MINUTES
FIRST REGULAR QUARTERLY MEETING OF THE
BOARD OF DIRECTORS OF THE
COLORADO RIVER WATER CONSERVATION DISTRICT

January 15-16, 2013

Pursuant to notice duly and properly given, the First Regular Quarterly Meeting of the Board of Directors of the Colorado River Water Conservation District (CRWCD) was held on Tuesday and Wednesday, January 15-16, 2013 at the Hotel Denver, 402 7th Street, Glenwood Springs, Colorado.

Directors present during all or part of the meeting:
Thomas R. Sharp, President
Tom Alvey
David H. Merritt
Stan Whinnery
Tom Gray
Andrew A. Mueller
Rebie Hazard
James Newberry, Vice President
Jon Stavney
William S. Trampe
Steve Acquafresca
Stephen M. Mathis
Kai Turner
Gary Martinez

Directors not present:
John Ely

Others present during all or part of the meeting:
Eric Kuhn, Secretary/General Manager, CRWCD
Peter Fleming, General Counsel, CRWCD
Dan Birch, Deputy General Manager, CRWCD
Chris Treese, Manager, External Affairs, CRWCD
John Currier, Chief Engineer, CRWCD
Jason Turner, Associate Counsel, CRWCD
Mary Kalmes, Chief Accountant, CRWCD
Laurie DePaolo, Executive Assistant, CRWCD
Audrey Turner, Administrative Chief, CRWCD
Ray Tenney, Deputy Chief Engineer, CRWCD
Don Meyer, Sr. Water Resources Engineer, CRWCD
Dave Kanzer, Sr. Water Resources Engineer, CRWCD
Mike Eytel, Water Resources Specialist, CRWCD
Jim Pokrandt, Communication and Education Specialist, CRWCD
Dave Smith, Engineering Technician, CRWCD
Lorra Nichols, Paralegal, CRWCD
Denise Hussain, Records Specialist, CRWCD
Martha Moore, Public Affairs Specialist, CRWCD
Alesha Frederick, Business Support Specialist, CRWCD
Jennifer Gimbel, Colorado Water Conservation Board
Ted Kowlaski, Colorado Water Conservation Board
John McClow, Colorado Water Conservation Board
David Hallford, Balcomb & Green, P.C.
David Brown, USGS
Melissa McDonald, Eagle River Watershed Council
Seth Mason, Eagle River Watershed Council

1 An audio recording has been made of the meeting. The motions described herein may not necessarily represent a verbatim transcription. The audio recordings are available for listening at the CRWCD offices during regular office hours. These minutes are the official record of the Colorado River Water Conservation District’s meeting.
Heather McGregor, Glenwood Post Independent

**Quorum.**
President Sharp found a quorum and called the meeting to order at 9:04 a.m.

**Review Agenda and Meeting Objectives.**
Peter Fleming requested the removal of agenda item 6.d.iii., Minutes of Executive Committee Meeting, Telephone Conference, December 6, 2012, from the consent agenda for correction and separate action. Mr. Fleming also requested the addition of *Tarret v. Herman* as agenda item 7.b. v., and Board Discussion of CWCB Appointees as agenda item 14 d. Director Alvey moved, seconded by Director Merritt, to approve the agenda as amended. Motion carried unanimously.

**Report and Presentation of Directors’ Credentials for Delta, Eagle, Grand, Hinsdale, and Summit Counties.**
Eric Kuhn reported that executed credentials for directors from Delta (Alvey), Eagle (Stavney), Grand (Newberry), Hinsdale (Whinnery) and Summit (Martinez) Counties have been received by the River District. (The credentials are attached as Appendices A.-E.).

**Election of Board Officers for 2013.**
**Election of President:**
Director Stavney nominated Director Newberry for president. Director Mueller moved, seconded by Director Whinnery, to elect Director Newberry as president for 2013. Motion carried unanimously.

**Election of Vice President:**
Director Mathis nominated Director Stavney for vice president. Director Trampe moved, seconded by Director Hazard, to elect Director Stavney as vice president for 2013. Motion carried unanimously.

**Resolution for Outgoing Director.**
Director Mathis moved, seconded by Director Alvey, to adopt a resolution expressing the Board’s appreciation to Albert “Warner” Dewey for his service as a River District director. Motion carried unanimously. (The resolution is attached as Appendix F.).

**Appointment of Committees.**
President Newberry and Eric Kuhn provided background information regarding appointments to the Executive Committee which, historically, has rotated among counties within basin and sub-basin groups of counties and includes the President as chairman. The Executive Committee, consistent with rotation among counties, for 2013 is comprised of directors from Hinsdale, Montrose, Pitkin, Routt and Summit Counties as well as the Board President. Other committee assignments are made by the President and Vice President. Pursuant to the Joint Management Agreement with the Bluestone Water Conservancy District, Mesa County and Garfield County directors were appointed to the Bluestone Management Committee.

**Consent Agenda.**
Director Alvey moved, seconded by Director Hazard to approve the following consent agenda as presented. Motion carried unanimously.

a. Designation for Posting Notices.
b. Reappointment of General Manager, General Counsel and Treasurer.
c. Confirmation of Assistant Secretary.
d. Approval of Minutes and Actions Taken.
i. Minutes of Special Joint Meeting, Telephone Conference, October 5, 2012.
ii. Minutes of Fourth Regular Quarterly Meeting, October 16-17, 2012.

Peter Fleming requested the addition of the phrase “motion carried unanimously” at the end of paragraph 3, page 1, of agenda item 6. d. iii., Minutes of Executive Committee Meeting, Telephone Conference, December 6, 2012. Director Sharp moved, seconded by Director Trampe, to approve the minutes as amended. Motion carried unanimously.

**General Counsel’s Report - Executive Session,**

Peter Fleming reported that the following matters qualify for discussion in Executive Session pursuant to C.R.S. §§ 24-6-402(4)(b)(legal advice) and (e)(negotiations):

- **Matters Proposed for Executive Session:**
  - Proposed Colorado River Cooperative Agreement-Implementation Issues and Execution, and Application in Case No. 11CW152, Water Division 5.
  - Pitkin County RICD Application, Case No. 10CW305, Water Division 5.
  - Joint Diligence Application of River District and West Divide Water Conservancy District, Case No. 11CW93, Water Division 5.
  - Application of Busk-Ivanhoe, Inc., Case Nos. 09CW142, 09CW186, and 09CW272, Consolidated, Water Division 2.

Director Alvey moved, seconded by Director Trampe, to proceed into Executive Session pursuant to C.R.S. §§ 24-6-402(4)(b)(legal advice) and (e)(negotiations). Motion carried unanimously.

Peter Fleming stated that no further record of the Executive Session need be kept based on his opinion that the discussion will constitute privileged attorney-client communications.

*President Newberry reconvened into Public Session at 11:24 a.m.*

**General Counsel’s Report - Public Session,**

Peter Fleming reported that during Executive Session, the Board provided guidance to staff and General Counsel on the following matters:

- Proposed Colorado River Cooperative Agreement-Implementation Issues and Execution and Application in Case No. 11CW152, Water Division 5.
- Pitkin County RICD Application, Case No. 10CW305, Water Division 5.
- Joint Diligence Application of River District and West Divide Water Conservancy District, Case No. 11CW93, Water Division 5.
- Application of Busk-Ivanhoe, Inc., Case Nos. 09CW142, 09CW186, and 09CW272, Consolidated, Water Division 2.

Mr. Fleming also stated that he was not present during the discussion of agenda item 7.b.vi., Application of Busk-Ivanhoe, Inc., Case Nos. 09CW142, 09CW186, and 09CW272, Consolidated, Water Division 2.
In the matter of National Ski Area Association v. United States Forest Service, Peter Fleming reported that the Federal District Court recently issued a ruling vacating the Forest Service permit directive that would impose terms on ski area permits that would force ski areas to convey private water rights used on Forest Service land in conjunction with ski area operations to the federal government. The Court’s ruling was based only on the Forest Service’s failure to comply with the notice and comment procedural requirements of the Administrative Procedures Act, National Forest Management Act and the Regulatory Flexibility Act. The Forest Service has the option of pursuing the permit directive if it follows the procedural rulemaking process. The River District filed an amicus brief on behalf of the NSAA in this case.

Director Sharp moved, seconded by Director Trampe, to approve special counsel rate increases for 2013. Motion carried unanimously.

Director Whinnery moved, seconded by Director Trampe, to authorize Counsel to enter stipulations consenting to the Colorado Water Conservation Board’s proposed rulings in Case Nos. 11CW159, 11CW160, and 11CW161, Water Division 5. Motion carried unanimously.

Peter Fleming updated the Board on Tarrant v. Herrmann (Oklahoma Water Resources Board (OWRB)) Tarrant is a water district that services north central Texas, including the City of Fort Worth. The case is over water apportioned under the Red River Compact. Texas, Oklahoma, Arkansas, and Louisiana are covered by the compact. Tarrant’s suit alleged that Oklahoma’s anti-export statute limited Tarrant’s ability to acquire water from Red River tributaries in Oklahoma and was in violation of the Red River Compact. The 10th Circuit Court of Appeals ruled against Tarrant who appealed the ruling to the United States Supreme Court. The Supreme Court recently agreed to hear the case. It is anticipated that the State of Colorado will file an amicus brief in support of the OWRB. Other Colorado water entities, including the River District are also contemplating filing amicus briefs.

Jason Turner outlined the formation and purpose of the Bluestone Management Committee, which was formed by the River District and the Bluestone Water Conservancy District (Bluestone WCD). It is comprised of four appointed directors: two River District directors (Garfield County and Mesa County) and two Bluestone WCD directors. The purpose of the Bluestone Committee is to manage Kobe Project assets held jointly by the two districts.

Mr. Turner went on to explain that interest has been expressed by energy producers regarding further development of the Kobe Project to supply water for natural gas production. Water would also be available for agricultural and municipal use. At the direction of the Board’s Water Supply Projects Committee in October 2012, staff is currently preparing a Water Authority agreement to replace the Bluestone Management Committee. The structure and function of the Water Authority would be similar to the current committee but would be a separate governmental entity created by both districts to develop and manage Kobe Project water resources and facilities. Mr. Turner also relayed that he anticipates presenting a resolution dissolving the Bluestone Management Committee, the water authority agreement, a lease termination agreement with Chevron, and easement documents for board approval at a future meeting.

Eric Kuhn and Peter Fleming gave an overview of 2013 goals for the General Manager and General Counsel as well as the River District. These goals include: implementation of the Colorado River Cooperative Agreement and the Windy Gap Firming Project agreement; completion of Phase I and II of the compact water bank study and initiation of Phase III; continued cooperative efforts with constituents in the sub-basins of the River District; and, development of a strategic plan for the future direction of the River District. Director Alvey requested an addition to the General Counsel’s goals of legal support for staff in the compact bank and risk management studies.
Presentation on Colorado River Basin Study Results and Discussion of Future Steps.
Dave Kanzer presented an overview of the Colorado River Basin Study (Basin Study), which was conducted by the Bureau of Reclamation and the seven basin states. The study’s purpose was to “define current and future imbalances in water supply and demand in the Basin and the adjacent areas of the Basin States that receive Colorado River water through 2060, and to develop and analyze adaptation and mitigation of strategies to resolve those imbalances.” The study concluded that current average demands frequently exceed average supplies, shortages will occur in the Lower Basin in the future, Upper Basin development may be impacted by shortage solutions for the Lower Basin, and mitigation actions will be key to meet future needs and avoid or minimize shortages.

A discussion ensued with Jennifer Gimbel regarding how the information garnered by the Basin Study could be incorporated into future water supply planning. Ms. Gimbel relayed that the study participants will be meeting to discuss what the next steps will be. River District and Colorado Water Conservation Board (CWCB) staff will be making presentations on the Basin Study to the West Slope Roundtables as well as other groups, and the River District will be continuing with its compact water bank study (a mitigation element included in the Basin Study). Ms. Gimbel also relayed the state’s appreciation for the River District’s staff participation in the Basin Study.

Executive Session - (Resumed):
Peter Fleming reported that the following matter qualified for Executive Session pursuant to C.R.S.§ 24-6-402(4) (e)(negotiations):
Colorado River Interstate Issues.

Director Mueller moved, seconded by Director Acquafresca, to move into Executive Session and invited Jennifer Gimbel, John McClow and Ted Kowalski to participate in Executive Session pursuant to an existing confidentiality agreement with the State of Colorado on Colorado Interstate matters and pursuant to the role of Eric Kuhn and Peter Fleming as advisors to the State on the Upper Colorado River Commission. Motion carried unanimously.

Vice President Stavney reconvened into Public Session at 3:16 p.m.

Public Session – (Resumed):
Peter Fleming reported that during Executive Session, the following topic was discussed:
Colorado River Interstate Issues.

A discussion ensued with Jennifer Gimbel regarding the future of the Roundtables and IBCC processes. Roundtable members expressed concerns that issues such as risk management and the impact of climate change on hydrology have not been given adequate consideration by the IBCC. Ms. Gimbel offered that a proposal now being discussed is to table discussion of a future transmountain diversion project, but create guidelines and conditions for discussion in the future.

General Manager’s Report.
Employment Policy Manual Update:
Director Mueller moved, seconded by Director Acquafresca, to approve a proposed tuition assistance increase from a maximum of $1,500 to $2,000 per year. Motion carried unanimously.
Brokerage Account Option:
Audrey Turner reported that a brokerage account option is being added to the employee retirement plan. This will apply only to the 457 plan which is funded solely by employee contributions.

Naming of a West Slope Dam for Clifford Stone:
There has been discussion about the possibility of naming the dam at Blue Mesa Reservoir after Judge Clifford Stone in recognition of his numerous achievements in Colorado water matters. The Colorado Water Conservation Board will explore this with the Bureau of Reclamation.

Update Memo from Technical Staff:
Eric Kuhn referred the Board to the technical staff memo update on recent activities.

Flaming Gorge Task Force Update:
Dan Birch reported Phase I of the Flaming Gorge Task Force report has been completed and is being reviewed by the CWCB to ascertain if additional funding for Phase II is warranted.

Ruedi Reservoir Update.
Dan Birch reported that the following contracts have been executed with the Bureau of Reclamation for Ruedi Reservoir water:
1. 5,412.5 acre-foot 15-Mile Reach Programmatic Biological Opinion (15-Mile Reach PBO) contract;
2. 2,000 af “insurance pool” contract also pertaining to the 15-Mile Reach PBO;
3. River District Financial Agreement for an additional Ruedi contract in the amount of 4,683.5 af for water marketing purposes;
4. Financial Agreements with fifteen other West Slope water providers to secure Ruedi supplies in the amount of 14,902 af.

Mr. Birch noted that with these 15 Financial Agreements, commitments are now in place to contract for the entire remaining Ruedi Round II marketing pool and fulfill the repayment obligation of Ruedi Reservoir.

Annual Policy Discussion.
Water Quality:
Chris Treese recommended deferring discussion of the Water Quality Policy to the April quarterly meeting when it can be held in conjunction with a discussion of the River District’s draft strategic plan.

Recreational Water Uses:
By consensus, staff was directed to delete the phrase “and related water rights” in the first sentence of the policy and replace with clarifying language limiting “related water rights” to those rights that confirm the recreational water use.

Endangered Species Act:
No substantive changes were recommended.

Upper Colorado River Basin Endangered Fish Recovery Program:
No substantive changes were recommended.

Acceptance of Treasurer’s Reports and Check Registers for September, October and November 2012,
Director Merritt moved, seconded by Director Hazard, to accept the treasurer’s reports for September, October and November 2012. Motion carried unanimously.

Vice President Stavney recessed the meeting at 4:40 p.m.
**Wednesday January 16, 2013**

Director Sharp found a quorum and reconvened the meeting at 8:27 a.m. (In the absence of President Newberry and Vice President Stavney, Director Sharp was delegated to the chair the meeting).

**External Affairs.**

**Information and Outreach Committee Report:**

Director Acquafresca updated the Board on upcoming public outreach efforts including: six State of the River meetings throughout the District; the CRWCD annual seminar on September 13 in Grand Junction; two H2O water camps at Keystone Science School; public radio appearances and underwriting; the CRWCD annual report; and a public survey to test the River District’s name recognition with its constituents as well as the level of knowledge and values regarding water and related issues.

**State Affairs:**

Director Mueller moved, seconded by Director Trampe, to initiate bi-monthly conference calls for discussion of state legislation and other issues as necessary, beginning on January 24, 2013. Motion carried unanimously.

Director Merritt moved, seconded by Director Acquafresca, to approve Continuing Services Agreements with Danny Williams and Laura Locke for lobbying services in an amount not to exceed $10,000 each per year. Motion carried unanimously.

**HB13-1012: FINANCIAL INCENTIVES FOR WILDLIFE MITIGATION.**

**Recommendation: Support.**

This bill would continue an income tax deduction for landowners who perform wildfire mitigation measures. It also continues authority for the Water & Power Authority to issue bonds for watershed protection and forest health.

Director Acquafresca moved, seconded by Director Martinez, to support HB13-1012. Motion carried unanimously.

**HB13-1013: LIMITING LANDOWNERS’ ABILITY TO CONDITION WATER EASEMENTS.**

**Recommendation: Oppose.**

For rights-of-way for water rights, a landowner cannot demand as a condition of granting a right-of-way or special use permit, and a court cannot order as a condition of an eminent domain proceeding, that a water right owner assign to the landowner partial or joint ownership of the water right or limit the alienability of the water right. The bill also voids any and all such existing conditions.

This bill is in response to the U.S. Forest Service’s directive to require assignment of water rights used on federal lands for ski areas to the Forest Service as condition of issuing a ski area use permit. While the River District opposed this action, there were concerns expressed about potential unintended consequences of this bill.

Director Turner moved, seconded by Director Martinez, to oppose HB13-1013 as introduced. Motion carried unanimously.

**HB13-1018: PRODUCED WATER USED AS DUST CONTROL.**

**Recommendation: Monitor.**

This bill would give the Solid and Hazardous Waste Commission exclusive jurisdiction to regulate the beneficial use of groundwater produced during oil and gas operations for dust suppression on unpaved roads in rural areas. The commission would adopt rules to establish standards (including radioactive content standards).
Director Gray moved, seconded by Director Whinnery, to support HB13-1018 in concept and directed staff to seek an amendment to ensure the bill does not affect the Water Court’s jurisdiction over beneficial use. Motion carried unanimously.

**HB13-1037: LIMITING CHARGES FOR PROVIDING COPIES OF PUBLIC RECORDS.**
Recommendation: No position (no further involvement).
This bill limits the fee a public entity may charge for providing copies of public records under the Colorado Open Records Act. Directors assented to staff’s recommendation that the District not be involved with this bill.

**HB13-1044: GRAYWATER USE.**
Recommendation: Support in Concept.
This bill requires rules and codes to be adopted to allow for graywater use and to protect public health. Graywater is discharged water from non-kitchen sinks, bathtubs and showers, and laundry machines.

Director Acquafresca moved, seconded by Director Mathis, to support HB13-1044 in concept. Motion carried unanimously.

**HJR13-1004: OPPOSING USFS PERMIT REQUIREMENTS ON SKI AREAS RELATED TO WATER RIGHTS ASSIGNMENTS.**
Recommendation: Support.
Director Merritt moved, seconded by Director Acquafresca, to support HJR13-1004. Motion carried unanimously.

**SB13-019: PROMOTING WATER CONSERVATION MEASURES.**
Recommendation: No Position (pending further development).
This bill attempts to address the issue of removing disincentives and provide incentives for agricultural conservation. The bill will be extensively amended because of inconsistencies, redundancies and ambiguities. Staff is currently working on amendments with the bill sponsor. Directors agreed with staff’s recommendation to delay action pending additional language development.

**DRAFT SENATE BILL: PROTECTING STORED WATER FOR DROUGHT AND LONG-TERM NEEDS.**
Recommendation: Support.
River District staff, as directed by the Board, in conjunction with the Front Range Water Council has drafted this bill with the goal of addressing certain aspects of the Colorado Supreme Court’s rulings in the Upper Yampa Water Conservancy District cases. The bill would clarify the following: an applicant does not have to demonstrate that all existing absolute decreed water rights that are part of an integrated system have been utilized to their full extent to establish the need to exercise a conditional water storage right or to make the conditional water storage right absolute; when conditional storage rights are made absolute, the decreed volume should be the extent of the volume of the appropriation that has been captured, possessed, and controlled at the decreed storage structure; and, carrying water over in storage from one year to another is not grounds for a determination of abandonment.

Director Turner moved, seconded by Director Whinnery, to support the **DRAFT SENATE BILL**. Motion carried unanimously.

**Federal Affairs:**
Chris Treese reported that legislation for reauthorizing the Endangered Fish Recovery Programs for the Upper Colorado and San Juan Rivers was passed by both houses of Congress and signed into law during the
lame duck session of the 112th Congress. River District federal priorities for 2013 include advocating for financial and permitting incentives for hydropower and working with sponsors of wilderness area bills to identify potential impacts of the legislation to water rights and supplies.

**CWCB Appointments:**
Chris Treese reported that seats for the Yampa/White Basins, mainstem Colorado River and Metro Area on the Colorado Water Conservation Board are up for appointment in 2013.

**Review of 2012 USGS Gaging Program and Discussion of 2013 USGS/CRWCD Activities.**
David Brown presented an overview of the purpose and programs of the USGS. Its sole purpose is to gather and distribute data to state and federal agencies for their use. USGS data is considered to be unbiased and reflect the latest state of the art for technologies and practices. Programs include stream gauging, water quality monitoring, measurement of selenium and salinity levels and stream temperature data collection. Mr. Brown also expressed appreciation to the River District for its continued funding support. The River District is the largest contributor in the State of Colorado.

Director Merritt moved, seconded by Director Mathis, to authorize the Board officers to execute joint funding agreements with the USGS for 2013 as included in the River District’s 2013 budget. Motion carried unanimously.

**Discussion of Eagle River Watershed Council Activities.**
Seth Mason presented a summary of the Council’s current monitoring program which examines the impacts of urbanization, agriculture and other uses on water quality in the Eagle River watershed. Information gathered is shared with stakeholders and the public to aid in decision making for resource uses. Mr. Mason also expressed the Watershed Council’s appreciation to the River District for its involvement and funding.

**Directors’ Concerns.**
Director Mueller requested electronic board packets as an option for board members.

**Future Meetings.**

- a. Special Joint Meeting Conference Calls, beginning January 24, 2013. (Every other Thursday).
- b. Executive Committee Meeting, March 8, 2013, Glenwood Springs, CO.
- c. Second Regular Quarterly Meetings, April 16-17, 2013, Glenwood Springs, CO.
- d. Third Regular Quarterly Meetings, July 16-17, 2013, Glenwood Springs, CO.
- e. CRWCD 2014 Budget Workshop, September 12, 2013, Grand Junction, CO.
- f. CRWCD Seminar, September 13, 2013, Grand Junction, CO.
- h. Other Meetings:
  - i. CWC Annual Convention, January 30-February 1, 2013, Denver, CO.
  - ii. Western State Water Workshop, July TBD, 2013, Gunnison, CO.
  - iii. CWC Summer Convention, August 21-23, 2013, Steamboat Springs, CO.
  - iv. CRWUA Convention, December 11-13, 2013, Las Vegas, NV.

**Adjourn.**
There being no further business before the Board, Director Sharp adjourned the meeting at 10:45 a.m.

James Newberry, President
Executive Session Attestations.
I hereby attest that the portions of the Executive Session that were not recorded constituted privileged attorney-client communications.

Peter Fleming, General Counsel