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

July 15-16, 2014

Pursuant to notice duly and properly given, the Third Regular Quarterly Meeting of the Board of Directors of the Colorado River Water Conservation District (CRWCD) was held on Monday and Tuesday, July 15-16, 2014 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
Stephen M. Mathis                  Andrew A. Mueller
John Ely                           Doug Monger
Tom Gray                           Rebie Hazard

Directors not participating:
Stan Whinnery                      Kai Turner
Gary Martinez

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 Treece, 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 and Information Specialist, CRWCD
Lorra Nichols, Paralegal, CRWCD
Martha Moore, Public Affairs Specialist, CRWCD
David Hallford, Balcomb & Green, P.C.
Chuck Ogilby, Committee for the Wild and Scenic
Dorothea Farris, Committee for the Wild and Scenic
Bill Jochens, Committee for the Wild and Scenic
Heather Lewin, Roaring Fork Conservancy
The Honorable K.C. Becker, State Representative
The Honorable Gail Schwartz, State Senator
Doug Robotham, The Nature Conservancy

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 9:08 a.m.

Review and Approve Meeting Agenda and Objectives.
Peter Fleming requested the addition of United States Forest Service Ski Area Water Right Permit Clause Directive as agenda item 3.b. ii., with subsequent items being renumbered accordingly. Mr. Fleming also requested the addition of a discussion of a Colorado Open Records Act (CORA) request that was received by the River District to be discussed after the consent agenda item. Director Alvey moved, seconded by Director Monger, to approve the agenda as amended. Motion carried unanimously.

Consent Agenda.
Director Stavney moved, seconded by Director Mathis, to approve the following consent agenda as presented. Motion carried unanimously.

a. Approval of Minutes and Actions Taken:
   i. Minutes of Second Regular Quarterly Meeting, April 15, 2014.
   ii. Minutes of Special Joint Meeting, Telephone Conference, May 1, 2014.

b. Acceptance of Treasurer’s Reports for March, April and May 2014.

Discussion of Colorado Open Records Act Request (CORA).
Peter Fleming reported that the River District had received a CORA request for compensation, mileage and expenses paid to President Newberry in his capacity as a River District director and officer. The information was provided as requested.

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.
iii. Application of Denver Water, Grand County and Colorado Water Conservation Board, Case No. 11CW152, Water Division 5.
iv. Applications of United States of America for Taylor Park Exchange, Case No 90CW164 and Taylor Park Reservoir Refill Diligence, Case No. 11CW31, Water Division 4.
v. Application of Busk-Ivanhoe, Inc., Case No. 09CW142, Water Division 2.
vi. Application of Lower Arkansas Valley Water Conservancy District/Larkspur Ditch Co., Case No 11CW77, Water Division 2.
vii. Application of Lake County, Case No. 98CW173, Water Division 2.
viii. Kobe Project Development.
ix. Colorado River Compact and Interstate Issues.

Mr. Fleming requested that River District special counsel David Hallford be invited to participate in a portion of Executive Session:

Director Mueller moved, seconded by Director Mathis, to proceed into Executive Session pursuant to C.R.S. §§ 24-6-402(4)(b)(legal advice) and (e)(negotiations) and to invite David Hallford to participate in a portion of Executive Session. 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.

Vice President Stavney reconvened into Public Session at 11:27 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:

i. Colorado River Cooperative Agreement – Implementation.


iii. Application of Denver Water, Grand County and Colorado Water Conservation Board, Case No. 11CW152, Water Division 5.

iv. Applications of United States of America for Taylor Park Exchange, Case No 90CW164 and Taylor Park Reservoir Refill Diligence, Case No. 11CW31, Water Division 4.

v. Application of Busk-Ivanhoe, Inc., Case No. 09CW142, Water Division 2.

vi. Application of Lower Arkansas Valley Water Conservancy District/Larkspur Ditch Co., Case No 11CW77, Water Division 2.

vii. Application of Lake County, Case No. 98CW173, Water Division 2.

viii. Kobe Project Development.

ix. Colorado River Compact and Interstate Issues.


Director Mueller moved, seconded by Director Trampe, to authorize counsel to stipulate to a proposed consent decree in the Application of Denver Water, Grand County and Colorado Water Conservation Board, Case No. 11CW152, Water Division 5, subject to the approval of the General Counsel and General Manager, and to have the River District stay active in the case in order to best ensure that an acceptable decree is entered without substantial interference or objection from other parties. Motion carried unanimously.

Director Alvey moved, seconded by Director Mueller, to authorize counsel and staff to file a Notice of Appeal to the Final Ruling and Decree in the Application of Busk-Ivanhoe, Inc. Consolidated Case Nos. 09CW142, 09CW186, and 09CW272, Consolidated, Water Division 2. Motion carried unanimously.

Director Merritt moved, seconded by Director Monger, to authorize execution of agreements with Chevron for the Kobe Pipeline Project including: 1) an intake structure bill of sale; 2) a pipeline easement and bill of sale; 3) a surface lease for the Kobe water storage facility; 4) a road license agreement; and, 5) a water rights termination agreement, subject to approval by the Bluestone Water Conservancy District and counsel. Motion carried unanimously.

Peter Fleming reported that the River District had received a request from River District special counsel David Hallford for a conflict of interest waiver in order for Mr. Hallford to continue representing another client in a water court case.

Director Merritt moved, seconded by Director Justman, to delegate consideration of the conflict of interest waiver request to the Litigation Committee.

After discussion, Director Mueller offered a substitute motion, seconded by Director Mathis, to deny the conflict of interest waiver. Motion carried 6:4. Directors voting in favor of the motion: Mueller, Stavney, Ely, Trampe, Mathis and Merritt. Directors voting against the motion: Monger, Alvey, Justman and Gray.

Director Merritt moved, seconded by Director Trampe, to authorize counsel and staff to file comments on a proposed ski area permit directive from the U.S. Forest Service focusing on clarifying that the scope of the directive is limited to water rights that arise on U.S. Forest Service lands that are necessary for ski area operations, and, that the appropriation and adjudication of a water right for ski area operations on U.S. Forest Service lands should be subject to state law and not pre-conditioned on the existence of a U.S. Forest Service Special Use Permit. Motion carried unanimously.
Director Stavney moved, seconded by Director Trampe, to ratify a Statement of Opposition to the Amended Application of Board of County Commissioners of Lake County, Case No. 98CW173, and Water Division 2. Motion carried unanimously.

Mr. Fleming requested that agenda item 3. b. v., General Counsel’s Review of 2014 Goals and Objectives, be discussed in conjunction with the General Manager’s Review of 2014 Goals and Objectives scheduled as agenda item 4.a.

John Currier and Peter Fleming presented a technical and legal review of water rights change cases. All change cases must be adjudicated in water court and changes can be in type of use, place of use, and/or change in point of diversion. Standards for change cases include the following: 1) the applicant must show no injury to existing water rights (including junior rights). 2) A junior water right holder is entitled to the maintenance of the stream conditions existing at the time of the junior’s appropriation. 3) Changes in use are generally limited to the historical consumptive use of the right. 4). Amount, location and timing of historical return flows must be maintained.

**Discussion with Representatives of the Committee for the Wild and Scenic (CWS) and the Roaring Fork Conservancy.**

Members of the CWS sought comments from the Board regarding the CWS’s efforts to secure legislation for a Wild and Scenic designation for 39 miles of the Crystal River. Concerns expressed by the Board included the inability to provide for future water needs within the Crystal River Basin because of the inflexibility of a Wild and Scenic designation. Recent studies of the basin have indicated a water shortage exists currently for municipal, agricultural and environmental needs.

Heather Lewin of the Roaring Fork Conservancy provided an overview of the Conservancy’s efforts to develop a restoration plan for the Crystal River.

**General Manager’s Report.**

**Review of 2014 Goals and Objectives:**

Eric Kuhn reiterated goals and objectives for 2014 including continued implementation of the Colorado River Cooperative Agreement, ongoing monitoring of the Wolford Mountain dam deformation, and participating in the development of the Colorado Water Plan as well as the Upper Basin contingency plan, among others. Peter Fleming relayed that in addition to participating in the aforementioned goals, General Counsel Goals include working to ensure a satisfactory resolution of the Windy Gap Firming Project, assisting staff in the development of a strategic water development plan, and implementation of the Kobe Project.

**IBCC/Roundtables Update:**

Mr. Kuhn reported that the IBCC has reached a conceptual agreement on a framework for discussion of a new transmountain diversion to help meet projected water shortages on the Front Range. The concept is that if there is a new transmountain diversion, it would not be a “firm” yield supply based on West Slope diversions. It would only divert during surplus or wet years and not increase the risk to existing uses. There would also be an “insurance plan” to cover existing uses and some level of new uses to avoid a future “involuntary” curtailment under the 1922 Compact. Also included in the framework is any detailed discussion of the hydrologic feasibility of a new transmountain diversion would not occur until after 2026.

**Colorado River Interstate Issues:**

Mr. Kuhn relayed that work is continuing at the Upper Colorado River Commission to develop a contingency plan to maintain Lake Powell and Lake Mead above critical levels. Elements of the plan include extended operations of the Colorado River Storage Project reservoirs upstream of Lake Powell, cloud seeding and demand management. The River District is assisting the State of Colorado with the effort.
Grand County Water Management Request:
It was reported that the River District has received a request from Grand County for assistance in managing water resources that will be obtained by the county as a result of the Colorado River Cooperative Agreement and the Windy Gap Firming Project.

Technical Staff Update Memo.
Mr. Kuhn referred the Board to memos regarding recent water quality issues and technical staff activities.

Discussion of Basin Implementation Plans.
By consensus, discussion of the basin implementation plans was tabled to the October 2014 quarterly meeting.

Annual Policy Discussion.
Transmountain Diversions:
Chris Treese noted that in light of the Board’s direction to include the Windy Gap Firming Project in the background section of the Transmountain Diversions Policy, and the ongoing negotiations between the Bureau of Reclamation and the Municipal Subdistrict of the Northern Colorado Water Conservancy District on the firming project, it would be premature to request approval of the policy. It will be brought for final action at a future meeting.

Aging Infrastructure:
Director Monger moved, seconded by Director Gray, to adopt the River District’s Aging Infrastructure Policy as presented. Motion carried unanimously. (The policy is attached as Appendix A.).

External Affairs:
State Issues:
Son of SB14-023 and 2014 Wrap Up:
The Board held an extended discussion with Senator Schwartz and Representative Becker, sponsors of SB14-023, regarding this bill that would have allowed an irrigator to loan or permanently transfer non-consumptive water savings due to efficiency improvements for instream flow uses. The River District worked throughout the 2014 session to develop an acceptable bill but ended up opposing the final bill. Possible compromise scenarios were discussed for future legislation with the Board endorsing the general concept of a pilot program to test the benefits and impacts of a program for water efficiency savings.

President Newberry recessed the meeting at 5:02 p.m.
Wednesday, July 16, 2014
President Newberry found a quorum and reconvened the meeting at 8:33 a.m.

Presentation of 2013 CRWCD Audit by Kevin Smith of McGladrey, LLP.
Kevin Smith of McGladrey, LLP, reported that in their opinion, the financial statements present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund and aggregate remaining fund information of the Colorado River Water Conservation District as of December 31, 2013. He also stated that the respective changes in financial position and cash flows were acceptable for the year and conforms to generally accepted accounting principles.

Acceptance of 2013 CRWCD Audit:
Director Merritt moved, seconded by Director Hazard, to accept the 2013 CRWCD audit as presented. Motion carried unanimously.

Discussion of Auditor Selection:
Director Monger moved, seconded by Director Merritt, to enter into a one-year contract with McGladrey, LLP in amount not to exceed $24,500 to perform the 2014 CRWCD audit. Motion carried unanimously.
External Affairs (cont’d).

2014 Legislative Wrap-Up:
Chris Treece resumed this agenda item from the day before recapping the 2014 legislative session and noting that HB14-023 was vetoed by the governor. He also noted that HB14-1026 was postponed indefinitely; it would have created a new type of changed agricultural water right that would not require the applicant to identify the final type or place of use while still requiring quantification and no injury to other water rights owners. The River District opposed both bills.

Ballot Initiatives:
Chris Treece reported that Initiative 75, which would have allowed local government environmental regulations to override state and federal regulations, was recently withdrawn from signature gathering and will not be on November ballot. He went on to review Initiative 89 which would essentially create a broad Public Trust Doctrine that could usurp Colorado’s prior appropriation system.

Director Alvey moved, seconded by Director Trampe, to adopt a resolution in opposition to Ballot Initiative 89. Motion carried unanimously. (The resolution is attached as Appendix B.)

Federal Affairs:
Mr. Treece reported that Congressman Polis is planning to introduce Wilderness legislation but it will contain fewer proposed areas and will be limited to areas within Mr. Polis’ district.

Directors’ Concerns.
No concerns were expressed.

Future Meetings.

a. CRWCD 2015 Budget Workshop/Special Joint Meeting with Southwestern Water Conservation District, September 18, 2014, Montrose, CO.
b. CRWCD Water Seminar, September 19, 2014, Grand Junction, CO.
c. Fourth Regular Quarterly Meetings, October 21, 2014, Glenwood Springs, CO.
d. Other Meetings:
   i. CWC Summer Convention, August 20-22, 2014, Snowmass Village, CO.
   ii. CRWUA Convention, December 10-12, 2014, Las Vegas, NV.

Adjourn.
There being no other business before the Board, President Newberry adjourned the meeting at 9:35 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
Aging Infrastructure

Colorado River Water Conservation District Policy Statements:
The Colorado River District supports federal and state appropriations and programs that support and encourage investment in capital maintenance, including extraordinary maintenance, to address and maintain – and upgrade where possible - the full function and benefit of Colorado’s aging water infrastructure. A comprehensive inventory of Colorado’s water-related infrastructure is a requisite first step to responsibly managing and maintaining these historical investments. Streamlining of the permitting process for capital maintenance is just one appropriate mechanism to encourage infrastructure maintenance.

Background & Discussion:
Water supply and delivery infrastructure provides Colorado with essential water supply for agriculture, drinking water, recreational opportunities, power generation and more. This infrastructure is often also an important component of flood control. Many of these systems, including those within the River District, were built 50 to 100 years ago and require increasing resources for maintenance, repair or replacement.

As these systems age, the corresponding increase in the frequency and cost of extraordinary maintenance needs often exceeds the financial capabilities the responsible end-users. Financial assistance programs are essential to address the needs of Colorado’s aging water infrastructure and to ensure the continuance of its many benefits and should be prioritized among public investments.

According to the American Society of Structural Engineers (ASCE) in 2013, the average age of the 84,000 dams in the country is 52 years old. The Association of State Dam Safety Officials estimates that it will require an investment of $21 billion to repair these aging, yet critical, high-hazard dams. ASCE grades the condition of America’s dams D+ or ‘poor’.

A dedicated, comprehensive system of planning and investment will be required to ensure the continued viability and safety of our current water infrastructure, as well as investments to meet future water demands.

Assistance programs should include grant and loan programs to encourage and assist capital maintenance programs and regulatory permitting programs that facilitate and reward infrastructure repairs and rehabilitations.
RESOLUTION OPPOSING INITIATIVE 89

Whereas, the Colorado General Assembly created the Colorado River Water Conservation District (Colorado River District) to protect and to develop the water resources to which Colorado is entitled, and

Whereas, the Colorado River District has faithfully represented the interests of its constituents of northwest and west-central Colorado for 77 years regarding their water resources, and

Whereas, Colorado has the nation’s easiest mechanism for citizens to place proposed laws and constitutional amendments on Colorado’s general election ballot, and

Whereas, two citizens filed Initiative 89 for Colorado’s November 2014 ballot asking voters to amend the state constitution, and

Whereas, Initiative 89 could be interpreted to replace Colorado’s historical reliance on the Prior Appropriation Doctrine with some form of Public Trust Doctrine of water allocation and enforcement, and

Whereas, Initiative 89 does little to define its feel good terms asserting protection of “clean air, pure water, and scenic values,” and

Whereas, since Colorado is a semi-arid state where water is a scarce natural resource, water requires a fair and effective system of use and allocation to meet the needs of Colorado’s citizens, businesses, and environment, and

Whereas, Initiative 89 may establish a Public Trust Doctrine in Colorado’s constitution, perhaps supplanting Colorado’s Prior Appropriation Doctrine, and

Whereas, Colorado’s Prior Appropriation Doctrine has proven itself both successful and flexible in addressing the public’s changing beneficial uses and values regarding Colorado’s water resources (e.g., Colorado’s instream flow program and recreational in-channel diversion water rights), and

Whereas, the Public Trust Doctrine, despite lacking clear definition in Initiative 89, is sufficiently well understood as rejecting Colorado’s reliance on the fairness, efficacy and flexibility of the Prior Appropriation Doctrine and its establishment of water rights as property rights with the inherent protection of property rights under the U.S. and Colorado’s constitutions, and

Whereas, the majority user of Colorado water is agriculture, Initiative 89 could take away their rights to use water severely impacting Colorado’s agricultural economy and culture, and

Whereas, Initiative 89 places all Colorado water users at some risk of claims of unconstitutional injury to “pure water,” and

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Whereas, secure and reliable access to water and the right to beneficially use water in Colorado are essential to Colorado’s economy, Initiative 89 will damage Colorado’s economy, and

Whereas, the adoption of Initiative 89 could result in the dramatic reallocation of public and private resources from the constructive management and development of Colorado’s natural resources, including water, to protracted litigation,

NOW THEREFORE BE IT RESOLVED that the Colorado River Water Conservation District opposes Initiative 89 as unwise, unwarranted, and disruptive to the fair and responsible use and allocation of Colorado’s scarce resources.

Certificate

I, James Newberry, President of the Board of Directors of the Colorado River Water Conservation District, do hereby certify that the above and foregoing action was taken by the Board of Directors at Glenwood Springs, Colorado on the 15th day of July 2014.

[Signature]
James Newberry, President

[Signature]
R. Eric Kuhn, Secretary/General Manager