

**Southwestern Water Conservation District  
Board of Directors Meeting  
December 8, 2014**

**Present:** John Porter, President Steve Fearn, Vice-President Bob Wolff, Secretary-Treasurer  
J.R. Ford Preston Goetzke Rusty Hinger  
Jenny Russell Doug Stowe

**Absent:** Fred Kroeger, Emeritus Monte Naslund John Taylor, Emeritus

**Staff:** Bruce Whitehead, Southwestern Water Conservation District (SWCD) Executive Director  
Laura Spann, SWCD Office Manager  
Steve Harris, Harris Water Engineering  
Carrie Lile, Harris Water Engineering  
Peggy Montano, Trout, Raley, Montano, Witwer & Freeman  
Barry Spear, Maynes, Bradford, Shipps & Sheftel (MBSS)  
Jeff Kane, MBSS

**Guests** Christine Arbogast, Kogovsek & Associates  
Jimbo Buickerood, San Juan Citizens Alliance  
Ryan Christianson, Bureau of Reclamation (BOR)  
Jennifer Dansie, U.S. Geological Survey (USGS)  
Rob Genualdi, Division of Water Resources (DWR)  
Dave Grey, USGS  
Darlene Marcus, U.S. Representative Scott Tipton  
April Montgomery, Colorado Water Conservation Board (CWCB), participated via phone  
Kevin Murphy, USGS  
Trudy O'Brien, O'Brien Accounting  
Mike Preston, Dolores Water Conservancy District (DWCD)  
Denise Rue-Pastin, Water Information Program (WIP)  
John Simpson, DWR  
Gregg Ten Eyck, Colorado Foundation for Water Education  
Ed Warner, BOR

President John Porter called the meeting to order at 9:05 a.m. Roll was taken and a quorum was present.

**Executive Session**

*(time: 00:01:00)*

Peggy Montano recommended that the board go into executive session for the purpose of discussing the Animas-La Plata Project water rights due diligence case (13CW3011). The statutes covering this session are § 24-6-402(4)(b), C.R.S., "conferences with an attorney for the district for the purposes of receiving legal advice on specific legal questions," and § 24-6-402(4)(e), C.R.S., "determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators." Doug Stowe moved that the board go into executive session. Bob Wolff seconded. The motion passed unanimously.

Peggy Montano announced that the board was out of executive session, during which no action was taken. The board discussed case 13CW3011. Special counsel reported to the board on the course of settlement and preparation for trial. The board provided direction to negotiators.

**Executive Session (Personnel Matters)**

*(time: 00:03:55)*

Peggy Montano recommended that the board go into executive session for the purpose of discussing personnel

matters. The statue covering this session is § 24-6-402(4)(f), C.R.S., "personnel matters." Preston Goetzke moved that the board go into executive session. Doug Stowe seconded. The motion passed unanimously.

John Porter announced that the board was out of executive session, during which no action was taken. The board discussed the Executive Director's performance appraisal.

### **Approval of Minutes (September 18, 2014; October 8, 2014)**

*(time: 00:04:45)*

Steve Fearn moved to approve the September 18 and October 8 minutes. Bob Wolff seconded. The motion passed unanimously.

### **Approval of Treasurer's Report (October 2014)**

*(time: 00:05:20)*

Bruce Whitehead summarized the October 2014 budget comparison, bank account summary and check detail. Colorado Department of Public Health and Environment has conducted mercury fish sampling, which will be invoiced in 2014. Staff and board members thanked Secretary/Treasurer Bob Wolff for his time and dedication in assisting with invoice and payroll processing. Doug Stowe moved to accept the October 2014 Treasurer's Report. JR Ford seconded. The motion passed unanimously.

## **Agency Reports**

### **Bureau of Reclamation (BOR)**

*(time: 00:11:50)*

Ed Warner and Ryan Christianson reported on the following:

- BOR will be holding a public meeting at 1:30 today at the Durango Public Library to negotiate the Animas-La Plata repayment contract with the Southern Ute Indian Tribe.
- Regarding BOR's permanent operating easement for the Durango Pumping Plant on property owned by the Animas-La Plata Water Conservancy District, BOR has sent a letter to ALPWCD with their final decision on the permanent easement. Appraisals will be done on the two parcels not needed for operations.
- Regarding Lake Nighthorse, consultations have begun on a Cultural Resource Management Plan, which must be completed before the reservoir can open for recreation. Designs have been completed for the boat inspection and decontamination station at the entrance. Discussions continue regarding three agreements which will provide the basis for recreation management.
- Work continues on projects proposed under the Colorado River Storage Project Memorandum of Agreement (CRSP MOA).
- BOR continues to work with the Mancos Water Conservancy District regarding title transfer of Jackson Gulch Reservoir.
- BOR is conducting an alternative study EIS for the Paradox Unit of the Colorado River Salinity Control Program.
- Upper Colorado Regional Director Larry Walkoviak has retired. Principal Deputy Commissioner Estevan Lopez is waiting official confirmation as BOR Commissioner.
- Ryan summarized area reservoir levels.

Ed Warner responded to board questions.

## **Board Member Reports**

### **Bob Wolff (La Plata County)**

*(time: 00:29:35)*

Bob, Bruce, and Christine Arbogast met with BOR Chief of Staff at the National Water Resources Association (NWRA) Annual Conference in San Diego in mid-November. Governor Hickenlooper has appointed Bob to the Board of Directors of the Colorado Water Resources and Power Development Authority (CWR&PDA). The Hermosa Creek Watershed Protection Act has been attached to the National Defense Authorization Act, which has passed out of the House. The Senate will vote on the bill before December 15.

### **Doug Stowe (San Juan County)**

*(time: 00:33:05)*

Doug reported that U.S. Fish and Wildlife listed the Gunnison Sage Grouse as threatened and proposed 1.4 million acres for critical habitat designation. The 11-county coalition will meet on December 12 in Montrose to discuss next steps. Several special interests groups have filed suit that the listing is not sufficient enough to protect the bird.

**JR Ford (Archuleta County)**

(time: 00:34:35)

JR reported that Pagosa Area Water & Sanitation District and San Juan Water Conservancy District (SJWCD) continue to work with the CWCB to find a compromise for repayment of the Dry Gulch Reservoir property loan.

**Rusty Hinger (Mineral County)**

(time: 00:35:50)

Rusty reported that skiers are struggling with little snow.

**Preston Goetzke (Hinsdale County)**

(time: 00:36:10)

Preston reported that southern Hinsdale County is quiet. There is hardly any snow.

**Jenny Russell (San Miguel County)**

(time: 00:36:25)

Jenny reported that the Town of Norwood has met to explore the possibility of a raw water system, and John Porter will speak at the next meeting in January. Jenny will be in Italy through 2015 and plans to participate in board meetings via phone. A San Miguel County Commissioner will attend board meetings as well.

**Steve Fearn (San Juan County)**

(time: 00:39:30)

Steve reported on a meeting with the San Juan County Commissioners to discuss the San Juan County water right (05CW88) held by SWCD. Joint ownership between the County and the District has been discussed as one option.

**John Porter (Montezuma County)**

(time: 00:41:40)

John congratulated Steve Harris on his 15 years on the CWR&PDA board. Steve reported on changes to the CWR&PDA loan programs.

**Agency Reports (cont.)**

**U.S. Geological Survey (USGS)**

(time: 00:47:30)

Dave Grey, USGS, reported on the 2015 joint agreement with SWCD. SWCD will be matching funds in the amount of \$89,310, a more than \$10,000 decrease from 2014. Previously cost shared with SWCD, the Tall Timbers gage will be operated by CRSP MOA funds, and the San Juan River near Caracas gage by NSIP (National Stream Information Program) funds. Dave will retire in January. Kevin Murphy presented 2013-2014 comparisons from stream gaging sites around the region. Jennifer Dansie demonstrated online USGS tools for the board's use. Dave Grey was presented with a gift and letter from SWCD in honor of his work.

**Colorado Foundation for Water Education (CFWE)**

(time: 01:13:55)

Gregg Ten Eyck, CFWE Board President, thanked Steve Fearn for his many years of contributions as a board member. The most recent *Headwaters* issue focuses on Colorado's Eastern Plains, and the next will be on the Colorado Water Plan. In 2015, CFWE will be offering water education courses for elected officials. Christine Arbogast thanked CFWE for covering Colorado's Eastern Plains, a less-well known area.

**Water Information Program (WIP)**

(time: 01:22:30)

Denise Rue-Pastin, WIP Coordinator, reported that she is updating a few brochures, including SWCD's, and developing new brochures for distribution. Several additions have been made to the WIP library, including new audio books. The Winter 2014 WIP Newsletter is now being drafted.

*The board adjourned for lunch.*

**Division of Water Resources (DWR)**

(time: 01:25:10)

Rob Genualdi, DWR, introduced new Assistant Division Engineer John Simpson.

**U.S. Representative Scott Tipton**

(time: 01:27:10)

Darlene Marcus, Field Representative for U.S. Representative Scott Tipton, reported on the status of the Hermosa Creek Watershed Act, which will be voted on in the U.S. Senate this week as part of the Defense Act. Work

continues on the Environmental Protection Agency's proposed definition of Waters of the US. Congress adjourns soon and will reconvene in January.

### **Colorado Water Congress (CWC)**

*(time: 01:29:50)*

Steve Fearn added that a board meeting was held on December 5. The board agreed that CWC's Water Stewardship Project is to continue, as a new public trust initiative has been filed by Phil Doe. CWC has approved funds from the CWC general budget to temporarily be spent on Water Stewardship Project activities. SWCD can expect a fundraising request for the February 2015 meeting to support the Project. The preliminary Project budget for 2015 is \$325,000. Floyd Ciruli reported to CWC that the ballot initiative process has become more active in regards to broad-reaching environment, local government, and water propositions. CWC's Annual Conference will be held January 28-30, 2015.

### **Questions/Comments from the Audience**

*(time: 01:37:25)*

Christine Arbogast summarized legislative activities. Many committee assignments will be changing after the recent election. She congratulated Rep. Scott Tipton on the hard work, and looked forward to working with newly elected Senator Cory Gardner, who has a good background in water issues. It is unknown if the proposed Good Samaritan legislation will be taken up by Senator Gardner as Senator Udall had done.

### **Interbasin Compact Committee (IBCC) & Roundtable**

*(time: 01:42:10)*

Carrie Lile and Steve Harris, Harris Water Engineering, reported on the following:

- The last Roundtable meeting was on November 12, 2014.
- The next IBCC meeting is scheduled for January 28. At a recent meeting of the IBCC water conservation sub-committee, there was more openness to establishing statewide goals.
- Steve has drafted language regarding alternative sources to meet future east slope urban water demand, which will be considered by the Roundtable for inclusion in the BIP.
- Attendance was good at the three public outreach meetings in Pagosa Springs, Bayfield, and Mancos. The last meeting will be held in Placerville. A comment chapter will be included in the Southwest Basin Implementation Plan (BIP). At the January Roundtable meeting, public comments will be presented to the Roundtable.
- The final BIP will be presented to the Roundtable for approval in April. The CWCB approved the first draft of the Colorado Water Plan at their last meeting, which is due to the Governor on December 10. Public comment will be accepted on the Plan until September. Steve will continue reviewing the draft plan on behalf of SWCD.
- A West Slope Roundtable Caucus meeting will be held in Grand Junction on December 18, which Carrie and Ann are coordinating. In comparing BIPs across the state, the southwest is the only one to have a quantified water conservation goal.

There was discussion regarding public outreach.

### **Colorado Water Conservation Board (CWCB)**

*(time: 02:00:00)*

April Montgomery (participating via phone) reported on the following:

- At the November meeting in Berthoud, the CWCB board voted to approve the draft Colorado Water Plan and turn it in to the governor on December 10. Work will continue on the plan through 2015. There have been over 13,000 public comments so far.
- CWCB has approved a restructuring of SJWCD's loan for the proposed Dry Gulch Reservoir, with the net result of a reduced loan payment.
- CWCB is changing their interest rate policy to fluctuate every two months depending on the market.
- CWCB provided another Alternative Transfer Method grant, increased funding for weather modification from \$175,000 to \$300,000 to support efficiency and updated cloud seeding equipment, approved \$500,000 for watershed restoration projects, added \$500,000 in technical support for applicants to the Regional Conservation Partnership Program, and included \$100,000 for water conservation planning and tracking.
- The CWCB may be scheduling a meeting in Ignacio in July.

**Natural Resources Conservation Service (NRCS)**

No representative was in attendance; no report was available.

**Office Report***(time: 02:09:30)*

Bruce Whitehead directed board members to the written Executive Director report, and summarized the following issues:

- Bruce attended a meeting on extended operations of the Colorado River Storage Project reservoirs in the upper basin, which, if implemented, could mean moving some storage as available from upstream reservoirs to Lake Powell to avoid critically low levels. Contingency planning discussions continue in the upper and lower basins.
- The Upper Colorado River Commission will consider becoming the fiscal agent for System Conservation Agreement to fund demand management in coordination with the Water Bank Work Group.
- The Interim Water Committee met on September 30; the committee has proposed six water-related bills to move forward in the 2015 legislative session, which will convene on January 7.
- Bruce participated in an Agricultural Efficiency (2014 SB23) meeting on December 5 convened by the Department of Natural Resources. The 2014 legislation, which was vetoed by the governor, will be introduced as an Administration bill in the form of a pilot program in 2015.
- The River Protection Workgroup Steering Committee will meet on December 15 to discuss the future of the process which could include a facilitated or negotiated process, separating the Piedra legislative drafting from the Animas/Hermosa process, the possibility of reconvening the Animas workgroup to review the new proposal of additional wilderness by the Alliance and The Wilderness Society, and discussion about whether or not a broader compromise agreement can be achieved.
- Bob and Bruce attended the NWRA conference in San Diego on November 12-14. Christine Arbogast was recognized for her work on behalf of Colorado and Ray Kogovsek spoke on one of the panels. The 2015 NWRA conference will be in Denver, and board members were invited to attend.
- Some members of the IBCC would still like to meet in southwest Colorado in 2015. The Upper Colorado River Commission (UCRC) may meet in Durango in June 2015, and will decide at their December meeting in Las Vegas.
- Per the board's direction, SWCD's Executive Committee elected to add two million dollars in excess liability coverage and a \$1,000 deductible for property and liability insurance with the Colorado Special District's Association.
- Per the board's direction, SWCD wrote a letter to BOR regarding the Oso Diversion Dam, and a letter to the New Mexico Water Trust Fund regarding the Crowley Reservoir funding request.
- The Natural Resources Conservation Service (NRCS) announced that after nearly dropping several manual snow courses last winter due to budget cuts, after work with several cooperating entities across Colorado, this winter all desired courses will be monitored.

There was discussion.

**Old Business****Update: Hermosa Creek***(time: 02:24:20)*

Bruce Whitehead provided background on the Hermosa Creek Watershed Act. Steve Fearn, Preston Goetzke, and Bruce represent SWCD on the River Protection Workgroup Steering Committee. Jimbo Buickerood, River Protection Workgroup Steering Committee member, and Darlene Marcus, Field Representative for U.S. Congressman Scott Tipton were in attendance. The River Protection Workgroup sent a letter to the Colorado Congressional Delegation in support of the legislation. Thanks to much collaboration, the bill is moving forward.

**Update: Proposed Dolores Instream Flow***(time: 02:27:50)*

Bruce Whitehead and Mike Preston provided background on the proposed Dolores River instream flow appropriation. In late 2013, DWCD and SWCD brought concerns before the CWCB regarding the instream flow. At the time, CWCB moved forward with the appropriation, but delayed the process for one year pending ongoing discussions with the US Forest Service (USFS) and US Bureau of Land Management (BLM) regarding the Joint Land and Resource Management Plan (JL&RMP). As announced at the last CWCB meeting, any contest to the instream

flow will need to be filed by January 31, which the SWCD board may discuss at an upcoming teleconference. There was significant discussion regarding the connection between the proposed Dolores River instream flow and USFS and BLM JL&RMP.

### **River Watch Proposal**

*(time: 02:44:10)*

Gregg Ten Eyck, Leonard Rice Scholarship Fund Trustee, described the proposal to fund the River Watch Program in a local school. The Program works with Middle and High School students to monitor water quality and other indicators of watershed health. He asked the board to consider a grant to match the Leonard Rice Engineering's contribution of \$1,500 to support starting the River Watch Program at a new school. A grant application will be presented to the board for consideration in February 2015.

### **BLM & USFS Joint Land & Resource Management Plan**

*(time: 02:48:45)*

Bruce Whitehead updated the board on the USFS and BLM JL&RMP. SWCD's Executive Committee met with the USFS on December 3 to discuss 12CW34 (USFS water rights application), the Plan, and develop a new working relationship with San Juan National Forest Supervisor Kara Chadwick. Bruce, John Porter, and Mike Preston, DWCD, met with Connie Clementson, BLM, on December 3 to discuss concerns with the BLM portion of the Plan. Jimbo Buickerood, San Juan Citizens Alliance, encouraged the community to continue to engage the BLM in conversation. The ROD for the BLM plan is expected for February 2015. There was discussion.

### **EPA Proposed Rule: "Waters of the U.S." Definition**

*(time: 03:02:15)*

Jeff Kane, MBSS, directed board members to comments submitted on behalf of SWCD and DWCD on the EPA proposed definition of "waters of the United States." Public comments on the rule total more than one million. Among SWCD's concerns were the following: 1) the definition of "tributary" is overbroad and would unlawfully subject normally dry arroyos and irrigation ditches to Clean Water Act jurisdiction, 2) the rule's definition of "tributary" does not comport with the Supreme Court's holdings in SWANCC and Rapanos, 3) the overbroad assertion of Clean Water Act jurisdiction will result in untenable application of the Act's regulatory scheme on waters never intended to be regulated, and 4) the overbroad interpretation of Clean Water Act jurisdiction impacts citizens far beyond what Congress mandated in the Clean Water Act. Christine said the EPA has requested new revised language from water quality experts in Colorado. There was significant discussion.

### **Case No. 13CW3011 Animas – La Plata Project Water Rights Application C-A & DD**

*(time: 03:21:00)*

Bruce Whitehead provided a status report on case number 13CW3011, Animas-La Plata Project water rights due diligence case, which was discussed in executive session. No action was taken.

### **State Water Plan**

*(time: 03:21:20)*

The State Water Plan was covered with the IBCC & Southwest Basin Roundtable report.

### **Options for Structure of WIP**

*(time: 03:21:35)*

Denise Rue-Pastin, Bruce Whitehead, and Steve Fearn provided background on the Water Information Program (WIP). Barry Spear presented a few options for restructuring WIP: 1) establishing an independent non-profit, 2) developing a contract and operating agreement between Environmental Dimensions and SWCD, or 3) contracting Denise Rue-Pastin as an employee of SWCD. Discussion occurred. There was consensus to delay action until a future meeting and discuss the idea of the various restructuring proposals with the WIP Steering Committee. Staff will further explore options and report back in February.

## **New Business**

### **FY2015 Budget Hearing and Adoption**

*(time: 03:59:50)*

John Porter identified a few changes to the budget, including Executive Director wages at a 3% increase and the 2015 USGS stream gaging cost share program at \$89,310. There was discussion regarding support for CFWE, and there was consensus to decrease the budgeted scholarship support to \$8,500, bringing the overall Scholarships

line item to \$24,250. The board opened the budget conversation to public comment. The following motions were made:

JR Ford moved to approve the resolution to adopt the proposed 2015 budget as amended. Bob Wolff seconded. The motion passed unanimously.

Steve Fearn moved approve the resolution to certify a mill levy of .362 on the assessed valuation of \$3,953,471,830 to generate revenue of \$1,431,157. Doug Stowe seconded. The motion passed unanimously.

Rusty Hinger moved to appropriate funds in the amount adjusted (at today's meeting) to be spent in 2015. Preston Goetzke seconded. The motion passed unanimously.

### **SWCD Certificate of Deposit Proposal**

*(time: 04:21:35)*

Trudy O'Brien presented interest rates at local banks for certificate of deposits. There was discussion. Trudy responded to board questions. Jenny moved to invest in two Certificate of Deposits for three years each, the first at Bank of San Juans for \$750,000 and the second at 1st Southwest Bank for \$250,000. Bob Wolff seconded. JR Ford recused himself. Steve proposed to amend the motion to invest \$500,000 at Bank of San Juans and \$500,000 at 1st Southwest Bank. There was no second. The original motion passed 7 to 1.

### **Balancing Board Representation**

*(time: 04:34:40)*

Jenny Russell requested that staff, legal counsel, and consultants address the broader concerns of varied constituent perspectives across the District before presenting proposals to the board or highlighting problems for the board to address. There was significant discussion.

### **Proposed 2015 Board Meeting Schedule**

*(time: 04:58:20)*

Bruce Whitehead explained the proposed 2015 board meeting schedule. JR Ford moved to adopt the 2015 board meeting schedule. Rusty Hinger seconded. The motion passed unanimously.

### **Engineering Report**

*(time: 05:00:30)*

Steve Harris and Carrie Lile referred board members to his written report, and highlighted the following:

- Carrie attended the San Juan River Basin Recovery Implementation Program (SJRBRIP) Biology Committee meetings in Durango on December 3-5. She passed around a newly developed handout on San Juan River's native fish species. The discussion covered the long-range plan and priorities for 2015, upcoming flow recommendations workshop in Albuquerque, new technology of antennae PIT-tag readers, and a population viability assessment model. Carrie and Steve responded to various board questions.
- The Water Bank Work Group (WBWG) met in Denver on December 4 to discuss how the group could be involved with the System Conservation Program without placing the majority of the burden for demand management on agriculture. WBWG will be assisting with System Conservation Program applications. The Upper Colorado River Commission will consider being the fiscal agent, with Wilson Group administering the program. As a pilot program, the criteria for applications are not yet clear.

### **Legal Report**

*(time: 05:27:30)*

Barry Spear recommended that the board go into executive session for the purpose of discussing water rights cases in which the District is involved (as listed in the agenda), except for 13CW3011. The statues covering this session are § 24-6-402(4)(a), C.R.S., "the executive session concerned the purchase, acquisition, lease, transfer or sale of any property interest," § 24-6-402(4)(b), "conferences with an attorney for the district for the purposes of receiving legal advice on specific legal questions," and § 24-6-402(4)(e), C.R.S., "determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators." Steve Fearn moved that the board go into executive session. Bob Wolff seconded. The motion passed unanimously.

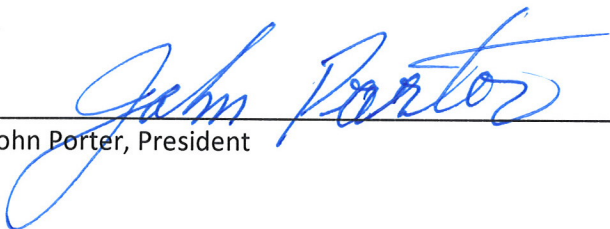
Barry Spear announced that the board was out of executive session, during which no action was taken. The board discussed water cases in which the board is involved.

**Next Meetings**

Wednesday, January 14	10:00 a.m.	Teleconference
Tuesday, January 27	9:00 a.m.	Teleconference
Tuesday, February 10	10:00 a.m.	Special Regular Board Meeting
Wednesday, February 25	9:00 a.m.	Teleconference

**Adjournment**

President John Porter adjourned the meeting at 5:45 p.m.



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John Porter, President