

These written minutes represent the general discussion of the DWCD Board of Directors, DWCD staff, and participants at the DWCD board meeting, and they include a record of any and all board actions taken at the meeting. The written minutes are not intended to provide a word-for-word account of the board meetings. Nor are they a direct quote of any statements offered at board meetings. All DWCD board meetings are recorded on audiotape.

DOLORES WATER CONSERVANCY DISTRICT WATER ACTIVITY ENTERPRISE

MINUTES Regular Meeting January 12, 2023

CALL TO ORDER Godwin Oliver, President, called the meeting to order at 2:01 pm

ROLL CALL Godwin Oliver, President
Simon Martinez, Vice-President
Don Schwindt, Secretary-Treasurer
Wes Wilson, Director
Glen Fish, Director
Landan Wilson, Director
Jeremy Redshaw, Director
Ken Curtis, General Manager
Ben Harclerode, Chief of Engineering & Construction
Rob Walker, Maintenance Supervisor
Eric Sprague, Engineering Technician
Lisa Jordan, Office Administrator
Adam Reeves, Attorney-Via Teleconference
Robert Stump, Bureau of Reclamation

INTRODUCTION OF GUESTS

In-Person

Brandon Johnson, MVIC General Manager; Rusty Crangle, CDWR

Via Telephone/Teleconference

MINUTES

APPROVAL OF THE MINUTES

MOTION: TO APPROVE THE MINUTES AS SUBMITTED FOR THE DECEMBER 8, 2022, ENTERPRISE MEETING.

MOTION: JEREMY REDSHAW

SECOND: LANDAN WILSON

MOTION CARRIED UNANIMOUSLY. SIMON MARTINEZ AND WES WILSON WERE ABSENT AT THE TIME OF THE VOTE.

FINANCIAL STATEMENTS

MOTION: TO APPROVE THE NOVEMBER '22 FINANCIAL STATEMENT AND APPROVE THE STATEMENT OF PAYABLES AS PRESENTED.

O&M: AP/CHECK #41001-41104 & PR/CHECK #125621-125662
\$298,364.56

MOTION: JEREMY REDSHAW

SECOND: LANDAN WILSON

SIMON MARTINEZ AND WES WILSON WERE ABSENT AT THE TIME OF THE VOTE.

O&M REPORT – Rob reported the following:

Canal Maintenance – The Crew is working on the canal drainages along THC Reach 3. We're also helping UF&RE excavate their leaking lateral. Rob included the THC worklist that shows MVIC taking care of most of Reach 1 & 2 and DWCD taking care of Reach 3 with the help of UF&RE.

Pumping Plants – We're replacing the interior lighting with LED energy-saving lights in all the plants and updating the roof ventilation system in GCPP. All three water screens were shipped to Evoqua's shop in Guntown, MS, on December 20, 2022 (2 Plcs). The Field Techs have been rebuilding meters, and we've started remodeling the storage bay into a tire mat building at GC Field Office.

Control Room – The Control Room Operators have been helping Gary install the server at GC. We hope to have the new FIIX program in place soon.

Cortez Office – A security camera is planned to be installed at the Cortez Office due to recent vandalism. Robert is working with a BOR security person on some additional security measures.

Personnel Committee – Rob asked the Committee if they would like to meet later this month or before the February Board Meeting. The Committee set up a meeting for February 7, 2022, at 8:00 am at GC. There was a discussion of meeting at different locations, such as pumping plants, for new board members to see the facilities. Landan would like to see more of the project facilities.

WATER MANAGEMENT REPORT

Water Accounting – Ben presented the Inflow/Outflow **1) December:** Dolores River Inflow: 3,046 AF. McPhee's Total Inflow was 3,369 AF. Narraguinnep stored in McPhee was 2,910 AF. Current releases below McPhee are 10 CFS. Precipitation for December was 1.86," and monthly precipitation in our basin was between 130%-150%. **2) January:** Dolores River Inflow so far is at 1,019 AF. Narraguinnep stored in McPhee is at 981 AF for the month, Narraguinnep stored in McPhee to date is 4,998 AF, and Narraguinnep's total fill to date is 6,733 AF. Releases below McPhee remain at 10 CFS. There is 4,780 AF left in the fishpool until April 1st. Precipitation thus far for January was 1.41". This is already above 100% for January in our area. **3) Future Weather:** Ben stated that a potentially good storm will be moving through our area starting Sunday with predicted heavy snowfall. 7-14 day outlook is very positive for more precipitation. **4) Current Snotels:** Lizard Head SWE (inches) is 9.3", El Diente SWE (inches) is 8.7", Scotch Creek SWE (inches) is 8.6", Sharkstooth SWE (inches) is 10.4" and Lone Cone SWE (inches) is 11.0". Snotels are currently 146% of the median for this time of the year. With the last storm this week, the basin is at 70% of the SEASONAL median (9.3" of SWE; 13.4" medium) and is above where we were last year at this time. We had a substantial dry spell last January/early February. This year is tracking much better.

Projects Update

Forest Fuels Reduction

- Grant application is with BOR. We hope it will be rewarded by the end of January, but work may be difficult depending on the weather/accumulated snow. There is a forester ready to go once funded.
- WaterSmart Meter Grant: We got official word this past week that our water meter upgrade grant was selected for funding and is anticipated to be fully funded (\$100,000). More to come as things develop. This will be a phased project over five years. Around 70 meters can be installed for \$200,000. The goal is to add telemetry that will allow the meters to be read by just driving. There is a cellular option, but each meter has to have service. The battery life is around five years and will need to be replaced, but they are relatively inexpensive to replace. Staff will continue to bring this back to the Board; approximately six months of contracting are yet to come.

WY 2022 Penalties for OverUse – Ben stated that **1)** the mailout included a memo summarizing the 2022 overuse fines assessed for last year. The Board voted to provide relief from their established overuse policy by reducing the overuse penalty to \$350/AF without an escalation. The last column of the table highlights the fine that will be assessed for each user. **2)** Ben also included a letter to be mailed out to the irrigators receiving a fine for the 2022 season. The letter states the relief being offered and that this offense is considered their first offense for overuse. Don asked if this letter would only go to the users that went over, and another letter would be sent out in the spring informing everyone of the penalty? Ben said that this letter would only go to the ones that went over last year. Another letter can be sent once the Board sets the policy for WY2023. Ken said the Board talked about 1st, 2nd, and 3rd penalties, which must be adopted before the next water season.

WY 2021 Penalties for OverUse – Godwin stated that he asked Ken to put this item on the agenda as there are interest in looking at 2021 overuse charges. Ben noted that, as an additional request, in the packet are handouts regarding 2021 penalties for overuse. **1)** A handout titled WY2021

Penalties Assessed for Overuse with two tables is provided, a) the first table highlights the six users that were fined for overuse during WY2021. The fine was \$800/AF with an \$800 escalation for each additional AF of overuse. b) The second table compares the relief the Board provided for overuse in WY2022. c) Keep in mind WY2022 differed significantly from WY2021 in allocation, duration, and district personnel. In WY2021, extra water taken by one irrigator would have been taking water away from their neighbor. The supply was minimal, and the season was extremely limited.

Discussion: Glen stated that it would be fair to share some of the relief given to users in 2022 for the same reason. The Board resolved 2022 but did not take action concerning the 2021 penalties. Adam stated that the Board had heard his cautions as this is a penalty already applied rather than 2022, a penalty mitigated regarding circumstances. If the Board decides to provide relief for 2021, they will need to have substantial reasons to provide the relief and reminded the Board that there was a long discussion about why the penalty should be mitigated in 2022. The moving allocation, turnover in personnel, duration of water season, etc. Adam stated that he is not sure the same reasons held true in 2021. The Board needs to make sure they treat like things alike. So if the Board decides to provide relief from 2021 policy, the Board needs to have similar good reasons to deviate from the set policy; otherwise, the Board is potentially engaging in arbitrary actions. Adam instructed the Board to be mindful of why they would provide relief. Ken stated that 2021 was the first year of the penalty; this came out of staff and was a bad year. There was overage before WY2021, but no set penalty. From that experience, the staff brought the idea of a penalty of \$250/AF to the Board prior to WY2021. The Board said they wanted to make the penalty meaningful and went to \$800 with an escalation. Everything was new, but with the escalation, the two individuals that went over by more than 3AF were paying \$2,400 for the last full AF they used. Ken has heard that the main impact was the escalation and not thinking that people would go over by multiple acre-feet. Out of 305 boxes, there was a small percentage that went over. The big difference is the unit cost per acre-foot and the escalation. Ken stated that the 2021 water season was over by the end of June, and there were a huge amount of fallow fields. Adam stated that if they do this, they need to figure out a refund mechanism, whether a check or a credit to the user. There could be tax implications for those users that should be considered. Ken stated four users went over a small amount, and two were much more significant. He would call the two more significant ones if it got to that point.

Wes stated that he feels that what is done is done. Jeremy noted that he wasn't on Board when the policy was set, but he supports doing away with the escalation and leaving the \$800. Don stated that 2022 circumstances were quite different, and he is focused on the future and worried about how we will do things right with the future hydrology that could cause significant problems. Don stated that he has some strong opinions on how our community can work together to mesh these things. It was stated that the Board could potentially punt this topic to a brainstorming session and keep them separate. We need to figure out the reality of these problems before we have to set the policy again. Don stated that this ties directly to the discussion with MVIC on reconciliation. They are separate but feed off of each other. Don thinks they should be more thoughtful and have a better way to solve this, with staff having more time to work on options. Godwin stated that Trent Nielson mentioned that he would like to use water up to the last day, and Godwin is concerned that irrigators will get scared about going over and not use their full allotment. It was noted that the big over users in 2021 didn't go over in 2022. Don stated that they need to melt the topics together and see what they think will work. Landan stated that he would recuse himself from the 2021 conversation as he was an overuser in 2021. Adam stated that he should recuse from the vote but could make a comment as a public person. Simon asked Wes if there was a number that Wes would use. Wes said he wanted to keep everything the same up to the 4 AF for the WY2022 penalty, so the Board didn't have to fight this issue. That's why he voted no on the previous issue. Glen stated that he could see where Wes was coming from. Don would like to wait. Glen would also like to wait and thinks a quick vote would be a mistake. Ken stated that the Board needs to be thoughtful and understood that Wes was trying to keep within the policy. Ken appreciates that Wes is trying to uphold the precedent. Ken noted that he is not afraid to make a course correction when needed. This will be a running item on the agenda.

Hydrology Study & M&I Comparison

- There are two handouts comprised of tables. Ben took a deeper dive into Don's suggestion of looking at the DPR projections for population and M&I water requirements. Don pointed out that a lot of the growth in the area has been in the county, not the City of Cortez.
- The first table shows the Population data utilized by the DPR from 1950-1975 (DPR looked back to 1930). Using this data, the DPR projected population growth in the project area up through 2030. As indicated in the table, the engineers expected the City of Cortez to double in population while both counties were predicted to increase by just under 50% by 2030.
- Also presented is the actual population based on census information. As Don correctly pointed out, the county saw the population growth, not the City of Cortez.
- Rate of Increase (ROI), utilized for comparison.

- Second Handout: The DPR Engineers used their population projections to quantify how much M&I water would be needed to meet the expected population. Also included is a table showing the actual M&I water usage from our records. The usage is well below what was anticipated.
- Original Reserved Water:
- The DPR calculated the need for 8,700 AF of M&I water to supplement current (at the time of the DPR) water rights and support development in the project area. Current breakdown:

M&I UTE Mountain Tribe	1,000 AF
M&I City of Cortez	2,300 AF
M&I Town of Dove Creek	280 AF
M&I DWCD	5,120 AF
San Juan F&W	800 AF

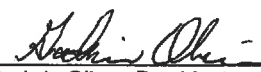
Wes stated that Montezuma Water Company (MWC) figures 6,700 gallons per month per household. Don stated that we have in our control a municipal supply for our future, and this water has real value in today's world for our community. Ken asked Ben to look at this and thinks they need to continue building on this in talking to the municipalities and MWC. Wes noted that the City of Cortez and the town of Dove Creek turned the water back, realizing they were over-portioned, but that water is still in the reservoir.

Other

ADJOURNMENT Dolores Water Conservancy District Water Activity Enterprise Board meeting adjourned at 2:59 pm



 Donald W. Schwindt, Secretary-Treasurer



 Godwin Oliver, President

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DOLORES WATER CONSERVANCY DISTRICT

MINUTES Regular Meeting January 12, 2023

CALL TO ORDER Godwin Oliver, President, called the meeting to order at 2:59 pm

ROLL CALL Godwin Oliver, President
Simon Martinez, Vice-President
Don Schwindt, Secretary-Treasurer
Wes Wilson, Director
Glen Fish, Director
Landan Wilson, Director
Jeremy Redshaw, Director
Ken Curtis, General Manager
Ben Harclerode, Chief of Engineering & Construction
Rob Walker, Maintenance Supervisor
Eric Sprague, Engineering Technician
Lisa Jordan, Office Administrator
Adam Reeves, Attorney-Via Teleconference
Robert Stump, Bureau of Reclamation

INTRODUCTION OF GUESTS

In-Person

Brandon Johnson, General Manager; Rusty Crangle, CDWR

Via Telephone/Teleconference

Steve Garchar, Dolores County Commissioner; Ed Millard

MINUTES

APPROVAL OF THE MINUTES

MOTION: TO APPROVE THE MINUTES AS SUBMITTED FOR THE DECEMBER 8, 2022, REGULAR MEETING.

**MOTION: JEREMY REDSHAW
SECOND: WES WILSON
MOTION CARRIED UNANIMOUSLY SIMON MARTINEZ ABSTAINED.**

MOTION: TO APPROVE THE MINUTES AS SUBMITTED FOR THE DECEMBER 8, 2022 EXECUTIVE SESSION.

**MOTION: JEREMY REDSHAW
SECOND: GLEN FISH
MOTION CARRIED UNANIMOUSLY SIMON MARTINEZ ABSTAINED.**

FINANCIAL STATEMENTS

MOTION: TO APPROVE THE NOVEMBER '22 FINANCIAL STATEMENTS AND APPROVE THE STATEMENT OF PAYABLES AS PRESENTED.

ADMIN: AP/CHECK #12271-12287

\$110,804.49

**MOTION: JEREMY REDSHAW
SECOND: WES WILSON
MOTION CARRIED UNANIMOUSLY.**

AGENCY REPORTS

BOR Report – Robert Stump reported that the water screens are in Guntown, MS and have been dismantled for inspection. A report will be prepared and the BOR will make sure all needed repairs correspond with the scope of work. Robert will schedule a time to go out and inspect the repair work.

Division of Water Resources Report – Rusty stated that he did not have a report.

T/H Committee Report – Godwin stated that the Committee met December 14, 2022 1) The Committee paid DWCD, MVIC and UF&RE.

Next T/H Meeting – The Committee will meet at the DWCD, Cortez Office January 18, 2023 at 2:00 p.m.

MVIC Report – Brandon reported that 1) MVIC is performing meter service work system wide. 2) They have also started servicing the PRV's on the Rocky Ford. 3) MVIC is also performing ditch cleaning around their system.

GENERAL MANAGERS REPORT

2023 Water Congress – January 25 – 27, 2023: Gina has signed up Don, Wes & Glen and can still register others if you have the time. Don stated that this is filling up fast. Landan asked if the summer meeting covered the same topics. Ken stated that there are more technical talks in January and current updated information on legislation and issues at the winter meeting.

Kinder-Morgan Payment – Ken stated that DWCD received a Kinder Morgan payment in January of \$24,447.54 the funds will eventually be transferred to the Discretionary Reserve account. Several years are in dispute, but 2018 on will be under the agreed process going forward.

Zebra Mussel Mitigation – CPW has begun the process of lowering the Highline Lake near Loma CO in an effort to eradicate zebra mussels in the lake and stop the spread to additional water. Ken stated that the article in the packet states that they will drain down the lake to treat with a copper-based molluscicide while trying to save the fishery. The Highline lake drains into the Colorado River which has the Colorado River Endangered Species Recovery Program concerned. It is the first Colorado lake with actual adult mussels.

Proxy for MVIC Shareholder Meeting, January 21, 2023: DWCD Board needs to decide who will carry DWCD proxy for the annual MVIC meeting. Depending on the individuals selected the GM may have to write a letter for the proxy. Don and Glen are planning on attending the meeting. They are both shareholders and could carry the proxy. Godwin stated that he was fine with Don and/or Glen carrying the proxy.

MOTION: TO HAVE DON SCHWINDT CARRY THE DWCD PROXY TO THE MVIC SHAREHOLDER MEETING.

**MOTION: WES WILSON
SECOND: JEREMY REDSHAW
MOTION CARRIED UNANIMOUSLY.**

Brandon stated that Larry Dozier is a candidate for Lebanon District #3 along with Danny Wilkin. There will be a Q&A with Larry Dozier Monday, January 16 at 10:00 am at MVIC.

Hydrology Study / UCB Region Fiscal Year (FY) 2022 Basin Study Selection – Dolores Project Plan of Study: A Reclamation letter offers to work together on a 2022 Basin Study – Dolores Project Plan of Study. Ken stated that his initial concern is that this is backing us up to plan for a year before

we do the more in-depth study the following year. We may not like the schedule or some of the other requirements. Ken provided an updated hydrology outline with changes from the previous meeting that we will discuss later. Current communication is just to set up a meeting the first week of February. As we move forward DWCD will need to decide if we want to pursue this Reclamation opportunity or go a different route.

MVIC Payment – DWCD received a letter “Re: Dolores Project OM&R Charges to MVIC for 2023-Payment Under Protest” was received along with the 2023 Payment for O&MR Charges to MVIC on December 30, 2022. The letter from MVIC was included in the Board packet.

Legislation Update – Federal, BOR & State: Most of the federal legislation items are embedded in the Omnibus spending bill passed before Christmas. Ken included a full article from right before passage. Ken stated that he is sure we’ll hear more as people find out what is in it and may even include the Lower Dolores NCA. The highlights Ken noted in the article include:

- One drought-specific measure would allow the Western Area Power Administration to purchase electricity when current hydropower facilities cannot produce enough because of low water levels. They needed some legislative change and when quizzed at CRWUA they appeared to not have made any specific plans yet.
- The Bureau of Reclamation would get nearly \$2 billion, around \$3 million more than the Senate version and around \$30 million more than current funding levels.
- The Agriculture bill totals \$22.5 billion, a \$737 million increase from current levels. The legislation would provide \$3.45 billion for agricultural research programs, a \$175 million increase. More than \$1 billion would go to help farmers and ranchers conserve their land, including \$77 million for watershed and flood prevention initiatives.
- S. 3308, the “Colorado River Indian Tribes Water Resiliency Act,” from Sen. Mark Kelly (D-Ariz.), to grant the Colorado River Indian tribes the ability to lease or make storage agreements with its allocation of water from the river.
- S. 4104, the “Hualapai Tribe Water Rights Settlement Act,” from Sen. Kyrsten Sinema (I-Ariz.), to modify and ratify the Hualapai Tribe water rights settlement agreement.

Discussion: Ken asked Steve Garchar if the NCA made it into the omnibus bill? Don stated that he heard that it did not make it. Steve had not heard any news at this time.

On the State level the CWC State affairs met Monday.

- DNR legislative priorities: DWR staff, CWCB staff and moving CR Commissioner into DNR Director’s office.
- DNR Bill Concept – Allow Stream Restoration Outside of the Priority System – Ken stated that this is along the lines of the beaver dam analogues. This would be working within a stream and not calling it a diversion. We might hear more at CWC. There are still people interested in doing the beaver dam analogues in the upper Dolores.
- Bill A Concerning a task force to study the feasibility of high-altitude water storage in Colorado that will probably not go forward (McKean/McLachlan and Bridges/Simpson)
- Bill B Concerning the Water Resources and Agriculture Review Committee (Bridges/Simpson and McKean/McLachlan/McCormick)

Ken also included articles on the long running Thornton water case and the Supreme Court case on access to non-navigable stream beds as brief updates. Thornton informs how the future buy and dry proceeds on the Northern Front Range. Don stated that Ag Leadership taught him a ton about water. Since you can’t speculate, in 1985 or so Thornton purchased water from the mutual ditch companies and leased the water back to the farmers. Later they will transfer to municipal use. Don stated that this is why it pays to learn federal water law, Colorado water law and how they mix to help protect our local supplies. Don stated that as he read some of the information that the UB has to put 500 KAF in to solve the CR problem, it will come from the Western Slope agriculture. Don stated that there has to be agriculture for us as a country to survive, but many want to buy and dry ag for cities and the environment. Glen said that what he got out of it was moving water from farms to the cities, in this case by a pipeline instead of down the dirty river. Don stated that Counties 1041 powers may put in rules similar to the federal NEPA compliance. Don wondered if there are 1041 powers for rural communities to use to protect our water rights and keep our community protected the way we want our community to be protected. Ken stated that the 1041 rules are very tough and not absolute powers, but have slowed down the buy and dry process. Don thinks cities should limit their growth.

Colorado’s River Access Rules – Ken briefly reviewed the Wasera case. CWC does not want any of the existing legal structure to unravel. This has been overturned in Montana and New Mexico. Adam explained the history of bed & bank ownership based on commercial navigation at statehood. Adam stated that the bed and banks of river determined to be navigable is whether an individual can say the state owns the bed and banks. Adam suspects they will lose at this juncture. They will continue to watch this.

Colorado River Basin Issues – Colorado River Compact Issues, DCP, DROA, DM & Drought Resiliency: The Colorado River Water Users Association (CRWUA) meeting was very active in December. **Upper Colorado River Commission** – Ken stated that the System Conservation Pilot Program (SCPP) was released at CRWUA they are offering \$150/AF of water conserved. There was

information on what you had to have to submit, submittals are due February 1. Ken stated that this has been open for just six weeks it will be interesting to see how many applicants there are. Ken noted that it is part of the UCRC 5-point plan to the current emergencies on the Colorado River. We do have the studies from the past rounds, the actual price were closer to \$200/AF but there were some low prices out of Wyoming and Ken believes that may have helped set the \$150/AF amount. Grand Valley has probably been the biggest Western Slope interest.

The UCRC released their System Conservation Pilot Program (SCPP) for 2023. A Pre-solicitation notice was in the packet. They are seeking proposals by the end of January and are offering \$150/AF conserved unless you justify a higher cost. It seems too fast to get much participation.

The UCRC also released their Demand Management study and agreed to address next steps at their June meeting. Ken included the summary document and full document in the packet. Ken stated that he doesn't think they have all the information nailed down yet. Don expects better results from forest treatments than demand management.

Demand Management – Ken stated that DM had two big pieces that were released. Ken stated that there are still a lot of identified problems with DM and the UCRC agreed to bring it back up in June 2023 at a meeting in New Mexico. The meeting may direct the workgroup to answer the remaining questions and start drafting a possible DM program. There are a lot of remaining legal questions, Ken doesn't think the economic findings are that concrete but they do talk about them. Ken stated that the biggest item of interest is that they are talking about remote sensing on the losses (evaporation and evapo-transpiration (ET)). Ken hopes to learn more about this going forward. Ken stated that if this works on crops it will work on trees and could help in the forest health arena. The UCRC already wants to support the remote sensing for consumptive use calculation of the UB.

The larger Hazen report, Ken stated that it tells him they are a long way from being done but are working of these issues. The State had indicated that they are trying to find more gaging and other technical tools. That does use some of the federal money Bipartisan Infrastructure Law (BIL) money to put in gages and some of the remote sensing. Ken thought it would be more field based. Ken called out a section in the Hazen report regarding DM Program Development. Ken stated that what he would bring out without reading the items individually is that anyone with a water right can apply for the SCPP. All it does is stop somebody from diverting. In the Grand Valley they had fields that they kept completely bare for a season and in theory they did not divert that water. That is all we know it went past the headgate and we don't know where it went beyond that. You can imagine the problems with that depending on where you are at. DM has this whole shepherding problem it doesn't do you any good if you don't get it to Powell or Aspinall or Flaming Gorge or Navajo. Then you could put a label on it that says it is for the UB to protect against compact compliance. Ken also directed the board to the Annual Evaporation Estimates in the Hazen Report. If you read the whole section, you will find out that the conclusion is that we better keep the water in the upper reservoirs, if it goes to Lake Powell there is a short fuse on it before it evaporates. They are advancing some of the science on losses and talk about some of the riparian and ET losses in the report. Ken stated that eventually they studied the Dolores River and it is one of the worst places to send water down as it won't get there due to a combination of sun, solar radiation, and vegetation. Ken stated that they may learn more at CWC on this topic.

Ken included four additional related articles to give a flavor of the positioning and actions going on around the basin as these tense negotiations continue. Ken stated that the Board may need to discuss these and several related articles in executive session.

Ken stated that the article titled *Water authority lays out Colorado River plan to protect Lake Mead*: Ken stated that it is worth the read and summarized that this is Southern Nevada Water Authority's plan for how the seven states that rely on the Colorado can protect Lake Mead and Lake Powell.

Ken stated that there is an article titled *In Arizona, Colorado River crisis stokes worry over growth and groundwater depletions*. Ken stated that he thought it was an interesting commentary from a former Arizona Department of Natural Resource official. It makes it sound like they are recognizing that they may not have the water for their explosive growth. There is a second article about trouble at Glen Canyon and another article about cutting off groundwater to farmers around Kingman, AZ. Ken noted that Arizona is getting more active in water management. The final article is about groundwater sustainability in some of their growth areas.

Supplemental SEIS - The seven states continued negotiations on getting additional cuts for 2023, 2024 and possibly beyond. They did not reach agreement and have until the end of January to provide a joint proposal to Reclamation. Public comments on the Supplemental EIS for Powell & Mead operations were due December 20, 2022. Ken included his cursory comments in the packet. SNWA released their comments publicly and an article provides the four main points of the LB proposal:

- Accounting for the more than 1.5 million acre feet of water lost along the river system each year to evaporation and other system losses that would effectively act as reductions in the lower basin, about half of which would come from California's allocation.

- Earlier triggers for mandated water delivery cuts in the lower basin states of Nevada, Arizona and California, with, with additional cuts if deemed necessary by the federal government.
- Continued releases from reservoirs upstream of Lake Powell and further modifications to releases at Glen Canyon Dam when Lake Powell's elevations are projected to near elevations that would put hydropower generation at risk.
- Additional mandatory cuts of 500,000 acre feet from the four states in the upper basin — Colorado, New Mexico, Utah and Wyoming.

Ken stated that Southern Nevada's comment letter has been made public. Nevada also signed a LB letter, Ken guesses that it doesn't have all the loss accounting included in it. Southern Nevada is leading the charge for the LB. It is a unique place, they have the smallest allocation, they are effectively 100% municipal. They spent \$1.7B on their water system and draw out of below dead pool at Lake Mead, they are in some ways, the only safe place in the LB. They run the water up and supply Las Vegas then it runs down a wash and they get credit for everything running back. So, in some ways, accounting wise, they are never going to run out of water. Ken highlighted a few items of interest. They are starting to set up what emergency actions may be available to the feds. They want to set up protection of hydropower in Lake Powell. They are also saying they will never cut CAP off 100% no matter what their seniority stature. There are also indications of waste although agriculture in the LB is pretty efficient. They are looking at lower inflows. They talk about lower releases, public health and life safety shows up but not much about agriculture. This has not been agreed to by the LB, it is in the feds hand as a possible proposal.

Division 7 Exemption: Based on our discussions and following MVIC's lead, Ken will ask SWCD to delay actively seeking to remove the Division 7 exemption at this time. There are too many ongoing negotiations going on around the Colorado River to truly understand all of the potential ramifications around removing this exemption. SWCD meets January 17 & 18, but Ken had a letter in on January 11. Ken included Ed Millard's letter to SWCD on this subject noting that Ed does a good job tying the history and potential compact ramifications to this issue. Currently Division 7 is exempted from the law protections that prevents lessening historical consumptive use when you go to water court, if you have years of nonuse for your water while in a conservation easement. Some of this was set up to help with the in-stream flows (ISF) for ecological purposes. When it was first proposed at SWCD, right before Covid, several environmental organizations had gotten some letters of interest from some agricultural interests on the San Miguel and San Juan that they might be interested in joining a conservation program if this exemption didn't exist. SWCD considered it at that time, then they passed and since Covid came and they have never reconsidered this. It may be an impediment to both system conservation and demand management. When you look at the law under "C. An approved land fallowing program as provided by law in order to conserve water or to provide water for compact compliance; or D. A water banking program as provided by law." This also relates to system conservation and demand management. While environmentalists have every right to do what they can towards their interests, it is also a concern that it might facilitate system conservation and demand management. Ed's report also goes into a lot of other reasons about how fast things are moving around the Colorado River consultation. There hasn't been a lot of talk regarding this they just want SWCD to lobby at our state to just add Division 7 into this. There is no NEPA going on, ISF is the state's answer to keep some environmental flows in the rivers, it wasn't ever set up to solve Lake Powell crisis problems. Ed brings up irrigation bylaws, there is still no shepherding allowed so if you do save water who knows where it is going. Ed has several other reasons that relate to current negotiations, there is no storage pool in Lake Powell, Southern Nevada is already wants more water, the LB has been overusing their compact allotment for many years. CWCB talked about proportionality on the East and the West Slope, others have talked about proportionality within river basins. Article 3a is a legal argument, and it is written into the compact, that our water is only for exclusive beneficial use in the UB. Ed brings up the anti-speculation and the UCRC that was cancelled in 2018 because of some of these problems. Ed goes into a little more detail on 603a, as any of these programs may violate the use of UB water in the LB. Ken does not believe we will ever hear that until it goes to the Supreme Court but hopefully it is being discussed. CWCB policy about proportionality between East and West Slope. There was not a lot of East Slope participation in the last SEPP program and we don't expect it this time, it comes back to where the water going to come from.

Ed Millard stated that 1) regarding the proportionality issue it is important to point out that he thinks that defended policy by saying that this is not a DM program. They are saying it is a pilot program so Ed thinks they will say they don't have to demand participation by the Front Range. The \$125 million funding is many times more than the last round. 2) Article 3a; Ed stated that he has brought up Article 3a at multiple IBCC and CWCB meetings and is met with silence when he brings it up. This is the same with Section 603. Ed thinks basin principals know full well that they are tearing up Article 3a and when they do, they are tearing up the whole purpose of the compact. It is there to ensure that the LB doesn't take our compact rights. It is really important to not go ahead and silently ignore the purpose of the compact. The UCRC needs to defend the compact. 3) Anti speculation issue; Ed stated that Adam served on an anti-speculation committee to try to find remedies for it and it wasn't successful. Division 7 exemption is the one anti speculation protection that we have to keep DM/SCPP out of the Southwest. Ed stated that we don't want WAM moving into our area. The investors in the hedge fund are opaque, you don't know who they are. It is more than possible that

these are from the LB. 603 is like Article 3(a) to protect the LB from taking UB apportionment and UCRC needs to invoke.

Ken stated that the MVIC Board will like to keep the exemption. Brandon stated that Gerald Koppenhafer will pass that along as a SWCD member. Ken had to submit a letter by January 11, he went ahead and expressed DWCD reservations about acting this year. If nothing else given what is going on they should at least pass for another year. We still see it as a positive and in support of MVIC we should put it on hold for a year.

DWCD Board Workshops – January 18, 2023 (3rd Wed): The Board should consider a workshop on January 18 to provide more time to focus on one or two of the current topics listed here or included in your attorney's work. Towards the end of the meeting the Board can choose a topic or two and set the time based on the regular meeting materials and discussion. The Board set the Workshop for January 18, 2023 at 5:30 with dinner.

Select Date and Discuss Topics for Brainstorm – Weeks of February 6, February 13, February 27, March 6 or March 13: The Board has traditionally set aside a day 9:00 Am to 3:00 PM +/- to focus in on one to a few topics for in depth discussion. The regular Board meetings are Thursday February 9 & March 9 at 2:00 PM. The Board decided to have a Brainstorm meeting on March 1, 2023 at 9:00 am.

LEGAL REPORT

Mediation – John Justus, Judge Kuenhold, Bill McDonald and Adam had a meeting to discuss how mediation will work and also discussed the week of March 6th as potential mediation dates. They would like to hold mediation at the DWCD office. Adam stated that they would like to schedule two days that would work for everyone. Brandon said that MVIC would like to wait until after Tuesday, March 7 at 1:00 p.m. to begin. Adam stated that the whole board doesn't have to be there but there must be a quorum and there needs to be someone in attendance with sufficient authority to recommend a proposed settlement to the board for approval. Adam told the board that the mediator will want to talk with the board separately, without Adam in terms of introductions. Adam stated that he has never met Judge Kuenhold but in terms of the meeting, he thought it went really well and they have the right team. Adam stated that they don't need to appoint board members to mediation at this time but stated that it would be good if Godwin is there as president and stated that Don's knowledge and history of the project is important. Glen stated that he wants to be there. They will block off March 7, 8 and 9.

AZ v. Navajo Nation, DOI v. Navajo Nation – Adam stated that they discussed one of the issues with Arizona v. Navajo, for the purposes of this project, is that if taken to the conclusion urged by the United States, UMUT wouldn't be able to sue the federal government to get what it bargained for in the settlement agreement because there is no specific language that grants the Ute Tribe the authority to tell the government to do what is necessary to deliver their quantified water rights. Adam worked with Don and raised that issue with Family Farm Alliance (FFA) and they were exceptionally helpful in recognizing the distinction between tribal water rights that are quantified and are part of the system that have been through court and those, like Navajo is currently asserting, which are considered unquantified water rights. There were some minor changes to their amicus brief, they were under the gun on timing given the holidays and he is pleased how it came out. Ken stated that he was missing this distinction, Colorado is taking the federal side which would remove the ability for tribes to sue for certain things. He's not clear on the quantified versus unquantified rights distinction. Ken asked how Adam sees a positive result for this relative to Colorado River use and clarify that distinction. In this particular case, where the Navajos have unquantified rights that could have impacts on the Colorado River issues and how that might apply to other tribes on the Colorado River. Adam said they didn't take a position on Navajo's unquantified rights. The quantified rights that have been through state court and are part of the system, those are an important part of the system and deserve the same sort of protection that any other part of the system would get. Navajo's unquantified right, if they ever get one, are going to come out of Arizona's allocation. They are not going to be on top of and in addition to Arizona's allocation. Arizona is concerned about the Navajo rights but that is not the issue addressed in Colorado. Colorado did back off on Arizona and the United States in it's brief, it's focused on the fact that any water right in the LB has to be adjudicated under Arizona v. California without getting into the nature of the trust responsibilities for Indian tribes. Adam stated that Colorado is standing pretty well together on the idea that once a water right is part of the system the federal government should protect it the same as the way a mutual ditch company would protect the water to a shareholder.

Discussion: Ken stated that he has multiple briefs if the board is interested in reading them. This is a very interesting and unique case. Don asked if Colorado and both Ute tribes are comfortable in what they are advocating for in this case. Adam stated that the Ute tribes expressed concern to Colorado that the supreme court decision could easily extend beyond the rights that Navajo is seeking other important tribal matters including things like the ability of the Colorado Ute tribes to compel the federal government to get their water. Adam noted that the federal reserve water rights are not owned by the tribes, but are owned by the United States in a trust for the tribe. The position Arizona and the

United States are advocating for is that tribes uniquely wouldn't be able to hold their trustee accountable for delivering their water. Adam stated that Colorado and Ute tribes are pretty well aligned right now. It would protect ALP & Dolores Project. The Dolores Project is a reserve right held in trust and the Utes being able to compel the United States to ensure that the Utes get their water is a benefit to the project. As discussed, this project doesn't work if Full Service, MVIC and the UMUT don't all have the ability get their water. Don stated that he understood that UMUT has some unquantified rights in New Mexico and Utah. Adam stated that is correct. Adam stated that UMUT is in the process of working on their settlement in New Mexico, but he doesn't know the status of the settlement or what their claims might be in Utah. Those cases are proceeding through the system. The Navajos have sought protection of an unquantified right and instead need to re-open AZ v. CA.

MVIC/City of Cortez Agreement for use of the Cortez 4.2 CFS direct flow right – Adam stated that he did not have anything new to discuss on this issue.

MVIC 87.3 CFS Water Rights Filing – Adam stated that he has talked with John Justus about the 87.3 cfs case and would like to discuss this in executive session.

Adam asked for an Executive Session to discuss the following: MVIC 87.3 cfs, Mediation, Colorado River Issues and Water Rights Protection.

MOTION: MOVE INTO EXECUTIVE SESSION PER CRS 24.6.402(b) TO OBTAIN ADVICE FROM COUNSEL AND CRS 24.6.402(e) MATTERS OF NEGOTIATION FOR DISCUSSIONS ON MVIC 87.3 CFS, MEDIATION, COLORADO RIVER ISSUES AND WATER RIGHTS PROTECTION.

**MOTION: WES WILSON
SECOND: LANDAN WILSON
MOTION CARRIED UNANIMOUSLY.**

**RECESSED FOR EXECUTIVE SESSION AT 4:42 P.M.
RECONVENED REGULAR MEETING AT 6:15 P.M.**

REPORT OUT OF EXECUTIVE SESSION

Adam reported that in Executive Session the Board discussed matters related to Colorado River issues, mediation with MVIC, the upstream user cases on the Dolores River and the MVIC 87.3 cfs case. No decisions were made.

OTHER – Ben Harclerode stated that he will be resigning at the end of the month. The Board thanked Ben and wished him well.

NEXT DWCD BOARD MEETING – Thursday, February 9, 2023 - 2:00 P.M.

ADJOURNMENT Meeting adjourned at 6:19 P.M.


Donald W. Schwindt, Secretary-Treasurer


Godwin Oliver, President