

MEETING MINUTES
SPECIAL MEETING
BOARD OF DIRECTORS
MIDDLE PARK WATER CONSERVANCY DISTRICT

Frisco – Summit County Community and Senior Center, Ute Room

To Join via Zoom Video Conference:

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To Join by Phone, Dial (346) 248-7799, Enter Meeting ID 859 4476 3716

August 9, 2021, 1:00 p.m.

Directors:

Jack Buchheister – President (present)
Sean Flanigan – Vice President (present by Zoom)
Jim Lenzotti – Secretary (present)
Stan Cazier – Treasurer (present)
Mike Eytel (present)
Gary Bumgarner (present)
Tom Long (not present)

Others present in person:

MPWCD Water Resources Consultant & Hydrologist Kristina Wynne
MPWCD Attorney Kent Whitmer
MPWCD Attorney Katie Randall
Keith Riesberg, Manager, Town of Winter Park
Janet Williams (LRE Water) on behalf of the Town of Winter Park

Others present via Zoom:

Kelsey Briggs (LRE Water) on behalf of the Town of Winter Park
Jon Mayberry (Spronk Water Engineers) on behalf of Elk Creek Vista
Mary Elizabeth Geiger (Garfield & Hecht) on behalf of the Town of Winter Park

Jack Buchheister called the meeting to order. The Board generally followed the agenda, and the following topics and resolutions were discussed and passed, as the case may be, during the meeting (a copy of the agenda is attached):

Kent Whitmer provided a summary of the policy attached as Exhibit B to the MPWCD Bylaws and to the water allotment contracts that are issued by MPWCD. The policy sets forth restrictions and conditions that are applicable to water contract requests made by any user who, or whose predecessor, has sold or otherwise conveyed water rights out of the Colorado River Basin for any parcel that either had water rights that were conveyed out-of-basin or if the parcel was part of a larger parcel at the time that water rights were conveyed out-of-basin. The policy was the basis for denial of two contract applications that were considered at the July regular MPWCD meeting, submitted by the Town of Winter Park and Elk Creek Vista, respectively. Following denial at the

July meeting, MPWCD staff has had several conversations with representatives of the contract applicants, wherein applicants shared their concerns with this policy and its application to these particular requests.

Following the July meeting, MPWCD staff researched the background and history behind this policy, the reasons for its enactment, and how its applicability and interpretation could affect future MPWCD operations. Given the additional information that was found during such research, it was decided that the topic of today's meeting would be narrowed to discussion of this policy, potential changes to the policy, and reconsideration of the contract application denials, if appropriate. The applicants will be given a chance to provide their comments following Board discussion and before potential reconsideration of the denials.

Mr. Whitmer explained the impetus behind the policy, which arose from actions taken in the 1980s on the Front Range by the City of Thornton. At that time, Thornton was buying up many irrigated farms in northern Colorado with the intent of drying them up to use for Thornton's municipal water supply. Thornton went to Water Court to get this change approved, which eventually was appealed to the Colorado Supreme Court, with a decision issued in 1997 allowing the change of use. Shortly thereafter, the Middle Park Board instituted this policy in 1998. Part of the motivation for MPWCD to enact this policy was to discourage similar actions in Grand and Summit Counties. Furthermore, it also appears that MPWCD did not want to play a role in enhancing the value of properties that had previously profited by selling off water to transbasin diverters. If a property owner sold their water to a transbasin diverter, and were then able to buy water from Middle Park at a much lower rate, this would be problematic on several fronts: it would allow the property owner to profit at the expense of the taxpayers; it would utilize a portion of Middle Park's finite water portfolio, possibly to the detriment of future contractees that had not conveyed their water off their land; and it would indirectly promote transbasin diversions in an already-taxed water supply in the Upper Colorado River Basin.

Mr. Whitmer then explained the practical challenges in applying this policy. As matters currently stand, MPWCD staff would essentially need to do a title search for the water rights on each parcel that could potentially be subject to the policy. This would be incredibly time-consuming and resource-intensive, and does not guarantee consistent results for all applicants. Kent explained the different policy implications if the applicant is the party who decided to convey water rights separately from the land, vs. if the conveyance was made 70 years and four owners ago. After the July meeting, MPWCD staff located a map that displays where the Denver Water Board owns property in Grand County, which could facilitate the determination going forward. Kent requested guidance from the Board to address these practical implications.

Mr. Whitmer then explained that the Board has discretion to maintain or alter this policy as it sees fit; there is no requirement in the statutes or by rule of law that requires the policy to remain in place as it currently stands. Furthermore, the Board has the discretion to either approve or deny contract applications on a case-by-case basis under the current policy; there is discretionary language in the policy that allows for such individual consideration.

Next, Kristina Wynne presented information to the Board regarding the water supply that MPWCD has already contracted to date, the amount that has not yet been contracted, and the amount that is

actually used by contractees. Kristina provided a table demonstrating the average amounts that had been contracted out from 2018-2021, which averaged 0.9 acre-feet of permanent contracts issued for Windy Gap each year. Ms. Wynne explained that there are existing Windy Gap contractees who could be served by Wolford contracts for purposes of replacement of their depletions given their location; for example, water users in Summit County would not be subject to the ISF call below Windy Gap, so Wolford water would meet their needs. Ms. Wynne clarified that the amount of water that had been contracted out for Windy Gap water is different from the amount that is actually used. This is particularly true for the original Windy Gap contractees, who were given contracts for large amounts of water but do not necessarily request that such water be released each year. Given that the Board now has a restriction that no permanent contracts will be issued in amounts larger than 5 acre-feet, the Board can expect that no large contracts for augmentation water will be issued in the future. Additionally, several contractees request contracts for double the amount that they actually need, to ensure that they will have a replacement supply if there is no Windy Gap water available in a given year since the Windy Gap supply is not yet firm. This further distorts the difference between the amounts of water that have been contracted out compared to the amounts that contractees actually need or request to be released on their behalf.

Board discussion followed. Jim Lenzotti expressed that the policy appears to be a good one, but that amendments may be in order so MPWCD has guidelines and standard operating procedures for how to apply this policy. The goal of the policy should be to promote good water policy in Grand and Summit Counties. In the case of a municipal water provider like the Town of Winter Park, perhaps exceptions should be made. Perhaps a different pricing structure should be used for contracts issued to properties where water had been separately conveyed, to address some of the profit motives that drove the formation of the policy in the first place. Mike Eytel added that this discussion has provided a lot of background information about this policy; it isn't so much an antiquated policy, but it needs to be emphasized that it is discretionary. The Board needs to take into account the merits of each application when deciding whether to grant or deny the request on the basis of this policy. The Board generally discussed the need for another planning session to address these policy considerations, and determining a more specific operating procedure to guide these decisions in the future. Gary Bumgarner expressed his concerns about the effects of a Compact Call, and how that will affect the District's operations.

Stan Cazier provided additional history of this policy's enactment and MPWCD's history with the Grand County contract that is used to augment the Garage Well: in the 1950s when Denver was buying up these water rights in the Fraser Valley, it was buying old, senior water rights from the early 1900s. Denver became one of the largest landowners in Grand County. In the 1980s, several of these water rights (totaling approximately 35 c.f.s.) were put on the abandonment list. MPWCD protested this, and ended up litigating the issue to the Colorado Supreme Court. One of the results of the abandonment was Denver got the entire 35 c.f.s. without any consumptive use analysis in Water Court. It is common knowledge that the Fraser Valley is the most troublesome area of water rights and supply in the District. MPWCD, by virtue of the Windy Gap settlement negotiations, received 3,000 acre-feet of Windy Gap water. As part of those negotiations, MPWCD agreed to those big initial contracts issued at either very low or no cost to West Slope entities, including a contract for 15 acre-feet to Grand County. This took place in 1988 before the trans-basin restriction policy was enacted. Later, MPWCD was approached by Grand County; because Grand County did

not have a water attorney at the time, Grand County asked MPWCD to get a decree for the Garage Well. MPWCD did this, and listed the 15 acre-foot contract as the source of augmentation water for the Garage Well. Because the 15 acre-foot contract was issued before the trans-basin restriction policy was in place, there were no restrictions as to its use on a parcel of land that had previously been conveyed separately from its water rights. Discussion then moved to the current uses by Grand County for this 15 acre-foot contract. Kristina Wynne reported that Grand County uses almost all of this water each year, if not the entire amount, to augment the Garage Well, the Landfill Well No. 1 and under administrative exchange to divert from surface water sources for dust mitigation/road maintenance in late summer months.

Board discussion followed. Sean Flanigan said that he was not aware that the Board had discretion to apply or not apply this policy to contract requests. Mike Eytel explained the general parameters of the River District's marketing policy for issuance of water contracts. A copy will be provided to the Board following the meeting. Kristina Wynne provided a table demonstrating the historical call data for the Colorado River ISF right below Windy Gap. By showing how frequently the call comes on, it's easier to see why a River District contract wouldn't necessarily be sufficient for applicants: they need Windy Gap water to release above this ISF call. Jack mentioned that to the extent that the Board can help put this property into productive use, it would be a good thing. Stan added that Denver hasn't been selling this property off partly because the effects to the streamflow would be horrendous. Jack added that Moffat diversions are going to be shut down for maintenance in the next month or so, so we'll be able to see the extent of impacts that Denver Water operations have on the system.

The meeting then opened to the public for comment.

Keith Riesberg, the Town Manager for the Town of Winter Park, introduced himself. Janet Williams introduced herself and Kelsey Briggs, in attendance from LRE Water on behalf of the Town of Winter Park. Janet welcomed any questions that the Board may have about the project that is proposed in the application. She explained that not having access to Windy Gap water would pose a significant problem to the proposed project. Keith Riesberg explained the history of the transit facility project, including involvement by Grand County as a partner and the 50-year lease of the subject property by the Town of Winter Park from Grand County. Janet explained that the augmentation plan held by Grand County for the Garage Well is not going to be enough to cover the additional uses proposed by the Town of Winter Park; Grand County uses that 15 acre-feet for other purposes previously discussed. Mary Elizabeth Geiger joined the meeting, and thanked the Board for its reconsideration of its decision to deny this contract request. She reiterated that this policy has room for discretion and is not absolute. Further details of the contract request were discussed with representatives of the Town of Winter Park, including the amount of water requested, the proposed uses, and the efficiency of the washing facility, which reclaims a large percentage of the water that is used for bus washing. Further discussion included the Town's methodology for calculating lagged depletions and return flows from the septic system. The depletions to the system will drastically decrease after the first year of operations, once the return flows even out and taking the lagged depletions into account. Janet Williams indicated that, in the event of an ISF call on the Fraser, the Town would likely truck in water to continue operations. Further discussion included the MPWCD Board's acknowledgment that it is important to maintain

partnerships with other water providers, and to encourage cooperation on future projects in the Fraser Valley, particularly given the storage and supply challenges in that area. The Board also asked representatives from the Town of Winter Park if they would be willing to adjust their contract amount to a smaller amount of water after operations have been in place for long enough to know how much will be needed once lagged depletions even out. The representatives of the Town of Winter Park indicated that they would be open to evaluating that as an option once their operations are up and running.

Following discussion, a motion was made to rescind the Board's denial of this contract application made at the July Board meeting, and to approve the contract request in the amount of 3.4 acre-feet, so long as there is a stipulation that the contract amount will be re-evaluated once operations are up and running to determine the amount that is actually needed once lagged depletions are taken into account, and such contract amount will be reduced accordingly at that time. The motion was made by Gary Bumgarner, seconded by Jim Lenzotti. Stan Cazier requested an amendment to the motion to include the reasoning behind this decision to approve this specific contract request; namely that the application was submitted by a municipal provider, that the contract will provide specific benefits to the greater population in the District's service area, and that MPWCD desires to maintain good relations with other water providers in the Basin. Gary accepted this amendment. Motion passed unanimously.

The next topic for discussion was the reconsideration of the Elk Creek Vista application that was denied at the July meeting.

Kent Whitmer summarized the Elk Creek Vista application, including the history of the property and proposed uses contemplated by the contract request. A 9-acre parcel will be served by this contract. It was originally part of a 430-acre ranch, but this particular portion of the land is cut off by a county road. The developer wants to build a single family home with minimal outdoor use. The larger ranch was owned by a partnership that conveyed its water rights to Denver Water in the 1950s. The property has passed through a series of subsequent owners before the current owner took title. Jon Mayberry (Spronk Water) spoke on behalf of the applicant, and offered to answer any questions that the Board members may have. In addition to indoor use within a single-family home, the application proposes 1000 square feet of outdoor irrigation for landscaping near the home, no livestock watering. The contract application requests 0.3 acre-feet total: 0.2 from Wolford Mountain Reservoir, 0.1 from Windy Gap. Jim Lenzotti asked if this is an urgent contract request. Jon responded that the developer is trying to sell the property, so if they can't get an augmentation plan to replace the depletions, then they'll need to go elsewhere. The Board discussed that the specific situation of this contract presents different considerations than the application submitted by the Town of Winter Park, and the Board needs to develop a standard operating procedure to ensure equitable policy enforcement before it can make a decision. **Following further discussion, Stan Cazier made a motion to table the reconsideration of this application until the regular Board meeting in October. Seconded by Sean Flanigan, motion passed unanimously.**

The last order of business was scheduling a planning session. The Board scheduled a planning session for September 8 from 1-4 P.M. in Summit County. Topics for discussion at the planning session were proposed.

The meeting adjourned at 3:00 P.M.



Jack Buchheister, President

NOTICE OF MEETING AND AGENDA
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August 9, 2021, 1:00 p.m.

1. Call to Order
2. Discussion regarding the District’s policy entitled, “Middle Park Water Conservancy District Bylaws (Relating to Water Allotment Contract Restrictions), attached as Exhibit B to the District’s Rules/Regulations & Bylaws.
3. Open Forum – Opportunity for Public Comment
4. Reconsideration of Contract Applications Denied at the Regular Meeting of the Board, July 2021 *
5. Adjournment

* Denotes an action item.