;



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- d) Water Contracts;
- (11) Executive Session with Bob Weiss, legal Counsel, under CRS § 24-6-402(4)(b) to discuss legal issues on Water Resumes, Water Cases, and 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).
- (12) Board Member Reports;
- (13) Next Meeting Agenda;
- (14) Adjournment.

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

General Manager McBride introduced the District's new Business Manager, Deb Bastian. Chairman Brenner announced the retirement of Director Steve Colby. Director Colby's term at the Board ended on March 8, 2020 and he had announced his retirement. Chairman Brenner introduced incoming Director Lyn Halliday. Director Halliday introduced herself and updated the Board on her professional background.

### **Succession Planning**

Chairman Brenner stated General Manager McBride had announced his retirement and thanked him for his service to the District over the years. General Manager McBride described some of the more salient District accomplishments and District milestones reached during his tenure and thanked the Board for the opportunity.

Director Brenner referred to the current job description for the position. He proposed the Governance Committee review and updated it, then bring it to the Board for review, before it be posted publicly.

Director Monger thanked General Manager McBride for the flexible offboarding schedule he offered the District and stated his opinion that it would be best to establish a well-defined timeline. Director Monger proposed an RFP be issued and commented Routt County had recently gone through the process of hiring a new County Manager. Five firms had been recruited in the search effort and they might be a good resource for the District as well. Additional resources were mentioned, such as Employers Council and the International City Manager Association. An Executive Committee was scheduled for Wednesday March 18; Director Sharp suggested the Executive Committee take on the responsibility of finding such firms. General Counsel Weiss clarified the District could choose to, but was not required to, issue an RFP for personnel matters. There was general agreement that the process outlined above would be a good approach.

**Consent Agenda** Director Sharp made a motion to approve the consent agenda (approval of January 15, 2020 minutes, Budget Updated and Comparison Report, Cash Disbursement Report), Director Haskins seconded the motion, which was unanimously approved.

**Public Comment** The Chairman asked the public present if there were any questions or comments; there were none.

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### *Board Member Recognition*

General Manager McBride recognized and thanked retiring Director Colby for his many years of service at the District. The sentiment was echoed through the room. Director Colby expressed his gratitude for the opportunity, recognized the work achieved by the District in the past fifteen years and wanted to wish the District all the best in the future.

### *Report of the General Manager*

Water Quality Standards Consulting – General Manager McBride handed a letter from Leonard Rice Engineers (LRE) to the District. He discussed work being carried out by LRE in water quality standards for Stagecoach Reservoir. Director Monger inquired about timelines; General Manager McBride said he saw early summer for a general timeline.. There was a discussion about the standards.

### Pricing Discussion –

The General Manager provided a general overview of pricing of current contracts. He then referred to pricing methods the District has used to capture costs of each facility. He spoke of the new water contracts, and different ways to bring a price for new contracts for municipal water.

Jon Snyder, Public Works Director of the City of Steamboat Springs, was invited to speak. He discussed rate study strategies, including full cost recovery, which he supported. He described pricing components; ongoing operations, a rainy-day fund, and capital maintenance. He commented capital improvement plans can be very variable, and encouraged recovery of % 100 of operating costs, commented he typically keeps a rainy-day fund equivalent to that of about 25% of operating costs. He requested that details of proposed water pricing could be made publicly available soon.

Chairman Brenner asked members of the public present if there were any comments; there were none.

The topic of firmness of water relative to pricing was discussed. Director Sharp inquired what might or might not be appropriate to discuss in open session relative to pricing of contracts that are currently under negotiation. General Counsel Weiss said with respect to existing contract interpretation and instructions to negotiators should be discussed in executive session. He said pricing related to new water contracts could be discussed in open session.

Chairman Brenner asked Directors to express their opinions. Director Sharp referred to a pricing matrix he was proposing, with water pricing varying with volume of water to be contracted, and length of contract term. Director Jones proposed pricing varying based on type of water use, recognizing four categories: agricultural, ERC, municipal and industrial. He discouraged the signing of long-term contracts, commenting perpetuity is a long time. He had a broader range of prices, he commented. Director Woodmansee discussed risk, and whether a firming project would be needed. He stated his opinion that \$125.00/AF would be too high of a price. Director Haskins stated he had the same thought

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initially. However, he said, the firming project might indeed be needed, and it should be kept on the table. He referred to comments about pricing sensitivity and noted that pricing of water is much higher in other basins. He clarified this was the case for water in general, and particularly for environmental water.

Director Monger discouraged the District to enter into new perpetual contracts. He was advocating for cost recovery pricing and the consideration of firmness of yield. The community wishes for the District to save money for new projects, and to have some reserves, he expressed. ERC water might be sold for a lower price, but it might not be there when needed. Director Redmond stated he would like to see no new perpetual contracts, and he'd like to see contracts be simplified in the future. Director Halliday commented there are numerous variables contributing to pricing, especially considering changes to climate and other unknowns.

Director Jones spoke; he said there is no set protocol in pricing as there is in retail municipal water. The District hired an accounting firm with background. Calculated prices are educated estimates, which come close to the actual costs. As a District, he said, we are not able to recover all of the cost. There is a subsidy, because not all of the water is under contract. He was suggesting Directors pick a number they feel comfortable with, that reflects the values of the District. He further commented, the City of Steamboat Springs has a capital-intensive budget, while the District's situation is different, with capital expenditures that are not as unpredictable. He felt comfortable with the method developed by the District, he concluded.

Director Brenner stated he did not see a current need for agricultural water pricing at Stagecoach. He could empathize with other governments who will continue to serve their constituents in the long term and asked if there was a provision or terms that could give further assurance for long term planning. He recognized firmness ought to be a factor in pricing considerations. He stated the cost recognition through an enterprise fund model had its value, while he was aware that not all costs could be recovered, and water would be subsidized. He added, he was in agreement of avoiding any new perpetual contracts.

Director Murphy stated he liked the pricing matrix proposed by Director Sharp; however, he added, it would drastically complicate pricing for staff. He did not believe in perpetual contracts, and in his opinion, contracts should have a term of 20 years or less.

Chairman Brenner invited the public to comment. Gerry Smith commented that under applicable rules what will be discussed in Executive Session must be listed or otherwise it could not be discussed. General Counsel Weiss responded and clarified; there are two types of Executive Sessions. They can be for legal advice, or for contract negotiations. For the latter, there is a recording, and the District holds it for 90 days, per State law.

*Board Meeting Calendar* – The annual 2020 Board meeting schedule was reviewed. Some of the scheduled meetings are on the same dates as with the Yampa White Green Basin Roundtable. Some of the Roundtable Committee meetings overlap not only in date, but in time. There was a proposal to adjust

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the District calendar so that District staff and Directors may attend to both meetings. Director Monger moved to keep the April 8, 2020 1:30 PM Board meeting as scheduled, and to adjust the monthly Board meetings for the remaining months of 2020 to the third Thursday of the month, with a start time of 12:00 PM. Director Woodmansee seconded the motion, which was unanimously approved.

*Risk Study Modeling* – General Manager McBride presented a Big River Committee Summary. The Big River Committee is a sub-committee of the Yampa White Green Basin Roundtable which is focused on the RT’s positions of the group.; the chair of that group has put out a document for comment: **Goals, Focus, and Policy Recommendations**. This was briefly discussed.

As part of the Colorado River District sponsored “Risk Study” the BOD’s previously approved funding with the provision that the “Yampa Doctrine” and “equitable apportionment” possibilities for administration of the Yampa River were considered. A YRWCD Equitable Apportionment spreadsheet document was presented, reviewed and discussed. The conversation included allocation of reduced depletion volumes for different basins through a variety of processes. Directors expressed interest in continuing to receive updates on the information presented.

### ***Report from the District Engineer***

*Reservoir Water Status* – Engineer Rossi presented and discussed in detail several graphs with water storage data for Yamcolo and Stagecoach Reservoirs, for the years 2019, and 2020-to-date.

*Inflow Forecasting* – Engineer Rossi presented a Yamcolo Inflow Forecast Worksheet, a Stagecoach Inflow Forecast Flowsheet, SNOTEL data sheets, and CBRFC inflow forecasts. He explained the data used, and the methodology. He then referred to pike, an introduced species present in Stagecoach Reservoir, and stated the District works in communication with other agencies actively involved in pike management.

### ***Report from Public Information Manager – Summary Update***

*Diversion Infrastructure Improvement Project* – Public Information Manager Kirkpatrick updated the Board on the project. She referred to budgeting and clarified the District won’t be issuing funds until after they are received from other participating agencies. Effectively and in terms of cash-flow, the expenditures will be a pass-through.

*Website Redesign* – Manager Kirkpatrick shared with the Board that the District’s website will be updated, both in presentation and content. She is currently working with consulting firm Hive180. She estimated the updated website would be launched in mid-May. She stated she would like the website to include an event calendar easily accessible to the public, as well as to staff and Directors.

*Public Information Schedule* - Manager Kirkpatrick updated the Board on different events and publications were District related materials have or will appear. She asked Directors to share with her

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any other events or publications that might be useful for her to know about. Director Brenner shared some events from Friends of the Yampa.

*Yamcolo Individual Irrigator Marketing Update* – The Public Information Manager presented and reviewed an Individual Irrigators Water Allotment Contract Timeline. Contract applications have been mailed out to prospective contractees. Several people have reached out and several applications have been received. Friday March 13, 2020 is the deadline for all applicants to submit their applications. Soon after, contracts will be mailed out for signature. Contracts are expected to be received by April 1, 2020.

### ***Report from General Counsel***

*Water Resumes and Status of other Water Cases* – General Counsel Weiss reported Scott Grosscup had reviewed the Water Resumes for Water Divisions 5 and 6 for water court filings in January and he had not identified any water applications that would impair or injure the District's water rights. Counsel Weiss presented and reviewed an update on cases 17CW3043, 18CW3020, 19CW3005 and on the Million's project involving the Utah Division of Water Rights prepared by Scott Grosscup.

Director Sharp asked Counsel Weiss if he could take some time and give some thought to the pros and cons of taking an active role on a certain water case involving Tri-State diligence. There was a discussion about some historical water rights, as well as about water matters currently active in the Legislature.

*Board Appointments* – General Counsel Weiss updated everyone present on the process and results of the new Board appointments. The terms of Directors Haskins, Brenner and Colby expired on March 8, 2020. Publications were carried out in compliance with statutes. Applications were received by the February 7, 2020 deadline. The Chief Judge appointed Directors Haskins, Brenner, and Halliday. The terms are for four years and will be expiring on March 8, 2024.

*Water Contracts* – Counsel Weiss updated the Board on several contracts. A proposed amendment to the YIA includes changes involving pricing provisions until the year 2041. The proposed amendment provides for a \$13/AF pricing for 2020, with annual CPI increases, through 2041. Afterwards, pricing would be calculated based on costs. A proposed amendment for the 2005 Stillwater Ditch Agreement Amendment was presented. Counsel Weiss was explaining the amendment proposes a \$0.74 price per share fee for the year 2020, to be adjusted by CPI on an annual basis, through 2041. The District had agreed at a previous meeting to reimburse to former shareholders those legal fees incurred during negotiations, up to a maximum of \$11,000.

A proposed Carriage Contract for Individual Irrigators and YIA members who wish to use the Stillwater Ditch was presented and discussed. The proposed starting price is \$1.84 per acre foot of water currently under contract. The price would be adjusted by CPI, and a credit would be applied according to use, for those shareholders who hold capacity in the original 36.3 cfs in the Ditch.

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Finally, the 3,500 AF YIA contract was discussed. A proposed application and form of non-renewable allotment contract and carriage contract was presented and reviewed. The proposed price was \$11 AF with a sideboard CPI adjustment. The District had agreed to reimburse attorney's fees up to \$2,000. The re-contracting process was outlined through a Resolution adopted by the Board in January 2020 and revised at the February meeting. Director Sharp moved to authorize as a District an extension of the arbitration of the YIA contract for 60 days, provided the YIA also agree and sign said extension. The motion was seconded by Director Woodmansee and 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.

At 4:00 PM Director Sharp moved, Director Monger seconded, and 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 Water Resumes and Water Cases, and provision C.R.S. §24-6-402(4) (e) for instructions to negotiators. 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). Director Sharp moved, Director Haskins seconded, and it was unanimously approved to go out of Executive Session at 5:05 PM.

Director Sharp moved to advise the City of Steamboat Springs of a water price of \$124.23/AF, to be adjusted by CPI, with a right of first renewal and a term ending in the year 2041. The motion was seconded by Director Haskins. The motion was also supported by Directors Murphy, Redmond and Monger. Directors Jones, Woodmansee and Brenner did not support the motion. Director Halliday abstained. The motion passed with five in favor, three opposed and one abstention.

***Board Member Reports*** – Chairman Brenner asked Directors if they had had time to review certain documents he had sent out. Director Monger commented he had been championing transitioning from coal, and he now had an understanding of the concerns from community members about the loss of coal production in the region.

***Determination of future meetings*** The scheduled date for the next Board meeting was confirmed, being Wednesday April 8, 2020 at 1:30 PM.

Director Sharp moved to adjourn the meeting. The motion passed and the meeting adjourned at 5:20 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

Date: \_\_\_\_\_

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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 to Water Resumes and Water Cases constituted a privileged attorney-client communication in the opinion of the undersigned attorney.

\_\_\_\_\_  
Robert G. Weiss, Counsel

Date: \_\_\_\_\_

### 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.

\_\_\_\_\_  
Ken Brenner, Chairman

Date: \_\_\_\_\_

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**UPPER YAMPA WATER CONSERVANCY DISTRICT  
BOARD OF DIRECTORS MEETING  
MARCH 27, 2020 2:00 PM  
VIA BLUEJEANS TELECONFERENCE MEETING #296566042**

### 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, John Redmond, Ron Murphy, Lyn Halliday, Tom Sharp, and Webster Jones. General Manager Kevin McBride, District Engineer Andy Rossi, Marketing/Communication Manager Holly Kirkpatrick, Business Manager Deb Bastian, and General Counsel Bob Weiss were also present.

The following agenda was proposed:

#### **AGENDA**

Establishment of Quorum and Call to Order;  
Approval of Agenda for Meeting;  
Bylaw Amendment (emergency adoption)  
Discussion of General Manager's proposal for employment during transition  
General Manager selection process  
Adjournment

#### ***Establishment of Quorum and Call to Order***

Chairman Brenner established a quorum and called the meeting to order at 2:05 PM.

#### ***Meeting Agenda***

Chairman Brenner requested to add "Directors Manual" and "General Manager Job Description" after "General Manager selection process." Director Jones moved to approve the agenda with the additions requested by Chairman Brenner. Director Woodmansee seconded the motion which was unanimously approved.

#### ***Bylaw Amendment (emergency adoption)***

Robert Weiss, as counsel for the District, recommended the following changes to the Bylaws:

1. Authorize meetings that do not have to have a physical location and can be conducted by video/teleconference.



## RECORD OF PROCEEDINGS

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2. Make physical posting of notices of meetings optional. Counsel Weiss stated that Colorado law was recently amended to allow for physical posting to be optional and that posting on the UYWCD website will be sufficient for posting of notices.
3. Bylaws currently state 6 meetings per year. Will change to state that meetings will be held as scheduled in the last meeting of the prior year.

Counsel Weiss further stated that the rule is that Bylaws amendments must go out 10 days ahead of time. However, the existing Bylaws allows the Board to take action on an emergency basis and ratify changes at the next regular meeting. The Board can approve the Bylaw amendments today and dated as of March 27, 2020 and then ratify them at the April 8, 2020, meeting.

Director Murphy noted that in Article 3, Section 3, Subsection C there is a word “by” that is not needed. Further, he asked how do we ensure that only the appropriate people are participating in the Executive Committee meeting when it is being held via video or teleconference.

Counsel Weiss stated that this will need to be figured out. There are issues associated with conducting meetings in this fashion and allowing public participation. He sent some information on security issues to Manager McBride this morning. These are the issues that will need to be reviewed and discussed.

Director Woodmansee noted that in Section 4, approximately halfway down, there is a statement stating, “not required of the General Manager ... in **his** discretion”. This needs to be gender neutral. Counsel Weiss agreed and will make change.

Director Jones moved to approve the adoption of the proposed Bylaws amendments as presented by the General Counsel, Director Woodmansee seconded the motion which was unanimously approved.

### ***Discussion of General Manager’s proposal for employment during transition***

Manager McBride stating he is following up on his letter that was written before the COVID-19 pandemic and he is trying to line up with what is going to be discussed next, which is the search for the new General Manager. If the Board wanted, he can stay on until a replacement is hired or he can retire June 1, 2020. Manager McBride has spoken with Counsel Weiss about putting these details in writing so that he can begin to deal with his healthcare and schedule.

The Board discussed Manager McBride’s letter and a general agreement that the Board wanted to provide healthcare through the end of September and that his retirement date would be June 1, 2020. In addition, it was proposed that a bonus (suggested \$20,000) could be provided to Manager McBride for his service and that this could be used toward his healthcare premiums. In addition, the Board discussed the appointment of District Engineer Rossi, as the Acting General Manager effective June 1, 2020.

## RECORD OF PROCEEDINGS

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The Board agreed that a formal proposal be prepared as an agenda item for the April 8, 2020, Board meeting.

Chairman Brenner asked Manager McBride to schedule a meeting with himself and Counsel Weiss next week to iron out the details for the proposal. Counsel Weiss spoke and stated that he understands what the agreement is now so he could write up a draft and circulate it. The key points are retirement effective June 1, 2020, some type of payment that would include COBRA and appointment of an interim General Manager.

Chairman Brenner clarified that Counsel Weiss will write up a summary of today's discussion and send out to himself and Manager McBride and they will get it ready for the April 8, 2020, agenda where there will be a final vote.

### *General Manager selection process*

Chairman Brenner asked if there were any questions on the Board Communication Form. With none, he began with Section II, Item #1 regarding the development and approval of the RFP.

He noted that staff prepared a draft RFP form for a search firm. The Board reviewed the draft RFP, and all agreed that the Introduction and Background, Proposal Submission and Rejection or Acceptance of Proposals sections were fine. Director Halliday requested an additional requirement for the search firm to have experience with water management entities in the State of Colorado. Chairman Brenner suggested that a subcommittee meet Tuesday (April 7, 2020) or Wednesday AM (April 8, 2020) to review proposals and then make recommendations to the Board at the April 8, 2020. After discussion, the Board agreed and asked for the RFP to be amended to state that a subcommittee will review the proposals and may decide they want a teleconference presentation. Director Redmond noted that there is a typo in the last section that needs to be changed from aware to award.

Director Redmond moved to approve the RFP developed by staff with the addition of the Proposal Requirement for experience with water management entities in the State of Colorado, changing that there will not be presentations made to the Board and correcting the spelling error. Director Woodmansee seconded the motion which was unanimously approved.

Chairman Brenner moved to Item #2 and all agreed to the timeline for receipt of proposals and to submit requests to the six firms that had indicated interest.

Director Monger moved to submit the RFP to the six firms that have responded with interest in submitting a proposal. Director Woodmansee seconded the motion which was unanimously approved.

Chairman Brenner continued to Section III stating that it has been agreed that there would be a review of submissions prior to the Board meeting. After discussion, it was decided that the reviews would take place on Tuesday, April 7, 2020. An inquiry will be sent out to the Board to pick a

## RECORD OF PROCEEDINGS

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block of time to look through proposals. It was agreed that Chairman Brenner, Manager McBride and Business Manager Deb Bastian will work out the details on how the meeting will be conducted to choose the finalist to present to the Board on April 8, 2020.

Item #4 was discussed and noted that firms generally provide all this detail in their proposals. It was agreed that this decision should wait until a firm is hired on April 8, 2020. The Board agreed that Chairman Brenner should be the point of contact with the selected firm and work out the scope of work and notify the Board of the parameters. He and Director Monger can finalize the contract with the selected firm and have the firm interview individual directors. Regular updates will be provided to the Board on the progress.

### *Directors Manual*

Chairman Brenner stated that the committee will work on the Board manual on Tuesday, March 31, 2020, and if there are no major changes, a draft of the manual will be sent out as part of the board packet. A thorough review of the manual will be schedule at the April 8, 2020, board meeting.

### *Job Description*

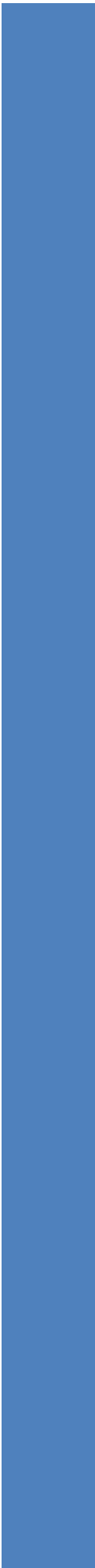
The committee has a few areas to review during the Tuesday, March 31, 2020, meeting, and will finalize the draft. The draft will be sent out with the Directors Manual and will be up for final adoption at the April 8, 2020, board meeting.

The meeting was adjourned at 3:20 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

Date: \_\_\_\_\_





## BOARD COMMUNICATION FORM

**From:** Kevin McBride

**Date:** 4/2/2020

**Item:** New General Manager Hiring Process

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DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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### **I. Request/Issue and Background Information:**

At previous BOD meetings the executive committee of the Board was charged with retaining a firm to aid in the search for the District's new General Manager. The governance committee was charged with developing a draft job description for consideration by the full board.

An RFP for search firms was developed by staff and sent to a collection of consultants with help from the Board. The selection process was described in an email from Deb Bastian on April 1<sup>st</sup>. That process:

1. **Tuesday, April 7, 2020 at 11:00 AM** – Executive Committee Meeting – to provide direction as staff selects executive search firms to be interviewed at the Executive Committee Meeting on Wednesday, April 8, 2020 at 11:00 AM.
2. **Wednesday, April 8, 2020 at 11:00 AM** – Executive Committee Meeting – Interview executive search firms for recommendation to the Board of Directors
3. **Wednesday, April 8, 2020 at 1:30 PM** – Board of Directors Meeting

You will be asked to consider, and if appropriate move to approve, the recommendation of the executive committee for a firm selected through this process.

Second in this item you will be asked to consider the is the draft Job Description for the new General Manager developed by the Governance committee. Director Jones was the principal author of the draft. The committee made edits and had considerable discussion regarding its consistency with the draft Board Manual. If appropriate the BOD would make a motion to approve a JD for use by the selected search firm.

### **II. Summary and Alternatives:**

To keep the Board's desired schedule a search firm should be selected. The Job Description could be further developed but could slow the process.



**III. Staff Recommendation:**

Make a motion to hire a selected search firm and approve the funds expenditure.  
Make a motion to approve the Job Description as amended.

Direct staff to make appropriate adjustments to the UYWCD budget and bring an amended budget to the Board at the next meeting.

**IV. Legal Issues:**

The Board is vested with the responsibility to hire the General Manager and adjust the budget.

**V. Consistency with Board Goals and Policies:**

Goal 10: Ensure robust staff, legal, and administrative resources to enhance District's viability and capacity to effectively serve its constituents.

**Attachments:**

Results of the search firm selection process will be presented to the BOD at the meeting

# UPPER YAMPA WATER CONSERVANCY DISTRICT

## Job Description General Manager

**Date:** March 31, 2020  
**Reports to:** Board of Directors  
**Type of Position:** Full-time  
**Hours:** 40+/week  
**Status:** Exempt

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### SUMMARY OF POSITION:

Under direction of the Upper Yampa Water Conservancy District (District) Board of Directors, the General Manager (GM) manages the overall activities of the District. The GM recommends and participates in the formation and revision of policies and programs by the Board and is responsible for implementing and directing through effective leadership, the District's mission, vision and strategic plan. The GM supervises day to day activities of the District, including water delivery and operation of two reservoirs and a hydroelectric facility. The GM represents the District on water policy matters and is directly involved in water rights issues and other legal matters. The GM works with representatives from the Basin Round Table, Colorado Water Conservation Board, stream management planning efforts and other advocacy groups. The GM coordinates and collaborates on projects, legislative activities and Colorado River water policies.

The GM must have familiarity with Northwest Colorado and the Colorado River Basin and an understanding of the importance of water resources to the region's natural environment, municipalities, industries, agricultural operations, tourism and active outdoor recreationalists.

### Primary Responsibilities:

Within the parameters set forth in the District's Bylaws, Colorado Revised Statutes governing Water Conservancy Districts, and policies adopted by the Board, the GM is responsible for the following primary duties and responsibilities:

### Leadership

1. Keep the District focused on its goals and strategic plan, making sure the Board and staff are fulfilling their respective roles.
2. Anticipate changes in legislation, regulations, data and science, resources, and constituent expectations that affect District activities and recommend appropriate responses.
3. Be innovative and willing to consider out-of-the-box solutions to accomplish District goals.
4. Implement and continually evaluate Best Management Practices when motivating staff to ensure personal, group and District success.
5. Motivate staff to produce work that contributes to the District's success and to feel an overall sense of pride in the organization.
6. Strategically assign staff members with responsibility for outcomes along with the authority and resources needed to produce desired results. Ensure others are performing assigned tasks that accomplish the mission and goals of the District.
7. Present information, ideas, and concepts effectively, verbally and in writing.
8. Be an effective negotiator and demonstrate comfort working with people in a variety of settings.
9. Demonstrate a commitment to a culture of responsiveness, timeliness, trust, mutual respect, clear communication, collaboration, integration and coordinated group efforts.

10. Demonstrate unwavering commitment to professional ethics and to sustaining the District's record of success.

### **Governance and Representation**

1. Proactively provide information, advice and guidance to assist the Board in formulating policy and/or Board action.
2. Develop and maintain clear and open communications with the Board and other relevant entities (governmental and non-governmental), working to foster a culture of trust, understanding and collaboration.
3. Provide the necessary liaison and staff support to the Board and its committees to help them fulfill their responsibilities.
4. Oversee the planning and coordination of Board meetings and collaborate with the Board President to develop meeting agendas. Meet with Board leadership for pre-meeting planning and post meeting follow up.
5. Follow local, state and federal legislation that affects District affairs. Work with the Board to develop responses to legislative proposals.
6. Coordinate District activities with federal, state, and local public and private organizations.
7. Be an effective advocate and spokesperson for the District, representing the District's broad range of constituents and priorities.

### **Operational Planning and Management**

1. With input from the Board, develop and implement a functional work plan that establishes clear responsibilities, timelines, and budgets. Ensure that the work plan accomplishes objectives prioritized within the District's strategic plan.
2. Bring significant financial, accounting, budgeting and audit issues to the timely attention of the Board.
3. Possess strong organizational capabilities and be skilled in administration, personnel, team building and finance.
4. Work with the Board to annually review the strategic plan and ensure its priorities are reflected in the GM's work plan and budget for the Board's consideration. Bring critical budget issues to the Board for discussion.
5. Develop internal procedures to implement and ensure consistency with the strategic plan and adopted Board policies.
6. Work closely with the District's General Counsel and Board to coordinate legal activities of the District. Work with the General Counsel to manage the District's water rights portfolio and ensure their due diligence.

### **Human Resources Planning and Management**

1. Recommend and implement an organizational structure for the District within parameters established by the Board.
2. Oversee the recruitment, hiring, training, development, compensation and discharge of staff.
3. Administer an effective human resources program that includes position job descriptions, performance standards, and regular performance appraisals.
4. Confer with and advise District staff on issues relating to the operation and management of the District, as well as the interpretation and enforcement of the District's policies and priorities.
5. Encourage and support the professional development of staff members.
6. Engage effectively, genuinely and professionally with staff members.



**Required knowledge, skills and abilities:**

1. Bachelor's or advanced degree in engineering, law, administration, management, or a related natural resources field.
2. At least five years of direct, progressive experience in managing a local governmental or similar entity, or an equivalent combination of education, training and experience which provides the knowledge, skills and abilities required for the position.
3. Experience in Colorado water-related issues and familiarity with a broad range of water interests, including Colorado water law and local and regional water-related issues.
4. Experience working with a Board of Directors (preferred but not required).

**SALARY RANGE**

The GM's salary range is \$115,859 – \$173,789, based on experience. The District provides a medical plan and retirement benefits to full time employees.

DRAFT



# BOARD COMMUNICATION FORM

Board Meeting, April 8, 2020

(Not attorney-client privileged Communication)

**From:** Bob Weiss, Legal Counsel

**Date:** April 1, 2020

**Item:** General Manager Retirement and Appointment of Acting General Manager

DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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**I. Request/Issue and Background Information:** General Manger Kevin McBride has announced his retirement effective May 31, 2020. At the special Board meeting last week the Board discussed the matter and asked me to discuss with Kevin and Ken Brenner the terms of his retirement and to prepare a summary in writing, including the agreement of the District to cover the premiums for health insurance for Kevin and his spouse for the months of June through September 2020 when Kevin will be eligible for Medicare and the potential payment of a Retirement bonus in appreciation of Kevin's long and dedicated service to the District.

In addition the Board discussed appointment of an Acting General Manager effective June 1, 2020.

**II. Summary and Alternatives:**

Attached please find letter summarizing the terms of Kevin's retirement from employment by the District. This is the recommendation that Board President Ken Brenner is making to the Board after discussing the matter with Kevin. This is a matter within the discretion of the Board and the Board is free to pay the amount suggested or some other amount.

**III. Staff Recommendation:** No staff recommendation.

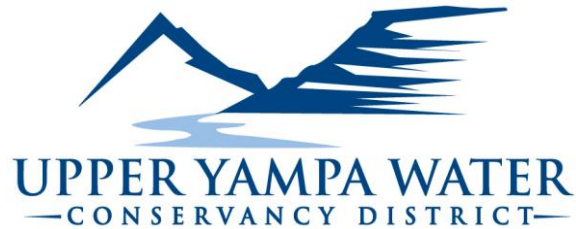
**MOTION 1:** Approve letter re terms of retirement to General Manger McBride.

**MOTION 2:** Appoint \_\_\_\_\_ acting General Manger effective June 1, 2020 at an annual salary of \$\_\_\_\_\_.

**IV. Legal Issues:** The Board is vested with the responsibility to hire the General Manager and to determine his or her compensation.

**V. Consistency with Board Goals and Policies:** The Board should consider whether these actions are consistent with Board Goals and Policies.

**VI. Fiscal Impact:** The retirement of the General Manger and appointment of Acting General Manager will have change the salary and benefit obligations of the District.



March 31, 2020

Kevin McBride,  
General Manager  
Upper Yampa Water Conservancy District  
2220 Curve Plaza, Suite 201  
Steamboat Springs, CO 80487

Dear Kevin:

The Board of Directors has received your e-mail dated March 3, 2020 announcing your decision to retire.

The last day of your employment with the District will be May 31, 2020. The Board has voted to pay you \$25,000 in addition to your normal salary and benefits. This amount will be paid to you with your last paycheck from the District and is intended to cover the premiums you expect to incur for health insurance for your family for the months of June through September of this year and to give you a "retirement bonus" in appreciation for your long and faithful service to the District.

In addition, the District will pay to you compensation for any accrued and unused vacation time you have as provided in the District's current Personnel Guidelines. Other than your normal salary and benefits through May 31, 2020, the \$25,000 lump sum payment described above and compensation for accrued and unused vacation time, no other compensation or other payments are owed to you in connection with your employment by the District.

Congratulations on your retirement. Thank you for your dedicated and loyal service to the Upper Yampa water Conservancy District and its Board of Directors. You will be missed. Have fun fishing, camping, skiing, bicycling and traveling (when we finally get around to that again).

Sincerely,

Kenneth Brenner, President  
Upper Yampa Water Conservancy District  
P.O. Box 775529  
Steamboat Springs, CO 80477

Mailing Address  
P.O. Box 775529  
Steamboat Springs, CO 80477-5529

Location  
2220 Curve Plaza, Suite 201  
Steamboat Springs, CO 80487

Telephone  
(970) 871-1035  
Fax (888) 519-3464





## BOARD COMMUNICATION FORM

**From:** Ryan Golten, CBI (facilitator of Board Governance Committee)

**Date:** April 1, 2020

**Item:** Board Governance Manual

DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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### I. Request/Issue and Background Information:

The Governance Committee has been working for the past few months on a draft Board Governance Manual for the Board's review. The Governance Manual is intended to address many of the governance issues that were raised in the 360 Assessment and in discussion with the Board and General Manager over the past year. The issues addressed by the Manual include respective roles, expectations, interactions, and resolution of issues between the Board and General Manager, among Board members, and between the Board and public. This draft incorporates language from Board governance documents and best practices from elsewhere. It also includes extensive edits from the Governance Committee.

### II. Summary and Alternatives

The Governance Committee is interested in Board members' reactions to the draft Manual in its present form. If the Board is generally supportive of the document, the Committee may propose to take Board members' suggested edits, incorporate them, and bring a revised Manual to the May Board meeting for potential adoption. Board members may also decide the Manual needs more significant revisions or changes before they are ready to consider potential adoption. The Committee looks forward to discussing this at the April meeting.

### III. Staff Recommendation:

Kevin?

### IV. Legal Issues:

Bob Weiss has reviewed the current draft, is supportive of the document, and has provided suggested edits on at least two occasions. See comments below under 'Consistency with Board Goals and Policies.'

### V. Consistency with Board Goals and Policies:



The draft Manual is an attempt to address issues raised by Board members regarding roles, expectations, interactions, and potential conflicts. It has been reviewed by Bob Weiss with the District Bylaws and Personnel Guidelines to ensure the documents are internally consistent.

In working on Chapter 5 (Conflict Resolution), Ryan and Bob have discussed minor changes that the Board may want to make to the Personnel Guidelines in order to promote clarity and consistency between the Manual, Personnel Guidelines, and Bylaws. This includes potentially clarifying, in the Personnel Guidelines, the types of matters that constitute ‘discipline’ and those that constitute ‘grievances.’ It may also include clarifying in the Personnel Guidelines that any grievance against the General Manager that is heard by the Board would require notice to the parties involved and an opportunity to participate meaningfully.

**Attachments**

Draft Board Governance Manual (dated 3/31)





## Board Governance Manual

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### Upper Yampa Water Conservancy District Mission

*To lead water resource management within the District’s boundaries by responsibly conserving, protecting, developing, providing and enhancing the water resources of the Upper Yampa River Basin for the benefit of the Basin.*

### Preamble

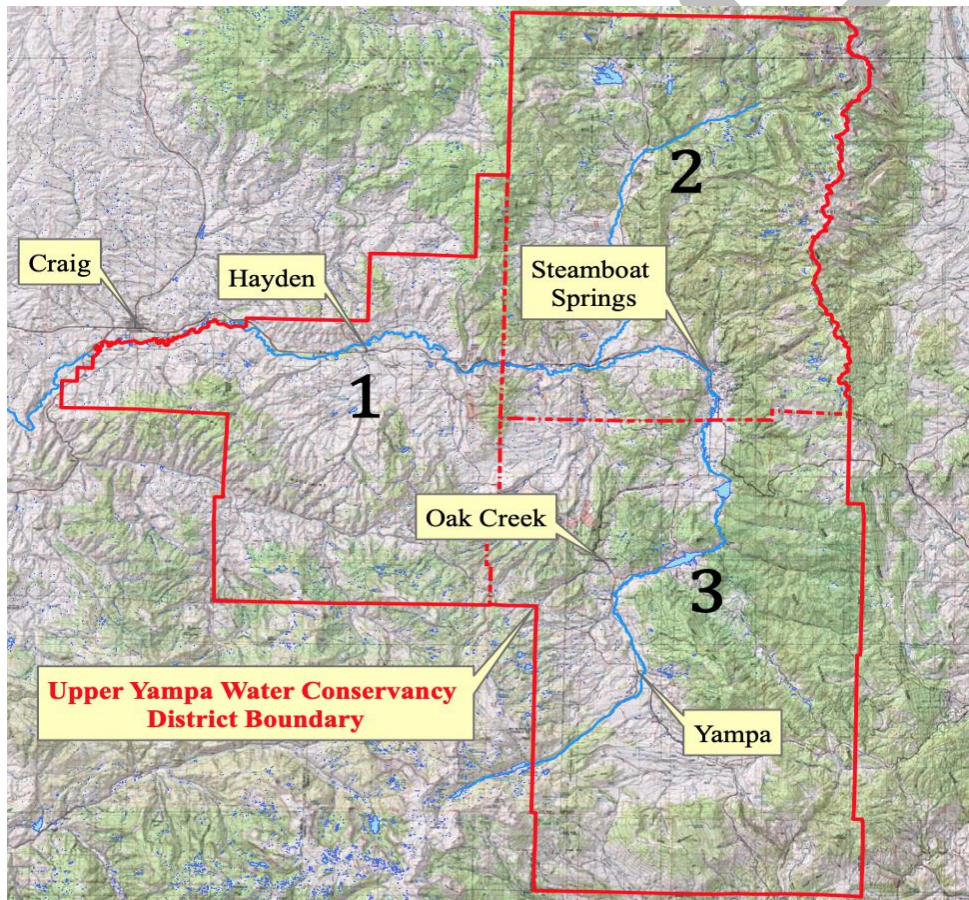
The Upper Yampa Water Conservancy District Board of Directors (herein ‘Board’) has developed and adopted, and will maintain, this Board Governance Manual as a resource to support the District’s mission, guide the Board, and encourage public confidence in the integrity of the District and its fair and effective operation. This Manual is shaped by the Board’s commitment to the following:

1. **Leadership** in the Upper Yampa Basin and regionally in the conservation and development of water resources.

2. **Partnership** with other agencies, stakeholders, and customers to conserve and develop water resources.
3. **Stewardship** of taxpayer dollars and the region's precious water resources.

## District Background

The Upper Yampa Water Conservancy District was formed in 1966 under the Water Conservancy Act of the State of Colorado to plan and develop water conservation projects in the Upper Yampa Basin. The District encompasses Routt County and a portion of Moffatt County and is divided into three divisions: Division 1 (Hayden area), Division 2 (Steamboat Springs area), and Division 3 (Oak Creek/Yampa area). The nine members of the Board of Directors, three representing each Division, are appointed by the District Judge to serve staggered four-year terms. Three Directors (one from each Division) are appointed each year, with the exception of every fourth year when no appointments are made. Directors must reside and own real property in the Division they desire to represent. There are no limits on the number of terms Directors may serve.



The District was formed on the basis that properties within the District would benefit through conservation, development, and stabilization of water supplies for domestic irrigation, power, manufacturing, and other beneficial uses. This led to the construction of Yamcolo Reservoir, located in the Flattops near the headwaters of the Yampa River, in 1980 and Stagecoach

Reservoir, located southeast of Steamboat, in 1989. Yamcolo offers 9,621 acre feet of storage, which primarily provides water to agricultural operations in South Routt County; some of which is delivered via the Stillwater Ditch, a District-owned and operated irrigation ditch that crosses the Five Pines Mesa. With up to 36,439 acre feet of storage, Stagecoach serves a multitude of water users, including municipalities, industrial use such as energy production, agricultural operations, and recreation including snowmaking. The District also owns and operates an 800 kW hydroelectric power plant at Stagecoach Dam. In addition to safely maintaining and operating District-owned facilities, the District promotes healthy reservoirs, streams, and watersheds within the District. In 2012, the District partnered with the Colorado Water Trust to coordinate the first environmental water release out of Stagecoach Reservoir. As part of its maintenance and operation, the District also closely adjusts and monitors the temperature and oxygen content of its releases to ensure a healthy habitat for trout and other aquatic life downstream, a contribution to both the environment and recreational opportunities on the Yampa River. In collaboration with various agencies, the District supports water quality efforts and participates in working groups to address issues that may affect water quantity in the future. The District monitors issues throughout the Colorado River Basin in an effort to protect the water resources of the Upper Yampa Basin and plan for potential water shortages.

The District is committed to an Upper Yampa River Basin with safe, secure water storage and supply that benefits all uses in the Basin.

## **Relevant Legal Authority**

The District is a governmental entity organized under the Colorado Water Conservancy Act found in Title 37, Article 45 of the Colorado Revised statutes. The Act contains the State law governing the creation, powers and authority, governance, operation, and financing of the District. The 1966 Decree forming the District describes the Boundaries and Divisions within the District, the Board structure, and the certain projects then expected to be undertaken by the District. The District is also subject to other legal requirements of state and federal law including the Colorado Open Meetings law, the Open Records Act, the Local Government Budget Law, the Colorado Governmental Immunity Act, and the Code of Ethics. The District has adopted Bylaws, policy resolutions, Personnel Guidelines, and this Board Governance Manual.

## **Chapter 1 – Role and Authority**

### **Board Values**

District constituents, and persons and entities who contract for allotments of water from the District, are entitled to Directors (herein ‘Directors’) who are fair, ethical, and accountable. Directors strive to constantly seek to reflect the following qualities in discharging their duties:

- Strive to be independent, impartial, and fair in their judgment and actions;
- Use their public office for the public good, not for personal gain; and
- Conduct public deliberations and processes openly, where not legally confidential, in an atmosphere of respect, civility and transparency.

## **Role of the Board**

The primary role of the Board is to establish policies and strategic direction that guide the District to meet its mission. The Board gives clear direction to the General Manager through motions, resolutions and other directives at Board meetings. This includes the need for visionary planning and adapting to unforeseen events. The Board exercises this authority only collectively as a Board, rather than as individuals. Directors recognize and respect the distinction between their policy-setting and oversight role, and the day-to-day implementation of policy by staff. The Board's role is to be 'nose in, fingers out,' meaning the Board is kept regularly informed of major District activities, pursuant to the Board's overall strategic plan and policy priorities, with the opportunity to provide feedback or raise questions at any time, and to discuss issues at Board meetings. The Board does not direct the day-to-day activities of the staff.

The Board's responsibilities are set forth in the District Bylaws and include the following:

- Promote the best interests of the District's constituents and stakeholders by establishing policies that support the current vision and mission of the District and ensuring implementation of those policies. Policies include the governing principles, strategic plans, and course of action for the organization.
- Establish policies that ensure fiscal stability and the effective use of funds. Each fiscal year the Board adopts a budget covering the anticipated revenues and expenditures of the District and reviews budget reports throughout the year. In addition, the Board hires an independent auditor to ensure District finances comply with standard governmental accounting rules. From time to time, the Board also reviews and/or adopts amendments to the District's cash reserve, investment, and other policies as necessary.
- Hire a General Manager to manage the day-to-day operations of the District. The Board holds the General Manager accountable for the effective operational management of the District and evaluates the General Manager at least annually.
- Engage legal counsel as needed to effectively represent the needs and interests of the District.
- Approves certain contracts and projects, appropriates water rights, and takes such other actions as set forth in the Bylaws.

For the Board of Directors to function in an effective manner, it is important that each member understand his/her respective role and the relationship they have to other members of the Board and to the General Manager.

## **Chapter 2 – Board Interactions with General Manager, Counsel and Staff**

The Board is committed to supporting a healthy, responsive and well-functioning organization. This requires collaborative, open and well-defined relationships with the Board's General Manager, counsel, and staff.

### **The Board's Relationship with the General Manager**



A strong collaborative relationship between the District Board and the General Manager is essential to a highly functioning Board and District. The General Manager is the primary agent of the Board and is the one to whom the Board delegates authority to manage and administer the District's daily operations in accordance with approved policies, budget, and governing documents of the District. The General Manager has two roles: chief executive officer and top advisor to the Board. As the most visible employee, the General Manager represents the District to its stakeholders and constituents.

Directors will focus on maintaining a shared sense of purpose, open communication, honesty, trust and mutual support of each another, Counsel, and staff. The Board must be able to support the decisions of the General Manager, provide the General Manager with clear direction, and grant him/her the authority to manage and lead the District. Both parties will endeavor to publicly support and be responsive to one another. They are expected to raise questions or concerns with one another in a direct, timely manner through open, honest and respectful communications, with regard to both the District's internal and external operations.

The General Manager is responsible for ensuring Directors have the information they need to make Board-level decisions and that all Directors are provided the same information. Directors expect the General Manager to make a recommendation on issues before the Board, except those that are strictly reserved to the Board or legal matters within the responsibility of the District's legal counsel.

In addition to the above, the following guidelines are intended to help define the relationship between the Board and the General Manager:

- 1) Individual Directors are encouraged to discuss District-related matters with the General Manager at any time, including to provide feedback, input, and/or suggestions concerning District policy and operations. If at any time the General Manager or a Director believes an issue may require broader policy clarification and/or decision making by the Board, he or she brings the issue to the full Board for input or guidance.
- 2) The General Manager prepares an annual budget and work plan for approval by the Board of Directors. The General Manager's annual work plan directly references and advances the District's strategic plan.
- 3) The Board reviews and, as needed, updates the District's strategic plan on an annual basis, prior to the General Manager's development of the budget and work plan for the following year.
- 4) The Board provides the General Manager with a written evaluation at least annually that is standardized, transparent, and tied to his/her job description and annual work plan.
- 5) The General Manager updates the Board bimonthly on the status and implementation of his/her work plan, to foster open communication regarding District activities, accomplishments, and any areas of concern. Any specific concerns and/or feedback should be raised during the General Manager's reports at these meetings, rather than being delayed until his/her annual review, consistent with the provisions of Chapter 5 below.

- 6) Directors are encouraged to engage on water matters with District stakeholders and others. Important issues or information from these discussions should be shared with the General Manager.
- 7) The General Manager provides all Directors with the same information regarding District business.
- 8) When a Director is going to be out of town or unavailable for a Board meeting or other function involving the Board, he/she notifies District staff in a timely manner.
- 9) The General Manager advises the Board of Directors when he/she is out of the office for an extended period of time and designates the individual who shall be acting General Manager during that time.
- 10) If a Director or General Manager has concerns that these guidelines are not being properly followed, he or she will raise the issue with the full Board and/or in accordance with the conflict resolution procedure in Chapter 5, as appropriate.

### **The Board's Relationship with Counsel**

- 1) **General counsel.** In general, any Director may contact the District's General Counsel with District-related inquiries. If the matter involves a request for significant legal work, it is approved by the Board as a whole. Exceptions include Directors collaborating with Counsel on longer-term District projects, in which cases approval by the Board is presumed, provided the Board initially authorized the project and is kept up to date. The Board President may also communicate with Counsel for purposes of Board meetings as needed; the General Manager is generally kept abreast of these communications. On an annual basis the Board shall approve an engagement letter with its General Counsel.
- 2) **Special counsel.** The District will from time to time employ special counsel. Unless otherwise determined by the Board, the protocol for Board member interaction with Special counsel is the same as with General Counsel.

### **Interactions with Staff (Apart from General Manager)**

District staff serves the District as a whole. The Board adheres to the following guidelines in interacting with staff serving under the supervision of the General Manger:

- 1) Directors do not direct staff to initiate any action, change a course of action, or prepare any report without the approval of the General Manager and, if necessary, Board action.
- 2) Directors may make reasonable inquiries to staff regarding District-related matters. Requests for staff research are directed to the General Manager. Responses involving District policy are generally shared with the full Board.
- 3) Directors do not attempt to pressure or influence staff discussions, recommendations, workloads, schedules, or priorities.
- 4) If Directors have questions or information they would like addressed by staff at Board meetings, they strive to share this reasonably in advance with the General Manager, so that staff can provide the desired information in the regular Board meeting packet and verbally at the meeting as requested.

- 5) Soliciting political support from staff is prohibited. District staff may, as private citizens, support political candidates, but all such activities must be done away from the workplace and may not be conducted while on the job.
- 6) Any issues or conflicts are addressed in accordance with the issue or conflict resolution procedure in Chapter 5.

## **Chapter 3 – Board Governance**

The District Bylaws establish the orderly conduct of District business where not otherwise provided by State law. The provisions below are non-binding guidelines, except where explicitly stated in the Bylaws.

The officers of the Board of Directors include the President and Vice-President. The General Manager serves ex officio as Secretary/Treasurer of the District. Officers of the District are elected annually by the Board.

### **Role of Board President**

A collaborative relationship between the President and General Manager is essential to a highly functioning Board. The primary role of the Board President is to preside over meetings, consult with the General Manager regarding Board meetings, and sign certain District documents and checks. The President is expected to meet with the General Manager before Board meetings, to frame and clarify topics, and after Board meetings, to ensure clear and timely follow up.

### **Board Meeting Schedule and Location**

The regular monthly meeting schedule is approved by the Board at the November Board meeting for the upcoming year. In general, every other Board meeting will include topics, materials, and/or policy issues with a need for more lengthy, informal, and participatory discussions, which will often inform future decision-making. These ‘work session’ style meetings are still considered Board meetings with accompanying agendas, minutes and relevant action items.

Currently, most (but not all) regular Board meetings are held on the second Wednesday of each month commencing at 1:30 pm in the upstairs conference room known as the Mountain Valley Bank Community Meeting Room, 2220 Curve Plaza, Suite 201, Steamboat Springs, Routt County, Colorado. Lunch is normally served before the meeting starting at 1PM. The Board may hold a day long Board retreat in October in lieu of the October Board meeting. Special meetings may be called from time to time in accordance with the Bylaws.

### **Board Meeting Agenda Development**

Board meeting agendas are generally set at the end of each meeting for the next Board meeting. Once set, they may be subsequently modified by the General Manager and Board President, or at the request of two Directors, provided any changes are made well before Board packets are distributed and posted, except in the case of urgent matters. Where possible, the General Manager and Board President come to agreement on the agenda topics and briefing materials required, in order to help ensure Board meetings are organized and productive.

## **Board Meeting Structure**

In general, Board meetings will follow the following agenda:

- Establishment of Quorum and Call to Order
- Approval of Agenda for Meeting
- Public Input and Comment
- Consent Agenda (minutes, financial report, disbursements, and other consent items)
- Report of General Manager
- Committee Reports
- Report of General Counsel
- District Engineer Report
- Consideration/Action on District Projects
- Board Member Reports
- Determination of Next Meeting Agenda
- Adjournment

As specified in the Bylaws, the 'Board of Directors Reports' section of each meeting agenda is for members of the Board to provide brief reports on matters of interest to the Board, including all meetings attended in their capacity as Directors. If the report is lengthy, or a Director wishes to raise an issue for Board consideration, the report is put in writing in the form of a Board Communication Form for staff to include in the Board meeting packet.

Bimonthly meeting agendas also include an update from the General Manager on the implementation of his/her work plan and any issues that may have arisen.

## **Board Meeting Protocol**

The following describes the Board's expectations for how its meetings are conducted.

- 1) Directors treat members of the public with courtesy and respect.
- 2) Board meeting minutes are distributed to Directors in advance of the next meeting and generally approved with corrections, if any, at the next regular Board meeting.
- 3) Information relevant to the Board's decision making and oversight should be shared efficiently by staff, but without unnecessary bureaucracy. In general, Board agenda items are accompanied by a Board Communication Form that explains the issue and what action, if any, is being sought. The Board is kept apprised of issues relevant to Board policy or decision-making and on the progress of District activities. Relevant updates, information, and policy options are provided in writing prior to Board meetings. Board Communication Forms may be supplemented with discussion and questions as needed.
- 4) As set forth above, the President and/or Vice President is expected to meet with the General Manager prior to Board meetings to review and prepare for the upcoming meeting, as well as after the meeting to ensure clear and timely follow up.
- 5) At the direction of the General Manager, department heads or appropriate departmental managers will generally be present at Board meetings.
- 6) Committees are used where beneficial to discuss, vet and frame complex issues for broader Board consideration.



- 7) When appropriate the Board adopts policies by resolution and ensures a clear methodology for tracking policy resolutions.

### **Electronic Communications**

Written and electronic documentation and communication regarding District business and/or operations is legally considered to be in the public domain. This excludes information protected by attorney-client or other privilege. Further, telephonic meetings, emails and texts that discuss public business and involve more than two members of the Board may constitute a ‘meeting’ under Colorado law and in such cases must be open to the public. Where appropriate, Directors’ ideas or proposals for consideration by the full Board are be sent to the General Manager (or, as relevant, the General Counsel) for inclusion in the Board packet prior to the next Board meeting. Board members understand that rules involving electronic communications are subject to change, and that their actions must be consistent with state law and the District Bylaws.

### **On-Boarding and Orientation of Directors**

New Directors should receive copies of this Board Governance Manual, District Bylaws, Personnel Guidelines, current strategic plan, annual budget, and other relevant policy and governance materials.

Further, to effectively oversee the functions of the District, new Directors should receive a tour of District’s facilities and infrastructure within their first six months. All Directors are encouraged participate in this tour on a regular basis.

## **Chapter 4 – Board Interactions with the Public**

As a public body, it is important for the District Board to establish a working environment that encourages public participation and trust. During their service, Directors may have a range of interactions with the public including written communication (i.e., letters, email, etc.), social media, phone calls, face-to-face, social functions, and regular and special Board meetings.

### **Engaging the Public in General**

The Board respects the role of constituents in the governance of the District and encourages their participation. The Board values public comments, both in writing and during Board meetings, and will seek input from stakeholders where appropriate in District decision making. Directors will encourage constituents to attend Board meetings where they have input, comments or concerns to share, whether in person or writing.

### **Public Input During Board Meetings**

The Board President maintains an orderly progression of the business before the Board, and to the extent possible regulates the amount and type of input from the public and from members of the Board and staff. To engage the public, public comment is generally accepted on all agenda items, with time set aside for general public comment on items not on the agenda. This is clearly indicated on meeting agendas. In addition, the Board will often invite a stakeholder group to attend lunch before Board meetings.

Generally, Directors will not respond to public comments during the public input portion of the agenda except to refer matters to the General Manager for follow-up. Directors may ask clarifying questions to ensure that staff provides an appropriate response. Occasionally, a prompt response may be offered by the President or the General Manager when an obvious answer or resolution is available. The Board will not enter into a debate or make decisions in response to public comments that are not on the agenda for consideration.

### **Representing the District Outside of Board Meetings**

Directors are always encouraged to attend meetings and events related to relevant water matters in an informal capacity. Primarily this helps create a more informed Board and enables Directors to share relevant issues and information with the rest of the District Board and staff at District Board meetings (during ‘Board Member Reports’). Additionally, Directors’ participation in other Basin water efforts can be helpful in raising the visibility and public understanding of the mission and activities of the District.

To help ensure they are representing the positions and perspectives of the District in an accurate and coordinated manner on policy matters, Directors adhere to the following guidelines:

- 1) When Directors attend other meetings or events as Directors of the District, they are encouraged to be collaborative and participatory, with the primary goal of listening, asking questions and contributing ideas, and reporting back to the District about relevant efforts and topics.
- 2) Directors attending another meeting or event will clearly delineate between their personal views and opinions and official District policy.
- 3) Directors do not represent policy positions of the District unless adopted by the Board.
- 4) Directors communicate and coordinate closely with District staff prior to communicating District policy positions, to ensure messaging is clear and consistent.
- 5) When one or more Directors accompany the General Manager and/or staff to external meetings, they first discuss and come to agreement on their respective roles.
- 6) The General Manager may invite Directors to accompany him/her to external meetings where useful in discussing official District business. (In some cases the General Manager may decide it would be useful to have two Directors attend such meetings.)
- 7) Directors may be called upon by the full Board and/or General Manager to represent the District in a formal capacity or otherwise.
- 8) To the extent a Director may communicate with constituents or stakeholders regarding Board perspectives on non-confidential matters, he/she will strive to offer a balanced perspective with adequate disclaimers about his/her own role. When expressing personal opinions and comments that may be contrary to adopted District policy, Directors will clarify that these statements do not reflect the official position of the Board or District.
- 9) When addressing the media or utilizing social media or other forms of communications to express positions contrary to official Board policy, Board members will explicitly state that their views reflect personal opinions rather than Board policy.
- 10) When three or more Directors are authorized by the Board to attend a meeting, the meeting is properly noticed as a public meeting of the District.

- 11) Once the Board of Directors has taken an official position on an issue, official District correspondence regarding that issue will normally reflect the Board's adopted position, except as otherwise directed by the Board.

## **Chapter 5 – Resolution of Issues or Concerns**

The Board recognizes that concerns, misunderstandings, and differences of opinion are inevitable for any organization. While in some cases the Board may simply agree to disagree, the Board is committed to addressing concerns that impair the healthy functioning of the District or Board. The Board strives to address these concerns directly, respectfully, with curiosity, and as transparently as possible, whether they concern Board members, the General Manager, or the District as a whole. Concerns are addressed in a timely, open and responsive manner to promote mutual understanding and healthy functioning of the District.

This Chapter describes options for resolving concerns, misunderstandings, and differences of opinion. They are not intended apply to disciplinary matters addressed in the District's Personnel Guidelines. The Board and the General Manger (in the case of matters within the purview of the General Manager) are free to modify the procedures described or to disregard them as they deem appropriate under the circumstances. These procedures are not mandatory and are not the exclusive means of addressing such matters.

### **Concerns Involving Board Members**

It is not uncommon for miscommunication, misunderstandings or conflicts to surface among Board members or between a Board member(s) and the General Manager. Board members will address such issues in a timely and direct manner, taking the following steps as appropriate (generally but not always in the following sequence, as needed).

- 1) Attempt to address any personal conflicts or concerns in a direct and timely manner with the other party or parties, striving for mutual understanding, curiosity, and appreciation for the different viewpoints involved.
- 2) Bring the concern to the Board President, who will facilitate the Board's determination of how to proceed with the concern. The Board and/or party involved may ask that the complaint be summarized in writing to support productive discussions, particularly if the complaint is of a more serious nature. The Board may choose to address the matter at a regular or special Board meeting, suggest mediation between the parties, and/or refer the issue to the appropriate parties. If the Board President is one of the people involved, the Vice President will serve in the role of the President. If the concern involves the General Manager, the Board may choose to address the issue in his/her annual review.
- 3) If the Board decides to address the concern at a Board meeting, the Board President in consultation with the General Counsel will ensure the concern is described and handled fairly and in accordance with District policy. This includes ensuring that the parties involved understand the concern and have an opportunity to share their perspectives. The President will facilitate the decision making of the Board. If the President is one of the

people involved, the Vice President will serve in the role of President. The Board may review its past decisions if new information comes to light or for other reasons.

- 4) If the Board decides the issue should be addressed through mediation, the Board President and/or Vice President will work with District Counsel to engage a neutral third party to facilitate direct discussions between the parties to resolve the issue.
  - a. The mediator must be: a) a person that the parties agree to; or b) in the absence of agreement, a person appointed by the Board. The third party may be a Board member or impartial individual whose aim is to help the parties resolve the issue.
  - b. While the parties may agree to keep discussions confidential to the extent authorized by law, the result will be shared with the Board at whatever level of detail the parties agree is appropriate, to keep the Board apprised, avert surprises, and promote transparency.

If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute by the Board or other means.

- 5) The Board may decide to refer the concern to appropriate authorities as needed.

### **Concerns Involving the General Manager**

The above procedures apply to complaints or concerns regarding the General Manager from the public, Board members, staff, or Counsel.

### **Issues or Concerns Involving Staff Operations and Actions**

Any concerns of a Director regarding the behavior or work of a District employee other than the General Manager are directed to the General Manager privately to ensure the concern is addressed. The GM will confer with District Counsel and keep him/her fully apprised of the handling of the issue. Directors do not reprimand employees directly nor do they communicate their concerns about individual staff members to anyone other than the General Manager or as otherwise permitted by law or the governing documents of the District. The General Manager addresses and tries to resolve the issue, consistent, where relevant, with the District's Personnel Guidelines. The General Manager keeps the Board apprised on the resolution of such issues in an appropriate and timely manner and in accordance with the Bylaws and other policies.

The District's Personnel Guidelines state that 'If the grievance involves the General Manager, the grievance should be reported to the District's Board of Directors President. In that case the Decision of the Board of Directors of the District shall be final.' If a grievance is escalated to this level, the Board will generally follow the procedures above.

### **Issues Involving the District in General**

The Board recognizes there will be occasions in which members of the public or stakeholder of the District have concerns about District operations or policy and raise such concerns with the General Manager and/or members of the Board. The District is committed to handling these concerns or complaints responsively and openly. When such concerns are presented to a Board member, the Director will promptly raise the issue directly with the General Manager. When such concerns or complaints are presented to the General Manager, he/she will provide the Board

with a written or verbal report of the concern and the District's response, if any. The Board is also kept informed of significant or, politically sensitive, urgent and/ or repetitive telephone or electronic communication inquiries.

### **Liability Concerns**

Information that may expose the District to liability will be shared with the Board at a noticed, executive session meeting of the Board of Directors as allowed by applicable law

## **Chapter 6 – District Liability and Insurance Issues**

As a Colorado governmental entity, the District, its Board and officers and employees enjoy limited protection from liability under the Colorado Governmental Immunity Act. In addition, the District maintains insurance, which includes coverage for general and automobile liability and public official liability coverage.

### **Disclaimer**

This Manual is intended to provide guidance and establish best practices for Directors concerning their responsibilities as Directors and their interactions among themselves and with the public, staff, and constituents of the District in the conduct of District business and operations. This Manual does not establish binding requirements or legally enforceable rights. Nothing in this Manual is intended to supersede any applicable provision of the District's Bylaws, Rules and Regulations, adopted Policies, Personnel Guidelines or other applicable law, regulation, or document of the District.





## BOARD COMMUNICATION FORM

**From:** Kevin McBride

**Date:** 4/1/2020

**Item:** Financial Accounts and Security

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DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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**I. Request/Issue and Background Information:**

Financial Accounts Information. The District has had the same accounts for over 12 years (tenure of the GM). Counsel Weiss raised the issue of financial security re the current market trends. I understand that these are all very conservative (safe) holdings. An email was sent out 3/19/2020 listing the Districts individual accounts and is attached. Colorado Trust, where most of the Districts monies are held, also has a new website devoted to the current coronavirus situation. There was a single reply that the accounts were essentially cash accounts and that we should “stay the course”. Staff plans no action unless there are other comments from the Board on this item. Refer to email of March 19, 2020.

**II. Summary and Alternatives:**

Information only

**III. Staff Recommendation:**

No action

**IV. Legal Issues:**

N/A

**V. Consistency with Board Goals and Policies:**

Goal 3 deals with financial solvency.





# BOARD COMMUNICATION FORM

April 8, 2020 Board Meeting

(Not Privileged)

**From:** Robert G. Weiss, Legal Counsel

**Date:** April 1, 2020

**Item:** Yamcolo/Stagecoach contracting update

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DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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**I. Request/Issue and Background Information:** This is an update on the pending Yamcolo and Stillwater Ditch agreements. This is not a privileged and confidential attorney-client communications or protected from disclosure as instructions to negotiators.

**A. Yamcolo Irrigators Association (YIA) Amendment.** This Amendment makes a number of changes to the YIA agreement, including the pricing provisions which would fix until 2041 the price of YIA water starting in 2020 at \$13/AF and increasing annually by CPI subject to certain side board limitations. Annual repricing of YIA water based on O, M &A will not be necessary through 2041. The amendment has been unanimously approved by the YIA Negotiating and Discovery Committee, signed by YIA President Gary Clyncke and is expected to be ratified at the YIA annual meeting on May 18, 2020. The minutes from the YIA Annual meeting on May 20, 2019 delegated to the Negotiating and Discovery Committee authority to approve the YIA Amendment. We are preparing Carriage contracts to be signed by 4 YIA members with the right to use the 4.5 cfs capacity in the Stillwater Ditch allocated to YIA. Since the YIA members will not ratify the YIA amendment until May 18, 2020 we are requesting that the Board authorize the General Manager to enter in to an agreement with YIA extending the arbitration deadlines under paragraph 3.2 of the YIA agreement.

**B. 2005 Stillwater Ditch Agreement Amendment.** This agreement is out for signatures by the Stillwater Ditch residual interest shareholders. The negotiations to reacquire the Stillwater Ditch with its former shareholders were suspended for at least 4 or 5 years. The District has agreed to reimburse the attorney's fees of the former shareholders up to \$11,000. The Amendment suspends annual repricing to the former shareholders based on O, M &A which was set to start this year under the existing agreement and instead establishes a 2020 fixed fee of \$0.74 per share fee (total in 2020 of \$8,186.25) adjusted annually by CPI (using the same CPI adjustment formula as the other contracts) through 2041.

C. **Individual Irrigator Carriage Contract.** Individual Irrigators and who wish to use the Stillwater Ditch must have carriage contracts with the District. The contract will run through 2041 on a take or pay basis. The 2020 starting price is \$1.84 per acre foot annually of water the irrigator has under contract. This adjusts by CPI as modified by side boards. Credit against the fee is given to shareholders who have "capacity" in the original 36.3 cfs in the Ditch under the 2005 Stillwater Agreement to the extent that capacity used to deliver their water. All of the Carriage contracts for Individual Irrigators and who wish to use the Stillwater Ditch have been signed and returned.

D. **Yamcolo Individual Irrigators** (3500 AF Yamcolo water). All water allotment petitions for the Individual irrigators have been returned. Water price is \$11 AF with sideboard CPI adjustment. Water subject to District's 2030 off-ramp of 500 AF is \$10 AF. District has agreed to reimburse their attorney fees up to \$2000. The Resolution adopted by the Board in January and revised in February describes the process for re-contracting the 3500 AF of individual Irrigator water. The Board is scheduled to take up for approval water allotment petitions at Public hearing on April 8, 2020 pursuant to attached notice.

## II. **Summary and Alternatives:**

**MOTION 1:** Authorize the General Manager to enter in to an agreement with YIA extending the following arbitration deadlines under paragraph 3.2 of the YIA agreement:

Extended deadline to demand arbitration: June 1, 2020

Extended deadline to select arbitrators: June 15, 2020

Extended deadline to complete arbitration: August 1, 2020

**MOTION 2:** Approve Petitions for water allotment contracts and Carriage contracts listed on attachment.

III. **Staff Recommendation:** Staff recommends approval of booth Motions.

IV. **Legal Issues:** As described above.

V. **Consistency with Board Goals and Policies:** N/A

VI. **Fiscal Impact:** Various

**Attachments:** Notice of Hearing on Allotment Petitions  
Summary of Petitions and Carriage contracts.

## **CARRIAGE CONTRACT**

**THIS CARRIAGE CONTRACT** (the "Contract") is made and entered into effective the 1<sup>st</sup> day of April, 2020 ("Effective Date"), between the UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservation district ("District") and the STILLWATER DITCH AND RESERVOIRS COMPANY ("Company"), on the one hand, and SLEEPING LION RANCH, LLC, a Colorado limited liability company (the "Irrigator") on the other hand.

### **RECITALS:**

A. The District is a Colorado water conservancy district duly organized and existing pursuant to the Water Conservancy Act, Colorado Revised Statutes §§37-45-101, et seq.

B. The Company is a mutual ditch and reservoir company organized and existing under Colorado law. The Company was originally organized to own and manage certain water rights and infrastructure through which those water rights are exercised. Those water rights are described as follows and are referred to collectively herein as the "Original Water Rights":

(1) Absolute direct flow water right decreed to the Stillwater Ditch for the diversion of 30.830 cubic feet per second (c.f.s.) from the Yampa (Bear) River with an adjudication date of June 8, 1910 and an appropriation date of September 23, 1903; and

(2) Absolute water storage right decreed to Gardner Park Reservoir for the storage of 1,155.6 acre feet from Gardner Creek and other tributaries of the Yampa (Bear) River with an adjudication date of June 8, 1910 and an appropriation date of October 7, 1902.

The infrastructure through which the Original Water Rights described in subparagraphs B(1) and B(2) above are exercised and delivered is the Stillwater Ditch as it physically existed prior to the enlargement of such Ditch by the District in 1989 (the "Original Stillwater Ditch"). The District enlarged such Ditch in 1989 to accommodate up to 62.5 c.f.s., and such Ditch and its ditch improvements, existing and future diversion and measuring facilities, easements, existing and future US Forest Service Special Use Permits, existing and future prescriptive and statutory right-of-way claims, and vested rights of way, but not including individual irrigator's turn-out structures, turn-out water flow measuring devices, or laterals on the Ditch, are herein collectively referred to as the "Stillwater Ditch" or "Ditch."

C. In 2005, the Company conveyed title to the Original Water Rights and Gardner Park Reservoir to its individual shareholders and retained title to the Stillwater Ditch and, thereafter, by the Assignment of Stock and Water Delivery Agreement recorded in the records of the Clerk and Recorder of Routt County, Colorado on July 14, 2005 at Reception No. 621890 and the records of the Clerk and Recorder of Garfield County, Colorado on July 25, 2005 at Book 1709 Page 444 ("2005 Stock Assignment Agreement"), all stock in the Company was transferred by its shareholders to the District. At the time of execution of this Contract, the District remains the sole owner of all stock in the Company and owns and controls the Company. For purposes of this Contract, the persons or entities who now or hereafter own the residual rights of the Company's former shareholders under the 2005 Stock Assignment Agreement shall be referred to as the "Shareholders."

D. In addition to the Original Water Rights, the Stillwater Ditch has been used to convey water diverted pursuant to the following other water storage rights:

(1) Those used for storage of water in Stillwater Reservoir No. 1 and Ramshorn Reservoir and available for release and usage by some of the Shareholders (the "Shareholder Other Reservoir Water Rights"), and

(2) Those water rights owned by the District for storage of water by the District in Yamcolo Reservoir (the "District Yamcolo Water Rights"), which include up to 445 AF of storage water from Yamcolo Reservoir allocated by the District to the Yamcolo Irrigators Association ("YIA") pursuant to Agreement dated January 9, 1981, as amended in 2020 (collectively, the "YIA-District Allotment Contract") and currently allocated by the YIA to several of its members (the "YIA Stillwater Ditch Allocation").

E. Among other things, the 2005 Stock Assignment Agreement committed the District to operate the Stillwater Ditch in a manner to permit the Shareholders to use up to 36.3 cfs of the capacity of the Stillwater Ditch (the "First Priority Capacity") for delivery of the Original Water Rights and Shareholder Other Reservoir Water Rights.

F. The District has constructed certain improvements to the Stillwater Ditch, including but not limited to enlargement of the carrying capacity of the Stillwater Ditch designed to permit, in addition to the carriage of water diverted and delivered pursuant to the Original Water Rights and Shareholder Other Reservoir Water Rights, the carriage of water stored by the District in Yamcolo Reservoir and delivered through the Stillwater Ditch for

(1) up to 4,000 AF to the District's contractees pursuant to individual water allotment contracts (the "District's Yamcolo Water"), plus

(2) up to 445 AF of storage water from Yamcolo Reservoir allocated by the District to the YIA pursuant to the YIA Stillwater Ditch Allocation. At the time of execution of this Contract, the carrying capacity of the Stillwater Ditch is approximately 62.5 c.f.s.

G. Irrigator has EITHER (a) simultaneously with the execution of this Contract entered into an allotment contract ("Allotment Contract") with the District in which the District has agreed, subject to certain conditions, to store in Yamcolo Reservoir prior to July 15th of each calendar year 2400 acre-feet of water for release for Irrigator's irrigation and stock water use on Irrigator's lands described in Exhibit A, upon request, OR (b) a membership in YIA and is allotted by such YIA \_\_\_\_\_ acre-feet of water out of the 445 YIA Stillwater Ditch Allocation which is part of the total 3,000 AF allotted to the YIA in the YIA-District Allotment Contract, the allotment of such portion of the YIA Stillwater Ditch Allocation being also herein referred to as the "Allotment Contract." The Allotment Contract provides that the stored water from Yamcolo Reservoir allotted to the Irrigator shall be delivered to Irrigator at the discharge of the outlet works of the Yamcolo Reservoir. The quantity of water described in such applicable Allotment Contract to Irrigator is usable only for irrigation and stock water purposes and is hereinafter referred to as the "Allotment Water."

H. Irrigator desires to enter in this Contract with the District and the Company to provide for the carriage of the Allotment Water within the Ditch from the discharge of the headgate of the Ditch to the headgate or turn-out of Irrigator on the Ditch shown and described on Exhibit B attached hereto (the "Irrigator Turn-Out") for use for irrigation and stock water purposes on the lands of Irrigator described on Exhibit A.

**NOW, THEREFORE, IN CONSIDERATION OF THE PAYMENTS TO BE MADE BY IRRIGATOR** as hereinafter provided, and in consideration of the mutual covenants herein contained, the sufficiency of which consideration is hereby expressly acknowledged, the District and Irrigator hereby agree as follows:

**I. CARRIAGE AND DELIVERY OF WATER:**

1.1 The District agrees, subject to the terms of this Contract, to accept at the Stillwater Ditch headgate, convey in the Ditch and deliver to Irrigator at the Irrigator Turn-Out the Allotment Water properly released from Yamcolo Reservoir to Irrigator under the Allotment Contract. Other than if Irrigator is an allottee out of the YIA Stillwater Ditch Allocation, the obligations of the District under the preceding sentence are also subject to the terms and provisions of the Allotment Contract, all of which are incorporated herein by reference, including without limitation, paragraph 2.2 regarding advance notice to the District of dates, time and rate of flow of water requested to be released, paragraph 2.3 regarding maximum allowable combined instantaneous release rate through the Yamcolo Reservoir outlet works and the allocation of water released among the various parties entitled to such releases pursuant to agreements with the District, paragraph 2.4 regarding risk of seepage, evaporation, and other delivery losses of the Allotment Water within the Yampa (Bear) River and the Ditch, paragraph 2.5 regarding the time period the Allotment Water will be released, and paragraph 2.7 regarding the place and manner of use of the Allotment Water. If Irrigator is an allottee out of the YIA Stillwater Ditch Allocation, the obligations of the District under the first sentence of this paragraph 1.1 above are subject to the terms and provisions of the YIA-District Allotment Contract, all of which are incorporated herein by reference.

1.2 The Company and the District shall not be obligated to carry or deliver water in the Stillwater Ditch before May 1 or the date in the springtime that the headgate, diversion structure and Ditch are free of ice and snow and capable of transporting water, whichever occurs later, or after October 1 of any year.

1.3 Except as set forth in this Contract, Irrigator agrees that, by virtue of this Contract Irrigator has no right, privilege, or entitlement to approve future Stillwater Ditch policies or bylaws as may be adopted by the District or the Company, including bylaw revisions or pricing or assessment rules, or other rules and regulations (in all, the "Stillwater Ditch Terms"), including (but not limited to) pricing, assessments, management, repairs or maintenance, as may be adopted by the District or the Company or changed from time to time in the sole discretion of the District or Company, including separate operations, maintenance and repair cost share by direct flow/Gardner Park/Ramshorn/Stillwater Reservoir users, even though a portion of the Allotment Water is or may then be delivered using the Stillwater Ditch into the Yampa River drainage or Colorado River drainage. The District shall give notice to Irrigator prior to the adoption of any changes, amendments, terminations, or revocations of any such Stillwater Ditch Terms. Irrigator is not by virtue of this

Contract a third party beneficiary of the Stillwater Ditch or the Stillwater Ditch Terms or the 2005 Stock Assignment Agreement or any amendments thereto. However, if Irrigator is also a Shareholder under the 2005 Stock Assignment Agreement or a shareholder in a successor Ditch owner, nothing in this paragraph 1.3 is intended to prevent Irrigator from exercising its rights with respect to the Stillwater Ditch or the Stillwater Ditch Terms or the 2005 Stock Assignment Agreement, or any amendments thereto, by virtue of such status.

1.4 Irrigator acknowledges that the existing carriage capacity of the Stillwater Ditch has been allocated by the District as set forth below and that such allocation will remain in effect and be binding on Irrigator and the District during the Term (as defined below) subject to the terms and provisions hereof:

(a) The first 36.3 c.f.s. of the capacity of the Stillwater Ditch (“Shareholder Capacity”) is reserved under the 2005 Stock Assignment Agreement for use by the Shareholders to convey water lawfully diverted under the Original Water Rights, and/or the Shareholder Other Reservoir Water Rights. In addition, to the extent capacity is physically available, the Shareholder Capacity may also be used by Shareholders, including Irrigator, if Irrigator is a Shareholder, to deliver the District's Yamcolo Water, including the Allotment Water, and the YIA Stillwater Ditch Allocation to which a Shareholder may be entitled. The Shareholder Capacity shall be allocated among the Shareholders on a pro rata basis, according to the number of shares owned by the predecessors in interest of the Shareholders as specified in the 2005 Stock Assignment Agreement. Water lawfully diverted by or under contract for delivery to Irrigator under any other water right than the Original Water Rights, the District's Yamcolo Water, the YIA Stillwater Ditch Allocation or the Shareholder Other Reservoir Water Rights shall not be conveyed within or under the Shareholder Capacity. Irrigator is not entitled to use the Shareholder Capacity to convey or deliver unadjudicated water from the Yampa or Bear River into the Stillwater Ditch. In the event that the capacity of the Stillwater Ditch suffers a reduction for any reason, the Shareholder Capacity shall remain intact, and, in such event, deliveries of water pursuant to carriage contracts in the Carriage Contract Capacity (defined below), including this Contract, shall be reduced as necessary and as further described in paragraph 1.4 (d) below to preserve the Shareholder Capacity to the greatest extent possible.

(b) Use of the remaining 26.2 c.f.s. of the capacity of the Stillwater Ditch (“Carriage Contract Capacity”) shall be reserved for use pursuant to carriage contracts between the District and Company and the individuals and/or entities utilizing or entitled to utilize such remaining capacity, as follows:

(i) 4.5 cfs of the remaining 26.2 c.f.s Carriage Contract Capacity shall be reserved by the District and Company for the delivery of the YIA Stillwater Ditch Allocation. Irrigator acknowledges that the YIA Stillwater Ditch Allocation capacity among the YIA members is determined by the YIA and not by either the District or the Company or the allottees from YIA, and that the YIA Stillwater Ditch Allocation is subject to the YIA-District Allotment Contract as now exists and as may hereafter be amended.

(ii) 2.5 c.f.s. of the remaining 26.2 c.f.s Carriage Contract Capacity (the "District Non-Ag Water Capacity") may be reserved to and for the District, at the option of the District, for the delivery of up to 500 acre feet annually that may be stored by the District in Yamcolo Reservoir and allocated by the District to its Original Municipal Pool for

municipal, industrial, augmentation or other non-agricultural uses (the "District's 500 AF Non-Ag Water") and further allocated pursuant to individual contracts between the District and the users of such 500 AF of stored water; provided, however, that such reservation of capacity shall only be reserved to and for the District commencing March 1 of the calendar year after the calendar year in which the Board adopts a Resolution authorizing such use (the "Non-Ag District Capacity Commencement"). Until the date of the Non-Ag District Capacity Commencement for the District, such 2.5 c.f.s District Non-Ag Water Capacity shall be added to the capacity reserved to and for the District under subparagraph 1.4 (b) (iii) below.

(iii) 19.2 cfs of the remaining 26.2 c.f.s. Carriage Contract Capacity (plus the 2.5 cfs District Non-Ag Water Capacity prior to the Non-Ag District Capacity Commencement) is reserved to and for the District for the delivery of the District's Yamcolo Water for irrigation and/or stock water first uses (including subsequent storage for such first irrigation uses) within the Yampa River basin and/or the Colorado River basin pursuant to allotment contracts entered into by the District, including the Irrigator Allotment Contract, and subject to the obligations of the District under subparagraphs (i) and (ii) above, the District may, when the Yampa (Bear) River is not under administration, utilize excess capacity in the Stillwater Ditch for diversion and carriage of water under any other decrees whether now existing or hereafter obtained or unadjudicated water from the Yampa River.

(c) Irrigator further agrees that the quantity of water carried by the Stillwater Ditch in such 26.2 c.f.s. of capacity for delivery into the Colorado River Basin in any water year shall never exceed the lesser of 4,000 AF or the sum of (a) the quantity of the District's Yamcolo Water delivered or expected to be delivered into the Colorado River Basin that water year, plus (b) the YIA Stillwater Ditch Allocation delivered or expected to be delivered into the Colorado River Basin (not to exceed in any event 350 AF). If the District concludes in the exercise of its reasonable discretion that the limitation set forth in the preceding sentence will be exceeded the District may take such action as it deems appropriate to limit the application of irrigation water to lands of Irrigator located in the Colorado River Basin, except such actions shall not include curtailment of delivery in the Ditch of up to 350 AF out of the 445 AF YIA Stillwater Ditch Allocation historically exported into the Colorado River Basin. If the District concludes in the exercise of its reasonable discretion that there exists excess capacity in the Stillwater Ditch when the Yampa (Bear) River is not under administration, such capacity may be used or contracted by the District for diversion and carriage of water under any other decrees whether now existing or hereafter obtained or unadjudicated water from the Yampa River.

(d) If the Carriage Contract Capacity is reduced or otherwise insufficient to accommodate the delivery of Allotment Water at the rate demanded, the YIA Stillwater Ditch Allocation capacity and the Carriage Contract Capacity (less the YIA Stillwater Ditch Allocation capacity) shall each be reduced proportionally and pro rata, without discrimination. As set forth in subparagraph 1.4 (b) (i) above, the remaining YIA Stillwater Ditch Allocation capacity shall be allocated among its members as determined by YIA and the remaining Carriage Contract Capacity (less the remaining YIA Stillwater Ditch Allocation capacity) shall be allocated among the holders of all Allotment Contracts (excluding YIA-District Allotment Contract) pro rata.

(e) For purposes of illustration, the allocation of capacity within the Ditch is

graphically depicted on Exhibit C attached hereto. In the event of a conflict between Exhibit C and the provisions of this paragraph 1.4, this paragraph 1.4 shall be controlling.

1.5 Except as otherwise approved by the District in writing, such approval to be given, conditioned or withheld by the District in its sole discretion, none of the Allotment Water shall be diverted from the Stillwater Ditch other than at the location of the Irrigator Turn-Out described in Exhibit B, and none of the Allotment Water shall be carried in the Stillwater Ditch into the Colorado River Basin for purposes other than irrigation and/or stock water uses on the property of Irrigator described in Exhibit A.

## **II. CARRIAGE FEES, PAYMENT, AND CREDITS AGAINST FEE :**

2.1 The fee for the carriage and delivery of any of the Allotment Water ("Carriage Fee") within the Ditch from the discharge of the outlet works of Yamcolo Reservoir to Irrigator's Turn-Out for Water Year 2020 under this Contract (the "First Water Year") shall be one dollar and eighty-four cents (\$1.84) per acre foot of the maximum Allotment Water as described in paragraph G of the Recitals above, whether Irrigator diverts and applies to Irrigator's land all, any, or none of such Allotment Water in any year, but subject to the Credit described in paragraph 2.3 below. This Carriage Contract is a "take or pay" contract, but subject to the Credit described in paragraph 2.3 below. However, if in any year Irrigator's payment obligation is reduced under the abatement provisions in Irrigator's Allotment Contract for Yamcolo water, either directly or as a member of YIA, the annual Carriage Fee payable by Irrigator for such year shall be reduced in the same proportion. The annual Carriage Fee the next Water Year after the First Water Year, and in each Water Year thereafter during the Term of this Contract, shall be an amount equal to the greater of (i) the Carriage Fee for the prior Water Year, or (ii) the product obtained by multiplying the Carriage Fee for the prior Water Year by a fraction, the denominator of which is the CPI for the semi-annual period ending December 31 in the Water Year prior to the prior Water Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior Water Year. However, notwithstanding the foregoing, the following rules shall apply and supersede the Carriage Fee as determined above for any calendar year from 2021 through to November 1, 2041:

(i) If the CPI-U increase for the preceding calendar year was 1.5% or less, then apply a 1.5% increase; but

(ii) If the CPI-U increase for the preceding calendar year was more than 1.5% but not more than 4%, then decrease such actual CPI-U increase by 0.5% and apply such adjusted increase; but



(iii) If the CPI-U increase for the preceding calendar year was more than 4%, then divide the amount by which such increase exceeds 4% by 2, and add the result to 4% and apply such adjusted increase, but

(iv) In no event shall the adjusted percentage increase be less than 1.5% nor more than six percent (6%).

The CPI as herein described is the Urban Consumers, "all items," as set forth in the Denver-Aurora-Lakewood Federal Bureau of Labor Statistics index. In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date then the District shall select a reasonably comparable price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all increases in the CPI are taken into account, notwithstanding any such change in the base year.

A chart demonstrating the operation of this paragraph 2.1 is attached as Exhibit D to this Contract for illustrative purposes. If there is any inconsistency between the chart and the text of this Contract the text of this Contract shall be controlling.

2.2 The annual Carriage Fee shall be paid by Irrigator to the District within 30 days following the date the District provides an invoice to the Irrigator requesting payment for the prior irrigation season most recently concluded specifying the amount of the Carriage Fee payable, which shall include a description of any credit to which Irrigator is entitled as calculated pursuant to paragraph 2.3 below. Any annual payment not made within fourteen (14) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. Except as set forth below, payments due are based on the amount of Allotment Water and shall be made regardless of the amount of Allotment Water carried within the Ditch and delivered to Irrigator at the Take-Out and there shall be no abatement or setoff against any such payment, nor shall Irrigator be permitted to withhold any payment required for any reason whatsoever.

2.3 Credits Against Fee: If Irrigator is a Shareholder, and, while a Shareholder, is not during a water year using all of such Shareholder's Shareholder capacity allocation described in subparagraph 1.4(a) above to divert Shareholder's ownership interest in the Original Water Rights or Shareholder Other Reservoir Water Rights owned by such Shareholder, but instead is using some of such owned Shareholder capacity to divert, carry and receive at Irrigator's Take-Out part or all of the Allotment Water under the Allotment Contract described in Recital G above, and if the quantity of such use is calculated and agreed to by the General Manager of the District for the current water year, then the quantity of such use as so agreed, times the then applicable Carriage Fee for that year, shall be credited against the total annual Carriage Fee for which Irrigator would otherwise be liable under paragraphs 2.1 and 2.2 above (the "Credit"). For purposes only as an example, if Irrigator is a Shareholder and holds an Allotment Contract for 200 AF and also is an owner of a percentage interest in the Shareholder Capacity under the 2005 Stock Assignment Agreement, and for a period of time in a water year Irrigator does not utilize all or some portion of his Shareholder Capacity for the Original Water Rights or the Shareholder Other Reservoir Water Rights and pursuant to the terms of this Carriage Agreement diverts a cumulative total of 90 AF of his Allotment Contract allocation under such unused Shareholder Capacity, then the Irrigator would, after application of the Credit only

be required to pay the Carriage Fee for 110 AF of his Allotment Water. In such example, the Irrigator-Shareholder would nevertheless still be required to pay for all of the Carriage Fees applicable to the percentage Shareholder Capacity under paragraph 7 of the 2005 Stock Assignment Agreement, whether used by Irrigator or not, but subject to the Credit.

### **III. TERM OF AGREEMENT:**

Except in the event of an early termination as provided in Article VII below, the term of this Contract shall commence effective May 1, 2020 (the "Effective Date") and shall end on November 1, 2041 (the "Term"). This Contract is not renewable, although the Parties may at any time prior to the expiration of the Term enter into a new carriage contract.

### **IV. OPERATION AND MAINTENANCE OF STILLWATER DITCH:**

Except for the Irrigator Turn-Out structures, turn-out water flow measuring devices and equipment, and laterals which shall be maintained, repaired, and replaced by the Irrigator at its cost in accordance with the requirements of the District and the Company, it is expressly acknowledged that the District and the Company shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Stillwater Ditch, and that the District and Company shall be the sole owners of the Stillwater Ditch. Nothing herein contained shall be deemed to create a partnership, a joint venture, or joint ownership or joint responsibility in any way between the parties hereto.

### **V CONTRACT TERMINATION:**

#### **5.1. Termination by the District or Company.**

(a) The District or Company may terminate this Contract for a material breach of the terms of this Contract by Irrigator, including Irrigator's failure to pay timely any amount due under this Contract, provided that the District or Company has first given at least 60 days' prior written notice specifying in detail such material breach and giving Irrigator the right within such 60-day period to cure and remedy such material breach.

(b) The District and/or Company may terminate this Contract if its legal ability to carry and deliver Allotment Water within the Ditch is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to store and deliver the Allotment Water.

(c) The District and/or Company may terminate this Contract if the Allotment Contract is terminated.

#### **5.2. Termination by Irrigator.**

(a) Irrigator may terminate this Contract only in whole and not in part, for any material breach of the terms of this Contract by the District or Company, including the failure or inability the District or Company to convey the Allotment Water properly released to Irrigator under

the Allotment Contract for an extended period of time, provided that Irrigator has first given at least 60 days' prior written notice from Irrigator to the District specifying in detail such material breach and giving the District the right within such 60-day period to cure and remedy such material breach.

(b) Except as provided in the preceding paragraphs, Irrigator has no right to terminate or reform or rescind this Contract.

5.3. Notice of Termination to Affected Officials. Either Party may notify the Division Engineer and any other appropriate governmental officials of any termination of this Contract.

**VI. FORCE MAJEURE:**

The District and the Company shall not be responsible for any losses or damages incurred as a result of their inability to perform pursuant to this Contract due to the following causes if beyond their control and when occurring through no direct or indirect fault of the District or the Company, including without limitation: acts of God; natural disasters; actions or directives or failure to act by governmental authorities; unavailability of supplies or equipment critical to their ability to perform; major equipment or facility breakdown or damage; and changes in Colorado or federal law including, without limitation, changes in any permit requirements.

**VII. INSPECTIONS:**

The District and the Company grant to the managerial staff of Irrigator and any of its professional consultants access to the Ditch for inspection purposes subject to this Contract at reasonable times and under reasonable protective terms and conditions. Irrigator and Irrigator's consultants have no right to make physical changes to or maintenance of the Stillwater Ditch except with the prior written consent and approval of the District.

**VIII. LIMITED REPRESENTATION BY THE PARTIES:**

The District and the Company represent and warrant that they have full power and authority to execute this Contract, carry and deliver the Allotment Water within the Ditch, and perform their obligations hereunder during the Term. Irrigator represents and warrants that Irrigator has full power and authority to execute this Contract, receive Allotment Water at the delivery point and cause it to be delivered to Irrigator's Take-Out point and locations of use, and pay for and perform its obligations hereunder during the Term.

**IX. ENFORCEMENT OF THIS CONTRACT; REMEDIES ON DEFAULT:**

9.1. Before commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall first give at least 60 days' prior written notice to the other Party specifying in detail such material breach and giving the other Party the right within such 60-day period to cure and remedy such material breach. Notwithstanding the foregoing, if Irrigator is in default in the timely payment of the Carriage Fees billed to such Irrigator by the District, the District may withhold delivery of water from the Ditch to the Irrigator's Take-Out until such Carriage Fees and any interest accrued thereon have been paid in full.

9.2. Specific performance and/or restraining orders and/or injunctive relief and/or the last sentence of paragraph 9.1 above shall be the exclusive remedies for the violation or default by a Party in any provision of this Contract, except that the District shall have all remedies at law for collection of sums required to be paid by Irrigator hereunder which are not paid when due, including interest and attorneys' fees.

9.3. In the event of litigation between the Parties with respect to this Contract or any alleged material breach of the terms of this Contract, the Party substantially prevailing in such litigation shall recover from the other Party all reasonable attorneys' fees and costs of discovery and suit incurred by the substantially prevailing Party.

**X. MISCELLANEOUS PROVISIONS:**

10.1. The District and/or Company may assign this Contract without necessity of Irrigator's consent or approval to one or more individuals or entities which succeed the District in the ownership of the Company and/or the Stillwater Ditch, and the District and Company or their successors may collaterally assign the proceeds of this Contract to any entity providing financing to the District or Company or their successors. Irrigator may assign this Contract without the necessity of the prior consent or approval of the District or Company to any individual or entity which acquires the entire interest of Irrigator in the Allotment Contract and which succeeds Irrigator in the ownership of the entirety of the property described in Exhibit A, such assignment to be effective on the effective date of written notice given from Irrigator to the District of such assignment setting forth the name and contact information for the assignee and certifying that the Contract is assigned in its entirety and that assignee is acquiring ownership of all of the property described in Exhibit A and the entirety of Irrigator's interest in the Allotment Contract. No other assignment of this Contract, including without limitation, any assignment of less than the entirety of Irrigator's interest in this Contract or the Allotment Contract or any assignment in connection with the sale of less than the entirety of the property described in Exhibit A, or any temporary assignment to any Shareholder or other holder of an Allotment Contract with the District or any other person, or any temporary assignment to any person of any use of capacity in the Stillwater Ditch, shall be effective unless approved in advance in writing by the General Manager or the Board, such approval to be given, conditioned or withheld by the District or the General Manager in its or his sole discretion.

10.2. This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

10.3. The Parties agree to communicate, coordinate and cooperate, if needed, on any required or desired water use accounting.

10.4. No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.

10.5. Any notice required or permitted to be given by a party under or in connection with this Contract shall be in writing and shall be deemed duly given when personally delivered or sent by

(i) registered or certified mail, return receipt requested, postage prepaid, (ii) expedited courier service, or (iii) email with confirmation of receipt, to the following addresses:

If to Irrigator: Sleeping Lion Ranch, LLC  
Attn: Alfred J. Fisher, III  
273 Ridge Road  
Grosse Pointe, MI 48236  
Email: [afisher3@fisherco.com](mailto:afisher3@fisherco.com)

If to the District  
or the Company: Upper Yampa Water Conservancy District  
Attention: General Manager  
P.O. Box 883990  
Steamboat Springs, CO 80488  
Email: [kmcbride@upperyampawater.com](mailto:kmcbride@upperyampawater.com)

Each party may change its address or contact information for notices under this Contract upon written notice to the other party in accordance with this paragraph.

**XI. EFFECTIVE DATE:**

The Effective Date of this Contract shall be April 1, 2020.

UPPER YAMPA WATER CONSERVANCY  
DISTRICT

By: \_\_\_\_\_  
(Title)

STILLWATER DITCH AND RESERVOIRS  
COMPANY

By: \_\_\_\_\_  
(Title)

IRRIGATOR:

SLEEPING LION RANCH, LLC, a  
Colorado limited liability company

By: \_\_\_\_\_  
Alfred J. Fisher, III, Manager

Date: \_\_\_\_\_

Mailing Address:  
273 Ridge Road  
Grosse Pointe, MI 48236  
Email: [afisher3@fisherco.com](mailto:afisher3@fisherco.com)  
Telephone: (586) 484-2122

**EXHIBIT A  
TO  
CARRIAGE CONTRACT**

**DESCRIPTION OF IRRIGATOR PROPERTY**

Parcel Identification Number(s) (PIN):

968013001

964313001

969054001

969033001

**EXHIBIT B  
TO  
CARRIAGE CONTRACT**

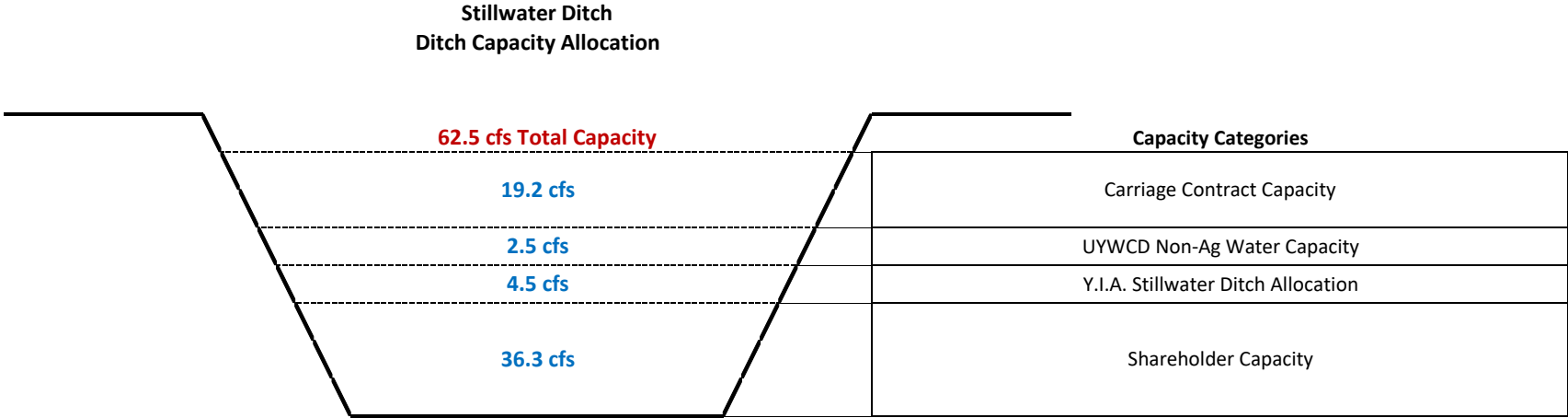
**DESCRIPTION OF IRRIGATOR TURN-OUT**

Laterals:  
Myrin  
Myrin Siphon  
700  
Upper Hamilton  
Lower Hamilton



**EXHIBIT C  
TO  
CARRIAGE CONTRACT**

**STILLWATER DITCH CAPACITY ALLOCATIONS**



# EXHIBIT D TO CARRIAGE CONTRACT

## Pricing Calculation Example

Example 2021 Price Calculation:

2020 Price per AF = \$1.84	or	2020 Price per Share = \$1.84	x	$\frac{\text{Example 2020 CPI}}{\text{Example 2019 CPI}}$		<b>Whichever is Greater:</b>	
CPI Decrease	1.84	1.84	x	$\frac{226.280}{230.338}$	=	1.81	Resulting 2021 Price (\$) per AF 1.84
CPI Increase	1.84	1.84	x	$\frac{230.338}{226.280}$	=	1.87	1.87

However, notwithstanding the foregoing, the following rules shall apply and supersede the price above for any calendar year from 2021 through 2041:

	If 2020 CPI increase =	Price Increase	Resulting 2021 Price (\$) per AF		If 2020 CPI increase =	Price Increase	Resulting 2021 Price (\$) per AF
1.84	(a) 0.0%	1.50%	1.87		(c) 4.1%	4.05%	1.91
	0.1%	1.50%	1.87		4.2%	4.10%	1.92
	0.2%	1.50%	1.87		4.3%	4.15%	1.92
	0.3%	1.50%	1.87		4.4%	4.20%	1.92
	0.4%	1.50%	1.87		4.5%	4.25%	1.92
	0.5%	1.50%	1.87		4.6%	4.30%	1.92
	0.6%	1.50%	1.87		4.7%	4.35%	1.92
	0.7%	1.50%	1.87		4.8%	4.40%	1.92
	0.8%	1.50%	1.87		4.9%	4.45%	1.92
	0.9%	1.50%	1.87		5.0%	4.50%	1.92
	1.0%	1.50%	1.87		5.1%	4.55%	1.92
	1.1%	1.50%	1.87		5.2%	4.60%	1.92
	1.2%	1.50%	1.87		5.3%	4.65%	1.93
	1.3%	1.50%	1.87		5.4%	4.70%	1.93
	1.4%	1.50%	1.87		5.5%	4.75%	1.93
	1.5%	1.50%	1.87		5.6%	4.80%	1.93
	(b), (d) 1.6%	1.10% default to 1.5% floor	1.87		5.7%	4.85%	1.93
	1.7%	1.20% default to 1.5% floor	1.87		5.8%	4.90%	1.93
	1.8%	1.30% default to 1.5% floor	1.87		5.9%	4.95%	1.93
	1.9%	1.40% default to 1.5% floor	1.87		6.0%	5.00%	1.93
	2.0%	1.50%	1.87		6.1%	5.05%	1.93
	2.1%	1.60%	1.87		6.2%	5.10%	1.93
	2.2%	1.70%	1.87		6.3%	5.15%	1.93
	2.3%	1.80%	1.87		6.4%	5.20%	1.94
	2.4%	1.90%	1.87		6.5%	5.25%	1.94
	2.5%	2.00%	1.88		6.6%	5.30%	1.94
	2.6%	2.10%	1.88		6.7%	5.35%	1.94
	2.7%	2.20%	1.88		6.8%	5.40%	1.94
	2.8%	2.30%	1.88		6.9%	5.45%	1.94
	2.9%	2.40%	1.88		7.0%	5.50%	1.94
	3.0%	2.50%	1.89		7.1%	5.55%	1.94
	3.1%	2.60%	1.89		7.2%	5.60%	1.94
	3.2%	2.70%	1.89		7.3%	5.65%	1.94
	3.3%	2.80%	1.89		7.4%	5.70%	1.94
	3.4%	2.90%	1.89		7.5%	5.75%	1.95
	3.5%	3.00%	1.90		7.6%	5.80%	1.95
	3.6%	3.10%	1.90		7.7%	5.85%	1.95
	3.7%	3.20%	1.90		7.8%	5.90%	1.95
	3.8%	3.30%	1.90		7.9%	5.95%	1.95
	3.9%	3.40%	1.90		8.0%	6.00%	1.95
	4.0%	3.50%	1.90		(d) 8.10%	6.05%	1.95

**PETITION TO**  
**UPPER YAMPA WATER CONSERVANCY DISTRICT**  
**FOR INDIVIDUAL IRRIGATOR WATER ALLOTMENT CONTRACT**

The undersigned property owner, SLEEPING LION RANCH, LLC, a Colorado limited liability company (hereinafter called "Irrigator"), hereby petitions the UPPER YAMPA WATER CONSERVANCY DISTRICT, a political subdivision of the State of Colorado, and a body corporate with all powers of a public or municipal corporation (hereinafter called "District" or "Upper Yampa"), organized and existing by virtue of Title 37, Article 45, Colorado Revised Statutes, 1973, as amended, and the Board of Directors of the District, for an allotment contract pursuant to 37-45-125, C.R.S. 1973, for the beneficial use of water under and pursuant to the following terms and conditions:

**I. RECITALS:**

A. The District has constructed and is operating a dam and reservoir known as Yamcolo Reservoir (the "Reservoir" or "Yamcolo Reservoir") for the purpose of supplying water to municipal, industrial, agricultural and other users within its boundaries. The dam and reservoir are located on the Yampa (Bear) River upstream from the Town of Yampa, Colorado. The total storage capacity of the Reservoir is approximately 9,500 acre-feet. Water is stored in Yamcolo Reservoir pursuant to various water rights owned by the District.

B. The storage capacity in Yamcolo Reservoir described above in excess of the approximately 1,000 AF of conservation pool shall be allocated to the pools described below (individually, a "Pool" and collectively the "Pools") effective upon adoption by the Board of Directors of the District (the "Board") of a confirming Resolution, and shall remain in effect indefinitely except as from time to time amended by Resolution of the Board:

(1) Municipal and/or Industrial use, augmentation use, other non-agricultural uses including (but not limited to) recreational and piscatorial and instream flow uses, and/or other lawful use by a Municipal or Industrial or other non-agricultural customer, for up to 1,500 AF, including up to 500 AF which is re-allocated to this Pool from the Individual Contract Pool as described in subsection B(4) below, which re-allocated 500 AF may also be used for irrigation and stock water uses (such 1,500 AF, in all, being herein referred to as the "Original Municipal Pool");

(2) Municipal and/or Industrial use, augmentation use, other non-agricultural uses including (but not limited to) recreational and piscatorial and instream flow uses, and/or other lawful use by a Municipal or Industrial or other non-agricultural customer, for up to 3,500 AF, such Pool to consist of storage water (a) recontracted for any or all such uses after termination of any Individual Irrigator Contract (as defined below) to the extent the agricultural user and District do not renew such Individual Irrigator Contract, and (b) available to be contracted for such uses as confirmed by Resolution of the Board pursuant to Section 8.1(b) below to the extent of storage water previously allocated to the 3,500 AF Individual Contract Pool but which is not under contract for irrigation and stock watering

uses (this Pool being herein referred to as the "Enlarged Municipal Pool");

(3) Irrigation and stock watering uses only for the 3,000 AF allocated to the Yamcolo Irrigators Association ("YIA") pursuant to the agreement between the District and YIA, dated January 9, 1981, as amended (the "YIA Agreement"), including up to 445 AF of storage water currently allocated by the YIA to several of its members (collectively, hereinafter referred to as the "YIA Stillwater Ditch Allocation"), 350 AF out of such 445 AF (out of the 3,000 AF to the YIA) being available for export into the Colorado River Basin through the Stillwater Ditch (sometimes herein called the "Stillwater Ditch" or the "Ditch") for such irrigation and stock watering purposes; the rate of flow of the entire YIA Stillwater Ditch Allocation down the Stillwater Ditch shall be as determined by the District or subsequent owner of the Ditch but may not exceed 4.5 cfs;

(4) Municipal and Industrial and Domestic and Irrigation and Commercial and Stock Watering and Snowmaking and Firefighting and Recreational and Piscatorial and Augmentation and Instream Flow uses, including any beneficial uses permitted under water rights decrees of the District and including delivery to and use within the Colorado River Basin and including re-use and successive uses of return flows to extinction for any lawful beneficial use, directly or by exchange, for 3,500 AF (the "Individual Contract Pool"). The water allotted to Irrigator under this contract is water allocated to the Individual Contract Pool. Such Individual Contract Pool was formerly 4,000 AF allocated to Colorado Ute Electric Association and later allocated to individual irrigators under previously existing expired contracts primarily using deliveries through the Stillwater Ditch, but has now been reduced to not more than 3,500 AF by the re-allocation of the Reallocated 500 AF to the Original Municipal Pool as described in subparagraph B(1) above. The District intends to enter into other individual contracts for allotment of storage water out of this Individual Contract Pool. Individual contracts may be made to agricultural users and, if so, will be limited to irrigation and/or stock water uses and for terms ending no later than November of 2041 ("Individual Irrigator Contracts"). One or more of such Individual Irrigator Contracts, for up to 500 AF, may have an "off ramp" permitting the District to reduce such contracts early on November 1, 2030, by written notice given prior to such date. Any part of such 500 AF additional which may become available to the District in 2030 (the "Additional 500 AF"), and any of the initial offered 3,500 AF Individual Contract Pool which is not taken up by Individual Irrigator contracts or is included in terminated or canceled Individual Irrigator contracts, may be reallocated by Resolution of the Board and recontracted by the District for non-agricultural uses and shall then become a part of the Enlarged Municipal Pool described in subparagraph B(2) above. The Individual Contract Pool may be increased by any relinquishments of allotted water from the YIA Pool pursuant to subparagraph 8.1(a) of the YIA Contract, as amended; and

(5) Any Lawful Purpose Permitted by District Water Decrees, directly or by exchange, for all water stored in Yamcolo Reservoir under the Yamcolo Reservoir Second Enlargement (the "Enlargement Pool"), or stored under any Yamcolo Reservoir re-fill decree (the "Refill Pool"). The Enlargement Pool and the Refill Pool are collectively referred to herein as the "Junior Priority Pool."

C. The District has agreed to make an allotment of water to Irrigator of \_\_\_\_\_ acre-feet annually of Yamcolo Reservoir storage water allocated for irrigation and/or stock water uses from the Individual Contract Pool as hereinafter set forth.

**NOW, THEREFORE, IN CONSIDERATION OF THE PAYMENTS TO BE MADE BY IRRIGATOR** as hereinafter provided, and in consideration of the mutual covenants herein contained, the sufficiency of which consideration is hereby expressly acknowledged, the District and Irrigator hereby agree as follows:

**II. STORAGE AND RELEASE OF WATER:**

2.1 The District agrees, subject only to physical water supply conditions, the administration of water rights by State of Colorado water officials and the terms of this Contract, to store in Yamcolo Reservoir prior to July 15th of each calendar year 2400 acre-feet of water for release for Irrigator's use, upon request (the "Contracted Water"), subject to the last sentence of Section 2.6 below.

2.2 The Irrigator shall give at least twenty four (24) hours' advance notice to the District specifying the date(s), time and rate of flow in cubic feet per second (cfs) of water requested to be released, and the District shall use reasonable diligence to accomplish such request within such 24 hours, but such time to accomplish such request may be extended by the District as reasonably necessary or appropriate to accommodate administration, directives, or policies of the District, Division Engineer or Water Commissioner or due to operating emergencies or other water cause or factor not fully in the control of the District. The point of delivery shall be the discharge of the outlet works of the Yamcolo Reservoir. The District shall maintain permanent records of all releases of water from storage in Yamcolo Reservoir, and shall maintain records of water levels in the Reservoir measured not less frequently than once per month. Irrigator shall be entitled to inspect such records and copies shall be furnished to Irrigator upon written request.

2.3 Subject to the administration of State of Colorado water rights and all federal, state, and local permits for the operation of Yamcolo Dam and Reservoir, the maximum allowable combined instantaneous release rate through the Yamcolo Reservoir outlet works for water stored in Yamcolo Reservoir is 220 cfs at any one time. The District reserves the right to limit and or amend the maximum allowable amount of water released through the outlet works from Yamcolo for any uses (including agricultural) for any reason, and the parties acknowledge that such maximum allowable release rate may be reduced by the District as Yamcolo Reservoir is drawn down or as necessary or appropriate for river administration, operational emergencies or circumstances beyond the control of the District. The maximum allowable combined instantaneous release rate through the Yamcolo Reservoir outlet works for water stored in Yamcolo Reservoir as determined from time to time by the District under the preceding two sentences is herein called the "Maximum Release Rate." The release rate through the Yamcolo Reservoir outlet works for the Original Municipal Pool shall take precedence and seniority over the release rate of all other water stored in Yamcolo Reservoir, and such releases shall not be abated by the District, subject only to required governmental permit minimum release requirements and the Maximum Release Rate. In the event the instantaneous release requests between May 15 and August 1 by allottees out of the YIA Pool

and Individual Contract Pool and the Enlarged Municipal Pool (including the Additional 500 AF) exceed the Maximum Release Rate, the release requests from the non-agricultural allottees of the Enlarged Municipal Pool shall abate first and prior to any abatement of releases to allottees in the YIA Pool and agricultural allottees in the Individual Contract Pool and the Additional 500 AF, and any abatement of release rates applied to such YIA Pool and agricultural allottees in the Individual Contract Pool and the Additional 500 AF shall be apportioned pro-rata among such agricultural users. Between August 1 and the following May 14, in the event continued instantaneous release requests conflict among such Pools with the Maximum Release Rate, the allottees of the Original Municipal Pool and Enlarged Municipal Pool and non-agricultural allottees in the Additional 500 AF shall have first priority and shall not be required to have releases abate; provided, however, that releases solely for environmental, recreational, or streamflow enhancement purposes and releases solely to deliver storage water for re-storage in Stagecoach Reservoir shall abate to the extent necessary to deliver through the Yamcolo Reservoir outlet works without exceeding the then-Maximum Release Rate all properly requested agricultural use storage water out of Yamcolo Reservoir for agricultural use in the Yampa River basin.

2.4 Except as provided in the next sentence, the point of delivery of water from the Individual Contract Pool shall be the Yampa (Bear) River immediately below the Yamcolo Reservoir dam, and the Irrigator shall assume the risk of seepage, evaporation, and other delivery losses of Individual Contract Pool releases. For Individual Contract Pool storage water delivered down such River to the various head gates or turn-outs or locations for exchanges, such risk of losses applies, and for Individual Contract Pool water, which is permitted to be carried in the Stillwater Ditch by carriage contracts, the point of delivery is still the Yampa (Bear) River immediately below the Yamcolo Reservoir, and Irrigator shall assume the risks of seepage, evaporation, and other delivery losses down the Bear River and down the Stillwater Ditch. Except as may be provided in a carriage contract entered into under paragraph 2.4 below, the District or any successor Ditch Owner has no responsibility for construction, maintenance, or repair of headgates or lateral turn-outs or exchange facilities on the Yampa (Bear) River or at the headgate of the Stillwater Ditch or down the Stillwater Ditch or elsewhere as necessary or appropriate to take delivery of any of the Individual Contract Pool water released by the District at the Yamcolo Reservoir dam.

2.5 The water allocated to Irrigator hereunder is available during the water storage year (December 1 through the following November 30). There is no carry-over of storage of the Individual Contract Pool agricultural water in Yamcolo Reservoir from year to year. Accordingly, any of the Individual Contract Pool, including any water stored under this allotment Contract, remaining and unreleased in storage in Yamcolo Reservoir on November 30 of any year is forfeited to the District, and the District may retain all or any part of such water in storage and/or may sell or grant and release all or any part of such water from the Reservoir for any beneficial use permitted by the water rights decrees of the District to any person or entity approved by the District, all without compensation or accounting to Irrigator.

2.6 In any calendar year when insufficient water is stored in Yamcolo Reservoir by July 15, for any reason, to supply the Pools described in paragraph B of the Recitals above, as measured at time of peak annual storage, the water allocated to such Pools shall abate as follows:

- (i) First, the Junior Priority Pool shall abate entirely.
- (ii) Next, the Original Municipal Pool, the Enlarged Municipal Pool, the YIA Pool, and the Individual Contract Pool will all abate proportionally.
- (iii) Then any uncontracted amount of water in the Individual Contract Pool, and any uncontracted part of the Additional 500 AF, will further abate up to the amount of remaining unreplaced abatements under subparagraph 2.6(ii) above, but such further abatement shall be applied for Pool recovery in the following order or priority: first, to Original Municipal Pool contracts up to the amount that it will suffer no reduction, then, second, to water contracted out of the Enlarged Municipal Pool for non-agricultural purposes up to the amount that it will suffer no reduction, then, third, to the stored water contracted out of the Individual Contract Pool, proportionally among such Individual Contract Pool allottees, up to the amount that it will suffer no reduction.
- (iv) If after application of subparagraph 2.6(iii) above, there remains unreplaced abatements to contracts within the Original Municipal Pool and/or Enlarged Municipal Pool (including contracted portions of the Additional 500 AF for non-agricultural uses) under subparagraph 2.6(ii) above, then all of the contracted Individual Irrigator Contract allotments from the Individual Contract Pool (including any of the Additional 500 AF storage water contracted that year for irrigation and/or stock water uses within the District) and including the allotment under this contract, will further abate collectively and proportionally among such Pool and contracted Additional 500 AF only in a collective amount sufficient to make up and replace and recover all remaining unsatisfied replacements for abatements applied to all storage water then allocated, first, to Original Municipal Pool contracts and, second, contracted out of the Enlarged Municipal Pool and the Additional 500 AF for non-agricultural purposes, until all of such non-agricultural allotment contracts in Yamcolo Reservoir that year are fully filled and have full yield or until all sources of replacement under this subparagraph 2.6(iv) are exhausted.
- (v) If after application of subparagraph 2.6(iv) above, there remains unreplaced abatements to the Original Municipal Pool contracts, then all of the contracted Enlarged Municipal Pool (including contracted portions of the Additional 500 AF for non-agricultural uses) will further abate collectively and proportionally among such Pool in a collective amount sufficient to make up and replace and recover all remaining unsatisfied replacements for abatements applied to all storage water then allocated, first, to Original Municipal contracts and, second, contracted out of the Additional 500 AF for non-agricultural purposes, until all allotment contracts in Yamcolo Reservoir that year for the Original Municipal Pool and the Additional 500 AF for non-agricultural purposes are fully filled and have full yield or until all sources of replacement under this subparagraph 2.6(v) are exhausted.

Abatements within a Pool are allocated pro rata among contract holders in that Pool. The District will notify the Irrigator by no later than July 25 if the amount of water stored in Yamcolo Reservoir for the Irrigator under this Contract for the current Water Year, after application of the above abatement rules, is less than the amount set forth in Section 2.1 above, and shall specify such

reduced amount, which will for that year be deemed to be "Contracted Water" under this agreement, but if no such notice is given by the District, then it shall be presumed that the amount set forth in Section 2.1 above was stored for the benefit of Irrigator in the Reservoir.

2.7 Water allotted under this Contract may only be used on the property of Irrigator described in Exhibit A attached hereto. The water stored in Yamcolo Reservoir in the Individual Contract Pool and allocated and delivered to the Irrigator under this Agreement shall never be used outside of the Yampa River Basin or outside of the geographical limits of the District as it may exist from time to time, and shall never be used for other than irrigation of agricultural lands and for stock water, and all lands which receive benefit from such water shall be situated within the boundaries of the District. Individual Contract Pool stored water not delivered into the Stillwater Ditch is usable only for Bear River delivery and diversions for irrigation and/or stock water out of Bear River and not through the Stillwater Ditch. In the event any portion of the water allocated to the Irrigator under this Contract is used or diverted for any period of time in violation of the preceding two sentences by Irrigator, then such portion of water shall be forfeited to the District. Nothing herein shall prevent Irrigator who takes storage water releases from Yamcolo Reservoir under this Contract from making maximum beneficial agricultural uses of such water within the lands owned or leased by such Irrigator, including surface return flows or wastewater on such lands which is not yet returned to the natural stream. However, the parties acknowledge that re-use of water out of the Individual Contract Pool which has reached the natural stream is not an entitlement of either the District or Irrigator under Colorado water law. Irrigator may not lease or sell or transfer or exchange the re-use of Individual Contract Pool water diverted to such Irrigator to other landowners outside of the Irrigator's owned or leased lands described in Exhibit A. The District reserves ownership of the re-use and successive uses to extinction of any of the Individual Contract Pool water stored in Yamcolo Reservoir, to the extent permitted by Colorado law. With the written approval of the District, Irrigator may lease, transfer or exchange such Contracted water to or with any others holding Individual Irrigator Contracts or YIA members, so long as the limitations of this Agreement and any applicable terms or provisions of the YIA's governing documents are complied with, and subject to Colorado water law.

2.8 If this Box  is checked, then by notice given to Irrigator on or prior to November 1, 2030 the District may reduce the amount of the Contracted Water allotted to Irrigator in an amount not exceeding 500 acre-feet, such reduction to be effective for the Water Year set forth in such notice and continuing thereafter through the end of the Term, but in no event such reduction shall commence earlier than (a) the first Water Year commencing at least one year from the date of such notice or (b) Water Year 2030. If the above Box is not checked, this Section 2.8 does not apply to Irrigator or this Contract.

### **III. PURCHASE PRICE:**

3.1 The purchase price for the Contracted Water from the Reservoir storage water allocated to the Irrigator for Water Year 2020 under this Contract (the "First Water Year") shall be Eleven Dollars (\$11.00) per acre-foot, except that the purchase price in any Water Year for that portion of the Contracted Water subject to reduction under paragraph 2.8, if any, shall be one dollar (\$1) less than the purchase price for the Contracted Water for such year calculated as provided in this paragraph 3.1. The annual price per acre-foot for the Contracted Water stored in the Reservoir



and allocated and available for release to the Irrigator in the next Water Year after the First Water Year, and in each Water Year thereafter during the Term of this Contract, shall be an amount equal to the greater of (i) the price per acre-foot charged to the Irrigator for the Contracted Water the prior Water Year, or (ii) the product obtained by multiplying the price per acre-foot charged to the Irrigator for the Contracted Water the prior Water Year by a fraction, the denominator of which is the CPI for the semi-annual period ending December 31 in the Water Year prior to the prior Water Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior Water Year. However, notwithstanding the foregoing, the following rules shall apply and supersede the price as determined above for any calendar year from 2021 through 2041:

- (a) If the CPI-U increase for the preceding calendar year was 1.5% or less, then apply a 1.5% increase; but
- (b) If the CPI-U increase for the preceding calendar year was more than 1.5% but not more than 4%, then decrease such actual CPI-U increase by 0.5% and apply such adjusted increase; but
- (c) If the CPI-U increase for the preceding calendar year was more than 4%, then divide the amount by which such increase exceeds 4% by 2, and add the result to 4% and apply such adjusted increase, but
- (d) In no event shall the adjusted percentage increase be less than 1.5% nor more than six percent (6%).

In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date then the District shall select a reasonably comparable price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all increases in the CPI are taken into account, notwithstanding any such change in the base year.

3.2 The annual payments for the Contracted Water shall be made by Irrigator to the District on or before July 31st of each year during the term of this Contract, beginning July 31, 2020. Any annual payment not made within fourteen (14) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. Payments due are based on the amount of Contracted Water and shall be made regardless of the amount of water delivered to Irrigator and there shall be no abatement or setoff against any such payment, nor shall Irrigator be permitted to withhold any payment required for any reason whatsoever, except only in the event the full Contracted Water has not been stored in the Reservoir by July 15 as described in the notice from the District to Irrigator pursuant to the last sentence of Section 2.6 above.

3.3 As security to the District, Irrigator agrees to be bound by the provisions of 37-45-125, C.R.S. 1973. If the annual payments herein required or some portion thereof are not fully met from such sources of revenue as may be legally available to Irrigator for such purpose, such annual payment or such portion thereof may be met from assessments levied by the District pursuant to 37-45-125, C.R.S. 1973 against the property described in Exhibit A.

#### **IV. STILLWATER DITCH:**

4.1 Irrigator acknowledges that the District acquired 100% of the shares of the Stillwater Ditch and Reservoirs Company (the "Ditch Company") in 2005 and simultaneously entered into that certain Assignment of Stock and Water Delivery Agreement recorded at Reception No. 621890 of the Routt County records (the "Ditch Agreement") with the former shareholders of the Ditch Company (together with their successors and assigns the "Original Users"), which among other things committed the District to operate the Stillwater Ditch in a manner to permit the Ditch Users to use up to 36.3 cfs of the capacity of the Stillwater Ditch (the "First Priority Capacity") for delivery of certain water storage or direct flows as described in paragraphs 4 and 5 of the Ditch Agreement. Such Ditch Agreement may be amended or changed in the future whereby the First Priority Capacity of the Stillwater Ditch may be reduced, or may be terminated by mutual agreement of the Original Users or their successors, and the District, in the event the District transfers ownership of the Ditch to a subsequent owner. The District reserves the right in its sole discretion to transfer ownership of the Ditch and amend or terminate the Ditch Agreement. The Individual Contract Pool stored water may be delivered into and through the Stillwater Ditch, including delivery to the Colorado River Basin for irrigation of agricultural lands and for stock water on the Lands of Irrigator described in Exhibit A, but such delivery is subject to perpetual restrictions, whether or not the Ditch is owned by the District, as follows: (i) the Individual Contract stored water flow delivered into and down the Stillwater Ditch must utilize the capacity of the Stillwater Ditch other than the First Priority Capacity of the Ditch, unless such Capacity is not then being fully used by the Original Users and the YIA Stillwater Ditch Allocation; (ii) export of the Contracted Water to the Colorado River Basin shall be subordinate to the export of not more than 4,000 AF of water by the District into the Colorado River Basin under the Decree in Case No. 95CW79 in Water Division 6, State of Colorado (the "Export Limit"), and such right of export of the Contracted Water shall fully abate to the extent necessary to prevent the District from violating the Export Limit, and (iii) Irrigator shall comply with paragraph 4.2 below.

4.2 If Irrigator desires to utilize the Stillwater Ditch for delivery of the Contracted Water, Irrigator shall be required to negotiate and obtain an individual carriage contract from the District or its successor Ditch owner, keep such carriage contract in place during the term of this Agreement and to comply in all respects with the terms and provisions of such carriage contract. Irrigator waives and agrees that by virtue of this Agreement it has no right, privilege, or entitlement to approve future Stillwater Ditch policies or bylaws as may be adopted by the District or the Ditch owner, including bylaw revisions or pricing or assessment rules, or other rules and regulations (in all, the "Stillwater Ditch Terms"), including (but not limited to) pricing or assessments or management or repairs or maintenance, as may be adopted by the District or the Ditch owner or changed from time to time in the sole discretion of the District or Ditch owner, including separate O, M & R cost share by direct flow/Gardner Park/Ramshorn/Stillwater Reservoir users, even though a portion of the Contracted Water is or may then be delivered using Stillwater Ditch into the Yampa drainage or Colorado River drainage. The District has no obligation to Irrigator to inform Irrigator of any changes, amendments, adoptions, terminations, or revocations of any such Stillwater Ditch Terms. Irrigator is not a third party beneficiary of the Stillwater Ditch or the Stillwater Ditch Terms or the Ditch Agreement or any amendments thereto. However, if Irrigator is also a shareholder under the Ditch Agreement or a shareholder in a successor Ditch owner, nothing in this paragraph 4.2 is intended to prevent Irrigator from exercising its rights with respect to the Stillwater Ditch or

the Stillwater Ditch Terms or the Ditch Agreement, or any amendments thereto, by virtue of such shareholder status.

**V. TERM OF AGREEMENT:**

Except in the event of an early termination as provided in Article VII below, the term of this Contract shall commence effective July 15, 2020 and shall end on November 1, 2041 (the "Term"). This Contract is not renewable, although the Parties may at any time prior to the expiration of the Term enter into a new water allotment contract for the Contracted Water. The District may not enter into a water allotment contract for the Contracted Water with any person or entity other than the Irrigator during the Term of this Contract.

**VI. OPERATION AND MAINTENANCE OF YAMCOLO RESERVOIR:**

It is expressly acknowledged that the District shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Reservoir, and that the District shall be the sole owner of the Water Rights and the dam and all facilities and all lands used in connection with the construction, operation, repair, maintenance, enlarging, permitting, changing, renovating, or modifying the Reservoir and all facilities in which the District has ownership or rights which provide supplies of water for storage in the Reservoir. Nothing herein contained shall be deemed to create a partnership, a joint venture, or joint ownership or joint responsibility in any way between the parties hereto.

**VII CONTRACT TERMINATION:**

7.1 Termination by Upper Yampa.

7.1.1 The District may terminate this Contract for a material breach of the terms of this Contract by Irrigator, including Irrigator's failure to pay timely any amount due under this Contract, provided that the District has first given at least 60 days' prior written notice specifying in detail such material breach and giving Irrigator the right within such 60-day period to cure and remedy such material breach.

7.1.2 The District may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to store and deliver the Contracted Water.

7.2 Termination by Irrigator.

7.2.1 Irrigator may terminate this Contract only in whole and not in part, for any material breach of the terms of this Contract by Upper Yampa, including Upper Yampa's failure or inability to deliver Contracted Water for an extended period of time, provided that Irrigator has first given at least 60 days' prior written notice from Irrigator to the District specifying in detail such material breach and giving the District the right within such 60-day period to cure and remedy such material breach.

7.2.2 Except as provided in the preceding sections, Irrigator has no right to terminate or reform or rescind this Contract.

7.3 Notice of Termination to Affected Officials. Either Party may notify the Division Engineer and any other appropriate governmental officials of any termination of this Contract.

#### **VIII. FORCE MAJEURE:**

The District shall not be responsible for any losses or damages incurred as a result of Upper Yampa's inability to perform pursuant to this Contract due to the following causes if beyond Upper Yampa's control and when occurring through no direct or indirect fault of Upper Yampa, including without limitation: acts of God; natural disasters; actions or directives or failure to act by governmental authorities; unavailability of supplies or equipment critical to Upper Yampa's ability to perform; major equipment or facility breakdown or damage; and changes in Colorado or federal law including, without limitation, changes in any permit requirements.

#### **IX. INSPECTIONS:**

The District grants to the managerial staff of Irrigator and any of its professional consultants access to Yamcolo Reservoir and Yamcolo Dam subject to this Contract at reasonable times and under reasonable protective terms and conditions.

#### **X. LIMITED REPRESENTATION BY THE PARTIES:**

The District represents and warrants that it has full power and authority to execute this Contract, allocate and deliver the Contracted Water, and perform its obligations hereunder during the Term. Irrigator represents and warrants that it has full power and authority to execute this Contract, receive Contracted Water at the delivery point and cause it to be delivered to Irrigator's point and locations of use, and pay for and perform its obligations hereunder during the Term.

#### **XI. ENFORCEMENT OF THIS CONTRACT; REMEDIES ON DEFAULT:**

11.1 Before commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall first give at least 60 days' prior written notice to the other Party specifying in detail such material breach and giving the other Party the right within such 60-day period to cure and remedy such material breach.

11.2 Specific performance and/or restraining orders and/or injunctive relief shall be the exclusive remedies for the violation or default by a Party in any provision of this Contract, except that the District shall have all remedies at law, including imposition of assessments under paragraph 3.3 above, for collection of sums required to be paid by Irrigator hereunder which are not paid when due, including interest and attorneys' fees.

11.3 In the event of litigation between the Parties with respect to this Contract or any alleged material breach of the terms of this Contract, the Party substantially prevailing in such

litigation shall recover from the other Party all reasonable attorneys' fees and costs of discovery and suit incurred by the substantially prevailing Party.

**XII. MISCELLANEOUS PROVISIONS:**

12.1 The District may assign this Contract without necessity of Irrigator's consent or approval to any entity which succeeds the District in the ownership of Yamcolo Reservoir, and the District or such successor may collaterally assign the proceeds of this Contract to any entity providing financing to the District or its successor. Irrigator may assign this Contract without the necessity of the District's prior consent or approval to any individual or entity which succeeds Irrigator in the ownership of the entirety of the property described in Exhibit A, such assignment to be effective on the effective date of written notice given from Irrigator to the District of such assignment setting forth the name and contact information for the assignee and certifying that the Contract is assigned in its entirety and that assignee is acquiring ownership of all of the property described in Exhibit A. No other assignment of this Contract, including without limitation, any assignment of less than the entirety of the Contracted Water or any assignment in connection with the sale of less than the entirety of the property described in Exhibit A, shall be effective unless approved in advance in writing by the District, such approval to be given, conditioned or withheld by the District in its sole discretion.

12.2 This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

12.3 The Parties agree to communicate, coordinate and cooperate, if needed, on any required or desired water use accounting.

12.4 No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.

12.5 Any notice required or permitted to be given by a party under or in connection with this Contract shall be in writing and shall be deemed duly given when personally delivered or sent by (i) registered or certified mail, return receipt requested, postage prepaid, (ii) expedited courier service, or (iii) email with confirmation of receipt, to the following addresses:

If to Irrigator:	Sleeping Lion Ranch, LLC Attn: Alfred J. Fisher, III 273 Ridge Road Grosse Pointe, MI 48236 Email: <a href="mailto:afisher3@fisherco.com">afisher3@fisherco.com</a>
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If to Upper Yampa:	Upper Yampa Water Conservancy District Attention: General Manager P.O. Box 883990 Steamboat Springs, CO 80488 Email: <a href="mailto:kmcbride@upperyampawater.com">kmcbride@upperyampawater.com</a>
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Each party may change its address or contact information for notices under this Contract upon written notice to the other party in accordance with this paragraph.

**XIII. EFFECTIVE DATE:**

The effective date of this Contract shall be the date set forth below that the Board of Directors of the District entered its order granting an allotment contract to Irrigator for the Contracted Water.

IRRIGATOR: SLEEPING LION RANCH, LLC, a  
Colorado limited liability company

By: \_\_\_\_\_  
Alfred J. Fisher, III, Manager

Date: \_\_\_\_\_

Mailing Address:  
273 Ridge Road  
Grosse Pointe, MI 48236  
Email: [afisher3@fisherco.com](mailto:afisher3@fisherco.com)  
Telephone: (586) 484-2122

**ORDER ON PETITION**

Petition having been made by Irrigator as a party interested in a water allotment from the Yamcolo Reservoir to the Upper Yampa Water Conservancy District ("District") and after a hearing by the Board of Directors of the District,

**IT IS HEREBY ORDERED** that the above Petition be granted and that an allotment contract for 2400 acre-feet annually of water is hereby made to Irrigator from the Yamcolo Reservoir for the beneficial use as set forth in the above Contract upon the terms, conditions and manner of payment as herein specified. Irrigator shall pay the costs of recording this Petition and Order.

UPPER YAMPA WATER CONSERVANCY  
DISTRICT

By: \_\_\_\_\_  
(Title)

I hereby certify that the above Order is entered by the Board of Directors of the Upper Yampa Water Conservancy District on the \_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

\_\_\_\_\_  
Kevin McBride, Secretary

**EXHIBIT A  
TO  
PETITION TO  
UPPER YAMPA WATER CONSERVANCY DISTRICT  
FOR INDIVIDUAL IRRIGATOR WATER ALLOTMENT CONTRACT**

**DESCRIPTION OF PROPERTY OF IRRIGATOR**

Parcel Identification Number(s) (PIN):

968013001

964313001

969054001

969033001



**Order Confirmation****COLORADO MOUNTAIN NEWS MEDIA**

03/20/20 10:41:27

**Account** 910010464  
**Ordered By** Robert Weiss  
**Ad#** 0000566799  
**Sales Rep** Jerilynn Medina  
**Order Taker** Jerilynn Medina  
**PO Number**  
**Invoice Text** Public Notice Upper Yampa Water Cons. Dist.

**Customer**  
**Customer Address** 600 S LINCOLN AVE. SUITE 202  
STEAMBOAT SPRINGS CO 80487 USA  
**Customer Phone** 9708796053  
**Customer EMail** CMighton@wvsc.com  
**Customer Fax**

<b><u>Net Amount</u></b>	<b><u>Payment Method</u></b>	<b><u>Payment Amount</u></b>	<b><u>Amount Due</u></b>
\$179.11	Billed-Invoiced	\$0.00	\$179.11

<b><u>Ad Number</u></b>	<b>0000566799-01</b>
<b><u>Ad Size</u></b>	2 X 76 li
<b><u>Modular Ad Size</u></b>	
<b><u>Order Start Date</u></b>	<b>03/22/2020</b>
<b><u>Order Stop Date</u></b>	<b>04/05/2020</b>
<b><u>Placement</u></b>	LEGALS CMN
<b><u>Position</u></b>	CMN Legal
<b><u>Products</u></b>	8INTA/8SBP

PUBLIC NOTICE  
UPPER YAMPA WATER CONSERVANCY DISTRICT

NOTICE OF HEARING ON PETITIONS FOR ALLOTMENT OF YAMCOLO  
RESERVOIR WATER

NOTICE IS HEREBY GIVEN that the Petitions described below ("Petitions") for the allotment of water under §37-45-125, C.R.S. 1973, from Yamcolo Reservoir have been filed with the Board of Directors (the "Board") of the Upper Yampa Water Conservancy District (the "District"). Notice is further given that all persons interested shall appear at the office of the Board at 1:30 PM on Wednesday, April 8, 2020 located at the MOUNTAIN VALLEY BANK COMMUNITY ROOM, 2220 CURVE PLAZA, STEAMBOAT SPRINGS, COLORADO and show cause in writing (except as set forth below during the time the District offices are closed as result of the COVID-19 pandemic) why any Petition set forth below should not be granted. At such time and place (or as set forth below during the COVID-19 pandemic), or at such time to which the hearing on said Petition or Petitions may be adjourned, the Board shall proceed to hear the Petitions and objections thereto, presented in writing, by any person showing cause why any Petition should not be granted. The failure of any person interested to show cause shall be deemed an assent on such person's part to the granting of a Petition. At its discretion, the Board may accept or reject any Petition; but, if it deems it for the best interest of the District that any Petition be granted, the Board shall enter an order to that effect granting said Petition, and, from and after such order, the Petitioner or persons interested therein shall be deemed to have purchased, leased, contracted for, or otherwise acquired the beneficial use of water or capacity of works as set forth in said order. As a result of the COVID-19 pandemic, the offices of the District are currently closed and all meetings of the Board of Directors and Committees of the District are being held by video/teleconference or other electronic means. Agendas and other information regarding upcoming meetings of the District and the means of public participation in such meetings, including the meeting on April 8, 2020 at 1:30 PM where the Petitions and objections thereto will be considered, shall be available for review no later than 24 hours prior to the meeting on the District's website: [upperyampawater.com](http://upperyampawater.com). During the period the District offices are closed, any person desiring to show cause why any Petition should not be granted should do so in an e-mail directed to the District's Communications & Marketing Manager, Holly Kirkpatrick at [HKirkpatrick@upperyampawater.com](mailto:HKirkpatrick@upperyampawater.com). Phone calls regarding this and other matters involving District business can be made to the main phone number of the District at 970-871-1035 and will be answered or returned by an employee of the District.

Dates of Publication: March 22, 2020, March 29, 2020 and April 5, 2020.

UPPER YAMPA WATER CONSERVANCY  
DISTRICT

By: */s/* Kevin McBride  
Kevin McBride,  
General Manager and Secretary

Name	Amount
Bueford E. Huffstetler Family Trust and The Estate of Bueford E. Huffstetler, Deceased	65 acre-feet
Jeffrey A. Connett	50 acre-feet
Hummingbird Acres, LLC, a Colorado limited liability company	300 acre-feet
Lone Creek Land Company, LLC, a Nebraska limited liability company	85 acre-feet
Lawrence Ricca & Sons, a General Partnership	100 acre-feet
Jim L. Rossi and L. Dean Rossi	100 acre-feet
Stillwater Land & Livestock, LLC, a Colorado limited liability company	164.15 acre-feet
Peter L. Symchych and Janice M. Symchych	55 acre-feet
Robert A. Logan, Jr. and Mary Jane Logan	20 acre-feet
JDP Holdings, LLC, a Colorado limited liability company	135.85 acre-feet
Timothy V. Corrigan and Donna L. Corrigan	25 acre-feet
Sleeping Lion Ranch, LLC, a Colorado limited liability company	2,400 acre-feet

Published in the Steamboat Pilot & Today on March 22, 29 and April 5, 2020. 0000566799

**Ad shown is not actual print size.**

Applicant Name	Contract Amount (AF)	Lateral	Carriage Contract
Bueford Huffstetler Trust	65	Acton Ditch	
Jeffrey A. Connett	50	Palmer	x
Hummingbird Acres LLC	300	Kirkpatrick and Topping	x
Lone Creek Land	85	Smith Basin, Flader, Lower Hassig, Upper and Lower Hamilton	x
Lawrence Ricca & Sons	100	Augie's Siphon	x
Jim & Dean Rossi	100	Bear River - Multiple	
Stillwater Land & Livestock, LLC	164.15	Acord	x
Peter Flint and Janice Symchych	55	Hernage and Kolbe	
Robert and Mary Jane Logan	20	Hernage and Kolbe	
JDP Holdings LLC	135.85	Bear River	
Timothy and Donna Corrigan	25	Hernage, Kolbe, Easterly Seepage and Waste Ditch	
Sleeping Lion Ranch	2400	Myrin, Myrin Siphon, 700 Ditch, Upper and Lower Hamilton	x



# BOARD COMMUNICATION FORM

Board Meeting, April 8, 2020

(Not attorney-client privileged communication)

**From:** Bob Weiss, Legal Counsel

**Date:** April 1, 2020

**Item:** Bylaw Amendments Ratification

\_\_\_\_\_ DIRECTION  
X\_\_\_\_\_ INFORMATION  
X\_\_\_\_\_ MOTION  
\_\_\_\_\_ RESOLUTION

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**I. Request/Issue and Background Information:** The Board approved on an emergency basis last week on March 27, 2020 Bylaw amendments to accommodate video/teleconference meetings which are expected to be necessary over the next several months as a result of the COVID-19 pandemic. Since these changes were adopted on an emergency basis they need to be ratified by the Board at a regular meeting.

**II. Summary and Alternatives:** The changes are:

- Allow regular Board meeting to be held entirely by video/teleconference or other electronic means
- Allow posting on the District's website of the agenda of the meeting to be sufficient without requiring physical posting at the District's designated posting location.
- Make certain other conforming changes.

**III. Staff Recommendation:** Staff recommends that the Board ratify the Bylaw amendments as the Board deems appropriate.

**MOTION:** Ratify the Bylaw amendments adopted on an emergency basis under Article III, Section 12 of the Bylaws last week on March 27, 2020.

**IV. Legal Issues:** The Bylaws require that Bylaw amendments be distributed to the Board 10 days in advance of the meeting in which they will be considered. However, the Bylaws allow emergency actions to be taken necessary for the immediate protection of the public health, safety and welfare; provided that any action taken at an emergency meeting shall be effective only until the next regular meeting. Therefore it is recommended the Board ratify the Bylaw amendments adopted March 27, 2020 on an emergency basis.

**V. Consistency with Board Goals and Policies:** The Board should consider whether the Bylaw amendments are consistent with Board Goals and Policies.

**VI. Fiscal Impact:** None of the Bylaw amendments appear to have a significant financial impact.

**BYLAWS OF THE  
UPPER YAMPA WATER CONSERVANCY DISTRICT  
(Effective March 27, 2020)**

PREAMBLE

For the purpose of providing for the orderly conduct and carrying on of the business, objects and affairs of the UPPER YAMPA WATER CONSERVANCY DISTRICT, the Board of Directors of said District hereby makes, publishes and declares these Bylaws.

ARTICLE I - DEFINITIONS

When used herein, the following words, terms and phrases shall have the following meaning, to-wit:

1. The term “Water Conservancy Act” or “Act” shall mean the act as set forth in C.R.S. §37-45-101 et seq., as amended.
2. The term “District” shall mean the UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservancy district.
3. The term “Open Meetings Law” shall mean C.R.S. § 24-6-401 et seq., as it may be amended from time to time.
4. The term “Open Records Act” shall mean C.R.S. § 24-72-201 et seq., as it may be amended from time to time.
5. The term “Decree” shall be the decree entered in Civil Action No. 3825 creating the District dated March 8, 1966, as the same may be amended from time to time.

ARTICLE II - BOARD OF DIRECTORS

SECTION 1 - Number, Qualifications, Power, Duties.

The number of Directors shall be nine (9). They shall be appointed and have the qualifications as provided in the Act. There shall be 3 separate divisions within the District, as described in the Decree, and 3 directors shall be appointed from each such division for 4-year terms. Such appointments shall be staggered, with one director from each district being appointed each year except every fourth year when no director terms expire. The powers and duties of the Directors are specifically provided for in the Water Conservancy Act, and the provisions of the Act concerning such matters are hereby made a part of these Bylaws. The following provisions are supplementary to said provisions.



SECTION 2 - Vacancies on the Board of Directors.

Vacancies in the Board of Directors shall be filled as provided in the Act.

SECTION 3 - Powers, Approval of Certain Matters by Board of Directors.

The Board of Directors shall have all of the powers granted it by the Water Conservancy Act and other provisions of Colorado and federal law applicable to the District; and said Board shall have such ancillary and incidental powers as may be proper, necessary or convenient for the full effectuation of the purposes, powers and objectives of the District. Except as set forth in Article VI, Section 3, all plats, deeds, other instruments encumbering the real property of the District, any contract or instrument authorizing or evidencing debt of the District, intergovernmental agreements, any document accepting the terms of any grant, loan, license, permit or other governmental authorization, any settlement of litigation to which the District is a party, applications for water rights and statements of opposition to water rights filings, any sale, lease, or other disposition of the use of water by term contracts or contracts for the perpetual use of such water and any instrument required by these Bylaws or law to be approved by the Board of Directors, shall be approved or ratified by the Board of Directors.

SECTION 4 - Compensation.

The compensation to be paid to the District's Directors shall be \$100.00 per meeting attended, in addition to their actual traveling and transportation expenses when away from their respective places of residence on District business. "Attending a meeting" to qualify for such \$100 compensation means preparation for, travel for, attendance at, or participation in: (1) in-person or video/teleconference or other electronic meetings of the Board and Board Committees, regardless of whether the Director is a member of the Committee; and (2) the following if the Director is representing the District on a matter related to the District's business: meetings of or discussions with state, county, local, and federal officials and District constituents; educational and policy presentations and seminars; meetings or negotiations with District staff or third parties; and judicial or administrative hearings or proceedings. Notwithstanding the foregoing, the maximum annual compensation (excluding travel and transportation expenses) which may be paid to any Director shall be \$2,400.00 pursuant to the Act.

SECTION 5 - Performance of Duties.

A Director of the District shall perform all duties of a Director, including duties as a member of any committee of the Board upon which the Director may serve, in good faith, in a manner which the Director reasonably believes to be in the best interests of District, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing the Director's duties, the Director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by persons and groups listed in subparagraphs (a), (b) or (c) of this Section 5. The Director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

A person who so performs the Director's duties shall not have any liability by reason of being or having been a Director of the District. Those programs and groups upon whose information, opinions, reports, and statements a Director is entitled to rely are:

- (a) One or more officers or employees of the District whom the Director reasonably believes to be reliable and competent in the matters presented;
- (b) Counsel, public accountants, or other persons as to matters which the Director reasonably believes to be within such persons' professional knowledge or expertise; and
- (c) A committee of the Board upon which the Director does not serve, duly designated in accordance with the provisions of the Bylaws, as to matters within its designated authority, which committee the Director reasonably believes to merit confidence.

### ARTICLE III - MEETINGS OF THE BOARD OF DIRECTORS

#### SECTION 1 - Regular Meetings.

Meetings of the Board of Directors shall be held no less often than required by the Act. The scheduled time, date, and place of such regular meetings shall be established by the Board of Directors at the last meeting of each year for the following year and shall not be varied except with the majority vote of the Directors.

#### SECTION 2 - Special Meetings.

A special meeting of the Board of Directors shall be held upon call of the President, Vice President or General Manager or three (3) or more Directors.

#### SECTION 3 - Place of Meetings and Remote Access to Meetings.

(a) 2220 Curve Plaza, Suite 201, Steamboat Springs, Routt County, Colorado, is hereby designated as the place where the principal office of the District shall be maintained. All regular meetings of the Board of Directors shall be held at the Mountain Valley Bank community room adjacent to the principal office of the District, unless a different location is determined by the President of the Board or the General Manager, and except as otherwise herein provided. Special meetings may be held at any location proper and appropriate pursuant to the Act.

(b) If the General Manager in consultation with the Board President or Vice President determines in his discretion that emergency circumstances exist where it is not in the best interest of the Board, District Employees or the public to be physically present at the designated meeting location, a regular meeting of the Board of Directors may be held entirely by video/teleconference or other electronic means. Special meetings of Board and meetings of any Committee may be held entirely by video/teleconference or other electronic means without a finding of emergency circumstances.

(c) In all meetings held entirely by video/teleconference or other electronic means (a) the meeting location shall be deemed to be the District's physical office, (b) all voting shall be by roll call and (c) the General Manager shall make and give reasonable notice of arrangements for the public to monitor the entirety of the meeting (except for executive session items) and comment on agenda items in the normal fashion.

#### SECTION 4 - Notice of Meetings.

(a) Not less than three (3) and not more than fifteen (15) days prior to the date of any regular meeting, and no less than twenty-four (24) hours prior to a special meeting, the General Manager shall notify all Directors of the time, date, and place of such meeting, and (if a special meeting), the purpose for which it is called. Such notice may be by writing delivered in person, by FAX machine, by telephone, or by the US mails, or may be by email communication. In addition, the District shall post written notice of the meeting on the District's public website with specific agenda information if available and in the designated posting place of the District no less than 24 hours prior to holding of the meeting, except that posting in the designated posting place shall not be required if the General Manager of the District determines in his or her discretion that emergency circumstances exist where it is not in the best interest of the District employees or the public that the meeting notice be physically posted. All meeting notices shall be directed to Directors at the address, FAX number, and/or email address which he or she has provided to the General Manager. It is the Directors' responsibility to provide and revise their address, FAX number, and email address to the General Manager of the District as and when changed.

(b) Where possible, notices of all meetings shall include or be accompanied by an agenda stating the specific items of business expected to be considered. If a consent agenda is to be utilized at the meeting, a copy of the consent agenda shall be included with the notice.

(c) Notice of all regular and special meetings also shall comply with the Open Meetings Law.

#### SECTION 5 - Quorum.

A quorum of the Board of Directors shall consist of a majority of the members thereof. Less than a quorum shall have power and authority to adjourn any regular or special meeting at which less than a quorum shall be present or to continue their meeting and to fix the time and place of the holding of the continued meeting. Once a quorum is established, a quorum shall be deemed to be present for the remainder of the meeting and any adjournment of that meeting notwithstanding the absence or recusal of any Board member initially counted to establish a quorum. Whether or not a meeting is noticed and held as a video/teleconference or other electronic means meeting, a Director participating in a regular or special meeting by video/teleconference or other electronic means shall be counted in determining the existence of a quorum, provided that such participation is through equipment in which all other Directors may hear the Director participating by video/teleconference or other electronic means at the same time.

SECTION 6 - Voting.

Directors must be physically present or must participate by video/teleconference or other electronic means in order to vote at any regular or special board meeting. Voting by proxy shall not be allowed.

SECTION 7 - Actions at Meetings.

The Board shall not act at any regular meeting on any matter which has not been described by general reference in the notice (agenda) for that meeting except for new items brought up by the Manager or any Director under New Business on the agenda, or unless the President determines that such matter should be acted upon because of necessity for prompt or immediate action thereon, or unless the Board first votes to modify the agenda. A consent agenda, consisting of a list of routine action items to be considered collectively by the Board, may be utilized at any regular or special meeting. Items shall be removed from the consent agenda and addressed separately at the request of any Director.

SECTION 8 - Order of Business.

Unless otherwise provided in the agenda for the meeting, the business of all regular meetings of the Board shall be transacted, as far as practicable, in the following order:

- (1) Establishment of Quorum and Call to Order;
- (2) Approval of Agenda for Meeting;
- (3) Public Input and Comment;  
THE BOARD WILL MAKE NO DECISION NOR TAKE ACTION, EXCEPT TO DIRECT THE GENERAL MANAGER. THOSE ADDRESSING BOARD ARE REQUESTED TO IDENTIFY THEMSELVES BY NAME AND ADDRESS. ALL COMMENTS SHALL NOT EXCEED THREE MINUTES AND SHOULD BE ADDRESSED TO ISSUES NOT ON THE MEETING AGENDA.
- (4) Consent Agenda, including minutes, financial report, disbursements, and other consent items;
- (5) Report of General Manager;
- (6) Committee Reports;
- (7) Report of General Counsel;
- (8) District Engineer Report;
- (9) Consideration/Action on District Projects;
- (10) Board Member Reports;
- (11) Determination of next meeting Agenda; and
- (12) Adjournment

## SECTION 9 - Meeting Procedures.

Regular and special Board meetings shall be conducted generally in conformance with Robert's Rules of Order, Newly Revised, 10<sup>th</sup> Edition. Meeting procedures may be modified by the President as necessary to ensure the fair and efficient conduct of Board meetings.

Each and every action of the Board necessary for the governance and management of the affairs of District, for the execution of the powers vested in District, and for carrying into effect the provisions of the Water Conservancy Act, shall be taken by the passage of motions or resolutions.

Within a reasonable time after passage, all resolutions, motions and minutes of Board meetings shall be recorded in a book kept for that purpose and shall be attested by the Secretary/Treasurer. Minutes of regular sessions shall be available for public review as soon as practicable following acceptance of the minutes by adoption of a motion therefor by the Board. Minutes of executive sessions shall be kept separate from minutes of regular sessions as described in Article III, Section 9 of these Bylaws and shall not be open to the public except as required by law. Proposed minutes shall be sent to all Directors at least 3 days prior to the next meeting of the Board of Directors.

One or more members of the Board or of any committee designated by the Board may participate in a meeting of the Board or committee by video/teleconference or other electronic means by which all persons participating in the meeting, including the public, can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

If the directors of the Board become deadlocked with respect to resolution of any matter which by Colorado law or these Bylaws may be decided by a simple majority vote of directors, so that an equal number of director votes are cast in favor of and in opposition to a proposition, then no decision shall be deemed to have been made and such matter shall automatically be tabled to the next regular or special meeting of the Board.

At each Board meeting the tentative agenda for the next Board meeting shall be reviewed and approved by the Board. The General Manager shall finalize the tentative agenda and prepare for each meeting in consultation with the Board President and shall include any item on the final agenda distributed in advance of the meeting specifically requested by the Board President or by at least two (2) Directors.

## SECTION 10 - No Informal Action by Directors/Executive Sessions.

All official business of the Board shall be conducted at regular or special meetings. Executive sessions may be called at regular or special meetings, and conducted according to the following guidelines:

(a) Calling the Executive Session. The topic for discussion in the executive session shall be announced in a motion, and the specific statute that authorizes the executive session

shall be cited. The matter to be discussed shall be described in as much detail as possible without compromising the purpose of being in executive session. An affirmative vote of two-thirds of the quorum present shall be required to go into executive session.

(b) Conducting the Executive Session. No adoption of any proposed policy, position, resolution, rule, regulation, or formal action shall take place in an executive session. The discussion in executive session shall be limited to the reasons for which the executive session was called. A record of the actual contents of the discussion in the executive session, using the same manner and media as are used to record minutes of regular sessions, shall be used. If handwritten notes of the executive session are kept, minutes of the executive session shall be created and shall contain a signed statement by the President that the minutes substantially reflect the substance of the discussion during the executive session. No record is necessary to be kept for any portions of the discussion which the District's attorney reasonably believes constitute attorney-client privileged communication. If minutes of the executive session are otherwise electronically recorded, the attorney shall state on the record when any portion of the executive session is not recorded as an attorney-client privileged communication. If minutes of the executive session are otherwise recorded in writing, then the attorney shall sign a statement to the same effect when any portion of the written Minutes is not recorded in writing as an attorney-client privileged communication.

(c) After Executive Session. The record of any executive session shall be retained by the District for ninety (90) days and then destroyed or erased. Minutes or recordings of the executive session shall not be released to the general public for review under any circumstances, except as required by law.

#### SECTION 11 - Adjournment and Continuance of Meetings.

When a regular or special meeting is for any reason continued to another time and place, notice need not be given of the continued meeting if the time, date and place of such meeting are announced at the meeting at which the continuance is taken, except as required by law. At the continued meeting, any business may be transacted which could have been transacted at the original meeting.

#### SECTION 12 - Emergency Meetings.

Emergency meetings of the Board of Directors may be called by the President or Vice President or General Manager in the event of an emergency that requires the immediate action of the Board in order to protect the public health, safety and welfare of the persons or property of the users, customers, or electors of the District, without notice if notice is not practicable. If possible, notice of such emergency meeting may be given to the Board by e-mail, telephone or whatever other means are reasonable to meet the circumstances of the emergency. At such emergency meeting, any action within the power of the Board that is necessary for the immediate protection of the public health, safety and welfare may be taken; provided, however, that any action taken at an emergency meeting shall be effective only until the first to occur of (a) the next regular meeting, or (b) the next special meeting of the Board at which the emergency issue

is on the public notice of the meeting. At such subsequent meeting, the Board may ratify any emergency action taken. If any emergency action taken is not ratified, then it shall be deemed rescinded as of the date of such subsequent meeting.

#### ARTICLE IV - OFFICERS

##### SECTION 1 - Designation.

The officers of the District shall be a President, Vice-President, and Secretary/Treasurer, and such other officers as may be authorized from time to time by Board resolution. The officers shall serve in their capacities for the District in the conduct of all of its affairs.

##### SECTION 2 - Qualification and Election of Officers.

The President and Vice-President shall be members of the Board of Directors. The Board of Directors shall elect a President and Vice-President at the first regular Board meeting of each year. The General Manager shall be appointed by the Board of Directors from time to time, to serve at the pleasure of the Board. The General Manager shall also be the ex officio Secretary/Treasurer of the District, but shall not be a member of the Board of Directors.

##### SECTION 3 - Term of Office of Officers.

The President and Vice-President shall serve for a term of one (1) year, and shall hold their offices until their successors shall have been elected. The term of consecutive service by the President of the Board in such President position shall not exceed six (6) consecutive years. A Director may again be elected to serve as President after a break in service of at least 2 years. The Vice-President and Secretary/Treasurer are not subject to any term limitations.

#### ARTICLE V - DUTIES OF OFFICERS

##### SECTION 1 - President.

The President shall be the Chairman of the Board of Directors and shall preside at all meetings of the Board. Except as otherwise provided herein or by Board action, the General Counsel for the District shall approve as to form and the President shall sign all documents required to be approved by the Board of Directors under Article II, Section 3 hereof.

##### SECTION 2 - Vice-President.

The Vice-President shall act, in all things, and shall possess all of the powers and be subject to all of the duties of the President in the event of the latter's absence from any meeting of the Board of Directors, or his/her inability to act.

SECTION 3 - Secretary/Treasurer.

(a) The Secretary/Treasurer shall be the secretary of the Board of Directors and all special and standing committees of the Board of Directors. The Secretary/Treasurer, or a designee working under his/her direction and control, shall keep a record of all meetings of the Board of Directors and all special and standing committees of the Board of Directors, except that the meeting minutes may initially be prepared by a recording secretary so designated by the Board of Directors from time to time.

(b) The Secretary/Treasurer shall have custody of the Seal of the District and shall attest the signatures of the President or Vice-President upon all instruments and other documents signed by such officer.

SECTION 4 - Assistant Secretary/Treasurer.

The Board may designate an Assistant Secretary/Treasurer, subject to confirmation by the Board of Directors, who shall discharge the duties of the Secretary/Treasurer in his/her absence or inability to act.

SECTION 5 - General Manager.

(a) The General Manager shall be an employee of the District. The General Manager of the District shall receive an annual salary as determined annually by the Board of Directors, and shall also receive such benefits as are provided to any other employees of the District, and such additional benefits not offered generally to the other employees the District as the Board of Directors may authorize, including (but not limited to) payment by the District of the cost of health/hospitalization/dental insurance premiums for the General Manager and his spouse. The General Manager shall have charge of and is delegated authority over the office of the District and of all employees thereof except for the District's attorneys, including the authority to hire, discipline and remove employees of the District. Except for the purposes of inquiry, the Board and its members shall deal with the subordinate employees of the General Manager through the General Manager, and neither the Board nor its members shall give orders to subordinate employees of the General Manager.

(b) The General Manager shall have authority to make contracts for goods and services and to approve purchase orders and expenditures for the administrative operations of the District, subject to the Board's budgeting and appropriating funds for such expenditures. The General Manager shall have authority to authorize expenditures in excess of budgeted line items provided that expenditures in excess of general categories of expenditures shown on the summary page of the adopted budget of the District shall not be exceeded without prior Board authorization.



(c) Notwithstanding anything to the contrary set forth in Article II, Section 3, the General Manager shall have the authority, without approval by the Board of Directors, to enter in to contracts for inclusion in area-wide augmentation plans decreed to the District for all applications which may be approved without the requirement that notice be given to persons who filed statements of opposition, other than the State and division engineers, in the water cases in which such plan of augmentation was decreed.

(d) The General Manager as Treasurer shall be the custodian of the funds of the District and shall deposit those funds in a bank, or banks, as authorized by the Board. The General Manager shall at all times keep an accurate and correct record of the funds of the District, including the amounts and sources of all receipts and amounts and purposes of all disbursements. The General Manager shall cause an audit of the books of the District to be made on behalf of the Board annually in compliance with Colorado governmental audit law or at such other times as the Board may direct by motion or resolution.

(e) The General Manager shall sign all warrants, checks or other instruments disbursing funds of the District in amounts less than \$10,000 and all checks for District employees' compensation from the District's "payroll" account. All warrants, checks or other instruments disbursing the funds of the District in amounts equal to or exceeding \$10,000 shall additionally require the signature of a member of the Executive Committee. At each regular meeting of the Board of Directors, the General Manager shall provide a listing of the check number, payee, and amount of each check issued on District funds for the period of time since the last listing for the last regular meeting, including all such checks in the month prior to the month of the regular meeting for ratification by the Board.

(f) The General Manager shall give notices of regular and special meetings of the Board of Directors and of all special and standing committees of the Board of Directors as required by these Bylaws, by the Act or by the Open Meetings Law, and the District shall retain such notices or appropriate evidences thereof as part of the District's permanent records.

(g) In addition to the powers and duties stated herein, the General Manager shall do and perform any and all acts required by the Board of Directors.

(h) At each regular meeting, the General Manager shall deliver in writing to the Directors a Treasurer's Report including a list of investments held by the District and the yield being earned on such investments, a list of significant contracts not yet approved by the Board of Directors and executed by the District since the General Manager's last report, a current income statement, income comparison to budget, and balance sheet, and including identification of any recommended changes to policies and/or accounting procedures, instances of non-compliance, and similar matters.

(i) The General Manager, as Treasurer, shall work with the District's auditor to ensure that accounting transactions comply with final audit requirements.

(j) In the fall and in accordance with Colorado law, the General Manager, as Treasurer, shall prepare the draft of a proposed budget for the District for the ensuing year, and shall prepare upon request of the Board updates to the 5-year long-term capital plan of the District.

(k) The General Manager, as Treasurer, shall assist with implementing changes adopted by the Government Accounting Standards Board and recommend revisions to accounting procedures and policies in order to maintain compliance.

(l) Before entering upon his duties as Treasurer, the General Manager shall give a good and sufficient surety bond in such sum as the Board shall, from time to time, fix by motion or resolution, conditioned upon and for the honest and faithful discharge of his/her duties, and the full and complete accounting by him/her for all funds and properties of the District which shall come into his/her hands, which bond, and the surety or sureties thereon, before becoming effective, shall be approved by the President of the District. The cost of such bond shall be a District expense.

## ARTICLE VI - COMMITTEES

### SECTION 1 - Executive Committee.

An Executive Committee is hereby created in order to more efficiently and economically carry out and effectuate the express powers of the District set forth in the Water Conservancy Act, including operation of the District as an Enterprise.

### SECTION 2 - Executive Committee Membership and Selection.

The Executive Committee shall consist of five (5) persons, all of whom shall be members of the Board of Directors selected in the following manner:

(a) The President shall be a member and chairman of the Executive Committee. The Vice President shall also be members of the Executive Committee.

(b) The remaining members of the Executive Committee shall be selected by the vote of the Board of Directors on an annual basis.

Appointment and selection of members of the Executive Committee shall be made at the first regular meeting of the Board of Directors in each year.

### SECTION 3 - Powers and Duties of Executive Committee.

The Executive Committee shall have the following powers and duties, to-wit:

(a) To act on behalf of the Board as directed by the Board of Directors at any regular or special meeting of the Board of Directors.

(b) Between regular meetings of the Board of Directors, the Executive Committee shall have power and authority to make contracts and agreements for the development and implementation of the District's policies, provided that no one such contract shall involve the expenditure or disbursement of more than \$50,000.

(c) To direct the General Manager and General Counsel for the District to perform such duties and functions as are deemed necessary for the carrying on of the business and affairs of the District, until the next regular or special meeting of the Board of Directors.

(d) To authorize, subject to Board of Directors, ratification, statements of opposition in water cases and settlement of litigation.

(e) To act on behalf of the Board in an emergency.

#### SECTION 4 - Creation of Special Committees.

Special committees may be created upon motion or resolution adopted at any meeting of the Board of Directors. The number of members of such committees shall be provided in the motion or resolution creating the committee. The Directors who shall serve thereon shall be selected by vote of the Board of Directors, or, in default of such selection, shall be determined and appointed by the President. Authority of any such committee to act on behalf of or bind the Board shall only be delegated by Board motion or resolution. Any such committees can be dissolved by the Board. The President shall be an ex-officio member of all such committees and shall vote on committee actions only if necessary to break a tie vote of the other committee members or if there is a quorum only because of the President's attendance. The General Manager shall be an ex-officio member of each special committee, but shall have no vote thereon.

#### SECTION 5 - Meeting of Committees.

All Board members shall receive notice of committee meetings and information required by the Open Meetings Law. Locations and notices of such committee meetings shall conform with the requirements of Article III, Section 4. All directors are entitled to attend committee meetings, but only committee members may vote.

#### SECTION 6 - Conduct of Committee Meetings.

The provisions and requirements of Article III concerning quorum, voting, actions and procedures at Board meetings shall apply to committee meetings, subject to the provisions of this Article. The ex-officio member of such committees shall not be counted in determining the existence of a quorum.

## ARTICLE VII - FINANCIAL ADMINISTRATION

### SECTION 1 - Fiscal Year.

The fiscal year of the District shall commence on January 1 of each year and end on December 31.

### SECTION 2 - Preparation of Budget.

On or before October 15th of each year, the General Manager shall prepare and submit to the Board of Directors a proposed budget for the ensuing fiscal year. Such proposed budget shall be based on policy and direction established by the Board at a regular meeting prior to preparation by the General Manager and shall be accompanied by a statement which shall describe the important features of the budget plan and by a general summary wherein shall be set forth the aggregate features of the budget in such manner as to show the balanced relations between the total proposed expenditures and the total anticipated income or other means of financing the proposed budget for the ensuing fiscal year, as contrasted with the corresponding figures for the last completed fiscal year and the current fiscal year. It shall be supported by explanatory schedules or statements classifying the expenditures contained therein by services, subjects and funds. The anticipated income of the District shall be classified according to the nature of receipts.

### SECTION 3 - Adoption of Budget.

On the day set for consideration of such proposed budget, the Board shall review the proposed budget and revise, alter, increase or decrease the items as it deems necessary in view of the needs of the District and the probable income of the District. The Board shall then adopt a budget setting forth the expenditures to be made in the ensuing fiscal year. The Board shall provide for sufficient revenues to finance expenditures in the budget with special consideration given to the proposed property tax levy.

### SECTION 4 - Levy and Collection of Taxes.

On or before December 15th of each year, unless an election for an increased operating tax levy is held, the Board shall certify to the Board of County Commissioners of the Counties of Routt and Moffat the mill levy established for the ensuing fiscal year, in order that, at the time and in the manner required by law for the levying of taxes, such Commissioners will levy such tax upon the assessed valuation of all taxable property within the District.

### SECTION 5 - Filing of Budget.

On or before January 30th of each year, the Board shall cause a certified copy of such budget to be filed with the Division of Local Government in the State Department of Local Affairs.

SECTION 6 - Appropriating Resolution.

At the time of adoption of the budget, the Board shall enact a resolution establishing the District's mill levy and shall also enact a resolution making appropriations for the ensuing fiscal year. The amounts appropriated thereunder shall not exceed the amounts fixed therefor in the adopted budget. The income of the District, as estimated in the budget and as provided for in the tax levy resolution and other revenue and borrowing resolutions, shall be allocated in the amounts and according to the funds specified in the budget for the purpose of meeting the expenditures authorized by the appropriation resolution. The Board may make an appropriation to and for a contingent fund to be used in cases of emergency or other unforeseen contingencies.

SECTION 7 - No Contract to Exceed Appropriation.

The Board shall have no authority to enter into any contract, or otherwise bind or obligate the District to any liability for payment of money for any purposes, for which provision is not made in appropriation resolution, including any legally authorized amendment thereto, in excess of the amounts of such appropriation for that fiscal year. Any contract, verbal or written, contrary to this Section shall be void ab initio, and no District funds shall be expended in payment of such contracts, except as provided in Sections 8 and 9 below.

SECTION 8 - Contingencies.

In cases of emergency caused by a natural disaster, public enemy, or other contingency which could not reasonably have been foreseen at the time of the adoption of the budget, the Board may authorize the expenditure of funds in excess of the budget by resolution duly adopted by at least five Directors. Such resolution shall set forth in full the facts concerning the emergency and shall be included in the minutes of such meeting. If so enacted, a copy of the resolution authorizing additional expenditures shall be filed with the Division of Local Government in the State Department of Local Affairs and shall be published in compliance with statutory requirements.

SECTION 9 - Payment of Contingencies.

If there is unexpended or uncommitted money in funds other than those to which the emergency relates, the Board shall transfer such available money to the fund from which the emergency expenditure is to be paid. To the extent that transferable funds are insufficient to meet the emergency appropriation, the Board may borrow money through (a) the issuance of tax anticipation warrants, to the extent that the mill levy authority of the District is available as provided by law, or (b) the issuance of bond anticipation notes payable from future bond proceeds or operating revenue, or (c) any other lawful and approved method.

SECTION 10 - Annual Audit.

The Board shall cause an annual audit to be made at the end of each fiscal year of all financial affairs of the District through December 31st of such fiscal year. In all events, the audit

report must be submitted to the Board within six months of the close of such fiscal year. Such audit shall be conducted in accordance with generally accepted auditing standards by a registered or certified public accountant, who has not maintained the books, records and accounts of District during the fiscal year. The auditor shall prepare, and certify as to its accuracy, an audit report, including a financial statement and balance sheet based on such audit, an unqualified opinion or qualified opinion with explanations, and a full disclosure of any violation of State law pursuant to statutory requirements. A copy of the audit report shall be maintained by the District as a public record for public inspection at all reasonable times. A copy of the audit report shall be forwarded to the State Auditor or other appropriate State official pursuant to statutory requirements.

#### ARTICLE VIII - GENERAL COUNSEL

The Board may retain an attorney licensed to practice law in the State of Colorado to act as General Legal Counsel for the District, including its Enterprise. Such General Counsel shall report to and be responsible to the Board and its committees and shall conduct legal affairs on behalf of the District subject to requirements of laws and rules governing the attorney-client relationship and with the assistance of such special legal counsel as the Board may authorize.

#### ARTICLE IX - PUBLIC RECORDS

##### SECTION 1 - General Procedures.

The Secretary/Treasurer, as custodian of the District's records, shall make the District's nonconfidential records available for inspection by the public during normal District office hours and provide copies of such documents to the public without the need for formal requests pursuant to the Open Records Act. The Secretary/Treasurer shall determine whether such records are confidential and therefore not available to the public by reference to the provisions of the Open Records Act concerning denial of inspection of public records and, as he/she deems appropriate, after conferring with the District's General Counsel. The Secretary/Treasurer also shall implement the procedures of the Open Records Act when requests for records are made by the public pursuant to that statute.

##### SECTION 2 - Requests for Board Meeting Information.

The Secretary/Treasurer shall provide copies of all nonconfidential documents which are provided to the Directors in connection with regular and special Board meetings to members of the public who request the same and agree to pay the costs thereof determined in accordance with the Open Records Act. In providing copies of documents to members of the public pursuant to this Section, the Secretary/Treasurer shall charge the amount allowed by statute.

#### ARTICLE X - CONFLICTS

##### SECTION 1 - Protection of Privileges.

At times Directors may be associated with other entities which have interests which are adverse to the interests of the District. Such Directors shall not disclose or use confidential information received as a District director contrary to the District's interests without approval of the Board. If a District director acts or intends to act for another entity on a matter in which there are or reasonably are expected to be adverse interests between that entity and the District, he/she shall recuse himself/herself from participating in the District's confidential discussions of that matter and decline to receive confidential District information about that matter. Such director also shall not vote on Board actions affecting the matter. In such a situation, the director shall promptly notify the District's General Counsel, or General Manager of his/her decision or intention to act on behalf of the adverse or potentially adverse entity, and General Counsel, and the General Manager thereafter shall not provide confidential information to such director about the matter.

#### SECTION 2 - Code of Ethics.

District directors, officers and staff shall comply with the Colorado Code of Ethics law which is codified at C.R.S. § 24-18-101 et seq., as it may be amended from time to time.

#### SECTION 3 - Disclosure of Conflicts.

District directors, officers and staff shall comply with C.R.S. § 18-8-308 concerning disclosure of conflicts of interest.

### ARTICLE XI - SEAL

The Seal of the District shall consist of two concentric circles within the word "SEAL" and the name of the District within said circle.

### ARTICLE XII - INDEMNIFICATION OF DIRECTORS, OFFICERS AND EMPLOYEES

The District shall defend, hold harmless and indemnify any Director, officer, agent, or employee, whether elective or appointive, against any tort or liability, claim or demand, without limitation, arising out of any alleged act error or omission occurring during the performance of official duty, as more fully defined by law or by an indemnification resolution. The provisions of this Section shall be supplemental and subject to and, to the extent of any inconsistency therewith, shall be modified by the provisions of the Colorado Governmental Immunity Act, 24-10-101, et seq., C.R.S.

### ARTICLE XIII - BIDDING AND CONTRACTING PROCEDURES

Except in cases in which the District will receive aid from a government agency, a notice shall be published for bids on all construction contracts for work or material, or both, involving an expense of \$25,000 or more of District funds. The Board may reject any and all bids, and if it appears that the District can perform the work or secure material for less than the lowest bid, it

may proceed to do so in accordance with law. All other constitutional and statutory requirements relating to sole source contracts performance bonds, retainage, and similar matters shall also be complied with.

#### ARTICLE XIV - AMENDMENTS

These Bylaws may be amended by the affirmative vote of a majority of the entire Board of Directors. A copy of any amendments to these Bylaws proposed to be made shall be mailed by the General Manager to each member of the Board of Directors not less than ten (10) days prior to the meeting of the Board at which such amendment is to be considered.



CERTIFICATE OF SECRETARY

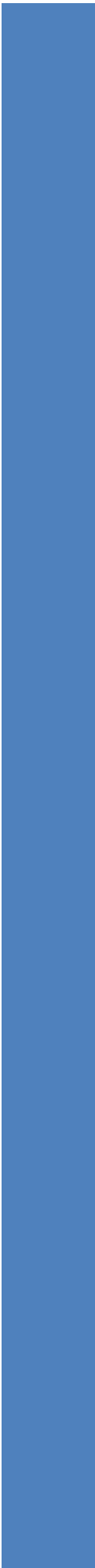
I hereby certify that the foregoing Bylaws were approved by the Board of Directors of the Upper Yampa Water Conservancy District on March 27, 2020 at an emergency meeting of the Board under Article V, Section 12 of these Bylaws upon a finding of the Board that immediate action was required in order to protect the public health, safety and welfare of the persons or property of the users, customers, or electors of the District.

By \_\_\_\_\_  
Kevin McBride, General Manager  
and Secretary/Treasurer

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# BOARD COMMUNICATION FORM

**From:** Scott Grosscup, legal counsel

**Date:** April 1, 2020

**Item:** Water Resume Review

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DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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**I. Request/Issue and Background Information:** I reviewed the Water Resumes for Water Divisions 5 and 6 for water court filings in the month of February and did not identify any water applications that would impair or injure the District's water rights. The March Resumes are not yet available.



# BOARD COMMUNICATION FORM

**From:** Scott Grosscup, legal counsel

**Date:** April 1, 2020

**Item:** Water Court Cases Update

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DIRECTION  
 INFORMATION  
 MOTION  
 RESOLUTION

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Following is an update of the status of water court cases in which the Upper Yampa Water Conservancy District is an Applicant or Opposer and matters pending before the Utah Division of Water Resources.

**Case No. 17CW3043** – This is the application by the City of Steamboat Springs for an augmentation plan for Casey’s Pond. The District has entered a stipulation consenting to the form of ruling in 2019. The ruling uses the District’s water rights from Stagecoach reservoir in its augmentation plan for Casey’s Pond. The Applicant continues to negotiate final terms with the last remaining opposer, the Mt. Werner Water & Sanitation District. We will continue to monitor the case to ensure that no concerns are raised in the use of the District’s water rights.

**Case No. 18CW3020** – This is the application by the Mt. Werner Water & Sanitation District for new junior water rights at the Yampa Meadows Infiltration Gallery and plan for augmentation using water from Stagecoach and Yamcolo Reservoirs pursuant to two contracts with the UYWCD. The District entered into a stipulation with the Applicant, which was approved by the Referee, consenting to the relief requested and properly identifying water rights that may be used from Yamcolo Reservoir for augmentation purposes. The City of Steamboat Springs is the only remaining opposer.

**Case No. 19CW3005** – This is an application for finding of reasonable diligence filed by Tri-State Generation and Transmission Association related to conditional water rights it owns in the Four Counties Ditch No. 3, Headgate 8 and in the Wessels Canal. No other statements of opposition were filed. The Division Engineer is recommending that the Court deny the application and cancel the conditional water rights. TriState has requested additional time to respond to the consultation report, now delayed to early May, citing “a significant shift in generation strategy over the next decade”.

**Water Horse Resources** – The Utah Division of Water Rights has not issued an Order on Aaron Million’s project to divert water from Utah to Colorado’s eastern slope. There is no estimated time for resolution.

**NEXT MEETING AGENDA**

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**AGENDA**  
**UPPER YAMPA WATER CONSERVANCY DISTRICT**  
**BOARD OF DIRECTORS MEETING**  
**WEDNESDAY, MAY 13, 2020 (1:30 PM)**  
**MOUNTAIN VALLEY BANK COMMUNITY ROOM**  
**2220 CURVE PLAZA, STEAMBOAT SPRINGS, CO**

- (1) Establishment of Quorum and Call to Order;
- (2) Consent Agenda; action item
  - a) Approval of Disbursements;
  - b) Budget Comparison
  - c)
  - d) Approval of the minutes of the April 8, 2020 Board Meeting; and acceptance of the March 18, 2020, Executive Committee Meeting;
- (3) Approval of Agenda for Meeting; action item
- (4) Public Input and Comment;
- (5) Financial Report; action item
- (6) Report of the General Manager;
  - a)
  - b)
- (7) Report from District Engineer
  - a) Reservoir water status
  - b)
  - c)
- (8) Report from Public information manager
  - a)
  - b)
  - c)
- (9) Report from General Counsel;
  - a) Water Resumes;
  - b) Status of other Water Cases, if any;
  - c)
- (10) Executive Session with Bob Weiss, legal Counsel, under CRS § 24-6-402(4)(b) to discuss legal issues on **Water Resumes, Water Cases, and 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).
- (11) Board Member Reports
- (12) Next Meeting Agenda
- (13) Adjournment.