

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 November 8, 2018

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**CALL TO ORDER** Simon Martinez, Vice-President, called the meeting to order at 7:07PM

**ROLL CALL** Bruce Smart, President  
Simon Martinez, Vice-President  
Don Schwindt, Secretary-Treasurer  
Godwin Oliver, Director  
Glen Fish, Director  
Wes Wilson, Director  
Sheldonna Z. Ives, Director  
Mike Preston, General Manager  
Ken Curtis, Engineer  
Lisa Jordan, Office Administrator  
Robert Stump, Bureau of Reclamation  
Doug Pickering, Colorado Division of Water Resources  
Adam Reeves, Attorney  
Dan McCarl, Attorney

### INTRODUCTION OF GUESTS

Brandon Johnson, General Manager MVIC; Danny Wilkin, Director MVIC; Rod Daves, Travis Daves, Dalton Daves, Ryan Daves, Ben Lanier Full Service Irrigators; Jim Mimiaga, Cortez Journal

### MINUTES

### APPROVAL OF THE MINUTES

**MOTION: TO APPROVE THE MINUTES AS SUBMITTED FOR THE OCTOBER 11, 2018 ENTERPRISE MEETING.**

**MOTION: GLEN FISH  
SECOND: WES WILSON  
MOTION CARRIED UNANIMOUSLY. BRUCE SMART WAS ABSENT AT THE TIME OF THE VOTE.**

### FINANCIAL STATEMENTS

**MOTION: TO APPROVE THE SEPTEMBER '18 FINANCIAL STATEMENT AND APPROVE THE STATEMENT OF PAYABLES AS PRESENTED.**

**O&M: AP/CHECK #36539-36622 & PR/CHECK #122910-122961  
\$282,725.58**

**MOTION: GODWIN OLIVER  
SECOND: SHELDONNA Z. IVES  
MOTION CARRIED UNANIMOUSLY. BRUCE SMART WAS ABSENT AT THE TIME OF THE VOTE.**

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

**Canals** – Preparation dirt work for tire mats along Dove Creek Canal should start next week.

**Laterals** – Delivery boxes have been winterized. Most the lateral lines have been drained. The Dove Creek L&G system has also been winterized.

**Pump Plants** – Both variable speed pumps at Cahone and all five fixed speed pumps at Ruin Canyon have been pulled and sent in for rebuilds. One motor at Ruin Canyon and one at Pleasant View were sent in for overhaul.

**Great Cut Dike** – Temporary concrete repair is continuing on the Lone Pine outlet structure. Ken stated that staff is working with the subcontractor and hope to have the subcontractor on sight to clean up the concrete for the next two pours. The process is slow due to steps the repair entails and the BOR consultation. Ken presented photos to the Board.

## **ENGINEERING AND WATER MANAGEMENT REPORT**

**Water Accounting, End of Irrigation Season** – Ken presented the **1) October Inflow/Outflow** spreadsheet. The reservoir elevation went up because everyone was shut down and Groundhog water is still begin stored. MVIC began collecting water for Narraguinnep in McPhee due to Lone Pine repairs. There was rain the first 10 days of October which correlates with higher Dolores River inflow. The Total Diversion column increases through the tunnel at the end of the month for MVIC stock run, which did not include Towaoc Highline Canal, done earlier, and Lone Pine Canal due to repairs. **2) November Inflow/Outflow** – Ken stated that the reservoir is holding level and the Dolores River is dropping since there is no new precipitation. MVIC finished the stock run on November 1, 2018.

**Pleasant View Drainage Problem CR CC to CR BB** – Ken stated that there is nothing new to report on Pleasant View drainage.

**Board Budget Discussion & Direction:** Ken referred the Board to the handout in the packet for 2019 DWCD Budget Discussion. **1)** Ken stated that the 2019 Draft Budget is based on a full water supply. Ken stated that the main control on the 2019 Budget would be to not spend any money on capital items until at least May and there are other items such as canal work that can be truncated if necessary if the water supply does not come in. **2)** Ken noted that for 2018 there still a \$75K transfer to the WSM Reserve account scheduled. **3)** Ken stated that the current Draft Budget currently includes a 2% increase on the FSA Base charges. **4)** There is a 3.1% salary increase input per our usual practice of using the Employer's Council salary data as a starting point. Ken stated that at the Budget Workshop there was discussion regarding linking employee wage increases to commodity prices and FS irrigator rates. Ken stated that staffing numbers have gone up and down in recent years due to transitions. Ken stated that there have been six long time employees who have retired being replaced by new or younger employees. Ken stated that from the FAC emphasized the current poor water conditions and pointed out that even with improved markets the 70% 2018 water supply only produced about 50% of normal yields.

**Discussion:** Godwin stated that the prices of hay on the commodity sheet that was presented are for the 1<sup>st</sup> and 3<sup>rd</sup> cutting. The 2<sup>nd</sup> cutting is a lesser number. Ken stated that DWCD has limited access to commodity pricing. There are recent 2017 numbers in the graph, however there are not many prices available for 2018. Ken stated that DWCD doesn't receive crop reports until 2019 and cannot put quantities on crop until much later.

## **RECESS MEETING FOR LAND INCLUSION HEARING AT 7:30 PM RECONVENE ENTERPRISE MEETING 7:46 PM**

**Board Budget Discussion & Direction continued** – Ken stated that he had Eric Sprague pulled the data from an NRCS website for the statewide averages. Ken stated that there were annual prices shown clear back to 1988 on hay, wheat and beans; however DWCD staff does not have the expertise to perform commodity marketing analysis.

**Salaries** – Ken presented the standard matrix sheet. Ken explained that there is an employee evaluation and in any given rating they could fall out in different areas. Ken also presented the grade for each of the positions including Minimum, Midpoint and Maximum ranges. Ken stated that there is not much internal movement since there are not many employees in each grade. As a person tends to top out there are not many increases to the employee's base pay. Ken stated that DWCD tends to follow the Employer Council information regarding pay increases as they survey the Western Slope of Colorado. Ken presented a spreadsheet showing what happens to the budget with different scenarios. The difference is approximately \$7K per .5% of wage increase/decrease.

Ken presented the FSA Rate Options with percentage of base increases. Ken stated that 2018 rates are there and then a scenario for 1%, 2% and 3% rate increases. Ken also presented the FSA Rate History from 1997-2018. Ken stated that most of this information has been presented in past years and come back to the Board at different times.

**Discussion:** Godwin asked if the 2010 Salary Survey information was current and Ken stated that these are the bands that DWCD is currently using. It is common for newer employees to move quicker through the band (larger % increases on lower rates) than for more senior employees who may get smaller percentage increases and be less likely to receive increases to base wages. Ken also presented a spreadsheet showing the matrix versus salaries per grade and stated that when we did the "Brooks" survey there were only 4 people that fell out of the salary band that had to be brought to minimum. An additional table shows that employees generally follow the matrix history with variations based on individual ratings over long periods due to low turnover. Ken stated that this is individual's raw data from DWCD records.

Godwin stated that Mike has always told the Board that they should not compete with Kinder-Morgan and Empire Electric regarding wages. Godwin stated that he did however check with Empire Electric and stated that the person he talked to said they get 1%-1.5% increases. It was noted that Empire Electric employees are union employees. Godwin also checked with the Counties and stated that they are not getting 3.1% and feels the amount in the Draft Budget is too high. Ken stated that 3.1% is just a starting point and the Board can set the number where Appropriate. The Board talks every budget cycle talks about making wage increase adjustments based on local issues. In 2014 there were only a few people whose wages were adjusted a little even though the matrix said 2.5% due to the 2013 shortages. Ken stated that it is difficult to get a draft budget started prior to September, but the Board can always talk about budget policy & issues during the year. Mike stated that the category of employees that we are involved with are different with regard to some local comparisons. DWCD competition comes more from the private sector than the public sector. Mike stated that there are advantages to working at DWCD and one advantage is that the employees get to stay at home and are not traveling for work. Mike stated that he puts emphasis on trying to maintain employee moral as good employees are the hardest to replace. Mike stated that DWCD is fortunate in that there have been employees who have spent their whole career at DWCD. Don stated that since the Budget right now is at 3.1% as a starting point, the amount should be settled tonight as opposed to make the decision later. Ken stated that this is correct. Ken stated that the Board should also decide on FSA rates but noted FSA rates can be modified later in the year. Ken stated that there are other items that can also be changed and discussed later in the year also however employee rate changes take place in January.

Godwin stated that he would like to leave FSA Rates where they are and to also leave salaries where they are, meaning zero increase on both. Bruce stated that he agrees with a zero increase on FSA rates but stated that employees are working with more level income and increases than a farmer and live on a more fixed income. Bruce stated that the employees do need something and should leave that to Mike and Ken. Bruce stated that having your salary go up and down based on commodity does not work for salaried and hourly employees. Simon stated that he would agree to leave FS rates alone and cut the 3.1% salary increase to 1.5%. Simon stated that a 1.5% raise to the employee is not a lot of money but something for the employees. Wes stated that he agrees with Simon. Don stated that he supports what Godwin stated. Don would like to get more comfortable with the discussion in a brainstorm session. Don stated that he doesn't quite understand the full spectrum of the salary information. Bruce stated that what is being used is the same information that has been used for many years. Bruce stated that zero percent to the employee's is a bad message to send. Glen stated that if we are tying salaries to the Full Service irrigator then you would have to put in zero. Bruce stated that we are not tying employee raises to the Full Service irrigator. Glen asked to hear from the audience. Mike stated that \$7K per .5% is not a significant amount of money, if employee's salaries are reduced to 1.5% the cost is \$21K. If there is not a FSA Rate increase the way the money comes in is by delaying some type of replacement work that could flex or pull back on late season canal projects because of the poor year. Ken stated that there is only flexibility on certain items. There are contract items and shared facilities to consider also. Bruce stated that if we are having a year that is so bad that we are looking at significantly cutting the budget this is a \$400K-\$500K cut and \$21K is a small percentage.

Travis Daves stated that if there is another bad year then employees may need to be laid off. Bruce stated that if you treat the employee like they are not important they will find another job and then you will have to replace them. Rod asked how much of a raise was given in 2017 and why employees had to receive a raise every year. Bruce stated that employee costs still increase. Godwin stated that he would hope the employees understand what the farmers are going through and wondered if the employees can't tighten their belt also. Travis asked if wage changes could be performed in the spring along with the other adjustments. Don stated that DWCD could make this work. Simon stated that he is staying with no FSA Rate increase and 1.5% to the employees. Wes stated that \$21K out of the budget would be pretty easy to accomplish. Simon stated that farming fluctuates and he is looking at the employee's moral, health and welfare. Robert Stump stated that he would offer, from a government oversight perspective, that the employees are the most important component to making sure the project is kept in good repair. Don asked Robert if he would be willing to write the letter asking for more federal money because the FSA irrigators can't afford to pay a higher rate. Don stated that we have been the beneficiary of money from the Basin Power Fund. Robert stated that there is a juggling act performed always and would like to see all of the maintenance items in top shape but need to meet the goals of the Project and that employees are a key piece of keeping the Project in shape. Don stated that he is weighing in to have a brainstorm session to go over the information and revisit the information to feel comfortable as to what the Board is doing is right. Godwin stated that he is set where he is. Sheldonna stated that you have to decide if the employees are on the top or if

employees are on the bottom. Based on the matrix, employees with longevity have very little to no percentage raise to their hourly rate but may still receive a lump sum that does not go on any base pay or toward any retirement funds. Ken stated that for a multiple reasons most organizations tend to make the long-term wage curve steeper when an employee is newer and flatten out for senior employees. Ken noted that there are ups and downs in farming but employees don't expect a bonus when the farmers are having an up year. The employees generally expects some sort of steady increases to their wages. Ken stated that he appreciates that the Board has had a serious discussion and will pass on to the employees. Travis asked if the raises have to do with performance. It was stated that employees are evaluated annually. Glen stated that even though it may be a trivial amount of money there is perception value in giving a raise. Wes stated that DWCD could also loose half of the employees because they are mad, noting that there are two different ways to look at it. Godwin stated that part of the reason he thought it should flat line for a year he stated that there have been high raises over some past years.

**MOTION: TO HAVE ZERO RATE INCREASE TO THE FSA BASE RATE AND 1.5% RATE INCREASE TO THE EMPLOYEE SALARIES.**

**MOTION: SIMON MARTINEZ  
SECOND: WES WILSON  
YES: 3 OPPOSED: 4. MOTION FAILED.**

**MOTION: TO HAVE ZERO RATE INCREASE TO THE FSA BASE RATE AND ZERO PERCENTAGE INCREASE TO THE EMPLOYEE SALARIES.**

**MOTION: GODWIN OLIVER  
SECOND: GLEN FISH  
YES: 3 OPPOSED: 4. MOTION FAILED**

**MOTION: TO HAVE ZERO RATE INCREASE TO THE FSA BASE RATE AND .5% RATE INCREASE TO EMPLOYEE SALARIES.**

**MOTION: SHELDONNA Z. IVES  
SECOND: GLEN FISH  
YES: 5 OPPOSED: 2 VOTES OPPOSED WERE GODWIN OLIVER AND SIMON MARTINEZ. MOTION CARRIED.**

**Discussion:** Ken asked if staff has flexibility to place the wage increase as they choose. He will let the Board know what decision has been made. Ken also stated that he will work though the budget and have a final budget for approval at the December meeting. Ken stated that he can begin looking into dates for a brainstorm session. Ken stated that the existing salary policy can be handed out sometime prior to the brainstorm.

**Land Transfer from Lanier Farms to Poco Dinero** – Ken stated that DWCD received a Statement of Damages from Ben and Xela Lanier aka Poco Dinero Land Co., Inc. claiming damages at 73 Acres,  $\frac{3}{4}$  ton per acre, \$220/ton = \$12,045.00; 150 Acres,  $\frac{3}{4}$  ton per acre, \$220/ton = \$24,750.00; 120 Acres,  $\frac{1}{2}$  ton per acre, \$220/ton = \$13,200.00; TOTAL DAMAGES: \$49, 995.00. Ken stated that last month staff presented a map and Ken did not have anything additional to present.

**Discussion:** Ben Lanier stated that he tried cutting some hay but couldn't see the windrow so he didn't cut a lot. Ben stated that he feels like the above claim is a fair assessment of what they might have gotten for a yield. Bruce asked if Ken or Mike had any input. Ken stated that for two years this transfer has been confused, but the landowner was notified of their pool numbers and did not object. It was brought up this year just after Labor Day and the water was turned on by Tuesday or Wednesday. Mike stated that DWCD does a lot of transfers and if they are done properly with a title company and a plat is filed with the County then it is not hard to track the transfers. In this case there was nothing on the record for DWCD staff to work with. Mike cautioned that with regard to the damage claim, if that door is opened that is a pretty big door to open on someone's concern about their pool. Bruce stated part of the problem was that the initial information presented to DWCD was vague. Ken stated that the County was involved because their GIS is used as a clarification point because it helps us see the land parcels visually, and the County was confused also. It was stated that this was a private transaction not using a title company and the landowners moved a lot of boundaries. Normally what happens is an entire box and associated classified acres are transferred with minor reductions sometimes for new house lots. This was a major change with multiple boxes and they moved a lot of property boundaries. Glen asked if the production costs were negotiable and stated that he would lean heavily on the legal team. Adam stated that attorneys saw the presentation at the October meeting and it is far from being clear that DWCD was in the wrong. Adam stated that in this transaction it appears that water was being shifted around more than land being shifted around. Adam stated that someone did take the water and there might be a claim against the person who got that water who presumably knew they shouldn't have been getting the water. Adam stated that the claim lay dormant for a long time and a statute of limitations may apply. Adam can't advise the District to agree to this as a purely legal matter. Bruce asked Adam if it would help if Adam had a chance to look at this. Adam stated that he would not be inclined to look at this outside of the context of a lawsuit, he doesn't think it is clear enough that there is a claim here and wouldn't advise the District to admit liability in this circumstance.

Ben asked what he should have provided stating that he thought they had provided everything they needed to. Ken stated that Ben knew the pool numbers weren't right based on a letter that DWCD mails out every year and he also signed the transfer form with the classified acres and the allocated water on it that was not correct. Ken stated that Ben should have brought this to the forefront when the allocations were not correct. Ben stated that he talked to Eric. Ken stated that it was not obvious to DWCD what exactly was going on, Eric was looking for a picture and for clarification he looked at the County GIS and the County picture was also wrong. Eric and Ben had multiple discussions over two years and Ken stated that the issue should have been raised higher and it was not. Ken noted that Ben did not pay for the pooled water, the water stayed with Lanier Farms, Inc. Don asked when the initial conversation with Eric began. Ben stated that after they made the division of land in 2015 he asked Eric if they could transfer the 62 acres that they refer to as "the pasture" which is irrigated out of Box R356 and wanted to transfer that water to R358. Ben stated that it took 2 years for the County to get the GIS correct. Ken stated that we don't have to have GIS but we do need to have a picture to overlay with our map. Adam stated that because the master maps that show the irrigable lands are surveyed there should be a survey produced to rectify it onto the paper map. Ben stated that he looked at a map with Eric and drew the boundary on the map. Ken stated that Ben looking at a map with Eric and drawing a line on it is not a survey. Ken stated that the deed that was presented to DWCD is legal but DWCD staff doesn't read deeds. Don stated that he has been hearing this entire time that there should have been a survey provided. Adam stated that the history of this transaction is factually complex, a lot of different things happened. There is a surveyed map that was provided by BOR and could be done reasonably well by GIS if you are provided a picture, there is no way through a series of calls and a deed to figure out what is going on. Don stated that it was clearly a misunderstanding by both parties and it has been helpful to have questions and answers. The email and document presented don't provide enough of a story and don't provide understanding of the facts. Don stated open discussion could have some value.

Wes asked if Ben started to cut the 3<sup>rd</sup> cutting and decided that it wasn't worth it and stopped. Ben stated that is correct. Sheldonna asked if it was up to the surveyor to provide a plat map. Bruce responded that it is provided only if the landowner asks for it. Ken stated that almost all transfers are a box and the original property. The other type of transfers are generally small acreages (3 acres) with a house that we are able to get a map of and transfer to our land maps. The fact that the pools weren't triggered and letters went out and transfers were signed made it additionally confusing. We start with the original petition and trace updated parcels as they move through time transferring from one owner to another. Adam stated that transfer of ownership and legal identification to classify allocated acres are different. There is a classified acre number on an original petition. Don stated that in some ways it should be a learning experience on both sides. Bruce stated that he looked at it as it is hard to expect Eric to be able to take a written description with meets and bounds and find a way to make this work. Ben stated that he didn't sign the transfer papers. Ken stated that Ben did sign the transfer forms in the beginning transferring all of Box R358 but the reality was that there was water transferred from Box R358 to Box R356. Ken stated that the present delivery box may not handle the full allocation. The policy is that if there is not enough volume and capacity to a delivery box that is up to the landowner to have a delivery box that will handle the capacity.

Ben asked Ken what Ken looked at over Labor Day to come to the decision to deliver the water. Ken stated that he made a call and Eric acknowledged that there was some confusion. Ken stated that he decided to deliver the water to Ben and that if it was wrong then Ben would have only paid the delivery fee. Ben stated that the water was off for 3 weeks. Ken asked why he didn't call then. Ben was under the impression that he couldn't have the water until it was corrected. It was stated that this water up until Labor Day had been in Lanier Farms pool and was accounted for. Sheldonna asked who was in charge of Lanier Farms. It was answered Tim Lanier and Joe Lanier are in charge of Lanier Farms.

Godwin stated that he is questioning the amount of water placed on the lands to make the amount of hay being specified for damages. Ben stated that he thought the shut-down was September 15 and used a bunch of water, but if the additional water been in his pool he would not have used it at the high rate. Bruce asked Ben if he used the water, but didn't get any hay off of it. Ben stated the ground had dried out to the point that he had to start over. Don asked what kind of yield Ben got on his irrigated lands. Ben stated about half of a normal year and normal is 4.5 ton per acre. Wes stated that he made about 1 ton on 3<sup>rd</sup> cutting.

Bruce stated that the information Eric got was vague and it is not normal for him to figure out how to make it work. Bruce does not feel this is DWCD's fault. Sheldonna stated that her experience with lawyers and title companies should get it right but they don't always. Sheldonna stated that it was unfortunate and there was confusion on both sides but doesn't think anyone was malicious or intentionally negligent. Wes and Glen both think the Board could make goodwill offer. Don stated that he has been in positions that he has lost money and can be sympathetic to the farmer however he can also be a staunch Board member but he can also see some sort of goodwill offer being discussed.

Don asked if there is also a problem with capacity. Ken stated that this is not a policy issue. Lanier's performed this land transaction on their own. They can sell the land. DWCD doesn't get an option to say you can't change the boundary lines, the landowner's have that right. What happens is there is now a piece of property with an allocation of water and no delivery box and when the land

sells there will have to be a new delivery box installed to deliver water to the property. Ken stated that there should be documentation regarding this transaction and there will be a memo to the file explaining the reason why there are acres that do not have a delivery box associated with them.

Don stated that the ball is in Ben's court to frame this in some other manner. Bruce stated that the Board can think about this for a while and take it up again. Bruce stated that at some point Ben will need and answer however at this time the issue was tabled until further notice.

#### **OTHER**

**ADJOURNMENT** Dolores Water Conservancy District Water Activity Enterprise Board meeting adjourned at 10:05 PM

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Donald W. Schwindt, Secretary-Treasurer

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Bruce Smart, President

# DOLORES WATER CONSERVANCY DISTRICT

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## MINUTES Regular Meeting November 8, 2018

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**CALL TO ORDER** Bruce Smart, President, called the meeting to order at 10:05 PM

Bruce Smart, President  
Simon Martinez, Vice-President  
Don Schwindt, Secretary-Treasurer  
Godwin Oliver, Director  
Glen Fish, Director  
Wes Wilson, Director  
Sheldonna Z. Ives, Director  
Mike Preston, General Manager  
Ken Curtis, Engineer  
Lisa Jordan, Office Administrator  
Robert Stump, Bureau of Reclamation  
Doug Pickering, Colorado Division of Water Resources  
Adam Reeves, Attorney  
Dan McCarl, Attorney

### INTRODUCTION OF GUESTS

Brandon Johnson, General Manager MVIC

**RECESSED AT 10:05 PM FOR BREAK  
RECONVENED AT 10:15 PM**

### APPROVAL OF THE MINUTES

#### MINUTES

**MOTION: TO APPROVE THE MINUTES AS SUBMITTED FOR THE OCTOBER 11, 2018  
REGULAR MEETING.**

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

### FINANCIAL STATEMENTS

**MOTION: TO APPROVE THE SEPTEMBER '18 FINANCIAL STATEMENTS AND APPROVE  
THE STATEMENT OF PAYABLES AS PRESENTED.**

**ADMIN: AP/CHECK #11212-11226**

**\$5,893.52**

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

### AGENCY REPORTS

#### BOR Report

Robert reported that **1)** there are currently two MOA Basin Fund projects going on. All American is working on the last three repairs on the pumps. The second project is the fixed speed pumps that Brimhall is working on and BOR is awaiting preliminary inspection reports. **2)** BOR continues to work with DWCD staff on the stilling basin at Great Cut Dike, working on a temporary repair for the

near future and working towards a strategy for a permanent repair. We asked if this was a bad concrete pour. Robert stated that this is more of a stilling basin design flaw that allowed rocks back into the works allowing it to erode. Robert stated that this was a typical stilling basin design and there have been others that have been studied and repaired. Robert noted that there will be analysis performed by BOR particular to this situation.

### **Division of Water Resources Report**

Doug reported that **1)** CDWR has extended the bubbler at Groundhog to measure water level below the fish pool. **2)** CDWR is installing a bubbler at Narraguinnep for better recording.

### **T/H Committee Report**

Godwin reported that the THC Committee had a meeting October 24, 2018. **1)** The Committee paid DWCD, MVIC and UF&RE.

**Next T/H Meeting** – The Committee will meet at the DWCD, Cortez Office November 28, 2018 at 2:00 p.m. at the Cortez Office.

### **MVIC Report**

Brandon reported that **1)** MVIC completed the gates at Groundhog on October 25, 2018.

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

**Colorado River Basin Issues** – Drought Contingency Planning, Demand Management, West Slope Risk Assessment – In October we discussed CWCB Board Meeting and the webinar that several board members attended on October 9 (Ken copied the powerpoint from the webinar for inclusion in the Board notebooks).

There seemed to be agreement by all parties that a drought contingency water bank pool should be established by the Upper Basin in Lake Powell. The water bank pool in Powell must not be subject to the equalization agreement involving Lakes Powell and Meade; and the impending Drought Contingency Legislation being spearheaded by California and the Lower Basin was an opportunity to establish a non-equalized pool.

While the positions of West Slope Conservation Districts (Southwestern and Colorado River District) align in many areas with Front Range Water Council comments, there are two main points of disagreement.

- The West Slope Conservation Districts want to limit “demand management” to a program that is temporary, voluntary and compensated. The front range is agreeable to these principles but believes that mandatory curtailment should also be under evaluation in the event that a voluntary approach is not agreed to by Colorado and the four Upper Basin States, or if the substantial amount of money needed to compensate for demand management does not materialize.
- The West Slope Conservation Districts assert that any movement beyond a temporary, voluntary and compensated approach should require consensus. The Front Range argues that if we face mandatory curtailment the state as the sovereign has statutory authority to step in and administer the call and this possibility should be prepared for.

The Risk Assessment commissioned by the West Slope Conservation Districts will look at various ways a mandatory call could be administered: Front Range-West Slope, the entire West Slope, or the West Slope by Basin or Sub-basin. These options would create various levels of impact on each West Slope Basin. Even though the State Engineer will take charge when a call is placed, knowing how the various options are likely to play out will help affected parties, such as DWCD, figure out how to communicate and negotiate prior to a call. As a Federally owned Reservoir with a 1940 storage right very close to the State Line and Colorado River, DWCD has a lot at risk and will need to engage as effectively and consistently as possible as events unfold.

Additional presentations on the Drought Contingency Plans and Demand Management were made to the Southwest Basin Roundtable on October 10 and a Roundtable DCP/DM Subcommittee was set up (see attached “Drought plan aims to limit reservoir losses” October 16, 2016 the Journal). The Interbasin Compact Committee (IBCC) met in Durango on October 18 with DCP/DM as a primary agenda item including a round of presentations and a panel.

On October 23, there was an excellent Workshop put on by the Grand Valley Water Users Association that included the Executive Director of the Upper Colorado River Commission and the Colorado State Engineer added to the CWCB and Attorney General Staff as well as Conservation District presenters that had addressed the above-mentioned gatherings.

Two things became clear through this series of presentations and discussions:

- There are a lot of moving parts sequenced over several years that need to be understood and addressed as this Drought Contingency Planning and Demand Management discussions advance. The information presented at these meetings is extensive and needs to be organized to be understandable by those farmers, municipalities and conservation interests that would be affected by a lower basin call or loss of power elevation at Lake Powell.
- It was widely agreed that the Basin Roundtables were in the best position to move information, engagement and discussion directly to affected constituencies. For example, being one of those entities operating federal reservoirs is a point of high interest for DWCD.

Accordingly, the first meeting of the Southwest Basin Roundtable Drought Contingency Demand Management Subcommittee is scheduled for November 6 at the Southwestern WCD Office in Durango, 1:00-3:00PM. Ken Curtis and Don Schwindt are both on the Subcommittee which will be Chaired by the Mike. MVIC will be represented by Greg Black, who serves on the Roundtable.

Carrie Padgett, working with Water Plan Implementation Funds has developed a PowerPoint show that compiles the best available information from all of the presentations described above. The agenda for the November 6 meeting is attached, along with the PowerPoint presentation summarizing all of the background information on DCP/DM. The presentation is hole-punched for your notebooks as one of the best summaries available. When Steve completes the "Connecting it All" flow chart it will be circulated to the Board. All relevant documents, presentations, and letters are posted on the Roundtable Website at: <https://waterinfo.org/resources/southwest-basin-roundtable/> click on DCP/Demand Management Subcommittee button.

There will be another meeting of the Subcommittee likely in mid-December.

Mike stated that he has placed a Draft Inventory of Concerns Specific to DWCD for background in the packet, because DWCD needs to decide what they want to do on this issue as it will affect the Dolores Project. Mike reviewed his draft with the Board. Mike stated that the part he would like the Board to focus on are the power generation elevations as they will likely be one of DWCD's top concerns. Because we are federally owned with a 1940 storage right, curtailment could hit the Dolores Project pretty hard as we are very junior as far as storage right.

**Discussion:** Ken stated that Mike's explanation was comprehensive. Ken noted that he has heard federal legislation is being sought and that the wording is such that the Secretary of Interior is not going to be authorized to sign it until all seven states sign. It was stated that California is the only state that cut off water from farmers when they did their QSA in the early 2000's. Ken stated that the states are putting up a front and watching Arizona since they are requiring a January 2019 legislative act. The Tribes have not spoken out to date but are expected to be speaking out in December. Ken stated that everyone has been wondering about Power versus Compact. Ken stated that he has heard that when you get down to power pool in Lake Powell that is four million acre feet and it is the feeling that we cant let elevation fall to enforcement. Lake Powell didn't have that much inflow in 2018 and will break through the 2007 guideline pretty quickly. The way it was expressed by the AG's Office out of Wyoming, if you get below power pool you lose control. Ken stated that the CWCB memo will be out Monday and they will push the State Engineer to open a public rule making process so that as CWCB takes on the voluntary temporary compensated, and this alternative can be done amongst all the Colorado parties. Ken stated that he attended a workshop at CMU where those in attendance were Christopher Harris out of California, Becky Mitchell from CWCB, Chris Brown, Wyoming's Senior Deputy Attorney General, Scott out of Utah, Ralph out of New Mexico and Daryl Vigil from Jicarilla. Ken stated that the way Wyoming put it is that they will see how Flaming Gorge is going to play. Don asked if Becky laid out how Colorado would bring the State Engineer in on this. Ken stated that in answer to a question, she said everything has been voluntary temporary compensated and CWCB will stick to that but that she would like to see the State Engineer open the public rule making process. Ken stated that this was not necessarily her Board's position, but he would expect this to be on the table at the CWCB Board meeting. Ken stated that he is trying to listen to different views. Wyoming was clear that they will stand with Colorado. Mike stated that all of the stuff that has be roiling under the surface has become more transparent. Don stated that the Engineering piece is an interesting piece. Ken stated that there was an interesting chart regarding how the risks play out. Ken stated that he will pull new slides from the CMU workshop when they become available online. Don stated that it is critical to see what CWCB's policy says. Mike stated that the Roundtable has an implementation contract and can float questions in that need research. Ken stated that the lower basin has no right to call on water it cannot use and drought cuts off the consumptive use on the upper basin. Ken stated that some of the finer points are coming out and are important. Adam stated that one thing that the Board should think about is that there will be limited funds and the Board will want to stretch the funds as far as they can. Don stated he is concerned by Becky's word choice and how much it encourages the State Engineer and stated that the way this is done is to have anticipatory curtailment. Adam stated that he thinks anticipatory curtailment is probably illegal. Adams stated that the front range is pushing for rules because they know they are safe. Ken would say Becky's comment would be that the State Engineer brings consequences of mandatory curtailment to the light of day. Don stated that language choice is important and that there is no other place more at potential risk than the Montezuma Valley.

**Himes Creek ISF** – The Himes Creek Instream Flow is scheduled for notice of intent in January 2019, putting it on a standard annual schedule as DWCD has been requesting. A key piece of information for the Board to formulate a response are the sideboards, requested by DWCD, which would confine the non-standard ISF approach proposing the taking of all unappropriated flows, by limiting this application of the Instream Flow Program to first order streams, on National Forest Land that can't be quantified by standard methods, where rare native trout populations reside. DWCD received a counter proposal from CWCB Instream Flow Program Manager Linda Bassi in October, to which Adam has offered a response. Prior to the December Board meeting, we will push to get acceptable side-boards. How well the sideboard negotiation goes will shape the discussion about how DWCD engages the ISF process leading up to and beginning at the January 2019 CWCB meeting.

Efforts continue to explore federal designations that could be placed on rare, remote native trout populations that have been discovered and will be discovered in the future on tributaries to the Dolores River. This would provide a means of protecting these populations that does not distort the Colorado Instream Flow Program in a way that creates problems lower in the river system. Adam has identified Research Natural Areas (RNAs) as a federal tool that could accomplish both the objective of protecting native trout populations and not compromising standard applications of the Instream Flow program.

A work session to consider alternative protections is scheduled for November 2. Mike and Ken met with leadership from the San Juan National Forest, Colorado Parks and Wildlife and the local chapter of Trout Unlimited.

Since the meeting with Senator Cory Gardner on September 10, Mike was asked by Senator Gardner's Office to write a letter outlining DWCD concerns regarding Himes Creek and opportunities for the Senator to assist. The letter from the Mike dated October 29, 2018 and copied to Senator Bennet and Congressman Tipton was mailed to the Board. This letter tracks very closely with points of discussion planned for the November 2 meeting with SJNF, CPW and TU.

**Discussion:** Don asked if the letter to Senator Gardner's office had already been mailed. Mike stated that it had been. Don stated that he would have preferred the letter to be phrased slightly differently. All of the right language is there and it is an implied preference Don would have liked to be stronger and would have asked specifically to have Senator Gardner to more directly engage with the Forest Service on Himes Creek. Mike stated that we can make that point. One of the things learned is that even the RNA may not be the right tool for Himes Creek because vegetation management is possibly more in line with what needs to happen. Don asked if it was possible to follow up with more specific language. Mike stated that it is possible to make some points stronger. Ken noted that Himes Creek was not mentioned at the November 2 meeting. Adam stated that it might be useful to have Christine Arbogast help with the delegation of authorities. Adam stated that he and CWCB are in the back and forth stage regarding the sideboards and he will get the current sideboard information to the Board.

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

- October 14: Farmers Union Annual Meeting, Mancos – Mike spoke on Forecasting, Colorado River Basin Issues and Forest Health.
- October 16: Board to Board Meeting, DWCD
- October 17: ANS Inspections at McPhee, Technical Team Meeting, (9:30) Dolores Public Lands Office
- October 17: LEMing, Durango, 2:00PM
- October 17: IBCC Reception, Double Tree, Mike, Don
- October 18: Interbasin Compact Committee (IBCC), Fort Lewis College – Mike, Glen, Don, Ken
- October 22: Watershed Forum, Norwood – GM Speaker
- October 23: Grand Valley Water Users Association, Planning for and Uncertain Future, Colorado Mesa University – Mike, Ken, Don
- October 24: Towaoc-Highline Committee
- October 25: 2019 Budget Workshop
- November 5: National Young Farmer's Western Water Workshops including Water Law & Policy 101 for young and beginning farmers and ranchers, 5:00PM, Animas Grange, Durango – Mike will present with Division Engineer
- November 6: Roundtable Subcommittee, Drought Contingency Plan/Demand Management, 1:00PM, Southwestern WCD, Durango
- November 7: DWRF Collaborative, 1:30PM, DWCD
- November 8: DWRF Coordinating Committee, 10:00AM

#### **Upcoming Meetings and Activities:**

- November 13: MVIC Board Meeting, 2:00PM
- November 14-15: Kelcie Nice, Absaroka Energy, Project Manager Plateau Pump Back Project – Stakeholder visits.
- November 19: Instream Flow Discussion, Dolores County Commission, 2:00PM
- November 20: Board to Board (TBD)

November 26: Lower Dolores Native Fish Monitoring and Recommendation Team, 1:00PM, DWCD  
November 28: Towaoc-Highline Committee, 2:00PM, DWCD  
December 5: DWRF Collaborative, 1:30, DWCD  
December 6: Forest Health Advisory Council, Glenwood Springs - GM  
December 11: MVIC Board Meeting, 2:00PM  
December 13: DWRF Steering Committee, 10:00AM, DWCD

**Legal Report** – Adam stated that **1)** included in the Board packet is a memorandum regarding Tax Liens on District Assessments. **2)** Adam stated that attorneys are working on the Bayless Ranches case, this is a riparian claim and Adam has not heard from their attorney. **3)** Adam and Ken continue to work on the 87.3 conditional water right.

**Other** – Ken stated that he would like the Board to read Barry's memo regarding Tax Liens on District Assessments and if they decided they want to make a policy or dive deeper they can bring back questions or leave it at the memo.

Don asked if the November 19 meeting with Dolores County on the Instream Flow pertained to DWCD. Ken and Mike stated that this is for Disappointment Creek.

Don asked if there was going to be a Board to Board. Ken stated that there wasn't a topic to discuss. Brandon stated that MVIC's meeting is after DWCD's this month and he will ask his Board if they would like to meet.

Wes Wilson stated that he feels like a land development fee should be explored. Ken explained that when Sandstone was developed there was a fee to just get water placed. It was noted that the fee did have to do with WETPack development initially. Ken explained that some land had been allocated to users and then it was determined that the capacity was at Ruin Canyon. Leroy Oliver came and asked for water, the lines were there to supply the water, at the time there was a big discussion regarding whether he had to pay in to get into the District. It was stated that Leroy was not charged an additional cost to have the land in the project. Don stated that this should be an agenda item. Ken stated that the Board should hash out the amount that should be charged. Don stated that the justification in those years was from a good realtor comparing land sales. Mike stated that the one important consideration is that the user pays for new infrastructure, noting that all of the infrastructure costs have been born by the landowner.

**NEXT DWCD BOARD MEETING** – Thursday, December 13, 2018 - 7:00 P.M.

**ADJOURNMENT** Meeting adjourned at 11:46 P.M.

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Donald W. Schwindt, Secretary-Treasurer

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Bruce Smart, President