

**Southwestern Water Conservation District
Board of Directors Meeting
August 13, 2014**

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

Absent: Fred Kroeger, Emeritus John Taylor, Emeritus

Staff: Bruce Whitehead, SWCD Executive Director
 Laura Spann, SWCD Office Manager
 Steve Harris, Harris Water Engineering
 Peggy Montano, Trout, Raley, Montano, Witwer & Freeman
 Barry Spear, Maynes, Bradford, Shipp & Sheftel (MBSS)

Guests: Christine Arbogast, Kogovsek & Associates
 Sarah Bobbe, San Miguel Watershed Coalition
 David Brown, U.S. Geological Survey (USGS)
 Marc Catlin, Montrose County
 Ryan Christianson, Bureau of Reclamation (BOR)
 Elaine Fischer, San Miguel County Commissioner
 Kathy Green, Telluride Ecology Commission
 Finn Kjome, Town of Mountain Village
 April Montgomery, Colorado Water Conservation Board (CWCB)

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

Executive Session

(time: 00:00:50)

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 statues 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." Jenny Russell moved that the board go into executive session. Doug Stowe 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. The board provided direction to counsel and staff for proceeding with litigation.

Approval of Minutes (July 9, 2014; June 11, 2014)

(time: 00:01:55)

Steve Fearn moved to approve the July 9 and June 11 minutes. Bob Wolff seconded. The motion passed unanimously.

Approval of Treasurer's Report (July 2014)

(time: 00:03:35)

Bruce Whitehead detailed specific transactions from the July 2014 budget comparison and treasurer's report. Board members suggested exploring other options with First National Bank, such as a 90-day rolling certificate of deposit. Bruce responded to board questions regarding funds budgeted for financial assistance. Monte Naslund moved to approve the July 2014 Treasurer's Report. Doug Stowe seconded. The motion passed unanimously.

Board Member Reports

Rusty Hinger (Mineral County)

(time: 00:17:40)

Rusty reported that Mineral County has had a fair amount of rain in the last month. The West Fork Complex Fire's effect on water quality and flooding was not as bad as expected, and fish populations are doing better than was forecasted.

Doug Stowe (Dolores County)

(time: 00:18:35)

Doug reported that the U.S. Fish and Wildlife Service's (FWS) final comment period on the listing of sage grouse is fast approaching. Governor Hickenlooper sent another letter to FWS requesting them to read the material that has been presented to them and issue a response. The first round of meetings with the Bureau of Land Management (BLM) took place in Montrose, Gunnison, and Dove Creek last week to put together a program to study methods in improving sage grouse habitats and populations. BLM has hired full-time employees dedicated to this sage grouse program. When the scoping process is complete for the BLM study, the FWS deadline for comments will be up. Doug was recently appointed to represent Dolores County to the Southwest Basin Roundtable.

Monte Naslund (Montrose County)

(time: 00:22:20)

Monte reported that Montrose County could use a little more rain. Construction continues on the mill at Paradox. Marc Catlin reported that Montrose County has a carriage contract with Colorado Cooperative Ditch Company to move water from the diversion point to potential reservoir sites including Maverick Draw #1. Reconstruction of the fish passage has not yet been completed by the San Miguel Watershed Coalition.

JR Ford (Archuleta County)

(time: 00:26:40)

JR reported that Pagosa Area Water & Sanitation District (PAWSD) is making a new tie-in to connect their ponds and treatment plant to their system in town. PAWSD and San Juan Water Conservancy District (SJWCD) continue to negotiate with Colorado Water Conservation Board (CWCB) regarding adjustments to their reservoir loan.

Preston Goetzke (Hinsdale County)

(time: 00:27:34)

Preston reported that Hinsdale County has received a lot of rain.

Bob Wolff (La Plata County)

(time: 00:28:00)

Bob reported that monsoons arrived to La Plata County just in time. Recreation management at Lake Nighthorse has hit a snag. The Ute Mountain Ute Tribe has cultural resources concerns, which the Bureau of Reclamation (BOR) has not yet been able to address. The City of Durango proposed changes to the Recreation Master Plan, a scaled-down version that all entities may be able to agree upon.

Jenny Russell (San Miguel County)

(time: 00:30:15)

Jenny reported that San Miguel County has hired a contractor for the first segment of the San Miguel River restoration. The San Miguel Watershed Coalition is about to publish a watershed report card, partially funded by SWCD. The Coalition plans to fix the scour hole in the fall near the diversion dam. The Water 101 Seminar will be in Telluride on Monday, September 22. A study conducted after Tabeguache dam removal showed that it has been successful in helping threatened fish populations recover.

Steve Fearn (San Juan County)

(time: 00:33:40)

Steve reported that the settlement with San Juan County (05CW88) has been finalized. SWCD filed the application in 2005 in order to provide water rights for users in San Juan County that would have a priority date senior to the City of Durango RICD water right filed in 2006. The private party withdrew his Statement of Opposition and SWCD filed a Request for Entry of Decree on July 23 that had been signed by Trout Unlimited and the Division Engineer. Judge Lyman signed the decree August 1. With the entry of the decree, the private party will be conveyed the settlement amount and the SWCD Board will need to consider assignment of the water right to San Juan County. Bruce and Steve provided background on the case to the board.

John Porter (Montezuma County)

John reported that Empire Electric Association sued Tri-State Generation and Transmission over the rate.

Agency Reports**Colorado Water Conservation Board (CWCB)**

(time: 00:38:10)

April Montgomery, CWCB Chair, updated the board on the following topics:

- At the most recent CWCB board meeting, each Roundtable presented their draft Basin Implementation Plans (BIPs), which were officially submitted on July 31. Four new draft chapters will be available for comment before the September meeting. Coloradowaterplan.com has had 160,000 visitors. The report "Climate Change in Colorado" was released this summer, and will inform the Colorado Water Plan (CWP). After attending the Interim Water Resources Review Committee hearing, CWCB has decided to review suggestions and ideas around conservation.
- CWCB has now adopted a scoring matrix for considering Water Supply Reserve Account funding.
- A new split-season instream flow project has been proposed under Policy 19. CWCB would purchase a "grant of flow" on water rights owned by the Colorado Water Trust to be used for irrigation in spring season and instream flow purposes in fall season. CWCB views it as a good balance between consumptive and non-consumptive uses, and beneficial to both agriculture and the environment. April responded to board and staff questions.
- Bob Wolff, SWCD board member and Animas La Plata Water Conservancy District (ALPWCD) board president, asked April to clarify CWCB's opinion on the future of the Durango Pumping Plant (DPP) property. CWCB believes that if 100% of the DPP property will not be used by the Animas La Plata (ALP) Project operator, then the remainder should be returned to the State of Colorado. April read the motion adopted by the CWCB board at the most recent meeting, which expressed CWCB's opinion that the intention was for the DPP property be expressly held by the entity operating the pumping plant, and directed staff to send a letter to BOR expressing their opinion that the easement shall be for the full 46.27 acres. The ALPWCD board will be discussing options, including possible litigation, at a special meeting on September 16. Bruce Whitehead, ALPWCD Executive Director, expressed concerns that CWCB adopted a motion without agenda notice, and without first pursuing conversations with ALPWCD. There was extensive discussion.

Bureau of Reclamation (BOR)

(time: 00:58:30)

Ryan Christianson, BOR, reported on area reservoir elevations and provided the following updates:

- BOR is currently revising flow recommendations for the San Juan River Basin Recovery Implementation Program (SJRBRIP), and has established an end-of-season reservoir elevation target of 6065 at Navajo Reservoir to protect Colorado water users and providers against shortage.
- BOR and Florida Water Conservancy District have negotiated a conversion contract (ag to M&I water), which is moving through NEPA.
- Vallecito Reservoir is at 170% of average due to the installation of a bubbler system, which has allowed more storage during the winter.
- Mancos Water Conservancy District is still evaluating title transfer of Jackson Gulch Reservoir, and will host a public meeting on the topic.
- BOR met with Montezuma Valley Irrigation Company to discuss the possibility of an excess capacity contract.
- BOR approved CWCB's contract with La Plata Archuleta Water Conservancy District for water transfer from the CWCB Animas-La Plata allocation. Ryan responded to board questions.

U.S. Geological Survey (USGS)

(time: 01:12:40)

David Brown, USGS, reported that additional funds were appropriated for the national streamflow information program, some of which will be used to pay for specific stream gage operations. BOR's salinity control program is looking at other potential salt loading areas, including the San Juan River basin. One of the primary ways to address salt loading is improving irrigation practices and equipment. David responded to board questions. On September 23 meeting, there will be a joint meeting with the U.S. Environmental Protection Agency (EPA), USGS, and Animas Stakeholder Group. Dave Grey, USGS, is planning on retiring in January 2015.

Interbasin Compact Committee (IBCC) & Roundtable

Steve Harris added that the final draft BIP developed by the Southwest Basin Roundtable has been submitted. The Roundtable's conservation goal and measurable outcome has prompted statewide discussion. Three categories of goals have been proposed: per capita water usage, inside-to outside water use ratio, and best conservation management practices. There was extensive discussion. IBCC will hold a meeting in October, hopefully in Durango. News coverage continues on water conservation, including two articles in the *Durango Herald* and one in *Mountain Town News* covering the Interim Water Resources Review Committee hearing on SB14-017 on August 7.

The board adjourned for lunch at 12:30 pm.

Colorado Water Congress (CWC)

(time: 01:44:10)

Steve Fearn updated the board on water-related ballot initiatives, all of which have been withdrawn. In response to Ballot Initiative #89, Governor Hickenlooper has established a special task force to find common ground on local government control and gas development. New ballot initiatives have already been proposed for the next election period, and advocacy through the CWC and its Water Stewardship Project will continue. All were invited to CWC's Summer Conference in Snowmass on August 20-22.

Colorado Foundation for Water Education (CFWE)

(time: 01:48:10)

Steve Fearn encouraged board members to pick up the *Citizen's Guide to Transbasin Diversions*, to which SWCD contributed. As part of the CFWE's effort to continue transbasin diversion-related education, there will be a tour on September 22 and 23.

Division of Water Resources (DWR)

No representative was present; a report was not available.

Questions/Comments from the Audience

(time: 01:49:55)

Marc Catlin, Montrose County, continues to work on conditional water rights in the Nucla/Naturita area. Applications have been submitted to BLM for access to the Maverick Draw #1 reservoir site for core drilling.

Elaine Fischer, San Miguel County Commissioner, thanked Jenny Russell for representing San Miguel County's interests and perspective on the board.

Sarah Bobbe, San Miguel Watershed Coalition, reported on the Tabeguache Creek dam demolition. After conducting a fish population survey area, there is an abundant population of the species of concern.

Office Report

(time: 01:54:00)

Bruce Whitehead reported on the following:

- The final 2013 audit report was submitted to the State of Colorado before July 31. Bruce and Trudy added a "Management's Discussion and Analysis" to be included in future audits.
- CWC's webinar on SB-023 was attended by more than 70 people. Bruce spoke and provided background on the legislation's development.
- The Colorado Cattlemen's Association, Colorado Farm Bureau, Colorado River District, SWCD, Denver Water, The Nature Conservancy, and Trout Unlimited are in discussions about leveraging \$11 million made available under the Colorado River System Conservation Program (CRSCP), which will fund pilot projects to reduce demands in the Colorado River Basin and improve reservoir levels in Lake Powell and Lake Mead. CRSCP was created by BOR and four municipalities in the upper and lower Colorado basins to provide funding to develop, test, and gather data on potential short-term demonstration or pilot programs. A press release was developed in response to a widely-published op-ed by Co. State Representatives Don Coram and Jerry Sonnenberg criticizing the program.
- On August 12, participants in the SJRBRIP and the Colorado Recovery Program, as well as representatives from across the state met with Mike King, Colorado Department of Natural Resources (DNR) Executive Director, to propose a "must kill" order for non-native species. Agencies, including Colorado Parks & Wildlife, are reluctant

to impose a “must kill” order, but may consider a pilot program to ensure that the order would have biological benefits. These non-native species such as northern pike and small mouth bass are known to feed on the endangered species that are the focus of the two Recovery Programs. There was additional discussion.

Old Business

BLM & USFS Joint Land & Resource Management Plan

(time: 02:08:55)

Bruce Whitehead, Barry Spear, and Christine Arbogast updated the board on the U.S. Forest Service (USFS) and BLM Joint Land and Management Plan. SWCD filed a protest to the BLM portion of the joint plan, and an appeal to the USFS portion of the plan. SWCD’s main concerns have been the restrictive bypass standards and two newly identified Outstandingly Remarkable Values (ORVs) on the Dolores River.

USFS

USFS has denied SWCD’s appeal, and a request for discretionary review made by SWCD with support of the Colorado Congressional delegation was denied by the Secretary of Agriculture. The USFS portion of the joint plan has already gone to a Record of Decision (ROD). SWCD, DWCD, and DNR met several times with USFS representatives in a good faith effort to resolve issues of concern prior to a final determination on the appeal. Those efforts were unsuccessful, and now options for addressing SWCD’s concerns through the USFS administrative process have been exhausted. One of the only remaining options for the board to consider is litigation against the USFS. DNR has indicated that they do not intend to litigate until there is injury.

BLM

The BLM portion of the joint plan will go to a ROD by the end of the federal fiscal year (September 30). A phone conference was held on July 2 with the agency, at which SWCD was informed that it would be sent a final decision on the protest three days prior to the ROD being issued. BLM representatives told SWCD that under their process, there is not a provision for further edits to the draft, and there will be no meetings to discuss possible revisions after the plan has gone to a ROD. According to the BLM, the only recourse was litigation under the Administrative Procedures Act (APA).

MOUs with USFS and BLM

USFS Memorandum of Understanding (MOU) was to expire in July 2014, but was extended for one year by the USFS and Colorado DNR/CWCB. The BLM MOU will expire in 2016. The MOUs encouraged use of state programs such as Instream Flows as an alternative to mandates of federal bypass flows. These recent policy shifts by the federal agencies appear to give them “two bites of the apple,” which was not the intent of the MOUs. The board may also want to consider supporting legislative remedies to address this.

There was extensive board discussion regarding the benefits and detriments of instream flows and bypass flows for local communities. No action was taken.

USFS Proposed Groundwater Directive

(time: 02:35:55)

MBSS provided draft comments on the USFS’s proposed directive for groundwater resources management. The proposed directive would add a chapter to the USFS manual providing guidance to agency personnel regarding what information is needed and what conditions may be imposed when a new or renewed authorization to use groundwater on national forest system lands is requested. SWCD’s comments 1) emphasize limitations on USFS authority to impose conditions that interfere with state authority or with the rights of water appropriators under state law, 2) request that the USFS remove any directives that establish a policy to discourage the use of groundwater resources on National Forest System lands by the public, and 3) detail concerns with the misleading manner in which the USFS has characterized the impacts and intent of the proposed directive. SWCD’s comments will be submitted by MBSS before the September 3 deadline.

EPA Proposed Rule: “Waters of the U.S.” Definition

(time: 02:37:15)

Barry Spear, MBSS, reported on the EPA’s proposed rule to clarify the agency’s “Waters of the U.S.” definition. SWCD’s comments are being developed by Jeff Kane for submission before October 20. Christine added that

numerous congressional hearings have been held on the EPA's proposed rule. There is movement to propose comments to address concerns with the rule, rather than have it withdrawn altogether. In the appropriations process, Congress has included language prohibiting the EPA and the U.S. Army Corps of Engineer from disbursing funds to implement the rule. The U.S. Senate sent a letter to the EPA, U.S. Department of the Army, and U.S. Department of Agriculture requesting clarification of the proposed rules impacts to agriculture.

Case No. 13CW3011 Animas – La Plata Project Water Rights Application C-A & DD (time: 02:46:05)

Peggy Montano provided a status report on case number 13CW3011, which was discussed in executive session to receive advice from legal counsel. No action was taken. Discovery has begun and will likely continue.

Children's Water Festival Proposal (time: 02:46:35)

Bruce Whitehead directed board members to a proposal from Denise Rue-Pastin, Water Information Program Coordinator, regarding adjustments to the 19th Annual SWCD Children's Water Festival. Denise proposed solutions to problems caused by a substantial increase in student participation, including 1) hiring a part-time Vista volunteer for future festivals, 2) increasing the water festival budget line item by \$500 for FY 2015, and 3) initiating a dialogue with New Mexico entities through the Animas Watershed Partnership to assist them in reinstating their own funding and coordination for a New Mexico festival. Jenny Russell moved to support the proposed changes to the Children's Water Festival. Preston Goetzke seconded. The motion passed unanimously.

State Water Plan (time: 02:54:00)

Bruce Whitehead directed board members to the draft BIP executive summary, critical basins map, and county-specific Identified Projects & Processes (IPP) list included in their board packets. As part of the new scoring criteria adopted by CWCB for Water Supply Reserve Account grant funding, consideration is given to projects funded by various partners. Therefore, SWCD may see more grant requests as entities seek additional funding partners. The Interim Water Resources Review Committee will hold a hearing on Wednesday, August 27 from 6-8:30pm at the Durango Public Library to hear public comment on SB14-115 and the Colorado Water Plan.

Grant Extension: Pagosa Lakes Property Owners Association (time: 02:59:30)

Pagosa Lakes Property Owners Association is requesting an extension to their \$25,000 grant approved in 2011 to support the rehabilitation of a failing outlet pipe on the dam. The Association continues to discuss the best method of repair with the Division Engineer, and has been making progress towards permitting the rehabilitation in the past few years. J.R. Ford moved to approve an extension of the \$25,000 grant (originally approved in 2011) for dam rehabilitation. Bob Wolff seconded. The motion passed unanimously.

New Business

Kogovsek & Associates Report (time: 03:02:00)

Christine Arbogast updated the board on the following issues:

- FWS has proposed a rule changing the process by which critical habitat can be designated. There are concerns that the proposed rule permits FWS to designate critical habitat where a species never existed before. Comments are due in late October. National Water Resources Association is accepting contributions of \$250 or more to support research and comments to be made on the proposed rule.
- U.S Congressman Cory Gardner has introduced a bill to delay action for 10 years on the proposed listing of sage grouse and the designation of its critical habitat.
- A bill has been introduced to expand funding to \$40 million for BOR's Water Smart program and not have any sunset date on the program.
- There is proposed legislation requiring BOR to compile an inventory of aging infrastructure needs and estimate related costs.
- Estevan Lopez (Director of the New Mexico Interstate Stream Commission) is awaiting confirmation as Commissioner of the Bureau of Reclamation.
- The proposed Rural Water Project Completion Act would provide additional funding to finalize various rural water projects whose progress was stalled by lack of funding.

USFS Proposed Ski Area Water Rights Rule

(time: 03:10:50)

Bruce Whitehead reported that the USFS is seeking public comment prior to August 22 on a proposal addressing water provided for ski areas on national forest lands through the permitting process. Within SWCD's boundaries, there are at least five ski areas with water rights that may be affected by the proposed rule. There was consensus to direct legal counsel and staff to canvas area ski resorts for their reaction to the proposed rule and submit comments if necessary.

Water Bank – Colorado River System Conservation Program

(time: 03:17:45)

Bruce Whitehead referred board members to his Office Report.

Meeting Structure & Reports

(time: 03:18:15)

Board members suggested estimating times for specific agenda items to encourage public attendance and shorten meetings for those traveling long distances. Some board members would like written legal and engineering reports to provide more time to review the issues in advance, while others would prefer to receive reports orally at the meeting. There was general consensus to note specific time blocks for major agenda items such as Agency Reports, Old Business and New Business. There was additional discussion.

Update to Open Records Policy

(time: 03:39:25)

Laura Spann gave background on the Colorado Open Records Act and explained HB14-1193, which created prerequisites for governmental entities to charge research and retrieval fees, and limited the amount of those fees. To charge research & retrieval fees, an entity must first adopt a written CORA policy stating the amount of the fees and publish the written CORA policy. An entity cannot charge for the first hour of staff time, and cannot charge more than \$30 per hour after the first hour. There was discussion. There was consensus to determine annually the actual cost of copies to be charged for a CORA request. Bob Wolff moved to adopt the updated version of SWCD's open records policy specifying research and retrieval fees. Steve Fearn seconded. The motion passed unanimously.

CWR&PDA Appointment & Letter of Support (Bob Wolff)

(time: 03:50:55)

Steve Fearn moved to submit a letter of support for Bob Wolff's application for appointment to the board of the Colorado Water Resources and Power Development Authority. Monte Naslund seconded. The motion passed unanimously.

2015 Aspinall Award Nomination

(time: 03:52:15)

John Porter and Bruce Whitehead provided background on Jim Isgar. J.R. Ford moved to direct staff to submit a letter and application nominating Jim Isgar for the 2015 Aspinall Award. Bob Wolff seconded. The motion passed.

The board adjourned for a short break.

Topics for Joint Board Meeting with River District

(time: 03:54:15)

Bruce Whitehead solicited topics for the joint board meeting with the Colorado River Water Conservation District on September 18 at 12:30 p.m. at the Montrose Holiday Inn Express. Suggested topics included the USFS and BLM Joint Land Management Plan, the USFS proposed groundwater directive, EPA's proposed rule on "Waters of the U.S.", the Water Bank Working Group, conceptual agreements around transmountain diversions, addressing non-consumptive needs (including recreation) in the final draft BIPs, and future use allocation as part of CWCB's instream flow program.

Budget Committee FY 2015

(time: 04:07:50)

There was consensus to hold the budget committee meeting on Tuesday, September 9 at 10:00 a.m.

Engineering Report

Steve Harris reported on the Water Bank Working Group (WBWG), which has requested a proposal from Colorado State University for a three-year on-site study in Delta, Gunnison, Montrose, Montezuma, and Mesa counties to evaluate the recovery of fallowed fields and quantify reduced yields. The estimated cost of the study is \$500,000 over several years. SWCD’s estimated annual contributions will be \$15,000 for three years. In addition, four major municipalities and BOR have invested \$11 million to fund pilot projects in ag fallowing called the Colorado River System Conservation Program. The program will be managed by the WBWG.

Legal Report

Barry Spear recommended that the board go into executive session for the purpose of discussing the water cases in which the district is involved. The statute covering this session is § 24-6-402(4)(b), “conferences with an attorney for the district for the purposes of receiving legal advice on specific legal questions.” Doug Stowe moved that the board go into executive session. Monte Naslund seconded. The motion passed unanimously.

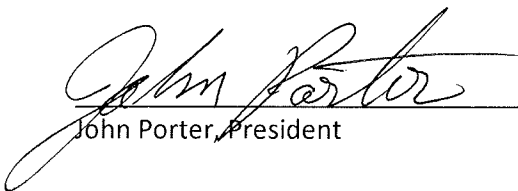
Barry Spear announced that the board was out of executive session, during which no action was taken. The board discussed water cases in which the board is in involved.

Next Meetings

Tuesday, September 9	10:00 a.m.	Budget Committee Meeting
Thursday, September 18	12:00 p.m.	Joint Board Meeting River District (Montrose)
Wednesday, October 8	10:00 a.m.	Special Regular Board Meeting
Monday, December 8	10:00 a.m.	Special Regular Board Meeting

Adjournment

President John Porter adjourned the meeting at 4:30 p.m.



John Porter, President