

**UPPER ARKANSAS WATER
CONSERVANCY DISTRICT**

Regular Meeting of the Board of Directors

**February 8, 2018
1:30 PM**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, February 8, 2018, at the District offices, 339 East Hwy 50, Salida, Colorado, following the Water Activity Enterprise committee meeting, notice having been given by posting of Notice and Agenda on February 7, 2018, at the offices of the Upper Arkansas Water Conservancy District, 339 East Hwy 50, Salida, Colorado.

DIRECTORS PRESENT

Robert M. Senderhauf	Tim Payne (phone)	Richard Hilderbrand
Franklin J. (Jay) Moore	Mannie Colon (phone)	John H. Sandefur
Tom E. French	Robert B. (Bill) Donley	
Dennis Giese	Jeff Ollinger	
Thomas Goodwin	Timothy C. Canterbury	

DIRECTORS ABSENT

Gregory W. Felt

DISTRICT OFFICIALS/STAFF MEMBERS PRESENT

Ralph L. (Terry) Scanga, General Manager	Brian Sutton, Water Commissioner
Chelsey Nutter, Project Manager	Chris Manera, Engineer
Jord Gertson, Hydrologist	Kimberly Kerschke, Secretary
Ken Baker, Consultant	

DISTRICT OFFICIALS ABSENT

Kendall K. Burgemeister, Attorney

EX-OFFICIO REPRESENTATIVES PRESENT

Tom Flower, Custer County Commissioner
Harald Kasper, Salida City Council

EX-OFFICIO REPRESENTATIVES ABSENT

Brian Berger, Poncha Springs Administrator
Michael Patterson, Florence City Manager
John Roorda, Chaffee County Planning Manager
Ashley Smith, Cañon City Council
Shawn Williams, Buena Vista Public Works Director
George Medaris, District Manager, Round Mountain WSD
Philip Puckett, Buena Vista Town Administrator

GUESTS PRESENT

Joe Stone, Ark Valley Voice
Kristie Nackord, Fremont County
Bob Hartzman, Canon City Water Department
Lucas Babbitt, Watervation

PLEDGE OF ALLEGIANCE

Chairman Senderhauf led attendees in the Pledge of Allegiance.

INTRODUCTION OF GUESTS

Guests were asked to introduce themselves.

RECORD OF PROCEEDING

MINUTES OF THE MEETING OF January 11, 2018

The minutes of the meeting of January 11, 2018, were unanimously approved upon motion by Director Donley with second by Director Giese.

FINANCIAL REPORTS

Upon motion by Director Goodwin with second by Director Sandefur, the Board unanimously approved the monthly financial report dated January 31, 2018.

PROGRAM PRESENTATIONS

None

EX-OFFICIO REPORTS

There were no ex-officio reports.

CONSULTANT REPORT – Ken Baker

Consultant Baker brought to the Board's attention a matter that came up during the State Affairs Meeting. In Saturday's edition of the Denver Post an article appeared dealing with the Right to Wade, relating to a fisherman's access lawsuit with a Texas Creek land owner. The essence of the lawsuit is that the fisherman wanted to fish by wading adjoining surface property owned by a riparian land owner. The land owner was persuaded that he owned to the center of the stream. The fisherman took the position that the Arkansas River is a navigable stream, the bottom of the stream belonging to the State by historic law. He referenced that, prior to Colorado becoming a state, logs were floated down the stream by the railroad, thereby making it navigable. Consultant Baker followed up on this point with reference to the following cases. In 1979, in a Grand County lawsuit, the court held that ownership is for anything above the stream bed on an unnavigable river. In PPL Montana, LLC vs. Montana in 2012 the US Supreme Court unanimously determined what is and what is not navigable. It was concluded that the river must be regarded as a public navigable river if it is used or is susceptible of being used as a highway of commerce for trade and travel on water.

Discussion followed that, should the courts be able to conclude that portions of the river are navigable and certain portions are unnavigable, a dilemma could arise where the riparian rights of property owners could be affected, and they could lose their right to dominion and control.

Consultant Baker relayed to the Board that the land owner in Texas Creek may not fight the fisherman's lawsuit. Director Canterbury assured the Board that the landowner community is watching this case closely. Director Donley asked whether the land owner has asked for help with the lawsuit and if not, if there is a way for others to get involved should he be served. Manager Scanga mentioned options to file and intervene as a party or amicus brief to support the law. Director Donley suggested that Mountain States Legal Foundation become involved, referencing financial considerations and the fact that this is a statewide issue.

It was mentioned that Governor Ritter made a memo regarding the "Right to float", but it has no force of law. He was meant to appoint a special committee for mediation, but this was never done.

With regards to joining a case, the property owner is required to initiate the request for involvement and other parties must show standing as an intervener or may file an amicus brief. The Cattleman's Association was suggested as an appropriate intervener in light of riparian land ownership. Manager Scanga suggested that it may be possible that water rights owners would have standing since the determination of the navigability of a stream may have impacts to water use.

COLORADO WATER CONGRESS:

Consultant Baker noted that the State Affairs Committee agenda contained four bills presented for consideration, and one draft bill.

- HB18-1151

RECORD OF PROCEEDING

Concerning the authorization of deficit irrigation pilot projects approved by the Colorado Water Conservation Board, this bill comes from the lower Arkansas Basin Super Ditch concept and adds to lease following pilot legislation.

- SB18-134
This is a bill concerning the exemption of nonprofit water companies from regulation by the public utilities commission.
- HB18-1073
Concerning water districts' ability to enter into contracts regarding their water-related assets, Manager Scanga stated that it would be positive for the District to enter into these contracts. As of now, contracts can be entered for M&I and utilities, but not for capacity in the works, such as storage space and pipelines. At this point, legislation is not clear in the Conservancy Act for contracts related to capacity in the works.
- HB18-1093
This is a bill concerning the allowable uses of reclaimed domestic wastewater and, in connection therewith, allowing reclaimed domestic wastewater to be used for food crops. Consultant Baker stated that these bills get a lot of support and the District should stand behind them. Director Ollinger, having been involved in wastewater technologies, stated that, despite the perception of lower quality, recycled wastewater is actually an improvement on intake water.
- A draft bill
This draft bill concerns a water court process by which an owner of a storage water right allowing water to be stored in new reservoir capacity may release water into an identified stream reach to comply with mitigation measures identified in a Fish and Wildlife Mitigation Plan approved by the Colorado Water Conservation Board. With regards to the draft bill Manager Scanga brought the following questions and comments to the Board. Is the storage right, typically a certain quantity of water in an existing storage reservoir, quantified? What about flow rights? Manager Scanga said that in the Arkansas River Basin he would think you would need a new storage decree for new storage capacity. The problem is that you will never be in priority to fill that capacity and so a 2018 decree will not operate. Manager Scanga also noted that this new proposed legislation does not allow storage by exchange.

PROJECT MANAGER REPORTS - Chelsey Nutter **Projects and Education**

Project Manager Nutter provided the Board with an update on the Water Balance Study, which is nearing the end of its first year. Per the requirements of the grant, Project Manager Nutter will be providing presentations to matching partners beginning in March. Also included in these presentations will be an update on our multi-use projects and our education and outreach plans. By connecting with communities throughout the District, Project Manager Nutter is focusing on the building of relationships as detailed in the Education Plan.

Director Goodwin asked if there was a plan to discuss the proposed augmentation boundary expansion when in Fremont County. Project Manager Nutter said that she is not planning to discuss this specifically but will allow questions specific to each region guide in the development of future outreach plans.

Project Manager Nutter met with Paul Moltz and shared the video that was created for the Trout Creek Park Multi-Use Project. Mr. Moltz enjoyed the film and gave his approval for it to be used in outreach efforts. Mr. Moltz also relayed that he is in the process of getting cost estimates for the pipeline for our alluvial storage project.

Project Manager Nutter communicated that she and Consultant Nackord have been working on the next District vignette, which will focus on the history and operations of the District. They hope to have this

RECORD OF PROCEEDING

completed in the next few months and would like to preview the video at the March Board meeting. They have also been developing content and structure for the new website and communication materials.

Project Manager Nutter shared that on February 21st the first “Water Talks” program is being held. The purpose of the “Water Talks” is to meet with local non-profits and provide a platform for relationship building and water related discussion in a casual and inviting atmosphere.

Project Manager Nutter stated that she is preparing for several community events that will take place April through August. These include a presentation at the Agrisummit put on by Guidestone in April, a youth education activity for GARNA’s 6th grade field trip, and the development of this year’s Water Festival to be held in August.

Project Manager Nutter provided the Board with an update on her continuing education. She is in the 3rd semester of an MBA Program at Adams State and currently has a 4.0 GPA. She has found this to be a great program with immediate application to the District and expressed her gratitude for the support she has been given.

In addition, Project Manager Nutter informed the Board that she and Manager Scanga recently attended a drone club meeting. Having recognized the costs associated with hiring drone operators and the extent of information available through drone footage, Project Manager Nutter, who holds a certification in GIS, believes there are many applications that could benefit the District, particularly with an in-house operator. Courses are being offered through the drone club for commercial FFA licensing for drone operation and Manager Scanga, Project Manager Nutter, and Hydrologist Gertson are planning to attend these courses. Manager Scanga requested approval to join the drone club as an institutional member, stating there would be a \$500 annual fee.

Discussion following the request included a comment by Director Colon who stated that there would be a drone presentation at the upcoming DARCA conference. Director Colon also expressed interest in applications specific to agriculture and the water industry and the integration between drones and tractors.

Director Ollinger stated that he would like to see a brief list of beneficial objectives of the drone program to see if we, as a District, are meeting targets. Director Ollinger believes this will be helpful in guiding future budget decisions. Project Manager Nutter said that she would follow up on this request.

Engineer Manera offered comment regarding the costs associated with drones. He stated that drone cost is not the most expensive, it is the technology required to achieve beneficial outcomes. This includes computer software and monitors capable of handling advanced applications.

Director Giese informed the Board that Chaffee County was the first County to have a test site for drones.

Director Donley moved that we authorize the UAWCD staff to join the drone club as an institutional member with a \$500 annual membership fee and take courses to become certified with a commercial FFA license to operate drones. The motion was seconded by Director Giese and was unanimously approved by the Board.

Lastly, Project Manager Nutter recommended that, in the future, documents for Board meetings, including tentative agendas and minutes, be sent by email only. There were no objections to this recommendation.

COMMITTEE REPORTS

None

Resume Review Committee

Nothing of significance for the District in the Resume.

MANAGER’S REPORT – Terry Scanga

RECORD OF PROCEEDING

Manager Scanga provided the Board with a progress update regarding the South Arkansas Reservoir special use permits with the United States Forest Service. After approximately 18 years and ½ million dollars in accrued expenses, it is possible that a special use permit may be granted by the end of the year.

ENGINEER'S REPORT – Chris Manera, P.E., Colorado River Engineering (CRE)

Engineer Manera reported on a recent meeting with the USFS regarding the flow enhancement monitoring program out of O'Haver Reservoir. There are opportunities to make releases that benefit both the fishery habitat and the District's augmentation plan. If North Fork Reservoir operations are combined with O'Haver in the proposed flow enhancement plan, reservoir management will become more complex and have to be closely considered. Program Manager Nutter commented that the O'Haver flow enhancement plan is truly a stream management plan and offers benefits to multiple users.

Engineer Manera provided an update on the Projection Tool, which will be a terrific asset in how we think about and manage variable water scenarios. Given storage amounts now, the projection tool will look at drought projections and how storage will be impacted over future years. It will be specifically helpful in back to back drought year scenarios.

Engineer Manera also reported that he is reviewing the historic consumptive use with Thompson Ditch for Yale Lakes Estates. If there are credits that are not being used this could provide a benefit for the District.

Gratitude to Water Commissioner Sutton was expressed with regards to the Division of Water Resources newly created water right map for the South Arkansas River. The map illustrates the complexity of change cases, return flows, call locations, and the use of South Arkansas Reservoirs.

Director Goodwin asked how close we are on completing the engineering for the augmentation boundary expansion plan. Engineer Manera said that they have been waiting on the completion of the projection tool and for Attorney's Burgemeister's trial to conclude in March. At that point the filing will become first priority.

LEGAL REPORT – Law of the Rockies, Kendall Burgemeister

Attorney Burgemeister was not in attendance.

CHAIRMAN AND DIRECTOR REPORTS

Colorado Water Congress Summaries

Consultant Baker relayed feedback that was offered by Director Felt regarding the Colorado Water Congress. Director Felt thought the agenda looked great but presentations were shallow and lacked depth. Consultant Baker agreed with Director Felt on this point but did find some value on the work sessions and the discussion related to Amendment 43 concerning elected officials using their judgment to make budget decisions.

Director Ollinger felt the conference was weak with regards to depth, apart from the presentation on forest health as related to water quality. Director Ollinger informed the Board that he does the lending program for the Colorado State Forest Service and is involved with forest service lending around the state.

Director Ollinger followed up his summary of Colorado Water Congress with a question for the Board. He was curious as to how Board meeting agendas were put together. Manager Scanga said that agendas were created based on the circumstances and events of the previous month, changes or progress on issues related to past meetings, or anything specific that that Board has asked to do. Director Ollinger expressed that he would like to see Board members contribute more to the agenda. For example, Director Ollinger mentioned his question regarding the District's property value in the real estate market which was posed at a previous meeting. Director Ollinger wondered why this has not been added to ongoing agendas. Conversation followed between Director Ollinger and Project Manager Nutter, who believed the matter had been addressed within the Board meeting, Chairman Senderhauf having explained that a property valuation would change over time due to changes in the market. Director Ollinger also asked why Director Hilderbrand's molybdenum presentation was not on the agenda and Project Manager Nutter

RECORD OF PROCEEDING

responded that the tentative agenda that is sent to the Board and other interested parties prior to the meeting may differ from the final agenda after presentations are confirmed. Project Manager Nutter stated that presentations are added to the agenda per Board requests.

Director Ollinger proceeded to inquire whether this is a staff and General Manager's meeting or a Board of Director's meeting and felt there should be improvement in the amount of participation by Board members. He requested a more established protocol for the path to bring something to the agenda.

Chairman Senderhauf responded by saying that we can enter into a formal process, but he felt there was encouragement to reach out and ask for an opportunity to contribute something to the agenda through a phone call or email to himself and Manager Scanga. The Chairman also pointed out that this is a section in the agenda dedicated to Chairman and Director Reports and that during most meetings a time is set aside to go around the room and speak freely to the Board.

Manager Scanga responded to Director Ollinger by saying it is the Manager's job to protect the Board of Director's from litigation. For example, if we are negotiating a contract to purchase a water right, that should be discussed at an executive session. Manager Scanga believes there should be a screening process for what is included on an agenda and that we should function as a Board and not as individual Board members. Manager Scanga said that he was accountable in his position to the Board in its entirety and not to individual Board members.

Director Goodwin commented that if he has an issue he feels needs to be addressed he will call Manager Scanga or Chairman Senderhauf or both and will defer to their leadership.

Director Ollinger continued stating that he has more specific questions regarding the District's property, such as cash flow on the building, maintenance, and what the future holds for this specific piece of real estate. Manager Scanga said he would follow up on this issue directly.

Continuing with summaries regarding the Colorado Water Congress, Director Goodwin said he was disappointed by the USFS report on forest health. He believes the acres that are being dealt with are not the acres affecting our watershed and more focus needs to be placed on the acres affecting our watershed, most of which are designated Wilderness. Director Goodwin believes that Wilderness protection can hinder proactivity. Director Goodwin did enjoy the presentation from Israel, where water is being re-used through a desalination process for crop production. He found the irrigation options innovative. Director Goodwin also complimented Director Colon and the DARCA presentations.

Director Hilderbrand expressed that he would like more information on forest health as related to water quality and would like to see more input from forest supervisors from Pike/San Isabel National Forest. Director Hilderbrand recommended that we bring in a district ranger with regards to Wilderness and our watershed. He said it is important to remember that the watershed on the Western Slope affects us too, because of the Fry-Ark Project. Project Manager Nutter responded that she has been in contact with Jim Pitts, and though funding has come through for a project at Monarch and will hopefully start this summer, the Forest Service is not ready for us. Grant money was also funded for restoration work on Hayden Pass, but we are waiting on the Forest Service to say they are ready for additional support to move forward. Project Manager Nutter also relayed that she and Manager Scanga sit on the ARWC (Arkansas River Watershed Collaborative) Board as part of the Basin Roundtable.

Manager Scanga, in response to Director Hilderbrand's request, said that we will check into having a presenter from the USFS.

Director Ollinger followed up by asking what the staff is representing on the ARWC Board.

Director Canterbury stated that the interests of the Upper District are represented by several members of the UAWCD Board and that every member of the Basin Roundtable sits on the ARWC Board. Director Ollinger said that he wants to ensure that the staff is receiving its direction from the Board.

RECORD OF PROCEEDING

Director Colon believes the best thing at Colorado Water Congress was the DARCA workshop. He enjoyed having a diverse group gathered together for the protection of ditch companies. He also enjoyed the presentation from the people in Israel and thinks this is an innovative movement in the world of agriculture. Director Colon reminded the Board of the upcoming DARCA conference, being held February 21-23, 2018. Highlights will include a John Deere display, a drone seminar, a color of water presentation, and a history presentation by a Supreme Court Judge.

Director Giese returned to the subject of Board Meeting agendas, saying that we deal with, in the agenda, the very essence of what we are here for, to manage water. Director Giese expressed that we may need direction on the entire function of the Board, including other committees, specific things related to the District, buildings owned by the District, etc. He suggested that at some point the staff needs to bring up periphery items that are on the extended arms of Board member involvement.

Hydrologist Gertson gave his summary of the Colorado Water Congress by saying that, while content was lacking, networking potential made the conference valuable. He also noted that costs may more than double with next year's conference being held at the Westin.

NOTICES & MEETINGS

- SECWCD Meeting –March 15, 2018, Pueblo, CO
- ABRT Meeting – March 14, 2018, Pueblo, CO

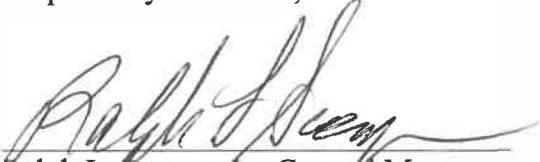
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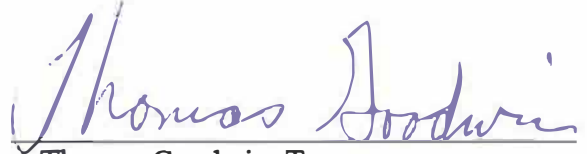
There being no further business to come before the Board, upon motion by Director Donley, second by Director Moore and unanimous approval of the Board, the meeting adjourned at 3:45 pm.

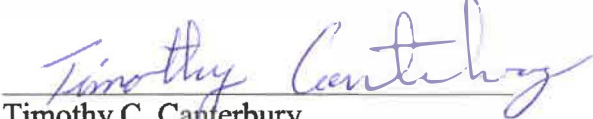
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RECORD OF PROCEEDING

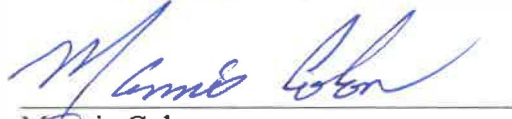
Respectfully submitted,


Ralph L. Scanga, Jr., General Manager

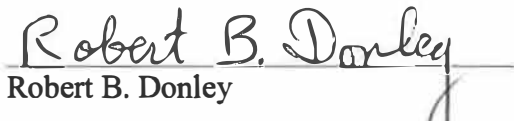

Thomas Goodwin, Treasurer


Timothy C. Canterbury


Richard Hilderbrand


Mannie Colon


Franklin J. Moore


Robert B. Donley


Jeff Ollinger

Absent- No signature

Gregory W. Felt


Tim Payne


Tom E. French


John H. Sandefur

Dennis Giese


Robert M. Senderhauf