

**Southwestern Water Conservation District
Board of Directors Regular Meeting via Zoom
October 4-5, 2021**

Present: Dagan Chadd (October 5th) JR Ford (October 4th-5th)
Rusty Hinger (October 4th-5th) Amy Huff (October 4th-5th)
Jenny Russell (October 4th-5th) Don Schwindt (October 4th-5th)
Charlie Smith (October 4th-5th)

Absent: David Guilliams (October 4th-5th) Monte Naslund (October 4th-5th)

Staff: Laura Spann, Programs Coordinator (October 4th-5th)
Steve Wolff, General Manager (October 4th-5th)

Consultants: Christine Arbogast, Kogovsek & Associates (October 4th)
Peter Butler, Independent Consultant (October 4th)
Elaine Chick, Water Information Program (October 4th)
Pete Foster, Wright Water Engineers (October 5th)
Carrie Padgett, Harris Water Engineering (October 4th)
Beth Van Vurst, Van Vurst Law, General Counsel (October 4th-5th)
Tyson Williams, Wright Water Engineers (October 5th)

Guests: Orla Bannan, Western Resources Advocates (October 4th)
Jackie Brown, Tri-State Generation & Transmission Association (October 4th)
Keith Caddy, Montrose County Commissioner (October 4th)
Allie Cunningham, Science on the Fly (October 4th)
Andrew Edstrom, Public (October 4th)
Marcel Gaztambide, San Juan Citizens Alliance (October 4th)
Terri House, Pagosa Springs Sun (October 4th)
Gigi Richard, Four Corners Water Center at Fort Lewis College (October 4th)
Jonathan Romeo, Durango Telegraph (October 4th)
Scott Shine, City of Durango (October 4th)
Chuck Wanner, Public (October 4th)

Monday, October 4, 2021

1.0 Call to Order – Roll Call and Verification of Quorum

President Jenny Russell called the meeting to order at 8:31 a.m. Roll was taken and a quorum established.

2.0 Review and Approve Agenda

(time: 00:01:00)

There was unanimous consent to approve the agenda as noticed.

3.0 Approve and/or Remove Consent Agenda Item

(time: 00:01:15)

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

4.0 Consent Agenda

(time: 00:01:30)

4.1 Approval of Minutes (August 11, 2021; September 8, 2021; September 13, 2021)

4.2 Acceptance of Treasurer's Report (August 2021)

Rusty Hinger moved to approve the consent agenda as presented. Amy Huff seconded. The motion passed.

5.0 Questions & Comments from Public

There were no questions or comments from the public.

6.0 Reports

6.1 Director Reports

(time: 00:02:30)

Amy Huff (La Plata County) reported that La Plata County recently promoted the Animas Service Area conditional water right in their seasonal magazine. The Durango Herald also published an article on the proposed legislative change to allow recreational in-channel diversions to be filed without the construction of instream structures. La Plata County's manager met with SWCD to discuss potential uses for the American Rescue Plan Act funding, including on legacy water projects.

JR Ford (Archuleta County) reported that recent rains have made people hopeful. Several proposed San Juan River restoration projects are currently being discussed with Archuleta County and the Town of Pagosa Springs.

Don Schwindt (Montezuma County) reported on the drought challenges facing water users in the Dolores and McElmo basins over summer 2021 and expressed hope for collaboration in addressing aridification while ensuring agriculture continues to be productive.

Jenny Russell (San Miguel County) reported that she and Steve presented to the San Miguel County Commissioners and Steve participated in a San Miguel River basin tour. Jenny has never seen the San Miguel and Dolores rivers this low for this extended period of time.

6.2 Water Information Program Report

(time: 00:13:20)

Elaine Chick reported that the Water Information Program (WIP) held four sold-out virtual "Water Law in a Nutshell" courses in 2021, with one more planned before yearend. The redesigned and updated WIP brochure is available at the office. Elaine continues to evaluate the possibility of holding an in-person Annual Children's Water Festival in 2022 or alternative events to engage fifth graders across the District. She just graduated from Water Education Colorado's Water Fluency course and thanked the WIP Steering Committee for supporting her participation. The Forest to Faucets Teacher Training Program had to be cancelled due to insufficient registrations. Elaine will be presenting at an upcoming Fozzie's Farm event on leadership and water supply uncertainty. In her role as Public Education, Outreach & Participation (PEPO) liaison and funded by a Water Supply Reserve Fund (WSRF) grant, Elaine will be leading the creation of a standalone Southwest Basins Roundtable website in 2022.

6.3 Southwest Basins Roundtable Report

(time: 00:19:40)

Laura Spann directed the board to the written Roundtable update in their packet. The next Roundtable meeting will be held via Zoom on October 28th, with WSRF grant applications due on October 15th. The Basin Implementation Plan is currently being updated, with the public comment period opening October 13th. The Interbasin Compact Committee meeting will be held on October 21st via Zoom.

6.4 Colorado River Basin Hydrologic Conditions

(time: 00:22:30)

Steve Wolff summarized local and Colorado River basin hydrologic conditions. Generally, stream flows within the District are below 50% of mean. Monsoon rains may increase soil moisture and improve runoff in spring 2022. He directed the board to press releases from the U.S. Bureau of Reclamation and Becky Mitchell, Colorado Commissioner to the Upper Colorado River Commission, regarding the concern that Lake Powell will drop below 3,525 feet in elevation in early 2022. Without good snowpack, Lake Powell's elevation could fall below 3,490 feet in 2023, which would result in the loss of power generation and could risk the Upper Basin's ability to make delivery obligations under the Colorado River Compact.

7.0 General Manager's Report

7.1 Virtual Meeting Protocols

(time: 00:29:45)

The board will be provided a virtual meeting protocol in December that addresses how the District will respond to a "Zoom bombing" should one occur during a board meeting."

7.2 Proposed 2022 SWCD Employee Health Plans

(time: 00:33:15)

Laura Spann outlined the current Colorado Employer Benefit Trust health plans offered to employees. SWCD employees will absorb the two percent increase in premiums for 2022 and do not propose adjusting the employee health benefits structure or plans offered. There was board consensus to continue offering SWCD's 2021 employee health plan options through Colorado Employer Benefit Trust within the current health benefit structure through 2022.

7.3 Proposed 2022 SWCD Meeting & Holiday Schedule

(time: 00:36:15)

Laura Spann summarized the proposed 2022 SWCD board meeting and office holiday schedule. The board discussed several potential changes to the schedule, which will be presented to the board again in December.

7.4 Proposals for Professional Auditing Services

(time: 00:41:30)

Laura Spann reported that SWCD published a Request for Proposals for professional financial auditing services and five submissions were received by the September 20th deadline. Staff recommended that the board select Fredrick Zink and Associates. Fredrick Zink and Associates currently provides limited bookkeeping review and answers accounting-related questions for SWCD, but this was not viewed as a conflict by SWCD staff or the accounting firm. Charlie Smith moved to accept the proposal from Fredrick Zink and Associates for professional financial audits for the term 2021-2026. JR Ford seconded. The motion passed.

7.5 Proposed Scope of Work with Hydros Consulting for Downscaling of Phase III Risk Study Modeling within southwest Colorado

(time: 00:47:27)

Steve Wolff summarized the proposed scope of work from Hydros Consulting to analyze how interstate regulation may impact water users within the District, building upon results from Phase III of the Colorado River Risk Study. The analysis will be completed on a sub-basin level. Once this first phase is completed, District staff will meet with local water users to discuss the results. Once this initial modeling is completed, SWCD may evaluate additional scenarios with more detail. Don Schwindt moved to approve the proposed Scope of Work with Hydros Consulting for downscaling of the Phase III risk study modeling up to \$18,000 and utilization of \$12,000 from local partners already contributed to SWCD. JR Ford seconded. The motion passed.

7.6 SWCD Letter of Support for Colorado Aerial Snow Observatory's Request for CWCB Funding

(time: 01:10:40)

There was board consensus to support Steve's recommendation that SWCD write a letter to the CWCB in support of fiscal year 2023 funding for aerial snow monitoring flights in winter 2022-23 through the Colorado Aerial Snow Observatory program, some of which may be conducted in southwest Colorado and yield promising data for forecasting and local water management.

7.7 SB20-048 Anti-Speculation Workgroup Report

(time: 01:11:50)

In Senate Bill 2020-048, the Colorado General Assembly directed the convening of a work group to explore ways to strengthen current water anti-speculation law, which would be summarized in a report to the Interim Water Resources Review Committee. Members of the workgroup included Peggy Montano and Adam Reeves. The completed report outlines eight concepts to reduce investment water speculation; however, the work group did not arrive at a consensus nor recommend any of the concepts for implementation. A copy of the report was provided to the SWCD board. The Interim Water Resources Committee has discussed further addressing speculative water investment through proposed state legislation. SWCD board members provided additional observations.

7.8 SWCD's Strategic Plan Discussion

Steve Wolff directed the board to an outline of the draft SWCD strategic plan priorities. Jacob Bornstein, Wellstone Collaborative Strategies, and Steve will email a narrative draft SWCD strategic plan for review in the coming days. There was board consensus to review a sixth priority addressing public outreach and engagement. There was board consensus to hold a special SWCD board meeting on Wednesday, November 10th from 9am-12pm to discuss the draft SWCD strategic plan.

7.9 General Manager Activities Report

(time: 01:26:15)

Steve Wolff directed board members to the written board report summarizing his activities and meetings since the last update. Don Schwindt commented on the success of the Colorado Water Congress summer conference in addressing pandemic-related restrictions and tensions. Laura Spann also thanked Fort Lewis College for collaborating on the Water Connections event and noted the opportunity to showcase southwest Colorado at the President's Reception.

The board recessed for a short break.

8.0 Old Business

8.2 Proposed Consulting Services Contract for State Legislative Representation and Lobbying

(time: 01:34:20)

Chris Treese was hired to help SWCD hire a person/firm for state legislative representation. After some initial work by Chris, Chris and Steve Wolff interviewed three candidates in late August. Each of those three were then asked to submit written responses to an RFP prepared by Chris. The proposals were then reviewed and discussed by District staff, legal counsel and Chris Treese. The team recommended that the SWCD board engage Garin Vorthmann with Colorado Legislative Strategies to represent SWCD in state legislative affairs. Amy Huff moved to direct the general manager to execute a contract with Colorado Legislative Strategies' state lobbyist Garin Vorthmann for state legislative representation and lobbying. Don Schwindt seconded. The motion passed.

8.3 Congressional Redistricting

(time: 01:39:40)

Steve Wolff reported that the Colorado Independent Congressional Redistricting Commission released the final draft Congressional redistricting map on September 28th. The Third Congressional District currently encompasses the entire SWCD and most of the Western Slope. The State legislative redistricting map is still under development.

8.4 Water Quality Updates

(time: 01:41:00)

Peter Butler updated the board on the Southern Ute Indian Tribe's proposed water quality standards, on which SWCD submitted a comment letter. The Tribe will host a public hearing on October 7th, with the public comment period ending October 22nd. Charlie Smith brought forward the proposed standards to San Juan County. It has also been discussed with La Plata County and the Bonita Peak Community Advisory Group. Amy has heard from several ditch companies whose deliveries cross the checkerboard reservation and may be impacted by the water quality standards.

The Bonita Peak Community Advisory Group is developing a proposal to establish aquatic habitat and other water quality standards for a reach of Mineral Creek with significant water quality improvements resulting from several upstream remediation projects conducted by the Animas River Stakeholders Group. Several of those remediation efforts were supported by SWCD.

Peter updated the board on the Outstanding Waters designations proposed for southwestern Colorado. Marcel Gaztambide, San Juan Citizens Alliance, relayed stakeholder conversations about potential Outstanding Waters designations in Quartz Creek and Lower Cascade Creek.

8.1 Federal Affairs Update

(time: 02:13:30)

Christine Arbogast, Kogovsek & Associates, reported that the major federal legislative package includes specific focus areas on U.S. Bureau of Reclamation efforts in the West (\$8.3 billion), approximately \$40 billion in forest

health and wildfire, and other water project funding. U.S. Senator Bennet has introduced the Aquatic Nuisance Species (ANS) Act to direct Reclamation to more directly control the spread of invasive ANS. U.S. Senator Hickenlooper is planning to lead the introduction of the Upper Colorado and San Juan Recovery Program bill. Camile Touton's nomination hearing for Reclamation Commissioner was last week, but she has not yet been confirmed. The U.S. Senate Energy and Natural Resources Committee's Subcommittee on Water & Power will hold a hearing on "Examining the Status and Management of Drought Conditions in the Western United States."

8.5 Proposed Legislation to Establish Dolores River National Conservation Area (time: 02:24:50)

The discussion on this agenda item was initiated at this time but was completed after a lunch break. The summary is shown below.

9.0 New Business

9.1 Tri-State Generation & Transmission Association's San Miguel River Enhancement Program & Case No. 21CW3039 (time: 02:43:20)

Jackie Brown described Tri-State Generation and Transmission Association's "San Miguel River Enhancement Program," through which Tri-State plans to blend Nucla Station and Dakota Spring water at the station site before release to the San Miguel River by piping the water to seepage resistant ponds on the Nucla Station property. The Dakota Spring's water quality is currently impacted by mining and natural seepage from existing coal seams. This dilution would allow for temperature moderation and chemistry balance before the blended water is released to the San Miguel River. The associated water court application purports to change their Nucla Station water rights from power plant cooling and industrial uses to an industrial/environmental uses. Jackie solicited community feedback on the Enhancement Program and related concerns.

9.2 Science on the Fly – Water Quality Sampling Sites in Southwest Colorado (time: 03:05:00)

Allie Cunningham summarized the volunteer water quality sampling effort organized by Science on the Fly (SoF), which partners with the local fly-fishing communities to increase the number of rivers subject to long-term studies of water quality and watershed health. The group focuses on the presence of nitrates and organic compounds, including nitrate, phosphate, silica, ammonium, dissolved organic carbon, total dissolved nitrogen, and water temperature. She solicited additional sampling locations as well as suggestions for volunteer coordination in southwest Colorado. Data collected by SoF can be found [here](#).

The board recessed for lunch.

8.5 Proposed Legislation to Establish Dolores River National Conservation Area (time: 03:36:30)

Beth outlined several suggested comments and proposed revisions to the draft legislation. General topics included the suggestion that the makeup of the Advisory Council comprise representation from both within and above the boundaries of the Dolores River National Conservation Area (NCA), that accommodations be made for the installation and maintenance of climatological or hydrologic data collection within the NCA, that the Secretary be required to consult with the Dolores River Native Fish Monitoring and Recommendation Team and other stakeholders, and request explanation on several terms used in the draft bill related to water use. Board members also suggested that there be an opportunity for affected counties outside the NCA boundaries be given a voice in its management. Steve Wolff and Beth Van Vurst recommended that SWCD prepare and submit a comment letter to U.S. Senator Michael Bennet on the proposed federal legislation to establish the Dolores River National Conservation Area by the October 28th deadline.

10.0 New Business (continued)

10.3 Review of SWCD's Draft FY2022 Budget, Draft Budget Message, and Related Topics (time: 03:45:30)

Steve Wolff walked through updates to the draft FY2022 budget since the September 8th budget workshop. A few changes were proposed to the draft budget during the meeting. By October 15th, a notice will be published in several local newspapers announcing the public hearing on Wednesday, December 8th at 1:00 p.m and the draft budget's availability for inspection at the office. The draft 2022 budget and the related draft budget message will also be posted on SWCD's website.

Steve also directed the board to a memo by Chris Treese outlining the potential negative revenue impacts to SWCD of Proposition 120, which will be on the November ballot for voter consideration.

10.4 2022 Proposed Scope of Work for Water Info Program Independent Contractor *(time: 04:02:30)*

Steve Wolff summarized the proposed scope of work for WIP coordination by Elaine Chick Consulting. Steve noted Elaine's recommendation to remove from the scope of work Elaine's duties as PEPO Liaison for the Southwest Basin Roundtable as she contracts directly with the CWCB for compensation for that work. Steve proposed the reduction in Elaine's newsletter task to providing updates to a new "SWCD-WIP newsletter" that would be primarily produced by SWCD staff. In exchange for this reduction in tasks, Elaine would assist with coordination of the SWCD Annual Water Seminar. There were concerns raised that this change in tasks would need to be evaluated in light of Elaine's independent contractor status. There was board consensus to consider the potential rearrangement of newsletter and seminar duties and make a final decision at the December board meeting.

11.0 Engineering Report

11.1 Upper Colorado & San Juan River Basin Recovery Implementation Programs *(time: 04:20:45)*

Carrie Padgett reported that Navajo Reservoir has decreased releases due to the recent monsoon precipitation. Reclamation will release a total of 20,000 acre-feet in November and December from Navajo Reservoir as part of the Colorado River Drought Response Operations Agreement. Tom Chart is the Water Development Committee's new Biology Committee Representative. The National Park Service has requested to join the San Juan River Recovery Program's Coordination and Biology Committees and plans to provide financial and in-kind support for the program. The Recovery Programs expire in 2023, so the states have proposed a plan to Reclamation and are awaiting their input. SWCD sent a letter supporting the proposed downlisting of the razorback sucker.

11.2 Animas Watershed Partnership – Proposed Animas River Stream Management Plan *(time: 04:26:30)*

Carrie Padgett added that the Animas Watershed Partnership will be leading the effort to develop an Animas River stream management plan on behalf of interested stakeholders in the basin.

12.0 General Counsel Legal Report

12.1 Proposed Second Amendment to IGA with La Plata County for the Animas Service Area

Conditional Water Right

(time: 04:31:30)

Beth Van Vurst summarized the proposed second amendment to the intergovernmental agreement with La Plata County, which would authorize SWCD and La Plata County to split attorney and engineering fees associated with the upcoming due diligence application for the jointly owned Animas Service Area conditional water right and outlines the process for payment of those fees. Amy Huff moved to approve the proposed second amendment to the Intergovernmental Agreement with La Plata County for the jointly owned Animas Service Area conditional water right. Charlie Smith seconded. The motion passed.

12.2 Proposed Tax Increment Financing Agreement for Durango's Midtown Urban Renewal Authority

(time: 04:35:30)

Beth Van Vurst summarized the provisions of proposed tax increment financing agreement for Durango's Midtown Urban Renewal Authority (URA), including that SWCD will be reimbursed for all SWCD property tax revenues diverted to the authority. Scott Shine, City of Durango, said that the URA will reimburse property tax revenue given that its mission and that of SWCD do not align. In the future, Durango may pursue other URAs and ask SWCD to contribute some revenues to support the development of workforce housing or other projects of community-wide benefit. Amy Huff moved to approve the proposed tax increment financing agreement with Durango's Midtown Urban Renewal Authority. Charlie Smith seconded. The motion passed.

12.3 Guideline 2021-1 – State Engineer’s Procedure to Confirm the Extent of Claimed Unadjudicated Uses or Exchanges of Water Being Made on the Date of Appropriation of an Instream Flow Water Right (time: 04:43:00)

Beth Van Vurst updated the board on the procedure released by the Colorado Division of Water Resources in mid-September to confirm beneficial uses or exchanges of water in existence on the date of the appropriation of an instream flow (ISF) water right and allow those practices to continue without being curtailed if the CWCB places a call for an ISF right. A water user may utilize this procedure or pursue confirmation of their pre-existing use or exchange in water court as well. Currently there are no additional fees for this procedure. Beth answered several board questions.

12.4 August Water Court Resume Review (Divisions 3, 4, 7)

12.4.1 Case No. 21CW3034 & 21CW3039 Tri-State Generation & Transmission Association

(time: 04:56:00)

Beth Van Vurst reported that one application in the August Water Court resume for Division 4, Case No. 21CW3039, that warranted further discussion or consideration by the board. Charlie Smith moved to file a statement of opposition in Case No. 21CW3039, Tri-State Generation and Transmission Association. JR Ford seconded. The motion passed.

The board recessed until 8:30 a.m. on Tuesday, October 5, 2021.

Tuesday, October 5, 2021

13.0 Call to Order – Roll Call and Verification of Quorum

(time: 05:01:05)

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

14.0 Review and Approve Agenda

(time: 05:01:50)

There was unanimous consent to approve the agenda as noticed.

15.0 Executive Session

(time: 05:02:00)

Beth Van Vurst recommended that the board move into executive session for the purpose of discussing agenda item 15.1, Montezuma Valley Irrigation Company, Case No. 18CW3052 in Water Division 7; agenda item 15.2, San Miguel River Basin Water Supply Planning; agenda item 15.3, use of transmountain water rights originating within the District; and agenda item 15.4, Colorado River Compact, interstate and intrastate negotiation matters, including re-negotiation of the interim guidelines. 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.” Rusty Hinger moved that the board go into executive session. Amy Huff seconded. The motion passed.

As a Montezuma Valley Irrigation Company shareholder, Don Schwindt recused himself from discussion of agenda item 15.1. Jenny Russell recused herself from a portion of discussion of agenda item 15.2. Pete Foster and Tyson Williams, Wright Water Engineers, joined the executive session for discussion of agenda items 15.1 and 15.2 as engineering consultants for SWCD.

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.

15.0 Summary and Action Items from Executive Session


(time: 05:04:20)

Beth Van Vurst announced that the board was out of executive session at 11:17 a.m. During the executive session, the board discussed agenda item 15.1, Montezuma Valley Irrigation Company, Case No. 18CW3052 in Water Division 7; agenda item 15.2, San Miguel River Basin Water Supply Planning; agenda item 15.3, use of transmountain water rights originating within the District; and agenda item 15.4, Colorado River Compact,

interstate and intrastate negotiation matters, including re-negotiation of the interim guidelines. No action was taken during executive session.

16.0 Adjournment

President Jenny Russell adjourned the meeting at 11:18 a.m.



Jenny Russell, President