

**UPPER ARKANSAS WATER  
CONSERVANCY DISTRICT**

**Regular Meeting of the Board of Directors**

**May 10, 2018**

**1:30 PM**

A regular meeting of the Board of Directors of the Upper Arkansas Water Conservancy District was held Thursday, May 10, 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 May 9, 2018, at the offices of the Upper Arkansas Water Conservancy District, 339 East Hwy 50, Salida, Colorado.

**DIRECTORS PRESENT**

Robert M. Senderhauf	Richard Hilderbrand	Thomas Goodwin
Franklin J. (Jay) Moore	Mannie Colon	John H. Sandefur
Robert B. (Bill) Donley	Gregory W. Felt	Timothy C. Canterbury

**DIRECTORS ABSENT**

Dennis Giese  
Tim Payne  
Jeff Ollinger  
Tom E. French

**DISTRICT OFFICIALS/STAFF MEMBERS PRESENT**

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

**DISTRICT OFFICIALS ABSENT**

None

**EX-OFFICIO REPRESENTATIVES PRESENT**

Tom Flower, Custer County Commissioner  
Harald Kasper, Salida City Council  
Bob Hartzman, Canon City Water Department

**EX-OFFICIO REPRESENTATIVES ABSENT**

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

**GUESTS PRESENT**

Joe Stone, Ark Valley Voice  
Kristie Nackord, Fremont County  
Richard Shea, Penrose  
Samantha Gunther, Office of U.S. Senator Gory Gardner  
Bill Canda, Custer County Commissioner  
April Obholz-Bergeler, The Mountain Mail

**PLEDGE OF ALLEGIANCE**

Chairman Senderhauf led attendees in the Pledge of Allegiance.

**INTRODUCTION OF GUESTS**

Guests were asked to introduce themselves.

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Chairman Senderhauf offered a special introduction of Custer County Commissioner Bill Canda. Appreciation was expressed for both his, and Custer County Commissioner Tom Flower's, presence at the meeting.

Manager Scanga recognized Consultant Baker as the well-deserved recipient of the "Bob Appel- Friend of the Arkansas" award. Refreshments were served in honor of Consultant Baker during a brief meeting intermission.

### **MINUTES OF THE MEETING OF March 8, 2018**

The minutes of the meeting of March 8, 2018, were unanimously approved upon motion by Director Donley with second by Director Moore.

### **FINANCIAL REPORTS**

Upon motion by Director Colon with second by Director Goodwin, the Board unanimously approved the quarterly income statement and balance sheet, along with the monthly financial reports dated March 31, 2018 and April 30, 2018.

### **PROGRAM PRESENTATIONS**

None

### **EX-OFFICIO REPORTS**

There were no ex-officio reports.

### **CONSULTANT REPORT – Ken Baker**

#### **Colorado Water Congress Legislative Activity**

CWC State Affairs Committee Meeting report dated April 16, 2018 was forwarded to the Board for review in advance of the May meeting. The report fairly summarizes the SAC activity as the legislative year closes.

Two significant Initiatives were introduced by Frank McNulty, former House Speaker. The proposed constitutional amendments intend to have a more neutral process for drawing district boundaries. A more detailed information sheet is available for Board members who would like a copy for review.

#### **HB 1151: Deficit Irrigation**

This is a Bill introduced and promoted by the Lower Arkansas Valley WCD. The plan, like previous plans introduced by the Lower District, is to remove jurisdiction of original applications for municipal water changes from the Water Court and direct that such applications should be made to the Colorado Water Conservation Board. The concern stated is that such applications made to the Water Court are lengthy and expensive. The objective of the plan is to calculate the volume of irrigation water that may be lawfully eligible for consumptive use, but not actually consumptively applied to irrigation under the applicable water rights decree, and convert the "deficit irrigation" to an annual consumptive use that could be stored and allocated to municipal use. Proponents assert a water court standard that directs the Water Judge to disregard five out of ten years of "non-use" in the calculation of HCU. Objectors to the Bill cited previous Colorado Supreme Court decisions in which the Court has emphasized the requirement that Historical Consumptive Use requires that the irrigation water decreed for diversion shall be applied to beneficial use on the land specified in the respective water rights decree. Note: The Bill was postponed indefinitely in the Senate State Affairs Committee. It is still being considered in the Governor's sector.

#### **SB-167: Concerning increased enforcement of requirements related to the location of underground facilities.**

The Bill raised enough controversy that it became the subject of a special committee review. Supporters and opponents were unable to reach a middle ground and the Bill will probably become an item on the Interim Legislative Review Committee. Worthy of note is that the Bill did not impose regulations on underground facilities located on agricultural land. The Bill was referred to the Senate

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Finance Committee where it was passed with some amended language. Board member Colon gave testimony at the hearing on behalf of DARCA.

Director Colon provided the Board with further commentary on SB-167 and his opposition at the Finance Committee. He stated that Denver, Greeley, Monument, and Aurora were all in opposition, though the Farm Bureau supported the Bill.

Manager Scanga asked for the names of legislators that supported the Bill and suggested that this information be distributed to the agricultural community. It was also suggested that letters be written to the Governor's office to veto the Bill.

Director Colon stated that proponents of the Bill would not sit down to rewrite amendments.

Director Canterbury relayed that the agricultural exemption was lost because of the Farm Bureau's support of the Bill.

Director Hilderbrand inquired as to what pipes would be included under the Bill's new tier classifications. It was reported that anything underground would be considered Tier 1 and would require an 811 locate call, the fee being paid by the entity requesting the locate. It was also noted that every entity in Tier 1 would have to join a commission, follow specific rules, and pay associated fees. In addition, any new installation would be required to have electronic monitoring by 2021.

Under SB-167 entities that would be classified as Tier 1 include oil and gas, water providers, sanitation districts, large scale communication companies, road and bridge departments, and essentially all of agriculture. Director Canterbury remarked that the only thing one would be able to do is plow a field, everything else would be called a dig and would require an 811 call.

Custer Commissioner Tom Flower announced to the Board that Colorado Counties, Inc. took a position to oppose the Bill, identifying ramifications outside of agriculture, including road and bridge operations.

Moving forward, Consultant Baker included information for two proposed Bills concerning the building of public facilities.

**HB-1383: Concerning bonding requirements for a contractor that is party to a contract that uses private financing for construction contracts on public property.**

**HB-1278: Concerning the requirement that contractors contracting to build public projects over five hundred thousand dollars that are not funded using federal money use apprentices for the parts of the project that are performed by workers in an apprenticeship occupation.**

Objectors noted that labor unions already have apprenticeships in place, and the Bill would raise the cost of construction. The need in the market place will take care of labor membership.

Discussion followed on a news report of the interstate water war between New Mexico and Texas and including Colorado. The U.S. Supreme Court hearing among the three states is very similar to the lawsuit filed by Kansas against Colorado in late 1970's. Kansas claimed that wells pumping water in the lower Arkansas Basin depleted the river and violated the 1948 Compact. The lawsuit in the Texas v. New Mexico (and Colorado) represents the same administration practices. Wells are being pumped downstream of Elephant Butte Reservoir, and the pumping was not administered as a part of the Rio Grande River irrigation priority.

### **PROJECT MANAGER REPORTS - Chelsey Nutter**

#### **Projects and Education**

Projects Manager Nutter provided the Board with an update of ongoing projects.

Year one has been concluded on the Water Balance Study in the Wet Mountain Valley. A presentation will be scheduled with Bill Banks to learn more about the study.

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An extension of grant funds through the Colorado Water Conservation Board has been approved for the Lake Ranch Multi-Use Project Feasibility Study. Some funding is being moved to the Trout Creek Park Multi-Use Project for the purpose of study on the Helena Ditch instead of the Cameron Ditch. Moving forward, as a result of high potential at the Lake Ranch, the focus will be ATM's, specifically lease following options. Projects Manager Nutter said we are uniquely positioned since we own the land and water at Lake Ranch.

With regards to the Trout Creek Park Multi-Use Project, Projects Manager Nutter emphasized the importance of the Helena Ditch improvement study for delivering water to recharge ponds. At this time, an easement is being finalized and Mr. Moltz is investigating reservoir enlargement potential and cost estimates for pipeline completion.

Projects Manager Nutter provided an update on agreements with Poncha Springs and Ice Lakes. Matching funds were secured, grants have been approved, and grant management is being done by Projects Manager Nutter. By coming under our umbrella augmentation plan these entities were able to save significant time and money.

Joint efforts continue with the United States Forest Service and the Arkansas River Watershed Collaborative on the Monarch Forest and Watershed Health Project. The Forest Service has completed their NEPA process and funding is being pursued. Projects Manager Nutter will be presenting to the Colorado Water Conservation Board and the joint roundtable meeting. Support is being offered from other basins to use this project as a demonstration project. The area being targeted is on the east side of Hwy 50, across from Monarch Ski Area. Technology called "Cut to Length" will be utilized, which is common and has seen success on steep slopes in the Pacific Northwest. Costs associated with the use of "Cut to Length" are 40% less than helicopter cutting and 70% less than the skyline approach. Projects Manager Nutter stated that a full presentation will be given by Alex Rudney at next month's meeting.

Projects Manager Nutter provided details on stream management, flow enhancement, and storage projects. DeWeese Dye and Ditch Company recently reached out to Projects Manager Nutter for grant potential to enlarge capacity at DeWeese Reservoir. A video was shown of outflow affected by wind, where the reservoir saw a loss of 60 acre-feet on a given day earlier this spring. Engineer Manera commented that storage is a key component for stream management and increasing flows on Grape Creek. The first step will be a feasibility study should DeWeese Dye and Ditch Company choose to move forward with this project. Chairman Senderhauf said that Ron Dorn may have plans or maps specific to potential enlargement.

Projects Manager Nutter, along with District staff, have been working with Jamie Krezelok, a hydrologist for the USFS, on stream management and watershed health. The focus has been on special use permits, stream management plans for Grays Creek and Poncha creek, flow enhancement out of O'Haver Reservoir, stream rehabilitation, and sediment reduction.

With regards to education and outreach, Projects Manager Nutter has been involved with a series of efforts. Presentations have been offered to public officials in various cities within the District. Non-profit engagement has taken place through Guidestone's AgriSummit, where Manager Scanga offered a presentation on the history of Colorado Water Rights. A snowpack and storage presentation was offered through GARNA and Central Colorado Conservancy. In addition to this, Projects Manager Nutter led an "Awesome Aquifers" station for GARNA's 6<sup>th</sup> grade field trip. "Water Talks" also continue, the next conversation scheduled for Thursday, May 17<sup>th</sup>.

Work continues on the District's new website, which should be live by Thursday, May 17<sup>th</sup>. Beginning in June there will be a once a month information column in the Mountain Mail, with articles written by Manager Scanga, Projects Manager Nutter, and Education Consultant Kristie Nackord. Print brochures have also been updated and were provided to the Board. These will be offered to partner organizations and will be used at upcoming events.

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Scheduled events include the bike tour and reception being held for the Colorado Water Conservation Board during their May Board meeting in Salida. The reception will take place on Tuesday, May 22<sup>nd</sup> from 3-6pm at the Salida Scout Hut. Board members may RSVP to Projects Manager Nutter by email.

The 3<sup>rd</sup> annual Water Festival will take place on Saturday, August 25<sup>th</sup> at the Salida Farmer's Market and on Sunday, August 26<sup>th</sup> at the Buena Vista Farmer's Market.

Projects Manager Nutter also informed the Board of upcoming screenings of the PEPO documentary "The Arkansas River: From Leadville to Lamar". The film will be shown in Canon City on June 1<sup>st</sup>, in Westcliffe on June 20<sup>th</sup>, and in Salida on July 17<sup>th</sup>.

The newly completed District vignette was shown to the Board and received positive feedback. This vignette will be used at presentations and on social media as a tool to tell the good story of the District's history and operations.

### **COMMITTEE REPORTS**

None

#### **Resume Review Committee**

Nothing of significance for the District in the Resume.

#### **MANAGER'S REPORT – Terry Scanga**

Manager Scanga reported that work is being done on special use permits for O'Haver and North Fork reservoirs, along with Cottonwood Lake. An operational and management program is being pursued and they are close to a final draft for operational plans.

As the representative for the Arkansas Basin, Manager Scanga attended the Interbasin Compact Committee meeting on May 2<sup>nd</sup>. The IBCC has been working through the conceptual framework on how the state would do a new trans-mountain diversion. At their last meeting they visited on point number 4 of the framework, which is how to avoid a compact call on the Colorado River. The South Platte Regional Storage Project was discussed as a project of regional significance and the IBCC could potentially utilize that project as a lens through which a new trans-mountain diversion could be considered. The next meeting for the IBCC is scheduled for September 26<sup>th</sup>, 2018.

Manager Scanga also reported that, due to severance tax volatility which has provided funding for CWCB and the DNR, the state is looking for another source of water funding. Three main questions have been posed with regards to this potential new funding source.

1. Who would administer the revenue? CWCB? A Board similar to GOCO? At this stage no conclusion has been drawn.
2. How would the new revenue source be used? Water projects alone?
3. How much funding is truly needed? Should the Basin Implementation Plan be updated and, if so, why? Updating the BIP could enhance consistency, add more value to the plan by including project specifics, be used as a tool to assess the value of projects, and help with future funding needs.

In matters relating to the Roundtable, Manager Scanga informed the Board that the PBS documentary "The Arkansas River: From Leadville to Lamar" will be aired on PBS on May 31<sup>st</sup>.

Manager Scanga also complimented Projects Manager Nutter for the graphed presentation she provided to the Arkansas Basin Roundtable, which showed the correlation of dollars to projects that has taken place through the needs assessment committee.

Director Donley asked for a report on drone classes. Manager Scanga said that they are learning regulations, air space, weather, and sectional maps and the test for FAA certification will be conducted on May 17<sup>th</sup>. Upon successful completion of the test, a certificate will be awarded, and they will apply to the FAA for certification. Re-certification must be completed every two years for commercial drone operations. Manager Scanga said that having certified staff members will be beneficial to the District, as

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costs to hire a drone, operator, and visual observer range from \$11K to \$15K a week. Conversation followed that drones are being built specifically for agricultural use, including seeding, fertilizing, and plant life evaluation.

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

Engineer Manera provided an update on the Trout Creek Park Multi-Use Project, accompanied by slides showing the engineering for a potential new pipeline. The pipeline would provide flows to recharge ponds and would come off existing pumps with controls at one location, serving the needs of both Mr. Moltz and the District. The pipeline would run approximately 5000 feet, be 12-inches in diameter, and have a 2-foot drop to the recharge pond.

The use of the Helena Ditch was discussed as a source of water for the pipeline. Because the Helena Ditch is a main stem diversion it does not have the flow issues like Cottonwood Creek and, therefore, offers a lot more flexibility with regards to supply. Improvements to the ditch would be necessary and funds are being allocated toward that end. With ditch improvements there could be more water available for storage, for hydro, and for recharge.

With regards to the pipeline's location along a county road, the issue of county approval for an easement was discussed. Director Felt expressed that approval should be pursued sooner rather than later.

Engineer Manera also reported on the Grey's Creek flow enhancement plan and the schedule being created with the USFS to provide benefit to the fishery. North Fork is also included in this plan. By enhancing low flows during spawning season, the fish population can be kept more consistent. The aim of the plan is to match releases to benefit habitat.

As details of the plan were discussed, along with associated triggers that would terminate the plan, Director Felt commented that the plan allows us to get credit for what we are already doing through releases, but flexibility is being added because a benefit is provided to habitat. It is a win-win for all and provides a great example of stream management.

Lastly, Engineer Manera reported that he is working on a couple of water right cases.

### **LEGAL REPORT – Law of the Rockies, Kendall K. Burgemeister**

Opposition updates and transactional matters are included in the Law of the Rockies legal report in the Board's binders.

Attorney Burgemeister reported on two cases that the District is opposing and presented stipulations for the Board's consideration.

In case 17CW3022, application of Buena Vista regarding McPhelemy Pond, Attorney Burgemeister reported that he was comfortable recommending a stipulation because concerning language had been removed from the application. Manager Scanga noted that, because McPhelemy Pond is an on-stream pond and we are able to augment on-stream ponds through our decrees, Buena Vista could have saved significant time and money by coming to the District for their augmentation needs. This point was mentioned specifically for the benefit of the City of Salida. Following this discussion and upon motion by Director Goodwin with second by Director Felt, the Board unanimously approved stipulating out of case 17CW3022.

In case 16CW3056, the Colorado Springs Utilities change of Sugarloaf water rights, Attorney Burgemeister reported that, upon further investigation, there was not much risk of injury nor much to gain if return flow obligations were maintained, regardless of where releases were made. Attorney Burgemeister recommended stipulating out of the case and upon motion by Director Goodwin and second by Director Colon, the Board unanimously approved the request to stipulate out of case 16CW3056.

In other matters, Attorney Burgemeister reported that pending cases were reviewed and project priorities were set during a meeting with District staff in April. At this time, with an expert report due

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at the of summer, the Friend Ranch case is the first priority. The augmentation boundary expansion is also at the top of the list.

Regarding transactions, Attorney Burgemeister informed the Board that purchase of the Cottonwood Irrigating Ditch water right was closed and a water court application is being developed to include CID water in the District's augmentation plan.

Attorney Burgemeister and Engineer Manera further noted that the Security case has been re-referred and is on trial track. Most opposers are still in the case, including the District. While there is general agreement that the consumptive use seems appropriate, the issues the District has are with runoff patters and return flow timings. In addition, there are other impacts to local users. The intention was to combine ditch head gates into one location, which could alter the call pattern on the stream. They are now looking at putting in two separate augmentation stations. Engineer Manera believes progress is being made and things are heading in the right direction, but at this time we still have issues with the application and are staying in the case.

### **CHAIRMAN AND DIRECTOR REPORTS**

Director Colon noted that the CoAgMet station was moved from the prison and is set up and working and recording.

Director Donley inquired about the Xcel Hydro Tour, which is scheduled for June 22<sup>nd</sup>, 2018 at 10am. Everyone attending should meet at the Xcel facility.

Director Hilderbrand asked for further clarification on SB-167. Director Colon offered to send a copy of the Bill and Kimberly said she would forward it to all Board members via email.

Chairmen Senderhauf, expressing concern over questions and comments regarding staff efforts, reminded the Board of the "Projects Completed to Date" document that was given out during the March meeting. Chairman Senderhauf also provided the Board with the "Budgetary Notes & Narrative" document and asked every Board member to read the document. It was also asked that an electronic copy be sent to all Directors absent from the meeting.

### **NOTICES & MEETINGS**

- SECWCD Meeting – May 17, 2018, Pueblo, CO
- CWCB Reception- May 22, 2018, Salida, CO, 3-6pm
- CWCB Meeting – May 23-24, 2018, Salida, CO
- ABRT- June 13, 2018, Pueblo, CO
- Xcel Hydro Tour- June 22, 2018, 10am


### **ADJOURN**

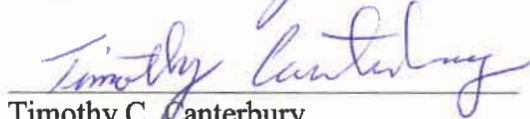
There being no further business to come before the Board, upon motion by Director Colon, second by Director Donley and unanimous approval of the Board, the meeting adjourned at 4:50pm.


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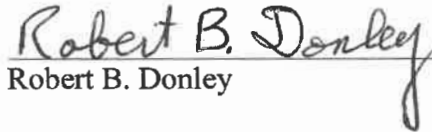
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Respectfully submitted,

  
Ralph L. Scanga, Jr., General Manager

  
Timothy C. Canterbury

  
Mannie Colon

  
Robert B. Donley

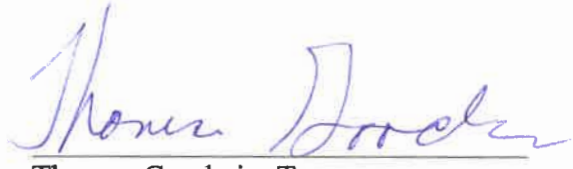
  
Gregory W. Felt

**Absent- No Signature**

Tom E. French

**Absent- No Signature**

Dennis Giese

  
Thomas Goodwin, Treasurer

  
Richard Hilderbrand


  
Franklin J. Moore

**Absent- No Signature**

Jeff Ollinger

**Absent- No Signature**

Tim Payne

  
John H. Sandefur

  
Robert M. Senderhauf