

**Southwestern Water Conservation District  
Board of Directors Meeting  
Dolores Community Center  
Dolores, Colorado  
August 6, 2019**

**Present:** Bob Wolff David Guilliams Monte Naslund  
JR Ford (by phone 8-10am) Charlie Smith Don Schwindt  
Rusty Hinger Jenny Russell Doug Stowe

**Staff:** Laura Spann, SWCD Programs Coordinator

**Consultants:** Steve Harris, Interim Executive Director  
Carrie Padgett, Harris Water Engineering  
Beth Van Vurst, Fairfield and Woods

**Guests:** Orla Bannon, Western Resources Advocates  
Elaine Chick, Water Information Program  
Ken Curtis, Dolores Water Conservancy District  
Steve Garcher, Dolores County Commissioner  
Becky Guilliams, Southwest Basins Roundtable  
Chad Hill, City of Cortez  
Kris Holstrom, San Miguel County Commissioner  
Bob Hurford, Colorado Division of Water Resources, Division 4 Engineer (by phone)  
Phil Johnson, City of Cortez  
Zane Kessler, Colorado River Water Conservation District (by phone)  
Chris Mannara, Pagosa Springs Sun (by phone)  
Ann Mc-Coy Harold, U.S. Senator Cory Gardner's Office  
Ed Millard, Interbasin Compact Committee  
John Porter, SWCD Director Emeritus  
Mark Ragsdale, Colorado Division of Water Resources, Water Commissioner (by phone)  
Gigi Richard, Fort Lewis College  
Chris Treese, Colorado River Water Conservation District (by phone)

**1.0 Call to Order – Roll Call and Verification of Quorum** (time: 00:00:00)

President Bob Wolff called the meeting to order at 8:05 a.m. Roll was taken and a quorum established.

**2.0 Review and Approve Agenda** (time: 00:02:00)

Bob Wolff clarified that under agenda item 3.2, the word "candidate" should have been plural. That change was made during the meeting. The agenda, with that clarification, was approved by board consensus.

**3.0 Executive Session** (time: 00:02:30)

Beth Van Vurst recommended that the board move into executive session as a search committee of the whole for the purpose of discussing the executive director hiring process, including continuing to conduct deliberations regarding the candidates for the Executive Director position as well as the potential terms of a conditional offer of employment. Beth also recommended the Board move into executive session to discuss the status of settlement negotiations in Case No. 14CW3011, filed by the San Luis Valley Water Conservancy District, the CWCB's proposed instream flow appropriations on Disappointment Creek, and Colorado River interstate and intra-state matters, including drought contingency planning and demand management. The statutes covering this session are § 24-6-402 (3.5), § 24-6-402(4)(b), C.R.S., "conferences with an attorney for the district for the purpose 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.” Doug Stowe moved that the board go into executive session. David Williams seconded. The motion passed.

#### **4.0 Report from Executive Session**

*(time: 00:05:31)*

Beth Van Vurst announced that the board was out of executive session at 10:12 a.m., and that no action was taken during the executive session. The board discussed Case No. 14CW3011, filed by the San Luis Valley Water Conservancy District, the CWCB’s proposed instream flow appropriations on Disappointment Creek, and Colorado River interstate and intra-state matters, including drought contingency planning and demand management. As a search committee for the whole, the board also discussed the executive director hiring process, including continuing to conduct deliberations regarding the candidates for executive director position as well as the potential terms of a conditional offer of employment for the executive director position. Jenny Russell moved to approve a conditional offer of employment for Frank Kugel for the executive director position. Monte Naslund seconded. The motion passed.

#### **5.0 Approve and/or Remove Consent Agenda Item**

*(time: 00:07:45)*

There was consensus to accept the consent agenda as proposed. The audience introduced themselves.

#### **6.0 Consent Agenda**

*(time: 00:09:35)*

##### **6.1 Approval of Minutes (May 29, June 4, June 17, July 9, July 15)**

##### **6.2 Approval of Treasurer’s Report (June 2019)**

It was clarified that expenses related to Steve Harris’ time towards interim executive director duties were categorized under Engineering Fees – General. Doug Stowe moved to approve the consent agenda items as proposed. Monte Naslund seconded. The motion passed.

#### **7.0 Reports**

##### **7.1 Partner Updates**

*(time: 00:10:45)*

No representatives were present from Colorado Parks & Wildlife, Colorado Water Conservation Board (CWCB), U.S. Bureau of Land Management (USBLM), U.S. Bureau of Reclamation (BOR), U.S. Forest Service (USFS), U.S. Geological Survey (USGS), San Juan Citizens Alliance, Trout Unlimited, or Kogovsek & Associates. No updates were received from these organizations.

##### **Division of Water Resources (DWR)**

Bob Hurford, Division 4 Engineer, summarized hydrologic conditions in the San Miguel Basin. No calls are anticipated on the San Miguel River, except on the lower tributaries. The Highline Canal is pulling 125 cfs. The river is flowing between 400-500 cfs. Gurley Reservoir normally stores 900 af, but storage is current restricted to 600 af. Fortunately, Beaver Creek flow has been making the system whole, and users have not needed storage. A substitute water supply plan was recently approved on San Miguel, using senior water rights from pump station to irrigate nine acres of Uravan ball fields campground. Some participants have signed up for the San Miguel Water Conservation Program through the CWCB, which is designed to keep water in the stream in times of shortage. The San Miguel Watershed Partnership’s second monthly meeting is tonight, August 6.

##### **Colorado River Water Users Association (CRWUA)**

Bob Wolff reported that CRWUA’s Annual Conference will be held in Las Vegas in December.

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

Don Schwindt reported that the CWC Summer Conference is coming up on August 20-22. Don participated in a board retreat, which several board members reported was extremely valuable. There was a lot of CWC board interest in expanding communications. The CWC board is a policymaking board, and will continue to build on that focus with its strategic plan.

### **Western Resources Advocates (WRA)**

Orla Bannon reported that WRA released a state water policy and program database, which looks at notable and exemplary land and water planning efforts from across the country that conserve water. The database is searchable by keyword, topic, and state.

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

Elaine Chick reported that Kogovsek and Associates is now a WIP member! Elaine will attend the CWC Summer Conference and Statewide Basin Roundtable Summit. Water 101 may focus more exclusively on water law this year, as several water education events coincided in late October. Water Education Colorado will be bringing a Land Use and Water Planning Workshop to Durango on October 30. Elaine also solicited newsletter story ideas.

### **Colorado Water Resources & Power Development Authority (CWR&PDA)**

Bob Wolff reported that CWRPDA's next board meeting will be held on August 21.

### **Interbasin Compact Committee & Roundtable**

Carrie Padgett reported on the last Southwest Basins Roundtable meeting in July. There was a pre-meeting workshop on Colorado River issues and demand management. Ken Curtis was elected as an At-Large member, Ed Millard as the IBCC representative, and Al Pfister as the IBCC alternate. Board members were invited to attend the Statewide Roundtable Summit in Winter Park on September 25-26, which will focus on the technical update to the water plan.

At the joint IBCC-CWCB meeting in July, there was discussion of demand management and the technical update to the water plan. Steve Harris noted that statewide population projections from 2015 have decreased. As part of this water plan update, the CWCB would like to add cost estimates to the "Identified Projects & Processes." Russell George is interested in leading the IBCC through a discussion of proportionality in demand management, and Andy Mueller provided detailed proposals to this end. There was talk of the potential permanency of demand management program in Colorado. Russell George may come down for the January Southwest Basins Roundtable meeting. Ed Millard added that he thought southwest Colorado's IBCC members were well-informed on demand management.

### **Water Education Colorado (WEco)**

Laura Spann plans to attend WEco's September board meeting and strategic planning retreat on September 4-5. The summer *Headwaters* focused on permitting is now available.

## **7.2 Board Member Updates**

(time: 00:37:25)

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

Commissioner Kris Holstrom reported on a grant San Miguel County received from the State of Colorado, which will focus on improving soil health and water retention. There will be a presentation on forest health in Telluride tonight, August 6. Jenny invited board members to join her in creating a draft policy to guide director fee and travel expense reimbursement.

### **Doug Stowe (Dolores County)**

Commissioner Steve Garchar celebrated the excellent water year, and noted that Dolores County recently filed for water rights to adjudicate its historic uses on Disappointment Creek.

### **Rusty Hinger (Mineral County)**

Tourists season is in full swing.

### **Monte Naslund (Montrose County)**

The coal mine is now closed.

**Don Schwindt (Montezuma County)**

There's a great water supply this year. Monsoons have not kicked in yet. Groundhog Reservoir did not quite fill this year.

**David Guilliams (Hinsdale County)**

There's plenty of grass, but so much moisture that it's hard to put up grass.

**Charlie Smith (San Juan County)**

Charlie, Beth, and Steve met with Willie Toookie regarding the San Juan County water rights. Beth and Steve plan to send Willie a letter summarizing the meeting. Charlie encouraged SWCD to continue communications with San Juan County regarding diligence. The Bonita Peak Mining District Community Advisory Group (CAG) continues to meet monthly. The EPA is developing an adaptive management plan focused on six projects with the goal of streamlining the remediation efforts. However, it's not clear what the plan will do, and the counties are asking for more clarity.

**Bob Wolff (La Plata County)**

Bob proposed forming board committees to delve more deeply into the following topics: policy, financial management, director and staff travel reimbursement, state legislative affairs, federal affairs, and public engagement. He encouraged board members to contemplate which committee they might like to participate in. SGM and Fort Lewis College are hosting a Fall Forum on water, scheduled for September 13<sup>th</sup>.

**7.3 Hydrologic Conditions Update**

*(time: 00:46:30)*

Steve Harris referred the board to the written office report, and summarized Reclamation's 24-month study that forecasts inflows and guides releases from Lake Powell.

**7.4 Office Update**

*(time: 00:49:20)*

Steve reported that the CWCB instream flow program will be discussed as part of the Water Congress Summer Conference program, so Beth Van Vurst will attend those sessions on behalf of SWCD. Steve asked the board if they would like to move their October 1<sup>st</sup> board meeting, and there was consensus not to change it. There was also board consensus to shorten the Annual Water Seminar agenda. Board members were invited to register for the CWC Summer Conference. There was board feedback that the ED report was thorough and concise.

**8.0 Questions & Comments from the Audience**

*(time: 00:56:30)*

There were no comments or questions from the audience.

**9.0 Old Business**

**9.1 Colorado River matters**

**9.1.1 Interstate and intra-state matters, including drought contingency planning efforts and demand management**

*(time: 00:57:15)*

Steve Harris reported that the Colorado Water Conservation Board (CWCB) is no longer requesting that Demand Management Workgroup participants sign a Nondisclosure Agreement. Carrie Padgett, Beth Van Vurst, and Laura Spann will now be participating in their respective workgroups on behalf of SWCD. Beth Van Vurst reported that most of the workgroup meetings have been scheduled, except for Law and Policy and Water Rights Administration workgroups. Steve Harris highlighted that potential funding sources for a compensated demand management program have not yet been identified. The first Regional Demand Management Workshop is scheduled for Thursday, August 22, which will include an overview of the drought contingency plan and an update on workgroup progress. Mark Harris, Grand Valley Water Users Association, is also organizing a West Slope Ag Water Users Group (WAG) to discuss the potential impacts of the proposed demand management program for Western Slope agricultural water users.

Beth Van Vurst reported on the Upper Colorado River Commission's June meeting on demand management in Salt Lake City. There were around 80 people in attendance, most representing non-governmental organizations, a

quarter representing water managers, and a handful of water users. Each Upper Basin state provided a summary of the status of their demand management feasibility investigation.

### **9.1.2 West Slope Risk Assessment – Phase III**

*(time: 01:12:45)*

Carrie Padgett summarized the preliminary results of the Phase III West Slope Risk Assessment, the final report for which has not yet been released. She encouraged the board to review the modeling results and consider additional questions for deeper analysis that she can work on with John Carron. Steve Harris emphasized that 19% of post-compact depletions in the Colorado River basin occur in southwestern Colorado. Aside from the Front Range transmountain diversions, southwestern Colorado is most at risk. Board members suggested that the depletions be separated by the San Juan and Dolores River basins, as well as by use (municipal, industrial, etc.). There were questions regarding how specific compact obligations were accounted for in the study, how the San Juan Chama Project will be impacted by a call, if at all, and other special circumstances of water use in southwestern Colorado.

### **9.1.3 Colorado River Water Bank Working Group**

*(time: 01:26:45)*

Carrie Padgett and Don Schwindt are helping Stacey Beagh generate a list of participants for half-day workshops in southwestern Colorado that will inform the Secondary Impacts Water Bank Working Group. Material and homework will be sent out to participants in advance of the workshops. The next WBWG meeting will be in Glenwood Springs in mid-August, at which the group will continue to coordinate with the facilitators to carry out the study.

## **9.2 CWCB Instream Flow Program**

### **9.2.1 Proposed Instream Flow Appropriations**

#### **9.2.1.1. Himes Creek**

*(time: 01:29:30)*

Beth Van Vurst reported that the CWCB board has approved the stipulation with SWCD providing for no-precedent language to be included in the Himes Creek instream flow appropriation. This language will recognize the unique nature of this filing, and the circumstances that permitted this appropriation to occur. Steve Harris attended the CWCB meeting in person in July and spoke in support of the stipulation on behalf of SWCD and DWCD. SWCD and DWCD will withdraw their Notices to Contest.

#### **9.2.1.2 Disappointment Creek**

*(time: 01:32:00)*

Dolores County hopes to finalize their water rights decree in advance of the CWCB's instream flow filings on Disappointment Creek. SWCD will send a letter to water users in the Disappointment Creek basin to let them know that CWCB will be filing for two instream flows in 2019.

#### **9.2.1.3 2020 Proposed Instream Flow Appropriations in Divisions 4 and 7**

*(time: 01:35:00)*

Carrie Padgett reported that there have not been any updates on the proposed 2020 instream flow appropriations in southwestern Colorado, likely because additional data are still being collected over the summer.

## **9.3 Waters of the United States**

*(time: 01:36:45)*

Beth Van Vurst provided background on the proposed Waters of the United States definition under the Clean Water Act. In 2015, the Obama administration released a proposed rule to clarify what waters fall under federal jurisdiction per the Clean Water Act. A lawsuit was filed in the U.S. District Court of North Dakota challenging the 2015 proposed rule, and the judge imposed an injunction in several western states including Colorado, leaving the WOTUS definitions and other guidance in place before 2015 as the current guiding regulations in Colorado. The State of Colorado was initially a plaintiff in that action, but withdrew in 2019. As a result, the preliminary injunction on the 2015 rule has been lifted in Colorado. The Trump administration has published a draft of the proposed 2019 WOTUS rule, which SWCD provided comments on in April. Last week, two Senators introduced the "Define WOTUS Act" as well.

## 10.0 New Business

### 10.1 Personnel Matters

#### 10.1.1 SWCD Personnel Policies

(time: 01:42:40)

SWCD has used the executive director hiring process as an opportunity to review personnel policies. Beth Van Vurst recommended two policies for board adoption. Charlie Smith moved to adopt the recommended SWCD personnel policies concerning work-related accidents, injuries, or illnesses, as well as equal employment opportunity, anti-discrimination, and anti-harassment. David Guilliams seconded. The motion passed unanimously.

#### 10.2 Sponsorship: San Juan Mining & Reclamation Conference & Expo

(time: 01:46:30)

Laura Spann summarized the sponsorship request from Peter Butler to support the San Juan Mining & Reclamation Conference and Innovation Expo to be held in Silverton from September 24-26, 2019. The Bonita Peak CAG plans to form a 501(c)(3), and take over the mission of the Animas River Stakeholders Group, which plans to dissolve by year end. Charlie Smith moved that SWCD sponsor the San Juan Mining & Reclamation Conference and Innovation Expo in the amount of \$750. Jenny Russell seconded. The motion passed.

### Lunch

The board adjourned for lunch.

## 9.0 Old Business (cont.)

#### 9.2.2.1 Colorado Water Congress Instream Flow Subgroup (HB 1218)

(time: 01:50:00)

Beth Van Vurst, along with Chris Treese and Zane Kessler of the Colorado River Water Conservation District, reported on recent water community discussions about the CWCB's instream flow (ISF) program. The Colorado Water Congress State Affairs Committee has established an ISF Subgroup, which some expected to guide a broader discussion of the instream flow program. However, the committee's focus quickly narrowed to HB19-1218 (Loaned Water for ISF to Improve Environment), proposed legislation that was postponed indefinitely and referred to the Interim Water Resources Committee for further discussion. HB19-1218 would have expanded the number of years that the loaned water can be used (from 3 to 5 years in a 10-year period), and allowed the loan to be renewed for up to 2 additional 10-year periods. SWCD acted to oppose this legislation in the spring. Beth has been participating in the ISF Subgroup on behalf of SWCD, and there was board consensus to direct Beth to continue to do so. A separate stakeholder group led by the Colorado Water Trust is refining HB19-1271 (Augmentation of Instream Flows), which was also postponed indefinitely.

#### 9.2.2.2 Interim Water Resources Review Committee Meeting

(time: 02:00:00)

#### 9.2.2.3 Recognition, administration of pre-existing uses under C.R.S. 37-93-102(3)(b)

At the Interim Water Resources Review Committee, scheduled to be held in conjunction with the Colorado Water Congress Summer Conference, state legislators will be discussing HB19-1218 (Loaned Water for ISF to Improve Environment). Chris Treese emphasized the River District's position that while the ISF program enjoys the support of the water community, it does have some problems. For example, in the Yampa River basin some pre-existing uses are not being recognized because they have not been decreed. This is despite the statute explicitly calling out these uses as honored. During the public comment period of the Committee meeting, the River District may expand the conversation to raise some of these concerns.

There was SWCD board discussion regarding whether Beth should provide comments on behalf of SWCD reflecting concerns about the ISF program. There was general consensus to direct Beth to listen and take notes during the Committee meeting, and not provide comment. San Miguel Commissioner Kris Holstrom cautioned the SWCD board from expressing concerns without having a formal policy regarding the ISF developed, as some of the District's nine counties are often in support of ISF appropriations. Ken Curtis, Dolores Water Conservancy District, commented that their board is also concerned regarding mission creep with the ISF program, and encouraged SWCD to provide regional leadership and strategy in this policy discussion. It was suggested that the SWCD board consider adopting a policy on the ISF program to guide representation and provide leadership on the topic. There

was also board discussion regarding the development of SWCD's own ISF program. Chris Treese explained that the River District challenged the CWCB's exclusive authority to appropriate ISFs. Within the River District, there are several private ISFs appropriated prior the amendment to the statute granting sole authority to appropriate ISFs to the CWCB.

### 10.3 Consideration of Banking Proposals for SWCD Funds

(time: 02:21:30)

Laura Spann summarized current concerns with customer service at TBK Bank, where SWCD's three checking accounts and two CDs are held. She presented the proposals provided by several banks and recommended that SWCD relocate its checking accounts to either Bank of the San Juans or Bank of Colorado. Both had competitive interest rates, no fees, and were eager to have SWCD as a customer. Charlie Smith moved that SWCD relocate its three checking accounts from TBK to Bank of Colorado, and also relocate the two CDs from TBK when they mature in December. Monte Naslund seconded. The motion passed.

## 11.0 Engineering Report

### 11.1 Upper Colorado & San Juan River Basin Recovery Implementation Program

(time: 02:29:30)

Carrie Padgett participated in multiple Program activities in the past two months. These activities included an Executive Committee call for the Upper Program, a Biology Committee call, and review of Post-2023 Planning efforts. For the Biology Committee's upcoming August meeting, Carrie assisted Tom Wesche in reviewing a list of priority tasks for the program post-2023. This list ranked program goals, objectives, and tasks. Carrie provided comments to Tom focused on clearly defining tasks and objectives with benchmarks, triggers, or other means to assess success or identify when management changes should be made. The August meeting will be an all-day webinar reviewing this list of priorities as synthesized by the Program Office after reviewing all committee member comments.

### 11.2 Paradox Salinity Unit

(time: 02:32:45)

The Paradox Valley Unit Administrative Draft Environmental Impact Statement (EIS) is scheduled to be available for review starting August 30. There will be a 30-day review period. There are four alternatives proposed to replace the existing injection well. These alternatives are: (1) no action at all; (2) a new injection well; (3) evaporation ponds; or (4) a reverse osmosis system. Carrie proposed to take the lead on reviewing the draft EIS and work with the new executive director on any comments we may have on the document. There was agreement that SWCD support the alternative that is least impactful to the environment and most cost effective.

## 12.0 General Counsel Legal Report

(time: 02:38:20)

Beth Van Vurst reported on the following topics:

- 12.1 **Case No. 14CW3011, San Luis Valley Water Conservancy District:** SWCD has sent a revised settlement proposal to the parties in late June. Beth hopes to report on their comments at the October meeting.
- 12.2 **BLM Substitute Water Supply Plan (SWSP) Application for the Treasure Pass Diversion Ditch:** SWCD submitted extensive comments on this application. DWR has not issued a decision yet on SWSP. As of last night, there is only 0.07 cfs available at the headgate. Beth anticipates an application for a permanent change of water right in the coming year.
- 12.3 **Water Court Resume Review (Divisions 3, 4, 7):** Beth and Steve reviewed the Water Court resumes for Divisions 3, 4 & 7, and no applications warranted further discussion.

## 13.0 Adjournment

President Bob Wolff adjourned the meeting at 2:30 p.m.



Bob Wolff, President