

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  
October 10, 2019

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**CALL TO ORDER**      Bruce Smart, President, called the meeting to order at 7:05 PM

**ROLL CALL**            Bruce Smart, President  
Simon Martinez, Vice-President  
Don Schwindt, Secretary-Treasurer  
Godwin Oliver, Director  
Wes Wilson, Director  
Glen Fish, Director  
Sheldonna Z. Ives, Director  
Ken Curtis, General Manager  
Lloyd Johnson, Maintenance Supervisor  
Gina Espeland, Accounting Clerk  
Robert Stump, Bureau of Reclamation  
Adam Reeves, Attorney  
Dan McCarl, Attorney

### **INTRODUCTION OF GUESTS**

Brandon Johnson, General Manager MVIC; Rich Landreth, City of Cortez; Ed Millard, Montezuma County/IBCC/SWBRT

### **MINUTES**

#### **APPROVAL OF THE MINUTES**

**MOTION:            TO APPROVE THE MINUTES AS SUBMITTED FOR THE SEPTEMBER 12, 2019 ENTERPRISE MEETING AND SEPTEMBER 12, 2019 PUBLIC HEARING ON FULL SERVICE ASSESSMENTS.**

**MOTION:            GLEN FISH  
SECOND:            DON SCHWINDT  
MOTION CARRIED UNANIMOUSLY, WES WILSON WAS NOT IN ATTENDANCE**

### **FINANCIAL STATEMENTS**

**MOTION:            TO APPROVE THE AUGUST '19 FINANCIAL STATEMENT AND APPROVE THE STATEMENT OF PAYABLES AS PRESENTED.**

**O&M: AP/CHECK #37610-37695 & PR/CHECK #123527-123578  
\$350,293.06**

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

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

#### **Pump Plants**

Pump plants are scheduled for season shutdown on Monday, October 14<sup>th</sup>. Some downstream plants might run a few days longer to drain the canal if needed. Fixed speed pump #7 at Ruin Canyon was removed and sent in to Brimhall for evaluation and repair. Small gravel was washed into the plant and damage to the impeller wear ring

resulted. Gravel on the edge of upstream of the plant and high-water levels is what washed it out. Lloyd stated that they are trying to clean it up so that it doesn't happen again. A complete intake and sump cleaning is scheduled immediately after shutdown.

### **South Canal**

Cleaning, reshaping and rip rap is scheduled for the end section of the canal. WAPA's contractor is scheduled to start warranty work on the underground power spliced on October 15<sup>th</sup>. They have brought in some of their equipment, will start next week and hope to have it completed in November. A short liner is scheduled to be installed just downstream of Pleasant View Pump Plant. Wes asked how many feet. Lloyd stated that it was a short one.

### **Dove Creek Canal**

1000 feet of tire mats are scheduled to be installed near Road 18.

### **Laterals**

The F-600 road access is still scheduled for upgrade this fall.

### **Power Plants**

McPhee Power Plant is running at 50 cfs and will continue at 50cfs for the remainder of October. Towaoc Power Plant was shut down for the season due to low flows on October 2<sup>nd</sup>.

Ken asked Lloyd about the Lone Pine. Lloyd stated that they still have some work to do on it.

**Set Dolores Project Tour** – Ken stated that we will schedule this later in the meeting with the other scheduling items tonight.

Wes asked where the F-600 lateral is and Godwin stated that it out near his property off Road X ROW east of 16.

## **ENGINEERING AND WATER MANAGEMENT REPORT**

**Water Accounting & Review** – Ken presented the he would give a report and then in the spring he will have Eric Sprague reporting on it. **September Inflow-Outflow** - The river is continuously dropping since the first week. Ute Farm hit a peak diversion on the 6<sup>th</sup> and then a steady drop in use. MVIC was steady until a peak the 18<sup>th</sup> and then use fell steadily. Full Service were going good at the beginning of September and then cutting started and diversions dropped. Upstream is highlighted what we are counting out of Groundhog for the U/S Exchange. We had a high temperature of 96 and very little rain for September. **October Inflow-Outflow** - First nine days in October end up near the end of season projected elevation of 6901 or even a little higher. Ute Farm diversions have stayed low and we recently talked about how they are going to wrap up the season. MVIC is going lower and Brandon will report on their ramp down later. Full Service diversions will be wrapping up next week. Recent weather changes have brought in cooler temperatures. No significant water supply changes for this year's allocations from previous months.

### **Projects Update**

**Parking Lot** - Ken stated that the contractor cut the concrete at the handicap ramps in the parking lot today and will start concrete work next week. After the concrete the contractor will pulverize existing pavement in place, regrade and overlay. We are building up the surface by 3", but otherwise won't change it much.

### **Other**

Don stated that at the last DWCD Board meeting there was discussion on supporting Proposition DD and he weighed in not very positively, but since has had the opportunity to gain more information. At CWC they took a position in support after significant discussion. Southwest also took a position to support DD. Josh Henry was there actively advocating for DD at CWC and some of the detail was general frustration with polling for funding by ballot initiative which efforts had been put in a holding pattern. DD came out of the legislature after debate and that was really the essence that brought forth a motion to support by CWC. Ken stated that we can support DD individually without taking a Board position. Wes asked how cast in concrete is the Colorado Water Plan (CWP)? Don stated that it is not fixed and as it has unfolded it will continue to grow to be a bigger piece of State water position. It is the format that drives the basin round tables & IBCC. Adam stated that calling it a plan is not what you think. The local basins put in their individual project wish lists. Glen questioned the plan's impact on the prior appropriation doctrine and Ken stated that Justice Hobbs has held that prior appropriation has worked because of its flexibility. Adam stated that while the water plan was being put together, in the water community there was a feeling that was completely different. There is no balance between wants and desires. A lot of people have been planning for local & state water needs for a long time and felt the plan was a real injustice.

**ADJOURNMENT** Dolores Water Conservancy District Water Activity Enterprise Board meeting adjourned at 7:31 PM

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## DOLORES WATER CONSERVANCY DISTRICT

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### INTRODUCTION OF GUESTS

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### APPROVAL OF THE MINUTES

#### MINUTES

**MOTION: TO APPROVE THE MINUTES AS SUBMITTED FOR THE SEPTEMBER 12, 2019 REGULAR MEETING AND SEPTEMBER 12, 2019 EXECUTIVE SESSION MEETING.**

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

### FINANCIAL STATEMENTS

**MOTION: TO APPROVE THE AUGUST '19 FINANCIAL STATEMENTS AND APPROVE THE STATEMENT OF PAYABLES AS PRESENTED.**

**ADMIN: AP/CHECK #11377-11391**

**\$10,191.82**

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

### AGENCY REPORTS

#### BOR Report

Robert reported that **1)** Denver Tech Center contractor, Pure Tech, was here for the scheduled September 16 remaining siphon inspection of Siphon 2 on T/H and the Dolores Canal Siphon at Hartman Draw. The inspections went well. Pure Tech ran a swimmer through the pipe and we received good data and are waiting to hear back on the final report results. He said that most of the DP pipes are low risk rating based off a matrix on risk rating. The DTC recommend continued inspections which will be another one like this to be completed in 2029. **2)** Robert reported that they held a public downstream boater meeting in Dolores for a season review and spill critique on September 25<sup>th</sup>. The main information received is that boating over Memorial Day is not as important as it once

was. No dramatic or major problems and generally positive over all. **3)** Brimhall pump rebuild work is coming up and will be coordinating with Lloyd.

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

CDWR reported was not in attendance.

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

Godwin reported that the THC Committee had a meeting September 25, 2019. **1)** The Committee paid DWCD and MVIC. **2)** Robert told about the pipe diver inspection on the last two siphons one behind the tunnel and one at Simon Draw. Not much else.

**Next T/H Meeting** – The Committee will meet at the DWCD, Cortez Office October 23, 2019 at 2:00 p.m. at the Cortez Office.

### **MVIC Report**

Brandon reported that **1)** MVIC is working on the spillway at Narraguineep. **2)** Planning on shutting off Groundhog on Sunday and will run last down to McPhee. **3)** Plan to have a stock water run, but will shut the gates at midnight on the 15<sup>th</sup> and the rest can be used. **4)** Will start maintenance and winterization afterwards.

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

**Investment Update** - Minor items that are not listed. Don and Ken directed the purchase of 2 new non-callable CDs today to replace one that was called and one about to be called. Ken stated we will bring in an update on investments in a month or so. Ken stated when you get to the budget you will notice the investment income in the Reserves from our CD's.

Ken stated that Ed would be going through the Article Forgotten Law of the River, Section 603 later tonight and the presentation is in the packet and is worth reading.

**Adopt Resolution 19-01 to Change Signatures on Four Corners Community Bank Accounts** – The Board has to adopt this resolution in order to change the signatures from Mike to Ken on the accounts at Four Corners Community Bank.

**MOTION: TO ADOPT RESOLUTION 19-01 TO CHANGE SIGNATURES ON FOUR CORNERS COMMUNITY BANK ACCOUNTS.**

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

**Adopt Resolution 19-02 to Change Access Authorization for Safe Deposit Box at First National Bank** – The Board has to adopt this resolution in order to change the signatures from Mike to Ken on the Safe Deposit Box at First National Bank.

**MOTION: TO ADOPT RESOLUTION 19-01 TO CHANGE ACCESS AUTHORIZATION FOR SAFE DEPOSIT BOX AT FIRST NATIONAL BANK.**

**MOTION: GODWIN OLIVER  
SECOND: SHELDONNA IVES  
MOTION CARRIED UNANIMOUSLY.**

**Set Upstream Users Inclusion Hearing for 7:30 PM November 14, 2019** – Ken presented the Board with a map corresponding to Schedule 1 for an Upstream Users Inclusion Hearing. He stated that there are 6 users that need to be added. He recommended setting the hearing for the November 14, 2019 Board Meeting at 7:30 PM. Ken stated that MVIC replaces the water from Groundhog and we replace from McPhee and both agree to not call out these users. The Upstream Exchange/Augmentation Plan was put into place in the 1980s and formalized through Water Court in the 90s. They become users of DWCD and have to join the taxing district.

Don asked where the calculation of 6.2 acre feet on the user for Slippery Rock Falls came from. Ken stated that it is an augmentation for a pond and minor irrigation per their request. There is an actual spreadsheet that aids in figuring the consumptive use in the decree, which determines the contract amount.

**MOTION: TO SET UPSTREAM USERS INCLUDING HEARING FOR THE NOVEMBER 14, 2019 BOARD MEETING AT 7:30 PM**

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

**Set Budget Hearing for November 14, 2019** – Ken presented the Board with the first draft of the 2020 Budget. He stated that the Board needed to set a Budget Hearing and he recommended the November 14, 2019 Board Meeting at 7:45 PM

**MOTION: TO SET BUDGET HEARING FOR THE NOVEMBER 14, 2019 BOARD MEETING AT 7:45 PM**

**MOTION: DON SCHWINDT  
SECOND: GODWIN OLIVER  
MOTION CARRIED UNANIMOUSLY.**

**Set Budget Workshop** – Ken stated that the Board needed to set a Budget Workshop. The Board discussed dates that would possibly work as well as a date for the Farmer Advisory Meeting.

**Set FSA Farmer Advisory Committee Meeting** – Ken stated that he would like to set the FSA Farmer Advisory Committee Meeting to go over the water year with the Full Service Irrigators. The proposed dates are next week or week of October 21st. The Board agreed on the following dates for the Budget Workshop, the Farmer Advisory Committee Meeting and the Dolores Project Tour:

Budget Workshop – October 24, 2019 at 6:00 PM/Dinner and workshop following.

FAC Farmer Advisory Committee Meeting – October 30, 2019 at 5:30 PM/Chili Dinner provided.

Dolores Project Tour – October 30, 2019 at 1:00 PM starting at Great Cut, Pumping Plant and maybe including Fairview. Adam said he would like to have Dan attend if the space is available. Ken stated that everyone should meet at Great Cut. Ken invited Rich from the City of Cortez to join as well. Robert made the offer, to the Board and others who can't make it fit in, that he is always willing to take someone around to see any facilities.

**Weather Modification** – Ken stated that a new DRI remote cloud seeder was placed on Montoya's property at Hesperus. CWCB is going to ask for future funding up from \$175,000 to \$350,000 for next year. The Lower basin is contributing \$405,000 this year. Southwestern matches all local contributions. Ken stated that he is attending additional meetings on the weather modification.

**Colorado River Compact Issues, Drought Contingency Planning, Demand Management** - Ken stated that they had a good SWBRT workshop on Colorado Water River issues and this continues discussions around the Colorado River and possible ramifications for Dolores Project and potential Board actions for mitigation, protection and position adoption. Ken stated that he needs to give Ed some time for his presentation. Steve Harris made a motion at the SWBRT asking the state to put more effort into Weather Modification, phreatophyte removal and Forest Health and start looking at areas that these actions are more feasible. The Basin implementation plan is coming up for renewal next year and needs to be reviewed. They were getting in gear with selecting contractors late this year and you will hear more about the updates next year.

Don stated that to circle back to the Basin Roundtable Meeting yesterday, and similar discussion at Southwestern Meeting, there is nothing official yet, but they would lean harder with official policy in the future. DWCD Board should be aware of it and looking for a better discussion at a Brainstorm session to look into what are the better options and developing policy. The Colorado River District is pushing for a strong shared policy including alternative efforts like cloud seeding. There is new science out on the Cloud Seeding. Don stated he has always been skeptical on the cloud seeding, but would be looking more at these recent study efforts. He stated that he would be pushing for Forest Health more than ever and quantification of improved runoff, especially through Forest Health. Don stated that he feels that we have until 2026 for the upper basin to pull a trigger and between now and then we should strongly explore each of these options. By 2026 we can land on the most appropriate one and where we want to prioritize spending money.

Ken stated that Friday, November 1, 2019 is Southwestern's Annual Water Seminar. We will register all Board members and encourage them to attend as their schedules allow.

Ken stated that he would like for Ed Millard to give his presentation at this time.

Adam stated that he has some good information on runoff quantification in Colorado. Ed stated that he did acquire information on 2003 quantification from the Forest Service (FS). Adam stated that they started abandoning the FS prescriptions and quantification around that time.

Ed was asked to be on a panel at a water forum to be held at Colorado Mesa University on November 13 - 14, 2019 in Grand Junction. Russell George will be on the panel as well. Ed stated that he normally has a slide show and tonight it was printed. It is titled the Forgotten Law of the River, Section 603 and the Genesis of the Crisis on the Colorado. Ed stated that the whole story has not been told to water rights holders. We want all water rights holders to know how we got here and feel that it is important. He stated he is just trying to tell a story and stated that he is not a lawyer or professional engineer. CWCB had a webinar talking about the Drought Contingency Plan because of bad hydrology causing Lake Powell to crash. The UB is using 2/3 of our entitlement and leaving a lot on the table. There is a graph showing Colorado River natural flow at Lees Ferry Gaging Station, Arizona. The 1922 Colorado Compact, Article 1 –Points out the Colorado River System. The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System. Article II – Defines the portion of the Colorado River. The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America. Article III – There is hereby apportioned from the

Colorado River system in perpetuity to the upper basin and to the lower basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist. Article 4 – Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

Arizona didn't sign the compact, because they didn't want the Gila River included, but it was. The 1928 Boulder Canyon Project Act – stated that there shall be apportioned to the State of Nevada 300,00 acre-feet and to the State of Arizona 2,800,00 acre-feet for exclusive beneficial consumptive use in perpetuity, and that the State of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River compact and that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries. It states that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico. The State of California shall and will mutually agree with the State of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the lower basin. None of the said three States shall withhold water and none shall require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses, and that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact. There is a map of the tributaries. Included are pie charts showing obligations and evaporation loss. It is not clearly defined who pays for the evaporation loss. The information on the treaty shows that it took a lot of Colorado River water, 1.5 million acre feet at the border to Mexico, in exchange for the requested water from the Rio Grande for Texas. Then the Mexico Obligation sheet stating that such waters be supplied first from the waters which are surplus over and above the aggregate of the quantities specified and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the upper and lower basin and whenever necessary the States of the upper division shall deliver at Lee's Ferry water to supply one half of the deficiency so recognized in addition to that provided.

Ed covered information on the case in 1964, Arizona versus California. Arizona won this case and started down the road for the Central Arizona Project. Colorado and Wyoming were not allowed in this case. Ed reviewed the 1965 Tipton Report findings that outlined our current problems. Next was a 1965 paper that assessed what happened in the HR 4671 First Attempt, Colorado River Basin Projects Act. In 1966 there was funding for CRB augmentation studies. Next Ed covered releasing from Lake Powell every year to break even and they are entitled to surplus water in the river. The demands of 1968 – Colorado River Basin Projects Act, Section 603 states that "rights of the upper basin to the consumptive use of water available to that basin from Colorado River system under the Colorado River Compact shall not be reduced or prejudiced by any use of such water in the lower basin."

Ken stated that was a good stopping point. The rest is about future potential options and is good information.

Dan stated that he has looked into the interpretation of 603, the allocation under the compact won't change based on lower basin use and even if it is using more than its allocation the Compact is not going to change. Both the CRBP Act and 2007 guidelines expressly preserve the Colorado River and Upper Basin Compact. The state of Colorado has clear authority to curtail use to satisfy an order from the Upper Colorado Basin Commission. Those authorities and the compact make it absolutely clear and it does not change the obligations.

Don asked about the Section 603 interpretation from Dan. There is not a lot of commentary on it and an interpretation that makes sense to him means that the upper Basin allocation under the compact and terms of the compact will not change with the lower basin's over use of water even if there is a transfer of water from the upper to the lower basin under the compact. To him it makes sense. Don stated that the interim guidelines don't change the compact. The 1968 Act still puts the Central Arizona Project as the junior right.

Wes asked who determines how much we have to send down from Powell. Adam answered saying it is equalization tier of the 2007 Interim Guidelines, which is something less than a federal regulation. It is a federal practice agreed to by the States, but is not a Treaty. It is not a statute. There is a hierarchy and the Compact can't be changed by lesser things. Just because something is adopted later doesn't mean that it changes the Compact. The 2007 Interim Guidelines can't change the compact. Don reminded Wes that the Interim Guidelines expire in 2026.

Ken and Bruce thanked Ed for his thorough presentation on the Section 603 Genesis.

**BUDGET** – Ken handed out the Overview of 2020 Budget Process sheet. We went through the scheduling items. The 2020 impacts are we will get most of our expected revenue, but some payments may be held over until next year. The lease revenue was down 500 AF and the water sales may be down less than originally anticipated last month. We also received higher interest due to holding payments over winter until turning on in Spring of 2019. The 2020 Budget inputs are FSA Base Charge increased 2% and employee increase of 2.5%. We will go over in greater detail at the Budget workshop.

**Legal Report** – Ken stated that there is a legal filing that Adam can speak to.

Adam stated that they filed for party status for the WQCC hearing and Dan will talk about it in Executive Session.

CWCB has filed the Himes Creek instream flow decree and sent it to us prior to filing. Adam asked if DWCD wanted to continue to keep party status to monitor. Bruce and Don both agreed that we need to stay in it. Adam stated that it should be extremely minimal work and Mike deserves a great deal of credit for getting to this point. Ken stated that he would like to keep our name on stipulations for use in the future.

Adam stated that everything else he has to discuss in the legal report should be discussed in Executive Session.

**MOTION: FOR DWCD TO STAY IN THE HIMES CREEK CASE**

**MOTION: DON SCHWINDT**

**SECOND: GODWIN OLIVER**

**MOTION CARRIED UNANIMOUSLY**

**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 IN DISCUSSION ON THE MVIC 87.3 FILING.**

**MOTION: WES WILSON**

**SECOND: SHELDONNA IVES**

**MOTION CARRIED UNANIMOUSLY.**

**RECESSED FOR EXECUTIVE SESSION AT 9:40 P.M.**

**RECONVENED REGULAR MEETING AT 10:00 P.M.**

**REPORT OUT OF EXECUTIVE SESSION**

Adam reported that in Executive Session the Board discussed the status of the MVIC change case and the DWCD 303 D listing and no decisions were made.

**NEXT DWCD BOARD MEETING** – Thursday, November 14, 2019 - 7:00 P.M.

**ADJOURNMENT** Meeting adjourned at 10:01 P.M.

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Donald W. Schwindt, Secretary-Treasurer

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Bruce Smart, President