

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

January 20-21, 2015

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 20-21, 2015 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	John Justman
Marc Catlin	John Ely
Doug Monger	Rebie Hazard
Gary Martinez	Martha Whitmore
Stan Whinnery	Alden Vanden Brink

Directors not participating:

Tom Gray

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
Chris Treese, Manager, External Affairs, CRWCD
Audrey Turner, Administrative Chief, 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
Hunter Causey, Water Resources Engineer, CRWCD
Mike Eytel, Water Resources Specialist, CRWCD
Denise Hussain, Records Specialist, CRWCD
Lorra Nichols, Paralegal, CRWCD
Martha Moore, Public Affairs Specialist, CRWCD
Alesha Fredrick, Business Support Specialist, CRWCD
Tom Pitts, Water Consult
Shirley Pitts
Dianne Johnson, Upper Eagle River Water Authority
Brent Gardner Smith, Aspen Journalism
Larry Sweeney, Colorado Association of Conservation Districts

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.

Quorum.

President Newberry found a quorum and called the meeting to order at 9:32 a.m.

Review Meeting Agenda and Objectives.

No changes were recommended for the agenda.

Report and Presentation of Directors' Credentials for Garfield, Gunnison, Montrose, Ouray and Rio Blanco Counties.

Eric Kuhn reported that executed credentials for directors from Garfield (Merritt), Gunnison (Trampe), Montrose (Catlin), Ouray (Whitmore), and Rio Blanco (Vanden Brink) Counties have been received by the River District. Director Whinnery moved, seconded by Director Alvey to accept the credentials as presented. Motion carried unanimously. (The credentials are attached as Appendices A.-E.).

Election of Board Officers for 2015.

Election of President:

Director Alvey moved, seconded by Director Martinez, to nominate Director Stavney as president for 2015. Motion carried unanimously. Director Trampe moved, seconded by Director Whinnery, to close the nominations and elect Director Stavney as president for 2015. Motion carried unanimously.

Election of Vice President:

Director Whinnery moved, seconded by Director Ely, to nominate Director Alvey as vice president for 2015. Motion carried unanimously. Director Trampe moved, seconded by Director Whinnery, to close the nominations and elect Director Alvey as vice president for 2015. Motion carried unanimously.

Resolutions for Outgoing Directors.

Director Merritt moved, seconded by Director Trampe, to adopt resolutions expressing the Board's appreciation to Kai Turner, Andrew A. "Andy" Mueller and Stephen M. "Steve" Mathis for their service as River District directors. Motion carried unanimously. (The resolutions are attached as Appendices F.-H.)

Appointment of Committees for 2015.

President Stavney 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 historical rotation among counties, for 2015 is comprised of directors from Delta, Grand, Mesa, Rio Blanco and Saguache Counties as well as the Board President. Other committee assignments are made by the President in consultation with Vice President.

Director Merritt moved, seconded by Director Monger, to affirm the Executive Committee for 2015 as presented. Motion carried unanimously.

Mr. Kuhn reminded the Board that pursuant to the Joint Management Agreement with the Bluestone Water Conservancy District, Mesa County and Garfield County directors are appointed to the Bluestone Management Committee.

Consent Agenda.

Director Merritt requested that the word "and" be changed to "an" in the last sentence of page one of the minutes of the Special Joint Meeting, Telephone Conference, December 16, 2014. Director Merritt moved, seconded by Director Trampe, to approve the following consent agenda as presented, with the correction included. 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 Fourth Regular Quarterly Meeting, October 21, 2014.
 - ii. Minutes of Special Joint Meeting, Telephone Conference, December 16, 2014.
- e. Acceptance of Treasurer's Reports and Check Registers for September, October and November 2014.

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 Matters.
- ii. Windy Gap Firming Project.
- iii. Shoshone Outage Protocol.
- iv. Green Mountain Reservoir Administrative Protocol.
- v. Application of Lake County, Case No. 98CW173, Water Division 2.
- vi. Colorado River Compact, Interstate and Related Matters.

Director Ely 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 Stavney reconvened into Public Session at 11:00 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:

- vii. Colorado River Cooperative Agreement Implementation Matters.
- viii. Windy Gap Firming Project.
- ix. Shoshone Outage Protocol.
- x. Green Mountain Reservoir Administrative Protocol.
- xi. Application of Lake County, Case No. 98CW173, Water Division 2.
- xii. Colorado River Compact, Interstate and Related Matters.

Director Whinnery moved, seconded by Director Trampe, to authorize counsel to stipulate to a consent decree in the Application of Lake County, 98CW173 Water Division 2 that includes language that was negotiated with counsel for Lake County or language that is substantially similar, provided that any amended language is no less restrictive on the applicant. Motion carried unanimously.

Director Alvey moved, seconded by Director Trampe, to approve a rate increase for 2015 for special counsel Michael McCarty. Motion carried unanimously.

Peter Fleming proposed that discussion of the General Counsel 2015 goals and objectives be held in conjunction with the General Manager 2015 goals and objectives scheduled later in the agenda.

Jason Turner reported that the Kobe Pipeline Project was nearing completion with water deliveries being made through some temporary facilities and proposed the formation of a water authority to assume the responsibilities currently held by the Bluestone Management Committee. The Kobe Water Authority, as

proposed, would consist of two members of the Colorado River District (Mesa and Garfield County Directors) and two members appointed by the Bluestone Water Conservancy District.

Director Merritt, moved, seconded by Director Alvey, to approve the Resolution of the Colorado River District Concerning the Formation of the Kobe Water Authority and Dissolution of the Joint Bluestone Management Committee, and authorize the appointment of the River District directors from Mesa and Garfield Counties to the Board of the Kobe Water Authority upon its formation, and confirm Board direction for the River District counsel to represent the Authority jointly with counsel for the Bluestone Water Conservancy District. Motion carried unanimously. (The resolution is attached as Appendix I.).

Presentation by Tom Pitts of Water Consult.

Tom Pitts provided an overview of the Upper Colorado River Recovery Program (Recovery Program) which was established to manage conflicts between water development and the recovery of endangered fish species as mandated by the Endangered Species Act (ESA). Mr. Pitts represents water users in Colorado, Utah and Wyoming on the Recovery Program. The Recovery Program provides ESA compliance to water projects pursuant to Programmatic Biological Opinions (PBOs) that rely upon Recovery Program actions. Mr. Pitts went on to explain that the greatest challenge currently facing the Recovery Program is nonnative fish species that prey upon and compete with endangered fishes and are difficult to control. If the efforts of the Recovery Program are deemed unsuccessful, water users could be faced with losing existing protections provided under the PBOs.

General Manager's Report.

Colorado River Interstate Issues:

Eric Kuhn reported that the Upper Basin states are continuing to develop a contingency plan in response to the ongoing basin-wide drought with the goals of maintaining the minimum power level at Lake Powell and avoiding a Colorado River Compact curtailment. The three elements of the contingency plan – in order of priority - are: supply augmentation through cloud seeding and tamarisk removal; extended operations of the Colorado River Storage Project reservoirs upstream of Lake Powell; and demand management of consumptive uses upstream of Lake Powell.

Mr. Kuhn also relayed that the System Conservation Agreement (SCA) among Denver Water, the Central Arizona Project, the Metropolitan Water District, the Southern Nevada Water Authority and the Bureau of Reclamation will spend \$11 million (75% in the Lower Basin, 25% in the Upper Basin) on pilot projects intended to conserve consumptive uses and improve system storage levels. The Bureau of Reclamation has been soliciting and evaluating proposed pilot projects in the Lower Basin. The Upper Colorado River Commission has been requested to fill the same role in the Upper Basin. It was also noted that the Lower Division states and the Bureau of Reclamation have signed an agreement to reduce demands on Lake Mead by 740,000 acre-feet over the next three years.

Roundtable/IBCC Update:

Mr. Kuhn referred the Board to a consensus paper developed by the Gunnison Basin Roundtable (GBRT) in response to the Colorado Basin Roundtable's position paper that noted many terms in the IBCC's seven point concept regarding potential future transmountain diversion projects needed better definition. One of the seven concepts is that if there is a new transmountain diversion, it would not have a "firm yield." It would only divert during surplus or wet years in order to not increase the risk of compact curtailment to existing uses. Another of the seven points calls for an "insurance plan" to cover existing uses and some level of new West Slope uses and to avoid an involuntary curtailment under the 1922 Compact. The GBRT paper offered definitions of key terms in an effort to assist the West Slope roundtables in reaching consensus on what terms such as "insurance plan," "hydrologic risk," and "triggers" mean.

Goals and Objectives for 2015:

Eric Kuhn and Peter Fleming provided an overview of 2015 goals for the General Manager and General Counsel as well as the River District as a whole. These goals include: continued monitoring of the Ritschard Dam embankment movement, investigation of all reasonable operation and rehabilitation options, and development of a rehabilitation plan in a timely manner; facilitation and technical support for the development of a consensus strategy among the West Slope roundtables to guide the future conservation and development of Colorado River water; continued implementation of the Colorado River Cooperative Agreement (CRCA) and the Windy Gap Firming Project Agreement; and, continued participation in Colorado River interstate issues.

Proposed Contract Approvals:

Director Monger moved, seconded by Director Whinnery, to approve a contract amendment with Harvey Economics for Shoshone Power Plant work in an amount not to exceed \$25,000. Motion carried unanimously.

Director Martinez moved, seconded by Director Alvey, to approve a contract with SC Environmental for management consulting services related to selenium and salinity control in an amount not to exceed \$50,000. Motion carried unanimously.

Director Merritt moved, seconded by Director Trampe, to approve the following recommendations as presented by staff. Motion carried unanimously.

1.) To authorize the General Manager to enter into a contractual agreement with the USGS for up to \$500,000 to perform the numerous cooperative data collection and analyses as specifically outlined in a single comprehensive proposed Joint Funding Agreement (JFA) for 2015, subject to approval of the JFA by the General Manager and General Counsel. The contract amount is consistent with the previously approved 2015 budget; and

2.) To authorize the General Manager to enter into an MOU, subject to approval of the MOU by the General Manager and General Counsel, with the Eagle River Watershed Council (ERWC) that specifies roles, responsibilities and reimbursement obligations for the portion of the cooperative data collection program in the Upper Eagle River that is to be administered by the River District in 2015.

Director Newberry moved, seconded by Director Martinez, to authorize the General Manager to enter into a cost sharing agreement with the Eagle River Water & Sanitation District and the Upper Eagle Regional Water Authority to fund 1/3 of the cost for reinstallation and ongoing operation & maintenance of USGS gaging station No. 09058500, Piney River below Piney Lake, subject to annual appropriation by the Board and subject to final approval of the cost share agreement by the General Manager and General Counsel. Motion carried unanimously.

Proposed Changes to Employee Manual:

Director Newberry moved, seconded by Director Justman, to approve changes to the employee manual as presented by staff. Motion carried unanimously.

Technical Staff Update:

Eric Kuhn referred the Board to an update memo by the technical staff outlining recent activities.

Service Anniversaries Recognition:

John Currier relayed the River District's appreciation to Ray Tenney for 25 years of service and Dave Kanzer for 20 years of service.

Policies.

President Stavney and Chris Treese reminded the Board of the policy review process. In 2004, the Board chose to formalize the development and review processes of River District policies. Approximately one-third of the policies are reviewed by the Board annually.

Federal Reserved Water Rights:

No substantive changes were recommended.

Prior Appropriation Doctrine:

No substantive changes were recommended.

Transmountain Diversions:

The Board accepted Mr. Treese's recommendation to again table consideration of the Transmountain Diversions until resolution of issues connected to the Windy Gap Firing Project Agreement.

By consensus, staff was directed to draft a policy on agriculture and agricultural water use to be presented at the April 2015 quarterly meeting.

External Affairs.

Information and Outreach Update:

Jim Pokrandt updated the Board on upcoming public outreach efforts including: six State of the River meetings throughout the District; the CRWCD annual seminar on September 10, 2015 in Grand Junction; two H2O water camps at Keystone Science School; public radio appearances and underwriting; and, the CRWCD annual report.

Martha Moore reported that the new CRWCD website is scheduled to be launched by the end of January.

Federal Affairs:

Chris Treese outlined the River District's federal priorities for 2015 including pursuing funding for the endangered fishes recovery programs in the Upper Colorado and San Juan Rivers, and funding for the NRCS Manual Snow Courses, which is a critical planning component in water management.

State Affairs:

The Board accepted Mr. Treese's request to initiate bi-weekly special joint meeting conference calls commencing on February 5th.

HB15-1006: CONCERNING THE ESTABLISHMENT OF A GRANT PROGRAM FOR THE MANAGEMENT OF INVASIVE PHREATOPHYTES.

Recommendation: Support.

This bill would create a \$5 million annual grant program for management of tamarisk and Russian olive.

Director Merritt moved, seconded by Director Martinez, to **support HB 15-1006**. Motion carried unanimously.

HB15-1013: CONCERNING THE IMPLEMENTATION OF RECOMMENDATION NUMBER ONE SET FORTH IN THE STUDY OF THE SOUTH PLATTE RIVER ALLUVIAL AQUIFER PREPARED BY THE COLORADO WATER INSTITUTE PURSUANT TO HOUSE BILL 12-1278.

Recommendation: No Position.

This bill requires the CWCB to administer two pilot projects in the lower South Platte area to evaluate alternative methods for lowering high groundwater levels.

Director Justman moved seconded by Director Monger, to accept staff's recommendation of **no position**. Motion carried unanimously.

HB15-1016: CONCERNING INCENTIVES FOR PRECIPITATION HARVESTING.

Recommendation: Support in Concept.

This bill makes certain amendments to the existing precipitation harvesting pilot program in order to encourage new pilot projects to center the program.

Director Hazard moved, seconded by Director Whitmore, to **support in concept HB15-1016**. Motion carried unanimously.

HB15-1038: CONCERNING FLEXIBLE WATER MARKETS.

Recommendation: Oppose.

This bill would create a new "flexible" water right for changes-of-use water applications. It would allow flexible, unspecified uses of an agricultural water right that is temporarily not used to due to fallowing, deficit irrigation, reduced consumptive use cropping or other alternative agricultural transfers. The water right cannot be used to enable or enhance a transmountain diversion but does not identify how, when or where the water would be used.

Director Catlin moved, seconded by Director Trampe, to **oppose HB15-1038**. Motion carried unanimously.

HB15-1057: CONCERNING THE PROCESS FOR A STATEWIDE INITIATIVE TO BE PLACED ON THE BALLOT.

Recommendation: Monitor.

This bill directs the legislative council to prepare a fiscal impact statement for ballot initiatives prior to distribution of the blue book to voters which also contains ballot initiative fiscal impacts. This earlier fiscal note must appear on the petitions for signatures required to place the initiative on the ballot.

Director Whinnery moved, seconded by Director Catlin, to **monitor HB15-1057**. Motion carried unanimously.

HB15-1093: CONCERNING LIMITATIONS ON REQUIREMENTS FOR THE USE OF WATER-EFFICIENT PLUMBING FIXTURES.

Recommendation: Oppose.

This bill would essentially reverse legislation passed in 2014 requiring only water-efficient plumbing fixtures be sold beginning in 2016.

Director Monger moved, seconded by Director Justman to **oppose HB15-1093**. Motion carried unanimously.

SB15-008: CONCERNING THE PROMOTION OF WATER CONSERVATION IN LAND USE PLANNING PROCESS.

Recommendation: Support.

This bill directs the CWCB and DOLA to provide training programs to local governments concerning water conservation and demand management primarily in the context of land use and zoning. The CWCB and Water & Power Authority would consider local governments' participation in and application of these training programs when considering grant requests.

Director Monger moved, seconded by Director Ely, to **support SB15-008**. Motion carried 10:3. Directors voting for the motion: Alvey, Newberry, Trampe, Whinnery, Catlin, Whitmore, Ely, Monger, Hazard and Martinez. Directors voting against the motion: Justman, Merritt and Vanden Brink.

SB15-010: CONCERNING AUGMENTATION REQUIREMENTS FOR WELLS WITHDRAWING WATER FROM THE DAWSON ACQUIFER.

Recommendation: No Position.

This bill repeals a prospective rule concerning the Dawson (Denver Basin) Aquifer's augmentation requirements that is no longer required.

The Board accepted staff's recommendation of **no position on SB15-010.**

SB15-017: CONCERNING THE APPELLATE PROCESS GOVERNING A DISTRICT COURT'S REVIEW OF FINAL AGENCY ACTIONS CONCERNING GROUNDWATER.

Recommendation: Monitor.

This bill specifies that appeals of the Groundwater Commission or State Engineer before the Water Court will be reviewed based on evidence presented to the Commission or Office of the State Engineer; no new evidence may be presented at trial.

Director Monger moved, seconded by Director Whitmore, to **monitor SB15-017.** Motion carried unanimously.

SB15-055: CONCERNING STATE ENGINEER ADMINISTRATOR OF TAILWATER DITCHES.

Recommendation: Monitor.

This bill permits a tail ditch to return variable amounts of water to a stream. The State Engineer shall not require the delivery of a minimum amount of water to the stream, except as required by a court decree.

Director Alvey, moved seconded by Director Merritt, to **monitor SB15-055.** Motion carried unanimously.

SB15-064: CONCERNING LIMITS THAT THE BASIC TENENTS OF COLORADO WATER LAW PLACE ON THE ABILITY OF CERTAIN FEDERAL AGENCIES TO IMPOSE CONDITIONS ON A WATER RIGHT OWNER IN EXCHANGE FOR PERMISSION TO USE FEDERAL LAND.

Recommendation: Monitor.

This bill prohibits the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) from placing conditions on special uses permits for, or rights-of-way on, federal land that require the owner of a water right or a conditional water right to assign to the USFS or BLM partial or joint ownership of the water, impose limitations on the alienability of the owner's water right, or impose restrictions that give the USFS or BLM full or partial control over the use and operation of the water right.

Director Merritt moved, seconded by Director Monger, to **monitor SB15-064.** Motion carried unanimously.

SB15-075: CONCERNING THE ABILITY TO IRRIGATE NOT MORE THAN ONE ACRE OF CROPS FROM A WELL.

Recommendation: Oppose.

This bill would add an exemption from the Prior Appropriation System for certain water wells irrigating less than one acre of commercial crops.

Director Whinnery moved, seconded by Director Hazard, to **oppose SB15-075.** Motion carried unanimously.

SB15-084: CONCERNING A PROHIBITION REDUCING THE QUANTIFICATION OF A WATER RIGHT'S ACTUAL HISTORICAL USE IN A CHANGE OF WATER RIGHT.

Recommendation: Oppose.

This bill directs the Water Court to ignore previous quantifications of historical consumptive uses when calculating historical consumptive uses for other users of a shared water right.

Director Merritt moved, seconded by Director Justman, to **oppose SB15-084**. Motion carried unanimously.

SB15-091: CONCERNING A REDUCTION IN THE STATUTORY LIMITATION PERIOD APPLICABLE TO LEGAL ACTIONS FOR CONSTRUCTION DEFECTS ON IMPROVEMENTS TO REAL PROPERTY.

Recommendation: Oppose.

This bill reduces the mandatory statutory limitation period from 8 years to 4 years for an action against an architect, contractor, builder or builder vendor, engineer, or inspector performing or furnishing the design, planning, supervision, inspection, construction, or observation of construction of any improvement to real property.

Director Monger moved, seconded by Director Alvey, to **oppose SB15-091**. Motion carried unanimously.

“Son of SB14-023”:

Chris Treese reported that a bill has been drafted as a follow-up to **SB14-023** which would have allowed irrigators to save water through efficiency measures and dedicate those non-consumptive savings to the CWCB for instream flows. The draft bill allows approval of no more than 12 pilot projects (all on the West Slope) in order to gage the effectiveness of such savings and would sunset in 10 years.

The Board discussed and provided direction to staff but did not adopt a position on the draft bill.

President Stavney recessed the meeting at 4:55 p.m.

Wednesday, January 21, 2015

President Stavney found a quorum and reconvened the meeting at 8:15 a.m.

Future Meetings.


- a. Special Joint Meeting Conference Calls during Legislative Session, **beginning February 5, 2015 (Every other Thursday)**.
- b. Meeting with Lower Basin Agricultural Entities, **March 4-6, 2015**.
- c. Executive Committee Meeting, **March 12, 2015, Glenwood Springs, CO**.
- d. Second Regular Quarterly Meetings, **April 21, 2015, Glenwood Springs, CO**.
- e. Third Regular Quarterly Meetings, **July 21-22, 2015, Glenwood Springs, CO**.
- f. CRWCD Water Seminar, **September 10, 2015, Grand Junction, CO**.
- g. CRWCD 2016 Budget Workshop, **September 24, 2015, Location TBD**.
- h. Fourth Regular Quarterly Meetings, **October 20, 2015, Glenwood Springs, CO**.
- i. Other Meetings:
 - i. CWC Annual Convention, **January 28-30, 2015, Denver CO**.
 - ii. Western State Water Workshop, **mid-June, 2015, Gunnison, CO**.
 - iii. CWC Summer Convention, **August 19-21, 2015, Vail, CO**.
 - iv. CRWUA Convention, **December 16-18, 2015, Las Vegas, NV**.

Directors' Concerns.

Director Monger requested that staff draft a policy on the State Water Plan to be presented at the April quarterly meeting.


Adjourn.

There being no other business before the Board, President Stavney adjourned the meeting at 8:26 a.m.



Jon Stayney, 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