

**Southwestern Water Conservation District  
Board of Directors Regular Board Meeting  
SWCD Office, 841 E 2<sup>nd</sup> Avenue  
Durango, Colorado  
February 14-15, 2024**

**Present:** Dagan Chadd                      Amy Huff                      Gerald Koppenhafer  
Kenny Heldman<sup>1</sup>                      JR Ford\*<sup>2</sup>                      Jenny Russell  
Rusty Hinger\*<sup>3</sup>                      David Guilliams                      Charlie Smith

**Staff:** Steve Wolff, General Manager  
Mo Rock, Programs Coordinator

**Consultants:** Beth Van Vurst, Van Vurst Law, General Counsel  
Pete Foster, Wright Water Engineers  
Carrie Padgett, Harris Water Engineering\*  
Elaine Chick, Elaine Chick Consulting\*  
Garrin Vorthmann, Colorado Legislative Strategies\* (Feb 15)  
Christine Arbogast, Kogovsek & Associates \*(Feb 15)  
Peter Butler, Water Quality Consultant

**Guests:** Warren Rider, Animas Watershed Partnership (Feb 14)  
Sensa Wolcott, Mancos Conservation District (Feb 14)  
Taylor Schultz, Mancos Conservation District (Feb 14)  
Nate Peters, Southwest Conservation Corps (Feb 14)  
Jimbo Buickerood, Hermosa Creek Ditch (Feb 14)  
Kaity Mattos, Fort Lewis College (Feb 14)  
Jay Lochart, Montezuma Land Conservancy (Feb 14)  
Brandon Johnson, Montezuma Valley Irrigation Company\* (Feb 14)  
Sara Burch, Bonita Peak CAG\* (Feb 14)  
Blake Mamich, Colorado Water Trust (Feb 15)  
Danielle Snyder, Colorado Water Trust (Feb 15)  
Jeff Derry, Center for Snow & Avalanche Studies\* (Feb 14)  
Ken Curtis, Dolores Water Conservancy District (Feb 15)\*  
Ed Millard, Public\* (Feb 14 &15)  
Orla Bannon, Western Resource Advocates (Feb 14 & 15)  
Laura Spann, Colorado Water Conservation Board (Feb 14 &15\*)  
Morgan Wagner, Western Landowners Alliance\* (Feb 14 & 15)  
Chris Treese, Water Education Colorado\* (Feb 15)  
Ryan Unterreiner, Colorado Parks and Wildlife (Feb 15)  
George Gavrielides, SUIT\* (Feb 15)  
Kevin Murphy, United States Geological Survey (Feb 15)  
Patrick O'Neill\* (Feb 14)

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<sup>1</sup> 2/15 - Kenny Heldman left at 11:30 am during 19.0 Partner Updates

<sup>2</sup> 2/14 - JR Ford joined at 4:20 pm for 10.0 Executive Session

<sup>3</sup> 2/14 - Rusty Hinger joined at 12:50 pm during 7.0 Shoshone Water Rights Preservation

board members requested the removal of consent agenda items. David Guilliams motions to approve the consent agenda items as revised, seconded by Charlie Smith. The motion passes unanimously.

#### **8.0 Questions and Comments from the Audience**

Since we were ahead of schedule, Jenny Russell opened public comment, no public had comments or questions for the board.

#### **15.0 General Counsel Legal Report**

The Board remained ahead of schedule, so they moved item 15.0, which was originally scheduled for February 15<sup>th</sup> up and went into the General Counsel Legal Report.

#### **15.1 FZA engagement letter and professional services agreement**

Beth Van Vurst and Steve Wolff spoke to the FZA engagement letter and professional services agreement, which are very similar to our agreements last year. Beth recommended the board approve the engagement letter and professional services agreement. Amy moved to approve the FZA engagement letter and professional services agreement for the 2023 year-end audit allowing Steve to execute the documents and get them back to FZA, as recommended by General Counsel. Kenny Heldman seconds. The motion passes.

#### **15.2 Proposed Ratification of SWCD Statements of Opposition filed in Case Nos. 23CW35 and 23CW36, Water Division 4 (Applications of Michael Orpi)**

Beth Van Vurst gave a summary of two cases filed by Michael Orpi (Case Nos. 23CW35 and 23CW36, Water Division 4). It appears that although these cases do not occur in the geographic boundaries of the District, they do involve exporting water out of state, which is of concern to the District. General Counsel has submitted statements of opposition and is recommending the board ratify those statements. Charlie Smith motions to ratify statements of opposition in case Nos. 23CW35 and 23CW36, Gerald Koppenhafer seconds, motion passes.

#### **15.3 February & March Water Court Resume for Water Divisions 3, 4, and 7**

Beth Van Vurst said there were no other applications listed in the Water Court Resumes of concern besides the two cases discussed in agenda item 15.2.

#### **7.0 Shoshone Water Rights Preservation**

Peter Fleming (General Counsel, Colorado River District) joined the meeting to give a presentation on the Shoshone Water Rights Preservation acquisition being pursued by the Colorado River Water District. In December of 2023 the CRD executed a purchase and sale agreement with Public Service Company of Colorado (a subsidiary of Xcel Energy) to acquire the water rights for \$98.5 million. One of the water rights is the largest, most senior and non-consumptive right on the Colorado River. The Shoshone water rights command 1,408 cubic feet per second, or up to 1.02-million-acre feet per year. Please visit the Colorado River District's Website for more information about these efforts: Shoshone Preservation Campaign Archives - Colorado River District 2023.

After the presentation, Steve Wolff, Amy Huff, Charlie Smith, and Gerald Koppenhafer asked clarifying questions, including about the agreement, funding, operation, and future scenarios. Steve also asked if it would be beneficial to CRD if the SWCD board took action to support this effort, Peter said that they would appreciate the support and overall, the benefits of the program align with SWCD's mission.

*The board took a short break until 1:30 pm.*

recommended taking the portion of the project that just deals with raw water and reworking the application.

**Hermosa Company Ditch:** Jimbo Buickerood gave an overview of the Hermosa Company Ditch's Grant Application, Hermosa Company Ditch Mid-System Parshall Flume. This grant was in the Water Supply/Watershed Restoration bucket and the request totaled \$1,530.

**Southwest Conservation Corps:** Nate Peters gave an overview of the Southwest Conservation Corps' grant application, Montrose County Tamarisk Removal. This grant was in the Water Supply/Watershed Restoration bucket and the request totaled \$22,000.

**Fort Lewis College:** Kaitly Mattos gave an overview of Fort Lewis College's grant application, Tribal Water Media Fellowship. This grant was in the Education bucket and the request totaled \$10,000.

**Montezuma Land Conservancy:** Jay Lochart gave an overview of Montezuma Land Conservancy's grant application, Water Education at Fozzie's Farm. This grant was in the Education bucket and the request totaled \$9,000.

**Montezuma Valley Irrigation Company:** Brandon Johnson gave an overview of Montezuma Valley Irrigation Company's grant application, Beaver Creek Ditch Phase 2. This grant was in the Emergency bucket and the request totaled \$50,000.

Mo Rock gave a breakdown of the grant program as a whole and stated that the public forums/studies bucket was over budget by \$2,000, whereas the other buckets were under budget. There was a general consensus that this was not an issue, since the other categories came in under budget.

The board pulled two grants for quick discussion, Hermosa Company Ditch, as Steve Wolff mentioned with the new measurement rules that a lot of constituents might reach out in the next few years for funding and the board may want to consider a policy, or way to navigate a significant amount of requests for financial assistance for measurement devices. Jenny Russell mentioned that it might be a good idea for measurement devices to have their own bucket. The board agreed to discuss this matter at an upcoming meeting.

The second request pulled for discussion was the Aspen Trails Metropolitan District's request of \$20,000. The following concerns were raised by the board:

1. Board members were concerned with doing a feasibility study around the treated water pipeline, as the grant program does not allow for funding of treated water projects.
2. The board also highlighted that the Aspen Trails Metropolitan District did not have adequate match, yet if they took out the treated water portion of the study, they may be able to meet the board's match requirements.
3. Steve also brought up concerns about whether the wells are permitted for what Aspen Trails proposes. We may want to ask the applicant to seek some clarification from DWR on this matter.
4. Jenny Russell requested that the budget be broken into more specific numbers and have the treated water side be pulled from the application
5. As a metro district that does not currently serve water, we want documentation that their board has approved spending these funds on a water feasibility study. Since we do not know if they have authorization to spend the money on this.

The Board asked a few questions of the presenters and thanked them for their appearance.

### **9.5 Staff and Board Review of Grant Program**

Steve Wolff led a discussion about sending grant applications to Directors in advance of the review meeting to allow time for applications to be edited and any outstanding questions to be answered, Jenny Russell and Charlie Smith supported this idea earlier in the meeting. Jenny Russell also recommended having a five-year limit on the emergency grant bucket and checking to see if applicants were coming back to us and using different buckets for similar projects (getting around the 5-year limit). Charlie requested that we have a better form to track where our money was spent, with receipts. Gerald Koppenhafer thought we may be able to reduce some of the other buckets to cover measurement devices, Steve clarified that we would have to have a longer discussion around funding these measurement rules.

### **10.0 Executive Session**

Beth Van Vurst recommended that the board move into executive session to discuss agenda items 10.1 through 10.5, more specifically those matters are 10.1 Colorado River Compact, Interstate and Intrastate matters, including the 2024 System Conservation Pilot Program and modeling efforts, 10.2 Settlement negotiations regarding the applications of the U.S. Bureau of Land Management for change of water right, appropriative rights of exchange and junior water right, case nos. 21CW3014 (Division 3) and 21CW3029 (Division 7)(Treasure Pass Diversion Ditch), 10.3 Settlement negotiations regarding the amended application of Navajo Development Co., Inc. Rio Grande Water Conservation District, and Special Improvement District No. 2 of the Rio Grande Water Conservation District for Appropriative Right of Exchange and to Change Purpose of Use Case No. 20CW3016, Division 3 (Williams Creek-Squaw Pass Ditch), 10.4 Settlement negotiations regarding the application of the San Luis Valley Water Conservancy District for appropriative rights of substitution and exchange, case no. 21CW3004 Division 3 (Pine River-Weminuche Pass Ditch), and 10.5 Development and Potential Structure of SWCD Water Conservation and Infrastructure Program. The board is authorized to discuss each of these items under § 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.” Further, Beth recommends inviting Peter Foster, Wright Water Engineers, to participate in items 10.2-10.4 since Peter serves as the engineering consultant on these cases. David Guilliams moved that the board go into executive session. Kenny Heldman seconded. All board members voted ‘yes’. The motion passed unanimously.

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.

### **10.0 Summary and Action Items from the Executive Session**

Beth Van Vurst announced that the board was out of executive session at 05:47 p.m. During the executive session, the board discussed agenda items 10.1-10.5. No action was taken during the executive session, but the following items need to be followed up on:

**Case No. 20CW3016** - Settlement negotiations regarding the amended application of Navajo Development Co., Inc. Rio Grande Water Conservation District, and Special Improvement District No. 2 of the Rio Grande Water Conservation District for Appropriative Right of Exchange and to Change Purpose of Use Case – Settlement would include stipulating into entry of a decree that is no less

**17.1 Colorado River Basin Conditions and Activities:** Steve Wolff gave an overview of the forecast provided in the board packet but admitted that it was now outdated. A new forecast will be out soon.

**17.2 Division 6 Measurement Rules:** Steve Wolff and Beth Van Vurst reviewed the press release from DNR and a copy of the final approved measurement rules in Division 6. We've been following that rule-making since they are developing measurement rules in Division 7. There are several stipulations and provisions that may help us understand how they will implement measurement rules. Steve and Beth have not had time to go through all of these, but they will have that information by the next board meeting. For reference, Division 6 has set a phase-in for compliance, which may be similar to what may occur in Division 7.

**17.3 SWCD's Strategic Plan:** Steve Wolff talked through the Strategic Plan that was developed by the SWCD Board in 2022. The staff has gone through the plan. He requested that the board review the document and provide any feedback on where the board is going and what they think should be included. Jenny commented that she would like an opportunity to review the document before the final version.

**17.4 Draft Agenda for SWCD's 40<sup>th</sup> Annual Seminar:** Mo Rock gave an overview of the Draft Agenda for SWCD's 40<sup>th</sup> Annual Seminar. The Seminar will be held on March 27<sup>th</sup> at Sky Ute Casino and Resort in Ignacio, CO. Please see the board packet for further details. Charlie thought that we should include a Tribal Media Fellowship Video during a break.

**17.5 General Manager Update:** Steve Wolff gave an update on his recent activities including, Upper Colorado River Commission activities and discussed the efforts to bring a Growing Water Smart workshop to southwest Colorado. Please see Steve's memo for more information.

**17.6 Proposed Assignment of a Portion of the FY 2023 End-of-Year Fund Balance:** Mo Rock overviewed the proposed assignment of a portion of the FY 2023 End-of-Year Fund Balance, see the board packet for the actual numbers. Amy Huff moves to approve the recommendations put forth by staff for the proposed assignment of a portion of the FY 2023 End of Year Fund balance in their memo, dated Feb 14, 2024, with increasing the Water Defense Fund by \$244,355 and the Water Development Fund by \$162,904. Dagan Chadd seconded. The motion passed unanimously.

**17.6.1 Discussion on Fund Balance Assignments – Policy?** Charlie Smith again reiterated that he would like to see SWCD create a policy on how we plan to use these funds. Steve Wolff agreed and said that he and Beth would work on a draft policy for review and discussion by the Board at an upcoming meeting (probably in June). Jenny Russell recommended that the finance committee take the first stab at reviewing this draft policy.

**17.7 SWCD Water Conservation and Infrastructure Program:** Steve Wolff gave an update on the Water Conservation and Infrastructure Program. The biggest update is that we had a large partner meeting since the last board meeting, where approximately 40 organizations attended. We are still waiting for an announcement relative to the application of 'bucket two' funds from the Bureau of Reclamation.

**17.8 CWCB Approval of San Juan Resource Conservation and Development's Local Capacity Grant Application and Potential Next Steps:** Steve Wolff and Mo Rock overviewed that we are using a fiscal agent for our grant from CWCB due to Tabor concerns. Staff and General Counsel are reviewing the proposed MOU from the San Juan Resource Conservation and Development Council. The Board had a

402(4)(e), C.R.S., “determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators.” Amy Huff moved that the board go into executive session. Gerald Koppenhafer seconded. All board members voted ‘yes’. The motion passed unanimously.

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.

## **22.0 Summary and Action Items from the Executive Session**

Beth Van Vurst announced that the board was out of executive session at 11:57 p.m. During the executive session, the board discussed agenda items 10.1 & 10.5. No action was taken during the executive session and there is nothing we need to follow up on in open session.

*The board took a quick break.*

*The board jumped to 19.3 Efforts to Develop a Broader State Program to protect Colorado’s wetlands, streams, and other water quality matters under 19.0 Partner Updates.*

**19.3 Efforts to Develop Broader State Program to Protect Colorado’s Wetlands and Streams and other water quality matters** Peter Butler gave the District an overview of proposed legislation that was drafted in response to the Sackett case, which reduced the number of wetlands and other bodies of water that would be protected under ‘waters of the United States’. Please see the board packet for more information on this case and the proposed legislation. The largest difference right now between the proposed bills is who houses the program, CDPHE, or a new program under DNR. Garin Vorthmann provided her assessment of the discussion at the general assembly. She also clarified that the reason many seem to want this program housed some place other than CDPHE is that they are already behind on permits, and this would put them further behind. Additionally, it aligns more with what DNR focuses on versus what CDPHE does. Peter also explained that SB24-127 excludes water in ditches and canals, but the draft house bill does not address this.

Peter also summarized the Natural Resource Damages Fund, which the state is collecting due to the Gold King Mine spill, which totals 7 million dollars. This funding is now being offered as grants from the state and can only be used in the Animas River watershed, for damages from historic mining. These projects require a substantial match, which is 50%. The local communities and other entities have not had sufficient time to line up projects or gather matches, but these applications will be due in September. Peter stated that stakeholders are not ready for this funding, but the state said that the deadlines may be flexible.

On another matter, EPA has changed its screening level for lead in soil. Previously it was 300 parts per million, now it is 200 parts per million, which means that new areas may be looked at. Steve asked where these sites may be, Peter said that old mining, an old gun factory near Bodo Park, or under the main street in Durango may have lead.

*The board moved to 18.0 legislative affairs*

## **18.0 Legislative Affairs**

**18.1 Federal Affairs Update** Christine Arbogast gave an update on Federal Affairs. Federal legislation is moving slowly, the biggest legislation going through is funding. The state's revolving fund for drinking

of water to New Mexico for the strategic water reserve. She also attended the hydrological modeling meeting update the day before.

#### **19.6 WEco Water Leaders 2023**

Logan Hartle, (General Manager at Elbert Creek Water Company), gave a presentation on his experience going through the WEco Water Leaders Training. The SWCD Board supported his attendance by awarding Logan a tuition scholarship last year. Logan expressed gratitude for the values he gained from the Water Leaders Program. Some topics covered were conflict navigation, leadership style, inclusivity, building effective teams, and building emotional intelligence as a leader. The program has a mentorship component and Logan had two mentors including Steve Wolff and a worker at CDPHE. Through this program and his mentors, Logan was able to develop strong relationships with other water leaders in southwest Colorado and the state.

#### **20.0 Director Updates**

All directors gave a brief update on their country. Overall, precipitation was low to average. Gerald shared that Montezuma County has some financial issues, taking about a million dollars out of reserves to make the budget work for the last two years. Dagan Chadd shared that Dove Creek has gotten a lot of rain. They have been approved for funding that will be used to replace infrastructure to pump water to the treatment plant. Jenny shared that there are proposals for a Dolores National Monument and they are starting to do lots of outreach.

#### **22.0 Upcoming Meetings and Announcements**

**February 29<sup>th</sup>, Special board meeting**

**March 14<sup>th</sup>, Special board meeting**

**March 27<sup>th</sup>, SWCD Annual Seminar**

#### **18.0 Adjournment**

President Russell adjourned the meeting at 12:21 p.m.



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**Charlie Smith, Secretary/Treasurer**  
**Approved on 4/10/2024**