

**Southwestern Water Conservation District
Board of Directors Regular Meeting
Durango Recreation Center
Durango, Colorado
March 31, 2022**

Present: Dagan Chadd JR Ford (via Zoom) David Guilliams
Kenny Heldman Rusty Hinger Amy Huff
Jenny Russell Don Schwindt Charlie Smith

Staff: Laura Spann, Programs Coordinator
Steve Wolff, General Manager

Consultants: Peter Butler, Independent Consultant
Elaine Chick, Independent Consultant, Water Information Program
Peggy Montano, Trout Raley
Carrie Padgett, Harris Water Engineering
Beth Van Vurst, Van Vurst Law, General Counsel
Garin Vorthmann, Colorado Legislative Strategies

Guests: Karlyn Armstrong, Public
Orla Bannan, Western Resource Advocates
Adrian Bergere, San Miguel Watershed Coalition
Tina Carver, Public
Sage Cramer, Student, Fort Lewis College
Marcel Gatzambide, San Juan Citizens Alliance
Rob Genualdi, Colorado Division of Water Resources, Division 7 Engineer
Bob Hurford, Colorado Division of Water Resources, Division 4 Engineer
Ed Millard, Water Rights Holder
Gigi Richard, Four Corners Water Center at Fort Lewis College
Danielle Snyder, Brown and Caldwell
Aimee Tooker, Colorado Cooperative Ditch Company
Chris Treese, Retired
Warren Rider, Rider International

The board, staff, and counsel met at the Durango Community Recreation Center and the public participated via Zoom.

Thursday, March 31, 2022

1.0 Call to Order – Roll Call and Verification of Quorum

President Jenny Russell called the meeting to order at 10:05 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 SWCD Board of Director Appointment for Montrose County

(time: 00:01:00)

Beth Van Vurst reported that SWCD has received director credentials for the appointment of Kenny Heldman to represent Montrose County.

4.0 SWCD Resolution 2022-02 Honoring Monte Naslund

(time: 00:01:30)

Jenny Russell read the SWCD Resolution 2022-02 honoring Monte Naslund's 20 years of service on the Board of Directors. The SWCD board of directors thanked Mr. Naslund for his service. Don Schwindt moved to adopt Resolution 2022-02 Honoring Monte Naslund. Rusty Hinger seconded. The motion passed unanimously.

5.0 Executive Session

(time: 00:04:45)

Beth Van Vurst recommended that the board move into executive session for the purpose of discussing agenda item 5.1, San Miguel River basin water supply planning, and agenda item 5.2, January 2022 water court resume review for Division 7. The statutes covering this executive 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." David Guilliams moved that the board go into executive session. Dagan Chadd 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.

6.0 Summary and Action Items from Executive Session

(time: 00:06:50)

Beth Van Vurst announced that the board was out of executive session at 11:15 a.m. During the executive session, the board discussed agenda item 5.1, San Miguel River basin water supply planning, and agenda item 5.2, January 2022 water court resume review for Division 7. No action was taken during executive session.

7.0 General Counsel Legal Report

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

(time: 00:07:45)

Beth Van Vurst reported that, aside from Case No. 22CW3003, there were no other applications in the January and February water court resumes for Divisions 3, 4 and 7 that warrant further discussion or action by SWCD.

7.2 Proposed Ratification of Statement of Opposition in Application of Anesi Mining Ventures LLC, Case No. 22CW3003, Division 7

(time: 00:08:15)

While the agenda proposes ratification of a statement of opposition in the application of Anesi Mining Ventures, LLC, Case No. 22CW3003, division 7, the statement has not yet been filed since it is due today, March 31st. The application seeks to make use of an increment of the conditional "Animas Service Area" (ASA) water right that is co-owned by La Plata County and SWCD. Upon reviewing the application, Beth Van Vurst had some concerns with the application and recommends SWCD file a statement of opposition to ensure any decree ultimately entered in this case is consistent with the ASA water right decree entered in Case Number 06CW127. Charlie Smith moved that SWCD file a statement of opposition in the application of Anesi Mining Ventures LLC, Case No. 22CW3003, Division 7. David Guilliams seconded. The motion passed.

8.0 Special Counsel Legal Report

8.1 Diligence for SWCD Water Rights, Case No. 13CW3011, Division 7

(time: 00:10:00)

Peggy Montano reported that while SWCD filed its diligence application for the SWCD water rights (Case Number 22CW3005), the Animas La Plata Operation Maintenance and Replacement (ALPOM&R) Association also filed a diligence application for the ALP water rights (Case Number 22CW3007). Rather than file statements of opposition in each other's cases, both parties are considering signing a letter agreement that commits to informally exchange draft decrees for comment, thereby reducing costs for both clients. Amy Huff moved to direct special counsel to execute a letter agreement with the ALPOM&R Association regarding Case Numbers 22CW3005 and 22CW3007. Kenny Heldman seconded. The motion passed.

9.0 Approve and/or Remove Consent Agenda Item

(time: 00:14:30)

There was unanimous consent to approve the consent agenda.

10.0 Consent Agenda

(time: 00:14:40)

10.1 Approval of Minutes (February 3; February 16-17; March 3; March 17)

10.2 Acceptance of Treasurer's Report (February 2022)

Rusty Hinger moved to approve the consent agenda. Dagan Chadd seconded. The motion passed.

11.0 Questions & Comments from Public

(time: 00:15:00)

Orla Bannan, Western Resource Advocates, thanked the SWCD board for their support of HB22-1151 (Turf Replacement Program), which she hopes will be a valuable tool for water conservation statewide.

12.0 Legislative Affairs

12.1 Federal Affairs Update

(time: 00:15:50)

Christine Arbogast, Kogovsek and Associates, was unavailable to report to the Board, but had previously indicated there were no time-sensitive items to report on.

12.2 State Legislative Update & Positions on Bills

(time: 00:16:20)

Garin Vorthmann and Steve Wolff provided the following state legislative updates:

- The House Agriculture, Livestock and Water Committee voted 9-2 to postpone indefinitely SB22-126 (Prioritize Water Storage Projects South Platte Basin).
- Steve Wolff recommended the board support SB22-158 (Species Conservation Trust Fund Projects), which would provide funding for species conservation efforts associated with water, including the State of Colorado's financial commitment to the San Juan River Basin Recovery Implementation Program.
- Steve Wolff recommended the board support HB22-1316 (Colorado Water Conservation Board (CWCB) Construction Fund Projects), which would provide funding for ongoing and short-term water-related efforts, including state Colorado River activities.
- HB22-1322 (Water Quality Regulation) would, among other changes, require the Colorado Water Quality Control Commission to conduct outreach and gather input from disproportionately impacted communities regarding the commission's rule-making proceedings, licensing proceedings, and adjudicatory hearings.
- HB22-1301 (Controlled Environmental Agricultural Facility as Agricultural Property) would provide guidance on the tax assessment of certain types of agricultural facilities.

Don Schwindt moved that SWCD support HB22-1316 (CWCB Projects Bill) and SB22-158 (Species Conservation Trust Fund Projects). David Guilliams seconded. The motion passed.

13.0 Partner Updates & Presentations

13.1 Draft SWCD Letter of Support for Redmesa Ditch & Reservoir Company

(time: 00:26:30)

Steve Wolff reported that Redmesa Ditch and Reservoir Company (Redmesa) is pursuing approximately nine million dollars from the Natural Resources Conservation Service (NRCS) through the Watershed Protection and Flood Prevention Act (P.L. 556), which was allocated significant funding by the Bipartisan Infrastructure Law. The total reservoir rehabilitation and storage expansion project is estimated to cost 12 million dollars. In order to access NRCS funding, Redmesa needs at least one public entity to act as sponsor. La Plata Water Conservancy District and the Animas La Plata Water Conservancy District have sent letters to NRCS confirming their intention to serve as sponsors for the project. Amy Huff moved that SWCD submit a letter of support for Redmesa Ditch & Reservoir Company funding request to the NRCS and confirm SWCD's willingness to consider co-sponsorship. Kenny Heldman seconded. The motion passed.

13.2 SWCD Scholarship for Water Leaders Program (2021 Report, 2022 Request)

(time: 00:31:10)

Warren Rider reported on his 2021 Water Leaders Program experience and thanked the board for his 2021 scholarship award. Danielle Snyder, Brown & Caldwell, from southwestern Colorado was accepted into the 2022 Water Leaders Program. Danielle submitted a letter to the SWCD board applying for the SWCD Water Leaders

Program scholarship. Program tuition is currently \$4,000. Danielle summarized Brown and Caldwell's financial commitment to her travel time and expenses for the program. Dagan Chadd moved that SWCD award \$4,000 to support Danielle Snyder's tuition for the 2022 Water Leaders Program. David Guilliams seconded. There was discussion. The motion passed.

14.0 Reports

14.3 Director Reports

(time: 00:38:30)

Dagan Chadd (Dolores County) reported that it has been dry. The Town of Dove Creek has been awarded grant funding to support their municipal reservoir expansion. Dolores County is also pursuing a reservoir for fire mitigation.

Kenny Heldman (Montrose County) reported on the creation of the Wrights Mesa Water Users Coalition, which was awarded CWCB grant funding to lead a larger water planning effort for the region. The San Miguel Stakeholder Group will finalize their project identification efforts in mid-April. Farmers Water Development Company has divided Gurley Reservoir rehabilitation into two phases, with the first completed in time for municipal water deliveries to the Town of Norwood and the second for completion by May 2022. The Colorado Cooperative Ditch Company has completed its first water run prior irrigation season.

Amy Huff (La Plata County) reported that Lemon Reservoir is at 40% of storage capacity and Vallecito Reservoir water users are expected to receive a full supply.

Rusty Hinger (Mineral County) reported that southern Mineral County has received a lot of snow.

David Guilliams (Hinsdale County) reported that the snow melted away quickly in Hinsdale County.

Jenny Russell (San Miguel County) reported that San Miguel County received a bit of snow, although Trout Lake is still very low. The San Miguel Watershed Coalition will bring forward a proposal to collect more data on the influence of groundwater on river flows from the upper San Miguel watershed to the Dolores confluence.

Don Schwindt (Montezuma County) reported that his farm is dry. He described the current range of possible supply for Dolores Project full-service farmers as currently forecasted. As a Family Farm Alliance board member, Don summarized the recent policy document released by the organization regarding the future of agriculture in the Colorado River basin.

14.5 Engineering Report

14.5.1 Upper Colorado & San Juan River Basin Recovery Implementation Programs

(time:

00:50:30)

Carrie Padgett reported on the February 2022 Biology Committee meeting of the San Juan River Basin Recovery Implementation Program (SJRBRIP), which included a review of the past year's field work and related research. Specifically, the Committee discussed how declining inflows due to climate change make it increasingly difficult to guarantee a flow regime from Navajo Reservoir that supports species recovery and, as a result, the SJRBRIP may need to lean more heavily on other tools and strategies such as habitat improvement and floodplain wetlands development. Another major topic of discussion was the structure and funding for the SJRBRIP post-2023. Colorado Parks and Wildlife (CPW) recently reported the smallmouth bass (SMB) had been found in Long Hollow Reservoir. Their appearance is most likely the result of illegal stocking. The concern about this is the possibility of SMB escaping from the reservoir and establishing a population downstream (i.e. in the San Juan proper). SMB are voracious predators and are known to impact populations of native fish, including razorback suckers and Colorado pikeminnow. CPW will continue to monitor this. The SJRBRIP Annual Meeting is scheduled for May 17th and 18th at Fort Lewis College in Durango.

15.0 Staff Report

15.1 State and Division Engineers' Draft Measurement Rules for Division 6

(time: 00:55:45)

Steve Wolff and Beth Van Vurst reported on the proposed State and Division Engineers' draft measurement rules for Division 6, which are expected to be finalized in the summer with similar proposed rules to follow for Divisions 4 and 7. With a few exceptions, both surface and groundwater users will likely be required to install a measurement device and report use. SWCD may want to consider how to best support water users with the additional costs that measurement device installation may pose to water users. The SWCD board discussed water uses excepted from the proposed measurement requirement and how free river uses may be addressed.

15.2 2023 CWCB Proposed Instream Flow Program Recommendations

(time: 01:01:00)

Steve Wolff reported on the CWCB's proposed instream flow (ISF) appropriations for 2023, all of which are in the San Miguel Basin. Proposed ISF appropriations on Red Canyon Creek (Montrose County), Big A Creek (Montrose County), and Kelly Creek (Montrose County) are intended to protect Colorado River cutthroat trout. The proposed ISF appropriation on Goat Creek (San Miguel County) is in the Wrights Mesa area near existing water use. SWCD staff and counsel will continue to monitor these recommendations and provide additional information to the board as available.

15.3 Proposed SWCD 2022 Action Plan

(time: 01:02:40)

Steve Wolff summarized changes to the SWCD 2022 action plan. Board members provided feedback and comments. The SWCD strategic plan and 2022 action plan will be available on the SWCD website.

15.3.1 Proposed SWCD Board Workshop for Summer 2022

(time: 01:07:15)

There was board consensus to hold a SWCD board workshop from Tuesday, July 12th at noon to Wednesday, July 13th at noon. Suggested board discussion topics included SWCD partnership and outreach development, SWCD funding priorities and long-term financial strategies, and Colorado River issues. The SWCD board will send additional topic suggestions to staff via email in the coming weeks.

The board recessed for lunch.

14.0 Reports (continued)

14.1 Hydrologic Conditions, including updates from Division 4 and 7 Engineers

(time:

01:19:45)

Bob Hurford, Division 4 Engineer, summarized snowpack, soil moisture conditions, anticipated streamflows in the San Miguel River basin. Construction has begun at Gurley Reservoir to address outlet structure leakage and lift the Dam Safety Engineer's storage restriction. There is an unexplained sinkhole in Buckeye Reservoir, which is not affecting dam integrity but is decreasing reservoir elevation. A high-pressure system is forming over the Four Corners area, so projected precipitation is forecasted to decrease and temperatures to rise for the spring.

Rob Genualdi, Division 7 Engineer, summarized snowpack, area reservoir levels, recent temperatures, and hydrologic conditions in southwest Colorado. Three water commissioner positions were recently filled for the Mancos and Upper San Juan River basins. Rob responded to several board and consultant questions.

14.2 Colorado River Basin Hydrologic Conditions

(time:

01:43:50)

Steve Wolff referred directors to local hydrologic conditions summarized in their packet. Steve presented on the Upper Basin's commitments under the Colorado River Compact, Colorado River drought contingency planning, current Colorado River hydrologic conditions and forecasts, including Lakes Mead and Powell reservoir and hydropower operations, and Upper Basin considerations for the upcoming re-negotiation of the 2007 interim guidelines. Steve responded to board questions.

14.4 Outstanding Waters Update

Peter Butler summarized the proposed designations of Outstanding Waters (OW) in southwestern Colorado. SWCD has two concerns related to how climate change might increase baseline temperatures for area rivers and how forest management plans may interact with OW in the context of wildfire mitigation and related forest treatments. Peter also discussed activities of the Bonita Peak Community Advisory Group related to adding an aquatic-life use classification to a portion of Mineral Creek. Pre-hearing statements are due to the Colorado Water Control Commission by April 6th, after which there will be an opportunity for rebuttal statements with the hearing to following in June. SWCD plans to file a pre-hearing statement based on the above discussion.

14.6 Water Information Program (WIP) and Roundtable PEPO Liaison Report

(time: 02:38:30)

Elaine Chick updated the board on SWCD's 38th Southwest Water Seminar. 130 people are registered to attend in person and 50 people virtually. Ute Mountain Ute Tribal Chairman Manuel Heart and Southern Ute Indian Tribal Councilwoman Lorelei Cloud accepted invitations to speak. Elaine provided guidance for board members who will be moderating seminar panels.

The next Water Law in a Nutshell Course is scheduled for Friday, April 22nd. The Forest-to-Faucets Teacher Training Program is scheduled for June 8th-9th in the Dolores River Basin. Elaine Chick proposed to substitute the Rising Rivers Stewardship Program for SWCD's Annual Children's Water Festival given the challenges with COVID event planning for students. The Rising Rivers Stewardship Program is a collaboration between the Water Information Program, Mountain Studies Institute, Animas River Days, Powerhouse Science Center, San Juan Mountains Association, Animas Riverkeepers, and Dolores River Boating Advocates. The Program would provide a printed booklet with local ecosystem knowledge, leave-no-trace principles, and water conservation ethics to fifth-grade students in southwest Colorado. The estimated cost to print 5,000 copies by May 2022 is \$6,500. The Program will also offer the booklet to rafting companies, libraries, schools, and other key partners. Raft guides will be offered a training session on the booklet's content in early summer 2022. There was SWCD board consensus to sponsor the cost of Rising Rivers booklet printing in lieu of SWCD's Children's Water Festival costs.

As Roundtable Public Education, Outreach and Participation (PEPO) liaison, Elaine continues to coordinate with Water 22 to bring campaign content and events to southwest Colorado, including a mini basin tour scheduled for September 1st in the Animas, La Plata and McElmo River basins targeted at non-water professionals. The Southwest Basins Roundtable website is currently under development.

14.7 Board Logistics for SWCD's 38th Southwest Water Seminar

(time: 02:51:00)

Elaine Chick directed the board to the final Southwest Water Seminar hybrid program in their packets, described the speaker dinner and seminar logistics, and walked through the seminar program script.

16.0 Executive Session

(time: 02:56:30)

Beth Van Vurst recommended that the board move into executive session for the purpose of discussing agenda item 16.1, Colorado River Compact, interstate and intrastate negotiation matters, including re-negotiation of the interim guidelines. The statutes covering this executive 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. Kenny Heldman 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.

17.0 Summary and Action Items from Executive Session

(time: 02:57:50)

Beth Van Vurst announced that the board was out of executive session at 3:30 p.m. During the executive session, the board discussed agenda item 16.1, Colorado River Compact, interstate and intrastate negotiation matters, including re-negotiation of the interim guidelines. No action was taken during executive session.

18.0 Adjournment

President Russell adjourned the meeting at 3:31 p.m.



Jenny Russell, President