

**Minutes of First 2009 Regular Quarterly Meeting of the
Republican River Water Conservation District**

January 8, 2009

Burlington, Colorado

The Board of Directors of the Republican River Water Conservation District convened a regular meeting, pursuant to notice required by statute and the District's By-Laws, at the Burlington Community and Education Center, Burlington, Colorado.

Present were:

Board Members:

Dennis Coryell, President
Kim Killin, Vice President
Tim Pautler, Secretary
Rick Seedorf, Treasurer
Eugene Bauerle
Raymond Enderson
Garry Kramer
Steve Kramer
Greg Larson
Bruce Latoski
Wayne Skold

Stan Murphy, RRWCD General Manager
Dana Barnett, RRWCD Administrative Assistant
David Robbins, General Counsel, Hill & Robbins, P.C.
Dennis Montgomery, General Counsel, Hill & Robbins, P.C.

A sign in sheet listing the members of the public attending the meeting is attached as Exhibit 1.

STATEMENT OF QUORUM

President Dennis Coryell called the meeting to order at 10:05 a.m. and welcomed the public. Secretary Tim Pautler conducted a roll call of Board members, noting that Directors Bledsoe, Dowell and Laybourn were absent but had been excused. With eleven Directors attending the meeting, Secretary Pautler declared that a quorum of the Board was present.

AGENDA AND APPROVAL OF MINUTES

President Coryell asked for any amendments to the agenda for the meeting. General Manager Murphy advised the Board that the presentation by the Three Rivers Alliance should be

stricken from the agenda because they were not able to attend meeting. A motion to approve the agenda with that change was made, seconded, and approved unanimously.

Prior to this meeting, the directors had received drafts of the minutes of the October 9, 2008 regular quarterly Board meeting, the November 12 and 13, 2008 special Board meeting, the December 22, 2008 special Board telephonic meeting, and executive sessions held during the October and November Board meetings, as well as being included in the Board packet. President Coryell asked if there were any changes or corrections to the minutes. There were none, and a motion to approve the minutes of the October 9, 2008, November 12 and 13, December 22 meetings and the executive sessions was made, seconded, and approved unanimously.

GENERAL MANAGER'S REPORT

At 10:10 a.m., General Manager Stan Murphy presented the financial report and the disbursements for the quarter ending December 31, 2008, which were previously sent to the entire Board electronically as well as being included in the Board packet. A motion to approve the financial report and the disbursements for the fourth quarter of 2008 was made, seconded, and approved unanimously.

Mr. Murphy then reviewed the status of the \$5 million loan from Farm Credit of Southern Colorado. In the fall, Farm Credit had allowed the RRWCD Water Activity Enterprise (RRWCD-WAE) to defer payments on the loan from certificates of deposit as they matured because of cash flow concerns for various transactions that were scheduled to take place in December 2008. Since that time, Mr. Murphy said the cash flow situation had improved, and with the Board's approval, the deferred payments could now be made. After brief discussion, the Board directed Mr. Murphy to bring the loan payments current.

Mr. Murphy reported on various issues:

- The invoices for use fees on commercial and municipal well diversions had been sent out;
- The purchases of the McArthurs' Austin Ditch and Tuttle No. 4 Ditch water rights had been completed and copies of the deeds for the water rights were in the Board packet;
- A copy of a letter dated January 2, 2009, from Yuma County Abstract Company giving notice that unless it receives a copy of a summons and complaint within 120 days, it will return the earnest money for the Harsh contract to the RRWCD-WAE was in the Board packet. Mr. Murphy reported that Hill & Robbins had made a "write down" on its December invoice to share in the expenses of the Harsh matter;
- Requests for loan funds in the amount of \$1,396,205 had been submitted to the Colorado Water Conservation Board (CWCB) for eligible expenses

- The new IRS mileage reimbursement rate beginning January 1, 2009, will be 55 cents per mile

PROGRAM UPDATES AND REPORTS

At 10:20 a.m., Tim Davis, District CREP Consultant, reported to the Board on issues with FSA about the “Target Zone” for retirement of irrigated lands and use of the groundwater rights for delivery to the North Fork of the Republican River included as part of the amendment to the Republican River Conservation Reserve Enhancement Program (CREP). Mr. Davis explained that after numerous phone calls, the issues had been reduced to one main concern by FSA regarding the conservation benefits from delivery of the groundwater to the North Fork. Peter Ampe of the Colorado Attorney General’s Office, with assistance from Dennis Montgomery, District legal counsel, had sent a letter to the U.S.D.A. Office of General Counsel in Washington, D.C., to address the issue, but had not received a response yet. Mr. Davis noted that this issue affects the environmental assessment for the CREP amendment approval. A copy of the letter from Mr. Ampe was in the Board packet. Mr. Davis also updated the Board on the Farm Bill and said it was possible that both issues the District had wanted included in the Bill - lifting the county caps in Washington and Lincoln counties and removing alfalfa as an ineligible crop in the cropping history requirement – would be approved. Mr. Davis reported that there had been a delay in publishing the Farm Bill in the Federal Register due to the new administration coming in. Vice-President Killin thanked Mr. Davis for doing such a great job in keeping the Board updated on federal activities.

Secretary Pautler reported on the recent meeting that the Natural Resources Conservation Service (NRCS) had requested regarding further funding for the Environmental Quality Improvement Program (EQIP). The Executive Committee, Stan Murphy, and Tim Davis had met with the State NRCS staff on December 12, 2008. The NRCS wanted to know if the RRWCD-WAE had funds available to match the program payments as in the past three years. The Executive Committee explained that matching funds were “tight.” The NRCS understood the situation, but is willing to put the same amount into the 2009 program as it had put into the 2008 program. Secretary Pautler said designing a conservation plan for the entire basin was also discussed at the meeting.

President Coryell reminded the Board that the application for approval of the augmentation plan and accounting procedures for the Compact Compliance Pipeline was originally submitted to the Republican River Compact Administration (RRCA) in March 2008, almost a year ago, and there had still been no approval. President Coryell said the Board had put enormous time, effort, and expense into the Pipeline project and is still committed to going forward. He noted that the Board had increased use fees and that it was important that water users get what they are paying for. David Robbins, District legal counsel, then gave a review of the efforts of the past year to obtain approval from the RRCA. He said the delay in approval basically stems from accounting issues that Kansas wants to tie to the approval of the augmentation plan and the accounting procedures for the Compact Compliance Pipeline. He said Colorado officials have not been able to reach agreement with Kansas officials on these issues.

Therefore, a special RRCA telephonic meeting has been scheduled on January 26, and Colorado intends to press for a vote on a resolution to approve the augmentation plan and accounting procedures that Colorado has submitted for the Compact Compliance Pipeline. If Kansas and Nebraska vote no, it will go to fast-track arbitration, which could last 6 months and is ultimately non-binding. Mr. Robbins encouraged the Board and the entities they represent to write letters of support for Colorado's resolution to approve the Compact Compliance Pipeline and send them to the State Engineer prior to the January 26th teleconference. He said the letters will be more effective than trying to get everyone time to speak during the RRCA conference call. Vice-President Killin asked if the community should be involved as well. Mr. Robbins agreed that the community's input is important. Vice-President Killin then made a motion to authorize sending a letter from the RRWCD addressed to the RRCA requesting that the RRCA act favorably on Colorado's proposed resolution to approve the Compact Compliance Pipeline. The motion was seconded and passed unanimously. Following a discussion of whether other entities that should also submit letters, the Board directed Mr. Murphy to contact various cities, financial institutions, and businesses to request that they also send letters of support.

At 11:10 a.m., President Coryell congratulated County Commissioner Trent Bushner (who was sitting in the audience) on the successful closing on Yuma County Water Authority's purchase of surface water rights in the North Fork drainage basin and the successful bond election in December, 2008, to finance the purchase. Mr. Bushner thanked President Coryell and said it would not have happened without the support of the RRWCD Board. President Coryell said the Board was pleased to be a part of the effort. Dennis Montgomery reported to the Board that the deeds for the conveyance of the water rights had been signed and delivered and the 20-year lease of the surface water rights to the RRWCD-WAE had been completed. He noted that the funds for the lease payment for the 20-year lease had arrived via electronic wire in a timely manner thanks to the efforts of the CWCB staff.

Vice-President Killin reported on a recent meeting with State officials regarding the South Fork non-impairment issue and the concern that South Fork well users might be shut down if Kansas is correct in its interpretation of the sub-basin non-impairment requirement. Mrs. Killin said the Executive Committee has continued to try to convince the State officials that the Board will not protect only a portion of the basin and that the Board must have assurances from the State that the well owners in the South Fork sub-basin will not be at risk of curtailment because of the sub-basin non-impairment requirement if the RRWCD WAE borrows funds from the CWCB to build the Compact Compliance Pipeline. Mr. Robbins reported that he had prepared a draft letter for the State to sign to provide those assurances. He said Alex Davis of the Colorado Department of Natural Resources is working on the letter and said we may receive the letter as early as next week.

General Manager Murphy reported to the Board about his discussion with Jim Smith, one of the members of Habitat for Wildlife LLC, about the contract to purchase the water right owned by Habitat for Wildlife LLC. Mr. Smith has requested to amend the contract to allow for a one-year extension of the closing to allow Gary Newton to establish grass on the property he had irrigated with the water right pursuant to a lease, with a possible option for two years. Mr. Montgomery said he had reviewed the contract and had no objection to the amendment if the Board agreed. He said Habitat for Wildlife LLC had signed the contract and is required to deliver the deed by the end of this month (January 31) unless the contract is amended. After

discussion, a motion to approve an extension of the contract for six (6) months to allow for possible enrollment of the Newton property in EQIP was made, seconded, and passed unanimously.

Treasurer Rick Seedorf updated the Board on the Colorado Water Congress (CWC) agenda for its annual convention, which is set for January 25. Mr. Seedorf also informed the Board of a CWC water law conference if Board members wanted to attend as an educational meeting in accordance with Board policy. Mr. Robbins added that the water law conference would be a good one for Board members to attend if they are interested.

Director Gene Bauerle reported that he had missed the last meeting of the South Platte Roundtable; however, at a prior meeting, he said there was a proposal to pump water out of the South Platte River when it is frozen.

At 11:45 a.m., Fred Raish of the Yuma Pest Control District gave a presentation to update the Board regarding the Republican River Weed Control and the Republican River Restoration Project, for which the RRWCD-WAE had contributed \$10,000 in 2008.

At 12:07 a.m., President Coryell recessed the meeting for lunch.

At 1:00 p.m., the meeting was re-convened. President Coryell invited comment from the public.

PUBLIC COMMENT

Trent Bushner, a county commissioner for Yuma County, expressed his appreciation for the Board's efforts to construct the Compact Compliance Pipeline, but also expressed concern regarding the RRCA's approval of the Pipeline credit. He said, speaking personally and not as a county commissioner, he believed that spending the money to build the Pipeline project right away was best instead of waiting for approval by the RRCA. He asked the Board if it had a "Plan B" if approval was not obtained. He said he realized this was a difficult decision and requested that the Board keep the county commissioners involved and ask for help when necessary because the commissioners want to help. In that regard, he said Yuma County would send a letter of support for Colorado's resolution to the RRCA as previously discussed during the morning session. Lastly, he suggested, depending on what happens, re-negotiating the Pipeline water source contract to acquire the land to have more alternatives.

Dave Keeler, State water commissioner, but speaking as a citizen of Yuma County, expressed his belief that building the Compact Compliance Pipeline even prior to RRCA approval was also best. He said it did not matter what percentage of credit was given for the water delivered by the Pipeline because building the Pipeline would show that "we believe we are right" about the Pipeline.

Darvin Meurisse, branch manager for Farm Credit of Southern Colorado, stated his admiration for the effort the Board has made, but expressed his concern that people in the community were paying the water use fees but can't make business decisions due to the uncertainty regarding the Compact Compliance Pipeline. If people in the community knew that construction of the Pipeline was going forward, he said they "can get on with their business."

Director Ray Enderson asked President Coryell if citizens could do more to put pressure on the State. He agreed with Mr. Meurisse's comments and said "people are pretty nervous right now." President Coryell said the State believes the Compact Compliance Pipeline is the only feasible solution to get into compact compliance and that the State is solidly behind the project. He said Colorado will vote "yes" on Colorado's proposed resolution at the RRCA meeting, and if Nebraska and Kansas do not approve the resolution, then it will come back to the basin to decide how to move forward. Vice President Killin reminded everyone of how much has been accomplished in the past year and not to get pessimistic.

Joe Newton, citizen, said he was thankful that the State of Colorado is "taking Kansas and Nebraska to task." He expressed his concern that Kansas and Nebraska hadn't voted "yes" for the Pipeline, but said he wasn't that surprised. He said "the Pipeline is the only hope that the South Fork has." He encouraged the Board to move forward with construction of the Pipeline because he felt that ultimately the proposal would be approved by all three states. He also said that he heard Dick Wolfe, at the public meeting in Yuma, say that they would "do everything possible before taking my water."

There being no further comments, public comment ended.

At 1:25 p.m., Adam Prior, a CSU grad student, presented his findings on the effect of farming practices on water conservation. He also made available a survey for anyone who wanted to complete it for him to gather more information on the subject.

At 1:50 p.m., Christine Arbogast, District federal lobbyist, talked to the Board about the significant turnover in the Colorado congressional delegation and agency staff within the new administration, which will require a lot of education of the new senators, representatives, and staff. She proposed that the Board authorize a trip to Washington, D.C., to meet directly with the new people in the Colorado delegation to keep the issues of the basin in front of them and the agencies that the District partners with to offer conservation programs in the basin. She stressed that relationships and "eye-to-eye" contact are very effective when trying to get help with issues regarding the Farm Bill, the CREP addendum, and the Compact Compliance Pipeline. The Board then discussed details of a trip (i.e., who would go, duration of the trip, who meetings should be scheduled with, etc.).

At 2:20 p.m., Jim Slattery, District Engineer, gave the Board an update on the Compact Compliance Pipeline project status. Since the RRWCD-WAE is no longer purchasing the Harsh property, he had proposed to re-align the Pipeline so it would not cross the Harsh property. Mr. Slattery had been in discussions with engineers at GEI Consultants, Inc., the pipeline design firm. He said GEI estimated that the cost to re-design the alignment would be about \$25,000 and that GEI also had a change order for \$10,000 for other work. Mr. Slattery said GEI had requested that a letter be sent to authorize GEI to make the changes for the additional cost. Mr. Slattery also reviewed the issues still pending before construction of the Pipeline project could begin: easements needed from seven landowners, RRCA approval of the augmentation plan and revised accounting procedures, Sandhills GWMD approval of the export of groundwater, the Yuma County Land Use Permit, the environmental assessment for the proposed CREP amendment, and the start date for construction. Mr. Slattery also gave a brief overview of sub-

basin accounting under the RRCA Accounting Procedures and some accounting issues related to the North Fork of the Republican River.

BOARD ACTION ITEMS

The first item for consideration was to designate the public place or places for posting notice for RRWCD meetings, which is required annually at the Board's first regular meeting of each calendar year under the Open Meetings Law. A motion to keep the current designation of the RRWCD website and the Yuma County Courthouse bulletin board was made, seconded, and passed unanimously.

The second item for action was the renewal of the office lease between The Park, LLC, and the RRWCD-WAE for the current office space. After discussion, a motion to authorize General Manager Stan Murphy to sign the new lease for a monthly rent of \$741 for three years at the current office location, retroactive to December 1, 2008, when the current lease expired, was made, seconded, and passed unanimously.

The next item considered was the rates for the 2009 EQIP. There was a lengthy discussion regarding how EQIP could best serve the purposes and goals of the District and cash-flow issues in anticipation of building the Compact Compliance Pipeline. The Board agreed that the EQIP program is a useful conservation tool. The previous EQIP programs had different supplemental payment rates by the RRWCD-WAE to retire irrigated acreage depending on the distance of the well from a river. After discussion, the Board decided that a single rate should be paid by the RRWCD-WAE to supplement EQIP payments by the U.S. Department of Agriculture, regardless of the distance of the well from a river. John Willard, District Accountant, proposed that the RRWCD-WAE pay a flat rate of \$390 per acre to supplement EQIP payments (the same rate as previous USDA rates) with a cap of \$1,000,000 on RRWCD-WAE payments for the program. He said that way, the Board could be certain of its financial commitment instead of waiting to find out how many producers enrolled in the program. A motion to authorize payments by the RRWCD-WAE to supplement payments by the USDA for permanent retirement EQIP contracts only at a rate of \$390 per acre with a limit of \$1,000,000 in RRWCD-WAE funds dedicated to the program was made, seconded, and passed unanimously.

The final action item was the proposal by Christine Arbogast for a legislative trip to Washington, D.C., scheduled for the month of February. After considerable discussion regarding who should go to represent the District, a motion for the Executive Committee, Stan Murphy, Tim Davis, and David Robbins to go with the District's federal lobbyist as soon as the first week in February or later depending on scheduling meetings with government agencies and legislators was made and seconded. The motion was approved by a vote of ten yes votes, with one no vote by Rick Seedorf. Mr. Seedorf expressed his desire for a system that rotated one Board member into the group that would go Washington, D.C., for a member of the Executive Committee. Mr. Seedorf said he did not intend to go on this legislative trip and offered his place to any Board member who wanted to go. A few Board members expressed interest in going but said they would wait to see when the trip was scheduled before committing.

EXECUTIVE SESSION

At 3:48 p.m., a motion was made pursuant to section 24-6-402(4), C.R.S., to enter into executive session to discuss personnel matters and strategies for acquiring land and water rights for the Compact Compliance Pipeline and to develop a strategy for negotiations for the purchase, acquisition, or lease of water rights and to receive legal advice from District's legal counsel related to such issues. The motion was seconded and approved unanimously. President Coryell stated that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action shall occur in executive session. Before entering into executive session, President Coryell thanked the public for attending the meeting.

At 5:06 p.m., the executive session ended.

NEW BUSINESS

A motion to raise the salaries of both the general manager and the administrative assistant by \$2000 per year and to ratify the performance bonuses of \$750 that were paid to them in December 2008 was made, seconded, and passed unanimously. The Board directed that a plan to discuss personnel evaluations and salary adjustments (if any) at the Board retreat in November be implemented this year to alleviate the need to make adjustments to past payroll.

A motion to authorize Mr. Murphy to reallocate \$35,000 from the construction budget for the Compact Compliance Pipeline to the design budget to accommodate the re-alignment around the Harsh property and the change order was made, seconded, and passed unanimously.

Mr. Pautler suggested that a letter campaign be coordinated through the District office to support Colorado's proposed RRCA resolution to approve the plan for augmentation and revised accounting procedures for the Compact Compliance Pipeline. Mr. Montgomery said he would see if there was a draft letter that could be used by entities that want to submit a letter and, if so, would email it to the District office for distribution.

OLD BUSINESS

Director Enderson asked if anyone had heard if the Arikaree Ground Water Management District had appointed a director to the RRWCD Board. After a brief discussion, it was determined that no one had heard if an appointment had been made.

There being no further business, at 5:26 p.m., President Coryell adjourned the meeting.

Secretary

Date