

# Upper Gunnison River Water Conservancy District

## Regular Meeting Minutes

January 20, 2010

The Board of Directors of the Upper Gunnison River Water Conservancy District conducted a regularly scheduled meeting on Wednesday, January 20, 2010 at the District's offices, 234 North Main Street, Suite 3B, Gunnison, Colorado.

**Board members present:** Rebie Hazard, Flynn Mangum, Bill Nesbitt, Jim Pike, Brett Redden, Steve Schechter, George Sibley, Ken Spann and Dennis Steckel.

Board members not present: Steve Glazer and Gary Hausler.

Also present:

Matt Brown, Scenic River Tours

Frank Kugel, General Manager

John McClow, General Counsel

Ches Russell, Scenic River Tours

Mark Schumacher, Three Rivers Resort

Jill Steele, Office Manager

Bill Trampe, Colorado River Water Conservation District

### **1. CALL TO ORDER**

Board President Brett Redden called the meeting to order at 5:33 p.m.

### **2. AGENDA APPROVAL**

Brett said that legislative issues will be moved to 7:00. Mark Schumacher, Ches Russell and Matt Brown are coming to discuss the right to float legislation. John Hill will discuss this issue via telephone.

**Rebie Hazard moved and Bill Nesbitt seconded approval of the agenda as modified. The motion carried.**

### **3. CONSENT AGENDA ITEMS**

Ken Spann asked that the Williams Engineering bill be removed from the consent agenda because it mistakenly contains a charge incurred by another of Williams' clients.

**Bill Nesbitt moved and Flynn Mangum seconded approval of the remainder of the consent agenda items. The motion carried.**  
**Ken Spann moved and Bill Nesbitt seconded approval of non-operating expenses in the amount of \$3,090.30. The motion carried.**

#### **4. LEGAL MATTERS**

John McClow said he sent his report by email last Thursday and also included a printed version in the folders tonight.

A proposed bid package for the new building remodel will be ready for the Building Committee meeting on Friday. That meeting was originally scheduled to take place prior to tonight's board meeting.

Joe Salmon and the audio visual person came up with an idea for a conference table with a pop-up computer screen in front of each seat. Bev and Jill have done some interior decorating consultation. There will be room for thirty seats for members of the public.

The most recent Water Court Resume contains a notice for an application by the Mount Crested Butte Water and Sanitation District for enlargement of their water right in Meridian Lake Park Reservoir. This would provide an increase of the current storage of 106 acre feet without changing characteristics of the reservoir. John and Frank recommend filing a "friendly" statement of opposition to stay informed, since releases from Meridian Lake Reservoir pass through Meridian Lake Park Reservoir.

**Steve Schechter moved and Bill Nesbitt seconded to direct staff to file a Statement of Opposition in this case. The motion carried.**

John said that during the recent lower basin tour, Pat Mulroy gave a speech on the value of importing Mississippi River water into the Colorado River basin. The group toured the recently lined All American Canal, Hoover Dam, Davis Dam, Parker Dam, the Imperial Valley, and the pumping plant for the Colorado River Aqueduct. California is experiencing a major drought and reservoirs are low. They are using their reserves to meet their needs and are looking for water everywhere desperately.

#### **5. LEGISLATIVE ISSUES**

Postponed per agenda modification.

#### **6. MANAGER'S REPORT**

Frank Kugel said he sent some information to the board electronically. His report is in folders tonight. He asked for feedback from the board. Ken Spann said he likes

the electronic format of some of the reports. George Sibley said he likes the news updates that Frank has sent out from newspapers.

Frank said that he is on the Gunnison County Trails Commission. A week ago Monday night the Trails Commission heard a presentation about the Hidden Gems Wilderness Area. It incorporates large areas of Forest Service and BLM lands and some parts of it are within the District. He asked for, and received, some detailed GIS information from the project proponents. An overlay of water rights on a map of the wilderness proposal revealed that there was minimal impact by the proposal on existing absolute water rights. The proponents expressed willingness to redraw boundaries so as not to impact these rights.

There have been reports of icing problems in the basin at a number of places along the Gunnison River downstream of Almont. The current releases from Taylor Park Reservoir are fifty percent higher than the average over the past ten years. There is some concern that the icing could be a result of the higher releases. Marlene Crosby has said there are some issues on side tributaries as well.

Steve Schechter said that there has been some icing on Steuben Creek near his house, and that there could be problems if we get a large surge of water from rain or snowmelt.

Frank said he received an email from Marlene Crosby who mentioned icing issues with areas near the West Branch west of town. Ken Spann said Spann Ranches has spent a few days breaking up ice. The West Branch water level had dropped, but it has gotten higher again. It also looks like a fair amount of water is coming down the East River.

Brett Redden said he observed similar conditions while driving along the Arkansas River near Texas Creek.

## **7. COLORADO RIVER WATER CONSERVATION DISTRICT UPDATE – BILL TRAMPE**

Bill Trampe communicated what position the CRWCD has taken on some of the pending legislation:

SB 10-27: Language needs to be cleared up.  
SB 10-52: Monitor  
SB 10-67: Oppose  
SB 10-78: No decision  
Resolution 004: Support  
Right to float legislation: Has not been discussed.

The CRWCD Executive Committee has changed, but the only board member change is Gary Martinez. He is the Summit County Manager and replaces Tom Long as the Summit County representative.

The CRWCD is considering working with some Front Range entities to discuss water conservation. A possible public outreach effort under consideration is the use of billboards along the I-70 corridor as an attempt to get people to think about water when they are travelling to recreation areas.

Carol DeAngelis and Ed Warner of the Bureau of Reclamation gave the CRWCD board an update on the Aspinall EIS and PBO process. The final draft EIS document is late but they promised it will be out this month. Most of the conversation was centered on the PBO and the selenium management plan or program as a patch to keep the PBO working. The Bureau will probably put together a management committee to work on the selenium problem.

The mediation process with Denver Water, Northern, West Slope entities, and the CRWCD continues. Denver made a final offer in December which was well received by the West Slope.

The CRWCD is considering how to protect recreational flows to a degree that satisfies the recreation community below the Shoshone power plant. Owned by Xcel Energy, it has been the controlling water right on the Colorado River. Xcel decided to change operations, replacing on-site crew with remote, computer operation. As a result, maintenance operation has suffered. The CRWCD negotiated a contract whereby Denver can divert and store a certain amount of water. In exchange, the West Slope gets 10% of that and a bypass flow at Shoshone is guaranteed. One proposed idea is for the West Slope to gain ownership of the plant. The CRWCD is in the process of looking for partnership to present a proposal to Xcel.

Ken Spann said that the Shoshone power plant was a major issue, and the CRWCD was able to step in and negotiate. Perhaps there is a willingness to negotiate a deal.

The CRWCD has two DVDs available to use in public outreach, and Jim Pokrandt is in the process of making more.

CRWCD policies under discussion this year are water quality, endangered species and the upper river recovery program, and recreational water use.

George Sibley is going to write the CRWCD's 75 year history.

Rebie Hazard said that Shanna Koenig indicated interest in partnering with the river district in its public outreach efforts. The River District is considering who to partner with. She asked that the UGRWCD board give her input.

## **LEGISLATIVE ISSUES**

John McClow said that HB 10-1086, the so-called landowner's liability act, will be in the judiciary committee in the next week. Representative Curry and Senator Hodge have asked for support on that bill. John said he does not see a downside. It fills a gap in the law as it exists and would protect irrigators from liability for accidental injury to children. That protection is enjoyed by other types of owners.

**Bill Nesbitt moved to support HB 10-1086. Jim Pike seconded. The motion carried.**

John McClow said that Representative Curry's draft rafting bill was to be introduced today. He said he has some concerns because of the way the bill approaches protecting the right for commercial operators to float through private property. It cites a U.S. Supreme Court opinion that he thinks is not relevant and not applicable. It also discusses reincorporating English common law into Colorado law which sets a dangerous precedent for many reasons. He said the bill may also have some unforeseen, unintended consequences.

John Hill will speak for five minute on the phone. Then Mark Schumacher will speak for five minutes. John McClow recommended that the board not make a decision tonight, but rather refer this to the Legislative Issues Committee, for more research.

John Hill said that the bill attempts to interpret or modify common law in a variety of ways which represent some practical problems. He said that floating through private property is unconstitutional because it constitutes a taking of private property without just compensation and denies landowners the right to exclude others from their property.

Mr. Hill said that the public trust doctrine was part of the common law. Environmentalists in particular have been trying to get Colorado to recognize the public trust doctrine, so far unsuccessfully. Floating through private property creates a burden, can result in a reduction in property value and reduced taxes, and possibly other unforeseen consequences.

Bill Nesbitt expressed concern about outfitters that have plied the navigable waters and paid license fees and would be deprived of their right to earn their income. John Hill said there are no legally navigable rivers.

Mark Schumacher said that he would like the support of the Upper Gunnison District on the bill. He said that floating does not involve going on private property because land is not touched. The boats float on the water, which belongs to the people of the state. Forty eight out of the fifty states have some kind of right that allows this and most rely on the common law regarding navigable waters. He identified all the local rivers that have been floated: The Lake Fork of the Gunnison,

the Taylor River from Lottis Creek down to the confluence of the Gunnison River in Almont, and the Gunnison River from Almont to Blue Mesa Reservoir. He said that the bill was taken to the floor yesterday but was not read due to time constraints and will most likely be read tomorrow. The bill is being carried by Representative Curry and Senator Hodge.

Bill Nesbitt asked Mr. Schumacher if his business would be in jeopardy if the bill does not pass. Mark replied that it would.

John McClow asked Mark if he would be willing to consider language changes that would build in more protection for water users/irrigators if he were convinced the concerns were legitimate. Mark said yes.

Ken Spann said he regrets it has come to this. He is not unsympathetic to Mr. Schumacher's plight, but he feels the bill has statewide ramifications.

Ken asked Mark if there is there a way to handle his position by prescriptive use.

Ken said that he has had several phone calls within the last ten days, from constituents on both sides of the issue. He asked Bill Trampe why the CRWCD has not taken a position on the bill. Bill said that the staff recommended the board not discuss it at this time. He said he has not spoken with fellow board members about it. He said that the UGRWCD is in a unique and troubling position here due to being in the forefront of Taylor River issues, and having a water right based on flows to provide for floating and fishery.

Ken said that the term incidental contact is in there, but there is a danger for abuse. He said that a concern is how to pass that along to newcomers in your business and mine so we all know what incidental contact means.

Ken said this is not an issue that should be rushed. If this board takes a position on this issue after an informed discussion of the public, then all involved should have a full opportunity to express their views.

Dennis Steckel said he would like to hear what other dangers John McClow thinks there are, but that this may not be the time to do so.

John said that is the starting point and that he will give the board written comments. The discussion will be open to public scrutiny.

Mark Schumacher said he would like to have more time with the board at some point.

Bill Trampe closed the discussion with the observation that when he first came on the UGRWCD board, recreational rights were never even mentioned. The ranchers got “beat up” over the past couple decades as recreational rights were asserted and affirmed. Now recreationists are experiencing the same thing from the wealthy elite.

John McClow said that will put his concerns about unintended consequences in writing to the board.

The board expressed concern that tonight is the first time this bill has been discussed with them and that there is very little time to provide input on the bill.

**Jin Pike moved to request staff to contact Representative Curry and request a two-week delay. Bill Nesbitt seconded. The motion carried.**

Ken Spann said that, as John stated, the board needs to think about the long-term health of this district when deciding the process to be use in handling this issue.

John McClow will call Representative Curry tomorrow to ask for more time. He will send an email to the board after speaking with her.

## **8. DINNER BREAK**

## **9. BOARD/STAFF/COMMITTEE MEMBER REPORTS**

### **Treasurer’s Report**

There was no Treasurer’s Report because the Board Treasurer was absent.

### **Gunnison Basin Roundtable**

There was no meeting of the GBRT since the last board meeting. Frank previously provided the board a copy of an article by the Pueblo Chieftain letter regarding the GBRT response to a letter from the Arkansas Roundtable. In the article the Arkansas Roundtable representatives indicated they would like to meet with Gunnison Roundtable later this year.

### **Taylor Park Reservoir**

Frank Kugel said he received the Taylor Park Feasibility Study on Friday. It shows a rate of return for the smaller hydropower plant (1.96 megawatts) of 13.36%. The large hydropower plant (3.675 megawatts) showed a 9% rate of return. Cost estimates range from \$5 million to \$7.33 million. URS stated this is a reconnaissance-level feasibility study and recommended looking into it in more detail. We are scheduled to meet with GCEA and UVWUA to discuss the report and

will then discuss it with the Project Committee. Frank said he can provide copies of the report to whoever is interested.

The Gunnison River spreadsheet shows about 1,000 acre feet of storage in the Taylor second fill. The snowpack is around 80% of average. It may be necessary to release less water this spring in order to reach desired storage levels.

### **Grant Committee**

Frank said he and John looked at the CRWCD's grant program guidelines and found them to be comprehensive and contained concepts worthy of adoption by our District. They will draft guidelines and submit for approval by the Grant Committee for ultimate adoption by the Board.

At the February board meeting the board will consider the proposed, amended policies.

### **Building Committee**

John said this item was covered in his legal status report

### **Lake San Cristobal**

Steve Schechter said the LSCWAE board has not met since the last UGRWCD board meeting.

Frank Kugel said the grant applications were submitted for \$150,000 to the water supply reserve account. Todd Doherty said the balance in the basin funds are \$250,000 with \$52,000 to be added in January and then \$52,000 more in April for a total of \$360,000. Todd indicated that \$150,000 was a reasonable amount to request. A project screening committee meeting will be scheduled in the near future with the plan for action to be taken at the February GBRT meeting. A request for \$140,000 has been submitted to the CRWCD for the same project.

### **Strategic Planning Workgroup**

The Strategic Planning Workgroup is scheduled to meet January 21.

## **10. TAYLOR PARK LOCAL USERS GROUP APPOINTMENTS**

Mark Schumacher and Diane Marriott were the two incumbents and the only two applicants.

**Ken Spann moved to reappoint Mark Schumacher and Diane Marriott to the Taylor Local Users Group. Steve Schechter seconded. The motion carried.**

**11. MISCELLANEOUS MATTERS**

No miscellaneous matters were discussed.

**12. UNSCHEDULED CITIZENS**

No unscheduled citizens requested to speak.

**13. FUTURE MEETINGS**

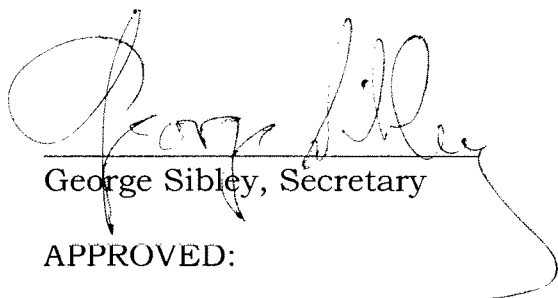
George Sibley said the Strategic Planning Workgroup was meeting on the first Wednesday of every month but has gotten off that schedule. He asked for input on scheduling future meetings. The next meeting is scheduled for January 21 at 9:30 a.m.

CRWCD legislative telephone meetings will begin on February 4<sup>th</sup> at noon.

**14. ADJOURNMENT**

Board President Brett Redden adjourned the January 20, 2010 meeting at 8:45 p.m.

Respectfully Submitted,

  
George Sibley, Secretary

APPROVED:

  
Brett Redden, President