

**Southwestern Water Conservation District
Board of Directors Special Meeting via Zoom
March 11, 2021**

Present: JR Ford Rusty Hinger Amy Huff
Monte Naslund Don Schwindt Charlie Smith (after 9:10 a.m.)
Doug Stowe

Absent: Jenny Russell David Guilliams

Staff: Laura Spann, Programs Coordinator

Consultants: Carrie Padgett, Harris Water Engineering
Chris Treese, Independent Consultant
Beth Van Vurst, Van Vurst Law

Guests: Elaine Chick, Water Information Program
Marcel Gaztambide, San Juan Citizens Alliance
Ed Millard, Montezuma County Representative to the Southwest Basin Roundtable

1.0 Call to Order – Roll Call and Verification of Quorum

Vice-President Don Schwindt called the meeting to order at 9:00 a.m. Roll was taken and a quorum established.

2.0 Review and Approve Agenda

(time: 00:01:00)

Rusty Hinger moved to approve the agenda. JR Ford seconded. The motion passed by unanimous consent.

3.0 Questions & Comments from the Audience

(time: 00:01:45)

There were no questions or comments from the audience.

4.0 Executive Session

(time: 00:02:30)

Beth Van Vurst recommended that the board move into executive session for the purpose of discussing agenda item 4.1, the general manager hiring process, including an update on the general manager hiring process and continued deliberations regarding the same. The statutes covering this discussion in executive session are § 24-6-402(3.5), § 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.” Chris Treese was invited to join the executive session as an independent contractor charged with coordinating the general manager hiring process. Monte Naslund moved that the board go into executive session. Rusty Hinger seconded. The motion passed unanimously.

5.0 Summary and Action Items from Executive Session

(time: 00:05:30)

Beth Van Vurst announced that the board was out of executive session at 9:20 a.m. Beth reported that in executive session the board discussed agenda item 4.1, the general manager hiring process, including an update on the general manager hiring process and continued deliberations regarding the same. No action was taken during the executive session.

6.0 Old Business

6.1 State Legislative Update & Position on Bills

(time: 00:07:15)

Chris Treese summarized SB21-164 (Uniform Easement Relocation Act), which was drafted by the Uniform Law Commission to codify case law from recent rulings, most notably the St. Jude’s case. The majority of ditches and

canals in Colorado operate under an easement, and this bill could significantly increase the cost and complexity of ditch and canal ownership. Chris Treese recommended that SWCD oppose this proposed legislation. Monte Naslund moved to oppose SB21-164 (Uniform Easement Relocation Act). Rusty Hinger seconded. The motion passed.

HB21-1105 (Low Income Utility Bill Assistance) would remove “Low-income Energy Assistance Program” (LEAP) funding from the otherwise water-related Tier 2 severance tax fund because the Tier 2 fund is being eliminated. While the bill imposes minimum, mandatory fees on gas and electric bills to fund LEAP, the bill also provides for voluntary, opt-in charges that a water utility may choose to offer its customers to help finance a statewide water utility bill payment assistance program or choose to implement its own program. Noting the voluntary nature of the offering for water utilities, Chris Treese recommended that SWCD support this proposed legislation. Charlie Smith moved to support HB21-1105 (Low Income Utility Bill Assistance). Amy Huff seconded. The motion passed.

Chris Treese reported on additional input from water providers within the District on SB21-034 (Water Resource Financing Enterprise Act), which was gathered as directed by the SWCD board in conjunction with SWCD’s adopting a position of monitor on said bill. Several water providers provided cautionary but open-minded concerns, none of which prompted Chris to recommend a change in the board’s current position of monitor. Several board members also indicated that the bill likely would not generate much more than the costs incurred by small water providers to implement it. There was board consensus to closely monitor this bill and express SWCD’s significant concerns with this bill if it gains traction.

Chris Treese sought board guidance on current interest in amending the statute applying to recreational in-channel diversions (RICD). Early discussions indicate the conservation community is exploring statutory changes allowing existing, natural stream features as qualifying for the physical control structures currently required to both define the upper and lower terminus of an RICD and to “capture and control” the stream along the recreational course. Proponents argue that these statutory changes would significantly lower the cost of RICD construction and allow communities some level of flow protection for river boating activities, which in many areas represents significant economic benefits. However, this bill may effectively allow entities currently eligible to hold RICD water rights to file on and hold de facto instream flow rights, which raises concerns about the scope and advisability of such an expansion. No draft bill has yet been proposed and the concept may not mature for legislative consideration during the 2021 session. There was board direction that Chris continue participation in this legislative discussion, keeping in mind the board’s diverse concerns and interest in further details as to how the proposed statutory change might impact southwestern Colorado.

Beth Van Vurst described HB21-1046 (Water Share Right Mutual Ditch Corporation), which addresses legal and technical nuances of the mutual ditch company statute that has been the subject of recent and pending water court rulings. Beth reviewed the multiple stakeholder meetings that have been held seeking compromise and consensus on this bill. A final draft for determination of a consensus was not available at the time of the meeting. However, the bill as introduced will be completely rewritten and considered in the House Agriculture, Livestock and Water Committee on March 15th. Beth recommended the board continue to monitor this bill and consider a position on the bill, if the bill survives its first hearing, at their March 25th special meeting.

Chris Treese reported that the stay has been lifted on the 2015 Waters of the United States (WOTUS) rule under the Clean Water Act promulgated by the Trump administration. Colorado now has new incentive to consider state legislation authorizing a state program addressing streams no longer “protected” by the federal Clean Water Act; these are predominantly smaller, higher elevation tributaries and intermittent and ephemeral streams.

6.2 2021 SWCD Annual Water Seminar

(time: 01:00:15)

Laura Spann reported that the Colorado River Water Conservation District declined to partner with SWCD this year on SWCD’s annual water seminar; however, the Four Corners Water Center at Fort Lewis College expressed interest in partnering. Laura confirmed board direction to coordinate with Fort Lewis College to prepare a proposal for the format, timing, medium, and topics of a joint summer/fall event to present to the board at an April board meeting.

6.3 Office Update on Various Topics

(time: 01:04:30)

Laura Spann informed the board that she will be taking vacation from March 15th-19th.

Amy Huff volunteered to attend the May and September Water Information Program Steering Committee meetings.

The Board Personnel Committee agreed to convene in conjunction with the March 25th special board meeting to review draft SWCD personnel policies, as requested by Chris Treese.

Laura Spann and JR Ford updated the board on progress in hiring a replacement for Tom Wesche as Biology Committee representative for the San Juan River Basin Recovery Implementation Program Water Development Committee.

7.0 Adjournment

Monte Naslund moved to adjourn the meeting. Rusty Hinger seconded. The motion passed. The meeting adjourned at 10:27 a.m.



Don Schwindt, Vice-President