

MINUTES OF A SPECIAL MEETING  
OF THE BOARD OF DIRECTORS OF THE  
MOUNT WERNER WATER & SANITATION DISTRICT  
HELD AT THE FISH CREEK WATER FILTRATION PLANT  
STEAMBOAT SPRINGS, CO 80487  
8:00 A.M. Friday-June 24, 2021

DIRECTORS PRESENT: Gavin Malia, John Shively, Don White, and Alan Koermer  
Wade Gebhardt (Via Microsoft Teams)

DIRECTORS ABSENT: None

STAFF PRESENT: Frank Alfone, General Manager  
Cat Smith, Office Administrator  
Tom Sharp, General Counsel

OTHERS PRESENT Jeff Houpt, Attorney with Beattie, Houpt and Jarvis, LLP (Via Microsoft Teams)  
Jonathan Kelly, Professional Engineer with Wright Water Engineering, Inc. (Via Microsoft Teams)

**I. ESTABLISHMENT OF QUORUM AND CALL TO ORDER**

Mr. Malia stated that a quorum was present and called the meeting to order at 8:09 A.M.

**II. ACKNOWLEDGE PUBLIC**

There was no public present.

**III. APPROVAL OF AGENDA FOR MEETING**

Mr. Malia asked if there were any changes to the agenda. There were no changes.

MOTION: To approve the agenda.

APPROVED: Vote 5-0

**IV. PUBLIC COMMENT**

None.

**V. WATER RIGHTS – 2020 ABANDONMENT LIST**

Mr. Alfone gave a brief introduction of this topic stating that every 10 years the State and Division Engineer (#6) draft the water rights abandonment list. The list of water rights that are contemplated for abandonment either do not record enough beneficial use over the past 10 years (less than the decreed water right) or are noted on the list for other reasons. The list came out in early 2021. The District had approximately 100 rights listed, all with pre-compact adjudication dates but with alternative points of diversion (APD). The State Engineer had instructed all Division Engineers not to include any pre-compact rights on the abandonment list. However, the Division #6 engineer made the decision to include the APD's since they were included as part of the District's decreed augmentation plan (W-959) which was approved after the compact date. Mr. Alfone met with Mr. Houpt, Mr. Kelly, and Colorado

River District representatives about this matter. The GM of the River District then contacted the State Engineer. As a result of this call, the State Engineer instructed the Division Engineer to remove the District's water rights, associated with the APD's from the list and was subsequently agreed to in a few e-mail correspondences from the Division #6 Engineer to the District. The new list will come out at the end of the year. There are additional post compact rights remaining on the list so those rights need to be reviewed to determine which of them the District should protest, if any.

Counsel Sharp noted that once a water right is protested (must be by June 30<sup>th</sup>, 2021), the Division #6 Engineer has until Dec 31<sup>st</sup>, 2021, to decide how to react. Then, if a water right is still on the second list (by December 31<sup>st</sup>, 2021) that was protested, the protester has the right to formally contest that listing by filing a water court case. The court case process typically takes around 2 years. It was recommended by Mr. Sharp that the District deliver a letter to the Division #6 Engineer that all District pre-compact rights noted on the original list are being protested so it is recorded and satisfies the Colorado Revised Statutes about this matter.

MOTION: To authorize the General Manager to file a written protest letter with respect to all the pre-compact rights on the 2020 Abandonment List, and both hand-deliver and e-mail it to the Division #6 Engineer.

APPROVED: Vote 5-0

The Water Matters Committee also recommended that this action be taken as noted in the motion.

Mr. Kelly reviewed several spreadsheets that identify the Districts Water Rights. He explained that the pre-compact rights were from historical irrigation water rights used to water lands now included in the District. The rights in the W-959 case were converted from irrigation rights to year-round municipal rights. The rights were also designated an alternative point of diversion, in addition to the original point of diversion and water is allowed to be taken/used at either point. A lot of the District's rights on the abandonment list were redundant due to the alternate points of diversion. The abandonment list process has been redefined, whereas they used to only list rights that were not being used and were to be abandoned completely, whereby now there is partial abandonment component and the list limits users to what they have historically diverted, thus a partial abandonment of a water right may result. Demonstrating actual use is the best way to provide clarification and proof of use and sent to the Division Engineers office for recording.

The peak diversion of the Mount Werner Water Right's portfolio in the preceding 10 years was 5.15 cfs. The list shows that the Districts most senior (first) water rights were used but it is hard to demonstrate historical use of the more junior water rights. However, a municipal water provider has the obligation to maintain a water rights portfolio which will account for future water demands in their planning documents and within the District boundary. A 50-year planning horizon is fairly typical. The District and City had a Water Supply Master Plan prepared in 2019 that looked at future water demands for the next 50 years. The plan identified

Peak Daily Demands projected in 2070 of 10 mgd which equates to 15.5cfs. The District needs to determine which rights to protect in order to meet projected future demands. The 15.5 cfs could be satisfied with the Districts water rights portfolio that are all pre-compact rights (totaling 17.49 cfs). Mr. Kelly did not see a defensible basis of being able to protest the inclusion of post-compact rights noted on the list if the future demands will be met with pre-compact rights. Additionally, there were no special attributes of any of the listed post compact rights that the pre-compact rights did not have that would cause them to be considered for protest. Per the W-959 decree, the Burgess Creek Pipeline (water right listed) location could still be used under the more senior water right if the junior water right is abandoned. The more junior A-E wells are listed as alternative points of diversion for the Fish Creek Municipal Intake and thus can also be used at their existing locations to exercise the pre-compact water rights. The rights that would potentially be abandoned would still leave the District 17.49 cfs, all pre-compact rights and above the 2070 projected demand of 15.5 cfs per the Water Supply Master Plan. Agreeing to allow the junior water rights on the list to be abandoned would possibly also shed more light on the W-959 Decree and its operational components.

The Sinden Seepage Ditch is a 2.5 cfs irrigation water right. Ed McArthur owned all of the water right originally, and when the District purchased a portion of the Yampa Meadows property from Mr. MacArthur, the water right was then divided; 1.36CFS remained with Mr. McArthur and he conveyed 1.14 cfs to the District. The Division #6 Engineer is proposing to abandon 1 cfs out of the 2.5 cfs leaving 1.5 cfs to irrigate the Districts and Mr. MacArthur's property. The diversion records indicate the water right was used on 35 acres. Mr. Kelly seemed to think that abandoning 1 cfs as listed might have been an assumption as to how the usage was determined for the 35 acres. Mr. MacArthur filed a protest and the consensus of everyone was to have the District protest this listing also.

MOTION: To authorize Attorney Houpt to file the application to protest the Sinden Seepage Ditch 1.0 cfs water right listed and to not protest the remainder of the post compact water rights on the abandonment list.

APPROVED: Vote 5-0

The Water Matters Committee also recommended that this action be taken as noted in the motion.

The Board discussed getting the Burgess Creek Pipeline diversion structure back in working condition and investigate other infrastructure requirements necessary and in case it was needed for a backup raw water supply. Also, further investigation will commence about the condition of vertical wells A-E that are no longer in production to create a possible infrastructure redundancy if they were needed to produce raw water in the future.

## **VI. REPORT OF GENERAL COUNSEL**

No report given.

## **VII. UNFINISHED BUSINESS**

A. Staff or Directors may raise for discussion any new business related to the business of the District.

There was no unfinished business.

**VIII. NEW BUSINESS**

A. Staff or Directors may raise for discussion any new business related to the business of the District.

Mr. Alfone informed the Board that the District recently mailed to all customers a follow up Customer Update Letter about the test results for Haloacetic Acids (HAA5) received about the 2<sup>nd</sup> Quarter water samples. The District did not have a violation in Q2 but since the running annual average remains higher than the CDPHE-mandated MCL, the District had to notify all customers.

**IX. ADJOURN**

The next Board meeting is July 16th, 2021, at 8:00 A.M.

There being no further business, the meeting was adjourned at 9:34AM.

Respectfully submitted,

Frank Alfone, Secretary/General Manager