

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 November 10, 2022

CALL TO ORDER Godwin Oliver, President, called the meeting to order at 7:00 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-Via Teleconference
Lisa Jordan, Office Administrator
Adam Reeves, Attorney

INTRODUCTION OF GUESTS

In-Person

Brandon Johnson, MVIC General Manager; Rusty Crangle, CDWR; Gary Nielson, Trent Nielson, Full Service Irrigators

Via Telephone/Teleconference

Rich Landreth, City of Cortez

MINUTES

APPROVAL OF THE MINUTES

MOTION: TO APPROVE THE MINUTES AS SUBMITTED FOR THE OCTOBER 13, 2022, ENTERPRISE MEETING.

MOTION: JEREMY REDSHAW

SECOND: SIMON MARTINEZ

MOTION CARRIED UNANIMOUSLY. WES WILSON ABSTAINED.

FINANCIAL STATEMENTS

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

**O&M: AP/CHECK #40866-440933 & PR/CHECK #125517-125559
\$198,968.78**

MOTION: LANDAN WILSON

SECOND: JEREMY REDSHAW

MOTION CARRIED UNANIMOUSLY.

O&M REPORT – Rob reported the following:

Pumping Plants and Fieldwork – Staff has winterized the pumping plants and the Full-Service area. The Field Techs have finished winterizing DC L&G and are finishing the M&Is along the canal. There are a few valves to replace, and staff will continue mucking the canal until the frost hits.

The water screens are ready for shipping, and the crew will start on their annual winter work orders. Evoqua is responsible for shipping the water screens, so we are waiting on their schedule. They are in the process of creating racks and cribbage to haul the water screens.

There is a little drainage work at the Dam to complete before winter sets in. Mechanics and Electricians have started their winter work orders going through power plants and pumping plants.

The THC ran until October 31, 2022. On November 1, 2022, DWCD worked with UF&RE to begin draining the last two canal sections of Reach 3. Once drained, DWCD will remove the sediment build-up and overgrown cattails. DWCD will be teaming up with MVIC to replace the air vacs along the siphon crossing under Hwy 491 above the Casino. There are five air vacs total, and the entire stub-out from the siphon to the air vac will be replaced.

Power Plants – McPhee Power Plant was shut down on November 3, 2022. Flows were reduced to 15 CFS and will be reduced to 10 CFS on November 17, 2022.

Budget Item – Building a new tire mat building at GCD has been budgeted for the last couple of years. DWCD staff is currently remodeling one of the bays in the shop where tire mats can be built. Rob stated that since they could use that bay, it would save money in the budget by not building a separate building.

Farmer Advisory Committee (FAC) – At the end of the FAC, Michael Fury discussed the Dove Creek Pumping Plant shutdown. Rob stated that the shutdown was slated for September 28 because they wanted to pull the water screen at the plant. There was a strict schedule on shipment dates, and Rob felt the crew needed the time to address any issues with removing the screen. The crew had never pulled a screen, so it was a first-time learning experience. Ben and Eric called the farmers in Dove Creek to inform them of the shutdown. Rob stated that the plant went down about 12 hours early. Rob said he didn't want to waste water at Cahone while pulling screens. Michael had assumed we didn't start the plant because we didn't want to. After explaining the situation to him and all the information, he understood why we didn't. Rob was very concerned about leaving water in the canal. Wes stated that Rob did apologize to Michael Fury at the meeting that night. He said that it was his call, and he apologized several times. Wes complimented Rob on how he handled the situation.

WATER MANAGEMENT REPORT

Water Accounting (WY2022 ended on the October 31, WY2023 started on Nov. 1) – Ben presented the Inflow/Outflow **1) October:** Due to the rains and diversions being reduced, the elevation of McPhee stayed relatively constant over the month of October. Once MVIC shut down, and the stock run was over, the active capacity increased. Active capacity was 209 AF higher on October 31 compared to October 1. October Inflows – Dolores River inflow was 8,664 AF for the month, and the total inflow was 9,191 AF (the river has been up). Usage – Dolores Tunnel: The total diversion for October was 3,756 AF and 60,800 AF for the season. Ute F&R: used 2,136 AF in October and a total of 9,483 AF for the season (unofficial). MVIC: Shutdown irrigation on October 13 and had a stock run through October 17. Total irrigation usage for MVIC was 3,837 AF for October and 107,915 AF for the year. The total MVIC water used was 109,039 AF. MVIC didn't use any of their project water. Fishpool was at 25 CFS for October. Their season runs from April 1st – March 31st. Carryover Update – Active Capacity on October 15 was 27,664 AF (removing fishpool & leaving M&I's). Ben noted that in 2021 on the same date, there was 5,303 AF left by parties. This season, FSA carryover was 2,556 AF, UF&RE was 969 AF, and MVIC was 14,287 AF for a total left by parties: +/-17,812 AF. Ben noted that all of these numbers are unapproved. Precipitation at Great Cut Dike was 1.31" for October. CBRFC Precipitation Summary – 115% of the average (1991-2020) for the Dolores Basin. **2) November:** Fishpool on November 3, the flow was reduced to 15 CFS and will go down to 10 CFS on November 17 and remain there till March 31st. The inflow of Dolores River will go to filling MVIC's senior rights for Narraguinnep. Ben noted that Narraguinnep had 5,116 AF at the beginning of the month; 20,710 AF is capacity w/ expansion (physical capacity is 19,075 AF). After 3,000 AF runs into Narraguinnep, roughly 12,500 AF may be stored in McPhee. MVIC has requested, and CDWR approved, utilizing McPhee to temporarily store Narraguinnep Reservoir water in McPhee. MVIC will fill 3,000 AF of water in Narraguinnep by Thanksgiving, and the rest will be held in McPhee. The release of the water will be around February 2023, depending on construction and the WY2023 outlook. Lizard Head was showing 2.1" of SWE; hopeful that we are going in the right direction. **3) Dolores River Annual Inflow Graph** – Ben stated he and Eric have just started on the DPR Hydrology project analyzing the DPR with respect to recent years. Ben included a graph spanning the past 77 years of inflows of the DR at the DR gauge at Dolores to help start the conversation. Ben included the DPR annual inflow average (1928-1973, a 46-year period),

which was discovered to be 349,900 AF. Also shown on the graph is a running 10-year average of the inflow, the average inflow for 2000-2020, the last five-year average, and the full allocation for all parties, generally. The trend overall is very unpredictable. High years followed by short years. Of note are the wet 1980's in the middle of the graph. After 1986, a five-year period of low inflows started a downward trend. Early 1990-2000 had decent water years, but from 2000 on, lower inflow became more normal. The graph doesn't get into things like carryover or runoff timing, just raw numbers, and a figure to start. One of the problems is that when Dolores is running under the norm snowpack wise, the low snow probably goes to zero. Don noted that temperature change affects low snow also. In an average or above year, the low snow makes up about 20% of the runoff. There is more to the story; this is an initial start for individuals to ask questions. Don stated that the west end of the basin is dryer than when you get over to the Animas and beyond. Wes asked what percentage of the allocation went unused. The Board discussed the annual unused amounts and will begin a record of carryover and unused allocation numbers from each entity.

Don and Wes asked questions about McPhee's carryover volume this year. Ben walked them through the inflow/outflow and calculations of how he derived the numbers.

Projects Update: Board Approval to Accept and Administer Reclamation Grant to Remove Fuel Overload at the Dolores Tunnel Exit by Contract Services – Ben stated that they have been working with Reclamation regarding a grant for fire management and to reduce the fuel loading in the area around Wellhouse 1 and 2. DWCD initially thought about using our crews to perform the work, but cost and time became an issue. Part of finalizing the grant is approving that DWCD will work in a supportive role, with most of the labor coming from a professional crew. The total grant amount is \$205,788, and around \$184K would go to a forestry crew. DWCD will get approximately \$14,600 to administer the grant. Ben and Rob will have some time in support and reporting. Ben explained the process of the reduction of the vegetation and reducing the fire load and protecting the infrastructure. This won't be a clear cut project; the goal will be to thin out the fuels in the treatment units.

MOTION: TO ACCEPT AND ADMINISTER THE RECLAMATION GRANT TO REMOVE FUEL OVERLOAD AT THE DOLORES TUNNEL EXIT BY CONTRACT SERVICES.

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

FSA Allocation Adjustment Timeline – Ken stated that the packet has an FSA allocation adjustment timeline. Landan stated that his impression from the FAC is that there were only a couple of people who were in favor of late-season pooling. Landan stated that if there was a need for it, he thinks there would have been more said at the FAC, so maybe they don't need to look into it any longer. Trent Nielson stated that he thinks that people didn't speak up because they weren't in a situation where they needed it. More flexibility for utilizing their water late in the season based on current circumstances would be helpful for water management. Ken stated that the last-second changes affect the water bank when late pooling happens. Ken stated that there had been discussion of going on a year-to-year basis; however, there is a letter sent in the spring that asks about billing and pooling for the season, which is the first communication of the season, and noted that leases aren't generally allowed after June 1. Ken stated that he is asking if there is something specific that the Board would like staff to do. Ken stated that with regard to the bills, there are billing rules that keep irrigators from making changes mid-season, where there is a little more flexibility is on the water management side. It was noted that pool, leasing, and billing adjustments are made every year. Wes suggested a memo to FSA in dry times explaining the pooling options to encourage farmers to create larger pools. Larger pools provide the flexibility that Trent wants.

Trent stated he heard that a box was supplying two fields, and the owner of the field split the water costs. Ken said he wasn't aware of that, and it didn't sound right. Each box was tied to one field when the project was designed. Jeremy stated that he has to stay in a pool with Michael Fury because they rent a place with two boxes, but the boxes' allocations are incorrect. Way more water comes out of one box than the other. The problem is that the higher allocation box doesn't have the land, while the other box has more farmland. In his opinion, they aren't appropriately allocated to what they want to farm. Ken stated they could check the original land class, but the land topography was often changed after the land was classified. Staff can look into the original land classification.

Trent reiterated that the pooling situation seemed simple to him. Ken clarified that the water management side is relatively simple. It's a spreadsheet that we keep up-to-date. Billing is not the same. It is set up at the beginning. Changing billing in the middle of the season would be a major change. Since the bills are split into five for the base fees, past bills would be changed as pools changed late into the season. That would be a major issue for the billing office. Then you add in the rules on interest, cut-off, and other things tied from the start to the end of the season. Billing is not easy to change, so we are having the conversation now.

Landan asked if this has been a topic brought up in the past dry years. Ken stated that it has not, but there have not been other years as dry as the last two years, and we are adjusting to the times. Last year we had what we called the "greater" pools, which was unique to that year. RRA makes us have

a written lease tied to the pools with the acreage tied to the pools. We started this year with a similar supply as 2021, so we utilized the "greater" pools context again, but greater pools will need to be tied to a lease moving forward. Then, we have to put everything into billing, where we have the FS billing rules. Delinquent interest, delinquent shut-off, you don't get turned on till you pay last year's bills at the start of the bill. There is a lot of moving parts in managing the billing. The water management side is more flexible but still impacts operations.

Jeremy asked Trent and Gary if they could have solved their problem if they had made one bigger pool. Trent said yes. Gary said that they had to move the water physically this year and used too much water. He stated that there was enough water in Trent's pool to cover the overage in Gary's pool. Making one pool would have taken care of the situation. Gary stated that in the past, the maintenance technician read the meter and let them know when they were about to go over, and he feels this is part of the service of the District. The farmer may get busy, or it's not on his mind to read the meter all the time. MVIC manages the water, not the farmer. Trent said that he did get the ending reading from DWCD. He explained that he was hauling hay, didn't figure out his water for the day, and went over his allocation. Godwin asked Trent to hold on a second. There will be a conversation about overuse after we finish the conversation on pooling. Ken stated that we have the rule to end pooling in June since he has been at DWCD. We have a penalty because people went over in 2018 and 2020, and the field technicians insisted on a penalty. Ken stated that staff would get together and have a process going into the spring on how they want to proceed with pool changes. Jeremy said he would like to know how much the other users who don't use water that get moved into the water bank. Don stated that managing water pools is necessary, and it is a long-term, highly complex problem. Don noted that DWCD has to look at pooling from a macro level, whereas the farmer looks at it from a micro level. It is all driving the management and having data to tell the story from the macro to the micro level. The water bank was stated to benefit all FSA irrigators, and late-season pooling would help only the user. Ken stated that the staff has policies and rules and must follow them. If the Board wants to flex the rules, they have to flex them as a Board. It was noted that the Board has the final say but doesn't want to make rules monthly. Adam stated that when you begin making rules after the fact, you have some liability, and the Board should be careful about making rule changes retrospectively.

Ben asked for clarification from Jeremy on what he'd like to see in regard to the waterbank. Jeremy said he wanted to see what the low users put into the waterbank. Ken said it would be an objective to see what is more beneficial, late season pooling or waterbank. Don said this might be a workshop topic.

FSA Irrigation OverUse – Ben stated that in light of current overuse volumes & fines, DWCD Board had requested staff submit revised alternatives to the current overuse penalty.

Background: At the April 14, 2022, Board Meeting, the Board reinstated the FSA penalty for overuse from WY2021 for WY2022. The penalty was adopted to set the overuse penalty at \$800 for the first AF and escalated by \$800 for each additional acre-foot of overuse. In addition, the Board elected to have a final review of any penalty charges.

In 2021, six users went over their allocation. Four of these users used less than 1AF more than their allocation. The highest overuse was 3.7AF which had a fine of \$7,056. That farmer did address the Board and requested leniency on the fine, but the Board voted to uphold the fine. Below is a table highlighting all the overuse in WY2021.

2021 FSA OVERUSE PENALTY				
USER	OVERUSE (AF)	PENALTY	TOTAL ACRES & 2021 ALLOCATION (1.7"/ACRE)	% OVER-BASED ON ALLOCATION
1	3.705	\$7,056.00	102 AC; 15,450 AF	24.0%
2	3.537	\$6,518.40	437.5 AC; 65,433 AF	5.4%
3	0.817	\$653.60	3,033.6 AC; 437,719 AF	.2%
4	0.302	\$241.60	365.4 AC; 51,765 AF	.6%
5	0.206	\$164.80	19.2 AC; 2,720 AF	7.6%
6	0.053	\$42.40	750.1 AC; 108,264 AF	.05%

WY2022 differed from WY2021 in several ways. While they began similarly with low allocations, the supply in WY2022 grew as the year progressed, leading to a longer operating season – FSA shut down in early October compared to WY2021's late June. In WY2021, only 179 boxes were pressured up out of 317. In WY2022, 258 boxes were pressured up and ran much longer. There was less opportunity in WY2021 for irrigators to go over. Lastly, in WY 2022, DWCD had key personnel turnover in the field that led to confusion and a lack of communication at times. In summary, the two water years, though both shortage years, varied greatly in allocation, length of season, and operations.

At the end of September, staff became aware of one irrigator going over 22,608 AF. After investigating, staff brought the issue to the Board and heard from the irrigator himself. The Board decided to table the issue for a month and have staff get input from the FAC and present options for revising the policy.

After reading through the minutes from the previous board discussion, the criteria for the penalty revolved around three main points:

- In light of severe water shortage, any overuse would, in effect, be taking water away from one's neighbors.
- The penalty needed to be stiff to prevent any ability to gain profit from overuse.
- The penalty should incentivize irrigators to manage their own water responsibly.

When the Board voted to adopt the penalty, Ben does not believe they anticipated an irrigator overusing by more than a few AF. In 2021, with the 10% supply, high overuse wasn't as feasible with pumping plants shut off by July 1. This year, water was available into early October, practically the entire water year. Increasing allocation throughout the summer also provided additional water supplies that potentially changed farming plans set in spring.

After the meter readings were finalized, five irrigators went over their allocation. One overage was due to a leak. The fines range from \$32.80 to \$213,587. Penalties of this magnitude were not discussed when the policy was adopted. These higher fines may potentially bankrupt the irrigators, which was clearly not the Board's intention.

At the FAC meeting held on October 24, several irrigators commented that the penalty did motivate them to pay attention to their water and manage it appropriately. None wished to bankrupt a neighbor, and many agreed the escalation was appropriate to a certain point and approved of the penalty switching a flat fee above some threshold. There was a discussion on the value of an AF in regard to crop production. A final value was not determined.

Ben presented several options for adjusting this year's policy. 22.6 AF over was 17.7% over the allocation, whereas last year's 3.7 AF over this was 24% over the allocation. This is just a viewpoint to look at in relation to each year. Ben explained each of the options and how the fines adjust to each of the options.

Alternatives: Staff is willing to provide any supporting calculations or policy adjustment ideas as directed by the Board.

The Board may consider the percentage over each allocation compared to the allocation available to each individual and assess a penalty based on the percentage.

Staff Recommendation: There are legal implications of unwinding last year's fines. Any adjustment to last year's penalties and policy would set a bad precedent. Overpayment of WY2022 overuse based on a new policy may be subject to interest and potential legal issues. As described above, the water years differed greatly. In light of that, it is recommended to address WY2022 overuse penalty so as not to affect last year's policy and fines. Because they are separate water years with different conditions and supplies, the penalty used each year doesn't necessarily have to be the same.

Staff does not have a specific recommendation, but the attached tables have several options for consideration and board discussion. In order to not affect last year's penalties, I suggest escalating the fine at \$800/AF up to at least 4 AF. After that, a flat fine of X dollars/AF makes sense based on the value of that AF. The most expensive water sold by DWCD is M&I water at \$110/AF as a reference point.

Discussion: Wes is in favor of Option 3 or Option 7. He doesn't think the Board wants to go below \$500/AF. Jeremy stated that last year there was no water left in the reservoir; this year there is 2,500 AF left over. Jeremy wondered if that should play into this. Godwin said that DWCD dropped the ball by not letting irrigators know that Vince was no longer with the District and getting Cole's number out to irrigators. Don asked why the FSA left that much water this year. It was stated some left water because they were too busy, some people overpooled and left water, weather played a factor with rains, and some were afraid of the fine. Trent said that a lot of that was starting out with 2"/acre. Irrigators had to decide which fields to irrigate and which to leave, and by the time they got up to 9 inches, irrigators didn't feel like they could irrigate other fields. Don stated that all of those reasons are the irrigator's management decisions, and sometimes they overdo it but would rather have water in their pool and not use it than need it and not have it. Landan stated that keeping in mind the user that went over 3.7 AF and paid \$7K in 2021, he thinks they should escalate up to 4 AF, which keeps it fair to those who paid the fine last year. It's important to stay consistent year to year instead of going back. Godwin stated that we didn't have to make a decision tonight. We can table it and do more options with the new overuse accounts. Landon asked if there were any other overuse due to a break or act of God. Ben stated that in 2022, one overage was a leak, and one was .04 AF, which is minimal. We are talking about three significant overages. Jeremy stated that you could be over by 2-acre feet in an 8-hour period. Wes agrees with Landan in maintaining the 4 AF. Godwin also agrees. Adam stated that would provide a measure of protection against fines that were processed in the past. Option 7 and Option 8 escalated to 4 AF. Jeremy asked if a letter was sent out to FSA with the fine. Ben stated a letter was not sent, nor was a postcard. He'll check on last year's. Don stated that in the spring FAC meeting, a number of irrigators wanted a significant fine to be enforced.

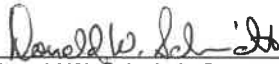
Godwin would like to discuss additional items regarding this topic in the executive session

MOTION: TO TABLE THE DISCUSSION UNTIL DECEMBER.

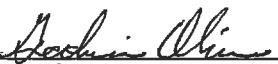
**MOTION: WES WILSON
SECOND: LANDAN WILSON
MOTION CARRIED UNANIMOUSLY.**

Other

ADJOURNMENT Dolores Water Conservancy District Water Activity Enterprise Board meeting
adjourned at 8:32 pm



Donald W. Schwindt, Secretary-Treasurer



Godwin Oliver, President

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DOLORES WATER CONSERVANCY DISTRICT

MINUTES Regular Meeting November 10, 2022

CALL TO ORDER Godwin Oliver, President, called the meeting to order at 8:32 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-Via Teleconference
Eric Sprague, Engineering Technician-Via Teleconference
Lisa Jordan, Office Administrator
Adam Reeves, Attorney

INTRODUCTION OF GUESTS

In-Person

Brandon Johnson, General Manager; Rusty Crangle, CDWR; Trent Nielson, Gary Nielson, Full Service Irrigators

Via Telephone/Teleconference

Rich Landreth

Trent Nielson shared his situation since the Board tabled the penalty decision. He stated that he had 2 boxes one which he used over the allocation and one which was under the allocation. Trent stated that he fell short in doing the math and didn't figure his reading to the ending day. The boxes in Gary Nielson's pool went over by 10.315 AF and there was 10.949 AF left over in the boxes in Trent's pool. The difference being .634 AF left over which will go back to the Project. Trent stated that his request to the Board is for this water to be transferred. Trent knows what he needs to do next year and will figure his allocation to the day. Jeremy stated that this is good for consideration when the item comes back to the Board. Ken asked if Trent receives the text messages and post cards, Trent stated that he does not receive them. Ken stated that we have heard mixed reviews regarding the post cards. Trent called in to get his ending numbers, and takes responsibility for the overage and reiterated that there is water in the pool his pool to cover overages in Gary's pool.

MINUTES

APPROVAL OF THE MINUTES

MOTION: TO APPROVE THE MINUTES AS SUBMITTED FOR THE OCTOBER 6, 2022, SPECIAL MEETING.

MOTION: JEREMY REDSHAW
SECOND: SIMON MARTINEZ
MOTION CARRIED UNANIMOUSLY

MOTION: TO APPROVE THE MINUTES AS SUBMITTED FOR THE OCTOBER 6, 2022, EXECUTIVE SESSION.

**MOTION: JEREMY REDSHAW
SECOND: SIMON MARTINEZ
MOTION CARRIED UNANIMOUSLY**

MOTION: TO APPROVE THE MINUTES AS SUBMITTED FOR THE OCTOBER 13, 2022, REGULAR MEETING.

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

MOTION: TO APPROVE THE MINUTES AS SUBMITTED FOR THE OCTOBER 13, 2022, EXECUTIVE SESSION MEETING.

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

MOTION: TO APPROVE THE MINUTES AS SUBMITTED FOR THE OCTOBER 19, 2022, BUDGET WORKSHOP.

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

FINANCIAL STATEMENTS

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

ADMIN: AP/CHECK #12245-12257

\$13,653.32

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

**RECESS FOR PUBLIC HEARING ON UPSTREAM USERS INCLUSION 8:43 PM
RECONVENED 8:52 PM**

AGENCY REPORTS

BOR Report – Robert Stump was not in attendance at the meeting.

Division of Water Resources Report – Rusty stated that CDWR staff are in the office and catching up with paperwork at this time.

T/H Committee Report – Godwin stated that the Committee met October 19, 2022 1) The Committee paid DWCD, MVIC and UF&RE. 2) The next THC meeting will begin at 10:00 am for a tour all Board members are welcome to attend. Please RSVP to Lisa prior to November 14 if you wish to go on the tour. 3) As the THCC set fall work plans they foresee a possibility that if the federal funds do not get to the UF&R soon and then forwarded to the THC payment, the THCC could need short term funding for materials and work billing. They would like to have DWCD Board approval to access \$100K if needed for a short term until 2023 payments are made. This has been done in the past, 2007 for the THCC and earlier for powerplants, prior to changes to the current practices. Basically, DWCD would pay bills and keep track and send the THCC an invoice when funds are available. Currently UF&R continues paying \$50K per month and expects to catch up when federal grant is received. Depending on work accomplished, no DWCD funds may be needed. Board action to allow staff to implement a \$100,000 line of credit should be taken if supported.

MOTION: TO ALLOW STAFF TO IMPLEMENT A \$100,000 LINE OF CREDIT TO THE TOWAOC HIGHLINE CANAL COMMITTEE.

**MOTION: DON SCHWINDT
SECOND: WES WILSON
MOTION CARRIED UNANIMOUSLY. SIMON MARTINEZ ABSTAINED.**

Simon stated that he abstained because of UF&RE continued commitment of paying \$50K to the THCC each month to keep up with funding projects until BOR approval.

Next T/H Meeting – The Committee will meet at the DWCD, Cortez Office November 16, 2022 at 10:00 a.m.

MVIC Report – Brandon reported that 1) the Groundhog project was completed as of November 10, 2022. They have closed the gate and started filling the reservoir. 2) MVIC is also performing maintenance and placing liner on the Lone Pine, North of Hwy 184 to County Road 23.

**RECESSED FOR BUDGET HEARING AT 9:00 PM
RECONVENED 9:02 PM**

GENERAL MANAGERS REPORT

Board Budget Discussion & Direction:

No changes are anticipated to the Administrative (100) draft budget until revised tax numbers are provided by the counties near December 1st. No changes are planned for DCL&G, or THCC. The power plant budgets will change when all quotes are in and staff reviews with Reclamation, but it will not otherwise affect the 200 budget or DWCD Board actions.

The Administrative is on track with the legal budget. If that budget goes over on expenditures, money will either have to be moved out of discretionary reserves or the transfer to O&M will need to be lowered. Ken noted that there is money that is appropriated but unbudgeted that can be transferred without having to change the budget but it does take Board approval to move the funds.

Ken stated that Gary Croke and Robert Stump are still working on the Power Plant budget.

The THC budget has been approved.

The DCL&G budget has not changed since presented to the Board.

Ken presented a revised Draft 200 budget. Ken reviewed the latest statement updates and updated the 2022 projected expenditures in the new Draft. Updates to the initial draft 2023 Budget include the addition of ASO flight funds for local match to the SWBRT and the 8% increase for cloud seeding. Ken stated that the big revenue number in user fees comes from the FSA projections. Ken noted that that it is unknown how much of this will be realized in 2022 as FSA irrigators are allowed to carry balances over to the next water year. Ken stated that the electrical line item hasn't changed. Ken updated the medical dental line item to reflect current estimates. Supplies were cut and the savings was added to the beginning fund balance. Ken stated that there will be cash in the checkbook which is a function of the FSA not getting reconciled. There will also be funds taken in late in the year to make the Bureau payment in the spring. Ken stated that he trimmed the total supplies amount from the initial budget from \$815,700 to \$776K which does not include taking out the funding allocated to the tire mat building. The Weather Modification line item has been adjusted and Tunnel Fuels Reduction project has been added. Currently the net income/expense line item is \$74. Ken stated that projected transfers for 2022 were added in this budget. Ken stated that he rounded the WSM transfer up to \$100K since we used \$300,000 last year. These funds will go back to the WSM reserve account and still allow the cash flow this year to work. Also projected is \$100K coming in from the Administrative Budget this is always a last-minute decision and transfer on the final amount depending on December expenses. Ken stated that if we are low on cash in the spring there is an operating reserve to pull from which is used and later paid back in the same year after FSA April payments begin to come in. Ken explained that the rates are not perfectly (precisely) tied to the costs. Ken stated that sometimes we spend more and sometimes we spend less they are not exact because the Board has set the FSA base & delivery rate. This doesn't mean the Board shouldn't be giving direction on expenditures. Ken presented the estimate sheet that divides the draft budget among users, stating that he reverted to DPR numbers this year given the extreme 2021 hydrology. Ken stated that there was previous Board discussion regarding a potential bonus to employees in this year's budget. Ken noted that the budget must be adopted at the December meeting to meet County and State deadlines.

Discussion: Jeremy stated that his direction would be to pull the funding of the tire mat shed out of the expenditures and transfer \$100K back to WSM. Ken asked if they want to lower the transfer to O&M out of the Administrative Budget if they go over on legal or transfer the money needed from Discretionary Reserve. Don stated that the transfer should be lowered. Wes asked about the how many acre feet are budgeted for FSA delivery & charges. Ken explained that the users sheet

estimates percentages on shared facilities to determine the FSA amount needed and then takes off the base fund revenue and then calculates the rate based on estimated deliveries. DWCD has been at the same base and delivery rates since 2020 and in the last 2 years the rate has been flipped between base and delivery to offer some discount to FSA irrigators. Ken noted that it is better to budget for a full supply and adjust down if necessary to avoid additional hearings. Ken stated that he also has the \$30K projected to transfer to Replacement Reserve in 2022 that is owed from purchases of the long stick track hoe and parking lot paving. Ben stated that in 2022 there were vacancies but additional workload to staff so bonuses are budgeted in 2022 but not in 2023. If the Board would like to pay out bonuses, they should decide on the total amount available and if they want that in the 2022 or the 2023 budget. Ben stated that currently DWCD is only actively recruiting for the SCADA operators since a clear definition of what is needed has not been determined on the other positions that are vacant. Jeremy stated that he likes the idea of rewarding the better employees. Rob stated that it has made a difference on morale when one person works harder than another but everyone gets the same raise. Supervisors would like to go back to a merit system to have input on raises. Godwin stated that this is something new that they are trying and it takes money out in only one year and not for years to come.

MOTION: TO APPROPRIATE \$34K FOR LUMP SUM BONUSES TO BE AWARDED ACCORDINLY, BY THE MANAGERS.

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

Board approval of FAMLI (Paid Family Medical Leave Program) Exemption: FAMLI is a paid long-term 12 - 16 weeks medical leave program that was approved by voters in a past recent election. The program initially costs 0.9% of employee wages split evenly between the District (employer) and employee. The rates are allowed to grow to 1.2% in the future. Payments are collected in 2023 for eligible use in 2024. DWCD is currently exempt from the unpaid federal family medical leave act due to less than 25 employees. Filling vacancies temporarily is difficult for small firms. Historically we have worked individually with employees on needed extended leaves of absence and the District has salary continuation disability insurance that can help. The program is run by the Colorado Department of Labor and offers three options for local governments.

Participate in FAMLI

- This option means that the Local Government has decided to participate, no vote is required.
- Just like private employers, local governments which choose to fully participate in FAMLI, will share responsibility for funding the program with their employees. FAMLI premiums are set to 0.9% of the employee's wage, with 0.45% paid by the local government and 0.45% paid by the employee. Local governments may also elect to pay some or all of the employee share if they choose to offer this as an added perk for their employees.
- In the Fall of 2022, the local government must register in the FAMLI system and create an account like any typical private sector employer.
- Local governments which decide to participate in FAMLI will begin deducting FAMLI premiums from its employees on January 1, 2023. Initial premium payments for Q1 of 2023 will be due on April 30, 2023, with a 30-day grace period.

Decline all Participation in FAMLI

- The local government's governing body must vote to decline all participation.
- The local government must register in the FAMLI system to notify the FAMLI Division of their vote to decline participation.
- Employees still have the option of self-selecting FAMLI coverage if their local government employer votes to opt out.
- Employees who voluntarily want to participate do not need to take any action until benefits become available in 2024 at which time they can self-elect coverage. These employees can then register in the FAMLI system like an independent contractor in order to report their wage data and pay their quarterly premiums.
- Local government employers who vote to decline participation in the FAMLI program are not required to have an equivalent paid leave plan in place.
- The vote to opt out of FAMLI must be revisited every eight years.

Decline Employer participation in FAMLI

- This option allows a local government agency to decline to pay the employer share of the premium, while still supporting employees who want to participate by voluntarily deducting and remitting the employee share of the premium (0.45% of wages) and corresponding wage data to the Division every quarter.
- This allows employees to voluntarily opt into the program without having to worry about the administrative burden of remitting their own premiums and wage data every quarter.

- The local government's governing body must still vote to opt out of paying the employer premium and must still register and notify the Division of their decision.
- FAML I would increase the administrative burden to DWCD and cost both users and employees. I am dubious on the benefits to DWCD employees, expect future cost increases, suspect FAML I will be subject to bureaucratic and inefficient program implementation and ultimately subsidize other Colorado employees. I recommend that the Board formally take action to Decline all Participation in FAML I.

MOTION: TO FORMALLY DECLINE ALL PARTICIPATION IN FAML I INSURANCE.

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

DWCD Board Workshops – November 16, 2022 (3rd Wednesday): The Board can set a workshop if they would like to work on an item in greater detail than regular Board meetings allow. Likely topics include water rights protection, land use, Colorado River issues, budgets, infrastructure or other topics the Board may wish to discuss. Ken stated that the Board can revisit this topic after the rest of the meeting. At this time, he doesn't have anything prepared. Don stated that the Board should be trying to have off season workshop sessions. The highest priority is to talk about river issues that tie back to our hydrology.

Regular Board Meeting Time for Winter Months: Recent review of past policies showed that the DWCD Board had moved winter Board meetings to 2PM on the normal second Thursday of the month. This has not been done for over 15 years. If the Board would like to consider they can reset start times for future winter meetings. Several Board members like the idea, but no decision was made.

Reconciliation: The final MVIC charge was reviewed, Ken noted that there were pumped charges this year for the U-Lateral. Ken stated that we normally don't estimate use for the U pumps and reconcile the cost in the year being reconciled.

Dolores Ponds: Town of Dolores has complained over these last dry years about empty ponds just below their waste treatment plant. The ponds were constructed by Reclamation to avoid mud flats and provide a more usable space for outdoor recreation including fishing, walking and river/lake access. The system has historically filled with McPhee and then held water until the following year, but that has not happened lately. The system has a gate and overflow pipes between ponds. No one was ever assigned responsibility for this infrastructure operationally or for maintenance. This could have water rights implications and may need some funding to make operational. Staff is investigating current condition of the ponds with the Town of Dolores and Reclamation. Ken stated that last year it was bad and this year we agreed to help out but can't go on for a number of reasons. Robert Stump did some research and there was an inlet gate placed which allows water to flow into one pond and has an overflow that goes to the next pond and back to the reservoir. There have been meetings with the Forest Service, Reclamation, DWCD and the Town of Dolores to begin discussions on whose responsibility the ponds are. Technically it is within our big water right as we inundate the ponds when we fill. The Town is within the District but they don't get any wet water. Rob has been told to fix the gate stem and nothing further. Don stated that the Town of Dolores was seen as the beneficiary of the flat-water amenity to the Town of Dolores. The water rights and other issues were unfinished business as the Project got scaled down. Dana Hill remembers that it was a mud flat and the Bureau agreed to build the ponds, but didn't have other details.

CWC 2023 Annual Convention – January 25-27, 2023 (Wednesday-Friday), Hyatt Regency Aurora-Denver Conference Center in Aurora

Zebra Mussels – A single adult Zebra mussel has been positively identified in Highline Lake near Loma, Colorado. The initial detection of the mussel was made by CPW ANS Sampling & Monitoring staff and confirmed through both visual identification and molecular analysis.

Highland Lake Stated Park will begin implementing a containment watercraft inspection and decontamination program effective immediately. All watercraft exiting Highline will be subject to inspection and those that cannot be fully drained and are destined for other locations will be decontaminated prior to exiting the park. All exiting watercraft will be issued blue containment inspection receipts. Additional surveys of the reservoir will be performed starting on September 19th.

Water Resources and Agriculture Review Committee (Interim) forwarded 2 bills to legislature:

Bill A: Task Force on High-altitude Water Storage
Bill B: Water Resources & Agriculture Review Committee

Bills not Recommended to Legislative Council

Bill 1: Xeriscaping in HOA Communities
Bill 2: Water Literacy Education in Public Schools
Bill 3: Treating Developed Water for Beneficial Use
Bill 4: Authorize Water conservancy District Water Management
Bill 6: Plant Swaps Exemption for Nonprofits
Bill 9: Science Advisory Board Review EPA Guidance of CDPHE Rules
Bill 11: Interstate Water Compacts Annual Presentation GA

Discussion: Ken stated that the Water Resources & Agriculture Review Committee would like a permanent committee rather than an interim committee. Don asked about Bills 4 and 11. Bill 4 was specific to the Rio Grande and subdistricts. Bill 11 would have the State Engineer annually present to the legislature on all Colorado compacts.

Reclamation Upper Colorado Regional Director Meeting – Durango November 15, 2022 (agenda attached)

Senators Hickenlooper & Barrasso amendment to the Energy and Water Development and Related Agencies Appropriations Act: EXTENSION OF CERTAIN DEADLINES RELATING TO PILOT PROJECTS TO INCREASE COLORADO RIVER SYSTEM WATER TO ADDRESS EFFECTS OF HISTORIC DROUGHT CONDITIONS. Extension through 2026 for System Conservation Pilot Projects. This is expected to be passed during the lame duck congressional session and fund projects in the LB & UB.

SWBRT CR ISSUES – SWCD additional Risk Study work using State Mod analysis shows the Dolores/McElmo basin at 48,080 AF (31%) pre-compact and 106,070 AF (69%) post-compact. Ken will continue to follow the State Mod analysis by SWCD.

2023 DNR budget request to add 13.9 FTE – This includes two in the Executive Director's office including a Colorado River Commissioner. Five in CWCB and 8.5 in DWR. \$5M requested to add to the \$12.6M from gambling to fund Water Plan Grants and leverage federal dollars. This is significant money to beef up the Colorado River Protection Group.

FFA Alfalfa Project – Demonization of Lower Basin alfalfa water use is picking up. Ken also reported on a federal repurposing bill spun off from the CA SGMA implementation. There is a federal bill out there to encourage and incentivize land use changes away from irrigation & farming to other uses.

Colorado River Compact Issues, DCP, DROA, DM & Drought Resiliency Updates: A letter from Senator Kelly, AZ, shows the tough spot they are in having the junior water right in the LB. The latest action includes formal federal register notice: "Notice of Intent to Prepare a Supplemental Environmental Impact Statement for December 2007 Record of Decision Entitled Colorado River Interim Guidelines For Lower Basin Shortages and Coordinated Operations For Lake Powell and Lake Mead". This would be the unilateral Reclamation action threatened back in June to protect Reclamation infrastructure at Powell & Mead. One might conclude a hand is being laid down since the bluff was called back in August. Although likely to impact the LB initially due to actual quantities of water use, the ultimate consequences to all CR users is unclear and may play out in the 07 IG renegotiations due by 2025. I have included the press release and full notice in your mail out. Ken has highlighted specific lines of potential actions and Reclamation is taking comments through December 20. Ken noted that if DWCD doesn't actively engage we will continue to monitor this topic.

Lower Basin Tour – Ken attended a Lower Basin tour with Colorado River District & SWCD people. Ken stated that it was very interesting and would like to discuss further in Executive Session.

LEGAL REPORT

Adam stated that he didn't have any updates for open session, all of his comments are for executive session discussion.

Jeremy asked about the old Cortez irrigation water rights. Cortez is seeking to have MVIC use them to establish a record of use. Staff is waiting to discuss water accounting with Cortez before they go forward.

Adam asked for an Executive Session to discuss the following: MVIC 87.3 cfs, Colorado River issues, penalties for overuse, pending upstream user cases, mediation with MVIC and potential land use policies.

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, COLORADO RIVER ISSUES, PENALTIES FOR OVERUSE, PENDING UPSTREAM USER CASES, MEDIATION WITH MVIC AND LAND USE POLICIES.

MOTION: JEREMY REDSHAW
SECOND: LANDAN WILSON
MOTION CARRIED UNANIMOUSLY.

RECESSED FOR EXECUTIVE SESSION AT 10:19 P.M.
RECONVENED REGULAR MEETING AT 12:14 A.M.

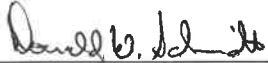
REPORT OUT OF EXECUTIVE SESSION

Adam reported that in Executive Session the Board discussed matters related to the MVIC 87.3 cfs case, potential adjustments to the penalty policy, Colorado River issues, pending upstream user cases, mediation with MVIC and land use policies. No decisions were made. Instructions were provided to negotiators.

The Board decided to have a workshop next Wednesday November 16, 2022 at 5:30 PM to discuss Colorado River Issues with Steve Wolff from SWCD.

NEXT DWCD BOARD MEETING – Thursday, December 8, 2022 - 7:00 P.M.

ADJOURNMENT Meeting adjourned at 12:15 A.M.



Donald W. Schwindt, Secretary-Treasurer



Godwin Oliver, President