

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

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### MINUTES Regular Meeting March 10, 2022

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**CALL TO ORDER** Godwin Oliver, President, called the meeting to order at 7:01 pm

**ROLL CALL** Godwin Oliver, President  
Simon Martinez, Vice-President  
Don Schwindt, Secretary-Treasurer  
Bruce Smart, Director  
Sheldonna Z. Ives, Director-Via Teleconference  
Wes Wilson, Director  
Glen Fish, Director  
Ken Curtis, General Manager  
Ben Harclerode, Chief of Engineering & Construction  
Rob Walker, Maintenance Supervisor-Via Teleconference  
Eric Sprague, DWCD Engineering Tech-Via Teleconference  
Lisa Jordan, Office Administrator  
Adam Reeves, Attorney  
Robert Stump, Bureau of Reclamation

### INTRODUCTION OF GUESTS

#### In Person

Jim Mimiaga, Cortez Journal

#### Via Telephone/Teleconference

Brandon Johnson, General Manager; Steve Garchar, Dolores County; Landan Wilson, Tony Tanner, Full Service Irrigators; Rich Landreth, City of Cortez; Marty Robbins, CDWR

### MINUTES

#### APPROVAL OF THE MINUTES

**MOTION: TO APPROVE THE MINUTES AS SUBMITTED FOR THE FEBRUARY 10, 2022 ENTERPRISE MEETING.**

**MOTION: SHELDONNA Z. IVES  
SECOND: SIMON MARTINEZ  
MOTION CARRIED UNANIMOUSLY.**

#### FINANCIAL STATEMENTS

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

**O&M: AP/CHECK #40185-40281 & PR/CHECK #125092-125135  
\$348,242.19**

**MOTION: GLEN FISH  
SECOND: BRUCE SMART  
MOTION CARRIED UNANIMOUSLY.**

**O&M REPORT** – Rob reported the following:

**Canal Maintenance** – Staff has finished cleaning the plugged cross drains on THC Reach 3 and are blading the last of the siphon ROW's. Due to the budget constraints, the remaining items on the worklist will not be completed until the money is available. There are no other emergency items on the THC worklist that need our attention at this point. We inspect the cross drains after any big rain event and will continue doing so.

Dove Creek Canal and South Canal maintenance will resume after we complete the worklist items on the shared facilities.

**Pumping Plants** – WAPA is still on schedule for the underground power line replacement along the South Canal for March 14th thru the 19th. Cross Canyon will have an inspector overseeing the installation.

**Power Plants** – Our plan is to complete the worklist items around the power plants, Dam, Dike and Tunnel. We also have a short list of recommendations from the BOR's annual inspection that we'll work on.

**Control Room** – The Control Room Operators have been attending an online Fiber Training course and completing their field testing. Eric and Gary have been at the Towaco Power Plant doing trouble shooting on the network.

**Weed Control** – We had our annual chemical storage facility and records inspection from the Department of Ag last week. We scored an "A" for this inspection.

Rob stated that he has been talking to Deagan Chad, the Public Works Director for the Town of Dove Creek with regard to storing water at the end of Dove Creek Canal. DWCD would like to store water at the end of Dove Creek Canal so in future deliveries to Dove Creek DWCD would not have to fire up Great Cut pumping plant. Rob noted that of course this depends on this year's runoff. Rob stated that there was a rumor that there wasn't going to be any water sent up north this year. This is a rumor.

**Personnel Committee** – Rob stated that there was a Personnel Committee meeting on March 8th. We talked about the supply and forecast, start-up dates, long term outlooks, concerns the farmers may have and similar topics. Rob asked the members of the Committee if they would like to have a meeting in April. Wes and Sheldonna both indicated that they will be getting busier and are okay with skipping the April meeting. Any further meetings will be discussed at the April Board meeting. Rob will stay in touch with the Committee.

## **WATER MANAGEMENT REPORT**

**Water Accounting** – Ben stated that **1)** as of Monday, March 7<sup>th</sup> the reservoir elevation was 6,862.73; 7.73 feet above inactive capacity. Active capacity was up to 17,434AF from 15,419AF on February 10<sup>th</sup>. There is 787AF left for the Lower Dolores for the rest of the month. The new water year starts April 1 for the Lower Dolores Fish Pool. MVIC is still storing Narraguinnep in McPhee and they stored 1,624 AF in the month of February. There has been 9,935AF of MVIC-Narraguinnep water stored in McPhee. Project water is around 7,000 AF, this amount has not changed since November. Precipitation in February brought 1.12 inches at Great Cut Dike. So far in March there have been two storms; March 4-6 brought .34 inches and March 9 brought .02 inches of precipitation. **2)** The CBRFC Hydrograph SWE shows 100% of the median for March 9, 12.4 inches of SWE, which is 93% for the year. At this time in 2020 there was 10.8 inches of SWE and we are already doing better this year than we were last year at this time. **3)** the March 2022 Snotel Median graph shows 101% of average including Sharktooth at 13.2 inches of SWE. Low snow as of March 1<sup>st</sup> was at 82% of average and probably saw some melting from the warm weather that we are having however the low snow is better than the previous two years. **4)** April-July Dolores River flows cover a 30 year average the past two years were really below average not even getting to 100KAF of runoff. **5)** Ben stated that right now we are going with a conservative 90% forecast with 90% the FSA would get 1.76 inches per acre. Ben stated that DWCD staff met with UF&RE managers and told them to plan for roughly 2,200 AF. New forecasts come out in mid-March and the first of April. Overall, we are feeling better about the snotels and it is a question of runoff efficiency in the spring. Overall, we are trending better than the past two years. Talking with ranchers and locals that were up in the mountains last fall, soil moisture seemed to be better as well. The NOAA forecast has our area higher in temperature and below average precipitation overall the next few months.

**2022 M&I Rates** – Ben stated The District has 5,120 AF of non-potable Dolores Project M&I water for lease, which serves the following: Upstream well users, Canal M&I, FSA users, Trucking users, and Dove Creek Secondary System users (DC L&G). M&I users pay annual fees and water charges based on their individual agreements. OM&R fees have not been adjusted since 2015.

Since 2015, all accounts have been charged a \$50 administration fee, \$70/AF O&M fee, and \$106.67 BOR Repayment water charge per AF. All M&I users except DC L&G are charged a 1 AF minimum

and then 0.1 AF increments for usage in excess of 1 AF. The O&M fee is applicable to all M&I Users except FSA Irrigators who wish to purchase 1 AF M&I and utilize their existing box (no new infrastructure). These accounts pay the minimum BOR Repayment charge (\$106.67) only. As discussed last board meeting, DC L&G has its own schedule of Rates and O&M fees, which were already adjusted to \$75 each. The following table provides a breakdown of the current M&I users and revenue generated:

**2021 M&I STATS**

USER	ACCOUNTS	USAGE (BILLED)	REVENUE
Upstream/Well	168	202.43 AF	\$44,163
Canal M&I	144	194 AF	\$41,474
FSA Irrigators	63	63	\$6,720
Trucking	22	33.5	\$7,018

As a starting place to adjust O&M fees, the Bureau of Reclamation develops Construction Cost Trends (CCT) to help track construction relevant to BOR projects and organizations. The CCT's take into account two main elements: contractor labor and equipment costs and contractor-supplied materials and equipment. The cost index provides a comparison tool to adjust historical construction costs or fees to the current year. For example, the \$70 O&M fee in 2015 would be \$80.08 in 2020 based on the cost index. The cost index increases roughly 3%-5% each year as material, labor, and equipment prices increase. With an increase of 3% for 2021 and 2022, the O&M fee would be around \$85 for 2022. If the O&M fee increased by \$15, it would generate an additional \$6,500 in income.

Assuming that the majority of M&I users do not use more than 1 AF, the annual charge would include the historical \$50 administration fee, \$85 O&M fee, and a minimum one(1) AF water charge of \$106.67 for a total minimum annual bill of \$241.67. In comparison, DC L&G users are not charged a minimum of one(1) AF, but their actual usage at \$0.33/1,000 gallons. With the new fees set at the February 2022 board meeting and assuming an average use of ½ an acre-foot, the minimum annual bill for DC L&G would be \$254.

**Alternatives:** The Board may consider slowly raising the fees over the next few years instead of all at once to ease the burden on account holders. The O&M fee could be increased by five dollars over the next four to five years, depending on cost trends moving forward. Due to recent water shortages, the board may also consider not raising the O&M fee at this time.

**Staff Recommendation:** DWCD staff recommends increasing the O&M fee to \$85 before the next billing cycle in April. The additional fee will bring the O&M charge up to 2022 costs and inflation.

**Discussion:** Sheldonna commented that with the hydrology the way it is she thinks a \$5-\$10 increase would be more appropriate rather than a \$15 increase. Godwin stated that we shouldn't raise the rate until there is a full supply or at least a better supply and would like to hold off until next year. Wes stated that he agrees with Godwin. Ken stated that this will be the kind of thing that will be considered annually in the future when discussing the budget.

**MOTION: TO LEAVE THE M&I O&M RATE THE SAME AS 2021 FOR 2022.**

**MOTION: BRUCE SMART**  
**SECOND: WES WILSON**  
**MOTION PASSED UNANIMOUSLY.**

Don stated that he would have suggested a slight increase but is in favor of the motion with the hydrology the way it has been the past two years. But appreciates that it will be brought back annually.

**FSA Interest Rate on Past Due Billing** – Ken stated that last March the Board dropped the interest on past due accounts to 0.5% per month. Then in June given the historic low DP water supplies the Board dropped the charge to 0.25% per month (3% annually) until March of 2022. The bulk of DWCD reserve funds are in COLOTRUST currently gaining interest at 0.025% annually in the Prime, most conservative, account. Other COLOTRUST accounts are earning 0.11% and 0.28% currently. Other reserves are making from 1.25% to 3.55% annually with recent quotes at about 2%.

**Alternatives:** Hold interest rates on delinquent accounts at current 0.25% per month until the Board revisits them or change to another rate.

**GM Recommendation:** I recommend that the DWCD Board hold the interest rate on delinquent accounts at 0.25% per month, 3% annually, until at least the September 2022 DWCD Board meeting.

**Discussion:** Don stated that having the investment comparison is important. With everything the Feds are doing he would be expecting it to be bumping up but it is volital. Don thinks a September review would be a good time to review.

**MOTION: TO HOLD THE FSA INTEREST RATE ON DELINQUENT ACCOUNTS AT .25% PER MONTH, 3% ANNUALLY, UNTIL SEPTEMBER 2022.**

**MOTION: DON SCHWINDT  
SECOND: WES WILSON  
MOTION PASSED UNANIMOUSLY.**

**ADJOURNMENT** Dolores Water Conservancy District Water Activity Enterprise Board meeting adjourned at 7:36 pm

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Donald W. Schwindt, Secretary-Treasurer

\_\_\_\_\_  
Godwin Oliver, President

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## DOLORES WATER CONSERVANCY DISTRICT

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### MINUTES

Regular Meeting

March 10, 2022

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**CALL TO ORDER** Godwin Oliver, President, called the meeting to order at 7:36 pm

**ROLL CALL** Godwin Oliver, President  
Simon Martinez, Vice-President  
Don Schwindt, Secretary-Treasurer  
Bruce Smart, Director  
Sheldonna Z. Ives, Director-Via Teleconference  
Wes Wilson, Director  
Glen Fish, Director  
Ken Curtis, General Manager  
Ben Harclerode, Chief of Engineering & Construction  
Rob Walker, Maintenance Supervisor-Via Teleconference  
Eric Sprague, DWCD Engineering Tech-Via Teleconference  
Lisa Jordan, Office Administrator  
Adam Reeves, Attorney  
Robert Stump, Bureau of Reclamation

### INTRODUCTION OF GUESTS

#### In Person

Jim Mimiaga, Cortez Journal

#### Via Telephone/Teleconference

Brandon Johnson, General Manager; Steve Garchar, Dolores County; Landan Wilson, Tony Tanner, Full Service Irrigators; Rich Landreth, City of Cortez; Marty Robbins, CDWR

### MINUTES

#### APPROVAL OF THE MINUTES

Sheldonna stated that her name was missing from the roll call however she was in attendance at the February meeting.

**MOTION: TO APPROVE THE MINUTES AS CORRECTED FOR THE FEBRUARY 10, 2022, REGULAR MEETING.**

**MOTION: WES WILSON**  
**SECOND: SIMON MARTINEZ**  
**MOTION CARRIED UNANIMOUSLY.**

**MOTION: TO APPROVE THE MINUTES AS SUBMITTED FOR THE FEBRUARY 10, 2022, EXECUTIVE SESSION MEETING.**

**MOTION: GLEN FISH**  
**SECOND: BRUCE SMART**  
**MOTION CARRIED UNANIMOUSLY.**

## FINANCIAL STATEMENTS

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

**ADMIN: AP/CHECK #12129-12145**

**\$13,203.31**

**MOTION: SIMON MARTINEZ  
SECOND: WES WILSON  
MOTION CARRIED UNANIMOUSLY**

## AGENCY REPORTS

**BOR Report** – Robert Stump stated that **1)** he is working on the MOA project for the water screens. The purchase request is moving through approvals towards solicitation, we should see an approval anytime. **2)** Robert stated that with regard to the UMUT O&M payments they have made two requests. First, they asked the Secretary to make the 2021 O&M payment under the Ute Settlement Act. They also asked for general drought assistance for 2022. Currently, the answer regarding payment under the Settlement Act is firmly that Reclamation can't bear the cost under the Act; not with BOR authority so can't make the payment. Robert stated that he doesn't see a resolution to that in time to assist the Tribe in their current financial circumstances. In the meantime, they have been looking at ways to help the Tribe under the Drought Assistance/Resiliency Projects. There are a lot of drought programs and Native American Affairs Assistance Programs that continue to be explored. This approach may assist the Tribe more efficiently timewise.

**Discussion:** Don stated that in terms of the first request, initially the THC expense was paid by the Secretary. Don asked if the request was tied to THC Contract or the Ute Repayment Contract. Robert stated that both reference the settlement legislation. Don asked if it is based on the contractual relationship or the Ute Water Rights settlement legislation. Robert stated that they are tied together but the authority is in 6B of the Settlement Act, referenced by the Repayment Contract and is tied to the Tribe's gross revenues. The interpretation at this point is if there is gross revenue sufficient to cover the O&M bill then the Secretary cannot make the payment. Adam stated that his recollection is that this issue came up around 2008 that the Tribe was successful in that bad year and that Reclamation picked up the bill. Don thought it was a part of THC. UF&RE came online and there were multiple years during development before the Tribe paid 100% of the THC payment. Robert stated that this is not an easy question to answer and there are a lot of opinions and conversations around this however, discussions are continuing.

Don asked Adam if he has had conversations with the Tribal attorney regarding this request. Adam stated that he has not. Don stated that that could be useful. Robert is willing to entertain any creative thinking and any other ideas. Simon stated that he appreciates the work Robert has done in working with the Tribe and the BOR. It was stated that the appetite Bureau wide is to certainly to help the Tribe any way that they can. Ken stated that he would like to confirm with the Board that they don't mind that Adam and Ken make some phone calls. Ken stated that we are obligated to perform maintenance on the THC and the trigger in the THC Contract is for the Tribe to notify the District if they can't make the payment. Ken and Adam will see if they can find a different tact. There was Board consensus that Ken and Adam can talk to the people they need to. Don stated that the District doesn't have a monetary stake in THC, but we do have a clear interest.

**Division of Water Resources Report** – Marty stated that he did not have anything new to talk about however he stated that Rusty Cringle is the new CDWR Dolores River Water Commissioner.

**T/H Committee Report** – Godwin stated that the Committee met February 16, 2022. **1)** The Committee paid DWCD & UF&RE.

**Next T/H Meeting** – The Committee will meet at the DWCD, Cortez Office March 16, 2022 at 2:00 p.m.

**MVIC Report** – Brandon reported that **1)** MVIC continues with maintenance. **2)** Stock run currently planned for week of April 4<sup>th</sup>. **3)** The MVIC Board set the allocation at 18" for the 2022 water season and will review as they go. **4)** Weeminuche was awarded the contract for the Groundhog guard gates.

**Other** – Godwin presented Bruce Smart with a plaque and stated his appreciation for Bruce's years of service to the DWCD Board serving as Board member and Board President. Ken thanked Bruce for his engineering contributions over the years. Don stated that when Bruce started on the Board, he was intimately knowledgeable and enthusiastic to be on the Board from the beginning. Bruce stated that it has been interesting and gratifying to be on the Board and serve the community. Steve Garchar also thanked Bruce for his service. Simon stated that he has enjoyed the years on the Board with Bruce. Robert stated he was thankful for the wisdom and wished Bruce luck. Glen stated

that he thinks Bruce has done a great job. Sheldonna thanked Bruce for his advice when she first got on the Board.

## **GENERAL MANAGERS REPORT**

**Save the Date Reminder** – SWCD Seminar scheduled for Friday April 1, 2022, at the DoubleTree in Durango, hybrid event.

Ken stated that Bruce's retirement from the Board leaves a spot open on the M&R Team. Celine Hawkins has a new position with TNC that will likely take her off the M&R team that she co-chaired with Bruce. Ken stated that he will probably bring back replacing Bruce's position on the M&R Team as an action item for the April meeting. Don stated that to be clear Ken is asking for a volunteer to the M&R Team. It has been an important position and had huge impacts during the spill years. This is a group that has an important position for spills like 2017 & 2019. Don stated that it is critical to this Project that we keep active engagement in the M&R Team. The Project has always been unique with the NEPA pool for downstream in contrast to the other contract interests. Ken stated that 5 CFS in 2021 was very little but the deeper pools are all still existing with a lot of small mouth bass and some native fish living in them. Ken stated that the whole group understands this is hydrology driven and are working with what Mother Nature has given us. Robert stated that the M&R Team has acknowledged the water issues and have taken advantage of the low flows to look at additional science and have taken the opportunity to learn how natives adapt to low flows and salinity. This is a complicated project and there is a myriad of interests, and the M&R Team takes the interests and bring them together in a productive way. Ken stated that the Biology Committee made a good case that the Dolores is seen with the San Miguel as an important spawning ground when possible. This remains important to the federal and state fishery biologists.

**FSA Farmer Advisory Committee set for 5:30 PM Monday, March 14 @ PVFD** – Water supply, soil health, set 2nd meeting and FSA feedback.

**Board to Board 7:00 PM March 15, 2022 @ DWCD MVIC/DWCD Board to Board** – Continue Reconciliation discussion. The Boards agreed to review the 1977 contract at the Board-to-Board meeting.

**DWCD Board Workshops 5:30 PM March 16, 2022 (3rd Wed) DWCD Board Workshop** – This would be the regular workshop right after the Tuesday Board to Board and Monday FAC. It could provide time to debrief from the reconciliation discussion with MVIC and FAC. Board agreed to hold the work session.

**Water Education Colorado (WECO)** – WECO puts out three *Headwaters* magazines a year and are looking for sponsorship of the next release set for April 2022 focusing on Tribal Water. There are varying degrees of sponsorship, Ken recommends \$500 or \$1,000. Ken noted that this would be charged to Project Promotion in the Administrative Budget. Don asked Simon if he had been contacted and if there was a way to push the more complex story of how we are tied together with the Tribe, stating that he thinks that this part of the story gets missed. Don stated that reporters come in and focus on the Tribe and FSA but skip MVIC. He asked Simon if he could help push the reporters that direction. Ken has not been contacted by any of the writers. Godwin asked what we have done in the past. Ken stated that DWCD contributed \$250 to CAWA and when WECO gave Mike Preston an award, we sponsored \$750. Back in 2014 WECO focused on SW Colorado issues and the Ute Farm & Ranch, which we sponsored at some level.

**MOTION: TO MAKE A \$1,000 SPONSORSHIP CONTRIBUTION TO WECO.**

**MOTION: DON SCHWINDT**  
**SECOND: WES WILSON**  
**MOTION CARRIED UNANIMOUSLY**

**Colorado River Basin Issues – DCP & DM** – Conditions across California and the west remain generally dry. California is looking at a very tough year which has some pull on the CR. The stories about Powell & Mead remain about crisis and Powell is getting close to 3,525' which is critical given minimum power pool at 3,490'. Ken shared Reclamation 2-year projections for Lakes Mead & Powell. This will trigger some level of DROA in April. The CWCB may have more updates on March 16.

Ken stated that certainly next year and maybe this year both Lake Powell and Lake Mead will be even lower. Lake Mead is likely to go below 1,030' they are actively working on their 500 plus plan. The FFA should release their Colorado paper soon in support of agriculture. Agriculture is seeing threats on all sides in the Basin and needs to raise their voice more on that front. DROA will have to make decisions in April on Aspinall, Flaming Gorge and Navajo. Wes asked if DROA will affect 2022 Powell releases. Ken responded that DROA would drop the water from the upper reservoirs Aspinall, Flaming Gorge and Navajo to keep this elevation up but DROA will not trigger any change in the 2007 guidelines required releases. They are trying to put water in Lake Powell to keep it above 3,525' but not so much that it forces additional releases between the Upper and Lower Basins. Don asked if there was any discussion with flexibility of holding water in Lake Powell to

keep from going under the power pool elevation before spring runoff hits? Ken stated that Reclamation has already done that, they will release less this spring and more over the summer or later after the spring runoff. Ken noted that it will be interesting to see how the DROA is modeled relative to 2022 water users in the system.

**Legislation Update – Federal (incl. BOR funding), State, NCA & DWR Rule Making** – Ken stated that there was nothing specifically new on federal funding. The CWC State Affairs notes from 2/28/22 and 3/7/22 agenda were included in the mailout. The RIVR, in stream values, remains a hot topic while the turf removal legislation was supported by CWC. The RIVR bill will be coming in with a late introduction. It is still quite controversial and in draft form. The Fire Suppression Ponds Water Rights bill was in legislation for possible action. There are still some concerns on lack of clarity and ambiguity in some of the language in the bill. Ken expects the Fire Suppression bill to go forward. Ken was unable to make it to SWCD meeting and stated that they likely went into more depth.

Don stated that SWCD is opposed to the storage project being prioritized in the South Platte Basin. The River District is also opposed. Ken stated that this one came up for a motion and there was silence with no discussion. It was well known that other people had raised issues at earlier meetings regarding that bill. Ken noted that the Protect Health of Pollinators and People was a little bothersome because it gave a lot of disbursed local control over spraying. Presumably for pests but there was potential for herbicide control. This would be a regulatory nightmare, but it is done for the year and may come back next year. Don stated that the Fire Suppression Pond bill was supported by SWCD. The LaPlata County Commissioners came to SWCD and asked for support on this bill. Steve Garchar stated that the Dolores County Commissioners were supportive of that legislation also. Ken noted that McPhee will override ponds close by for any fire suppression. Ken stated that he doesn't know what the radius is but there are criteria if you read the notes, it is the ambiguities and details being resolved to avoid injury to water rights.

**Federal Legislation** – Ken stated that water users are trying to line up a congressional hearing on the Klamath. California is headed into a drought and that will pull on the Colorado River. Likewise, Arizona is still working on cutting back on their uses while still using a lot of water.

**Reconciliation Process Review** – Ken stated that Ben has been working on data and corresponding charts to help the Boards understand the information regarding Reconciliation. Ken also has notes from the February 22, 2022, Board to Board meeting that he would also like to review.

Ben stated that he has nine pages of charts. **Page 1)** Originally in the DPR MVIC project water was estimated at 13,700AF. This was an average based on late season needs from MVIC and what they were expecting to take out of project water supply. Since the DPR and the 1977 contracts there are items that have been created that work like project water. Those things are the call water that created the THC, which is stored in McPhee, under McPhee's water right not under MVIC's diversion rights and the Totten Exchange water. Ben's chart from 2016-2021 gives an idea of those numbers and how they fluctuate throughout the years. It is clear that in the dry years there is more project water to MVIC. That is because there is more call water stored in McPhee. Ben stated that the 2019 number is lower due to the large spill because when we do spill, call water is spilled first. Ben stated that in the next two charts he looked at the 2020 Bill Breakdown and Estimated 2021 Bill Breakdown to MVIC. Ben has shown the five main components of MVIC's bill: Project O&M, Pre-Existing Infrastructure, U-Pump Power, THC and Repayment. Ben explained that the Pre-Existing Infrastructure charge doesn't fluctuate, it goes up with the Bureau's index. U-Pump Power is billed directly to MVIC. THC is a separate entity that has its own budget with set percentages on user fees. Repayment Contract is also separate from the reconciliation. Ben will be focusing on the Project O&M.

**Page 2)** 2020 Overview – the total water for 2020 was 156,939 AF, the total DWCD cost share for 2020 O&M was \$1,988,728. Ben showed two pie charts #1-2020 Project Water Usage and #2-DPR Water Allocation 10% and two bar charts #1-2020 DWCD Shared Costs – Water Usage and #2 DWCD Shared Costs – DPR Values. Ben stated that the goal here is to show everyone's share the charts show that FSA is paying the bulk in that year that is because of the water up north on all of the FSA facilities. The DPR Values is how it was historically charged. The bar charts show that the funds shift but not as dramatically as what will be seen on the shared facilities as we move on. **Page 3)** 2020 Reservoir, Dam & Dike – total water for 2020 was 156,939 AF the total DWCD cost share for 2020 Reservoir, Dam & Dike \$290,354. The charts show that FSA used 33.7% of the water and the rest is spread out among the users based on the percentage of water usage at the shared facility. The DPR values bar chart shows that FSA would have historically been charged 41% having received 33.7% of the water. Ben stated that this is getting at the what is proportional and what is fair. DWCD is proposing that using the total water usage is what is proportional. **Page 4)** 2020 Dolores Tunnel and Canal – total water for 2020 was 49,261 AF the total DWCD cost share for 2020 Dolores Tunnel and Canal \$37,642. The charts show that MVIC used 41.4% of the water and the rest is spread out to the five users of that facility (MVIC, UF&RE, City of Cortez, MWC and Ute M&I) based on the percentage of water usage at the shared facility. The DPR values bar chart shows that MVIC would have been charged 16.9% having received 41.4% of the water. **Page 5)** 2020 Great Cut Pumping Plant (not including power) – total water for 2020 was 60,837 AF the total DWCD cost share for 2020 Great Cut Pumping Plant \$81,332. The charts show that FSA used 87.0% of the water and the rest is spread out among the users based on the percentage of water



usage at the shared facility. The DPR values chart shows that FSA would have been charged 94.7% having received 87.0% of the water.

**Page 6)** 2021 Overview – this is the larger estimated bill for 2021. The total water for 2021 was 33,642 AF, the total DWCD estimated cost share for 2021 O&M was \$1,688,944. Ben stated that the charts show that MVIC used 53.3% of the water FSA 14.9 % and UF&RE 7.8%. **Page 7)** 2021 Estimated – Reservoir, Dam & Dike – total water for 2021 was 33,642 AF the total DWCD estimated cost share for 2021 Reservoir, Dam & Dike \$460,440. The charts show that FSA used 14.9% of the water and the rest is spread out among the users based on the percentage of water usage at the shared facility. The DPR values chart shows that FSA would have historically been charged 41.1% having received 14.9% of the water and MVIC would have been charged 10.4% having received 53.3% of the water. **Page 8)** 2021 Dolores Tunnel and Canal – total water for 2021 was 15,007 AF the total DWCD estimated cost share for 2021 Dolores Tunnel and Canal \$31,721. The chart shows that MVIC used 52.3% of the water and the rest is spread out to the five users of that facility (MVIC, UF&RE, City of Cortez, MWC and Ute M&I) based on the percentage of water usage at the shared facility. The DPR values chart shows that MVIC would have been charged 16.9% having received 52.3% of the water. **Page 9)** 2021 Great Cut Pumping Plant (not including power) – total water for 2021 was 8,350 AF the total DWCD estimated cost share for 2021 Great Cut Pumping Plant \$75,533. The chart shows that FSA used 59.9% of the water and the rest is spread out among the users based on the percentage of water usage at the shared facility. The DPR values chart shows that FSA would have been charged 94.3% having received 59.9% of the water and MVIC would have been charged 4.1% having received 37.4% of the water.

Ken stated that this is a lot of information to digest, and staff is planning to present it on Tuesday at the Board to Board. Ken stated that 2021 information is proposed, just an estimate, 2020 was implemented. Ken stated that we are trying to make sure that people understand what was put forth. This is our attempt at satisfying the question of additional breakdown. Ken stated that staff would like to discuss additional items in executive session.

**Discussion:** Don stated that fundamentally it is the call water. For MVIC not to pull it and use it for direct flow, they have to use it when it comes down the river. Pull that water, all 72,000 AF, when it is available and that puts it back to the DPR numbers and the 1977 contract. That would be a simpler way to get at the base problem. Don stated that the only way, under Colorado water law, for it to be non-project water is to pull it when it is in direct flow. Don stated that the call water was created in the THC contract. The THC contract allowed call water to be stored if there was room and described in that contract as a non-project supply. Adam stated that this was to create two separate classes of water. There was the regular project water, the 13,700AF, then there was this additional class of project water that got created. They needed to call it something different. Don stated that as the THC was negotiated, they discussed that they should be able to take that water and change it into MVIC's piece of McPhee. In our minds, we were protecting the 1885 water right. The reality is that you can only store it under the Project water right. Don stated that there is no better record on historical context than Appendix B that drove the contracts, but a judge doesn't look at the historical context as of the appendix, they would look at the words in the contract. Don stated that the Boards should have a constructive discussion. Glen stated that he heard Don say that a large part of the discussion would be about the call water. Don stated that this is correct. This was his suggestion to try to simplify what is happening. They could pull the 72KAF as a direct flow at a certain time and put it on the land if they don't store it in McPhee. Then there is no call water then they can live by the 13,700AF in the DPR. This would mean running just like MVIC ran prior to McPhee. Glen stated that they need to see if there is something in the 1977 contract that prohibited the THC contract from creating call water. Don stated that he has had people ask why the 1977 contract wasn't tied closely to Colorado water law. They didn't really want to because it was a federal project and they wanted to do it their way and allow MVIC to run as they always did but limit their use under the original rights. All the charts in Appendix B go to the 1977 contract. Glen asked how to make the discussion move forward without being stuck for the next 5 years. Don stated that the only way to get the benefit is to store the direct flow right (call water) otherwise MVIC would have to go back to taking water the way they did before the Project. Wes clarified that the call water is stored water of MVIC's in McPhee to pull out in the later months of July, August and September that they could not use before the project. Don stated that this is exactly the right for 72 KAF that comes in April, May and June. It was noted that there are only two significant shortage years in the DPR, that took the average down from 13,900 to 13,700. Ken stated in 2021 MVIC is using call water and the DPR never contemplated call water. Don stated that call water was brand new in the THC contract which is newer than the 1977 contract. The contracts were signed and there are benefits to it, but it helped confuse the call water because it is called a non-project supply instead of a project supply. Glen asked if the 1977 contract was weak enough that the THC contract could alter it? Don stated that they weren't weak at all it was a good foundation. Ken asked that if they didn't do the THC contract would there have been a shared canal? Don stated that there were new opportunities that build on the 1977 contract. Glen asked about proportionality during the THC negotiations. Don stated that you must understand how Colorado Water Law and Federal contracts work together. If you are thrown a new set of opportunities, you deal with them and figure out how they fit into the law. Glen stated that he is just contemplating how the conversation is going to go with MVIC. That is why he is asking the questions that he is. Don has had bits of this conversation, not in this depth of detail, with enough people to know that they know how much benefit they are getting. It is more about principle than the guts of everything and he's trying to think constructively. Glen stated that he still wondering why MVIC would think that they are not subject to the charges. Don stated that he

thinks it is because it is called non-project water. Don stated that the lightbulb went off for him was that if there was no THC and MVIC never parked the water in McPhee then they can go back to just the 1977 contract but if you want the benefits that the THC provided then you go with the proportionate share. Don stated that if they used some of the water in the spring instead of waiting until the later months then they would be putting moisture into the valley. Ken stated that this wouldn't make a change to the way we do things, it is either going on the ground or it is stored however call water is always spilled first. Ken asked if everyone understands what the hydrograph would look like. Right now if they do the 72KAF then the water is high in April, May and June then it would taper. If you take the call water out of April, May and June you would tack it on to the back end and have an overlapping hydrograph. Ken stated that staff will prepare some hydrographs for the Board to Board.

Adam asked that prior to the project did MVIC set allocations? Don stated that no they did not. Don stated that he still thinks in terms of flow over time, shares, but we are getting far enough away from that way of thinking. FSA irrigators have always thought of an allocation instead of flow over time. In the spring they were unlocked and put on whatever water they could, sometimes greater than 100% rates. Glen gave the example of full head and head and a half. Adam stated that the ability to plan with an allocation is an enormous benefit. Don agreed that it has worked for his operation.

### **MVIC/DWCD Board to Board Notes**

MVIC has other costs beyond DWCD charges. What impact do the increased DWCD charges have on their finances?

Proportionate shares of O&M. Proportion (definition): a part considered in relation to the whole (%). 13,700AF of 132,129 AF at 10.4% (after fish pool creation) was the original 1977 DPR Appendix B long term average MVIC Project Water number. 13,700AF was used back at the full project meetings. 2020 & 2021 (draft) are annual numbers.

Ken stated that he provided a summary guide to the Dolores Project's 1977 DPR – Appendix B. Ken stated that the 13,700AF is a long-term average from the Appendix B study. The number they need is 13,900AF but they were shorted a couple of years. The UF&RE average was 22,800AF but their contract amount is 23,300AF. When it is there, they get it when it's not they won't. The fishery was 25,400AF and should have been 29,300AF ergo the 3,900AF "mistake water". They had two significant shortage years and two minor shortage years in the DPR and felt like the water supply was very secure using these long-term averages. John Porter knew Appendix B very well and somewhere in there that was what he had to deal with when he created the process that is in place today. Around 2000 was when the project was fully online. This was all based on the DPR even though the THC came in 1989. It is a contract with a concept. In the initial planning they didn't plan a THC, so they did a contract but did not revise the DPR. Furthermore, 13,700AF is nothing more than a long-term average out of a study. That held true until 2000 due to hydrology and full project use.

Ken did note a comment that the ups and downs of billing is an issue and consistency is better to plan around.

Bruce had mentioned that maybe there could be an average to take out the highs and the lows. Ken didn't hear any further discussion on this.

Cost understanding for 2020 & 2021. Proportion changed to annual numbers of actual water used from stored McPhee. Includes call water & Totten for MVIC. We need to review the costs in greater detail starting at the next Board to Board. One thing that Ken will share is that if MVIC had run traditionally, we would have closed the night shift control room operators. FSA Irrigators were done watering in July. The Utes were running 5CFS, there is no need for a night shift to run 5CFS. We would have changed multiple practices had MVIC been running traditionally. Ken noted that DWCD had a lot of late season costs that were only relative to MVIC. Once everyone was part of the project, there are interconnections. Ken stated we ran late because of the stored water that is MVIC's contractually.

Ken stated that bureaucracy was mentioned but noted that he did not understand the context. If MVIC doesn't pay that portion who should? Full Service? Ute Farm & Ranch? The Dolores Project O&M must be paid for annually. Ken didn't hear any follow up.

Ken stated that someone mentioned that the charges look like a blank check. Ken said that this is one of the things that DWCD is trying to change. To be more transparent with what has happened. There was mention that MVIC had no input into the budget or project planning. Ken stated that there is nothing stopping them just historically it had been steadier and there was maybe no reason for MVIC to get involved. Maybe there is more reason to be involved now. We are trying to define what it looks like going forward. Ken has put forth that there might be a different proportionality that is fairer. There are two boundaries, and it might fall somewhere in between before it is all said and done. There was the existing practice and Ken's new interpretation.

DWCD should have consulted MVIC. Acknowledged, now we are trying. 2021 is not final, just an estimate.

MVIC asserts we changed contract. That's not DWCD interpretation. We're reviewing contracts & history to inform how to proportionally pay for DP facility O&M annually.

1977 Contracts represent DPR plans for MVIC to use 13,700 AF as a long-term average, same as historical place & time of use. That is not what now happens. What people think and what the contracts say may not line up.

Ken stated that he put together some dates because someone asked about timing. The Dam was complete in 1985, first deliveries to MVIC through DP facilities in 1986. THC concept comes out of 1988 Supplemental EIS to THC Contract of 1989. Fairview pumping plant & Cahone pumping plant start in 1986, but irrigated lands were not fully developed for years. Dove Creek pumping plant comes on line 1995. UF&RE deliveries start in 1994 and fully developed by 2000.

Ken said now we can talk about an agenda or other talking points for the next Board to Board. Glen stated that MVIC is going to have to surrender some their ground that they are holding and thinks that they probably will. Glen stated that there are some really good ideas ie: talking about averaging or, as Don mentioned, changing the scheme in the spring with more water diversions. Don mentioned changing mind sets. MVIC may need to give up something up also, Glen thinks there are some solutions, but we can't assume MVIC is in a weak position. Ken summarized current mutual understandings. We agree that there is a 1977 contract, we agree that they store water in McPhee, we agree that we have used static numbers for 20 some years. Ken explained that they need to explain to the other parties why those parties are paying for operations while the only party benefitting is MVIC. MVIC is not agreeing that DWCD is right. The contracts were up on the projector, but there was no additional discussion. Glen was disappointed in the meeting. Don pointed out the 1977 DCWD/BOR repayment language speaks to need for the DWCD/MVIC water rights adjustment contract. Don stated that you build from one contract to the next contract. The 1953 planning document from Ed said that DWCD had to negotiate the water rights contract limiting conditionals before there could be a project and to keep working with MVIC. The THC contract gave new opportunity to the project and got salinity and combined canals. Glen feels both Boards must budge a little bit.

**Brainstorm Workshop Review & discuss Next Steps – 1)** Ken doesn't have any new information on the financial discussion. **2)** Adam will discuss NCA and the water right protection & supply. **3)** Ken will try to prepare some notes to hand out at the meeting that involve "our story and package" that involve potential funding and Colorado River issues as time allows. **4)** Ben and Eric met with Marty we are not ready to put a call on the river. Ken will discuss the call on the river further with Adam and they will get back with the Board. **5)** Ben and Eric will be busy getting ready for the water season for all parties. The next two months will determine how the water season looks. We'll focus on the senior water rights relative to project supply at the FSA FAC. Ken covered rough numbers how the minimum forecast just covers senior rights.

Last year we thought water wouldn't be pulled out of Great Cut at low levels. The charts showed that we had to dredge 24 hours per day to make this work. The monsoons bought us some time. Glen stated that it always hurts the discussion anytime you have a problem with MVIC's prior rights. Don pointed out the 72,000 tied to acres during negotiations. Don stated that they got through this contract a gift of a ton of stuff that they never would have gotten without the federal ownership. Don stated that the owner will make someone pay for the project and will be a way tougher partner than we are. The mentality was there when they were discussing the THC contract.

## **LEGAL REPORT**

**MVIC 87.3cfs Water Rights Filing** – MVIC still working through the 87.3cfs change case. The two parties yet to stipulate are CDWR and SWCD.

**NCA Legislation** – Adam stated that he has spoken to both David Robbins and Scott Miller on interpretation of the document and would like to discuss our negotiating approach in executive session.

Don stated that he and Randy Carver were invited to a Montezuma County Commissioners (MCC) meeting he thought to give a report and it turned out that they were ready to hear about the NCA. Randy reported his personal position. Don did the same. Commissioner Candelaria really wanted to know where they were with the NCA, what he wanted to know was if the language in the NCA legislation isn't good then what language do we want. MCC want to support the NCA for their neighbors, but they have to have a reason to support it. They need to know acceptable language and what would work. Don stated that he told Commissioner Candelaria that he would carry his message to the DWCD Board and would get back with him tomorrow. Glen stated that Commissioner Candelaria was asking him if the benefits downstream would help if DWCD would back off a little bit. Don noted that Randy is strongly in favor of the NCA.

Adam asked for an Executive Session to discuss the following: NCA Legislation and Reconciliation Process

**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 NCA LEGISLATION AND RECONCILIATION PROCESS.**

**MOTION: BRUCE SMART  
SECOND: SHELDONNA Z. IVES  
MOTION CARRIED UNANIMOUSLY.**

**RECESSED FOR EXECUTIVE SESSION AT 10:20 P.M.  
RECONVENED REGULAR MEETING AT 11:38 P.M.**

#### **REPORT OUT OF EXECUTIVE SESSION**

Adam reported that in Executive Session the Board discussed the proposed NCA legislation, and Reconciliation Process. Instructions were given to negotiators and no decisions were made. The Board also discussed and corrected the minutes from the January 19, 2022 Board Workshop- Executive Session.

**MOTION: TO APPROVE THE MINUTES AS CORRECTED FOR THE JANUARY 19, 2022 BOARD WORKSHOP (EXECUTIVE SESSION).**

**MOTION: DON SCHWINDT  
SECOND: WES WILSON  
MOTION CARRIED UNANIMOUSLY SHELDONNA IVES WAS ABSENT AT THE TIME OF THE VOTE.**

Godwin asked the Board if it was ok to sign the NCA letter before the next meeting after the corrections are made and they agreed.

**NEXT DWCD BOARD MEETING – Thursday, April 14, 2022 - 7:00 P.M.**

**ADJOURNMENT** Meeting adjourned at 11:39 P.M.

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Donald W. Schwindt, Secretary-Treasurer

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Godwin Oliver, President