

**Southwestern Water Conservation District
Board of Directors Meeting
December 5, 2019**

Present: Bob Wolff JR Ford David Guilliams
Charlie Smith Don Schwindt Rusty Hinger
Jenny Russell (by phone) Doug Stowe

Absent: Monte Naslund

Staff: Frank Kugel, Southwestern Water Conservation District (SWCD) Executive Director
Laura Spann, SWCD Programs Coordinator

Consultants: Carrie Padgett, Harris Water Engineering
Beth Van Vurst, Fairfield and Woods
Michelle Magruder, Fairfield and Woods (by phone for executive session)

Guests: Orla Bannon, Western Resources Advocates
Karen Barger, U.S. Representative Scott Tipton's Office
Elaine Chick, Water Information Program
Marcel Gaztambide, San Juan Citizens Alliance
Celene Hawkins, The Nature Conservancy
Mike Fiebig, American Rivers
Paul Duft, intern, U.S. Representative Scott Tipton's Office
Chris Mannara, Pagosa Springs Sun (by phone)
Ed Millard, Southwest Basins Roundtable (by phone)
Gigi Richard, Four Corners Water Resources Center
Andrew Straub, Southern Ute Indian Tribe
John Whitney, U.S. Senator Michael Bennet's Office

1.0 Call to Order – Roll Call and Verification of Quorum

President Bob Wolff called the meeting to order at 8:30 a.m. Roll was taken and a quorum established.

2.0 Review and Approve Agenda

(time: 00:01:10)

There was unanimous consent to approve the agenda.

3.0 Executive Session

(time: 00:01:40)

Beth Van Vurst recommended that the board move into executive session for the purpose of discussing the following agenda items: 3.1, Colorado River interstate and intrastate matters, including drought contingency planning and demand management; 3.2, recognition and administration of pre-existing use occurring under C.R.S. § 37-92-102(3)(b); 3.3, updates to SWCD Executive Director's job description, including job duties; 3.4, employee benefits, including paid time off and retirement plan contributions; and 3.5, 2020 WIP independent contractor agreement.

The statutes covering this session are § 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)(1), C.R.S., "personnel matters." Doug Stowe moved that the board go into executive session. David Guilliams seconded. The motion passed.

(time: 00:04:05)

4.0 Report from Executive Session

Beth Van Vurst announced that the board was out of executive session at 10:00 a.m. The board discussed Colorado River interstate and intrastate matters, including drought contingency planning and demand management, recognition and administration of pre-existing use occurring under C.R.S. § 37-92-102(3)(b), updates to SWCD Executive Director's job description, including job duties, employee benefits (specifically paid time off and retirement plan contributions), and the 2020 WIP independent contractor agreement. No action was taken during the executive session.

5.0 Approve and/or Remove Consent Agenda Item

(time: 00:06:15)

Item 6.1 was removed from the consent agenda.

6.0 Consent Agenda

(time: 00:06:30)

6.1 Approval of Minutes (October 1, 2019; October 31, 2019)

6.2 Approval of Treasurer's Report (October 2019)

6.3 2020 Audit Engagement Letter with Haynie & Company

6.4 Requests for 2019 SWCD Grant Extensions through 2020

6.5 SWCD Personnel Policy on Hours Worked & Overtime

Doug Stowe moved to approve the consent agenda items 6.2, 6.3, 6.4, and 6.5. Rusty Hinger seconded. The motion passed.

Doug Stowe moved to approve consent agenda item 6.1 with the revisions proposed prior to the board meeting. David Guilliams seconded. The motion passed.

7.0 Office Update in Brief

(time: 00:09:00)

Frank Kugel summarized current snowpack conditions, as well as the stakeholder support for the installation of a new USGS stream gage on Hermosa Creek. The board and public provided input on other locations. There was board consensus to direct staff to move forward in pursuing the Hermosa Creek USGS stream gage in southwestern Colorado, subject to securing a commitment from an additional cost share partner, and continue to seek partnerships for additional stream gages in the Animas and Upper San Juan basins, for possible installation in 2020 or 2021.

Board terms for JR Ford, Jenny Russell, and Don Schwindt will expire in January 2020, and their respective counties will receive written notice in December. Board members interested in attending the Colorado Water Congress Annual Conference or Family Farm Alliance Annual Conference were invited to contact Laura Spann to register.

8.0 Questions & Comments from the Audience

(time: 00:21:00)

Marcel Gaztambide, San Juan Citizens Alliance, thanked the board for their financial support for data collection in southwestern Colorado and provided additional input on valuable gage locations in the Animas River basin.

9.0 Old Business

9.1 Colorado River matters

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

(time: 00:22:30)

Beth Van Vurst reported that the Upper Colorado River Commission (UCRC) and Colorado River Water Users Association will meet next week, after which there will be additional Colorado River updates for the SWCD board. The Colorado Water Conservation Board's (CWCB) Law and Policy Demand Management Workgroup will hold its first meeting in late December. The Monitoring and Verification Workgroup met in November and will meet again in January. The next regional demand management workshop is tentatively scheduled to be held in conjunction with the Colorado Water Congress Annual Conference in January. A joint meeting of the Interbasin Compact

Committee and CWCB Demand Management Workgroups has been tentatively scheduled for March 4-5, 2020 in Denver. Workgroup meeting summaries are now available on the CWCB website.

UCRC and CWCB have both released separate Requests for Proposals for contractors to conduct feasibility investigations on demand management.

The final report for Colorado River Risk Assessment, Phase III, has now been released, and will be posted on the Colorado River Water Conservation District's website.

9.2 CWCB Instream Flow Program

(time: 00:26:30)

9.2.1 Recognition & administration of pre-existing uses occurring under C.R.S. 37-92-102(3)(b)

Beth Van Vurst summarized C.R.S. 37-92-102(3)(b), which states that a CWCB instream flow appropriation is subject to the present uses and exchanges --decreed or undecreed--occurring at the time of the instream flow appropriation. The State Engineer's Office and CWCB staff have recently asserted that undecreed stockwater uses must be recognized by the Water Court in order to benefit from the protection offered by 102(3)(b). SWCD, the Colorado Cattlemen's Association and the River District disagree with this interpretation. The CWCB board invited SWCD, the Colorado Cattlemen's Association and the River District to their November board meeting to discuss this matter. The River District plans move forward with proposed legislation to clarify that preexisting uses and exchanges do not need to be recognized by the Water Court in order to be protected during administration of an instream flow call. This proposed legislative language will be developed in coordination with the State Engineer's Office and the CWCB. SWCD is supportive of the River District's legislative effort. Celene Hawkins commented that the root concerns on the Elk River related to the Colorado Division of Water Resources' administrative decision that stock water was not included in an irrigation water right decree and encouraged SWCD to further review the relevance of this issue in southwestern Colorado. There was board discussion regarding the history of the instream flow program and public perception of this administrative change. SWCD will continue to support the River District in its effort to introduce and pass the proposed legislation.

9.2.2 Colorado Water Congress State Affairs Instream Flow Subgroup (HB 1218)

(time: 00:40:10)

Beth Van Vurst reported that legislation similar to HB19-1218, to expand the temporary loan program within the CWCB's instream flow program, will likely be introduced during the 2020 legislative session. Beth will prepare additional information for the SWCD's board teleconference on January 14th.

9.3 Proposed Timeline and Structure for SWCD Board Committees

(time: 00:41:00)

The board reviewed the proposed timeline and structure provided by staff. There was board consensus to eliminate the Instream Flow Committee, and instead discuss this topic as a committee of the whole. Charlie Smith, Jenny Russell, and Don Schwindt volunteered to serve on the Strategic Planning Committee. The consideration of a proposed travel reimbursement policy was reassigned to the Finance Committee. The board directed Frank Kugel to participate in all committees to provide policy and management recommendations and Laura Spann to coordinate, notice, record, and take notes for all committee meetings. There was board consensus that the Personnel Committee begin meeting in December and January to draft personnel policies for consideration at the February board meeting. On the morning of February 12th, the Colorado River Committee will hold its first meeting. It was suggested that staff identify issues coming before the board at a future meeting and call together the committees to prepare recommendations.

9.4 SWCD Human Resources

9.4.1 Updates to SWCD Executive Director's Job Description, including job duties

(time: 00:51:35)

Beth Van Vurst provided background on the proposed addendum to the SWCD executive director's job description, which was developed in coordination with Frank Kugel. Charlie Smith moved to adopt the addendum to the SWCD executive director's job description. JR Ford seconded. The motion passed.

10.0 New Business

10.1 SWCD Human Resources

10.1.1 SWCD Employee Benefits, including Paid Time Off & Retirement Plan

(time: 00:53:30)

Beth Van Vurst reported that, in coordination with the Personnel Committee, she will draft a Paid Time Off policy for board consideration at the February 2020 meeting.

David Guilliams moved to transition paid time off for the SWCD Programs Coordinator position from two categories (vacation and sick/personal) to a single category at the current rate of accrual. Rusty Hinger seconded. The motion passed.

JR Ford moved that SWCD match up to 6% of employee contributions to a 457 (b) retirement plan for both regular hourly wages and overtime wages. Doug Stowe seconded. The motion passed.

10.1.2 Proposed SWCD Personnel Policies

(time: 00:58:15)

There were no draft personnel policies to discuss today.

10.2 2020 WIP Independent Contractor Agreement

(time: 00:58:30)

SWCD has an existing contract with Elaine Chick Consulting for coordination of the Water Information Program, which expires on December 31, 2019. Beth Van Vurst recommended the current contract be extended through January 2020 to allow Beth to review recent revisions and continue working towards a proposed 2020 contract to present to the board at the January 14, 2020 teleconference. Don Schwindt moved to approve an extension of the existing 2019 WIP coordination contract with Elaine Chick Consulting through January 2020. David Guilliams seconded. The motion passed.

10.3 Town of Pagosa Urban Renewal Authority

(time: 01:04:10)

JR Ford provided background on the Urban Renewal Authority being proposed by the Town of Pagosa Springs. Any increase in property tax revenue generated by improvements to the 27-acre area will pay back the developer for a 25-year period. Similar efforts are moving forward across southwestern Colorado. JR Ford requested the board's support in seeking appointment as a Special District representative to this Urban Renewal Authority governing body to represent SWCD and similar entities.

Doug Stowe moved to direct staff to write a letter of support for JR Ford's appointment as Special District representative to the governing body of the Urban Renewal Authority. Rusty Hinger seconded. The motion passed. There was consensus to include in the letter a request for additional Special District representation on the Urban Renewal Authority board.

10.4 Investment Options for CD Monies Maturing 12/29/19

(time: 01:12:25)

SWCD currently holds two 24-month Certificates of Deposit (CDs) with TBK Bank with an interest rate of 1.55%. Both CDs mature on December 29, 2019, and their current combined balance is \$1,046,326.09. The Finance Committee met on November 26th to consider investment options and review available CD rates. They made several recommendations, as provided in the board memo.

Doug Stowe moved to direct staff to carry out the following recommendations from the Finance Committee:

- Monitor cash flow and make necessary transfers to achieve a running checking account balance of approximately \$200,000;
- Reduce the total balance in the COLOTRUST accounts to approximately \$1 million;
- Cash out the two TBK CDs and invest \$2,030,000 in 1st Southwest Bank CDs;
 - 24-month CD, 2.35% interest rate, \$1,522,500 (75% of total amount)
 - 12-month CD, 2.35% interest rate, \$407,500 (20% of total amount)
 - 12-month CD, 2.35% interest rate, \$100,000 (5% of total amount)
- Secure written confirmation that the COLOTRUST accounts and 1st Southwest CDs are fully insured, which is required for public funds.
- At the February 2020 meeting, report on total balances for Project Reserve Fund and Emergency Reserve Fund. These "Funds" will be comprised of both COLOTRUST and CD investments.

- At the February 2020 meeting, report the interest rates of SWCD's current investments.

Doug Stowe seconded. The motion passed.

10.5 FY2020 Budget Hearing and Adoption

10.5.1 Budget Hearing & Public Comment

(time: 01:19:40)

Laura Spann presented the proposed 2020 budget, which included actual income and expenses through November 30th and the final property tax revenue based on final valuations from all nine counties. She highlighted several proposed updates to the 2020 budget.

Bob Wolff opened the budget hearing and solicited public comment. Marcel Gaztambide, San Juan Citizens Alliance, thanked the board for their careful consideration of fiscal matters and stewardship of taxpayer dollars, the additional public information provided through the budget message, and funding for the Bonita Peak Community Advisory Group. There were no other members of the public that wished to provide comments. Bob Wolff closed the public budget hearing.

10.5.2 Resolutions to Adopt Budget, Set Mill Levy & Appropriate Sums of Money

(time: 01:31:15)

The following motions were made:

- David Guilliams moved to approve Resolution 2019-05 to adopt the 2020 budget as proposed. Doug Stowe seconded. The motion passed.
- Doug Stowe moved to approve Resolution 2019-06 to certify a mill levy of .403, which is a temporary reduction from the District's maximum mill levy, on the assessed valuation of \$4,020,104,741 to generate revenue of \$1,620,102 in 2020. JR Ford seconded. The motion passed.
- JR Ford moved to approve Resolution 2019-07 to appropriate funds in the amount of \$2,994,956 to be spent in 2020. Rusty Hinger seconded. The motion passed.

The mill levy will be certified to all nine counties before the December 15th deadline, and the adopted budget will be submitted to the state by the January 31st deadline. Adopted budgets are accessible on via a link on the SWCD site to the Department of Local Affairs database where all public budgets are available and archived.

10.5.3 Proposed Budget Message

(time: 01:34:45)

Charlie Smith moved to approve the final 2020 budget message. Doug Stowe seconded. The motion passed.

11.0 General Counsel Legal Report

(time: 01:35:45)

Beth Van Vurst reported on the following topics:

Regulation #93 – Colorado's Section 303(d) List of Impaired Waters, and Monitoring and Evaluation List: There is a hearing before the Colorado Water Quality Control Commission on this matter on December 9th. The Dolores Water Conservancy District (DWCD) is opposing the Colorado Water Quality Control Division staff's proposal to move two segments of the Lower Dolores River from the Monitoring and Evaluation (M&E) list to the 303 (d) list based upon temperature exceedances. She referred to information in the board packet further detailing DWCD's position. At some point, DWCD may request SWCD's support on this matter. Don Schwindt further explained DWCD's position.

Himes Creek instream flow application, Case No. 19CW3028, Division 7: Boot Jack Ranch filed a Statement of Opposition in case number 19CW3028 regarding the Himes Creek instream flow application to ensure that the terms of their stipulation are adhered to while the CWCB proceeds with this appropriation in water court. In response, DWCD and SWCD have also filed statements of opposition, also to ensure the terms of their respective stipulations are maintained. Doug Stowe moved to ratify SWCD's statement of opposition in case number 19CW3028. Don Schwindt seconded. The motion passed. Frank Kugel added that in a recent meeting with the San Juan National Forest supervisor, Kara Chadwick expressed that US Forest Service (USFS) is unlikely to pursue any additional instream flow filings to address the USFS's reserved rights claims in southwestern Colorado.

October Water Court Resume Review (Divisions 3, 4, 7): Beth and Frank reviewed the October water court resumes and did not recommend any applications for board discussion.

13.0 Adjournment

President Bob Wolff adjourned the meeting at 11:40 a.m.



Bob Wolff, President