

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

By Zoom Video Conference:

<https://us02web.zoom.us/j/81905980088?pwd=KzhlaWx4S2JMTFA5ZkpzN0VhMzIKdz09>

To Join by Phone, Dial (719) 359-4580, Enter Meeting ID 819 0598 0088

March 1, 2023, 1:00 p.m.

Directors Present:

Jack Buchheister – President
Sean Flanigan – Vice President
Jim Lenzotti – Secretary
Stan Cazier – Treasurer
Mike Eytel
Gary Bumgarner
Tom Long

Others Present:

MPWCD Water Resources Consultant & Hydrologist Kristina Wynne
MPWCD Attorney Kent Whitmer
MPWCD Attorney Katie Randall
Russell Knight, Sunset Ridge Property Owners Association
Ron Jones
Don Conty, Circle C Ranch
Matthew Brown, Circle C Ranch

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 January 11, 2023 Minutes

- **A motion was made by Gary Bumgarner, seconded by Stan Cazier, that the minutes be approved as presented. Motion carried unanimously.**

2. AUDIT

A. Ratify approval of Audit Engagement Agreement, Fiscal Focus Partners

Included in the meeting materials is the engagement letter received from the auditor, Fiscal Focus Partners. This engagement letter is similar to ones received and approved in the past. Jack Buchheister has already reviewed the letter, approved, and signed the letter for the 2022 audit. **Following discussion, a motion was made by Gary**

Bumgarner and seconded by Mike Eytel, to ratify the approval and signature of the audit engagement letter. Motion carried unanimously.

3. REPORTS

A. **Attorney:** Kent Whitmer noted that many of the items in the attorney's report will be discussed under various agenda items later in the meeting, and invited any questions from the Board.

B. **BBA Report:** Kristina Wynne presented the following updates since the BBA Report was provided:

- Updated Basin Hydrology Numbers: as of yesterday, the South Platte basin snowpack is at 106% of median, and the Colorado River basin is at 120% of median. The Colorado River basin is already at 85% of the median peak; things are looking good for this summer, but it's still early. Now it is possible that Granby may spill this summer, in which case Windy Gap water would not be available to MPWCD contractees. MPWCD will continue to monitor the situation. The Shoshone call came off yesterday, and parties are now operating under ShOP. No operational changes will result for MPWCD.
- East Troublesome SWSP: included in the meeting materials is a draft letter to the Division Engineers and State Engineers, indicating that MPWCD plans to stop operating the SWSP. Typically SWSPs operate for 5 years, but there has been no participation by well owners in the first year, and accordingly no depletions to replace. This letter will inform the State and Division Engineers that MPWCD will discontinue the SWSP. The Board discussed the letter and discontinuance of the SWSP, and emphasized that the SWSP was an effort to be proactive and provide a legal mechanism for landowners affected by the fire to revegetate their properties. Given subsequent administrative constraints and lack of any interest among landowners in participating, it is appropriate to discontinue the SWSP going forward. **Following discussion, Stan Cazier made a motion to approve the letter and discontinue operation of the SWSP. Motion was seconded by Jim Lenzotti and carried unanimously.**
- HUP/Slot Group: Kristina provided an overview of the initial review of water rights identified by the Division Engineer as potential beneficiaries of the Slot Group. The proportion of potential beneficiaries located in Grand and Summit Counties is relatively small. BBA's cost estimate for the scope of work to analyze the depletions associated with these rights is between \$11,000-\$15,000. Kristina has been in contact with the River District about this project; they have previously conducted some analysis on this issue in the past, and they may be interested in contributing funds or support to get this project across the finish line. Board discussion ensued. Following discussion, the Board directed Kristina to contact the Division Engineer to determine how the results of this analysis would be used to secure a determination as to Slot Group beneficiaries, and to follow up with the River District regarding its prior analysis of this issue and potential interest in collaboration to complete

the analysis. This issue will be added for potential action on the April meeting agenda.

- Learning By Doing/Wild & Scenic: Kristina reported that both groups continue to move forward.
- Colorado River Administration: A summary was included in her report regarding the status of the Colorado River and potential impacts of Compact administration.

4. CONTRACTS / REQUESTS

A. Hill Industries – Pine Ridge Estates Contract Application

- Kent Whitmer provided a summary of the contract request submitted by Hill Industries for the Pine Ridge Estates development. The application contemplates a contract for an augmentation plan to serve a subdivision in Grand Lake. Kent clarified that Hill Industries already holds a separate MPWCD contract, but that is associated with an entirely different property than what would be covered by the present application. Accordingly, this request should be considered separately from the contract already issued. The cumulative amount contracted to Hill Industries would not exceed the 5 acre-foot limitation set forth in the MPWCD Bylaws. The present contract request is for 0.5 acre-foot total, to be provided from either Windy Gap or Wolford Mountain supplies, for household use, irrigation of landscaping, hot tub, municipal and fire protection uses, to serve 15 residential units at Pine Ridge Estates. The Board discussed the contract request. **Following discussion, a motion was made by Jim Lenzotti and seconded by Mike Eytel to approve the contract request for Hill Industries. Motion carried unanimously.**

B. Watts Contract Application

- Kent Whitmer provided a summary of the contract request submitted by David Watts. This contract request is for 0.1 acre-foot total, to be provided from either Windy Gap or Wolford Mountain supplies, for household use, irrigation of lawn and landscaping, and hot tub uses in one residential unit on Grand Lake. Kristina Wynne disclosed that BBA has been hired to assist Mr. Watts in the engineering analysis for this request. In that capacity, Kristina explained that Mr. Watts owns a property on Grand Lake, and has historically pumped water from the Lake because year-round supply is not available from the Town of Grand Lake. The Board discussed the application. **Following discussion, a motion was made by Jim Lenzotti and seconded by Sean Flanigan to approve the contract request for David Watts. Motion carried unanimously.**

5. EAST TROUBLESOME SWSP

A. Approval of Letter to Division Engineer Regarding Discontinuation of SWSP

- This agenda item was previously discussed and action was taken earlier in the meeting. No further discussion is required at this time.

6. HISTORIC USERS POOL SLOT GROUP ANALYSIS

A. Update from BBA Water

- This agenda item was previously discussed and action was taken earlier in the meeting. No further discussion is required at this time.

7. LONG TERM PLANNING:

A. **Ron Jones:** First for discussion under Long Term Planning is the proposal submitted by Mr. Jones regarding potential collaboration in operation of ponds located on his property in Tabernash. Kent Whitmer provided a summary of recent discussions with Mr. Jones. Kent had invited Ron to attend the meeting to provide his position to the Board directly, and see if there is potential for this project to move forward. Ron Jones then provided a history of the ponds on his property, his goals and objectives for the ponds going forward, and his desire to clarify potential expectations between himself and MPWCD regarding cost sharing and agreements that may be entered into to conduct a feasibility study for these ponds. Ron does not think that either party should incur the costs of a feasibility study without having a clear understanding of what will happen if work does not end up moving forward on the ponds. The Board discussed its questions and concerns regarding potential responsibility for administering the pond, evaluating current and future needs in the area, and the underlying need to know more about what could feasibly be done with these ponds and how that could benefit MPWCD constituents. MPWCD needs answers to these questions before it can commit to anything, which is why the feasibility study would be necessary as a first step. Following discussion, the Board committed to making a decision at or before its next regular meeting on April 12. Ron thanked the Board for the discussion, and left the meeting.

B. **Sunset Ridge Pond:** The Board then discussed the status of improvements to the Sunset Ridge Pond. Kristina Wynne provided an update of recent conversations with SRPOA's consultant, Julie Ash, who has provided updated numbers of the anticipated costs for a feasibility study to analyze potential improvements to the pond and river. At this time, it is estimated that the feasibility study would be approximately \$100,000 total if storage expansion is evaluated in addition to habitat improvements, and would be approximately \$70,000 if SRPOA evaluates habitat improvements only. SRPOA is in the process of applying for different grant funding opportunities to cover these costs. Kristina's understanding is that SRPOA would like MPWCD's support in these funding applications, and thinks that more funding opportunities would be available if MPWCD is a partner in the application. Russell Knight then spoke as a representative

of the SRPOA Board. SRPOA recently applied for a grant from the Colorado Healthy Rivers Fund for \$18,000. That funding application has clarified that MPWCD is a collaborator in this endeavor, but that MPWCD has not committed to any financial support of that funding request. The goal is to use this funding as the 20% match for an application to the River District for a grant in the amount of \$50,000. At this time SRPOA is only interested in pursuing feasibility analysis for habitat improvements, and is not interested in evaluating potential expansion of storage in the pond. The Board explained that its main priority at this point is to ensure that the terms of the Joint Use Agreement between SRPOA and MPWCD are upheld, and that any changes to the Pond would not interfere with the operation of the Pond and the storage/release of MPWCD's water rights stored therein. Russell acknowledged the Joint Use Agreement, and confirmed that SRPOA intends to fully honor its obligations under that agreement; at this point SRPOA wants to make habitat improvements in the area and improve how the Pond operates. The Board discussed the work that is currently contemplated by SRPOA. Kristina Wynne asked if the feasibility analysis would include a capacity survey of the reservoir, to demonstrate the extent to which the pond may have filled in with sediment since the last survey was done. Russell explained that SRPOA is in the process of evaluating where matters currently stand, and is collecting data in that regard. Following discussion, the Board asked SRPOA to keep the lines of communication open, and noted that this item will continue to be on future meeting agendas as the project moves forward. Russell left the meeting at this time.

8. DILIGENCE APPLICATIONS

A. Troublesome Project – 17CW3136 Due November 2023

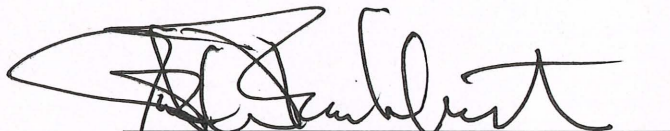
- Don Conty and Matthew Brown, representatives of Circle C Ranch, have joined the meeting to discuss recent conversations regarding the Troublesome Project. Kent Whitmer explained that after the January MPWCD Board meeting, Katie and Kent met with Ryan Donovan (water counsel for Circle C) and Matt Brown (water engineer for Circle C) to gauge Circle C's potential interest in collaboration or partnership with MPWCD regarding the Troublesome Project water rights. MPWCD has held these water rights for many years and maintained them for a long time through diligence applications, but in practice it may be difficult for MPWCD to bring these to fruition. If the landowner has interest in moving these projects forward, a collaboration or partnership could be a mutually beneficial conversation to have. The result of that conversation is the set of proposed deal points provided by Circle C and included in the meeting materials. A separate internal memo was circulated to the Board with initial thoughts and questions from Kent, Kristina, and Katie. At this time, Kent Whitmer and Gary Bumgarner disclosed that they are shareholders in the East Fork Mutual Irrigation Company, which is the owner of a portion of the Troublesome Project rights previously made absolute. Kent Whitmer stated that he did not

believe there to be a conflict of interest for either himself or Gary Bumgarner due to the fact that the East Fork Mutual Irrigation Company's water rights were absolute, owned by that Company, and would not be a part of this potential transaction, but for any Director to voice whether they felt otherwise. No Director voiced any concerns about potential conflicts. Don Conty (general counsel for Circle C) provided a summary of the proposed deal points. Circle C is very interested in constructing Haypark Reservoir, and would like to collaborate with MPWCD in this regard. His client has the interest and ability to get projects like this done. Circle C proposes that MPWCD convey a 50% interest in the Troublesome Project water rights to Circle C. In exchange, Circle C will be responsible for all costs associated with filing for diligence on these conditional water rights, as well as all costs involved in permitting, engineering, and constructing Haypark Reservoir. Circle C proposes giving four diligence cycles to try to get this work done; in the event that Circle C cannot bring this project to fruition in the next four diligence cycles, its 50% interest in these water rights would revert to MPWCD. If the Haypark Reservoir project is permitted and constructed, then MPWCD would receive a percentage of the water that is stored in that reservoir. Following this summary, the Board discussed the proposed deal points with the Circle C representatives, and asked questions. Following discussion, Don and Matthew left the meeting. The Board then expressed its intention to enter into executive session pursuant to C.R.S. §24-6-402(4)(e) to discuss the proposed deal points and recent conversations with Circle C Ranch regarding the Troublesome Project rights. Kent Whitmer is the attorney providing legal advice, and stated that his opinion is that the advice given is subject to the attorney-client privilege. As such, no electronic recording will be taken during this executive session. **A motion was made by Jim Lenzotti, seconded by Sean Flanigan, to enter into executive session pursuant to C.R.S. §24-6-402(4)(e) to discuss the proposed deal points and recent discussions with Circle C Ranch regarding the Troublesome Project rights. Motion carried unanimously.**

- **Following discussion, Mike Eytel made a motion to exit executive session, seconded by Jim Lenzotti. Motion carried unanimously.**

9. OTHER BUSINESS: None.

10. ADJOURNMENT: There being no other business before the Board, the meeting was adjourned. The next meeting will take place on April 12.



Jack Buchheister, President

Attorney's Opinion Required by C.R.S. § 24-6-402(2)(d.5)(II)(B): I, Kent Whitmer, as attorney for Middle Park Water Conservancy District, am of the opinion that the entire discussion in the executive session at the regular meeting of the Board of Directors on March 1, 2023, constituted a privileged attorney-client communication. As such, the executive session was not electronically recorded. The executive session was convened to discuss the proposed deal points and recent discussions with Circle C Ranch regarding the Troublesome Project rights, as authorized by C.R.S. § 24-6-402(4)(e).



Kent Whitmer

NOTICE OF MEETING AND AGENDA
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March 1, 2023, 1:00 p.m.

1. CALL TO ORDER

- A. Approval of January 11, 2023 Minutes *

2. AUDIT

- A. Ratify approval of Audit Engagement Agreement, Fiscal Focus Partners *

3. REPORTS

A. Attorney

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

B. BBA Report

- i. Water Resources Consultant & Hydrologist Report
- ii. Additions since BBA Report

4. CONTRACTS / REQUESTS

- A. Hill Industries – Pine Ridge Estates Contract Application *
- B. Watts Contract Application *

5. EAST TROUBLESOME SWSP

- A. Approval of Letter to Division Engineer Regarding Discontinuation of SWSP *

* Denotes an action item.

6. HISTORIC USERS POOL SLOT GROUP ANALYSIS

- A. Update from BBA Water

7. LONG TERM PLANNING


- A. Sunset Ridge Pond
- B. Global Augmentation Plan (Placeholder)
- C. Purchase / Long-Term Lease of GCWSD#1 Augmentation Pond Water (Placeholder)
- D. Expansion and Participation in GCWSD Reservoir (Placeholder)
- E. Ron Jones
- F. Pole Creek Meadows (Placeholder)
- G. Grand County Mutual Reservoir and Ditch Company (Placeholder)
- H. Little King Reservoir (Placeholder)
- I. Bunte Highline (Placeholder)
- J. Funding Sources for Water Rights Development (Placeholder)
- K. Open Discussion and Direction to Staff

8. DILIGENCE APPLICATIONS

- A. Troublesome Project – 17CW3136 Due November 2023
Executive session to discuss recent conversations with Circle C Ranch regarding the Troublesome Project rights. The executive session is authorized pursuant to C.R.S. §24-6-402(4)(e)

9. OTHER BUSINESS

10. ADJOURNMENT

 Denotes an action item.