

Minutes of the 5th Regular Quarterly Meeting of the
Republican River Water Conservation District

October 13, 2005

Wray, Colorado

Present were:

Board Members:

Dennis Coryell, President
Kim Killin, Vice President
Tim Pautler, Secretary/Treasurer
Eugene Bauerle
Grant Bledsoe
Kelly Burr
Jack Dowell
Raymond Enderson
Garry Kramer
Steve Kramer
Bruce Latoski
Rick Seedorf
Wayne Skold

Stan Murphy, General Manager
Monica Newton, Administrative Assistant
Deb Carlstrom, Office of Marilyn Musgrave
David Robbins, General Counsel, Hill & Robbins, P.C.
Scott Richrath, State Engineer's Office
Tim Davis, Colorado Division of Wildlife
John Deering, Colorado State University Cooperative Extension
William Burnidge, The Nature Conservancy

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

MINUTES

President Dennis Coryell called the meeting to order at 10:20 a.m. President Coryell introduced Monica Newton, newly hired administrative assistant for the Republican River Water Conservation District (RRWCD) and Water Activity Enterprise (RRWCD-WAE). President Coryell noted that the board positions held by Vice President Kim Killin, Secretary/Treasurer Tim Pautler, Director Eugene Bauerle, and Director Kelly Burr had all be open for appointment and all four directors were reappointed to three-year terms. The agenda was amended to include an update by legal counsel on the petition to the Ground Water Commission by the Pioneer Ditch

Association and the Laird Ditch (Pioneer & Laird) at 11 a.m. A motion to approve the agenda as amended was seconded and adopted unanimously.

At 10:27 a.m., General Manager Stan Murphy reviewed the financial report and noted that funds on hand with the Bank of Colorado would be distributed according to District policy among banks throughout the basin in the next week. A motion to approve the financial report was seconded and approved unanimously.

At 10:30 a.m., President Coryell noted that officer elections were to be conducted at this meeting and thus entertained a motion for the position of president. Director Steve Kramer moved to re-elect all current officers to their respective positions. The motion was seconded and approved unanimously, with Officers Coryell, Killin, and Pautler abstaining.

Mr. Murphy then delivered the General Manager's report. He noted that the new office facility was established and open for business in Wray. He explained that staff had reviewed various health, dental, and vision insurance options through two agents for a variety of carriers and plans. Director Garry Kramer asked for a comparison of premium costs. Vice President Killin noted that the plans presented to the board were competitive. A motion to adopt the Anthem PPO \$40 Co-Pay Plan to include vision and dental with total monthly premium of about \$1,000 for two full-time employees was seconded and approved unanimously.

Mr. Murphy then explained that the current phone system at the Wray office is in need of updating, noting that one vendor had quoted \$1,807 for system and installation permitting two voice lines and one fax – an amount that would exceed the current budget by \$200. Vice President Killin requested that Mr. Murphy look into leasing the system from Century Tel. President Coryell directed Mr. Murphy to review alternatives with Directors Rick Seedorf and Bruce Latoski and asked that those directors approve any plan before Mr. Murphy authorized installation.

Mr. Murphy reported that he and Directors Seedorf and Jack Dowell were speakers at an October 11 informational meeting in Yuma hosted by a local Yuma organization called "FARM," which was attended by nearly 50 people and was generally well received. President Coryell requested that board members work with Mr. Murphy to conduct similar meetings in their areas should they feel necessary. Mr. Murphy noted that RRWCD accountant John Willard expressed the need for the board to make an accounting distinction between annual expenses and capital expenditures. Legal counsel David Robbins clarified that this is for district bookkeeping purposes and not for tax purposes. A motion to adopt a resolution to expense all items under \$10,000 and capitalize all items of \$10,000 or more was seconded and passed unanimously.

Mr. Murphy then provided a draft proposal to create a special program for producers in Washington and Lincoln Counties whereby 50% of RRWCD-WAE funds collected from those counties would be returned to producers through competitive lease bidding programs. Recognizing that these counties are currently capped at their

Conservation Reserve Program (CRP) limitations and thus ineligible for current Conservation Reserve Enhancement Program (CREP) participation, Vice President Killin questioned whether the board should wait to see how the CREP and Environmental Quality Incentive Program (EQIP) transpired before committing to this program.

At 10:52 a.m., President Coryell noted Director Grant Bledsoe's arrival.

Discussion resumed concerning the Washington-Lincoln proposal and the board agreed to wait before adopting such a plan. Mr. Murphy then noted that producers had requested that he accelerate payments in the second year of EQIP to January 1. Some board members expressed concern over the ability to enforce irrigation retirement, the availability of funds, the time correlation to federal payments, and other issues. Director Garry Kramer suggested a mid-year payment date for all producers. It was agreed that with regard to the EQIP program, first-year payments would continue to be made based on implementation dates, but that ensuing payments would be made on the first business day in July. All existing contracts would abide by this policy and new contracts would be written to reflect this policy.

At 11:11 a.m., President Coryell introduced Ms. Deb Carlson of United States Representative Marilyn Musgrave's office and requested that Mr. Robbins update all in attendance on the petition filed by Pioneer & Laird. Mr. Robbins provided background on the Ground Water Management Act of 1965 and the roles of the Ground Water Commission (GWC) and ground water management districts (GWMDs) in issuing permits in designated basins. He noted that the Pioneer Ditch sued in water court during the 1980s to conjoin tributary wells in the appropriation system, that the Colorado Supreme Court ruled that the appropriate forum for such a suit was the GWC, and that the Pioneer Ditch chose not to further pursue such a suit. Mr. Robbins then noted that Colorado drew from its experience on litigation involving the Rio Grande and Arkansas Rivers in working to negotiate a settlement on the Republican River compact litigation. The United States Supreme Court approved the settlement, which included a model crafted by the three states for purposes of determining compact compliance. Mr. Robbins explained that the 1930s Supreme Court ruling of Hinderlighter v. La Plata – Cherry Creek Ditch determined that water rights senior to a compact were still subject to state compact compliance. Each state must proportion its water within the parameters of any interstate compact.

Mr. Robbins explained that most recently, Pioneer & Laird had written the State Engineer seeking curtailment of junior wells within the Republican River Basin. The State Engineer noted that the GWC was the appropriate authority to which to make such a request. Pioneer & Laird filed a petition with the GWC seeking full entitlement to its senior water rights. Mr. Robbins indicated that this would be heard by GWC's hearing officer before potentially proceeding to the GWC and then to District Court. He noted that RRWCD was legislatively responsible to all water users in the basin and that it would work with surface and ground water users to resolve water issues and seek compact compliance. Vice President Killin asked what effect a successful Pioneer & Laird petition would have on wells in the basin. Mr. Robbins responded that at one

extreme, all wells could be shut off until senior surface rights are met. At the other extreme, water would continue to be administered as before and that GWC could curtail certain wells. Mr. Robbins noted a similar case in Crow Creek, yet without finding. Mr. Murphy asked whether municipal wells would be subject to potential curtailment and Mr. Robbins replied that seniority makes no distinction based on use.

At 11:40 a.m., State Engineer representative Scott Richrath provided an EQIP update. Mr. Richrath noted that President Coryell, Secretary/Treasurer Pautler, Mr. Murphy, and he had attended a State Technical Committee meeting hosted by the Natural Resource Conservation Service (NRCS) on October 12 in Lakewood. He indicated that their purpose was to secure needed funding for EQIP in the Republican River watershed. At the meeting, Mr. Richrath explained the RRWCD budget committee's intent to recommend to the RRWCD board that RRWCD-WAE supplement EQIP funding be increased in federal fiscal year 2006 for purposes of gaining a higher level of producer participation. Mr. Richrath noted that the budget committee would recommend a plan to increase funding for permanent retirement by 67% over fiscal year 2005 levels by adding a fourth and fifth year to the three-year payment structure for permanent retirement. The 5-year retirement plan would obtain slight increases. The 3-year retirement plan would remain unchanged.

Mr. Richrath and Colorado Division of Wildlife representative Tim Davis then discussed the current status of CREP. Mr. Richrath reported that a firm from Virginia had begun the environmental assessment. Mr. Davis noted that county Farm Service Agency (FSA) committees might be willing to recommend reduced CRP caps upon re-enrollment of CRP and that RRWCD board members from Lincoln and Washington counties might wish to work with those committees to allow enrollment for CREP and other conservation programs. Mr. Richrath stated that USDA to date had remained silent on possible CREP rental rates.

At 12:00 noon, the board recessed for lunch.

At 1:00 p.m., the board returned from lunch, and President Coryell asked Vice President Killin, as RRWCD's representative to the South Platte Roundtable (SPR), to discuss what had happened at its first meeting. Vice President Killin reported that SPR discussed organization structure, vision of the organization, and introduction of the organization. The next meeting for SPR will be October 18 and will involve election of the two candidates to represent SPR at the State Meeting.

President Coryell asked Mr. Robbins to give a brief overview on the Colorado Water Congress (CWC) meeting held recently at Steamboat Springs, Colorado. Mr. Robbins reported that CWC is in the process of hiring a new director and is reviewing two possible bills.

It was then discussed whether the RRWCD should re-visit the CWC member appointments and where CWC is included in the budget. Mr. Murphy stated that there was not a specific line item for fees or dues in the budget, but meals, travel, and training

could be included. Mr. Robbins then stated it would be beneficial for the RRWCD to maintain its membership and that not all meetings would need attendance. If for some reason the RRWCD representative could not attend a meeting, Mr. Robbins stated RRWCD could rely on his office to inform RRWCD of the meetings. President Coryell will discuss with Director Jerry Sonnenberg his interest in remaining the representative to CWC. If he declines, Director Seedorf has agreed to visit with President Coryell about representation on behalf of RRWCD.

Mr. Robbins then reported that he, Mr. Murphy, and Mr. Richrath met with William Burnidge of The Nature Conservancy (TNC) regarding the district's effort to implement CREP and work with TNC. Mr. Robbins indicated that TNC expressed interest in adding funds to CREP in the Arickaree River Basin. Mr. Burnidge, Grasslands Manager, then spoke on behalf of TNC, stating that in order for Arickaree River objectives to be met, both the district and TNC would need to address water issues in the region. He requested that Mr. Murphy work with Mr. Burnidge on CREP. A motion to allow Mr. Murphy to work with Mr. Burnidge and TNC and to allow the district to participate with TNC on EQIP and CREP was made, seconded and approved unanimously.

Mr. Robbins reported on the meeting with Colorado Division of Wildlife (DOW). He indicated that there was no agreement reached between the conservation efforts of Bonny Reservoir water and the ditches operated by DOW. Bonny Reservoir is much depleted and DOW is not anxious to see it go away. However, DOW is actively seeking ways to deal with Bonny Reservoir water depth effectively and efficiently. DOW is actively making strong decisions and efficiently striving to make a strong fishery. It was noted that Mr. Murphy did send a fee schedule out which indicated how the fees would be distributed among the appropriate divisions. The Bureau of Reclamation indicated that there would be a lengthy process to determine how it would be billed out; therefore, RRWCD will not see any income for some time.

At 1:35 p.m., surface water user Rex Buck reported that the issue to save surface water rights continues to be a lengthy battle. He expressed strong interest in creating a 10-mile trail as one component of helping preserve surface water rights. Vice President Killin expressed to Mr. Buck that the doors are always open and RRWCD is willing to hear any solution that the surface water right individuals may have. President Coryell stated that the RRWCD would like to try to find a formula to work for both ground and water surface toward compact compliance. He would like to see some kind of proposal from surface right owners, as the RRWCD would soon present them with its proposal.

At 1:50 p.m., the meeting was opened to public comment. Mr. Don Rutledge asked if RRWCD had a website and whether plans existed to build one. Mr. Murphy stated there was information about RRWCD under two different websites, which were given: www.water.state.co.us and www.Republicanriver.com. Mr. Howard Paul of DOW commented on how his agency is committed to working with RRWCD. He also noted that Bonny Reservoir is two and a half feet down in water since January and is currently 18 ½ feet below capacity or norm.

At 1:58 p.m. The public comment session ended.

President Coryell then stated that the 2006 Budget Committee chaired by Vice President Killin met in September. President Coryell asked Vice President Killin to give the report on the 2006 budget. Vice President Killin stated minimal income and expense line item changes were made and that the budget reflected the maximum dollar expenditures under the assumptions that the EQIP and CREP programs are filled. Vice President Killin noted that the bottom line is what matters, not each line, as the district has certain areas to work within. Vice President Killin noted that a fee needs to be established by the 15th and questioned whether a fee should be imposed on pre-compact diversion. Mr. Robbins recommended that the board seek legal advice and post pone discussion concerning water use fee rates, resolution to adopt a budget and resolution to appropriate sums of money until after Executive Session. A motion to discuss such topics under Executive Session was made, seconded and approved unanimously.

At 2:10 p.m., President Coryell noted that the board's members had not been restricted in participation in and consideration for in RRWCD programs. Mr. Murphy recommended that if board members wanted to apply, an outside party could approve their application. Mr. Robbins stated that board members should not be prevented from participating in any programs, that any board member's application to RRWCD programs should be given equal consideration, and that no outside party is necessary for approving such applications.

At 2:25 p.m., a resolution was presented to re-designate the principal office location from Yuma, CO to 410 Main Street, Suite 8, Wray, CO 80758. A motion to adopt the resolution was made, seconded and passed.

A resolution to designate the Courthouse in Wray as the official location for posting notices was made, seconded, and approved unanimously. It was noted that that the designation will be the Courthouse in Wray until Mr. Murphy and The Park (office building property owner) could come to an agreement. If they could not, the courthouse in Wray will remain the designation for posting notices.

A resolution to designate the Country Club in Burlington as the location for January board meeting was made, seconded, and approved unanimously.

No old business was discussed.

New Business: Director Sedorf stated that as a result of the "FARM" meeting in Yuma, Colorado State Representative Cory Gardner had approached him with information that water shares from Western Sugar Company could be coming up for sale. Representative Gardner inquired whether RRWCD might be interested in purchasing those shares. Mr. Robbins expressed that those shares might be only entitled to consumption water rights and purchase may not be feasible, as it is a complicated

process. Mr. Robbins indicated that if the board wanted to look into them, he would be willing to look at the proposal as well.

Mr. Murphy stated that many producers are expressing their concern that the RRWCD could double water use fees at any time. Vice President Killin stated that she is also hearing such concerns in her area. President Coryell stated that the use fee should remain intact until compliance is met and if it is not met, then the use fee could go up if necessary.

President Coryell asked if Director Bledsoe would work with Mr. Latoski to approve a telephone plan for the office with Director Seedorf being excused. Director Bledsoe accepted.

At 2:48 p.m., the motion was made for the Republican River Water Conservation District Board of Directors to enter into executive session to develop a strategy for negotiations to purchase, acquire, or lease of water rights, to consider personnel matters, and to confer with the District's legal counsel to receive legal advice. The motion was seconded and approved unanimously. President Coryell stated that no motions are to be made or approved. Mr. Robbins stated that no action could be taken in executive session.

At 4:13 p.m., the executive session ended. No resolution, rule, or other formal action was taken during the executive session.

The meeting resumed and returned to the tabled items of usage fee rates, budget and resolution to appropriate sums of money. A motion was made to keep the water use fee rate on diversions due and payable in 2006 at the 2005 levels of \$5.50/acre for irrigated acreage on diversions of ground water for irrigation use, \$4.40/acre-foot on diversions of ground water for municipal, commercial, and industrial use, and \$5.10/acre-foot of consumptive use on diversions by post-compact surface water rights (e.g., evaporative losses from Bonny Reservoir) as stated in resolution 04-01 as amended by resolutions 05-03 and 05-04. The motion was seconded and approved unanimously.

Motion to approve Resolution to Adopt 2006 budget as presented by the budget committee was seconded and approved unanimously.

Motion to approve Resolution to Appropriate Sums of Money was seconded and approved unanimously.

Mr. Robbins recommended that the budget message be reviewed in the next few days by the board.

At 4:20 p.m., Mr. Murphy gave a report on the exemption from audit prepared by Bondi and Company. He expressed concern in regards to the amount of the invoice submitted by Bondi for that service. Bondi did not submit an itemization of the invoice. Mr. Willard suggested to Mr. Murphy that the district might advertise for future auditing service. Mr. Willard provided names of four accounting firms after the district received

bids from advertisement in papers. Mr. Murphy contacted the four firms from which he received bids. Mr. Robbins indicated that the board should wait and he will have Dennis Montgomery visit with Bondi with regard to this matter. Mr. Robbins also recommended that this is an issue that executive committee should decide. President Coryell tabled audit action to the next meeting and recommended that it be added to the agenda for January board meeting when Mr. Montgomery should have feedback from Bondi regarding the audit invoice.

At 4:35 p.m., a motion to adjourn the meeting was seconded and approved unanimously.

Secretary

Date