

MINUTES¹
FOURTH REGULAR QUARTERLY MEETING OF THE
BOARD OF DIRECTORS OF THE
COLORADO RIVER WATER CONSERVATION DISTRICT

October 15-16, 2013

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

Directors participating during all or part of the meeting:

James Newberry, President	Jon Stavney, Vice President
Tom Alvey	David H. Merritt
William S. Trampe	Steve Acquafresca
Stephen M. Mathis	John Ely
Thomas R. Sharp	Rebie Hazard
Gary Martinez	Tom Gray
Kai Turner	

Directors not participating:

Andrew A. Mueller	Stan Whinnery
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Others participating during all or part of the meeting:

Eric Kuhn, General Manager, CRWCD
Peter Fleming, General Counsel, CRWCD
Dan Birch, Deputy General Manager, CRWCD
John Currier, Chief Engineer, CRWCD
Mary Kalmes, Chief Accountant, CRWCD
Chris Treese, Manager, External Affairs, CRWCD
Jason Turner, Senior Counsel, CRWCD
Laurie DePaolo, Executive Assistant, CRWCD
Jim Pokrandt, Communication & Education Specialist, CRWCD
Ray Tenney, Deputy Chief Engineer, CRWCD
Dave Kanzer, Sr. Water Resources Engineer, CRWCD
Don Meyer, Sr. Water Resources Engineer, CRWCD
Ian Philips, Accountant, CRWCD
Dave Smith, Engineering Technician, CRWCD
Denise Hussain, Records Specialist, CRWCD
Lorra Nichols, Paralegal, CRWCD
Martha Moore, Public Affairs Specialist, CRWCD
Alesha Fredrick, Business Support Specialist, CRWCD
Max Schmidt, Orchard Mesa Irrigation District
Diane Johnson, Upper Eagle River Water & Sanitation District
Danny Williams, Williams & Locke
Larry Sweeney, Colorado Association of Conservation Districts

Quorum.

President Newberry found a quorum and called the meeting to order at 9:09 a.m.

¹An 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.

Review and Approve Meeting Agenda and Objectives.

Peter Fleming proposed a correction to agenda item 2.b., Minutes of September 12, 2014 CRWCD Budget Workshop/Special Joint Meeting on page 2, paragraph 2, replacing “\$200,000 to \$500,000” with “\$1,500,000,” and the addition of Proposed Endorsement for West Slope Water Quality Control Commission Applicants as agenda item 8.b.iii. Director Merritt moved, seconded by Director Stavney, to approve the agenda as amended. Motion carried unanimously.

Consent Agenda.

Director Merritt moved, seconded by Director Stavney, to approve the following consent agenda with the proposed changes to the Minutes of September 12, 2014 CRWCD Budget Workshop/Special Joint Meeting. Motion carried unanimously.

Approval of Minutes and Actions Taken:

- a. Minutes of Third Regular Quarterly Meeting, July 15-16, 2013.
- b. Minutes of 2014 CRWCD Budget Workshop/Special Joint Meeting, September 12, 2013.
- c. Acceptance of Treasurer’s Reports and Check Registers for June, July and August 2013.

Personnel Review Matters.

Peter Fleming recommended that the following matters qualify for discussion in Executive Session pursuant to C.R.S. §§ 24-6-402(4)(f)(personnel):

3. Personnel Review Matters with General Manager.
4. Personnel Review Matters with General Counsel.

Director Acquafresca moved, seconded by Director Alvey, to move into Executive Session pursuant to C.R.S. §§ 24-6-402(4)(f)(personnel). Motion carried unanimously.

Mr. Fleming stated that discussions on personnel matters would be recorded and retained for 90 days.

President Newberry reconvened into Public Session at 11:07 a.m.

Personnel Review Matters - Public Session.

Peter Fleming reported that during Executive Session the Board discussed the following:

3. Personnel Review Matters with General Manager.
4. Personnel Review Matters with General Counsel.

General Manager’s Report.

Discussion of Basin Implementation Plans and Proposed West Slope Roundtable Guidelines on New Supply:

Eric Kuhn and Dan Birch reported that the River District had been requested to act as the fiscal agent (pass-through contracts) for consultants preparing the Colorado River Basin Roundtable and Yampa/White Roundtable Basin Implementation Plans.

Director Alvey moved, seconded by Director Mathis, to authorize the River District to act as the contracting entity with the Colorado Water Conservation Board and the Basin Implementation Plan consultants for preparation of the plans. Motion carried unanimously.

Subsequent discussion resulted in Directors Alvey and Mathis withdrawing the motion and second with the proposed authorization slated for action during the River District’s Colorado River Water Projects Enterprise meeting.

Roundtable/IBCC Update:

Eric Kuhn reported that at the next IBCC meeting on December 4th, a detailed discussion is scheduled regarding a new supply project from the Colorado River Basin, identifying specific water needs on the East Slope, and the concerns the West Slope have about a new transmountain diversion. The Grand Valley entities have prepared a policy statement addressing Colorado's Water Plan that notes that a large new transmountain diversion is a reallocation of existing supply, not the development of a new supply. This could increase the risk of a Colorado River Compact curtailment.

Concerns voiced included having clear parameters set for the discussion, identification of specific East Slope needs, and having consensus among the four West Slope roundtables on guidelines for a potential Colorado River Basin project.

Dan Birch reviewed a draft version of the West Slope Roundtable Position Statement on the Colorado Water Plan including guidelines to preserve West Slope and East Slope agriculture, developing cooperative projects to benefit both the West Slope and East Slope, and opposition to a state water project that threatens future West Slope water development.

Approval of Contract with AMEC, re: Compact Water Bank Study, Phase IIB.:

Director Stavney moved, seconded by Director Trampe, to approve a contract with AMEC Environment and Infrastructure Inc. in an amount not to exceed \$240,000 subject to review and approval by the General Manager and General Counsel, to conduct Phase IIB. of the Compact Water Bank Study. Motion carried unanimously. (Subsequent discussion led to the contract approval being moved to the Enterprise agenda for action).

Colorado River Interstate Issues:

It was reported that the late summer rains resulted in a fairly significant increase in Lake Powell, Blue Mesa Reservoir and Navajo Reservoir. Navajo Reservoir gained approximately 80,000 af of storage, and forecast inflows into Lake Powell for August through December have increased by nearly 1 million af.

Technical Staff Updates:

Eric Kuhn referred the Board to memos from Ray Tenney on the completion of the Old Dillon Reservoir enlargement and from Mike Eytel on upcoming Water Quality Control Commission hearings on the Classifications and Numeric Standards for the Upper Colorado River Basin, North Platte River Basin, and Lower Colorado River Basin.

Service Anniversary Recognition:

Audrey Turner expressed the River District's appreciation to Meredith Spyker for five years of service at the River District.

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):

- i. Colorado River Cooperative Agreement- Implementation Issues.
- ii. C-BT Project Operations, Windy Gap Firming Project and Upper Colorado Stream Flow Management.
- iii. Conditional Water Rights of River District, Upper Eagle Regional Water Authority and Eagle River Water & Sanitation District for Eagle-Piney Project.
- iv. Application of Busk-Ivanhoe, Inc., Case Nos. 09CW142, 09CW186, and 09CW272, Consolidated, Water Division 2.
- v. Colorado River Compact and Interstate Issues.

- vi. Colorado State Water Plan and Colorado Compact Water Bank Study.
- vii. Application of Pitkin County for RICD, Case No. 10CW305, Water Division 5.

Director Acquafresca 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 2:21 p.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:

- i. Colorado River Cooperative Agreement- Implementation Issues.
- ii. C-BT Project Operations, Windy Gap Firming Project and Upper Colorado Stream Flow Management.
- iii. Conditional Water Rights of River District, Upper Eagle Regional Water Authority and Eagle River Water & Sanitation District for Eagle-Piney Project.
- iv. Application of Busk-Ivanhoe, Inc., Case Nos. 09CW142, 09CW186, and 09CW272, Consolidated, Water Division 2.
- v. Colorado River Compact and Interstate Issues.
- vi. Colorado State Water Plan and Colorado Compact Water Bank Study.
- vii. Application of Pitkin County for RICD, Case No. 10CW305, Water Division 5.

Mr. Fleming also reported that he was not present during the discussion of agenda item 6.a.iv., Application of Busk-Ivanhoe, Inc., Case Nos. 09CW142, 09CW186, and 09CW272, Consolidated, Water Division 2, and Director Ely was not present during the discussion of agenda item 6.a.vii., Application of Pitkin County for RICD, Case No. 10CW305, Water Division 5.

Director Mathis moved, seconded by Director Stavney, to confirm the Board's intent to maintain the 170 cfs Piney Right and directed staff to take the steps necessary to complete the appropriation in a reasonably expedient and efficient manner, consistent with Colorado law, and direct staff and counsel to file a joint application with the Upper Eagle Regional Water Authority and Eagle River Water & Sanitation District seeking a finding of reasonable diligence for the 170 cfs Piney Right. Motion carried unanimously.

Director Sharp moved, seconded by Director Acquafresca, to delegate future litigation decisions in the Application of Busk-Ivanhoe, Inc., Case Nos. 09CW142, 09CW186, and 09CW272, Consolidated, Water Division 2 case to the Board's Litigation Committee. Motion carried unanimously.

Director Alvey moved, seconded by Director Trampe, to authorize Counsel to enter into a stipulation with the City of Northglenn, consenting to a proposed decree in Northglenn's application in Case No. 08CW141, Water Division 1. Motion carried unanimously.

Peter Fleming relayed that the Colorado River Cooperative Agreement was fully executed and implemented on September 26th.

Mr. Fleming also reported that staff is continuing to research what approach similar organizations are considering in response to a recent amendment to the Colorado Governmental Immunities Act that increased

the governmental immunity waiver from \$600,000 to \$990,000 as well as any impacts to River District consultants if the insurance requirements are increased in the District's standard form contracts.

Discussion and Proposed Adoption of CRWCD Strategic Plan.

Director Stavney moved, seconded by Director Alvey, to adopt the CRWCD Strategic Plan. Director Sharp proposed an amendment to the motion to review the strategic plan on an annual basis in conjunction with the budget hearing. Directors Stavney and Alvey accepted the amendment and the amended motion carried unanimously.

External Affairs.

Information and Outreach Update:

Martha Moore reported that the River District's H2O water camp, in conjunction with Denver Water and the City of Aurora, will be held at the Keystone Science School from November 13-15.

State Affairs:

Chris Treese reported that the Water Interim Committee met recently and approved numerous proposed water-related bills for drafting and further consideration. The Committee discussed but did not approve a proposed bill for drafting that would amend the current diligence period for conditional water rights from six years to ten years. Mr. Treese requested discussion and direction on two of the proposed bills approved by the Committee: (1) a "FLEX water market concept" bill to facilitate alternative mechanisms to "buy and dry" of agricultural water and (2) a bill limiting objectors in water court cases to those who possess water rights. Mr. Treese further requested discussion and direction on the proposed amendment to the diligence filing timeline. The Board expressed its support in concept to the "FLEX water" proposal and directed staff to remain involved in the drafting and development of legislation. Directors were divided on the merits of increasing the period between required diligence filings and standing requirements for objectors in water court applications.

Approval of Contribution to Colorado Water Congress Educational Effort Related to the Public Trust Doctrine:

Director Sharp moved, seconded by Director Gray, to approve a \$10,000 contribution to the Colorado Water Congress' educational effort related to the Public Trust Doctrine. Motion carried unanimously.

Proposed Endorsement for West Slope Water Quality Control Commission Applicants:

Director Stavney moved, seconded by Director Trampe, to endorse Lurline Curran and Director Merritt for appointment to the West Slope seats on the Water Quality Control Commission. Motion carried unanimously, with Director Merritt abstaining from the vote.

Water Conservation Plan Application:

A provision in **SB13-019, passed in the last legislative session**, requires approval by a state agency, water conservation district, water district, water authority, etc for water conservation programs implemented by an agricultural water rights owner. Since the bill pertains only to Water Divisions 4, 5 and 6, the River District will have approval authority for any water conservation programs submitted to it.

Director Stavney moved, seconded by Director Martinez, to delegate approval authority to staff for Water Conservation Programs pursuant to C.R.S. §37-92-305(3)(II)(A). Motion carried 9:3. Directors voting for the motion: Stavney, Martinez, Alvey, Acquafresca, Sharp, Mathis, Ely, Turner and Hazard. Directors voting against the motion: Trampe, Merritt, and Gray.

Federal Affairs:

Chris Treese reported that **H.R.3189**, the Water Rights Protection Act, was recently introduced by Congressman Scott Tipton. The bill, as introduced, would prohibit the Departments of Agriculture and Interior and their agencies from issuing any permit with conditions that “transfer, relinquish, or impair” any water right “to the United States.” Mr. Treese noted that Mr. Tipton and his staff consulted with River District staff and ski area representatives both during the drafting of the bill and following introduction to address River District staff concerns. Mr. Tipton accepted amendments that include removal of the word “impairment” and changing “relinquishment” to “surrender of possession.”

The bill was drafted in response to U.S. Forest Service directives in 2012 and 2013. The 2012 directive required transfer of ski area-owned water rights as a condition of any new permit or permit modification. The 2013 revised directive contained provisions regarding ownership of water rights associated with ski area operations and requiring, as a condition of any new permit or permit modification, that the ski area operator agree not to transfer any water rights off the national forest, including rights owned solely in the name of the operator. The Federal District Court vacated the Forest Service directive and prohibited the Forest Service from enforcing the permit terms based on the 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 indicated it will pursue rulemaking on the issue in the near future.

Mr. Treese also reported that Mr. Tipton agreed to include a statement of intent in the legislative record that the bill is meant to prohibit federal agencies from using the permit, leasing and land management processes to extort ownership of water rights from waters users, not to prohibit the federal agencies from requiring bypass flows and other necessary permit conditions for the protection of the environment and water users.

Director Acquafresca moved, seconded by Director Gray, to support **H.R. 3189** with the aforementioned amended language and the inclusion of the statement of intent in the legislative record.

A discussion ensued with some directors expressing concerns over the lack of clear language in the body of the bill protecting the ability of the agencies to impose potential bypass and instream flow requirements. Director Martinez then offered an amendment to the motion to condition the River District’s support for the bill on the amendment of **H.R. 3189 to include** the statement of intent language in the main body of the bill. After further discussion, Director Martinez withdrew the amendment.

Director Merritt offered an amendment to the motion to direct staff to work with Mr. Tipton, his staff, and interested constituents to request inclusion of a clarifying statement regarding intent language (a “savings clause”) in the body of the bill. Directors Acquafresca and Gray accepted the amendment and the amended motion carried 10:2. Directors voting in favor of the motion: Trampe, Acquafresca, Alvey, Martinez, Mathis Gray, Merritt, Stavney, Hazard and Turner. Directors voting against the motion: Ely and Newberry.

President Newberry recessed the meeting at 4:34 p.m.

Wednesday October 16, 2013.

President Newberry found a quorum and reconvened the meeting at 8:27 a.m.

Approval of Proposed Modifications to Grants Program Policy and Contract.

John Currier reviewed proposed changes to the Grants Program Policy and Contract. After discussion, Director Stavney moved, seconded by Director Martinez, to adopt the proposed changes to the Grants Program Policy and Contract as presented with revisions to #16 of the draft policy to reflect that members of the Board of Directors and Staff are subject to Article XI of the By-Laws of the District and that any member of the Board or Staff with a personal interest in project proposed for grant funding will disclose that interest

or other conflict of interest and recuse themselves from participating in any vote or decision making process related to that project. Motion carried unanimously.

Budget Hearings.

President Newberry opened the 2014 budget hearings.

Eric Kuhn reported that the budget notice was published in local papers and that copies of the budget were sent to each county to be posted and was available to the public at the district office and on the district's website. Comments were requested from the public on the River District website. No public comment was received.

Resolution for 2013 General Fund Budget Amendments:

Director Stavney moved, seconded by Director Mathis, to adopt a resolution summarizing expenditures and revenues for the General Fund and adopting an amended budget for the Colorado River Water Conservation District, Colorado for the calendar year beginning on the first day of January 2013 and ending on the last day of December 2013. Motion carried unanimously.

Resolution to Adopt 2014 General Fund Budget:

Director Stavney moved, seconded by Director Mathis, to adopt a resolution summarizing expenditures and revenues for the General Fund and adopting a budget for the Colorado River Water Conservation District, Colorado for the calendar year beginning on the first day of January 2014 and ending on the last day of December 2014. Motion carried unanimously.

Resolution to Appropriate Sums of Money:

Director Stavney moved, seconded by Director Mathis, to adopt a resolution appropriating sums of money to the various funds in the amounts and for the purposes set forth below, for the Colorado River Water Conservation District, Colorado for the 2014 budget year: General Fund \$5,583,146 and Capital Projects Fund \$2,528,349. Motion carried unanimously.

Resolution for 2013 Capital Projects Fund Budget Amendments:

Director Stavney moved, seconded by Director Mathis, to adopt a resolution summarizing expenditures and revenues for the Capital Projects Fund and adopting an amended budget for the Colorado River Water Conservation District, Colorado for the calendar year beginning on the first day of January 2013 and ending on the last day of December 2013. Motion carried unanimously.

Resolution to Transfer Unspent 2013 Balances:

Director Stavney moved, seconded by Director Mathis, to adopt a resolution to authorize and direct the transfer of monies to the Capital Projects Fund from the General Fund in the amount of revenues less expenditures, and an amount sufficient to cover expenses prior to the receipt of tax revenues. This resolution further authorizes and directs that the funds be transferred no later than December 31, 2013. Motion carried unanimously.

Resolution to Adopt 2014 Capital Projects Fund Budget:

Director Stavney moved, seconded by Director Mathis, to adopt a resolution summarizing expenditures and revenues for the Capital Projects Fund and adopting a budget for the Colorado River Water Conservation District, Colorado for the calendar year beginning on the first day of January 2014 and ending on the last day of December 2014. Motion carried unanimously. (The resolutions are attached as Appendices A-F.).

President Newberry closed the budget hearings.

Director Stavney moved, seconded by Director Alvey to increase the General Manager's and General Counsel's salary 2.9% for 2014. Motion carried unanimously.

Directors' Concerns.

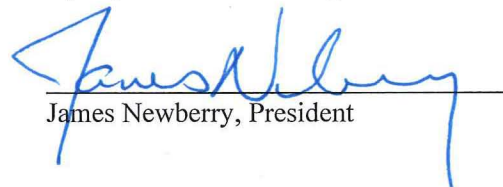
No concerns were expressed.

Future Meetings.

- a. First Regular Quarterly Meetings, **January 21-22, 2014, Glenwood Springs, CO.**
- b. Special Joint Meeting/Legislative Conference Calls, commencing **January ??, 2014.**
- c. Executive Committee Meeting, **mid-March, 2014, Glenwood Springs, CO.**
- d. Second Regular Quarterly Meetings, **April 15-16, 2014, Glenwood Springs, CO.**
- e. Third Regular Quarterly Meetings, **July 15-16, 2014, Glenwood Springs, CO.**
- f. 2015 Budget Workshop/Special Joint Meeting, **mid-September 2014, Location TBD.**
- g. Fourth Regular Quarterly Meetings, **October 21-22, 2014, Glenwood Springs, CO.**
- h. Other Meetings:
 - i. CRWUA Convention, **December 11-13, 2013, Las Vegas, NV.**
 - ii. CWC Winter Convention, **January 29-31, 2014, Denver, CO.**
 - iii. Western State Water Workshop, **mid-July 2014, Gunnison, CO.**
 - iv. CRWCD Seminar, **mid-September 2014, Location TBD.**

Adjourn.

There being no other business before the Board, President Newberry adjourned the meeting at 9:06 a.m.



James Newberry, President

ATTEST:


R. Eric Kuhn, Secretary/General Manager

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