

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

**April 9, 2009
Yuma, 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 Church of the Nazarene, Yuma, Colorado.

Present were:

Board Members:

Dennis Coryell, President
Kim Killin, Vice President
Tim Pautler, Secretary
Rick Seedorf, Treasurer
Eugene Bauerle
Grant Bledsoe
Jack Dowell
Raymond Enderson
Garry Kramer
Steve Kramer
Greg Larson
Stan Laybourn
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.
Jim Slattery, District Engineer, Slattery Aqua Engineering
John Willard, District Accountant, Premier Account
Tim Davis, District Program Consultant, TJD LLC

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 10:12 a.m. and welcomed the public. Secretary Tim Pautler conducted a roll call of Board members. All fourteen directors were in attendance; therefore, Secretary Pautler declared that a quorum of the Board was present.

AGENDA AND APPROVAL OF MINUTES

President Coryell requested any changes to the agenda for the meeting. It was noted that Fred Raish, who was scheduled to make a presentation at the meeting, may be late. Secretary Pautler asked to add an item under New Business regarding working with the Republican River Watershed Association (RRWA) pursuant to a request from the RRWA. A motion to approve the agenda with that change was made, seconded, and approved unanimously.

Prior to this meeting, the directors were able to access the Board packets on the District's newly designed website, including a draft of the minutes of the January 8, 2009 quarterly Board meeting. There, they could retrieve all documents that were pertinent to this meeting; hard copies were also provided at the meeting. President Coryell asked if there were any changes or corrections to the January Board minutes. There were none, and a motion to approve the minutes of the January 8, 2009 quarterly Board meeting and the executive session held during the January Board meeting was made, seconded, and approved unanimously.

GENERAL MANAGER'S REPORT

At 10:19 a.m., General Manager Stan Murphy presented the financial report and the disbursements for the first quarter of 2009, ending March 31, 2009, which were previously available to the directors on the website 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 balances in the checking and savings accounts and in certificates of deposit. He also read a list of names (copy attached) of the entities that had sent letters of support addressed to the Republican River Compact Administration (RRCA) for approving the Compact Compliance Pipeline plan for augmentation and accounting procedures. Mr. Murphy then gave a brief "tour" of the District's new website, showing key features and potential additions that could be made. Secretary Pautler complemented both Mr. Murphy and Administrative Assistant Dana Barnett for the work and commitment to making the website as thorough and user-friendly as possible.

PROGRAM UPDATES AND REPORTS

At 10:30 a.m., Tim Davis, the District's CREP Consultant, reported to the Board about the status of the Republican River Conservation Reserve Enhancement Program (CREP) addendum. On February 2, 2009, Mr. Davis, along with President Coryell, Directors Killin, Kramer and Pautler, General Manager Murphy, and legal counsel David Robbins, met with U.S. Department of Agriculture (USDA) staff in Washington, D.C., to address their concerns regarding the CREP addendum. Any information requested by the USDA has been provided; however, the addendum has still not been approved. At this point, the USDA has all CREP/CRP programs on hold as a result of the "pay/go" policy and will not be approving any programs until the Office of Management and Budget confirms that the program meets the pay/go requirements. Christine Arbogast, the District's federal lobbyist, added that a letter signed by the Colorado delegation (Senators Udall and Bennet and Representative Markey) urging the USDA to re-visit

the Office of Legal Counsel's opinion and to approve the CREP addendum would be ready for mailing in a day or two.

At 10:37 a.m., Mr. Davis brought the Board up-to-date on the Agricultural Water Enhancement Program (AWEP) proposal that had been submitted. The proposal to commit \$1,000,000 for the first year of the program (as approved at the January Board meeting) for supplemental payments for AWEP was drafted for a fiscal year beginning October 1, 2009. Mr. Davis had learned that the program could start as soon as the proposal was approved; therefore, he submitted an amended proposal to commit \$333,333 for the months prior to October 1, 2009, and \$666,667 for the fiscal year beginning October 1, 2009. Also, he said there was a previous indication from the Natural Resources Conservation Service (NRCS) that it would fund the AWEP program in the amount of \$1,000,000 (which was the basis for the Board's decision to commit \$1,000,000 for supplemental payments to match the federal payments), but there was still no dollar amount committed from NRCS. Mr. Davis asked if the NRCS funding was higher than \$1,000,000, would the District increase the supplemental funding? District legal counsel Dennis Montgomery noted that the previous approval of supplemental payments was limited to a rate of \$390 per acre with a limit of \$1,000,000 and said any changes in these amounts would require that the motion passed by the Board be amended. Mr. Davis commented that when AWEP is approved, it will replace EQIP; therefore, AWEP is EQIP. District legal counsel David Robbins suggested that the Board wait to see what the funding is when AWEP is approved before acting. Mr. Davis also asked General Manager Murphy if the AWEP proposal could be put on the District's website. Mr. Murphy said he would do that. There were no further questions for Tim Davis or Christine Arbogast.

At 10:50 a.m., the next item on the agenda was a report from Peter Ampe of the Colorado Attorney General's office; however, Mr. Ampe was not at the meeting yet. Therefore, President Coryell asked Mr. Robbins to give his report on the status of the RRCA approval of the augmentation plan and accounting procedures for the Compact Compliance Pipeline. Mr. Robbins reviewed the process since the time the application had been presented to the RRCA a year ago. Kansas still had three issues (two that seemed unresolvable between the parties and one that may be resolvable but has not been). The three issues are: the sub-basin non-impairment requirement; calculation of the credit for water pumped into the river (now being called the "above Swanson credit" issue); and a limit on over-pumping water for Compact compliance in one year and not delivering water for two or more years based on the five-year running average used for Compact accounting. Colorado has also proposed binding arbitration to resolve these issues if the RRCA cannot reach agreement. Mr. Robbins informed the Board that two meetings have been scheduled for the RRCA: a technical meeting on April 13 and a special RRCA meeting on April 28 when Colorado's proposed resolution will be voted on. Director Latoski asked how Nebraska viewed these issues. Mr. Robbins said that Nebraska had raised an issue regarding the Haigler Canal, but that he now believed that Nebraska was satisfied with Colorado's proposed resolution.

At 10:56 a.m., Peter Ampe arrived and President Coryell asked him to make his report on the non-binding arbitration hearing between Kansas and Nebraska. Mr. Ampe informed the Board that he has been participating in the non-binding arbitration between Kansas and Nebraska for the past six months. The dispute resolution process began in October, 2008, with seven

issues. All three states (Colorado, Kansas and Nebraska) had submitted briefs regarding the issues. He described the State of Colorado's perspective on the non-binding arbitration on three issues:

1. Kansas had claimed \$72,000,000 in damages from Nebraska based on the benefits obtained by Nebraska from consumption of more than Nebraska's allocation in 2005 and 2006. The arbitrator ruled that any damages awarded to Kansas are limited to the actual damages suffered by Kansas. That reduced Kansas' claim to \$9,000,000 in damages.
2. Nebraska's future compliance and how Kansas believes Nebraska should get into compliance and how Nebraska believes it should get into compliance.
3. Nebraska's proposed changes to the RRCA Accounting Procedures, including changes to the Groundwater Model accounting points for four sub-basins (Freachman, North Fork, South Fork, and Driftwood) and changes to revise the Haigler Canal accounting for diversions and return flows.

Mr. Ampe said the hearing lasted nine days and did not get finished due to testimony still needed from two Bureau of Reclamation witnesses. The arbitrator's decision is due June 17, 2009, and the States must notify the arbitrator whether they will accept the decision by July 17, 2009. Mr. Ampe reiterated that the Compact Compliance Pipeline was not part of this arbitration. The special RRCA teleconference meeting on April 28 will be to consider Colorado's resolution to approve the augmentation plan and accounting procedure for the Pipeline. Colorado has offered to use binding arbitration if Colorado's proposal is not approved. If Kansas and Nebraska do not agree to binding arbitration, the non-binding arbitration option provided for in the Final Settlement Stipulation will be pursued. State Engineer Dick Wolfe will send out notice of the April 28th RRCA meeting. President Coryell added that there should be at least one site in the basin for the public to listen in on the teleconference meeting. The Board agreed that the site should be the District office. President Coryell asked how Compact accounting would be handled if the Nebraska and Kansas disputes go to the Supreme Court. Mr. Ampe said that the States would not ratify the accounting, which would mean that there is no approved accounting since 2007.

At 11:12 a.m., District Engineer Jim Slattery informed the Board that he had assisted the State of Colorado during arbitration that Mr. Ampe had just reported on. Mr. Slattery said the changes proposed by Nebraska to the RRCA Accounting Procedures would increase Colorado's deficit by 4,000 acre feet per year. Mr. Slattery then went on to update the Board on the status of the Corsica Land & Cattle easement, the Corp of Engineer 404 permit application, which had been submitted, and the competitive bid procedure for construction of the Pipeline. Mr. Slattery reported a conversation he had with Steve Townsley of GEI Consultants, Inc., the Pipeline design firm, that the sooner the bid process began, the more competitive it would be due to the state of the economy at the present time.

At 11:17 a.m., Secretary Pautler gave a report on the Republican River Watershed Association (RRWA) meeting that he, President Coryell, Director Kramer, General Manager

Murphy, and Tim Davis had attended. Director Kramer will be the Board's representative on the RRWA committee. Secretary Pautler said that he believed working with the RRWA was good for both entities, primarily in that conservation can lead to more Compact benefit. It was also discussed that when the RRWCD-WAE contributes money to the Yuma Conservation District (YCD) and other conservation efforts, the money could be directed through the RRWA. Mr. Pautler said Fred Raish, vice president of the Yuma County Pest Control District, had informed him that with more partnerships with local entities, more federal funds are available.

At 11:25 a.m., President Coryell recapped the meeting that had been held with county commissioners and board members from the seven ground water management districts within the District on March 4, 2009. At the end of the meeting, they were presented with a number of issues to look at regarding conservation and were asked which conservation components would have the most support from the county commissioners and the GWMDs, as well as how conservation programs should be allocated, compensated, and designed. All agreed it was a worthwhile challenge.

At 11:30 a.m., Director Gene Bauerle reported on the most recent South Platte Roundtable meeting. He said the discussion at the last meeting centered on estimating how much water would be needed in the year 2050. Estimates were based on receiving water from the western slope of Colorado and how it would affect agriculture in the South Platte and Arkansas River basins.

At 11:35 a.m., Treasurer Rick Seedorf reported on recent Colorado Water Congress issues that affected the RRWCD-WAE and bills before the Legislature. He said a serious effort had been made by the Joint Budget Committee to have the Colorado Water Conservation Board (CWCB) sell existing loans to third parties, which both the CWC and the District had opposed. With help from Scot Meiklejohn, the District's state lobbyist, the effort was thwarted. Mr. Seedorf said the Board needed to watch committed but unexpended CWCB funds.

At 11:43 a.m., Director Jack Dowell reported on recent activities of the Republican River Weed Control project. He said between 130-150 acres of salt cedar and Russian olive have been removed on the North Fork, South Fork, and the Arikaree. On April 15 there will be a tour of the project. Anyone interested in seeing the progress of this project, to which the RRWCD-WAE donated \$10,000 last year, can participate in the tour. Director Dowell informed the Board that the project should be completed by September of this year, and that they have already started on re-vegetation strategies.

At 11:46 a.m., Don Andrews of Three River Alliance (TRA), which was formed in July, 2008, as a 501(c)(3) entity, gave a presentation to the Board. He said TRA's focus is on conservation, not only for water, but for wildlife and land as well. They have staff members from NRCS and DOW who sit on their advisory committee, and TRA's main goal is to provide service to the Republican River Basin. TRA also has representation on the Republican River Weed and the Republican River Watershed committees.

At 12:05 a.m., President Coryell recessed the meeting for lunch.

At 1:00 p.m. the meeting was re-convened. Christine Arbogast of Kogovsek & Associates, the District's federal lobbying firm, then reported to the Board on the status of the recent support letter signed by Colorado's legislators to the USDA regarding the CREP addendum. Ms. Arbogast also suggested that another letter might be appropriate to move the AWEF program along. She also highlighted issues in the Farm Bill, as well as the process for House Appropriations Committee to approve the budget resolution, which affects funding for RRWCD programs. Representative Salazar is the only representative from Colorado on the Appropriations Committee. Ms. Arbogast also stressed the need for ongoing education of our legislators on issues of importance to the RRWCD.

At 1:10 p.m. President Coryell invited comment from the public.

PUBLIC COMMENT

Stan Holmes, City Manager of the City of Wray, brought an issue to the Board for consideration concerning the water use fees that the City of Wray is invoiced for each year. Due to the unique wastewater treatment system utilized by the City of Wray, the City returns waste water to the North Fork of the Republican River and would like to have some credit for the groundwater that is discharged to the river. In 2008, the City had documentation showing 1,818 acre feet had been pumped and 254 acre feet had been returned to the North Fork. This issue brought up discussion of various topics, including the wastewater treatment methods used by other cities in the basin, the benefit for Compact compliance (if any) resulting from discharge of groundwater to the North Fork, how the discharge is treated in the RRCA Compact accounting, and the potential that it could be treated as an "augmentation supply." Director Bauerle noted that the City of Julesburg gets a credit for its wastewater returns to the South Platte River. The Board asked Mr. Slattery to study the issue and, if necessary, contact Mr. Holmes for more information. Mr. Slattery will report his findings at the next Board meeting.

Bethlene McCall, Yuma Conservation District, asked the Board if it would be willing to write a letter of support for a proposal she was submitting to the Colorado Department of Agriculture to extend the test plots for another year. She asked to receive the letter by April 20th.

There being no further comments, public comment ended.

BUDGET HEARING

At 1:35 p.m. President Coryell announced that the Board would hold a hearing on the proposed third supplemental budget for 2008 and appropriation of additional money and asked District Accountant John Willard to explain the need for the third supplemental budget and the appropriation. Mr. Willard reported that they were necessary due to receiving the \$4,545,000 loan from the CWCB for the 20-year lease payment for the lease of North Fork surface water rights from the Yuma County Water Authority Public Improvement District, which closed on December 29, 2008. There were no comments from the public on the proposed third supplemental budget and the appropriation. A motion to approve the resolution to adopt the third supplemental budget for 2008 and the appropriation of additional money for 2008 was made, seconded and passed unanimously.

At 1:37 p.m., the budget hearing was closed.

BOARD ACTION ITEMS

Having already approved the resolution to approve the third supplemental budget and appropriation for 2008 and needing further research on the City of Wray's request to modify the calculation of its municipal water use fee, the Board considered the request by Fred Raish of the Yuma Weed Control District (YWCD) for \$15,000 towards more tree removal along the river. Mr. Raish could not be present at the meeting, but the Board had received reports on how the present project was progressing and on conversations that had taken place with Mr. Raish at the RRWA meeting. Secretary Pautler reminded the Board that it could be advantageous to YWCD to have the contribution made to RRWA and then from RRWA to the YWCD. Mr. Robbins suggested that who the contribution is made to could be handled under New Business. A motion to contribute \$15,000 for additional tree removal was made, seconded and passed unanimously. The entity that should receive the contribution was addressed under New Business.

The second item considered was a possible second amendment to the water right purchase contract between the RRWCD-WAE and Habitat for Wildlife LLC. General Manager Murphy reviewed the status of the contract and the six-month extension of time for the closing that had been approved at the January Board meeting. An issue had developed between Gary Newton (neighbor of Jim Smith) and Jim Smith (a member of Habitat for Wildlife LLC) regarding revegetation of the Newton property, and Mr. Murphy invited the parties to address the Board directly. Gary Newton, Joe Newton, and Jim Smith were all present at the meeting and gave a report to the Board on their discussions about revegetation of the Newton property. Although it appeared there was little potential for agreement between the parties, the Board concluded that no change should be made to the July 2009 closing on the water right purchase. A motion to table this action item was made, seconded, and passed unanimously.

The next item considered was investment options for CDs that will mature in June 2009, as well as what to do with majority of use fees that would be received in May. Mr. Willard reported that he had contacted ten banks and only received quotes for CD rates from three of the banks. The best quote was from Kit Carson State Bank. Mr. Willard noted that banks may be in a better position to take in sizeable deposits in the upcoming months. A mailing was suggested to all of the banks in the basin to get CD rate quotes on a minimum amount and interest rate to determine where best to deposit the funds. After the discussion, a motion to authorize the General Manager to invest \$1,250,000 in a one-year CD with Kit Carson State Bank, was made, seconded, and passed unanimously. General Manager Murphy and Mr. Willard will work together to get CD rate quotes from banks in the basin for deposit of funds received in the future. A motion was made to authorize the Executive Committee to reinvest any CDs coming due or to invest funds in new CDs when more use fees are received by the Enterprise prior to the next quarterly Board meeting. The motion was seconded and passed unanimously.

Next, Mr. Montgomery reviewed the pipeline easement proposal that had been previously approved by the Board and made to Corsica Land and Cattle. A copy of a proposed easement agreement between Corsica Land and Cattle and the RRWCD-WAE was included in the Board

packet. A motion to approve the easement agreement with Corsica Land and Cattle was made, seconded and passed unanimously.

The Board then requested that Dave Keeler, State of Colorado water commissioner, update the Board on out-of-priority storage in Bonny Reservoir, and when water would be released in accordance with the August 2008 letter order from the State Engineer Dick Wolfe. Mr. Keeler reported that currently, 3,992 acre feet had been stored out-of-priority in Bonny Reservoir. He then read a statement by State Engineer Dick Wolfe stating that water would be released according to orders issued by the State Engineer's office, possibly in the fall. Mr. Keeler was asked several questions by the Board. He reported that there was a total of 10,954 acre-feet of water stored in Bonny Reservoir, that inflows into Bonny Reservoir were 9.2 cubic feet per second (c.f.s.), and that the Hale Ditch had a call on the river; however, Mr. Keeler said he had a stipulation on the call that needed to be worked out with the owner. Director Bauerle asked if the Board should request release of inflows and accretions to storage in accordance with the State Engineer's letter order. The Board addressed this under New Business.

The next item for consideration was the Wray Ranch Co., Inc. application for change of water rights and plan for augmentation. Legal counsel Dennis Montgomery recommended filing a statement of opposition to support and monitor the application. He said filing the statement of opposition is the simplest way for the District to stay informed about the status of the application without becoming a co-applicant. A motion to authorize legal counsel to file a statement of opposition for the purpose of monitoring the application was made, seconded, and passed unanimously. Mr. Montgomery also suggested that a Board member contact the Bucks to explain the filing. Director Grant Bledsoe said he would be able to talk to the Bucks.

The last item for consideration was the web hosting agreement between UpsourceIT and the RRWCD WAE that had been electronically sent to the Board prior to the meeting and was also contained in the Board packet. A motion to approve the agreement with UpsourceIT was made, seconded, and passed unanimously.

OLD BUSINESS

There was no Old Business.

NEW BUSINESS

Under New Business, the Board discussed partnering with RRWA on long-term conservation programs. Also, the Board expressed concern that before the RRWCD-WAE could pay RRWA the \$15,000 to contribute to YPCD projects, assurances regarding RRWA internal controls would be needed. The Board agreed that a new Conservation Committee should be formed to develop criteria for potential future alliances between the District and other entities in working toward conservation and Compact compliance. Director Steve Kramer volunteered to chair the committee. Other volunteers for the committee were Bruce Latoski and Tim Pautler. Director Garry Kramer asked if the Board needed to determine who would receive the \$15,000 contribution for additional tree removal, YPCD or RRWA. A motion was made to have Mr. Willard and legal counsel determine if the RRWA has sufficient internal controls to handle public funds; and, if it has sufficient internal controls to handle public funds, the \$15,000

contribution would be made through RRWA; however, if RRWA did not meet the criteria to handle public funds, the contribution in the amount of \$15,000 would be made directly to YPCD. The motion was seconded and passed with twelve Directors voting for the motion (Director Greg Larson had left the meeting), and one Director (Stan Laybourn) voting against the motion.

Next, the Board considered where its next quarterly meeting would be held. The schedule indicates that the meeting will be held in Holyoke, Colorado; however, if the Holyoke community meeting facility is not ready, the meeting could be held in Haxtun. Director Garry Kramer volunteered to find out the construction status of the Holyoke community facility and report back to Mr. Murphy.

Next, a motion to write a letter to support the request made by Bethleen McCall for the Yuma Conservation District extension was made, seconded, and passed unanimously.

Director Enderson then asked if the Board intended to write a letter to the State Engineer requesting the release of out-of-priority storage in Bonny Reservoir. Mr. Slattery stated that it was an advantageous time to release the water. A motion to request the State Engineer to release the out-of-priority storage in Bonny Reservoir was made, seconded, and passed unanimously. Legal counsel was directed to draft a letter for signature by President Coryell.

EXECUTIVE SESSION

At 3:50 p.m., a motion was made pursuant to section 24-6-402(4), C.R.S., to enter into executive session to develop a strategy for negotiations for the purchase, acquisition, or lease of water rights and to receive legal advice from the 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 5:10 p.m., the executive session ended.

There being no further business, President Coryell adjourned the meeting.

Secretary

Date