

**Southwestern Water Conservation District
Board of Directors Regular Meeting via Zoom
April 1-2, 2021**

- Present:** JR Ford (April 1st-2nd) Rusty Hinger (April 1st-2nd)
Amy Huff (April 1st-2nd) Monte Naslund (April 1st-2nd)
Jenny Russell (April 1st-2nd) Don Schwindt (April 1st-2nd)
Charlie Smith (April 1st-2nd) David Guilliams (joined April 1st after 1:00 p.m. - April 2nd)
- Absent:** Doug Stowe (April 1st-2nd)
- Staff:** Laura Spann, Programs Coordinator (April 1st-2nd)
- Consultants:** Jacob Bornstein, Wellstone Collaborative Strategies (April 2nd)
Elaine Chick, Water Information Program (April 1st-April 2nd)
Pete Foster, Wright Water Engineering (April 1st)
Carrie Padgett, Harris Water Engineering (April 1st-April 2nd)
Peggy Montano, Trout Raley (April 1st)
Chris Treese, Consultant (April 1st-2nd)
Beth Van Vurst, Van Vurst Law, General Counsel (April 1st-2nd)
- Guests:** Dave Alexander, Farmers Water Development Company (April 2nd)
Orla Bannan, Western Resources Advocates (April 1st)
Stacy Beaugh, Strategic by Nature (April 1st)
Jimbo Buickerood, San Juan Citizens Alliance (April 1st)
Jeff Derry, Center for Snow & Avalanche Studies (April 1st)
Marcel Gaztambide, San Juan Citizens Alliance (April 1st-April 2nd)
Rob Genualdi, Division 7 Engineer, Colorado Division of Water Resources (April 2nd)
Celene Hawkins, The Nature Conservancy (April 1st)
Kenny Heldman, Farmers Water Development Company (April 1st-April 2nd)
Kris Holstrom, San Miguel County Commissioner (April 2nd)
Bob Hurford, Division 4 Engineer, Colorado Division of Water Resources (April 2nd)
Blake Mamich, Southern Ute Indian Tribe (April 1st-April 2nd)
Seth Mason, Lotic Hydrologic (April 1st)
Ed Millard, Southwest Basins Roundtable (April 1st-April 2nd)
Dean Naslund, Colorado Cooperative Ditch Company (April 2nd)
Amy Ostdiek, Colorado Water Conservation Board (April 2nd)
Mark Ragsdale, Colorado Division of Water Resources (April 2nd)
Adam Reeves, Maynes, Bradford, Shipps, Sheftel (April 2nd)
Ed Tolen, Southwest Basins Roundtable (April 2nd)
Chris Trosper, Farmers Water Development Company (April 2nd)
Ryan Unterreiner, Colorado Parks and Wildlife (April 2nd)

Thursday, April 1, 2021

1.0 Call to Order – Roll Call and Verification of Quorum

President Jenny Russell called the meeting to order at 8:01 a.m. Roll was taken and a quorum established.

2.0 Review and Approve Agenda

(time: 00:00:50)

There was unanimous consent to approve the agenda as noticed.

3.0 Executive Session

(time: 00:01:30)

Beth Van Vurst recommended that the board move into executive session for the purpose of discussing: agenda item 3.1, upcoming diligence for SWCD Water Rights, Case No. 13CW3011; Division 7; agenda item 3.2, San Miguel River basin water supply planning; agenda item 3.3, upcoming diligence for the SWCD and La Plata County "06CW127" water rights, Division 7; and agenda item 3.4, application of the San Luis Valley Water Conservancy District, Case No. 21CW3004, Division 3. 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," 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." Peggy Montano joined the executive session as SWCD's special counsel for agenda item 3.1. Pete Foster and Chris Treese joined the executive session as consultants for SWCD on agenda item 3.2. Monte Naslund moved that the board go into executive session. Rusty Hinger seconded. The motion passed.

Beth Van Vurst stated that no further record of the executive session need be kept based on her opinion that the discussion will constitute privileged, attorney-client communications.

4.0 Summary and Action Items from Executive Session

(time: 00:04:20)

Beth Van Vurst announced that the board was out of executive session at 10:25 a.m. The board took a short break until 10:30 a.m. During the executive session, the board discussed agenda item 3.1, upcoming diligence for SWCD Water Rights, Case No. 13CW3011, Division 7; agenda item 3.2, San Miguel River basin water supply planning; agenda item 3.3, upcoming diligence for the SWCD and La Plata County "06CW127" water rights, Division 7; and agenda item 3.4, application of the San Luis Valley Water Conservancy District, Case No. 21CW3004, Division 3. No action was taken in executive session.

Beth Van Vurst recommended that SWCD file a statement of opposition in Case No. 21CW3004, application of the San Luis Valley Water Conservancy District for appropriative rights of exchange in Division 3. One of the exchanges relies on use of transmountain water derived from the Pine River basin, specifically the Pine River-Weminuche Pass Ditch. She recommended entering the case to ensure that the application does not result in an enlargement of those transmountain water rights or result in injury to Pine River water users. Monte Naslund moved to direct legal counsel to file a statement of opposition on behalf of SWCD in Case No. 21CW3004, application of the San Luis Valley Water Conservancy District, Division 3. Rusty Hinger seconded. The motion passed.

5.0 Approve and/or Remove Consent Agenda Item

(time: 00:07:10)

There was unanimous consent to approve the consent agenda as noticed.

6.0 Consent Agenda

6.1 Approval of Minutes (February 10-11, 2021; February 24, 2021; March 11, 2021)

6.2 Acceptance of Treasurer's Report (February 2021)

Charlie Smith moved to approve the consent agenda as presented. Amy Huff seconded. The motion passed.

7.0 Reports

7.1 Director Reports

(time: 00:07:50)

Charlie Smith (San Juan County) reported that the U.S. Environmental Protection Agency has released their five-year plan for work within the Bonita Peak Mining District Superfund Site, most of which is focused on additional data gathering.

Monte Naslund (Montrose County) reported that it's dry in the lower San Miguel Basin. The Colorado Cooperative Ditch Company conducted a domestic water run during which the ditch broke twice.

JR Ford (Archuleta County) reported that Wolf Creek is reporting 100% of average snowpack. The San Juan Water Conservancy District is currently considering whether to abandon their West Fork conditional water rights or file their application for due diligence by the summer deadline. SWCD previously transferred those water rights to the District and has been tracking the conversation.

Amy Huff (La Plata County) reported that Lake Nighthorse opens for recreation on April 2nd. Vallecito and Lemon reservoirs may not fill this year. The Southern Ute Indian Tribe may start taking water on April 25th.

Don Schwindt (Montezuma County) reported that the Dolores and McElmo basins are focused on water supply concerns for this irrigation season, having already started the water year with low reservoir elevation. Recent forecasts indicated a potential for no water supply available from McPhee reservoir for full-service irrigators.

Rusty Hinger (Mineral County) reported that Mineral County is quiet, muddy, and still covered in snow. He also is tracking the San Juan Water Conservancy District's discussion regarding their West Fork conditional water rights.

Jenny Russell (San Miguel County) reported that Telluride Ski Area closes for the season on April 4th. Farmers Water Development Company has applied for SWCD emergency grant funding to support the embankment slip repair for Gurley Reservoir that triggered a storage restriction in 2020 and 2021.

7.2 Board Committee Reports

(time: 00:13:35)

The Board Personnel Committee met as part of the March 24th special board meeting and draft personnel policies are being developed for board consideration at an upcoming meeting.

7.3 Staff Report

Chris Treese reported on area snowpack, reservoir and streamflow conditions. It is likely that Lake Mead and Lake Powell may soon reach elevation levels that trigger deep cuts in water deliveries for the Lower Basin states per the drought contingency plan. A recent study projects that in the next 50 years, Lower Basin states may need to cut deliveries by 40%, and the Upper Basin states' desire to continue development may be unrealistic or significantly exacerbate water supply concerns on the Colorado River.

There was board consensus to schedule two special board meetings on May 6th (12:00 p.m.) and May 20th (9:00 a.m.) to discuss state legislative updates and position on bills. Laura Spann updated the board on the potential transfer of fiscal management and contracting for the Water Development Committee, potentially holding the June board meeting in person, and the proposed joint, virtual educational event with SWCD and Fort Lewis College.

7.4 Water Information Program Report

(time: 00:21:00)

Elaine Chick reported on the region-wide Water Cycle Drawing Contest for fifth graders, the second sold-out Water Law in a Nutshell course held in March, and an upcoming realtor-focused water law course in June.

As Public Education, Participation and Outreach Liaison for the Southwest Basins Roundtable, Elaine is preparing a Roundtable "Handbook" and has submitted WSRF grant application to support the creation of an independent Roundtable website.

7.5 Engineering Report

7.5.1 Upper Colorado & San Juan River Basin Recovery Implementation Programs

(time: 00:24:00)

Carrie Padgett reported that she and Laura presented to U.S. Representative Lauren Boebert on the San Juan River Basin Recovery Program and other SWCD priorities with a federal nexus. Recovery Program representatives of the four upper basin states have been developing a proposal for post-2023 funding and organization of the Upper Colorado and San Juan recovery programs. Tom Pitts anticipates that the states' proposal will become the vehicle by which all participants in the programs, including states, tribes, federal agencies, power customers, environmentalists and water users, will reach a consensus on the post-2023 recommendations that will be

submitted to the Secretary of the Interior, and then to Congress by the Secretary, no later than September 30, 2022.

7.6 General Counsel Legal Report

7.6.1 February Water Court Resume Review (Divisions 3, 4, 7)

(time: 00:26:00)

Beth Van Vurst reported that there are no other applications in the December Water Court resume for Divisions 4 and 7 warrant further discussion or consideration by the board. Earlier in the meeting, the board authorized general counsel to file a statement of opposition in case number 21CW3004, an application by the San Luis Valley Water Conservancy District for appropriate rights of exchange in Water Division 3.

7.6.2 Proposed 2021 Instream Flow Appropriation on Rincon La Vaca Creek, Division 7 – Request to Ratify Filing of Notice to Contest

(time: 00:26:30)

Beth Van Vurst described the Colorado Water Conservation Board's proposed instream flow appropriation on Rincon La Vaca Creek in Division 7. SWCD has questions and concerns about how Colorado Parks and Wildlife's (CPW) proposed bypass will be used to support this proposed instream flow appropriation and whether it will enlarge the use of CPW's transmountain water rights and potentially cause injury to Pine River basin water users. Beth will be meeting with CPW and CWCB to learn more. Monte Naslund moved to ratify filing a Notice to Contest the proposed 2021 instream flow appropriation on Rincon La Vaca Creek in Division 7. Rusty Hinger seconded. The motion passed.

8.0 New Business

8.2 2020-21 Update from Center for Snow & Avalanche Studies

(time: 00:32:00)

Jeff Derry summarized recent monitoring and data collection by the Center for Snow & Avalanche Studies and how local water managers utilize that information for real time decision making. He also presented recent activities of the Colorado Dust on Snow program. He relayed the various tools from the Center available to stakeholders and water managers.

8.1 Presentation: Adopted San Miguel Watershed Needs Assessment

(time: 00:56:15)

Celene Hawkins, Kenny Heldman, Seth Mason and Stacy Beough provided background on the San Miguel Stakeholders Group and its membership, along with the development and adoption of the San Miguel watershed needs assessment. This effort was sparked by the Southwest Basin Roundtable and the State during development of the Colorado Water Plan, which wanted to close gaps in data regarding local environmental and recreational needs.

The San Miguel Stakeholders Group (Group) had regular participation from 20-30 members at its meetings that focused on objectives of the needs assessment, identification of high value recreational and environmental attributes, and linkages with streamflow and these attributes. The next step for the Group will be to identify collaborative projects that will address the needs outlined in the assessment.

The board took a short recess for lunch until 12:45 p.m.

9.0 Executive Session

(time: 01:16:45)

Beth Van Vurst recommended that the board move into executive session for the purpose of discussing agenda item 9.1, the general manager hiring process, including conducting interviews and deliberations regarding candidates for the general manager position. 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 Treeese joined the executive session as an independent contractor charged with coordinating the general manager hiring process. Amy Huff moved that the board go into executive session. Monte Naslund seconded. The motion passed.

10.0 Summary and Action Items from Executive Session

(time: 01:18:00)

Beth Van Vurst announced that the board was out of executive session at 4:04 p.m. During executive session, the board discussed agenda item 9.1, the general manager hiring process, including conducting interviews and deliberations regarding candidates for the general manager position. No action was taken during the executive session.

The board took a recess on Thursday, April 1st at 4:04 p.m. until Friday, April 2nd at 8:00 a.m.

Friday, April 2, 2021

11.0 Call to Order – Roll Call and Verification of Quorum

(time: 01:19:15)

President Jenny Russell reconvened the meeting at 8:01 a.m. Roll was taken and a quorum established.

12.0 Review and Approve Agenda

(time: 01:20:00)

There was unanimous consent to approve the agenda as noticed.

13.0 Executive Session

(time: 01:20:15)

Beth Van Vurst recommended that the board move into executive session for the purpose of discussing agenda item 13.1, the general manager hiring process, including continued deliberations regarding candidates for the general manager position. 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 joined 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.

14.0 Summary and Action Items from Executive Session

(time: 01:21:45)

Beth Van Vurst announced that the board was out of executive session at 8:38 a.m. During executive session, the board discussed agenda item 13.1, the general manager hiring process, including continued deliberations regarding candidates for the general manager position. No action was taken during the executive session.

15.0 Questions & Comments from Public

(time: 01:22:00)

Ryan Unterreiner, Colorado Parks & Wildlife, offered to be a resource for the SWCD board on proposed instream flow appropriations within the District.

16.0 Old Business

16.1 Colorado River Matters

16.1.1 Update on CWCB’s continued exploration of demand management feasibility

(time: 01:23:20)

Amy Ostdiek, CWCB, summarized the Colorado River drought contingency plan, the resulting process led by the CWCB to initiate the demand management feasibility investigation, and the CWCB’s newly adopted framework matrix, which is designed to show a broad range of demand management implementation options. As part of the current workplan, the CWCB will be pursuing pilot opportunities for “on-the-ground” learning regarding demand management-related issues. The CWCB’s demand management feasibility investigation is framed around whether the program is achievable, worthwhile, and advisable. The framework matrix describes options to address threshold issues and the tradeoffs and equity considerations for each of those options. Amy directed the board to engagecwcb.org for more information.

16.2 Hydrologic Conditions (Updates from Division 4 and 7 Engineers)

(time: 01:43:30)

Bob Hurford, Division 4 Engineer, and Rob Genualdi, Division 7 Engineer, summarized dismal area snowpack and streamflow conditions as well as water administration across southwestern Colorado. They described the storage

restriction on Gurley reservoir, the spring release from Lake Nighthorse to New Mexico entities, and the Long Hollow recharge pits recently built by the La Plata Water Conservancy District.

16.3 Colorado River Matters (continued)

16.3.1 Discussion of guiding principles for SWCD's exploration and consideration of demand management

(time: 02:08:00)

Chris Treese read and summarized the proposed SWCD "guiding principles" regarding demand management and for engaging with CWCB's exploration of demand management feasibility. There was board consensus that this was the right initial approach to developing and presenting SWCD's positions on the concept of demand management. There was significant board discussion and input on this document, including strengthening language against disproportionate impacts of demand management and new transmountain diversions and revising the language regarding pilot demand management projects. There was public comment that SWCD consider addressing the role of the IBCC in the demand management conversation and whether demand management complies with Article 3a of the Colorado River Compact. There was board consensus to finalize the SWCD "guiding principles" for demand management at the June board meeting.

The board took a short recess until 10:15 a.m.

16.5 State Legislative Update

(time: 02:48:30)

Chris Treese described HB21-1226 (More Robust Check Station Aquatic Nuisance Species), which would add authorities and requirements to Colorado's current aquatic nuisance species (ANS) control program. Specifically, HB21-1226 makes it illegal for anyone to fail to stop at an ANS inspection station. It also directs Colorado Parks and Wildlife to investigate and report to the General Assembly what other states are doing to control or prevent ANS spread or infections. Colorado's first highway inspection station is expected to be along US Highway 160 near the Four Corners, targeting trailers from Lake Powell and protecting McPhee and other southwest Colorado reservoirs. Charlie Smith moved that SWCD support HB21-1226. JR Ford seconded. The motion passed.

With the current implementation of the narrower definition of the "Waters of the United States" under the Clean Water Act, the Colorado Department of Public Health and Environment (CDPHE) has identified "gap waters" that no longer fall under federal jurisdiction. CDPHE is recommending legislation to allow their agency to create a new program to issue permits for dredge and fill activities (§ 404) in these gap waters. A stakeholder process is underway to evaluate this legislative concept.

Treese reported that HB21-1046 (Water Share Right Mutual Ditch Corporation), as amended, passed the House with no opposition.

16.6 Federal Legislative Update

(time: 02:55:30)

Christine Arbogast was not able to attend in person, and the board was directed to her written report in the board packet. Western water and rural water received a specific mention in the "Build Back Better" outline for S.803, President Biden's proposed infrastructure bill. Chris Treese offered to follow up with Christine regarding ways for SWCD to support federal investments in aging water infrastructure in the West.

16.4 SWCD Strategic Planning Update

(time: 03:00:20)

Jacob Bornstein, Wellstone Collaborative Strategies, summarized the results of his needs-based interviews with board members, staff, consultants and key stakeholders to inform the strategic planning work of the District. Several themes emerged regarding expectations for the strategic plan: unity, balance, leadership, Colorado River issues, climate change, and drought. He summarized interview themes around potential SWCD values, in-basin needs and the roles for SWCD to meet those needs, Big River needs and roles for SWCD to meet those needs, SWCD programs successes and opportunities for improvement, and internal operational needs and opportunities. There was public comment that it would be important to avoid endangered species listings and, as part of SWCD's strategic plan, to review the state's action plan to ensure at-risk fish populations are supported. There was board

consensus that the full board meet as soon as possible to further develop the plan, address areas of disagreement, and prioritize aspects of the draft strategic plan.

16.7 Southwest Basins Roundtable Update

(time: 03:31:15)

Ed Tolen, Southwest Basins Roundtable Chair, reported on recent Roundtable activities including updating the Basin Implementation Plan, CWCB’s request that all Roundtables adopt their Code of Conduct, adjustments to Water Supply Reserve Fund criteria and application review process in the context of state budget limitations, recent discussion about the IBCC’s role in negotiating proportionality among the basins statewide in any proposed demand management program, and discussions of forest health at the local Roundtable and IBCC level.

16.8 Anti-Speculation Committee Update

(time: 03:35:00)

Adam Reeves (Maynes, Bradford, Shippis, Sheftel) reported on the Anti-Speculation Law Workgroup formed by the state legislature to develop recommendations for strengthening anti-speculation laws in Colorado to guard against investors “flipping water for profit.” Adam listed the workgroup’s suggested disincentives to dissuade investors from engaging in these practices while still allowing for reasonable investments and flexibility in agricultural water use. A final report will be provided to the legislature by August 2021. There was board discussion regarding the context-specific nature of anti-speculation efforts and their impacts.

17.0 New Business (continued)

17.1 2020 Emergency Grant Requests to SWCD

17.1.1 Colorado Cooperative Ditch Company – Cottonwood Syphon Repair

(time: 03:52:35)

Laura Spann summarized Colorado Cooperative Ditch Company’s request for \$30,000 to support emergency repairs to the Cottonwood Syphon. The total project is estimated at \$68,407.02. Temporary repairs were completed in March to allow for water use during the 2021 irrigation season; however, materials will need to be on site should the temporary repair break during the season. Permanent repairs will be completed by winter 2021 at the latest. Dean Naslund answered board questions.

The board took a short recess until 11:45 a.m.

17.1.2 Farmers Water Development Company – Gurley Dam Embankment Slip Repair

(time: 04:05:40)

Dave Alexander, Chris Trospen, and Kenny Heldman presented Farmers Water Development Company’s request for \$32,000 to support the Gurley Dam Embankment Slip Repair. Gurley Reservoir is under a storage restriction until the repair can be completed. The total estimated project cost is \$379,494.04 and the applicant’s match is \$100,599.45. The Company is seeking other grant funding from the U.S. Department of Agriculture and San Miguel County. The Company is awaiting approval of their Engineered Repair Plan by the State of Colorado.

Laura Spann and Chris Treese recommended approval in the slightly reduced amount of \$27,642 for each grant request because both are true emergencies and maintain pre-compact water rights. These combined amounts would keep approved 2021 grant requests within the total budgeted amount of \$230,000.

JR Ford moved to approve the emergency grant request from the Colorado Cooperative Ditch Company to support the Cottonwood Syphon emergency repairs in the reduced amount of \$27,642. Don Schwindt seconded. Monte Naslund recused himself as shareholder in the Colorado Cooperative Ditch Company. The motion passed.

Monte Naslund moved to approve the emergency grant request from the Farmers Water Development Company to support the Gurley Dam Embankment Slip Reconstruction in the reduced amount of \$27,642 contingent upon approval of the Engineered Repair Plan from the State of Colorado. Rusty Hinger seconded. The motion passed.

18.0 Executive Session (if needed)

There was no need for this executive session.

19.0 Adjournment

President Jenny Russell adjourned the meeting at 12:02 p.m.



Jenny Russell, President