

**Southwestern Water Conservation District
Board of Directors Meeting – Teleconference
March 11, 2015**

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

Absent: Monte Naslund† John Taylor, Director Emeritus†

Staff: Bruce Whitehead, SWCD Executive Director
 Laura Spann, SWCD Office Manager
 Adam Reeves, Maynes, Bradford, Shipps & Sheftel (MBSS)
 Steve Harris, Harris Water Engineering

Guests: Mike Preston, Dolores Water Conservancy District†
 Joan May, San Miguel County Commissionert†

†Participated by phone.

President John Porter called the meeting to order at 9:00 a.m. Roll was taken and a quorum was present. J.R. Ford, Doug Stowe, Bruce Whitehead and Laura Spann attended the Lower Basin Tour on March 4-6 and provided their observations.

Questions/Comments from Audience

(time: 00:09:55)

There were no comments or questions.

Old Business

Legislative Update & Position on Bills

(time: 00:10:25)

The Colorado Water Congress (CWC) State Affairs Committee met on March 2 and 9 to discuss water legislation introduced thus far during the 2015 Legislative Session. Bruce Whitehead explained the bills and relayed CWC discussion of the bills to the board. He referenced the latest summary document he prepared (Legislative Report #2015-10). The following bills were discussed:

HB 1222 – Water Efficiency Savings Instream Use Pilot

A two-thirds majority to support, or oppose, could not be achieved. CWC has taken no position. SWCD board members discussed the bill.

SB 198 – Expand Following Pilot Program Non-Municipal Uses

CWC continues to discuss this bill, which was introduced on March 3.

HB 1178 – Emergency Well Pumping Damaging High Groundwater

This bill has been amended significantly by a strike-below amendment, and may be requested for reconsideration by State Affairs on March 16. The bill as introduced was opposed by CWC.

HB 1249 – Recodify Water Pollution Control Fees

CWC continues to discuss this bill.

HB 1252 – Extend Healthy Rivers Fund Voluntary Contributions

CWC continues to discuss this bill.

HB 1259 – Residential Precipitation Collection Rain Barrel

CWC continues to discuss this bill. There was SWCD board discussion, and consensus to support this bill.

HB 1247 – State Engineer Dam Safety Review Fees

CWC voted to propose an amendment to the legislation to strike the \$2000 fee provision for dams under a storage restriction.

Other possible topics of legislation to be introduced includes stormwater, the Colorado Water Conservation Board (CWCB) construction fund “Projects Bill,” drains and groundwater levels related to housing developments and foundation work, and the use of agricultural water rights for the cultivation of marijuana.

Dolores Instream Flow

(time: 01:08:10)

John Porter, Bruce Whitehead and Adam Reeves provided background on the Dolores River instream flow (ISF) appropriation proposed by the CWCB in 2014. There have been concerns about this proposed ISF’s location in the downstream reach of the Dolores, and the relatively high flows recommended. Last year, CWCB acted to move forward with the Dolores ISF appropriation, but delayed the process to begin in January 2015. At the CWCB board’s January meeting, the deadline for contesting the ISF was pushed back until March 31. If an ISF is contested, other entities can file for party status by the end of April.

SWCD’s conversations continue with CWCB regarding proposed terms and conditions, including a depletion allowance for future development. CWCB is receptive to arriving at an agreement to preclude a formal contest by SWCD, and suggested filing a Notice to Contest to allow conversations to continue through July. Adam Reeves estimated the cost at filing a notice of contestation at \$10,000 if the desired result were to require exercising the entire formal process. There was board discussion. Doug Stowe moved to authorize legal counsel to file a Notice to Contest in the event that negotiations with CWCB do not reach resolution before the March 31 deadline. Bob Wolff seconded. There was discussion. The motion passed 7 to 1.

New Business

Instream Flow Legislative Alternatives

(time: 01:21:20)

Adam Reeves directed the board to a memo regarding possible legislative alternatives with respect to the operation of CWCB’s ISF program.

First, legal counsel suggested the possibility of a statutory depletion allowance within the ISF program. The ISF program has been very successful in protecting stream reaches across Colorado. Recent, larger ISF appropriations on lower river reaches have raised concerns by SWCD, and highlighted the need for a mechanism to avoid contentious legal battles and allow small communities time for future water development planning. Board members discussed the implications for the prior appropriation system, the proper forum (e.g. regular board meetings) for discussing legislative proposals and similar topics, and building broader consensus in advance of pursuing a possible legislative alternative. Steve Fearn moved to direct legal counsel to develop a draft outline of possible legislation regarding a depletion allowance in the ISF program, for further discussion at the next regular board meeting. Doug Stowe seconded. The motion passed 6-2.

Second, legal counsel suggested possible legislation to require the State of Colorado to abandon an ISF water right along a reach where federal agencies have also sought to impose a bypass. There are concerns that federal agencies such as the US Forest Service and US Bureau of Land Management are using both recommendations for ISF appropriations as well as bypass flows, which is contrary to the federal agencies’ manual requirement to work within a state’s ISF program. Nothing would preclude state agencies or environmental agencies from utilizing or advocating for ISF appropriations. There was consensus to further discuss this idea at the next regular board meeting.

Next Meetings

Wednesday, March 25	9:00 a.m.	Teleconference
Thursday, April 2	10:00 a.m.	Special Regular Board Meeting
Wednesday, April 15	9:00 a.m.	Teleconference
Wednesday, April 29	9:00 a.m.	Teleconference

Adjournment

President John Porter adjourned the meeting at 10:47 a.m.



John Porter, President