

**Southwestern Water Conservation District  
Board of Directors Meeting  
December 8, 2015**

**Present:** John Porter, President                      Steve Fearn, Vice-President                      Bob Wolff, Secretary-Treasurer  
J.R. Ford    David Guilliams    Rusty Hinger  
Jenny Russell (by phone)                              Doug Stowe

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

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

**Guests** Steve Anders, U.S. Geological Survey  
Christine Arbogast, Kogovsek & Associates  
Jimbo Buickerood, San Juan Citizens Alliance  
Rob Genualdi, Co. Division of Water Resources  
Jeff Kane, Maynes, Bradford, Shipps & Sheftel  
Ray Kogovsek, Kogovsek & Associates  
Linda Kogovsek, Public  
Eric Kuhn, Colorado River Water Conservation District  
Carrie Lile, Harris Water Engineering  
Darlene Marcus, U.S. Representative Scott Tipton  
Marc Miller, U.S. Bureau of Reclamation (BOR)  
Mike Preston, Dolores Water Conservancy District

President John Porter called the meeting to order at 10:00 a.m. Roll was taken and a quorum was present.

**Approval of Minutes (October 13, November 2)**

*(time: 00:01:45)*

Doug Stowe moved to approve the October 13 and November 2 minutes as corrected. Bob Wolff seconded. The motion passed unanimously.

**Approval of Treasurer's Report (November 2015)**

*(time: 00:05:00)*

Bruce summarized the November 2015 budget comparison, bank account summary, and check detail. Miscellaneous revenue is at \$2070 due to the Colorado Water Conservation Board's (CWCB) reimbursement for Southwest Basin Roundtable Recorder duties performed by Laura from July to October 2015. CWCB also reimbursed SWCD for Roundtable meeting expenses. Staff bonuses authorized by the board at the October meeting were disbursed in November. Legal costs in 2015 were significant due to the ALP water rights due diligence litigation. Barb Prose, Fredrick Zink & Associates, reviews and approves SWCD and WIP financials monthly, and Bob Wolff reviews invoices and signs checks. The certificates of deposit established in 2014 have resulted in more interest income. Steve Fearn moved to accept the November 2015 Treasurer's Report. Bob Wolff seconded. The motion passed unanimously.

**Board Member Reports**

**Rusty Hinger (Mineral County)**

*(time: 00:13:00)*

Rusty reported that there has been some snow accumulation on Wolf Creek Pass.

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**JR Ford (Archuleta County)**

*(time: 00:13:50)*

JR reported that temperatures have been unusually high in December for Archuleta County. Work continues to tie in the water and sewer lines.

**Doug Stowe (Dolores County)**

*(time: 00:14:05)*

Doug reported that a special water users committee has been formed to review draft legislation for the proposed Dolores River National Conservation Area (NCA) with legal counsel David Robbins.

**Bob Wolff (La Plata County)**

*(time: 00:14:29)*

Bob reported that he and Bruce met with the U.S. Bureau of Reclamation (BOR) Commissioner at the National Water Resources Association Annual Conference in Denver, at which they urged federal agencies to act quickly to approve the Animas-La Plata (ALP) water rights settlement. At the conference, a climatologist described winter storms anticipated to hit Colorado from January 15 through February. Christine Arbogast received an award for her work on the federal committee.

**John Porter (Montezuma County)**

*(time: 00:16:25)*

John deferred his board report to the agenda item regarding the proposed Dolores River NCA grant request.

**Steve Fearn (San Juan County)**

*(time: 00:16:35)*

Steve reported that 8-10 inches of snow is the current ground cover in Silverton. Overall snowfall has been closer to 20 inches in town, probably higher in the county. After local officials participated in a statewide tour of Superfund sites, San Juan County and the Town of Silverton elected to begin negotiations in December with the U.S. Environmental Protection Agency to designate a specific area for a Superfund site within the County. The focus is funding a water treatment plant in the Gladstone area.

**David Guilliams (Hinsdale County)**

*(time: 00:19:40)*

David reported that they might have received 16 inches of snow so far this season.

## **Agency Reports**

### **U.S. Geological Survey**

*(time: 00:20:10)*

Steve Anders reported that the federal government is again looking at a shutdown before the holidays. USGS is investing resources in employee education and training on the newest technologies.

### **Division of Water Resources**

*(time: 00:29:30)*

Rob Genualdi described storage and administration at Long Hollow Reservoir. Coordination between the La Plata Conservancy District and DWR went smoothly this first year of operations, and although the supply was limited, the Reservoir has served its purposes of assisting with compact compliance to alleviate pressure on Colorado water users, as well as providing exchange water to other systems in the La Plata basin. Rob explained the process for filling the reservoir in compliance with dam safety requirements in the context of a potentially heavy snow season.

### **U.S. Bureau of Reclamation**

*(time: 00:37:00)*

Marc Miller distributed information on area reservoir levels. Currently the local BOR office has several staff positions open.

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

*(time: 00:41:00)*

April Montgomery sent an email thanking Bruce and John for making the effort to travel to Denver for the Water Plan celebration. Also, the CWCB was very happy about the ALP water rights settlement.

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

*(time: 00:42:00)*

Steve Fearn reported that the next board meeting is this week, at which he anticipates there will be discussion of the membership dues structure. Regarding the Colorado Water Stewardship Project, Steve distributed a proposed

ballot initiative on “self-governance” and “rights of nature.” Bruce provided more background on the initiative and CWC’s response. The 2016 Water Stewardship Project budget is \$195,000. CWC will need to raise approximately \$150,000. SWCD is among the more significant contributors.

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

*(time: 00:48:50)*

Steve Fearn reported that the most recent *Headwaters* covers broad Colorado River issues. CFWE will update the *Citizen’s Guide to Interstate Compacts*. Applications for the 2016 Water Leaders Program are now being accepted. Next year’s tour will look at industrial water use in Pueblo. On December 10, CFWE will host a webinar on Ag and Water Scarcity. CoBank has approved a \$50,000 grant for CFWE.

### **Colorado Water Resources & Power Development Authority**

*(time: 00:51:15)*

Bob Wolff reported that at last week’s board meeting, they discussed a possible work session with the CWCB to address financing as part of water plan implementation. Regionally, the Authority approved a \$2.5 million loan for La-Plata Archuleta Water District’s pipeline project and acted to decrease the interest rate and renegotiate the payment schedule on La Plata West Water Authority’s loan. The Authority will write a letter to the governor expressing concern regarding the policy to limit board terms, especially considering how much experience is required for the financial programs the Authority manages.

### **River Protection Workgroup**

*(time: 00:58:50)*

Bruce Whitehead provided background on the River Protection Workgroup process, which resulted in the Hermosa Creek Watershed Protection Act of 2014. The Steering Committee agreed to move forward with the development of language for new federal legislation to address regional water issues and protections, and a drafting committee was formed and has had a couple of meetings. Bruce described several issues and tradeoffs still being negotiated.

### **Water Information Program (WIP)**

*(time: 01:06:55)*

Laura Spann reported that the pilot Water and Land Use Planning Session in October was successful in attracting more than 35 people to hear Western Resources Advocates Water Policy Manager Drew Beckwith and attorney Barbara Green discuss how planners can support sustainable water supplies and encourage conservation. The Fall Newsletter went out in October via email in a new format. WIP is working to upload to the website a GIS map of streams, rivers, ditches and water supplies in the District. Most recently, an engagement letter with Environmental Dimensions has been executed for 2016 forward.

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

*(time: 01:09:10)*

Steve Harris reported that there hasn’t been an IBCC meeting recently, but it is referenced in the Colorado Water Plan as a tool for implementation. Regarding the Roundtable, there was general consensus to consider an amendment to the bylaws to add a seat for the southwestern representative to the Water Quality Control Commission. Roundtable members expressed concerns at the last meeting regarding the potential conflict of interest for BIP consultants also serving as Roundtable members, so there will also be an amendment to the bylaws to address this issue. Carrie summarized the proposed implementation work to be considered by the Roundtable at their next meeting on January 13, 2016 in Cortez. Bruce Whitehead added that the CWCB has cut the Center for Dust on Snow from \$40,000 to \$25,000, so they may put in a request for funding from the WSRA Account. Eric Kuhn reported that a Roundtable has suggested a change to the Colorado River Water Conservation District statute to form a sub-district to implement portions of the Colorado Water Plan.

### **Board Member Reports (cont.)**

#### **Jenny Russell (San Miguel County)**

*(time: 01:21:40)*

Jenny reported that there was a mine discharge in the San Miguel River on Howards Fork, which is still being investigated. Jenny will be back in Telluride for the February meeting.

## Questions/Comments from the Audience

(time: 01:22:35)

Ray Kogovsek, Kogovsek & Associates, thanked the board for the opportunity to represent SWCD over the past 30 years. Christine Arbogast discussed the policy riders attached to the omnibus appropriations bill. Drought legislation may be attached to the omnibus appropriations bill, depending on whether the California delegation can agree. A proposed provision of the legislation would de-authorize water projects that have not received funding in 10 years. There are also other west-wide provisions. SWCD staff expressed concerns about the possible de-authorization of projects, or portions of projects, in the draft legislation. There has not been any activity on the Good Samaritan legislation that has been introduced. Several hearings have been held on the Gold King mine release. Christine has been quietly encouraging Reclamation to approve the ALP water rights settlement. Commissioner Lopez will be invited to speak at the Annual Water Seminar and tour the ALP Project.

## New Business

### Joint West Slope Roundtables Technical Work

(time: 01:48:20)

At the December 18, 2014 meeting of the Four West Slope Basin Roundtables held at Ute Water in Grand Junction, various attendees cited the need for technical data so that the Four Roundtables could better discuss issues surrounding future Colorado River development and the risk to current water users. This also came up for each Basin Implementation Plan, and as part of the IBCC conceptual agreement for trans-mountain diversions. The River District would like SWCD to join in their request to the Four Roundtables to support technical data development by the two Districts. The purpose is to create a common platform to have fruitful discussions on the West Slope regarding Colorado River development. SWCD was asked to contribute \$10,000 to this study, along with \$10,000 from the River District, and \$8,000 from each West Slope Roundtables for a total of \$52,000 in funding. Steve Fearn moved to approve funding in the amount of \$10,000 to support the first phase of joint West Slope Roundtables technical work. Bob Wolff seconded. The motion passed unanimously.

*The board adjourned for lunch.*

## Office Report

(time: 02:13:40)

Bruce Whitehead directed board members to the written Executive Director report, which he summarized:

- The Sullivan-Wallace Ditch Company approached staff about applying for funding for a project which was recently completed. There was board consensus to send a letter to the Sullivan-Wallace Ditch Company to encourage them to seek funding in advance of future projects.
- Snowpack is above normal, and many gage measurements are ice-affected.
- The Colorado General Assembly will convene on January 13, 2016. The Interim Water Resources Review Committee will be moving forward with several resolutions, but no proposed legislation for changes to the statutes. Senator Roberts sent a letter to SWCD thanking the board for assisting in organizing the La Plata regional tour as part of their July meeting.
- Ecoflight hosted another student tour, this time focusing on the Gold King mine spill. Bruce was among the local presenters.
- Upper Colorado River Commission: There are some issues to resolve for the proposed extended reservoir operations as part of drought contingency planning. An estimated annual 145,000 af discrepancy between gage below Lake Powell (Lees Ferry) and Lake Powell releases is of concern. The next round of funding proposals for the system conservation pilot program is being considered by the Commission.
- The River District may seek to update the conservation districts statute to ease the formation of a sub-district to support implementation of the water plan. Should that effort move forward, SWCD might consider making a similar statutory change.
- Ag efficiency legislation could again be considered by the General Assembly in 2016.
- SWCD and La Plata County presented to the Interim Water Resources Review Committee (WRRC) meeting in July regarding possible legislation excluding out of state entities from Colorado water court cases. At the October WRRC meeting, the ALPOM&R Association presented against any such proposed legislation. As a result of these discussions, the ALPOM&R Association formed a 501(h) to hire a lobbyist, which must be paid by non-federal dollars only.
- Board members were encouraged to attend the Family Farm Alliance Annual Conference in February.

## Questions/Comments from the Audience

(time: 02:39:00)

Darlene Marcus reported that U.S. Representative Scott Tipton held a listening session in Silverton regarding a potential Superfund designation and the recent Gold King Mine spill.

## Old Business

### Update: Animas-La Plata Project Archive

(time: 02:44:30)

Staff has begun to prepare the archive on the ALP Project and the most recent water rights settlement, using previous files on the project, exhibits prepared in anticipation for trial, depositions, and expert reports. Electronic files and print files will be maintained at the office. Board members recommended keeping a copy of the electronic files in a separate place and maintaining the print archives in fire proof cabinets.

### Dolores Instream Flow

(time: 02:49:20)

Bruce Whitehead reported that the CWCB did act to move forward with filing an instream flow on the Dolores River. The River District is considering the possibility of filing a statement of opposition, and the SWCD board may consider similar options at the February meeting.

### Instream Flow-Future Use Allocation Update

(time: 02:51:05)

Bruce provided background on SWCD's effort to include a future use allocation consideration as part of the CWCB instream flow program, which would hopefully result in fewer contested instream flow filings in the future. The discussion with the CWCB, the River District and SWCD has expanded to include three more water development interest representatives and three additional environmental representatives. The next meeting is scheduled for January 4. Barry directed board members to a white paper he provided to parties at the most recent meeting.

### Request for Qualifications: General Counsel

(time: 02:57:00)

As directed by the board, the Request for Qualifications for General Counsel was distributed on October 2 to current SWCD general counsel, water attorneys in southwestern Colorado, and members of Colorado Water Congress (law firms and attorneys). In addition, a classified ad was published on the Colorado Bar Association website. SWCD received 31 responses by the deadline, one response after the deadline, and two responses with interest in special counsel. There was consensus to schedule a full board meeting on Friday, February 5, 2016 at 10:00 am to review the RFQ responses and send a letter to all respondents acknowledging their proposals.

## New Business (cont.)

### Grant Request: Proposed Dolores NCA

(time: 03:08:15)

Mike Preston presented the request for \$25,000 in support of an initiative of water boards (Montezuma Valley Irrigation Company and DWCD) and counties who desire a redraft by David Robbins of Hill and Robbins, P.C. of the proposed NCA legislation as an alternative to current Wild and Scenic Suitability on the Lower Dolores River from McPhee Dam to Bedrock. A total of \$25,000 will be raised from MVIC, DWCD, as well as Montezuma, Dolores, San Miguel, and Montrose counties. Mike responded to board member questions regarding SWCD's role as a major funder in the process. The total anticipated cost of the project is \$50,000, and SWCD's proposed maximum contribution would be \$25,000. Steve Fearn moved to approve the request for \$25,000 to support a redrafting of the proposed Dolores NCA legislation. Bob Wolff seconded. Doug Stowe, as a Dolores County Commissioner, recused himself. The motion passed 6 to 1. JR Ford did not agree with SWCD taking a strong financial lead in this process.

### Water Bank Workgroup Update

This agenda item was deferred to the engineering report.

### FY2016 Budget Hearing & Adoption

(time: 03:43:20)

Bruce Whitehead directed the board to 2016 budget lines adjusted since the last meeting: 1) miscellaneous income was increased from \$100 to \$4100 in anticipation of CWCB's reimbursement to SWCD for Laura's Roundtable Recorder duties, 2) meeting expenses were decreased from \$6,400 to \$6,000 to account for CWCB's

reimbursement to SWCD for Roundtable meeting expenses, 3) San Juan River Recovery Implementation expenses were increased from \$45,000 to \$51,000 to support additional work and a consulting fee increase in 2016, 4) special counsel expenses were reduced with no further litigation on the ALP water rights anticipated, and 5) the grant program was increased.

The board opened the public budget hearing for public comment. With no comments, the public budget hearing was closed. The following motions were made:

- Bob Wolff moved to approve Resolution 2015-04 to adopt the proposed 2016 budget. JR Ford seconded. The motion passed unanimously.
- Steve Fearn moved to approve Resolution 2015-05 to certify a temporary mill levy rate reduction to .340 on the assessed valuation of \$4,369,827,718 to generate revenue of \$1,485,741. Bob Wolff seconded. The motion passed unanimously.
- Bob Wolff moved to approve Resolution 2015-06 to appropriate funds in the amount of \$2,368,739 to be spent in 2016. Doug Stowe seconded. The motion passed unanimously.

### **Proposed 2016 Meeting Schedule**

*(time: 03:56:00)*

Bruce Whitehead explained the proposed 2016 board meeting schedule. Steve Fearn moved to adopt the 2016 board meeting schedule. JR Ford seconded. The motion passed unanimously.

### **Engineering Report**

*(time: 03:59:15)*

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

- San Juan River Recovery Implementation Program: Carrie summarized recent entrainment (aka diversion) studies on the Animas River above critical habitat. Tom Wesche will provide a comment letter on the entrainment/diversion studies. This is related to another proposal made to begin stocking endangered fish further up the Animas. Lake Powell sampling has resulted in healthy populations of razorback suckers. Navajo Reservoir flow requirements were revised last year, and now data is being developed regarding the new flow regime.
- System Conservation Pilot Program: Contracts are still being finalized for the first round of proposals. The amount of water conserved by this program is insignificant. Wilson Water Group will evaluate how much water is saved from these efforts, which the Water Bank Working Group might use as well.
- Water Bank Working Group: Grand Valley Water Users are developing practical information on how much water could be saved and at what cost. The next meeting will take place at the CWC Winter Conference in January.
- Steve Harris announced that he would be retiring in May 2016 from District work and from billing SWCD, and would apply for an appointment to the CWCB in summer 2016. April Montgomery's term will end in January 2017, after serving 2 ½ - three year terms.

### **General Counsel Legal Report**

*(time: 04:37:25)*

Jeff Kane directed the board to the written memo regarding the December 14 hearing to be held by the Water Quality Control Commission to designate certain streams and lakes as impaired under section 303 (d) of the Clean Water Act. Some of the proposed aquatic life and temperature listings in southwest Colorado are based on extremely limited data and incomplete explanations by the Water Quality Control Division. There was consensus to authorize MBSS to meet with Water Quality Control Division staff and, if necessary, submit comments regarding the proposed 303 (d) listings and attend the hearing on December 14.

### **Special Counsel Legal Report**

*(time: 04:54:40)*

Peggy Montano highlighted the following developments:

- Animas-La Plata Project conditional-absolute and due diligence case, no. 13CW3011; Animas River depletion due diligence case, no. 13CW3034 (06CW127): On November 9, several board members and staff appeared with counsel before the court to report that a settlement had been reached. The water rights will be divided

between SWCD and the ALPOM&R Association. SWCD will retain a portion of the water right for protection of other users on the Animas as well as future irrigation uses in the La Plata basin. Special counsel is moving forward to implement the settlement. There is a follow up status conference on December 10 for the United States to report on progress in approving the settlement agreement.

- Cove and Cottonwood HOAs case, no. 15CW07: The objectors withdrew their statements of opposition. The Ruling of the Referee has been entered.
- Basin Creek due diligence case, no. 08CW81: This deed was transferred to the ALPOM&R Association, which filed for due diligence.

**General Counsel Legal Report (cont.)**

*(time: 05:02:30)*

Barry Spear recommended that the board go into executive session for the purpose of discussing pending water rights cases. The statute covering this session is § 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. Steve Fearn 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 pending water rights cases.

**Next Meetings**

Tuesday, January 26	9:00 a.m.	Teleconference
Friday, February 5	10:00 a.m.	Special Regular Board Meeting
Tuesday, February 9	10:00 a.m.	Special Regular Board Meeting
Wednesday, February 24	9:00 a.m.	Teleconference

**Adjournment**

President John Porter adjourned the meeting at 4:15 p.m.




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John Porter, President