

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 audio tape.

## DOLORES WATER CONSERVANCY DISTRICT WATER ACTIVITY ENTERPRISE

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### MINUTES

Regular Meeting  
February 9, 2017

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**CALL TO ORDER** Bruce Smart, President, called the meeting to order at 7:10 PM

**ROLL CALL** Bruce Smart, President  
Simon Martinez, Vice President  
Don Schwindt, Secretary-Treasurer  
Godwin Oliver, Director  
David Frederick, Director  
Glen Fish, Director  
Mike Preston, General Manager  
Ken Curtis, Engineer  
Lloyd Johnson, Maintenance Supervisor  
Gina Espeland, Accounting Clerk  
Vern Harrell, Bureau of Reclamation  
Barry Spear, Attorney  
Marty Robbins, CDWR  
Doug Pickering, CDWR

**INTRODUCTION OF GUESTS:** Brett Oliver, Taylor Oliver, Brandon Johnson, MVIC General; Tyler Artichoker, Bureau of Reclamation, Larry Dozier, and Ed Millard, MVIC Shareholder

### MINUTES

#### APPROVAL OF THE MINUTES

**MOTION: TO APPROVE THE MINUTES AS PRESENTED FOR THE JANUARY 12, 2017 ENTERPRISE MEETING.**

**MOTION: SIMON MARTINEZ  
SECOND: DAVID FREDERICK  
MOTION CARRIED UNANIMOUSLY.**

#### FINANCIAL STATEMENTS

Simon asked about check #34527 to Weeminuche if that was the final billing. Lloyd and Ken stated that it was probably not, because there was backfilling left to complete.

**MOTION: TO APPROVE THE NOVEMBER '16 FINANCIAL STATEMENT AND APPROVE THE STATEMENT OF PAYABLES AS PRESENTED.**

**O&M: AP/CHECK #34456-34589 & PR/CHECK #121707-121778  
\$757,872.88**

**MOTION: SIMON MARTINEZ  
SECOND: GODWIN OLIVER  
MOTION CARRIED UNANIMOUSLY**

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

**Pump Plants**

The new VFD installation at Dove Creek Pump Plant is continuing. There was several weeks delay due to the new power cable having insulation damage. The cable was replaced by the vendor. All the cable has now been pulled in and the installation of the drive cabinets has started. The two variable speed pumps have been rebuilt by All American, and are scheduled for reinstallation next week.

The new exciters for Great Cut Pump Plant are scheduled for delivery late next week. The electricians are hoping to get at least two of the exciters installed by the end of March.

### **Power Plants**

McPhee Power Plant has been running steady except for two short term outages. One due to carbon dust causing a ground fault, and the other due to replacement of batteries in the RTU. Both outages were less than a day. The operators have plowed snow to the Dam and Power Plant three times during January and February.

The needle repairs at Towaoc Power Plant are moving along. Needles one, two and three have been upgraded, resealed and reinstalled. Needle 4 and 5 has been removed and repairs have started. A tour of the Towaoc Power Plant for the DWCD Board is scheduled for Wednesday, February 15<sup>th</sup> at 10:00 a/m. We will meet at the Power Plant.

### **Weed Control**

The herbicide bids for the season are being sent out. We have requested bids from; Basin Co-Op, IFA, Carhart and several wholesale suppliers (Van Diest, and Alligare).

### **South Canal**

The WAPA contractors have been working on the power reliability upgrade along the 5 miles of canal from Pleasant View to Ruin Canyon Pump Plants.

Bruce asked how long they have been working there. Lloyd said about 6 weeks and the mud has really been holding them up.

## **ENGINEERING AND WATER MANAGEMENT REPORT**

**Water Accounting Information** – Ken started off with the low snow charts that show we are consistently above average across the basin, 150% in the aggregate as of Feb 1. The longer term outlook remains unclear as to whether the snow pack will stay big or drop off. The forecasts only model the lower elevation snow and may not always represent the amount accurately for 18% of our inflow. The SNOTEL Median percent of average show we are still at 186% as of February 6. The year to year comparison shows we are one of the highest years. Individually all the SNOTELS are significantly above average showing good coverage across our basin. Next the Hi 4 and Hi 5 tables show a few comparison years, 1997 & 2008 are highlighted. We are starting out at high carryover capacity and drifting down slightly based on small releases downstream and to fill Narraguinnep. We are close to staying static elevation and capacity wise. Next are the CBR Forecast Center snow group that includes Mancos so is slightly different than our snow numbers, but still well above average. The highest line is for 1997 and the current year is the green line showing where we leveled out over the last dry week. We remain well above the historical median for SWE. There is more snow on the ground than our average median peak and spilling is only a matter of timing how it all comes down. The CBRFC McPhee forecast follows showing 440 KAF which is 149% of average. It drifts down a little then today it bounced back up to 433 based on some recent snow. The next CBRFC graph shows what is called a spaghetti plot showing all 35 traces of runoff based on 1980 – 2015 future historical weather built on to the February 1st snow pack. The back side shows the boiled down version. The bottom line is a 90% probability, the next 70%, then 30% and finally 10% on top to graphically show how the CBRFC determines their percentage probable forecasts. NRCS still uses the official 30 year average inflow (1981 - 2010) to estimate their forecast numbers based on a 1<sup>st</sup> of month snowpack. We have some of the driest water years on record in both these records so both are getting lower. The next sheet is the Upper CO River Basin SNOTEL current SWE and percent of daily and peak median. Median peak date is generally around April 1<sup>st</sup> in the Dolores Basin. Red Mountain is the lowest percent in the Dolores/San Miguel group. On the back I've listed the percentage forecast numbers from CBRFC and NRCS. The NRCS forecast has more spread than the CBRFC. All this data shows the high levels of inflow we may expect and bolster the general news that it is not if we have a spill, but only the timing of when we will have a spill.

## **RECESSED MEETING FOR PETITION HEARING FOR BRETT OLIVER AT 7:30 P.M. RECONVENED MEETING AT 7:45 P.M.**

**ANS Update** – Ken stated that the ANS topic is being well received at most of our meetings. The water community certainly understands the need to protect McPhee. There is a desire for more inspection hours and open access at Housecreek boat ramp. Also multiple boaters are concerned about getting locked on the lake side of the gates. Ken thinks we can address the boater concern, but we do not have the funds for additional hours at House Creek. There is a bit of scramble in other parts of the state to get their inspection programs funded for 2017. We

think that McPhee will be protected from the main vector of infestations, trailered and motorized boats. The big boats on trailers are the main concerns because they can carry water that has microscopic velligers that can live for many days between waters. They are also likely to be coming from Lake Powell, an infested water.

**Projects Update** – Ken stated that he recently watched a webinar on the Fontenelle problems from 1965. Dam problems are rare and so last as training items over many years. Today's problems at Oroville dam are very alarming, but also interesting in a technical sense. It is worse than the pictures show and crews are watching Oroville through the night. Oroville is owned by the State of CA and everyone involved with dams, but especially engineers, will ultimately study the lessons from Oroville. It will be some years probably before all the investigations are complete. When these rare events happen they bring home the responsibility that the District and Reclamation have to the public. This also demonstrates why we do routine inspections on the dam. Often engineering shows human failures. Bruce asked if Oroville used their spillway more often than we use McPhee and Ken thought that was the case, but will become apparent in the future. You can follow more detail on the National news and internet.

**2017 Adjustment to FSA Payment Policy** – Ken stated that he just finished the memo earlier today for this discussion tonight. Ken stated that he tried to capture some of the discussions from last fall during budget reviews to try and find ways to help our farmers through the current poor commodity prices. At the end of 2016 we had a few more accounts receivable than in previous years. We did slow down spending at the end of 2016 on projects we could delay. We appropriated higher amounts that were left unbudgeted from reserves for 2017. I have bulleted several ideas on the back page on how we can create some flexibility around our FSA Payment Policy. The first base payment invoice goes out in April, so we would have to act by March if we want to change the billing cycle or amount. Depending on what the Board decides we may have to change some computer programming and need to execute in a timely manner. We may want to have a Farmer Advisory meeting. Staff needs Board input to narrow down options for next month. The District will use reserves to cover cash flow issues and staff recommends that all farmers pay for 2016 charges before turning on in 2017. Suspension or extension of water cut offs was discussed last year with the Farmer Advisory Committee who agreed that could help. Not many other specific ideas were given.

**Board Discussion:** David asked if it is possible to do combination of options 1 and 4. Don asked if that would push carry over in April of 2017. Godwin stated that he liked option 1 and option 4 both. Staff believes we can look at those and make some reasonable estimates around those scenarios.

Barry stated one thing to remember that in order to get any delinquencies on the tax assessments we need to act in September to send to the assessor by October 1<sup>st</sup>. Don asked if we are proposing to do these options on a trial basis for one year. Godwin stated that he had a lot of people approach him on the 90-day shut off and he did not think that it should be permanent change. Ken stated that he would look closer at Options 1 and 4 to bring back to the Board next month. Ken asked if the Board would like to have a Farmer Advisory meeting prior to the next Board meeting. Ken stated that he would send out a letter to seek input from the Farmer Advisory Committee. Ken stated that if the Board has additional thoughts please let him know before the next Board meeting.

Don asked if we would develop whether the 90 or 120 extension of the shut off would work. Ken stated that he would bring back some scenarios next month for the Board.

Mike stated that maybe we would only adjust the 90-120 shut off instead of trying to combine a couple of strategies together. Ken stated that he would try to provide information to answer these questions next month. Don stated that staff would want a motion in March and the Board would need sufficient detail.

#### **OTHER**

Ken stated that he did not bring additional year end information due to all the snow info. Ed had caught some formatting problems that we cleared up. Ed has agreed to double check some excel numbers for us. Let us know if you have any specific questions on 2016 data.

#### **ADJOURNMENT**

Dolores Water Conservancy District Water Activity Enterprise Board meeting adjourned at 8:17 PM

# DOLORES WATER CONSERVANCY DISTRICT

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## MINUTES Regular Meeting February 9, 2017

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**CALL TO ORDER** Bruce Smart, President, called the meeting to order at 8:17 PM

Bruce Smart, President  
Simon Martinez, Vice President  
Don Schwindt, Secretary-Treasurer  
Godwin Oliver, Director  
David Frederick, Director  
Glen Fish, Director  
Mike Preston, General Manager  
Ken Curtis, Engineer  
Lloyd Johnson, Maintenance Supervisor  
Gina Espeland, Accounting Clerk  
Vern Harrell, Bureau of Reclamation  
Barry Spear, Attorney  
Marty Robbins, Colorado Division of Water Resources  
Doug Pickering, Colorado Division of Water Resources

### INTRODUCTION OF GUESTS

Brandon Johnson, MVIC General Manager; Tyler Artichoker, Bureau of Reclamation; Ed Millard and Larry Dozier.

### APPROVAL OF THE MINUTES

#### MINUTES

**MOTION: TO APPROVE THE MINUTES FOR THE JANUARY 12, 2017 REGULAR MEETING, JANUARY 12, 2017 EXECUTIVE SESSION WATER RIGHTS MEETING AND EXECUTIVE SESSION DAVID FREDERICK MATTER MEETING AS PRESENTED.**

**MOTION: DAVID FREDERICK  
SECOND: DON SCHWINDT  
MOTION CARRIED UNANIMOUSLY.**

### FINANCIAL STATEMENTS

David asked about the Bankcard Center payment and if it was new. Gina responded that it was a credit card statement payment and was not new.

David asked about the costs of legal services for the Water Quality over the past year. Ken stated that it was temperature standard hearings attended by Jeff Kane on behalf of DWCD. Barry stated that basin level hearings rotate every year. Ken stated that there have been a series of memos and updates brought to the Board. Trying to get an ambient temperature standard on the Dolores River is what we attempted to do this past year. Barry stated that the next WQCC meeting coming up is in San Juan and Gunnison because they move them around the state. Mike stated that they are trying to make temperature a pollutant. The Water Quality control staff recommended an ambient standard but the WQCC backed off when EPA threatened to veto the standard. Barry stated that we are going to have to move the issue into individual basin hearings to establish an ambient standard.

**MOTION: TO APPROVE THE DECEMBER '16 FINANCIAL STATEMENTS AND APPROVE THE STATEMENT OF PAYABLES AS PRESENTED.**

**ADMIN: AP/CHECK #10891-10921**

**\$825,486.27**

**MOTION: SIMON MARTINEZ  
SECOND: GODWIN OLIVER  
MOTION CARRIED**

## **AGENCY REPORTS**

### **BOR Report**

Vern introduced Tyler Artichoker from Bureau of Reclamation. Vern stated that Tyler is his immediate supervisor. Vern reported that we have an MOA contract in process on the SCADA upgrade. Vern stated that there was an opportunity for a Basin Fund MOA contract to rebuild 16 of the fixed speed vertical pumps in the 5 plants. Vern explained that the money is available because we were below cost on the previous contracts. The amended contract is approximately \$600K and will complete all of the pump repairs except the Great Cut Pumping Plant (GCPP) excitation. The solicitation is out and bids are due the 23<sup>rd</sup> of February. We won't receive equipment until October and will put it in the winter. We are working on a amended MOA contract with the money left and are doing 16 more fixed drive turbine pumps and should be in draft by the end of the month and awarded in the fall.

Vern stated that he brought the February 1<sup>st</sup> Most Probable Forecast with current inflow forecast for April – July runoff of 440,000 AF. Vern stated that as he was going through the spreadsheet it forecasts a large amount of water and if we do get it we have to be ready. With this much water available we have opportunities to do temperature suppression and can provide a week of low flows for fish studies to monitor fish populations. There are 94 days that the fish pool will not be debited. We can provide high flows to match the flows of the upper Dolores in May of 4 days at 4000 cfs scheduled in advance of Memorial Day weekend. We are able to move the boatable flows from starting April 1<sup>st</sup>, to the 9<sup>th</sup> and let it stack up and still end when it ends.

It cuts down on the debit to the fish pool and provides better boating and starts in April at 2,000. This forecast provides 61 days and plans boatable flows over memorial weekend. The blue grays horizontal lines are weekends. Tried to focus things over the weekends. It would be concentrated on the weekends. Those flows can move a lot of rocks and sediment to help with stream maintenance. When we come out of memorial weekend we are at 2500 through June 4. David stated that on the Reservoir Elevation column we don't hit 6924 ever. Vern stated that on May 31<sup>st</sup> on years of high inflow we want to keep 4 feet of freeboard and have to plan it out ahead of time. Vern stated that he will actually redo the numbers several times between now and when inflow actually starts coming in. Early projections will always change depending on how the flows come down. It depends on the temperatures. This first plan is just a starting point and we don't expect that is exactly what it will be. We do hit 6924 in this plan and it is a good year. We ran another operating plan on the minimum forecast. The temperature suppression flow takes water in March that we only want to dump it if we have enough excess. It appears we will still have a lot coming in. Vern stated that he put that in as a placeholder that march 31<sup>st</sup> is the end of the fish water year. We debit the fish pool 50 cfs but once you are in April you are in a new year, but charging April 1 – 9 to the fish pool the 50 cfs is only going for 8 days and believe that it is enough. Ed asked about the call water for MVIC. Ken stated that we would take the March run of this for the MVIC meeting.

Vern stated that Don sent a memo back in July and Vern would like to answer it to his satisfaction, if Don can clarify his questions.

Don stated that he ran the numbers from the inflow/outflow as best he knew how and ignoring the criteria. He stated that we just fill at 6924 and keep it full and matched inflow and outflow for the release. If you go back to the graph of the 2<sup>nd</sup> peak of actual releases and by his calculations 2,195 AF came out of storage without taking ramp down criteria into account. He said his theoretical release was not much different than the actual release but tried to follow the ramp down criteria. Don said is there a way we can improve and not lose that in a spill. Vern stated that he would like to get it answered to his satisfaction. Don said that he apologizes and said he has realized that he is not always clear.

## **Division of Water Resources Report**

Doug and Marty did not have anything to report.

## **T/H Committee Report**

Godwin reported that the Committee met on January 18, 2017. The leak at siphon 7 is finished except for the backfill and are waiting for the water starting to test it. The Committee was presented with 3 bills from the entities. Vern was approached by the Ute Tribe about putting a water line over the siphon and there was some concern because there is fiber optic there. Vern stated that they make them go under and we are 15 feet down. Brandon is working on a T/H Canal tour, March 22, 8:00 AM, all the Board is invited, but please RSVP to Lisa.

**Next T/H Meeting** – The Committee will meet at the DWCD, Cortez Office February 22, 2017 at 2:00 p.m.

## **MVIC Report**

Brandon stated that they are doing maintenance in the mud. Brandon stated that they are complete with the Narraguinnep Bridge.

## **GENERAL MANAGERS REPORT/DECISION ITEMS**

**CWCB (January 23-24), Colorado Water Congress (January 25-27).** Water Congress attendees included: GM, Bruce, Don and Glen. The GM also attended CWCB. Progress was made in the following areas outlined below. Other DWCD attendees will be invited to share their insights from the Water Congress events.

State house 117-004 bill is urging Federal support in the mussel programs. We have Reclamation and Forest Service participation on McPhee and efforts are being made to authorize the Corps of Engineers on the front range reservoirs built by the Corps. We want the whole state to remain clean.

ANS Inspections: Colorado Parks and Wildlife (CPW) made a presentation to CWCB on the ANS Inspection Program. The McPhee Program was listed as one that will be funded because of our 4-Way partnership. The General Manager testified in support of Federal Agency Participation requested in House Joint Resolution 17-1004 urging Federal participation. The GM also asked the CWCB to increase their engagement in ANS efforts, and after Board discussion, CWCB staff was directed to see if they can find funding to make an initial contribution in 2017 and to develop options for CWCB participation from 2018 forward.

Mike stated that he was also part of a meeting to brief Congressional staff representatives and raised the ANS issue. Staff for Senator Michael Bennet and Senator Cory Gardner pledged bi-partisan cooperation in stepping up Federal participation in ANS funding, including authorization for the Corps of Engineers to fund inspections of the Corps built reservoirs on the Front Range via an amendment to the Water Resources Development Act (WRDA).

Basin Fund MOA Projects: The GM was informed during CWCB that the DWCD request to use saved MOA money to rebuild 13 fixed drive pumps has been approved. The GM was able to personally thank CWCB Director James Eklund and Carlee Brown, CWCB Branch Chief of Interstate, Federal & Water Information Section, who lead the approval review for the State. Specs and contracting are being initiated.

BLM-Reclamation Authorities Clarification Regrading Wild and Scenic Suitability: GM had a variety of side discussions on this effort. Roy Smith has indicated that he doesn't see any problem getting the authorities language that we are requesting in the Uncompahgre BLM Plan since it is derived from a letter endorsed by the BLM State Director. There were 27,000 comments on the plan so our challenge is to try and get a commitment, in the near term, to include authorities language in the Final Plan. Bill McDonald who has served as a Regional Director and Acting Commissioner of Reclamation confirmed that getting authorities clarification language in BLM plans would be highly significant, since Federal Agencies are required to follow adopted Resource Management Plans. We are trying to get commitment without waiting the 2 years. If the clarification language is in the RMP then we have something to reference. We would like for the State of Colorado to be involved in the securing these commitments. Which is appropriate since DNR and CWCB helped to secure the authorities letter from the State BLM Director to DRN Direction, Mike King.

Federal Reserved Rights Settlement, Rio Lado Creek ISF – Barry will cover this in the next section. The GM was approached at Water Congress by Regional Forest Service officials that are in these discussions. The FS and Department of Justice have agreed to hold off on all non-R2 cross ISF pilots, including Rio Lado Creek until 2018 to allow for a series of discussions on emerging “wetland complex” ISF criteria, technical standards and uncertainties should such applications move lower in the river system. DWCD is also pushing for clarification on stock ponds and details on the outlines of a potential Federal Reserved Rights Settlement.

Hemp – State Senator Don Coram is actively engaged in clearing the way for commercial production of hemp in Colorado. He is interested in the potential of producing fiber and hemp oil. The GM let Senator Coram know that Dolores Project farmers are looking for profitable crops, that the Experiment Station at Yellow Jacket has test plots with seeds that meet the low THC standards, and that there is an oil plant building in Dove Creek that may be adaptable to hemp oil production. We discussed the issue of water out of Federal Reclamation Projects, and Senator Coram believes that this obstacle can be overcome and is working to that end. The interface between the hemp trials at the Yellow Jacket Experiment Station and the efforts of Senator Coram reinforce one another if well-coordinated. The GM spoke with Walter Henes and Gus Westerman prior to the Experiment Station Advisory Committee Meeting the week of January 30 to draw the attention of the Advisory Group to this opportunity in relation to the hemp trials.

Glen Fish asked if they got rid of the mussels in a couple of the lakes. Ken stated that the microscopic veligers are caught through DNA testing. Ken stated they are hard to get rid of in the adult stage. Ken stated that some of the lakes were testing microscopic positive for veligers such as in Pueblo Reservoir and they initially tested positive for veligers, but after 5 years of negative tests they can call them clean. Glen stated that he enjoyed attending Water Congress and that it was fast paced. Don stated that he always enjoyed it and learns something every year. Bruce stated that it re-enforced a lot of interests that we are participating in and enjoyed the update and talking with the people there.

David asked about the instream flow and if Plateau was still on the list. Barry stated that was the CWCB annual workshop where ISF evaluations for the coming year are presented. It is a workshop that they have put on for years. David asked if there were any new ones. Barry stated that each year there are new ones. Barry stated that he didn't review the list, Mike stated that there are none in this area. Barry stated that Plateau is on the Forest Service watch list, but nothing has triggered it yet. Barry stated that what he will address does not pertain to Plateau. Mike stated that Barry will come back to that.

**NCA Process Administration** – At the MVIC Annual Meeting on January 21, there was a shareholder vote, dominated by proxies, for MVIC to cease providing funding and administrative support for the David Robbins contract. There was shareholder input, during the discussion of the motion, that MVIC should retain a seat at the table, in spite of withdrawing financial support, if the NCA legislative effort continues. It has been proposed that the administration of the remainder of the David Robbins contract be assumed by DWCD.

Bruce stated that with MVIC pulling out, and the NCA goes forward, may be possible that DWCD would do the administration and we would have to have a vote to take it on. It is premature to look at it right now, but stay tuned. Bruce stated that he is on the drafting committee and on the Legislative Subcommittee and that DWCD is still on this and he is still convinced that it is far better to get rid of Wild and Scenic suitability with NCA Legislation than to leave it. If we are asked to take over the administration of the Robbins contract we will bring it back to the Board for discussion. David asked what decision was needed on the agenda for this item. Bruce stated that if we were to take over the management of the payment and record administration that MVIC has been doing we would need a decision item for Board consideration. If not DWCD it would be one of the counties. Mike stated that if it matures it will come up as a decision item later. Mike stated that at the advice of our attorney we make sure that all decisions are noticed on the agenda. If you do not have a decision listed on the agenda then you cannot act on it at that Board Meeting. Mike stated that if it matures we will bring it back to the Board. Don stated that what he has heard is no reason to pursue federal legislation if you don't have all parties on board. With Montezuma County Commissioners pulling out, they are one of the key players. The discussion has still gone on to make an NCA come to pass. Don stated that Bruce still thinks that is where we should be and Bruce agreed. Don stated that he did not think so because of the unanimity issue. Now we have another key player pulling out, directed by shareholder direction which is a lot broader support than just this Board. There are other proactive efforts that may address the same issues. To get the congressional support we have to have Gardener, Bennet and Tipton and don't see those guys coming together. This is not a smart place to be proceeding. Bruce stated that he understood Don's point and that Don was anti NCA. Don stated he wanted to be clear that he was never anti NCA, but this NCA has people assume that when David Robbins was hired that we would get the protections that Don requested and the draft that came back went backwards not forward in accepting Don's redline. Don stated that he doesn't think we can rescue that piece. The adaptive

management and monitoring are a good place to pursue and it is difficult to tackle that while pursuing NCA. Dolores County has concepts for a way to move forward and there are other ideas floating out that there that we should dove tail with the really good work that we have done. The land plan solutions and the things that we have pushed for on this need to be pursued.

Bruce stated that with Don's comments taken, Bruce would like to see bringing out the legislation and get it out there and then we can take all those arguments on. Bruce stated that he did not want to kill it at this time. Don stated that he did not know where the application will be the Robbins copayment with the other players. We don't know where SW will be with for funding coming from there. Don stated that we keep paying dollars out that are not fitting the parameters. Bruce stated that he still thinks it has benefit. Bruce stated that he would like to see what the NCA legislation released so we have a specific legislative draft to consider. Bruce stated that he still thinks it has benefit and wants to keep it going. Montezuma County and MVIC pulling out of the payment plan should not kill this effort just as a consensus draft of the legislation is nearly ready to release.

David stated that it is broken and how do we fix it or how does it get repaired. Bruce stated that he is still trying to see what we can accomplish before we bow out. Trying to find ways to fix the issues or trying to see what it would take or what can be done. David asked how we support something that our constituents are not willing to support and how do we reconcile that.

Barry stated that it is the duty of the Board to support the best interest of this District and not MVIC. David stated that he understood that, but if we are in this ball game together in the southwest corner how do you work that if they are opposing it.

Mike stated that there are more players involved. Montezuma County is the outlier and Dolores, Montrose and San Miguel County are still participating and would like to finish the legislative draft and see what they can achieve. You have one county that has pulled out and right now you don't just cut the effort off and leave the other three counties who have invested in this out in the cold without having some discussion.

Don stated that you say that we look at it from the perspective of DWCD and not MVIC what we are doing with that statement. We need to start being honest with our community and if that is the path we are going down. We need to be saying that we are not protecting this communities water rights, but we are protecting DWCD's water rights, and not protecting MVIC or McElmo users and their adjudicated right. We are saying we are protecting the water rights and really we are trying to protect the District's water rights and project's water rights. When the fight comes after the legislation comes out we are going into a fight with MVIC and the McElmo users and we need to be having that fight before we move forward with this.

Barry stated that Don just extrapolated a lot into what Barry had just said. Don stated that he might have. Barry stated that what he thinks is the best interest of DWCD can be in line with MVIC. Barry stated that all he was saying that as Board members of the District you need to look at the water rights for this District first and if it goes in line with other interests then great.

Don stated that his group wants to have this conversation with this District. They have come and presented and asked for discussion and this District has given them no response. This group are the ones sitting out there thinking we are the bad guys in this community and we are after them and that is what drove that shareholder vote.

Bruce stated that DWCD's water rights and the project water is the most vulnerable it is the easiest water available. MVIC's direct flow rights are not at risk. They could possibly take project water, which we need to protect as well, but DWCD would be a greater risk.

Don stated that he might think so too and that the legislation has laid the foundation for water to go down the river from somewhere in this valley. We have not had the detail of that discussion that Don would has been wanting to have with this Board for 8 years.

Bruce stated that we have tried that a few times and he has not been told clearly the exact problems Don sees in this. Bruce said if Don would like to get with Bruce then Don could show him how and why he opposes the NCA. Don stated that it would be a long discussion. Don stated that this is not where he thinks we should be going.

Mike stated that there is a not an NCA draft available and that we have great attorneys to review the draft legislation when it is available.

**Lease of MVIC Class A Shares** - The Board will be asked to decide whether to lease 170 Class A MVIC Shares in 2017, and if yes how much to charge per share. In 2016 DWCD offered its 170 MVIC Class A Shares for lease at \$70 per share. Initially shares were offered in blocks of up to 10 shares. At the end of this initial offer, there was 6 shares left split between two applicants who leased 10 shares in the first round. DWCD's O&M and account charges in 2017, for the 170 Class A shares, are \$5,310 (170 x \$29.50 + \$295 account charge). 2016 lease revenues totaled \$13,050 (170 x \$70 + \$1,150 in account fees).



**MOTION: TO LEASE MVIC CLASS A SHARES AT THE SAME PRICE AS 2016 FOR THE 2017 IRRIGATION SEASON AND FOLLOW THE SAME ADMINISTRATIVE PROCEDURES AS IN 2016.**

**MOTION: DAVID FREDERICK**

**SECOND: SIMON MARTINEZ**

**MOTION CARRIED UNANIMOUSLY**

**MVIC-DWCD Board to Board Meeting, February 21, 2017 (Tentative)** – Mike asked if there was a topic for a Board to Board meeting for February 21st. Bruce stated that there are several topics. The spill management presentation would be timely. Brandon stated that Gerald wanted to meet because we have not gotten together due to the holidays and felt that we needed to get together. Brandon stated that MVIC Board could only meet in February and March and then after March it begins to get busy with water starting in April. The Board members who attended Water Congress got together and felt that it was good. We will see what shapes up.

Ed asked if they would be having a Board to Board on the Drought Contingency Plan because it is due in the fall. Ken stated that he hopes that there would be more to discuss on at the March meetings.

**2017 Brainstorm, March 13, 9:00-4:00** – An Agenda will be circulated in advance of the Brainstorm.

Ken stated that we will be having a Farmer Advisory Meeting and would have a memo on the Full Service Payment Policy. Note: The Farmer Advisory Committee Meeting was subsequently set for March 30, 2017 at 5:30 PM with Chile.

**Settlement of SJNF Federal Reserved Water Rights Case Using the Colorado Instream Flow Program.** Barry stated that the USFS filed a case in the late 70s for the water rights to be adjudicated and it had gone on and off for years. Then the FS and CWCB started talking settlement. There are a number of other parties in the group. Those discussions have led to the FS being willing to test the instream flow program to adjudicate the water rights and wanted to do test cases. The test streams include 2 in Pagosa, 1 at Vallecito and 1 at Rio Lado. At first it was the decision to let the FS go through and if they think it works we consider settling the case, and we said ok, let's see if it works. They have done some investigation and brought to the meeting in December and proposed taking the entire stream flow in wetland segments rather than taking the minimum flow necessary to protect the natural environment to a reasonable degree.

When presented the approach in December they wanted all unappropriated water and didn't say how they reached what was the minimum necessary. Push back from DWCD and Southwestern changed their position and they said they would only go after 2 segments using R2 cross methodology and would wait until 2018 to submit the wetland segments to CWCB so parties could agree on the methodology. The 2 R2 cross segments are the lower Vallecito River and Little Sand Creek and the rest of the streams including Rio Lado, will be reviewed by CWCB, Southwestern and DWCD for methodology. They wanted to reserve water rights for consumptive uses and there are 70-90 on the Dolores River area. We are trying to learn if there are rights or if they are only FS claims. Barry stated that what Mike has in his GM report is a good summary and we are still negotiating. Don asked what has happened in other cases in the state. Barry stated that the FS has lost in all the other cases. Don asked what of the cases are they trying to get the unique characteristics. Barry stated that he didn't know.

**Mike's GM Report summary:**

Settlement of SJNF Federal Reserved Water Rights Case Using the Colorado Instream Flow Program. A second meeting including the GM, Adam, Bruce, Ken and SWCD met with CWCB, AG, CPW, USFS and Department of Justice Representatives via video conference from Durango on February 2. In response to the concerns expressed by DWCD and SWCD in December, the only streams that will go forward as Instream Flow Pilots in 2017 are Little Sand Creek and Lower Vallecito Creek. Both of these are trout streams in which standard R2Cross and median flows are being used to determine the "minimum flows necessary for reasonable protection of the natural environment."

In the Rio Lado Creek Pilot, in the Dolores drainage, the USFS is attempting to use the Instream Flow program to protect a wetland complex. Wetland protection is also the focus on other pilot reaches on Himes Creek and Upper Vallecito Creek. This would involve a different set of criteria that have not been fleshed out by CWCB. The concern of DWCD and SWCD is that if new ISF criteria get established to accommodate the desire of the Forest Service to protect wetlands, these criteria could invite ISF filings lower in the river system that would involve appropriations of water far beyond those resulting from ISF methods that water users are familiar with. The fact that Rio Lado and the other wetland oriented pilots have been deferred until 2018 gives us time to be informed and continue to raise and resolve DWCD and SWCD water user concerns.

The consumptive uses, mostly stock ponds and springs are also linked to the Settlement of Federal Reserved Rights. Attorneys for DWCD and SWCD will evaluate the status of these uses and any impact on private water rights holders. Background work will continue and another meeting is anticipated sometime in May or June.

Within this next year we will be working with CWCB staff which will hopefully give us adequate time to learn and engage. Discussion have drawn a lot of information of intent and where it might go. The engagement is a learning opportunity.

**Legal Discussions MVIC-DWCD – Groundhog, 505cfs, Change in Use of MVIC 87.3 conditional water right – Barry will update the Board, as appropriate in open session, and identify any points of discussion that need to be taken up in executive session.**

**Activities and Meetings since Last Board Meeting:**

- January 17: LEMing (Legal, Engineering and Management Team)
- January 18: Towaoc-Highline Committee
- January 19: Water Information Program Advisory Committee – GM
- January 25: Water Congress Workshops
- January 26-27: Water Congress
- Jan. 31, Feb. 2: Conduct Hearing
- January 31: Co-operating Agency Meeting, Tres Rios BLM Plan Amendment to Consider ACECs (Areas of Critical Environmental Concern) which include segments on the Dolores River - GM
- February 1: DWaRF (Dolores Watershed and Resilient Forests) - Ken
- February 2: Instream Flow Pilots and Consumptive Uses for Possible Settlement of Federal Reserved Water Rights Claims - San Juan National Forest, Department of Justice, Southwestern Water Conservation District and DWCD; via Video Conference – Ken, GM, Adam, Steve Harris
- February 2: Webinar Meeting of Basin Roundtable Chairs Statewide with CWCB to refine Scope of Work for Colorado River Risk Assessment – GM, Bruce Whitehead
- February 6: Drought Plan Work Session, DWCD, 2:00PM

**Upcoming Meetings and Activities:**

- February 10: Native Fish Monitoring and Recommendation Team (M&R Team), DWCD 10:00AM to 2:00PM
- February 13: ANS Technical Meeting, 1:30
- February 14: MVIC Board Meeting, 2:00PM
- February 21: MVIC-DWCD Board to Board Meeting (Tentative), 7:00PM, DWCD
- March 1: DWaRF, DWCD, 1:30
- March 6: Drought Plan Work Session, DWCD, 2:00PM
- March 7: SWCD Board Meeting, 9:30AM
- March 13: 2017 DWCD Brainstorm, 9:00AM to 4:00PM

**LEGAL REPORT**

Barry stated he would like to have a legal discussion on the District's cases with MVIC and the hearing with David and the aftermath of that in Executive Session.

**MOTION: TO MOVE INTO EXECUTIVE SESSION PURSUANT TO CRS 24-6-402(4) (e) CONCERNING MATTERS OF NEGOTIATION AND CONFERENCE WITH ATTORNEY CRS 24-6-402-(4) (b)**

**MOTION: SIMON MARTINEZ  
SECOND: GODWIN OLIVER  
MOTION CARRIED UNANIMOUSLY 6-0**

**RECESSED FOR A BREAK AT 10:08 PM**

**RECONVENED INTO EXECUTIVE SESSION AT 10:20 PM**

**RECONVENED REGULAR MEETING AT 11:40 PM**

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

Barry stated that the Board discussed DWCD water cases involving MVIC, the David Frederick Hearing and its aftermath, and direction was provided to attorneys regarding the water cases and the David Frederick matter.

**MOTION: DWCD WILL NOT PROCEED WITH AN APPEAL OF THE DECISION MADE BY JUDGE WALKER IN THE DAVID FREDERICK MATTER.**

**MOTION: DAVID FREDERICK  
SECOND: DON SCHWINDT  
MOTION CARRIED UNANIMOUSLY 6-0**

**NEXT DWCD BOARD MEETING – Thursday, March 9, 2017 - 7:00 P.M.**

**ADJOURNMENT** Meeting adjourned at 11:45 P.M.

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Donald Schwindt, Secretary-Treasurer

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Bruce Smart, President