

**Southwestern Water Conservation District  
Board of Directors Meeting  
August 11, 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 John Taylor, Emeritus (after 12)

**Absent:** Monte Naslund

**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

**Guests** Christine Arbogast, Kogovsek & Associates, participated by phone  
Darlene Marcus, U.S. Representative Scott Tipton  
April Montgomery, Colorado Water Conservation Board (CWCB), participated by phone  
Trudy O'Brien, O'Brien Accounting  
Mike Preston, Dolores Water Conservancy District  
Denise Rue-Pastin, Water Information Program (WIP)  
Nicholas Zupancic, U.S. Representative Scott Tipton

President John Porter called the meeting to order at 9:00 a.m.

**Swearing in of New Board Members**

*(time: 00:00:30)*

Barry Spear reported that SWCD received an email from the Hinsdale County Administrator dated August 6, 2015 notifying SWCD that formally appointing David Guilliams to the board. David replaced Preston Goetzke, who resigned in July 2015 due to a change in residence. Pursuant to 37-47-106, David was sworn in. John welcomed David to the board.

Roll was taken and a quorum was present.

**Executive Session**

*(time: 00:02:15)*

Peggy Montano recommended that the board go into executive session for the purpose of receiving legal advice regarding the Animas-La Plata Project water rights due diligence case (13CW3011), Animas River depletion due diligence case (13CW3034), and Basin Creek due diligence application (08CW81). 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." Steve Fearn moved that the board go into executive session. JR Ford 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 the Animas-La Plata Project water rights due diligence case (13CW3011), Animas River depletion due diligence case (13CW3034), and Basin Creek due diligence application (08CW81). The board provided direction to negotiators.

**Approval of Minutes (June 9, 2015)**

*(time: 00:04:00)*

Bob Wolff moved to approve the June 9 minutes. Steve Fearn seconded. The motion passed unanimously.

**Approval of Treasurer's Report (July 2015)***(time: 00:04:20)*

Bruce and Laura summarized the July 2015 budget comparison, bank account summary, check detail, and final 2014 audit. Bob Wolff moved to accept the July 2015 Treasurer's Report and the 2014 audit. Steve Fearn seconded. The motion passed unanimously.

**Board Member Reports**

Board members yielded their time for discussion of the Gold King Mine discharge.

**Bob Wolff (La Plata County)***(time: 00:15:15)*

Bob reported on the Gold King Mine waste spill, which occurred on August 5 on Cement Creek above Silverton and has contaminated the Animas River in La Plata County. Governor Hickenlooper spoke earlier this morning to the issue. Public frustration has been expressed about the time taken for the U.S. Environmental Protection Agency (EPA) to report sampling results. Stock water is being delivered to ranchers in the Animas Valley. Currently the City of Durango is using the Florida River intake only.

**Steve Fearn (San Juan County)***(time: 00:18:00)*

Steve provided background on the Gold King Mine, which is about 900 feet above the bulkhead at the American Tunnel. The EPA has been working with the Animas River Stakeholders Group for the past six years to address water quality on Cement Creek. One of the solutions proposed was a water treatment plant, but there has been an effort to find a more cost effective alternative. It was decided to put a bulkhead in the Red & Bonita Mine, and investigate the source of water at the Gold King Mine. The property owner agreed to allow the EPA to open the Gold King Mine portal. Certain precautions were not taken, such as determining the water pressure by drilling behind it. EPA unintentionally released more than three million gallons of mining wastewater. The discharge would have happened someday, given the water pressure. The Animas River has been contaminated with heavy metals. Testing continues regarding the effects to wildlife and human health. An interagency emergency response group was formed from Silverton to Lake Powell. Several public meetings have been held in Durango and Silverton. The Navajo Nation has threatened to sue the EPA. There was board discussion. SWCD's response has been to gather information, respond to public and media inquiries, and attend public meetings. There was consensus to submit a letter to the editor expressing SWCD's concerns about the spill, and support of the Animas River Stakeholders Group.

**Agency Reports****Colorado Foundation for Water Education (CFWE)***(time: 00:54:20)*

Steve Fearn reported that the next board meeting will be on September 11 in Alamosa. He passed out the Summer 2015 *Headwaters* covering water and land use issues. Steve's term on the CFWE board will be up in January 2016, and he has discussed SWCD supporting an application from Laura. The consensus of the board was to support an application by Laura Spann for the CFWE board.

**River Protection Workgroup***(time: 00:59:20)*

Steve Fearn directed board members to the Regional Package "Agreement in Principle," which includes the creation of a Wild & Scenic River on Hermosa Creek and removal of Wild and Scenic suitability for the Animas, Piedra, and San Juan Rivers. Based on the agreement, a small drafting committee will be developing proposed legislation in cooperation with Congressional staff for possible introduction in 2016. The Workgroup made a presentation to the Colorado Water Conservation Board (CWCB) at their July meeting, which was well-received.

**Colorado Water Congress (CWC)***(time: 01:07:00)*

Steve Fearn reported that the Summer Conference will be August 19-21 in Vail, Colorado.

**Interbasin Compact Committee (IBCC) & Roundtable***(time: 01:08:00)*

Steve Harris reported on the following:

- Navajo Reservoir releases were doubled to dilute the Gold King Mine contamination.

- The IBCC will hold a meeting on August 25 in Keystone. At the last IBCC meeting, the seven-point transmountain diversion conceptual framework was approved. A meeting of West Slope County Commissioners was held in Garfield County, at which the Commissioners expressed support for the conceptual framework. Montezuma County Commissioners passed a resolution in support of the framework as well.
- On September 1 from 2-4pm at the Dolores Water Conservancy District, a Southwest Basin Roundtable workshop will be held to review and provide comments on the Colorado Water Plan. Comments need to be submitted by September 17 to be considered for inclusion in the final plan.
- There was discussion of a possible resolution on the water plan from SWCD. There was consensus not to consider a resolution or letter of support without first consulting with respective County Commissioners and allowing the Roundtable to react to the water plan first.
- Environmental Dimensions may submit a Water Supply Reserve Account (WSRA) funding application to support water plan outreach efforts. Harris Water Engineering (through Carrie Lile and Ann Oliver) may also submit a WSRA funding application to support implementation of the water plan. CWCB will be working to streamline the application process; it currently takes about six months.

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

(time: 01:23:00)

Denise Rue-Pastin reported that WIP now has Facebook and Twitter accounts, and offered to share information regarding the Gold King Mine accident. More than 50 kids attended the Water Camp hosted by Durango Nature Studies and jointly sponsored by WIP. The Great Divide documentary will be screened in Cortez (September 9), Durango (September 10), Telluride (September 11), and Pagosa Springs (12). Bruce will participate in a panel discussion following the Durango screening. All the speakers have been confirmed for the Water 101 Seminar in Bayfield on September 25. The water/land use planning workshop is October 23 from 1-5 pm.

*Due in part to the Gold King Mine discharge, representatives from U.S. Geological Survey, Natural Resources Conservation Service, Division of Water Resources and Bureau of Reclamation were not able to attend the meeting. The board adjourned for lunch.*

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

(time: 01:31:05)

Chief of Staff Nick Zupancic and Field Officer Darlene Marcus reported on U.S. Representative Scott Tipton's advocacy for southwestern Colorado regarding the Gold King Mine accident, including requesting that EPA Chief Gina McCarthy visit Durango this week. Nick summarized water-related legislation and federal regulations, including the Water Protection Act introduced by Rep. Tipton, the EPA's proposed groundwater directive, the EPA's proposed definition of the Waters of the U.S. Rep. Tipton does not support the designation of a Superfund site in Silverton, and is developing Good Samaritan legislation to introduce in 2016. Bruce asked Rep. Tipton to support the proposed legislation to codify the River Protection Workgroup Regional Agreement, and expressed concern about the California Emergency Drought Relief Act regarding de-authorization of pending water projects in the Colorado River basin. Christine Arbogast (participating by phone) provided additional background on the Drought Relief Act. Bruce also made Rep. Tipton's staff aware of SWCD's concerns with the Bureau of Land Management and Forest Service (USFS) Joint Land and Resource Management Plan. There was additional discussion regarding the statewide implications of the Plan, as well the updated Memorandum of Understanding between the State of Colorado and the agencies.

### **Agency Reports (cont.)**

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

(time: 01:59:00)

After a question by April Montgomery, Steve Fearn provided an update on the Animas River conditions after the Gold King Mine release. April (participating via phone) reported on the following:

- CWCB appreciated the reception hosted by SWCD at the July Ignacio board meeting.
- CWCB also met with the Ute Mountain Ute Tribe and Southern Ute Indian Tribe; there was discussion of funding available through the WSRA to assist with tribal projects, including upgrades to the Cortez-Towaoc pipeline, tamarisk removal on the Mancos River, and upgrades to the Pine River irrigation system.

- The Colorado Water Plan is the CWCB's primary focus.
- CWCB is reviewing grant guidelines for the Watershed Restoration Program, which has an additional one million dollars budgeted for the development of stream management plans.
- Small amendments have been made to the Dry Gulch Reservoir loan agreement.
- Regarding SWCD's policy presentation to the CWCB on the incorporation of a future use allocation as part of instream flow appropriations, April thought the conversation could continue after the Dolores instream flow hearing in September.

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

*(time: 02:12:00)*

Bob Wolff reported that at the most recent board meeting, the Authority discussed rules to adopt regarding loans to not-for-profit private water systems. There was discussion by the CWR&PDA board regarding the appropriate interest rate compared to public entity loans.

### **Office Report**

*(time: 02:13:50)*

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

- John Porter sent a letter of appreciation to former board member Preston Goetzke. Preston asked staff to pass along his regrets, and thank the board for the opportunity to serve on the board.
- Chris Landry, Center for Dust on Snow, will retire in 2016. Jeff Derry, was hired to replace him as director.
- Bruce reviewed regional forecasts, reservoir levels, stream flows, and precipitation data.
- Two meetings have been cancelled by the USFS regarding the reserved water rights case, case no. W-1605-76.
- The 2015 Weather Modification Workshop took place on July 8 in conjunction with the Southwest Basin Roundtable meeting; the group decided to hold a strategy workshop to focus funding for program enhancements, with the short-term goal of bringing a WSRA funding request before the Roundtable.
- The Upper Colorado River Commission (UCRC) met in Durango on June 17 and 18; SWCD hosted a tour of water storage facilities and a reception at Blue Lake Ranch in Hesperus. The tour and reception were well received by the UCRC.
- Of the 15 proposals submitted for funding under the System Conservation Agreement, 10 were selected for a second round of reviews, including a request from the Water Bank Working Group. The applicants were regionally diverse, representing a variety of uses.
- Bruce attended the CFWE Water Efficiency Tour on the Front Range on June 11 and 12.
- Sponsored in part by SWCD, the Colorado Water Officials Association Conference will take place in Durango on September 30-October 2. SWCD has been given three tickets to a meet-and-greet event on September 30.
- Board members were encouraged to attend the Pagosa Verde Symposium on August 27-28.

### **New Business**

#### **Resolution in Honor of Trudy O'Brien**

*(time: 02:25:20)*

John Porter read the draft resolution in honor of Trudy O'Brien, who served as the District's accountant for 12 years. The board thanked Trudy for her work, and presented her with a framed resolution and a gift certificate to Dalton Ranch restaurant.

### **Old Business**

#### **Dolores Instream Flow**

*(time: 02:29:50)*

Barry Spear provided background on the proposed Dolores instream flow appropriation. Prehearing statements have been filed. Rebuttal statements are due August 14. The CWCB hearing will take place on September 15 in Montrose. Barry recommended this topic for executive session.

#### **Future Use Allocation Update**

*(time: 02:33:25)*

Barry Spear referred board members to the summary memo. SWCD and the Colorado River District presented to the CWCB board at their July meeting regarding the proposed policy change. There was discussion about setting a seminar/workshop regarding the future use allocation policy proposal after the September meeting. All those entities that made a statement at the July CWCB meeting would be invited, along with CWCB staff and legislators.

Jenny Russell wrote a letter on behalf of San Miguel County expressing opposition to the proposed future use allocation policy change, and reiterated concerns that the proposal would amount to speculative water rights.

**Case No. 13CW3011 Animas – La Plata Project Water Rights Application C-A & DD** (time: 02:41:00)

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. A three-week trial is scheduled for November 2015. Mediation will take place on August 13 and 14. Direction was provided to negotiators.

**SWCD Final Comments on Colorado Water Plan** (time: 02:41:45)

Steve Harris reported that the final second draft of the Colorado Water Plan was out for review, with comments due on September 17. The Southwest Basin Roundtable will be reviewing the Plan in detail on September 1. There was consensus that SWCD support local flexibility in the development of watershed groups as vehicles of local policymaking, as is discussed frequently in the water plan. There was board consensus to review final comments from SWCD regarding the Colorado Water Plan at a teleconference on September 9 at 1:00 pm.

**New Business (cont.)**

**Resolution in Honor of Trudy O’Brien** (time: 02:54:50)

Bob Wolff moved to adopt Resolution 15-02 in Honor of Trudy O’Brien. Doug Stowe seconded. The motion passed unanimously.

**Update: Waste-of-Game Provision** (time: 02:55:40)

Tom Pitts will circulate a draft letter in support of Colorado Parks and Wildlife changing the “Waste-of-Game” provision to help facilitate non-native species removal in Colorado. The current provision prevents anglers from killing non-native species if they are not to be consumed. There was general consensus that SWCD would support the effort, and the letter may be brought before the board at a future teleconference or meeting if possible.

*The board adjourned for a short break.*

**2016 Aspinall Award Nomination** (time: 02:57:40)

There was board consensus to nominate Jim Isgar for the 2016 Aspinall Award Nomination. This is SWCD’s fourth consecutive nomination of Jim.

**Renew Support for NISP** (time: 02:58:50)

Bruce Whitehead provided background on the Northern Integrated Supply Project (NISP), which the board supported with Resolution 13-01. Recently, the U.S. Army Corps of Engineers released a draft supplemental draft environmental impact statement (SDEIS). Bob Wolff moved to submit a letter renewing SWCD’s support of the NISP. Steve Fearn seconded. The motion passed unanimously.

**Letter of Engagement with Barb Prose, Fredrick Zink & Associates** (time: 03:00:20)

Bruce Whitehead summarized the proposed services offered by Barb Prose at Fredrick Zink and Associates. Doug Stowe moved to approve the Letter of Engagement with Fredrick Zink & Associates for accounting review services. JR Ford seconded. The motion passed unanimously.

**Budget Committee FY 2016** (time: 03:04:55)

There was consensus to hold the FY2016 Budget Committee on September 9 from 11am-1pm over lunch, immediately before the teleconference to discuss possible Colorado Water Plan comments at 1 pm.

**08CW81 Basin Creek Due Diligence** (time: 03:05:05)

Bruce Whitehead reported that this conditional water right for supplemental shortage at Ridges Basin Reservoir was discussed in executive session. The board gave direction to legal counsel.

## General Counsel Status

John recommended that this topic be discussed in executive session.

## Engineering Report

(time: 03:06:10)

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

- The Animas Watershed Partnership submitted a letter of support for Good Samaritan legislation.
- The Water Bank Workgroup will meet at the CWC Summer Conference the next week.
- Sharon Whitmore is the new director of the San Juan River Basin Recovery Implementation Program.

## Legal Report

(time: 03:12:50)

Barry Spear summarized recent work on the following:

- City of Durango recreation in-channel diversion due diligence case, no. 13CW3028: The decree was entered by the court on June 4. The City will likely file to make the right absolute before the next diligence filing.
- La Plata County due diligence case, no. 13CW3029: In the August 22 minute order, the Court stated that this case was “trailing 13CW3011.” A status conference is scheduled for November 2, 2015.
- Silverton case, no. 05CW87, San Juan County case, no. 05CW88: Steve Fearn and Bruce Whitehead have had discussions with San Juan County officials regarding the San Juan County case, and the County continues to review internally how it desires the water rights to be handled.
- USFS conditional to absolute case, no. 12CW34: After discussions with the Division Engineer, the United States circulated a proposed decree last summer. The United States reported to the Court in June it had not received comments from opposers regarding the draft. SWCD has inquired if a new draft decree will be circulated for review. The Court ordered the filing of the decree or a status report by September 14.
- City of Ouray Red Mountain Ditch case, no. 13CW3040 (Division 7), 13CW3072 (Division 4): Ouray has provided several documents to the Division of Water Resources. DWR filed a second consultation report that said they would support irrigation uses as part of the application. The status conference is set for October 9. The engineer, Pete Foster, has requested another settlement conference with the opposers.
- San Luis Valley Water Conservancy District case, no. 14CW3011: MBSS has provided comments on the draft decree. It is expected that a revised proposed decree will be circulated before the September 22 status conference.
- USFS reserved water rights case, no. W-1605-76: SWCD continues to monitor this case as instructed by the SWCD board last fall. Contact this spring from the CWCB to engage in settlement discussions stalled when USFS officials could not attend two meetings set to discuss the case.

Barry Spear recommended that the board go into executive session for the purpose of discussing general counsel status and the Dolores River instream flow hearing. Jenny Russell, counsel for Sheep Mountain Alliance, recused herself from the Dolores River instream flow portion of the executive session. The statues covering this session are § 24-6-402(4)(b), “conferences with an attorney for the district for the purposes of receiving legal advice on specific legal questions,” § 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, and § 24-6-402(4)(f), C.R.S., “personnel matters.” Steve Fearn moved that the board go into executive session. Doug Stowe 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 general counsel status and the Dolores River instream flow hearing. Direction regarding the two issues was given to staff and legal counsel.

## Next Meetings

Wednesday, September 9	11:00 a.m.	SWCD Budget Committee Workshop
Wednesday, September 9	1:00 p.m.	Teleconference (Colorado Water Plan)
Tuesday, October 13	10:00 a.m.	Special Regular Board Meeting
Tuesday, December 8	10:00 a.m.	Special Regular Board Meeting

**Adjournment**

President John Porter adjourned the meeting at 3:50 p.m.

  
\_\_\_\_\_  
John Porter, President