

MEETING MINUTES  
REGULAR MEETING  
BOARD OF DIRECTORS  
MIDDLE PARK WATER CONSERVANCY DISTRICT  
Kremmling Town Hall

**Zoom Video Conference Option:**

<https://us02web.zoom.us/j/87945162304?pwd=YW5jcG13WklEVmU3cmVlOXRxK0Y1UT09>

**To Join by Phone, Dial (346) 248-7799, Enter Meeting ID 879 4516 2304**

October 13, 2021, 1:00 p.m.

Directors:

Jack Buchheister – President (present)  
Sean Flanigan – Vice President (present)  
Jim Lenzotti – Secretary (present by Zoom)  
Stan Cazier – Treasurer (present)  
Mike Eytel (present)  
Gary Bumgarner (present)  
Tom Long (present by Zoom)

Others present in person:

MPWCD Water Resources Consultant & Hydrologist Kristina Wynne  
MPWCD Attorney Kent Whitmer  
MPWCD Attorney Katie Randall

Others present by Zoom:

Sue Avre, Division 5 Water Commissioner  
Neal Misbach, Division 5 Water Commissioner  
Timothy Ritschard, Division 5 Water Commissioner  
Troy Wineland, Division 5 Water Commissioner  
Paula Lariviere, member of the public  
Jon Mayberry, Spronk Water Engineers  
Kyle Whitaker, Northern Colorado Water Conservancy District  
Josh Blanchard, Summit County Commissioner

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):

**1. CALL TO ORDER**

- A. Approval of Minutes from Regular Meeting held July 14, 2021
- B. Approval of Minutes from Special Meeting held August 9, 2021

\* Denotes an action item.

- Stan Cazier noted a change to the July 14, 2021 regular minutes, item 7.C: the minutes should indicate that the water application was submitted by Northern *Colorado* Water Conservancy District, not Northern Water Conservancy District. **Gary Bumgarner moved to approve the minutes from both meetings including the proposed amendment to the July 14 minutes, seconded by Mike Eytel. Motion carried unanimously.**

## 2. BOARD ADMINISTRATION

### A. Proposed 2022 Meeting Dates:

- The following dates were confirmed as provided in the MPWCD Bylaws for Board meetings in 2022: January 12, April 13, July 13, and October 12. **Gary Bumgarner moved to approve the proposed meeting dates, seconded by Sean Flanigan. Motion carried unanimously.**

### B. Board Appointments:

- Two Board terms are set to end in January 2022: one appointment will be made from Grand County and one appointment from Summit County. Notice will be published and applications received for the new terms, as required by statute.

### C. Resolution to Set Board Member Compensation

- At the long-term planning and budget workshop in September, the Board discussed the rate of compensation for Board member service. Currently, the compensation payable to each Board member shall not exceed \$1,200 each year. Under C.R.S. § 37-45-115(3), “[e]ach member of the board shall receive as compensation for the member’s service such sum as shall be ordered by the court, not in excess of two thousand four hundred dollars per annum, payable monthly, and necessary traveling expenses actually expended while engaged in the performance of the member’s duties.” Included in the meeting materials is a Resolution, Motion, and Proposed Order to request that the Court amend the compensation payable for service on the Board, bringing the maximum amount of compensation in line with what is allowed by statute. In recent years, service on the Board has entailed more frequent meetings, more time-consuming review of materials presented, and increased obligations of service. **Following discussion, Gary Bumgarner voted to approve the Resolution, seconded by Sean Flanigan. Motion carried unanimously.**

## 3. REPORTS

### A. Financial/Banking

- Included in the meeting materials were the following financial statements: Profit & Loss Budget vs. Actual (January 1 through September 30, 2021), Balance Sheet (October 1, 2021), Check Register (July 1 through September 30, 2021), and Accounts Receivable Aging Summary (October 1, 2021). Mr. Whitmer reported as follows: income is on track for this time of year, and expenses are lower than typical. At the last meeting the Board

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discussed sending out notices that interest would be charged for outstanding invoices. Some of the accounts who are shown as outstanding on the Accounts Receivable report have since paid. We are looking to be 100% compliant. **Following discussion, Stan Cazier moved to approve the financial reports and check register, seconded by Sean Flanigan. Motion carried unanimously.**

#### B. Budget

- The Board reviewed and discussed the proposed budget for 2022. The Board discussed the budget ramifications given the additional water that could potentially be supplied under the SWSP to replace depletions associated with revegetation efforts in the East Troublesome burn scar. Given the conservative amount of water that was ordered from the River District and the fact that Windy Gap water is available this year, it was determined that no change to the proposed budget was warranted. In the past WPRA has requested a short-term water lease of 25 acre-feet, but they will not need this water going forward now that the pumpback has been constructed and is anticipated to begin operating. The Board discussed potential revenues from other short-term lease requests that could make up for this change in income. Budget resolutions were discussed and reviewed, and the timing was discussed for receipt of final certification of values from County Assessors. **Following discussion, Gary Bumgarner moved to approve the Proposed Budget for 2022, and to adopt the Resolution to Adopt Budget, the Resolution Designating Excess to General Reserve, the Resolution to Set Mill Levies, and the Resolution to Appropriate Sums of Money. Motion was seconded by Jim Lenzotti, and carried unanimously.**

#### C. Attorney

- The Attorney Report and Action Items Status List were included in the Board packet materials. Mr. Whitmer reported on a potential collaboration that has arisen since the packets went out. Mike Repucci is an attorney in Boulder whose client, Ron Jones, owns a property just East of Tabernash. The property includes a few ponds right on the Fraser River. The 5.5 acre pond was created when the railroad overpass was constructed; the project required gravel which was excavated from the subject property, exposing groundwater. According to Mr. Repucci the groundwater was exposed before 1981, which could result in favorable treatment to the owner. Another pond on the property is approximately 1 acre in size. Mr. Repucci has inquired as to MPWCD's potential interest in investigating a mutually beneficial arrangement whereby MPWCD could provide support to Mr. Jones in the form of potential financial investment for improvements to the pond and/or legal support in Water Court, and in return MPWCD could use water from the ponds for augmentation purposes and to facilitate releases to the Fraser River. Ms. Wynne reported that neither of the ponds currently have water rights decreed. This proposal could be of benefit to MPWCD because the ponds are located right on the Fraser River and could be used to meet an ISF call on the Fraser River from the confluence of Crooked Creek down to the mainstem of the Colorado. This is the only ISF right on the Fraser River that has historically called. Releases could be made in a

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similar manner as Sunset Ridge Pond. Further research and thought would be necessary to work out the details of management, maintenance, releases, etc. and the costs that could be involved in deepening and/or lining the ponds. The Board discussed potential pros and cons with this arrangement, and acknowledged that much depends on the details of the proposed arrangement. Following discussion, the Board directed MPWCD staff to continue conversations with Mr. Repucci and to investigate further details of what this arrangement could entail, potential funding sources, and potential benefits to MPWCD.

#### D. BBA Report

- **Shoshone:** Kristina Wynne reported that the Shoshone Power Plant is expected to come back online this week. The Board discussed the impacts to the river caused by flooding and slides in Glenwood Canyon, which have compounded maintenance and upkeep issues with the power plant. Crews are working to dig through 30 feet of rock and mud, addressing structural issues with the road, etc. Additionally, there are a limited number of technicians who know how to fix mechanical issues in the aging power plant. Ms. Wynne reported that James Heath has been sending daily updates on the status of the Shoshone Outage Protocol while the plant has been down.
- **Sunset Ridge:** Sunset Ridge HOA may be draining the pond entirely this winter for maintenance. MPWCD will want to claim credit for these releases if possible.
- **East Troublesome SWSP:** the goal of the SWSP was to release water to make up for the depletions caused by outdoor use of people who want to revegetate areas within the burn scar but who currently have household use only permits. A blanket SWSP was drafted to account for this. Several wells are located within the burn scar area that would have lagged depletions outside of the 5-year time limit of the plan, so the plan was narrowed down to only account for wells that are within the time constraints of the SWSP. In total, the estimated depletions of such outdoor use is estimated to be 165 acre-feet for the first year. This is a conservatively high estimate, because it assumes 100% participation by owners within the burn area. The 35-day public notice period has begun. So far, BBA has received notice from one landowner in the Grand Valley in support of the plan. The Division Engineers have voiced potential obstacles to the operation of the plan. First, due to permitting issues, the SWSP will need to not only cover the new depletions associated with irrigation, but also the indoor uses that are associated with those wells. A SWSP cannot be used to replace the partial depletions associated with the wells. Ms. Wynne estimates that the indoor uses would likely account for an additional 5-10 acre-feet of water. The second issue identified by the Division Engineers is that by statute the SWSP cannot be used to account for depletions that cannot be met in the event of a call. Only a few calls have historically come on that could be impacted, but the Division is likely unable to approve the SWSP without a demonstration of the ability to replace to a potential calling right. Two potential ways to address this issue are (1) to find sources of local supplies that could be used to satisfy a call, or (2) to secure no-call agreements from potentially affected water rights owners. The first option presents logistical challenges that would likely make the option unworkable. As for the option of

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no-call agreements, it would be unlikely to get a no-call agreement from every ditch owner on the tributaries. It could be more feasible to get no-call agreements for all of the ditch owners that have historically made a call, but they would have to agree not to call for the full 5-year term of the SWSP. Another option would be to limit the operation of the SWSP so it will only account for depletions caused by wells that impact the mainstem and not any of the tributary ditches. This would significantly limit the extent of coverage under the SWSP that was originally contemplated. A statutory change would be needed for these limitations to not constrain the operation of the SWSP as the parties initially intended. Board discussion followed, including inquiries and potential demand from affected landowners, local rebuilding efforts, the overarching goal to replace depletions that would not otherwise be replaced, and potential ways to address the statutory limitations without abandoning the SWSP entirely. Updates were provided by Mike Eytel and Kyle Whitaker regarding Northern and Grand County's work on the EWP program for the East Troublesome burn area. Following discussion, the Board directed MPWCD staff to continue to respond to the need as it arises; to assess demand from landowners, investigate the option of entering into no-call agreements with water rights owners that may call, and to address any other potential options that arise. Ms. Wynne indicated that any amendments to the SWSP would trigger another 35-day comment period. If we want the SWSP to be in effect for the next irrigation season, a new SWSP would need to be submitted in early Spring. The Board decided to discuss and assess at the January meeting.

- **Learning by Doing:** LBD is looking to do an update to the Grand County Stream Management Plan. They have requested letters of support from involved entities, including MPWCD. The Board directed Jack Buchheister to sign the form letter provided.
- **Contracts for Evaporative Depletions:** Ms. Wynne tallied up the MPWCD contractees who already have contracts to replace evaporative depletions. 8 contractees use at least a portion of their MPWCD contract water to replace evaporative depletions. A conservatively high estimate is that approximately 26 or 27 acre-feet is released annually for this purpose.

#### 4. REVISIONS TO BYLAWS AND RULES/REGULATIONS \*

Given the potential implications that the discussion may have on decisions regarding contract requests, the Board next discussed Revisions to the Bylaws and Rules/Regulations of the District (indicated as No. 6 on the Meeting Agenda).

- Kent Whitmer explained that he and Katie Randall reviewed the Bylaws, the Rules/Regulations, and the attachments to water contracts. These were updated and revised, including general housekeeping and to incorporate changes discussed at recent meetings. Redlined changes to these documents were included in the meeting materials. A primary focus was to give more clarity and direction to MPWCD staff regarding their

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authority to act on certain contract requests, and when a decision must be put to the Board for determination. Furthermore, discussions at recent Board meetings suggest that changes may be warranted for treatment of requests for water contracts to replace evaporative depletions from ponds. It has been suggested that perhaps a different pricing structure could apply for requests of this type of water use. Mr. Whitmer views the pricing issue as a separate consideration from changes to the Bylaws and Rules/Regulations, and could be slated for discussion at the April meeting when the Board sets its annual pricing structure for water deliveries. The redline is a rough draft of potential changes, and MPWCD staff welcomes Board feedback in this regard. Mr. Cazier indicated that problems would arise if we treat older contractees differently from people who are getting new contracts. It could be as simple as including language that indicates that water may not be available in certain areas due to over-appropriation. This is particularly an issue in the Fraser Valley. MPWCD needs to make sure that the onus is on the applicants and their engineers to make sure that enough water will be available. MPWCD has not and cannot take on this responsibility. Board discussion followed. Mr. Buchheister directed MPWCD staff to address the concerns brought up by Mr. Cazier and include this item for discussion at the January meeting.

## 5. CONTRACTS / REQUESTS

### A. Reconsideration of Elk Creek Vista Contract Application \*

- Mr. Whitmer provided a summary as follows: This application has been before the Board twice now: at the July meeting, where the request was initially denied, and then for reconsideration at a Special meeting in August. At the August meeting, this request was laid over for consideration at today's meeting, after some suggested changes were proposed to the Bylaws and Rules/Regulations, particularly to the policy articulated in Exhibit B for properties affected by out-of-basin transfers of water. Based on the discussion that just took place, it sounds like the proposed changes to the Bylaws and Rules/Regulations are in line with the Board's thinking as to the handling of these requests in the future. Right now, under the existing Bylaws and Rules/Regulations, the Board has discretion to approve or deny a request even if there was an out-of-basin transfer in the past. The present application seeks an augmentation contract for 0.3 acre-feet of water total (0.2af from Wolford, 0.1af from Windy Gap) for indoor domestic use, one hot tub, 1000 square feet of outdoor irrigation, and fire protection. Board discussion followed, including the uses proposed in the application, the amount of outdoor irrigation proposed, and whether granting the request aligns with the interests of MPWCD. **Following discussion, Mike Eytel moved to approve the application, seconded by Jim Lenzotti. Discussion ensued regarding the accuracy of the estimates of evaporation for the hot tub. Motion carried unanimously.**

### B. Ratify Gold Medal Ranch Short Term Water Request \*

- Mr. Whitmer reported that this request for a short-term contract has been administratively approved. The application requests a short-term contract for 1.4 acre-

\* Denotes an action item.

feet of water to replace evaporation from a gravel pit. The application indicates that this is the last year that a short-term contract will be needed; MPWCD has approved similar requests for Gold Medal Ranch in the past. **Following discussion, Stan Cazier moved to ratify approval of this short-term contract request, seconded by Gary Bumgarner. Motion carried unanimously.**

C. Peyton Ranch Contract Application \*

- Mr. Whitmer disclosed that he represented the Peytons in the acquisition of the subject real estate, but does not represent them in the water contract application. Included in the meeting materials was a contract application for 0.4 acre-feet of water total (0.2 acre-feet each from Wolford and Windy Gap) for domestic use in one single-family residence, irrigation of up to 1,000 square feet, and livestock watering of up to four horses. **Following discussion, Gary Bumgarner moved to approve this contract request, seconded by Mike Eytel. Motion carried unanimously.**

D. Boenish Contract Application \*

- Mr. Whitmer disclosed that he represented the Boenishes in the acquisition of the subject real estate, but does not represent them in the water contract application. Included in the meeting materials was a contract application for 0.4 acre-feet of water total (0.2 acre-feet each from Wolford and Windy Gap) to replace depletions associated with wells for two residential units on the property. The wells will be used for indoor use and up to 1,000 square feet of outdoor irrigation for each residence. **Following discussion, Stan Cazier moved to approve the application, seconded by Mike Eytel. Motion carried unanimously.**

E. Cancellation of Contract: Grand Enclave Investments \*

- Included in the meeting materials is correspondence from Grand Enclave Investments, expressing their desire to cancel their contract with MPWCD. The original plan was to develop their land into seven tracts and to do an augmentation plan for those seven tracts. According to applicant, those plans have been abandoned and they no longer have need for MPWCD water. **A motion to approve the request to cancel this contract was made by Gary Bumgarner, seconded by Sean Flanigan. Motion carried unanimously.**

## 6. DEMAND MANAGEMENT & COMPACT ADMINISTRATION

A. Report and Discussion

- Speaking in an individual capacity and not as a River District employee, Mike Eytel made a report on recent developments in the discussions across the state regarding Demand Management and Colorado Compact administration. Included in the meeting materials was a report by the Colorado River District Demand Management Stakeholder Advisory Committee. The committee was formed with the intent of understanding and articulating the perspective of water users on the West Slope.

\* Denotes an action item.

- The Board discussed the potential economic impacts of reducing irrigation, concerns about speculation from outside users, and the need for a Demand Management program to be adaptive; the program must have flexibility to adapt as we continue to collect new information.
- Mr. Cazier provided additional information about Demand Management and the impacts of Compact Administration on MPWCD operations. Mr. Cazier emphasized that MPWCD needs to continue to monitor these situations as they evolve, and to be involved in these conversations to ensure that MPWCD has a seat at the table as decisions are made. These are complex issues, and the outcomes and potential impacts in Grand and Summit Counties are not yet known. Going forward, it will be critical to coordinate with River District representatives and County Commissioners. The IBCC virtual meeting on October 21 will cover some of these issues, and they will be discussed at the annual CRCA meeting coming up on November 9. The Upper Basin meeting will take place the day before the CRWUA Annual Convention, and this will be an item of significant discussion. It is very important that MPWCD stay involved and active in this discourse.
- Following Board discussion, Mr. Buchheister directed that these topics be added to the agendas for future meetings going forward, so as to stay abreast of developments. Mr. Buchheister directed MPWCD staff to continue to monitor the situation and be involved in these conversations on behalf of the District.

## 7. LONG TERM PLANNING

### A. Purchase/Long-Term Lease of GCWSD#1 Augmentation Pond Water:

- Mr. Whitmer reported that studies on this project continue to move forward. GCWSD #1 is in the process of getting cost estimates from engineers for what it will take to dig out and line the pond. They are still working on getting the information they need to move forward. MPWCD staff will continue to monitor and report to the Board.

### B. Grand County Mutual Ditch and Reservoir Company

- Mr. Eytel reported that the project is still moving along. The Grand County Irrigated Land Company changed engineers last Spring, and the new engineers are requesting a different analysis. There is disagreement as to what analysis should be used to determine appropriate consumptive use for the area. The GCMDRC continues to be optimistic that it will be able to move forward with the CWCB in the first part of 2022.

### C. Little King Reservoir

- Mr. Whitmer has not heard anything from the owner's representatives since they presented at the July meeting. Mr. Whitmer will reach out to them before the January meeting.

### D. Bunte Highline

- Nothing new to report.

\* Denotes an action item.



E. Funding Sources for Water Rights Development

- Mr. Whitmer discussed the Open Lands, Rivers and Trails Fund as a potentially viable option for water projects in Grand County. If the District intends to move forward with the project proposed by Mr. Repucci, this could be a good project to propose funding. Mike Eytel reported that the River District funding program that resulted from the mill levy increase has been a great success so far. The total amount of funding is expected to be approximately \$4.2 million per year, which results in approximately \$250,000 per year for each county in the River District's geographic area. The funding under this program must be matched, which promotes local support. Some big projects have already been funded under this program, including \$1 million in support to the Connectivity Channel project. Because that funding exceeded the roughly \$250,000 allocated per year to each county in the River District area, the River District will likely focus on projects outside of Grand County for the next few years to ensure that funds are equitably distributed throughout the various River District counties.

F. Global Augmentation Plan for MPWCD

- BBA will look into feasibility and do some more research this winter, including an evaluation of potential pros and cons of pursuing such a plan.

G. Open Discussion and Direction to Staff: None.

**8. STATUS OF WATER COURT APPLICATIONS**

A. Middle Park Water Conservancy District Exchange – Application filed April 2021

- Katie Randall reported that the Response to Summary of Consultation is being drafted. The Division Engineer requested additional information to support the absolute claims made in the application. Katie is working with Kristina Wynne to collect this information.

**9. OTHER BUSINESS**

A. East Troublesome Fire Recovery Effort:

- This topic was discussed earlier in the meeting; nothing further to report.


B. Colorado River Water Users Association – 2021 Conference in Las Vegas:

- Information about the annual conference was included in the meeting materials. The meeting will take place December 14-16 at Caesar's Palace. The Board granted permission for Katie Randall and Kent Whitmer to attend. Kent asked any Board members who are interested in attending to let MPWCD staff know, and arrangements will be made accordingly.

**10. ADJOURNMENT**

The meeting was adjourned at 3:15 PM.

\* Denotes an action item.



Jack Buchheister, President

\* Denotes an action item.

NOTICE OF MEETING AND AGENDA  
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**To Join by Phone, Dial (346) 248-7799, Enter Meeting ID 879 4516 2304**

October 13, 2021, 1:00 p.m.

**1. CALL TO ORDER**

- A. Approval of Minutes from Regular Meeting held July 14, 2021 \*
- B. Approval of Minutes from Special Meeting held August 9, 2021 \*

**2. BOARD ADMINISTRATION**

- A. Proposed 2022 Meeting Dates: \*
  - i. January 12, 2022
  - ii. April 13, 2022
  - iii. July 13, 2022
  - iv. October 12, 2022
- B. Board Appointments:
  - i. Gary Bumgarner's term ending January 2022
  - ii. Jim Lenzotti's term ending January 2022
- C. Resolution to Set Board Member Compensation \*

**3. REPORTS**

- A. Financial/Banking
  - i. Profit & Loss Budget vs. Actual (January 1 through September 30, 2021)
  - ii. Balance Sheet (October 1, 2021)
  - iii. Check Register (July 1 through September 30, 2021)

\* Denotes an action item.

iv. Accounts Receivable Aging Summary (October 1, 2021)

v. Approve Financials \*

B. Budget

i. Proposed Budget for 2022

ii. Property Tax Revenue Limit Calculations (TABOR)

iii. Approve Proposed Budget \*

iv. Resolution to Adopt Budget \*

v. Resolution (Designating Excess to General Reserve) \*

vi. Resolution to Set Mill Levies \*

vii. Resolution to Appropriate Sums of Money \*

C. Attorney

i. Attorney's Report

ii. Action Items Status List

iii. Additions since Attorney's Report or Action Items Status List.

D. BBA Report

i. Water Resources Consultant & Hydrologist Report

ii. Additions since BBA Report

**4. CONTRACTS / REQUESTS**

A. Reconsideration of Elk Creek Vista Contract Application \*

B. Ratify Gold Medal Ranch Short Term Water Request \*

C. Peyton Ranch Contract Application \*

\* Denotes an action item.

D. Boenish Contract Application \*

E. Cancellation of Contract: Grand Enclave Investments \*

**5. DEMAND MANAGEMENT & COMPACT ADMINISTRATION**

A. Report and Discussion

**6. REVISIONS TO BYLAWS AND RULES/REGULATIONS \***

**7. LONG TERM PLANNING**

A. Purchase / Long-Term Lease of GCWSD#1 Augmentation Pond Water

B. Grand County Mutual Reservoir and Ditch Company

C. Little King Reservoir

D. Bunte Highline

E. Funding Sources for Water Rights Development

F. Global Augmentation Plan for MPWCD

G. Open Discussion and Direction to Staff

**8. STATUS OF WATER COURT APPLICATIONS**

A. Middle Park Water Conservancy District Exchange – Application filed April 2021

**9. OTHER BUSINESS**

A. East Troublesome Fire Recovery Effort

B. Colorado River Water Users Association – 2021 Conference in Las Vegas

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