

Upper Gunnison River Water Conservancy District

REGULARLY SCHEDULED MEETING

Monday, December 6, 1993
1:00 p.m.

Multi-Purpose Building - County Fairgrounds
Gunnison, Colorado

over

A G E N D A

- 1:00 p.m. 1. Call to Order.
- 1:10 p.m. 2. Approval of November 8, 1993 Scheduled Board Meeting Minutes.
- 1:15 p.m. 3. Consideration of Operational Expenses Paid.
- 1:20 p.m. 4. Consideration of Other Expenses Payable.
- 1:25 p.m. 5. Monthly Budget Report.
- 1:30 p.m. 6. Consideration of Resolution to Designate Year-end Fund Balance as a Reserve Increase.
- 1:45 p.m. 7. Employment Agreement with District Manager.
- 2:00 p.m. 8. Consideration of Proposed 1994 Budget.
- 2:30 p.m. 9. Consideration of Resolution to Adopt Budget for 1994.
- 2:35 p.m. 10. Consideration of Resolution to Set Mill Levy.
- 2:40 p.m. 11. Consideration of Resolution to Appropriate Sums of Money.
- 2:45 p.m. 12. Legal Matters:
 - a. Union Park Project Water Availability Appeal.
 - b. Other Legal Matters.
- 3:15 p.m. 13. Taylor Park Water Management Agreement.
- 3:30 p.m. 14. Miscellaneous Matters.
- 3:45 p.m. 15. Unscheduled Citizens.
- 3:55 p.m. 16. Future Meetings.
- 4:00 p.m. 17. Adjournment.

*Union Park file
Redlands
Just ladder
Endangered file*

UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT

SCHEDULED BOARD MEETING MINUTES

December 6, 1993

The Board of Directors of the Upper Gunnison River Water Conservancy District conducted a Scheduled Meeting on December 6, 1993 at 1:00 p.m. in the Multi-Purpose Building at the Rodeo Grounds, Gunnison, Colorado.

Board members present were: Robert Arnold, Ralph E. Clark, III, Ramon Reed, Peter Smith, Lee Spann, Dennis Steckel, Doyle Templeton, and William S. Trampe. Board members not present were Susan Lohr, Mark Schumacher and Purvis Vickers.

Others present were:

L. Richard Bratton, Board Attorney
John McClow, Board Attorney
Tyler Martineau, Manager
Patrice Thomas, Office Secretary
Rita McDermott, Treasurer
Ken Goering, Gunnison Country Times Reporter
Laura Anderson, Crested Butte Chronicle/Pilot Reporter
Diane Lothamer, City of Gunnison
Enid Peppard, KKYY
Lucy High, Citizen
Gary Sprung, High Country Citizens Alliance

1. CALL TO ORDER

President Trampe called the meeting to order at approximately 1:13 p.m.

2. APPROVAL OF NOVEMBER 8, 1993 MINUTES

President Trampe stated that the first item on the agenda was approval of November 8, 1993 minutes which had been circulated to the Board by mail.

President Trampe pointed out typographical errors on page 6 and page 15.

Butch Clark moved that the November 8, 1993, minutes be approved as circulated to the board and corrected. Ramon Reed seconded the motion. The motion carried.

3. CONSIDERATION OF OPERATIONAL EXPENSES PAID

Lee Spann asked why the billing for the Silver World newspaper was considerably more than the other newspaper billings. Tyler Martineau said that he would check on that information.

Bob Arnold moved to approve Operational Expenses Paid, as prepared by the treasurer, for November 1993. Lee Spann seconded the motion. The motion carried.

Tyler Martineau reported that the fee for membership on the Colorado Water Congress State Affairs Committee will be \$100-\$125 instead of the \$50 he had reported previously. Mr. Martineau said that this amount would be paid in December 1993 and asked if the board had any objections to the increased amount.

None?

None

4. CONSIDERATION OF OTHER EXPENSES PAYABLE

Bob Arnold moved to approve Other Expenses Payable except for payment of board of directors' fees and mileage to members not present at this meeting. Peter Smith seconded the motion. The motion carried.

5. MONTHLY BUDGET REPORT

There were no comments on the Monthly Budget Report by the treasurer, Rita McDermott.

Tyler Martineau reported that the education water video prepared by the City of Gunnison is complete and the district payment will be made in December 1993 to assist in making copies of the video. Mr. Martineau reminded the board that this expenditure had been authorized several months ago by the board.

6. CONSIDERATION OF RESOLUTION TO DESIGNATE YEAR-END FUND BALANCE AS A RESERVE INCREASE

President Trampe referred the board to Mr. Martineau's November 29, 1993

memorandum explaining the accountant's recommendation in regard to unexpended funds at the end of the district's fiscal year.

Butch Clark said that he agreed with the concept but requested a definition of the phrase, "non-operating revenues".

Tyler Martineau said that it has been a long-standing practice of the district to classify general property tax revenue and other revenues as non-operating revenues because the district does not receive fees from the sale of water to establish operating revenues. Mr. Martineau said that the accountant had advised him that non-operating revenues is the proper term to use.

Bob Arnold moved adoption of Resolution 93-9, A Resolution of the Board of Directors of the Upper Gunnison River Water Conservancy District Designating Increases in Year-End Total Fund Balance as a Reserve Increase. Butch Clark seconded the motion. The motion carried.

7. EMPLOYMENT AGREEMENT WITH DISTRICT MANAGER

President Trampe announced that a copy of the agreement prepared by Mr. Martineau and Mr. Martineau's November 29, 1993 memorandum explaining his changes to the contract were circulated to the board by mail.

Lee Spann moved that the board discuss this personnel matter in executive session and that the board adjourn to executive session at the end of the regularly scheduled board meeting. Dennis Steckel seconded the motion. The motion carried.

8. CONSIDERATION OF PROPOSED 1994 BUDGET

Tyler Martineau distributed to the board an Alternative A and an Alternative B section of the 1994 budget message with different language for the Water Resource Protection and Development Reserve concerning the mill levy to be established by the District. Mr. Martineau said that Alternative A and Alternative B language for the Resolution to Set Mill Levy had been circulated to the board by mail. Mr. Martineau stated that the alternatives were related to the board request to develop language to reflect a temporary reduction in the mill levy.

Mr. Martineau reported that he recently learned that insurance for the office premises will be about \$333.00 for 1994. He explained that \$300.00 had been budgeted in 1994 for this insurance, but the accountant advised him that this small overcharge in a line item is not a material issue. Mr. Martineau said that there are other options but that he recommends that the proposed budget remain as it is.

Butch Clark asked if Mr. Martineau had requested an explanation from the accountant as to why the language of a temporary reduction in mill levy was recommended.

Tyler Martineau said that the temporary reduction language would be consistent with the recommendation of the Colorado Municipal League and consistent with legislative language for refunding from a previous year. Mr. Martineau said that the district approach would be slightly different in that it anticipates a situation in which the county assessed value might drop and the level of the property tax revenue could be maintained. Mr. Martineau said that the need for this provision is unlikely but there is no risk on the downside for including this language.

9. CONSIDERATION OF RESOLUTION TO ADOPT BUDGET FOR 1994

Ramon Reed moved adoption of Resolution 93-10, RESOLUTION TO ADOPT BUDGET, A RESOLUTION SUMMARIZING EXPENDITURES AND REVENUES FOR EACH FUND AND ADOPTING A BUDGET FOR THE UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT, COLORADO, FOR THE CALENDAR YEAR BEGINNING ON THE FIRST DAY OF JANUARY, 1994 AND ENDING ON THE LAST DAY OF DECEMBER, 1994.

WHEREAS, the Board of Directors of the UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT has appointed Tyler Martineau, Manager, to prepare and submit a proposed budget to said governing body at the proper time; and

WHEREAS, Tyler Martineau, Manager, has submitted a proposed budget to said governing body on October 11, 1993 for its consideration, and;

WHEREAS, upon due and proper notice, published in accordance with the law, said proposed budget was open for inspection by the public at a designated place, a public hearing was held on November 8, 1993, and interested taxpayers were given the opportunity to file or register any objection to said proposed budget, and;

WHEREAS, whatever increases may have been made in the expenditures, like increases were added to the revenues so that the budget remains in balance, as required by law.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT, COLORADO:

**Section 1. That estimated expenditures for each fund are as follows:
GENERAL FUND**

Administrative Salary.	\$ 47,500.00
Secretary Salary.	14,000.00
Board Treasurer Salary.	4,000.00

Payroll Taxes & Benefits.	8,500.00
Staff Conference & Training.	500.00
State Compensation Insurance	0.00
Legal Retainer Fees.	0.00
Legal Expenses	70,000.00
Audit & Accounting	1,200.00
Engineering Services	10,000.00
Rent & Utilities.	1,500.00
Stream Gages O & M.	12,800.00
Stream Gages Construction.	4,000.00
Bonding.	200.00
Insurance.	300.00
Office Telephone.	2,500.00
Attorney Telephone.	0.00
Legal Printing.	1,400.00
Administrative Travel.	3,000.00
Attorney Travel.	0.00
Board of Directors Travel.	500.00
Office Supplies.	1,500.00
Postage.	1,200.00
Copying.	1,200.00
Publications Acquisition.	500.00
Office Equipment.	1,000.00
Board of Directors Fees.	5,000.00
Board of Directors Mileage.	1,400.00
Uncompahgre Water Users.	3,000.00
Taylor Park Water Management	10,000.00
CWC Membership.	500.00
WSC Water Workshop.	1,200.00
Water Resources Study.	0.00
Promotion & Guest Expense.	1,700.00
County Treasurer's Fees.	7,000.00
Contingency	10,000.00
Increase in Emergency Reserves.	2,500.00
Increase in Water Resourse Protection and Development Reserves.	<u>1,928.00</u>

TOTAL ESTIMATED EXPENDITURES. \$231,528.00

Section 2. That estimated revenues for each fund are as follows:

GENERAL FUND

Unappropriated Surpluses (Undesignated Funds). 0.00

General Property Tax.	210,778.00
Specific Ownership Tax.15,750.00
Other (Interest & Refunds).	5,000.00

TOTAL REVENUE (Available). \$231,528.00

Section 3. That the budget as submitted, amended, and hereinabove summarized by fund, hereby is approved and adopted as the budget of the UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT for the year stated above.

Section 4. That the budget hereby approved and adopted shall be signed by the President and Secretary and made a part of the public records of the District,

with the inclusion of Alternative B language following the section titled, "Water Resource Protection and Development Reserve", in the 1994 budget message. Peter Smith seconded the motion.

President Trampe noted for the board that adoption of Alternative B language will mean that the mill levy will be set on a temporary basis.

The motion carried.

10. CONSIDERATION OF RESOLUTION TO SET MILL LEVY

Bob Arnold moved that the board adopt Resolution 93-11, Alternate B, RESOLUTION TO SET MILL LEVY, A RESOLUTION LEVYING GENERAL PROPERTY TAXES FOR THE YEAR 1993 TO HELP DEFRAY THE COST OF GOVERNMENT FOR THE UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT, COLORADO, FOR THE 1994 BUDGET YEAR.

WHEREAS, The Board of Directors of the UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT has adopted the annual budget in accordance with the Local Government Budget Law, on December 6, 1993 and;

WHEREAS, the amount of money necessary to balance the budget for general operating purposes is \$210,778.00, and;

WHEREAS, the 1993 valuation for assessment for the UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT as certified by the County Assessors is \$145,999,072.00.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS

**OF THE UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT,
COLORADO:**

THAT for the purpose of meeting all general operating expenses of the UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT during the 1994 budget year, there is hereby levied a gross tax of 1.581 mills, a temporary mill levy rate reduction of .137 mills, and a net tax of 1.444 mills upon each dollar of the total valuation for assessment of all taxable property within the District for the year 1993.

THAT the Secretary is hereby authorized and directed to immediately certify to the County Commissioners of Gunnison, Hinsdale, and Saguache Counties, Colorado, the mill levy for the UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT as hereinabove determined and set.

Peter Smith seconded the motion. The motion carried.

11. CONSIDERATION OF RESOLUTION TO APPROPRIATE SUMS OF MONEY

Bob Arnold moved adoption of Resolution 93-12, RESOLUTION TO APPROPRIATE SUMS OF MONEY, A RESOLUTION APPROPRIATING SUMS OF MONEY TO THE VARIOUS FUNDS AND SPENDING AGENCIES, IN THE AMOUNT AND FOR THE PURPOSE AS SET FORTH BELOW, FOR THE UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT, COLORADO, FOR THE 1994 BUDGET YEAR. Lee Spann seconded the motion. The motion carried.

12. LEGAL MATTERS

12a. Union Park Project Water Availability Appeal

Dick Bratton reported on the meeting held on December 3, 1993 by the opposing attorneys to discuss the briefs to be filed. Mr. Bratton reported that Steve Sims from the State Attorney General's office also attended the meeting. Mr. Bratton said that another meeting of the attorneys will be held on December 13, 1993 to review the completed briefs. Mr. Bratton said that a procedural matter on the page limitation in the briefs means that the Upper Gunnison River Water Conservancy District will now file the brief on Aspinall rights, both generally and specific, including hydro, fish and recreation and flood control. Another procedural matter decided at the meeting was that Andy Williams will prepare one brief summarizing the major points of the other briefs by presenting the statement of the case, the burden of proof, a summary of the arguments, and a map of the area. Mr. Bratton thought that a benefit of this meeting was that Steve Sims' position appears to be closer to the opposers' position now. Mr. Bratton said that, in his opinion, the major defect of Arapahoe's case is that they failed in their burden of proof in that their modelling was not done properly.

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Dick Bratton referred the board to his memorandum about receipt of the brief prepared by Bruce Driver and David Getches on maximum utilization. Mr. Bratton reported that there was substantial discussion on this brief by the attorneys at the meeting and that the brief will be revised based upon the suggestions made at the meeting. Mr. Bratton reviewed these suggestions with the board.

Mr. Bratton said that the supporters of the maximum utilization brief are asking that the Upper Gunnison River Water Conservancy District join in support of their brief, or as a minimum not oppose it. Mr. Bratton outlined some of the major policy implications that were discussed at the attorney's meeting. Mr. Bratton said that it is possible to wait until February 1994 to file a response and he suggested that the board review the brief after it is revised by Bruce Driver and David Getches. Mr. Bratton also suggested that the board seek constituent views on the policy issues affected by the maximum utilization brief.

Butch Clark asked if there had been discussion about the permitting process for conditional water rights being looked at as a part of this brief. Mr. Bratton replied that he did not recall any discussion of this aspect at the attorney's meeting.

Lee Spann asked about the advisability of the number of briefs filed and the number of issues addressed in those briefs. Dick Bratton said that he and John McClow had discussed this major consideration. Mr. Bratton said that there are a number of easy ways for the Supreme Court to get out of this case, for example, the burden of proof, the 620f issue, and permission from the United States on Taylor Park Reservoir. John McClow said that the Arapahoe and amicus briefs had brought up many issues in a scattershot approach so that it is necessary to prepare responses in case the Supreme Court addresses any one of these issues.

Ramon Reed suggested that Mr. Bratton provide information on the negative impacts if the District supported the maximum utilization brief, particularly in regard to the 1041 permitting process. Mr. Bratton said that he and Mr. McClow would need to study the many possible implications and that any answer by him, at this time, would be conjecture. President Trampe asked Mr. Bratton to prepare some of his thoughts on this matter for the board. Ramon Reed also asked that Bruce Driver be invited to present his revised brief to the Upper Gunnison River Water Conservancy District Board at their next meeting.

Butch Clark asked Dick Bratton how he would like to see the process resolved on some of the policy issues brought forth by the brief prepared by Bruce Driver and David Getches. Mr. Bratton said that if the Supreme Court decided to proceed on this matter that it would be a significant change in water law. Mr. Bratton said that this matter brings up new ground from many perspectives and that he thinks that a lot of input is needed to assess its many ramifications.

12b. Other Legal Matters

Dick Bratton announced that he received notice of a Colorado Water Congress State Affairs Committee meeting scheduled for December 16, 1993 to review legislative bills including a bill by Senator Pastore, W.A.T.E.R. III, regarding intrastate transfers and diversions. Mr. Bratton asked if the board wanted a District representative to attend this meeting. Lee Spann said that since the District has paid their membership and these legislative matters could affect the district that Mr. Bratton or Mr. Martineau should attend the meeting. It was the consensus of the board that Tyler Martineau attend the Colorado Water Congress State Affairs Committee meeting on December 16, 1994 to represent the District since Mr. Bratton is busy preparing the legal briefs.

Ramon Reed congratulated Dick Bratton and John McClow on the results of their presentation to the Colorado Water Conservation Board last month.

Butch Clark also commended the response to the Upper Colorado River Commission regarding Union Park. Mr. Bratton said that Barney White deserves the credit for that response.

13. TAYLOR PARK WATER MANAGEMENT AGREEMENT

Tyler Martineau referred the board to his November 30, 1993 memorandum on the status of the Taylor Park Water Management Agreement. Mr. Martineau noted that the Bureau of Reclamation has requested that two District board members attend the technical meeting scheduled for December 21, 1993 to discuss the Bureau of Reclamation's findings concerning the options for providing carryover storage in Blue Mesa Reservoir and their position concerning the applicability of the Reclamation Reform Act in the Upper Gunnison basin.

Ramon Reed asked if there is some indication of change in the position of the Bureau of Reclamation on these two issues. Mr. Martineau said that there was no indication of change. Mr. Reed asked why the Bureau of Reclamation has scheduled a meeting to discuss these issues prior to the next negotiating session on the Taylor Park Water Management Agreement. Mr. Martineau said that the Bureau of Reclamation staff wanted to review their progress at this meeting and that they did not indicate any change in the Bureau of Reclamation position. Mr. Martineau said that he thinks that they want to present their final position concerning carryover storage and the Reclamation Reform Act at this technical meeting.

Ramon Reed volunteered to attend the technical meeting on December 21, 1993 with President Trampe. President Trampe confirmed that Dick Bratton and Tyler Martineau would also attend the technical meeting.

Tyler Martineau said that there will be at least one more negotiating session held after the technical meeting.

14. MISCELLANEOUS MATTERS

Tyler Martineau referred the board to recent memoranda prepared by the Colorado Water Conservation Board and the Colorado Department of Natural Resources regarding Taylor Park Reservoir. He also noted the recent correspondence received from Dave Miller and Arapahoe representatives.

Tyler Martineau referred the board to his November 30, 1993 memorandum and the attached Aspinall Unit Flow Protection meeting summary about implementation of the Recovery Implementation Program Recovery Action Plan. Mr. Martineau suggested that a letter explaining the release of flows and the endangered fishes be circulated to those operations that have existing reservoirs to ask about available storage space in regard to the augmentation plan. Lee Spann said that this approach would be a good idea.

Butch Clark also suggested that mention of the planning model and development of the augmentation plan be circulated so that those individuals with water rights could see how they might be affected. Mr. Clark suggested asking ranchers if they want to be a part of the District's proposed augmentation plan. Mr. Clark also said that it would be helpful to try to find out how much water the Bureau of Reclamation anticipates needing to comply with the Recovery Implementation Program Recovery Action Plan for endangered fish protection. Tyler Martineau responded that they are trying to figure out that information.

Lee Spann said that an invitation to ranchers to participate in the augmentation plan may be premature. Mr. Spann suggested that an educational process to provide information take place first. Bill Trampe said that perhaps an approach outlining the opportunities in participating in the development of the augmentation plan would help increase the knowledge base of the holders of storage water.

Butch Clark said that this idea sounded okay and that an analysis model prepared by Randy Seaholm for the Nature Conservancy donation is a good example of a process that could be used to determine how people would be affected by downstream calls.

Tyler Martineau referred the board to his November 30, 1993 memorandum regarding the delay in progress on the East River Study with the Bureau of Reclamation. Mr. Martineau reported that Gunnison County will hold a public meeting on December 8, 1993 to discuss population estimates to determine future water demand for their East River 201 Study.

Tyler Martineau reported that he had received a preliminary version of the Gunnison Planning Model about two weeks ago. Mr. Martineau said that flaws in the program prevent

model runs from being made at this time.

Dennis Steckel asked Mr. Martineau if these flaws were being corrected so that the model could be used and information could be obtained from the model. Butch Clark said that good information has been compiled but that the model design is frustrating.

Lee Spann reported on Colorado River Water Conservation District activities. He said that work at Woford Mountain will continue on the road approach and concrete until December 20, 1993 and then will resume in the spring of 1994. Mr. Spann reported that the Orchard Mesa check is being adjudicated as a decree and will act as a water saver on the Colorado River. In response to a question by Ramon Reed, Mr. Spann explained what the Orchard Mesa check is.

15. UNSCHEDULED CITIZENS

Lucy High of the Western State College Water Workshop said that she is scheduling a planning meeting for the next water workshop and asked which dates would be convenient for District board members. The consensus of the board was that January 6, 1994 might be a convenient date. Ms. High said that possible topics for the water workshop are watershed management and endangered species. She also announced that the Colorado Water Conservation Board is planning to meet in Gunnison on July 19-20, 1994 in conjunction with the water workshop meeting dates.

Enid Peppard asked if any board members had attended the meeting with Interior Secretary Babbitt and asked to be informed about the discussion of water issues. Bill Trampe said that it is his understanding that Secretary Babbitt indicated to Governor Romer that any reference to water in the grazing bill would be consistent with western state law. President Trampe asked Gary Sprung, who is a member of the Governor's committee addressing the grazing issue, to comment on the water provisions. Gary Sprung said that the current discussion is that the grazing bill would be consistent with the U.S. Forest Service policy in which water remains a part of the public domain. Mr. Sprung said that currently the grazing policy follows the Bureau of Land Management standards which state that if improvements are made on public lands a person can obtain a water right. Mr. Sprung said that the federal government will observe the Colorado process and the water courts to obtain water rights. In answer to a question by Ms. Peppard, Mr. Sprung said that water development in wilderness areas is part of the law in the recently passed Wilderness Bill.

16. FUTURE MEETINGS

President Trampe announced that the next scheduled board meeting will be on January 10, 1994 at 1:00 p.m. at the Gunnison County Multi-Purpose Building.

President Trampe asked if there were any other public comments before the board adjourned to executive session. In response to an audience comment, President Trampe said that any considerations of the employment agreement with the district manager will be contained in a draft to be presented to the board for consideration at the next regularly scheduled board meeting.

Lee Spann moved that the board adjourn to executive session to discuss personnel matters regarding the employment agreement with the district manager. Bob Arnold seconded the motion. The motion carried.

17. ADJOURNMENT

President Trampe reconvened the meeting after the executive session. Susan Lohr arrived at the meeting during the executive session.

President Trampe adjourned the meeting at approximately 4:05 p.m.

Respectfully submitted,

Mark Schumacher, Secretary

APPROVED:

William S. Trampe, President

BRATTON & McCLOW
232 West Tomichi Ave., Suite 202
P.O. Box 669
Gunnison, Colorado 81230
(303) 641-1903

Upper Gunnison River Water
Conservancy District
275 South Spruce Street
Gunnison, Colorado 81230

November 30, 1993

Professional services:

Administrative

10/28/93 UGd Review draft minutes of meeting of October 25, 1993

11/08/93 UGd Attend Board Meeting; update Board re: conditional
water rights issue in executive session

UGj Attendance at November Board Meeting NO CHARGE

11/12/93 UGd Meet with Tyler and Karl Ranous, attorney for
Skyland Water and Sanitation District

11/23/93 UGd Meeting with Bill and Tyler re: conditional water
rights planning issues and future water rights
administration issues

• Amount

SUBTOTAL: [700.00]

Availability - Appeal

09/09/93 tg Search transcripts regarding Scott Farnham's
testimony re: Debug model (This time was not
previously charged)

10/27/93 UGd Telephone conference with Andy; telephone conference
with Andy and Tyler re: availability issues/concerns
by State Engineer

PAYMENT IN FULL IS DUE ON RECEIPT OF STATEMENT: A LATE CHARGE
OF 1 1/2% PER MONTH WILL BE ASSESSED ON BALANCES NOT RECEIVED WITHIN 30 DAYS.

THIS STATEMENT DOES NOT INCLUDE DISBURSEMENTS FOR WHICH WE HAVE NOT YET BEEN BILLED.

- 10/28/93 UGj Review of trial exhibits and legal authorities; preparation of sections of brief on republication of Notice by Arapahoe County and East River points of diversion
- 10/29/93 UGd Review notes, brief preparatory to conference call; telephone conference with Andy, Barney, Duane Helton and Tyler re: issue of conditional water rights in determining availability
- 10/31/93 UGd Prepare for meeting with State Engineer and Division of Natural Resources; revise outline of analysis of consideration of conditional water rights
- 11/01/93 UGd Revise memo re: conditional water rights; telephone conferences with Tyler (2)
- UGd Meet in Denver with opposers attorneys, engineers preparatory to meeting with State Engineer; meet with Hal Simpson (State Engineer), Will Burt (Deputy State Engineer), Steve Sims (Assistant Attorney General), Andy Williams, Eric Kuhn, Duane Helton, Wayne Foreman re: consideration of conditional rights
- 11/02/93 UGd Prepare for meeting with Director of Natural Resources; meet with Ken Salazar (Director of Natural Resources), Chuck Lile (Director of CWCB), Steve Sims (Assistant Attorney General), Representative of Department of Natural Resources, Bill, Getches, Baumgarten, White re: state participation in Upper Gunnison litigation
- 11/03/93 UGd Work on conditional water rights brief; review Thornton, Arapahoe and Crystal Creek briefs; develop additional arguments for response brief
- 11/04/93 UGd Work on 620f brief; revise draft brief; review prior briefs
- UGj Review draft and authorities of City of Gunnison Brief in Support of Motion to Strike
- 11/05/93 UGd Work on preparation for meeting with CWCB; telephone conference with Tyler re: CWCB meeting
- UGj Research and review of trial record and exhibits; comments on Thornton/Arapahoe briefs; preparation of responses



PAYMENT IN FULL IS DUE ON RECEIPT OF STATEMENT: A LATE CHARGE OF 1½% PER MONTH WILL BE ASSESSED ON BALANCES NOT RECEIVED WITHIN 30 DAYS.

THIS STATEMENT DOES NOT INCLUDE DISBURSEMENTS FOR WHICH WE HAVE NOT YET BEEN BILLED.

- 11/08/93 UGd Telephone conference with Andy Williams, Barney White, Eric Kuhn, Bruce Driver, Mike Gheletta, Andy Mergen, Dave Smith; work on outline to CWCB members; revise outline
- 11/09/93 UGd Telephone conference with Wayne Foreman re: CWCB agenda; revise memo for CWCB; review 620f brief; telephone conference with Barney White; revise memo; review 6/21/93 letter to Upper Colorado River Commission; conference with Steve Sims; attend CWCB meeting in Denver
- 11/10/93 UGd Telephone conference with Steve Sims, Tyler re: CWCB decision to get involved in appeal
- UGd Work on 620f (hydropower) brief - revise draft brief
- 11/11/93 UGd Work on hydropower (620f) brief
- 11/12/93 UGd Work on hydropower brief
- 11/13/93 UGd Work on revisions to hydropower brief
- 11/14/93 UGd Work on revisions to hydropower brief
- 11/16/93 UGd Revise hydropower brief; telephone conference with Barney White, Andy Williams and Andrew Mergen re: briefs
- 11/21/93 UGj Review and editing of 620f Brief
- 11/22/93 UGd Work on hydropower brief
- UGj Review of statute and compact provisions related to Sec. 620f arguments; assemble U.S. cases; preparation of revisions re: Spann/Trampe testimony
- UGj Review and editing 620f brief, Spann Ranches brief
- 11/23/93 UGd Work on revisions to hydropower brief
- 11/24/93 UGd Work on hydropower brief
- 11/27/93 UGd Revise brief on hydropower issue
- 11/28/93 UGd Revise brief on hydropower issue

SUBTOTAL:

Amount

[9,042.00]

PAYMENT IN FULL IS DUE ON RECEIPT OF STATEMENT: A LATE CHARGE
OF 1 1/2% PER MONTH WILL BE ASSESSED ON BALANCES NOT RECEIVED WITHIN 30 DAYS.

THIS STATEMENT DOES NOT INCLUDE DISBURSMENTS FOR WHICH WE HAVE NOT YET BEEN BILLED.

Upper Gunnison River Water Conservancy District

MEMORANDUM

Upper Gunnison River Water

Page 4

	<u>Amount</u>
For professional services rendered	\$9,742.00
Itemization of costs	
-Telecopier expense	32.00
-Long distance telephone expense	89.54
-Photocopier expense	61.65
-Postage Expense	3.48
	<hr/>
SUBTOTAL:	[186.67]
<u>Availability - Appeal</u>	
-Airfare to Denver (one-way), 10/28/93 - Dick Bratton	99.00
-Lodging in Denver, 11/1/93 - 11/3/93 - Dick Bratton	232.40
-Mileage from Denver to Gunnison, 11/4/93 - Dick Bratton	56.00
-Lodging in Denver, 11/9/93 - Dick Bratton	42.43
-Airfare - round-trip Gunnison to Denver on 11/9/93 - 11/10/93	286.00
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SUBTOTAL:	[715.83]
	<hr/>
Total costs	\$902.50
	<hr/>
Total amount of this bill	\$10,644.50

PAYMENT IN FULL IS DUE ON RECEIPT OF STATEMENT. A LATE CHARGE
OF 1 1/2% PER MONTH WILL BE ASSESSED ON BALANCES NOT RECEIVED WITHIN 30 DAYS.

THIS STATEMENT DOES NOT INCLUDE DISBURSEMENTS FOR WHICH WE HAVE NOT YET BEEN BILLED.

DRAFT

RESOLUTION 93- _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT DESIGNATING INCREASES IN YEAR-END TOTAL FUND BALANCE AS A RESERVE INCREASE.

WHEREAS, on December 11, 1991, the Board of Directors of the Upper Gunnison River Water Conservancy District (the Board) adopted its operating budget for the fiscal year beginning January 1, 1992 and ending December 31, 1992; and

WHEREAS, on December 7, 1992, the Board adopted its operating budget for the fiscal year beginning January 1, 1993 and ending December 31, 1993; and

WHEREAS, non-operating revenues of the District exceeded expenditures (excluding appropriations to reserves) in the 1992 budget year resulting in an increase in Total Fund Balance for the year 1992; and

WHEREAS, the Board anticipates that after the 1993 budget year has ended on December 31, 1993 that non-operating revenues will be determined to equal or exceed expenditures (excluding appropriations to reserves) which may result in an increase in Total Fund Balance for the year 1993.

NOW, THEREFORE, BE IT RESOLVED; by the Board of Directors of the Upper Gunnison River Water Conservancy District that any and all increments to the year-end Total Fund Balance for the year 1992 shall be considered a reserve increase, and therefore a part of 1992 fiscal year spending, and that any and all increments to the year-end Total Fund Balance for the year 1993 shall be considered a reserve increase, and therefore a part of 1993 fiscal year spending, within the meaning of Article X, Section 20(2)(e) of the Colorado Constitution (TABOR).

We, the undersigned officers of the Board of Directors of the Upper Gunnison River Water Conservancy District, do hereby certify that the foregoing resolution was duly adopted by a unanimous vote of the members present at a regularly scheduled meeting of the Board of Directors on the 6th day of December, 1993.

UPPER GUNNISON RIVER
WATER CONSERVANCY DISTRICT

William S. Trampe, President

ATTEST:

Mark Schumacher, Secretary

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(X)

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Upper Gunnison River Water Conservancy District

M E M O R A N D U M

TO: Board Members,
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: November 29, 1993

SUBJECT: Agenda Item 6, December 6, 1993, Board Meeting --
Consideration of Resolution to Designate Year-End
Fund Balance as a Reserve Increase.

The District's accountant has recommended that the District designate any unexpended funds at the end of 1993 as a reserve increase. The purpose of the designation is to ensure that the funds will be considered to be included in fiscal year spending for 1993 for Amendment 1 purposes. A portion of the unexpended funds to be designated as a reserve increase may not be recognized until after the year has ended because actual revenues to the District may turn out to be greater than anticipated, because expenditures in certain line items may be less than the amount previously budgeted by the Board, and because of accounting adjustments. The recommendation is consistent with commentary concerning Amendment 1 provided by the Colorado Municipal League.

Attached is a draft resolution for consideration by the Board. The resolution has been worded to address the 1992 as well as the 1993 budget year.

I recommend that the Board adopt the Resolution of the Board of Directors of the Upper Gunnison River Water Conservancy District Designating Increases in Year-End Total Fund Balance as a Reserve Increase at the December 6, 1993 board meeting.

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DRAFT

RESOLUTION 93-_____

and budget
1992 page 2

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT DESIGNATING INCREASES IN YEAR-END TOTAL FUND BALANCE AS A RESERVE INCREASE.

Q

WHEREAS, on December 11, 1991, the Board of Directors of the Upper Gunnison River Water Conservancy District (the Board) adopted its operating budget for the fiscal year beginning January 1, 1992 and ending December 31, 1992; and

WHEREAS, on December 7, 1992, the Board adopted its operating budget for the fiscal year beginning January 1, 1993 and ending December 31, 1993; and

with operating revenues
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WHEREAS, non-operating revenues of the District exceeded expenditures (excluding appropriations to reserves) in the 1992 budget year resulting in an increase in Total Fund Balance for the year 1992; and

drop here →

WHEREAS, the Board anticipates that after the 1993 budget year has ended on December 31, 1993 that non-operating revenues will be determined to equal or exceed expenditures (excluding appropriations to reserves) which may result in an increase in Total Fund Balance for the year 1993.

NOW, THEREFORE, BE IT RESOLVED; by the Board of Directors of the Upper Gunnison River Water Conservancy District that any and all increments to the year-end Total Fund Balance for the year 1992 shall be considered a reserve increase, and therefore a part of 1992 fiscal year spending, and that any and all increments to the year-end Total Fund Balance for the year 1993 shall be considered a reserve increase, and therefore a part of 1993 fiscal year spending, within the meaning of Article X, Section 20(2)(e) of the Colorado Constitution (TABOR).

We, the undersigned officers of the Board of Directors of the Upper Gunnison River Water Conservancy District, do hereby certify that the foregoing resolution was duly adopted by a unanimous vote of the members present at a regularly scheduled meeting of the Board of Directors on the 6th day of December, 1993.

UPPER GUNNISON RIVER
WATER CONSERVANCY DISTRICT

William S. Trampe, President

ATTEST:

Mark Schumacher, Secretary

Upper Gunnison River Water Conservancy District

M E M O R A N D U M

TO: Board Members,
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: November 29, 1993

SUBJECT: Agenda Item 7, December 6, 1993, Board Meeting --
Employment Agreement with District Manager.

Attached is a copy of my previous employment agreement to which a number of proposed changes have been made for 1994. The changes include:

- 1) Salary increase.
- 2) Language concerning health insurance.
- 3) Language concerning accrual of vacation and sick leave requested by the District's auditors.
- 4) Language clarifying our understanding concerning the extent of services and unpaid leave as it applies to the manager.

On a related matter I would like to remind the Board that my current term on the Colorado Water Conservation Board will be completed in May, 1994. For a variety of reasons, including the on-going discussion of my participation in CWCB executive sessions, I have decided that I would prefer to not seek reappointment to the CWCB next year.

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EMPLOYMENT AGREEMENT

THIS AGREEMENT is entered into on ~~January 20, 1992~~ December 6, 1993, between the **UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT** (District) and **TYLER MARTINEAU** (Manager).

1. **Employment.** The District employs the Manager and the Manager accepts employment upon the terms and conditions contained in this Agreement.

2. **Term.** The term of this Agreement shall begin on ~~February 1, 1992~~ January 1, 1994, and shall terminate on ~~January 31, 1993~~ December 31, 1994.

3. **Compensation.** The District shall pay the Manager for all services rendered a salary of ~~Forty Five Thousand Dollars (\$45,000.00)~~ Forty-Seven Thousand Five Hundred Dollars (\$47,500.00) per year, payable in equal monthly installments on the last business day of each month. Salary payments shall be subject to withholding and other applicable taxes.

4. **Duties.** The District hereby employs the Manager as General Manager of the District, with such precise powers and duties in that capacity as may be determined from time to time by the Board of Directors (Board). Notwithstanding the ability of the Board to expand or curtail the powers and duties of the Manager, the Manager's duties shall generally include, without limitation, the following:

- a. Administration of the day-to-day business affairs of the District;
- b. Preparation of an agenda and appropriate background information regarding substantive issues to be addressed by the Board for use at meetings of the Board, and attendance at all regular and special meetings of the Board;
- c. Representation of the District, as directed by the Board, in its dealings with governmental and non-governmental agencies, commissions and authorities (excluding legal representation) and with the general public, including attendance on behalf of the District at such meetings and conferences as the Board shall authorize and direct;
- d. ~~Performance and~~ Management of engineering services relating to the maintenance of the conditional water rights held by the District, support of any plan for augmentation approved by the Board, water studies and similar engineering services.

Admining Augmentation Program

5. **Extent of Services.** The Manager shall devote his entire time and attention to the District's business during the term of this Agreement except as otherwise provided in this Agreement. The Manager shall not engage in the performance of engineering services or other business activity, regardless of whether it is pursued for gain or profit, which unreasonably affects his ability to perform the duties described in this agreement. The Manager shall not work less than the established work week and shall work whatever additional time is needed to accomplish his job duties and responsibilities. The established work week shall include the regular business hours of the District plus regular and special meetings of the board which occur during evenings or weekends. The Manager may accumulate and use a compensatory time credit based upon such time that has actually been spent by the Manager in excess of the established work week.

6. **Expenses.** The Manager may incur reasonable expenses while performing the District's business, including mileage and expenses for travel, and similar items. The District will reimburse the Manager for all such expenses. To obtain reimbursement for such expenses, the Manager shall prepare monthly an itemized account of such expenditures which shall be subject to review and approval by the Board.

7. **Health Insurance.** ~~Apartment to the compensation salary provided for in this Agreement, the District shall as a separate benefit pay, in an amount approved by the board, the premiums for health insurance which the Manager has provided for himself. The limit of such health insurance benefit shall be an amount equal to the premium for Manager's basic hospital-surgical policy with the State Farm Insurance Company, Policy Number H4463639 0606. reimburse the Manager, in an amount approved by the Board, for premiums incurred by the Manager in providing health insurance for himself. The provisions of this paragraph shall not be construed to require the District to provide a health insurance policy or program for the Manager.~~

8. **Vacation and Unpaid Leave.** The Manager shall be entitled each year to a vacation of three non-consecutive weeks, during which time his compensation shall be paid in full. The Manager shall be entitled to accumulate up to six weeks paid vacation. Accumulation in excess of the maximum accrual shall be subject to forfeit. The Manager shall be paid for all accumulated vacation at the time of termination of this agreement. In addition to the vacation described in this paragraph, the Manager shall be permitted, upon reasonable notice to the Board, to be absent from his duties without compensation, provided that the activities of the District will not be adversely affected thereby. The Manager may be absent from his duties without compensation for purposes including but not limited to: 1) Attendance at meetings as a member of the Colorado Water Conservation Board, and 2) Management of Manager's family farm. The Manager shall be entitled to take leave without pay, or make use of accumulated compensatory time during such absences.

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9. Sick Leave. The Manager shall be entitled each year to two weeks of paid sick leave. The Manager shall be entitled to accumulate up to six weeks of paid sick leave. Use of sick leave, accumulation of sick leave, and payment for accumulated sick leave shall be consistent with the District's written employee benefits policy.

- do we have

10. Termination Without Cause. The District may, without cause, terminate this Agreement at any time by giving thirty days' written notice to the Manager. In that event, the Manager, if requested by the District, shall continue to render his services, and shall be paid his regular compensation up to the date of termination. The Manager may, without cause, terminate this Agreement by giving thirty days' written notice to the District. In such event, the Manager, if requested by the District, shall continue to render his services and shall be paid his regular compensation up to the date of termination.

11. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

12. Notices. Any notice required or desired to be given under this agreement shall be given in writing and delivered by personal service or sent by certified mail, return receipt requested, to the Manager's residence or to the District's business office, with a copy by first-class mail to the President of the Board.

13. Waiver. The District's waiver of a breach of any provision of this Agreement by the Manager shall not operate or be construed as a waiver of any subsequent breach by the Manager. No waiver shall be valid unless in writing and signed by an authorized representative of the District.

14. Entire Agreement. This Agreement contains the entire understanding of the parties. It may not be changed orally but only by an agreement in writing signed by each of the parties to this Agreement.

15. Headings. The headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

16. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

BRATTON & McCLOW
Attorneys at Law
232 West Tomichi Avenue, Suite 202
P.O. Box 669
Gunnison, Colorado 81230
Telephone (303) 641-1903
Telecopier (303) 641-1943

Denver Office:
999 Eighteenth Street, Suite 1350
Denver, Colorado 80202
Telephone: (303) 295-3613
Telecopier: (303) 294-9933

Richard Bratton
John H. McCLOW

John R. Hill, Jr.
Of Counsel

November 30, 1993

Board of Directors
Upper Gunnison River Water Conservancy District
Gunnison, Colorado 81230

Dear Susan and Gentlemen:

Enclosed is a copy of the letter which was faxed to me earlier today by Bruce Driver. As his brief is 31 pages long and is a "draft" not in final form, I will provide copies only to those of you who specifically request them.

Please let me know if any of you would like a copy.

Very truly yours,



L. Richard Bratton

jr

Enclosure

c Mr. Tyler Martineau

*what is schedule of actions
time remaining*

*Endorse
I am willing to meet*

#12

BRUCE C. DRIVER
Attorney and Consultant

2260 Baseline Road
Boulder, Colorado 80302

(303) 444-2317
Fax (303) 440-4073

Memorandum:

To: UGRWCD Board members
From: Bruce Driver
Through: Dick Bratton
Date: November 30, 1993

At your September 8 meeting on the Union Park litigation, I indicated my hope that the Board would consider supporting the position of the environmental opposers on the need for the Water Judge to consider certain public values when it makes decisions on applications for conditional water rights. I also indicated that we wanted to work with the UGRWCD Board as much as possible in developing our positions. In that regard, I indicated we would share a copy of a draft brief on this issue with you as soon as possible.

It has taken a while, but David Getches and I have now completed a draft brief on the maximum use issues. I have faxed a copy of it to Dick Bratton, who has kindly agreed to make the brief available to you should you desire to review it.

I reiterate my desire to work with you in the development of this brief as much as possible. The brief is a draft and can be altered. If you do review this draft, I would ask you to regard it as confidential, keeping discussions of it within the family of opposers' counsel and other board members. Thanks.

cc: David Getches
Gary Sprung

Upper Gunnison River Water Conservancy District

M E M O R A N D U M

TO: Board Members,
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: November 30, 1993

SUBJECT: Agenda Item 13, December 6, 1993, Board Meeting --
Taylor Park Water Management Agreement.

Following the November board meeting I notified the Bureau of Reclamation (USBR) that the District has approved the concept of the Taylor Park Water Management Agreement and would like to continue to proceed towards completion of the agreement at the earliest possible date. The USBR has requested that before scheduling another negotiating session the District participate in an informal technical meeting with the USBR, the Colorado River District, and the Uncompahgre Valley Water Users. The meeting has been scheduled for December 21, 1993 at 10:30 a.m. at the USBR's offices in Grand Junction. The District has been asked to designate two board members to attend the meeting.

Principle purposes of the meeting will be to discuss the USBR's findings concerning the options for providing carryover storage in Blue Mesa Reservoir, and to discuss the Salt Lake office's position concerning the applicability of the Reclamation Reform Act in the Upper Gunnison basin.

Brent Uilenberg indicated to me on the telephone today that he is hopeful that the Taylor Park Water Management Agreement can be wrapped-up following one more public negotiating session.

UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT

SCHEDULED BOARD MEETING MINUTES

November 8, 1993

The Board of Directors of the Upper Gunnison River Water Conservancy District conducted a Regularly Scheduled Meeting on November 8, 1993 at 1:00 p.m. in the Multi-Purpose Building at the Rodeo Grounds, Gunnison, Colorado.

Board members present were: Robert Arnold, Ralph E. Clark, III, Susan Lohr, Ramon Reed, Mark Schumacher, Peter Smith, Lee Spann, Dennis Steckel, Doyle Templeton, William S. Trampe and Purvis Vickers.

Others present were:

L. Richard Bratton, Board Attorney
John McClow, Board Attorney
Tyler Martineau, Manager
Patrice Thomas, Office Secretary
Rita McDermott, Treasurer
Ken Goering, Gunnison Country Times Reporter
Laura Anderson, Crested Butte Chronicle/Pilot Reporter
Diane Lothamer, City of Gunnison
Lynnee Preston, Citizen
Lucy High, Citizen
Enid Peppard, KKYY
John Malensek, Citizen

1. CALL TO ORDER

President Trampe called the meeting to order at approximately 1:10 p.m.

2. APPROVAL OF OCTOBER 11, 1993 SPECIAL BOARD MEETING MINUTES AND SCHEDULED BOARD MEETING MINUTES, AND OCTOBER 25, 1993 SPECIAL BOARD MEETING MINUTES

President Trampe stated that the first item on the agenda was approval of the October 11, 1993 Special Board Meeting minutes, the October 11, 1993 Scheduled Board Meeting minutes and the October 25, 1993 Special Board Meeting minutes which had been circulated to the Board by mail.

Butch Clark moved that all three sets of minutes for October, 1993 be approved as circulated to the board. Bob Arnold seconded the motion. The motion carried.

3. CONSIDERATION OF OPERATIONAL EXPENSES PAID

Bob Arnold moved to approve Operational Expenses Paid, as prepared by the treasurer, for October 1993. Butch Clark seconded the motion. The motion carried.

4. CONSIDERATION OF OTHER EXPENSES PAYABLE

Rita McDermott, treasurer, distributed to the board copies of an invoice from Helton & Williamsen in the amount of \$228.19 for engineering services provided to the District in October 1993.

Butch Clark asked if next month's billing from Bratton & McClow would be approximately the same amount as the October billing. John McClow said that he anticipated that the November billing would be similar in amount to the October billing because there is a great deal of work being done on the brief for the Supreme Court appeal.

Butch Clark asked if the 1993 budgeted amount for legal expenses would cover the billings of Bratton & McClow for the next three months if they continue at the current rate. Tyler Martineau referred the board to the attorney invoice paid report prepared monthly by the treasurer. Rita McDermott explained that the total amount reported on this report is through September 1993 and that the bill before the board today is for billings through October 1993. The remaining budgeted amount available for the last two months of 1993 is approximately \$17,000. John McClow said that the December 1993 billing for legal expenses should be less than October and November 1993 because most of the work on the brief for the Supreme Court appeal will have been completed.

Ramon Reed moved to approve Other Expenses Payable except for payment of board of directors' fees and mileage to members not present at this meeting and

including payment of the Helton & Williamsen invoice of \$228.19 for October services. Bob Arnold seconded the motion. The motion carried.

5. MONTHLY BUDGET REPORT

There were no comments on the Monthly Budget Report prepared by the treasurer.

6. PUBLIC HEARING: PROPOSED 1994 BUDGET OF THE UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT

President Trampe opened the public hearing for comment on the proposed 1994 budget of the Upper Gunnison River Water Conservancy District.

Tyler Martineau announced that the proposed budget dated October 28, 1993 includes the revisions directed by the board at their last meeting. Mr. Martineau also pointed out again that the mill levy was reduced to 1.448 mills which yields a 1994 property tax revenue the same as the property tax revenue collected for the District in 1993.

Mr. Martineau said that he included an engineering line item in the amount of \$10,000 as directed by the board. Mr. Martineau said that in reviewing the district goals for preparation of the 1994 performance objectives of the district manager he noticed that many engineering services would be needed to accomplish the district goals. He pointed out that item 5 of his memorandum on the proposed budget outlines the engineering services he identified and clarified that these services would be provided by consultants. He said that the board may want to budget about \$30,000 instead of \$10,000 to pay for consulting engineering services depending on how quickly the board wants to advance on these projects.

Diane Lothamer said that the engineering tasks identified in item #5 of Mr. Martineau's memorandum all seemed like areas in which the District should begin work and that if these services are provided by consultant engineers money could be transferred from the District's reserve fund.

Laura Anderson said that she supports keeping the mill levy as high as possible and collecting more property tax revenues to put additional money in the district's reserve fund for the protection of water in the basin.

Lucy High said that the Water Workshop appreciates the support and sponsorship of the district for the annual the water workshop. She requested that board members let her know of any ideas or issues that they would like included on future agendas of the water workshop conference.

President Trampe asked if there were other comments. President Trampe closed the public hearing.

7. CONTINUATION OF PROPOSED 1994 BUDGET

Dennis Steckel said that in reviewing Mr. Martineau's comments it appears that the engineering line item needs to be increased.

Purvis Vickers said that he is troubled by the large amount of the reserved fund balance. He said that it would not be fair to the taxpayers to keep the mill levy high for the purpose of increasing the district's savings account. He recommended that the district approach the taxpayers in an election if additional funds are needed in the future. He said that he hoped that the district could reduce the legal expenses in the future.

Ramon Reed said that the mill levy is an artificially calculated figure which determines the amount of property tax revenue which the district will collect. He said that the property tax revenue for the district will not be reduced from 1993 and that the reserve fund is adequate. He said that he supports the proposed 1994 budget to keep the property tax revenue constant for 1993 and 1994.

Ramon Reed said in reviewing Mr. Martineau's list of engineering needs he noted that the last four tasks identified in item #5 could be partially accomplished by use of the Gunnison planning model which has been in development for some time and which should soon be available for use.

Peter Smith said that he agrees with the public comments and would not want the mill levy lowered before the district knows what the consulting engineering costs would be.

Lee Spann said that his impression is that there is a lot less uncertainty about the tasks and goals before the District than there has been in the past. He said that there is knowledge now about the cost of the Taylor Park Water Management fees and that the Supreme Court appeal is reaching the final legal stages. Mr. Spann said that he believes that the district owes it to the community not to increase the mill levy again to obtain increased property tax revenues.

Susan Lohr said that she favors a proactive approach to the protection of water and, therefore, does not want a reduction in district property tax revenues. Ms. Lohr said that the property tax revenues should not be reduced because the limits of Amendment #1 might interfere with increasing district revenue in the future.

Butch Clark had three comments. He said that he is comfortable with the reserve fund as it is and with the revenue proposed in the 1994 budget. He said that next year when the costs of the district may be more stable that the board can consider reducing the property

tax revenue. Mr. Clark said that it appeared that some of the engineering tasks in item #5 of Mr. Martineau's memorandum could be accomplished by analyzing information which should be available from the Bureau of Reclamation. Mr. Clark asked if the promotion and guest expense line item included the cost of the newsletter. Mr. Martineau said that the cost of the newsletter was included in the line item.

Tyler Martineau said that if the district proceeds at its current pace it will not be prepared with an augmentation plan and determining a replacement source of water to meet the April 1995 date currently set for the implementation of the Fish & Wildlife Recovery Implementation program for endangered fishes. He said that he thinks the Bureau of Reclamation has been slow to respond to his requests for information.

Susan Lohr asked how money would be transferred from the reserve fund to the legal or engineering line items. Tyler Martineau explained that the budget would be amended for transfer between line items. Susan Lohr said that she would favor a reduction in the legal expenses line item and transferring that amount to the engineering line item.

Lee Spann said that the public comments were supportive of the 1994 proposed budget and that he is not in favor of changing the budget now and if any adjustments are needed with a change in the district's needs, those adjustments can be made later.

President Trampe said that the board had not dealt with paying the expenses of Bratton & McCLOW to represent the district as a member on the Colorado Water Congress State Affairs Committee.

Butch Clark said that at the last meeting the board had directed membership on the Colorado Water Congress State Affairs Committee and that if the need for attendance at the meetings arose then the board would discuss the reimbursement of expenses. Mr. Clark suggested that travel for attendance at state committee meetings could be charged to the administrative travel line item.

Dick Bratton reaffirmed his position that the district board needs to take a position to keep informed on legislative matters and to develop a strategy to be participants in the legislative process. Mr. Bratton said that part of this strategy would be developing relationships through attendance at meetings and participating in decisions involving legislative approaches by recognized successful lobbying entities. Mr. Bratton suggested that the board stay with the policy adopted at the last meeting to attend the Colorado Water Congress State Affairs Committee as a member when the agenda indicates that participation may be necessary. Since the board named Mr. Bratton as the designated member and Mr. Martineau as the alternate, Mr. Bratton suggested that his reimbursement be \$100 a day to cover his time and expenses but that no hourly compensation be paid to him unless the board specifically requests his preparation and participation on a particular agenda item.

Lee Spann said that board members are not compensated for the time that they take away from their own businesses. Mr. Spann said that if a board member attends a function as a representative of the board that the board member should be reimbursed for expenses.

Butch Clark said that he agreed with Mr. Spann's position. Mr. Clark said that there are other meetings at which the district should have representation for information gathering.

Dick Bratton said that he agreed that the district needs to be better informed and prepared on legislative initiatives developing in other water organizations.

Ramon Reed said that whether staff, legal counsel, or board members attend meetings on behalf of the district that travel and expenses should be paid. He said that President Trampe and anyone else who attends a meeting for purposes of board business should bill the district for expenses.

Ramon Reed said that the decision as to what meetings are important to attend and who would best represent the district at those meetings is an administrative decision that should be made by the manager and reviewed by the board president.

Dick Bratton suggested that the board adopt a policy about attendance in advance of the legislative session rather than make these decisions on a reactive basis determined by crisis or emergencies.

Dennis Steckel said that anybody attending any meeting on behalf of the board should be reimbursed for travel expenses and that the manager should advise the board on which meetings should be attended and who should represent the board.

Tyler Martineau said that the board of directors travel line item is separate from the board of directors mileage line item. The board of directors mileage line item pays for travel to and from district meetings. The board of directors travel line item pays for other meetings or conferences attended by board members. Mr. Martineau said that the administrative travel line item is budgeted only for staff travel which is travel by the district manager. He said that any travel by the board attorney is paid from the legal expenses line item. He asked the board to let him know if adjustments should be paid to the 1994 budgeted amount in any of these line items.

Bob Arnold said that he agrees with Mr. Steckel and Mr. Reed on the procedure but that the 1994 proposed budget amounts may not cover the travel expenses to reimburse the board members or the board attorney for attendance at other meetings to gather information needed by the district.

President Trampe asked if the board consensus was to reimburse Mr. Bratton's expenses for attendance at meetings on behalf of the district. President Trampe said that if

this approach was the consensus of the board, which line item should funds for this reimbursement be taken.

Dennis Steckel suggested the legal expenses line item and asked if Mr. Bratton would be representing other clients when he attends these meetings at the request of the district.

Dick Bratton replied that he pays his own membership to the Colorado Water Congress and therefore could speak independently from the District but he has not represented any positions other than the district. Mr. Bratton said that the district has requested that he be a member representing the district on the Colorado Water Congress State Affairs Committee and has paid his membership on that Committee so he will represent only the district.

Peter Smith suggested taking Mr. Bratton's travel expenses from the legal expenses line item but when he has to attend meetings in place of the district manager then Mr. Bratton's travel expenses should be charged to the administrative travel line item.

Dennis Steckel moved that the district adopt the proposed 1994 budget and increase the board of directors travel line item to \$2000 and increase the engineering services line item to \$25,000. Peter Smith seconded the motion.

Ramon Reed asked if these amounts would cause the budget expenditures to exceed the legal limit under Amendment 1. Tyler Martineau said that these increases would exceed the limit.

With the consent of the second Dennis Steckel revised his motion to move that the district adopt the proposed 1994 budget to increase the board of directors travel line item to \$2000 and the engineering expenses line item to \$20,000.

Susan Lohr said her constituents are in favor of using the legal maximum amount of funds for the protection of water. She suggested that the district have a deficit budget.

President Trampe said that he would be opposed to a deficit budget for the district.

Lee Spann said that he is not sure that the budget is the problem and that the district itself may not be planning as needed to accomplish the necessary goals.

Peter Smith said that the people he has talked to want the district to be proactive on water issues.

Butch Clark said that he agreed with Lee Spann on holding the budget and the need for proactive district planning.

Bob Arnold said that he thought the district should be proactive, develop plans to protect the water, and use funds to develop the water resources rather than be reactive to other proposals and use the district funds for legal fees.

Dennis Steckel said that the increase in operating costs in the budget indicate a needed increase in revenues.

Purvis Vickers said that the reserve fund should be left as is although he personally thinks that it is too large. He asked for a vote on the motion.

Ramon Reed asked if the motion was to approve the 1994 proposed budget or to adopt the 1994 proposed budget. Mr. Reed said that those actions were scheduled for the December board meeting.

With the consent of the second, Dennis Steckel revised his motion to move that the staff prepare the 1994 proposed budget for board review with an increase in board of directors travel line item to \$2000 and an increase in the engineering services line item to \$20,000. The motion was defeated by a roll call vote of eight to three.

Ramon Reed moved to direct staff to prepare the district 1994 budget as proposed in the October 28, 1993 draft. Lee Spann seconded the motion. The motion carried with one negative vote.

Susan Lohr said that she felt this approach was a nice conservative procedure but that the district needs to be more proactive in the protection of water.

President Trampe said that Mr. Martineau had one more budget item that he wanted to discuss with the board.

Tyler Martineau said that the accountant had recommended that the district note the reduction in mill levy for 1994 is temporary to stay within the ramifications of Amendment 1 law as it develops.

Butch Clark said that this approach might be useful and that this information should then be included in the budget message. Peter Smith said that he agreed with Mr. Clark.

Bob Arnold moved that any reduction in the mill levy be noted as temporary and that this information be included in the budget message of the 1994 budget. Butch Clark seconded the motion.

Susan Lohr asked for clarification on the mill levy and property tax revenue. Tyler Martineau explained the calculation of a mill levy and how the mill levy is related to property tax revenue and the revenues budgeted for the district.

Lee Spann explained that every mill levy is set for one year and, by definition, is temporary.

Tyler Martineau said that the accountant was saying that this reduction of the mill levy would be a temporary one year reduction and that as a safety factor in anticipation of Amendment 1 limitations it should be noted as temporary by the board.

Dennis Steckel asked if there were any dangers in noting or not noting a one year reduction in mill levy as temporary. John McClow said that nobody really knows because the legal interpretations and ramifications of Amendment 1 will be developed over time.

Dennis Steckel said that this approach would be a safety factor but that it also implies that the board is not certain about their budget actions.

Ramon Reed moved that this motion be tabled until the next meeting when the final discussion and vote on the budget is scheduled to occur. Butch Clark seconded the motion. The motion to table the motion on temporary reduction of the mill levy carried.

Ramon Reed recommended that the board direct the district manager to obtain additional information on this matter of noting a temporary reduction in mill levy and to prepare two sets of resolutions for adoption of the budget with language to reflect both options.

8. LEGAL MATTERS

8a. Union Park Project Water Availability Appeal

Dick Bratton said that the Colorado Water Conservation Board will meet tomorrow and will meet in executive session with the expected result to be a decision as to whether the Colorado Water Conservation Board will join in the water availability appeal. Mr. Bratton said that he would like the board's authorization for Duane Helton to attend this meeting and provide assistance to Mr. Bratton on the water availability issues that may be raised.

Ramon Reed moved that the board authorize Duane Helton to attend the November meeting of the Colorado Water Conservation Board and provide any necessary information in support of the Upper Gunnison River Water Conservancy District. Lee Spann seconded the motion. The motion carried.

John McClow said that he had nothing to report on FERC.

Dick Bratton said that he had prepared an outline of information to offset the prejudices contained in the briefs submitted by Arapahoe County and Thornton. Mr. Bratton distributed copies of the draft outline titled Arapahoe/Union Park Project to the board and

requested input from the board.

Dick Bratton requested an executive session to discuss legal strategy in the presentation to the Colorado Water Conversation Board.

Susan Lohr said that item 5 on the draft outline seemed weak and asked if it referred to the decree when Judge Brown said that all conditional water rights would be considered but then considered the major conditional water rights in his deliberations. Mr. Bratton suggested defining the word, "consider," in the context of Judge Brown's decision. Ms. Lohr said that this approach would help clarify item 5.

Bill Trampe pointed out that the decision item on the first page of the draft outline needed clarification on the same matter of the judge's consideration of all and some conditional water rights.

Butch Clark suggested that in item 5 the concept of probability was not explained. Dick Bratton replied that he did not get into this sophisticated concept and interpretation of what does a conditional water right mean particularly in view of the Thornton/Ft. Collins case.

Dennis Steckel suggested that the next to the last sentence in item 5 be removed to make it a stronger statement. He said that if modeling needed to be addressed that this sentence could be included elsewhere in the outline. Mr. Bratton agreed that these were two separate thoughts.

Butch Clark asked for a clarification on the judge's opinion of modeling.

Dick Bratton said that the purpose of the outline is to demonstrate how information that the other side has provided to the Colorado Water Conservation Board and the State Engineer has been misleading; the purpose is not to answer all the questions of the appeal.

Ramon Reed said that he was glad to see the information in item 4 contained in the outline because it corrects erroneous information propagated by Dave Miller.

President Trampe confirmed that the board consensus was that Mr. Bratton give this outline to the Colorado Water Conservation Board to counteract misinformation that they may have received previously.

Lee Spann asked Mr. Martineau to provide his opinion, as a member of the Colorado Water Conservation Board, regarding the usefulness of this draft outline on the Arapahoe/Union Park Project. Tyler Martineau said that he had some minor word changes and he would give these suggestions to Dick Bratton.

Lee Spann said that he had meant any opinions from Mr. Martineau on the concept of

the draft *outline* and providing it for information purposes to the Colorado Water Conservation Board. Tyler Martineau said that he thought a short fact sheet for the Colorado Water Conservation Board members was probably a good idea.

Butch Clark asked if there was a reason that the 2nd fill right was not mentioned. He said that the private instream decree is a lot of water and that Dave Miller uses that point to attack the amount of the 2nd fill. Dick Bratton asked if Mr. Clark had something specific to add about the 2nd fill right.

Dick Bratton recommended a board executive session to discuss technical and legal issues of the Arapahoe appeal and conditional water rights. Mr. Bratton said that he had agreed with the other opposing attorneys to keep these issues confidential.

9. TAYLOR PARK WATER MANAGEMENT AGREEMENT

Tyler Martineau referred the board to his October 27, 1993 memorandum on the negotiating sessions with the Bureau of Reclamation. Mr. Martineau said that the real issue that he wanted to bring to the board was how fast to proceed with the negotiations on the Taylor Park Water Management Agreement.

Ramon Reed referred to the November 2, 1993 letter provided to the board by him, Butch Clark, and Dennis Steckel. In that letter they indicated their preference for delaying so that time would be available to gather more information on the available yield and refill accounting so that the board can use this information in decision making.

Lee Spann said that he is concerned about the reexamination of the implementation of the Reclamation Reform Act by the Bureau of Reclamation and its impact on these negotiations. He also said that changes in personnel within the Bureau of Reclamation could affect previous agreements made during the negotiating process. Mr. Spann said that in his opinion the basic question is are we willing to spend the money for the 2nd fill water.

Bill Trampe said that he agreed with the points made by Lee Spann. He said that the district is not close to knowing how to move forward on the augmentation plan. He said that the district needs to develop its own direction and broaden its scope. He said that the question from his viewpoint is at what level does this district want the agreement and how will it be used.

Susan Lohr said that what had been negotiated so far should be nailed down particularly the exemption from the Reclamation Reform Act.

Ramon Reed offered to discuss the details outside the meeting but that he is not convinced that the district can use this water directly from Taylor Park Reservoir for augmentation because there is not now storage to protect from downstream calls.

Butch Clark said that it is important to ask the Bureau of Reclamation to annually provide the figures on use under their management so that the district does not assume that accounting task.

Lee Spann said that the district should get the contract in hand for the water and then discuss how to split up the water.

Butch Clark said the district had the water right which was given to the United States of America and that this water is tied down at least for fishery and recreation.

Susan Lohr said that there are technicalities in the agreement that can be worked on later, but that she supports moving forward on negotiations for the Taylor Park Water Management Agreement because of the anticipated changes in federal government policy. She suggested that the district put in the agreement what the district expects from the Bureau of Reclamation, then sign it.

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Tyler Martineau said that it is important to know the hydrology and obtain this information, but that there is a provision in the agreement that it can be terminated at any time. He said that the district should proceed quickly.

Mark Schumacher asked Mr. Martineau for a timetable on completion of the six items listed on page 2 of Mr. Martineau's memorandum to the board. Mr. Martineau said that the first four of these tasks are the responsibility of the Bureau of Reclamation and that the Bureau is slow. He said that it could be a long wait for completion of items 1 and 2, that items 3 and 4 are critical to the agreement and must be done, and that items 5 and 6 are the responsibility of the district.

Dennis Steckel said let's get items 3 and 4 completed and then decide on when to sign the agreement.

Tyler Martineau said that if the district gave the Bureau of Reclamation an indication that the district wanted to move rapidly that the Bureau of Reclamation would do items 3 and 4 before January 1, 1994. Dennis Steckel asked Mr. Martineau for confirmation of the Bureau's ability to complete items 3 and 4 by January 1, 1994. Mr. Martineau said that he believed that the Bureau of Reclamation would complete items 3 and 4 by January 1, 1994, if asked to do so.

Lee Spann moved to approve the concept of the Taylor Park Water Management Agreement as negotiated to this point. Susan Lohr seconded the motion. Butch Clark offered an amendment to the motion that the Bureau of Reclamation annually submit an accounting statement for the previous year. Lee Spann and Susan Lohr accepted the addition of the amendment to the motion. The motion carried with one opposing vote.

Tyler Martineau referred the board to his October 29, 1993 memorandum on the settlement of the Natural Resources Defense Council vs. Duvall lawsuit and its affect on the implementation of the Reclamation Reform Act of 1882. Mr. Martineau asked if the board had any interest in obtaining water from the Bureau of Reclamation in ways that might require RRA compliance.

Lee Spann said that the people he had talked to would not want to operate under RRA constraints.

Dennis Steckel said that if the district addresses non-agricultural water the board may want to discuss other water supply options with the Bureau.

Butch Clark said that he agreed with Dennis Steckel.

President Trampe said that it might be a good idea to know what ideas the Bureau of Reclamation is considering that would require RRA compliance.

Susan Lohr asked if the Bureau of Reclamation wants to know why the Reclamation Reform Act is such a hardship at high elevations.

Tyler Martineau said that he thinks that there is sensitivity at the Bureau's local level to local area needs but national pressures are driving Reclamation Reform and our concerns get submerged.

10. 1994 PERFORMANCE GOALS FOR DISTRICT MANAGER

Mr. Martineau referred the board to his October 29, 1993 memorandum and list of annual performance goals for 1994 for the district manager which he prepared at the request of the board.

Butch Clark said that the list of goals looked complete and ambitious for the district. He asked Mr. Martineau what steps he foresaw for the development of the augmentation plan and what steps are currently in process.

Tyler Martineau replied that if the district is using Taylor Park as a source of replacement water the district will need a court decree so there will be a complicated court process so he doesn't know the scope of what to do at this time. He said the Bureau of Reclamation has extended the deadline for implementation of the endangered fishes Recovery Implementation Program to April 1995 from April 1994 but it will be impossible to have the augmentation plan in place.

Lee Spann said that he questions the concept of the performance goals for the district manager being tied to a written set of goals for the district. Mr. Spann said that this set of

goals for an annual evaluation of the district manager which has been prepared superficially, as an example, is not the way to proceed.

Susan Lohr said that she understood that Mr. Martineau is requesting the board to set priorities for the district manager and give him feedback but that non-performance by the district manager is also the fault of the board.

Doyle Templeton said that the list of broad district goals needed a yardstick to measure accomplishment. He suggested that percentages be developed to measure where the district manager is spending his time.

President Trampe said that the board needs to help the district manager prioritize his time and develop a plan of work for him.

Butch Clark said that Mr. Martineau had provided a list of district goals not performance measures for a district manager. He said that Mr. Martineau needs to point out what he has done towards accomplishing each goal and what he plans to do. Mr. Clark pointed out that the district goals as determined by the board are subject to change.

Dennis Steckel said there should be language on what the board wants to see accomplished in a specific time period and the district manager could be rated on how far the district has moved toward accomplishing these goals.

Susan Lohr said that Mr. Martineau had provided a list of long term district goals and that these goals are not a standard for performance. She said that it would be appropriate for the board to set priorities with respect to the goals.

Tyler Martineau said that Ms. Lohr's statement was a good way to characterize it, that all of the goals would be virtually impossible to achieve, and that there are many unknowns for the district that we have no control over. He said that he wanted to give the board an idea where he thought his time should be spent. Mr. Martineau asked if the board considers the list he provided as district goals does the board also want an evaluation system for the district manager.

Doyle Templeton asked why the manager could not develop standards, tasks, a timetable of percentages for each of these district goals.

Lee Spann said that it is helpful to the board and the district manager to have goals but he doesn't want them to be too restrictive. He suggested that the district try this list of goals for one year and then evaluate this approach in October 1994.

Susan Lohr said that the board needs to agree on its priorities so that Mr. Martineau can do his job.

11. MISCELLANEOUS MATTERS

Tyler Martineau said that there had been a request from Butch Clark about the office procedure for copying district documents for other people. Mr. Martineau asked if the board wanted to develop an office policy for copying.

Lee Spann suggested that an upper limit of 10-15 pages be set and that any amount above this limit could be taken to a private copying business.

Butch Clark explained that he had been approached for copies of the briefs filed in the Arapahoe case. Mr. Clark said that it might be more feasible to copy at a break-even price then to lend the documents for copying and not to have them returned.

Susan Lohr said that the district has a library and that a signout sheet could be provided for lending items from the district library. She said that it is not appropriate to compete with private business.

Ramon Reed said that he did not think that it is the board's responsibility to set an office policy on copying. Mr. Reed said that it is an administrative detail and that the district manager should handle this matter.

Tyler Martineau said that he will continue the current policy.

Ramon Reed asked about the Colorado Water Conservation Board's executive sessions on the Arapahoe case. He said that since Mr. Martineau doesn't participate that the district needs to consider how to balance the lack of representation of the Gunnison River basin during the executive session discussions.

Lee Spann asked Mr. Martineau who advised him not to participate.

Tyler Martineau said that a year and a half ago he had visited with the Colorado Water Conservation Board attorney about participation during executive sessions and that he had been advised that he probably should not participate but there had been no definitive answer.

Lee Spann asked if the other Colorado Water Conservation Board members were objecting to his participation in discussions about the Gunnison River basin. Mr. Martineau said that there have been no objections because he has not participated in discussions.

Lee Spann said that the district and the basin are shorthanded by Mr. Martineau's decision not to participate in discussions. Mr. Spann said that his understanding about conflict of interest is that a board member can participate in discussions if they don't gain financially. Mr. Spann said that Mr. Martineau's role with the Colorado Water Conservation

Board is as a board member and that he can provide important factual information about the Gunnison basin.

Tyler Martineau said that the issue is that he is employed by the Upper Gunnison River Water District and that this district and the Colorado Water Conservation Board are parties in litigation. He said that he has personally chosen to err on the side of conservatism and to not represent both this district and the Colorado Water Conservation Board in matters involving litigation.

Lee Spann said that his opinion is that Mr. Martineau is then not an effective representative member of this district and this basin on the Colorado Water Conservation Board.

Peter Smith said that the Colorado Water Conservation Board has not decided on being a party to this litigation which involves the district. He said that he does not understand why Mr. Martineau can't provide information and express his opinions during considerations in an executive session and then not vote on the issue. Tyler Martineau said that he would listen to their secrets on litigation and also know the district secrets on litigation.

Peter Smith suggested that Mr. Martineau could attend the executive sessions, present his points, and leave the executive session if litigation were to be discussed that Mr. Martineau felt would present a conflict of interest.

Ramon Reed said that he thinks that the Colorado Water Conservation Board is deciding whether to participate in the Supreme Court appeal and that participating in this discussion does not present any more conflict for Mr. Martineau than it does for some other Colorado Water Conservation Board members. Mr. Reed said that if the Colorado Water Conservation Board decides to become a party to the Supreme Court appeal on the side of Arapahoe then participation in the discussions would present a possible conflict of interest for Mr. Martineau. Mr. Reed said that his opinion is that Mr. Martineau needs to represent the basin, not the district, in his appointment as member on the Colorado Water Conservation Board. Mr. Reed said that the input of a representative from this basin is necessary to the discussions held by the Colorado Water Conservation Board.

Butch Clark asked about the participation of Tommy Thompson who is in a similar situation.

Tyler Martineau said that there is a longstanding practice that board members not participate when they are involved in both sides of litigation.

Susan Lohr said that the Colorado Water Conservation Board discussion is not at the point of two opposing parties in litigation.

Tyler Martineau said that there are two parties involved in litigation and that he would be privy to the strategy of the Colorado Water Conservation Board.

Peter Smith asked Mr. Martineau to talk to the Colorado Water Conservation Board attorney about this issue and report back to the board at the next board meeting.

Purvis Vickers asked how Mr. Martineau can serve this basin if he doesn't express his thoughts.

Lee Spann said that he thinks that Mr. Martineau has expressed his thoughts on this matter.

12. UNSCHEDULED CITIZENS

There were no comments by unscheduled citizens.

13. FUTURE MEETINGS

President Trampe announced that the next board meeting will be held December 6, 1993 at 1:00 p.m. at the Gunnison County Multi-Purpose Building.

President Trampe asked if there were any other public comments before the board adjourns to executive session.

In response to an audience comment, President Trampe said that he follows the advice of legal counsel on who may attend an executive session.

Bob Arnold moved that the board meet in executive session to discuss sensitive legal issues regarding the Supreme Court appeal. Purvis Vickers seconded the motion. The motion carried.

14. ADJOURNMENT

President Trampe reconvened the meeting after the executive session.

President Trampe adjourned the meeting at approximately 5:08 p.m.

Respectfully submitted,

Mark Schumacher, Secretary

APPROVED:

William S. Trampe, President

Upper Gunnison River Water Conservancy District

REGULARLY SCHEDULED MEETING

Monday, November 8, 1993
1:00 p.m.

Multi-Purpose Building - County Fairgrounds
Gunnison, Colorado

A G E N D A

- 1:00 p.m. 1. Call to Order.
- 1:10 p.m. 2. Approval of October 11, 1993 Special Board Meeting Minutes and Scheduled Board Meeting Minutes, and October 25, 1993 Special Board Meeting Minutes.
- 1:15 p.m. 3. Consideration of Operational Expenses Paid.
- 1:20 p.m. 4. Consideration of Other Expenses Payable.
- 1:25 p.m. 5. Monthly Budget Report.
- 1:30 p.m. 6. Public Hearing:
Proposed 1994 Budget of the Upper Gunnison River Water Conservancy District.
- 1:45 p.m. 7. Continuation of Proposed 1994 Budget.
- 2:00 p.m. 8. Legal Matters:
a. Union Park Project Water Availability Appeal.
b. Other Legal Matters.
- 2:45 p.m. 9. Taylor Park Water Management Agreement.
- 3:30 p.m. 10. 1994 Performance Goals for District Manager.
- 3:45 p.m. 11. Miscellaneous Matters.
- 4:00 p.m. 12. Unscheduled Citizens.
- 4:10 p.m. 13. Future Meetings.
- 4:15 p.m. 14. Adjournment.

OPERATIONAL EXPENSES PAID

October 13, 1993	U. S. West Communications-office telephone	\$177.63
October 13, 1993	Patricia Thomas-additional net wages for pay period 9/1/93-9/30/93	26.94
October 15, 1993	Colorado State Treasurer-3rd Qtr. Unemployment Insurance Tax	59.49
October 15, 1993	Tattered Cover Book Store- <u>Parliamentary Law at a Glance & Roberts Rules of Order</u>	27.20
October 15, 1993	B & B Printers-1M Letterhead laser	99.80
October 15, 1993	Stamped Envelope Agency-2 boxes prestamped envelopes	320.00
October 15, 1993	Kimberly S. Temple, CPA's-Bev met with Tyler re: budget	13.00
October 15, 1993	The Paper Clip-office supplies	29.73
October 15, 1993	Silver World Publishing-Sept. meeting notices	29.60
October 15, 1993	Postmaster-3 rolls .29 stamps/3 rolls .23 stamps	156.00
October 15, 1993	Chronicle & Pilot-Sept. meeting notices	43.40
October 15, 1993	Tyler Martineau-Sept. direct administrative travel expense (\$33.00) less \$20.00 to reimburse district for cleaning of personal computer at office, paid in August, 1993	13.00
October 15, 1993	The Computer Store-computer & software	3,360.68
October 31, 1993	Colo. State Auditors Office-1993 Financial Manual	25.00
October 31, 1993	Kimberly S. Temple, CPA's-9/24-Bev met with Tyler	26.00
October 31, 1993	Tyler Martineau-net salary for pay period 10/1/93-10/31/93	2,529.55
October 31, 1993	Patrice Thomas-net wages for pay period 10/1/93-10/31/93	639.82
October 31, 1993	Rita McDermott-net salary for pay period 10/1/93-10/31/93	251.45
October 31, 1993	Colorado Department of Revenue-CWT- October	227.20
October 31, 1993	First National Bank-FWT & FICA-October	1,654.46

OTHER EXPENSES PAYABLE

October 25, 1993 Special Meeting:

Bob Arnold	attendance-\$25	\$25.00
Ralph Clark III	attendance-\$25	25.00
Susan Allen Lohr	attendance-\$25 & 72 mi.@.25-\$18	43.00
Ramon Reed	attendance-\$25	25.00
Mark Schumacher	attendance-\$25 & 20 mi.@.25-\$5	30.00
Peter Smith	attendance-\$25	25.00
Lee Spann	attendance-\$25 & 6 mi.@.25-\$1.50	26.50
Dennis Steckel	attendance-\$25	25.00
Doyle Templeton	attendance-\$25 & 64 mi.@.25-\$16	41.00
William Trampe	attendance-\$25 & 14 mi.@.25-\$3.50	28.50
Purvis Vickers	attendance-\$25 & 120 mi.@.25-\$30	55.00

**ATTORNEY INVOICES RECEIVED AND PAID
1993**

Bratton and Associates

Invoice Date	Amount	Date Paid	Budget Year Expended
12/23/92	\$5,795.34	1/11/93	1992
1/27/93	\$3,055.31	2/12/93	1993
2/26/93	\$8,222.00	3/15/93	1993
3/29/93	\$4,811.26	4/12/93	1993
4/28/93	\$7,365.26	5/10/93	1993
5/27/93	\$7,225.52	6/21/93	1993
6/29/93	\$5,100.88	7/12/93	1993
7/29/93	\$6,153.92	8/9/93	1993
8/27/93	\$8,979.82	9/13/93	1993
9/29/93	\$7,309.69	10/15/93	1993

Williams, Turner, & Holmes, P.C.

	Invoice Date	Amount	Date Paid	Budget Year Expended
diligence	12/31/92	\$126.30	2/8/93	1992
diligence	1/31/93	\$208.10	3/8/93	1993
water rights	1/31/93	\$234.20	3/8/93	1992
diligence	2/28/93	\$1,045.10	4/12/93	1993
water rights	2/28/93	\$70.00	4/12/93	1993
diligence	3/31/93	\$442.20	4/12/93	1993
water rights	3/31/93	\$233.40	4/12/93	1993
exchange	4/30/93	\$920.00	7/12/93	1993
water rights	5/31/93	\$30.00	7/12/93	1993
Arapahoe/Hydropower	7/31/93	\$1,731.50	9/13/93	1993

Helton & Williamsen, P.C.

	Invoice Date	Amount	Date Paid	Budget Year Expended
Engineering Services	4/9/93	\$63.75	4/12/93	1993
Engineering Services	5/7/93	\$212.50	5/10/93	1993
Engineering Services	8/9/93	\$85.00	9/13/93	1993
Engineering Services	10/8/93	\$737.50	10/15/93	1993

Total Disbursed \$70,158.57

Total Disbursed-1993 Budget **\$64,002.73**

Note: These amounts include Travel Expense

UGRWCD BUDGET SUMMARY-OCTOBER 1993

	<u>OCTOBER EXPENSE</u>	<u>YEAR-TO- DATE AS OF 10/31/93</u>	<u>1993 AMENDED BUDGET</u>	<u>% EXPENDED</u>
Administrative Salary	\$3,660.69	\$35,580.02	\$43,000.00 *	83%
Secretary Salary	990.00	9,584.69	12,000.00 *	80%
Board Treasurer Salary	300.00	3,040.00	4,000.00	76%
Payroll Taxes & Benefits	438.22	4,691.59	6,000.00 *	78%
Staff Conference & Training	0.00	20.00	500.00	4%
Legal Retainer Fees	50.00	500.00	600.00	83%
Legal Exp & Eng. Related	8,047.19	69,397.43	93,000.00 *	75%
Audit & Accounting	39.00	913.30	1,200.00	76%
Rent & Utilities	0.00	0.00	1,500.00	0%
Stream Gages O&M	0.00	0.00	7,000.00 *	0%
Stream Gages Construction	0.00	0.00	0.00 *	0%
Bonding	0.00	150.00	200.00 *	75%
Insurance/Premises	0.00	0.00	300.00 *	0%
Office Telephone	177.63	1,575.33	2,200.00 *	72%
Attorney Telephone	0.00	0.00	100.00 *	0%
Legal Printing	73.00	799.36	1,200.00 *	67%
Administrative Travel	33.00	1,339.46	2,500.00 *	54%
Attorney Travel	0.00	761.14	800.00 *	95%
Board of Directors Travel	0.00	0.00	200.00 *	0%
Office Supplies	109.53	909.89	1,300.00 *	70%
Postage	476.00	994.00	1,000.00 *	99%
Copying	0.00	900.75	1,100.00	82%
Publications Acquisition	52.20	172.95	300.00 *	58%
Office Equipment	3,360.68	4,375.93	6,500.00	67%
Board of Directors Fees	250.00	3,375.00	5,000.00	68%
Board of Directors Mileage	74.00	895.00	1,400.00	64%
Uncompahgre Water Users	0.00	3,000.00	3,000.00	100%
CWC Membership	0.00	400.00	400.00 *	100%
WSC Water Workshop	0.00	1,200.00	1,200.00	100%
Water Resources Study	0.00	4,065.00	5,000.00	81%
Promotion & Guest Expense	0.00	438.97	1,500.00	29%
County Treasurer's Fees	255.38	6,647.97	7,000.00	95%
Subtotals	<u>\$18,386.52</u>	<u>\$155,727.78</u>	<u>\$211,000.00 *</u>	<u>74%</u>
Contingency			0.00 *	0%
Emergency Reserves			2,700.00	0%
Water Resource Protection & Development Reserves			46,000.00 *	0%
Totals	<u>\$18,386.52</u>	<u>\$155,727.78</u>	<u>\$259,700.00 *</u>	<u>60%</u>

*Amount amended per 10/11/93 scheduled meeting

**UGRWCD
FINANCIAL DATA-10/1/93 THRU 10/31/93**

Balance on Hand - September 30, 1993

Checking Account	\$4,301.14
Petty Cash	100.00
Time C.D.-FNB	2,680.07
Time C.D.-Wetlands Fund	932.49
Money Maker-GS&L	41,286.12
Time C.D.-FNB-Lake City	40,751.44
Passbook Svgs-CB St. Bank	40,000.00
Passbook Svgs-FNB	80,212.87

TOTAL FUNDS 9/30/93 **\$210,264.13**

Tax Receipt Collections thru September

Real Estate	\$197,542.23
Specific Ownership	10,659.89
Interest	1,045.04

Note: Treasurers' Fees are included
\$209,247.16

September Tax Receipt Collections Paid in October

Real Estate	\$7,833.12
Specific Ownership	3,570.83
Interest	393.17

Note: Treasurers' Fees are included
\$11,797.12

Interest on Investments received in October

1,808.24

TOTAL TO DATE **\$223,869.49**

Total Disbursements thru 10/31/93

18,386.52

TOTAL FUNDS 10/31/93 **\$205,482.97**

Balances as of 10/31/93

		INTEREST RATES	MATURITY DATES
Checking Account	\$17,740.03	2.25%	
Petty Cash	100.00		
Time C.D.-FNB of Gunnison (1 yr.)	2,703.71	3.50%	1/18/94
Time C.D.-Wetlands-FNB of Gunnison (1 yr.)	937.95	3.50%	8/16/94
Money Maker-GS&L	41,401.65	3.40%	
Time C.D.-FNB of Lake City (6 mo.)	41,465.74	3.51%	4/4/94
Passbook Savings-C.B. State Bank	40,280.42	3.00%	
Passbook Savings-FNB of Gunnison	60,853.47	3.00%	
TOTAL FUNDS 10/31/93	<u>\$205,482.97</u>		

BRATTON & McCLOW
232 West Tomichi, Suite 202
P.O. Box 669
Gunnison, Colorado 81230
(303) 641-1903

Upper Gunnison River Water
Conservancy District
275 South Spruce Street
Gunnison, Colorado 81230

October 28, 1993

Professional services:

Administrative

09/29/93 UGd Meeting with Tyler re: budget - legal fees for 1993
(balance of year) and 1994 (entire year); draft
letter to Board re: 1994 legal budget; draft letter
to Board re: 1993 - remainder of year

UGj Office conference with Tyler re: 1993 NO CHARGE
expenditures and 1994 budget

09/30/93 UGd Revise letters re: budget matters; telephone
conference with Tyler

10/04/93 UGd Review and revise draft of minutes of meeting

10/06/93 UGj Prepare discussion draft of legal services agreement

10/11/93 UGd Attend monthly Board meeting

UGj Attend October Board Meeting NO CHARGE

10/24/93 UGd Review/revise minutes of 10/11/93 meeting

Amount

SUBTOTAL: [875.00]

PAYMENT IN FULL IS DUE ON RECEIPT OF STATEMENT. A LATE CHARGE
OF 1 1/2% PER MONTH WILL BE ASSESSED ON BALANCES NOT RECEIVED WITHIN 30 DAYS.

THIS STATEMENT DOES NOT INCLUDE DISBURSEMENTS FOR WHICH WE HAVE NOT YET BEEN BILLED.

Availability - Appeal

- 09/27/93 jh Research and writing brief
- 09/28/93 jh Research and writing brief
- 09/29/93 jh Research and writing brief
- UGd Work on various availability briefs
- 09/30/93 jh Research and writing brief
- UGd Work on briefs; telephone conference with Duane Helton
- 10/01/93 jh Research and writing brief
- 10/04/93 UGj Review recent Supreme Court conditional water rights decisions
- 10/05/93 UGd Telephone conference with Andy re: conditional water rights
- 10/09/93 jh Conference with Dick Bratton on Colorado Springs Brief
- UGd Review Brief of City of Colorado Springs
- 10/11/93 jh Review opposing briefs
- UGd Review Thornton Brief; review Barney White Preliminary Brief
- 10/12/93 jh Review opposing briefs
- UGd Telephone conference with Steve Sims (Attorney General), Andy Mergen (Department of Justice) re: briefs: (1) conditional rights and (2) 650(f)
- 10/13/93 jh Review opposing briefs
- jh Conference with Dick Bratton; conference call to Andy Mergen
- UGd Review briefs of Arapahoe, Thornton; telephone conference with Steve Sims re: appeal
- UGj Review briefs of Douglas County, Arapahoe County
- 10/14/93 jh Conference with Dick Bratton; meeting with Steve Sims; conferences with attorneys

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10/14/93 UGd Reviw briefs of Colorado Springs, Douglas County and Thornton; telephone conference with Andy, Wayne Foreman re: conditional briefs and other issues

UGj Review Thornton, Crystal Creek briefs

10/15/93 UGd Read brief on conditional rights; attend meeting of opposers' attorneys re: applicant's and amicus briefs and strategy for answer briefs; meet with Steve Sims

10/18/93 UGd Telephone conferences with Tyler, Andy Williams and Ken Spann (2); review proposed letter to Attorney General; draft letter to Board re: conditional water rights/special meeting; draft memo for review of CWCB re: Arapahoe position on conditional rights

10/19/93 UGj Review briefs and legal authorities re: conditional water rights

10/20/93 UGd Work on appeal

10/22/93 UGd Telephone conference with Tyler re: availability meeting

10/25/93 UGd Conference with Tyler and Bill re: conditional water rights; telephone conference with Andy and Barney re: conditional water rights

UGd Attend special meeting re: availability appeal policy matters

Amount

SUBTOTAL: [9,070.00]

Taylor Park Res Management Contract

09/30/93 UGd Draft Taylor Park, 5(a) language revision

10/21/93 UGd Prepare for meeting (read Bureau of Reclamation draft); attend meeting of Taylor Park Management Commission in Montrose

SUBTOTAL: [475.00]

For professional services rendered \$10,420.00

PAYMENT IN FULL IS DUE ON RECEIPT OF STATEMENT. A LATE CHARGE OF 1 1/2% PER MONTH WILL BE ASSESSED ON BALANCES NOT RECEIVED WITHIN 30 DAYS.

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Amount

Itemization of costs

-Westlaw research charges	1,108.01
-Long distance telephone expense	44.27
-Telecopier expense	64.00
-Photocopier expense	169.05
-Postage expense	11.19

SUBTOTAL:	[1,396.52]
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Availability - Appeal

-Paid to Oxbridge Press for scanning documents	13.50
-Meals during Gunnison Trip, 9/29 - 9/30 (John Hill)	16.50
-Lodging in Gunnison, 9/29 - 9/30 (John Hill)	102.93
-Airfare to Denver on 10/12/93 (Dick Bratton)	139.00
-Lodging while in Denver on 10/13 and 10/14/93 (Dick Bratton)	162.50
-Taxi fare in Denver (10/13/93 - Dick Bratton)	12.50

SUBTOTAL:	[446.93]
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Total costs	\$1,843.45
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Total amount of this bill	\$12,263.45
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THIS STATEMENT DOES NOT INCLUDE DISBURSEMENTS FOR WHICH WE HAVE NOT YET BEEN BILLED.

HELTON & WILLIAMSEN, P.C.
CONSULTING ENGINEERS IN WATER RESOURCES
384 INVERNESS DRIVE SOUTH, SUITE 115
ENGLEWOOD, COLORADO 80112
PHONE (303) 792-2161
FAX (303) 792-2165

November 5, 1993

Upper Gunnison River Water Conservancy District
275 South Spruce Street
Gunnison, Colorado 81230

INVOICE

Project Description: Provision of engineering services as requested by client of counsel.

Job Number: U201

Billing Period: October 1 through 31, 1993

Work Completed:

- 1) As requested, continued to consult with client and counsel on matters related to Arapahoe County's appeal in Case No. 86CW226 and 88CW178, and particularly on with the issue of consideration of conditional water rights under the "can and will" standard.
- 2) Read and studied a draft brief prepared by Barney White addressing the issue of consideration of conditional water rights under the "can and will" standard in preparation for a meeting with the State Engineer.

Itemized Charges:

D. Helton	2.50 hrs @ \$85.00/hr	\$212.50
N. Mitchell	0.50 hr @ \$30.00/hr	\$15.00

Reimbursable expenses:

Long distance charges	<u>\$0.69</u>
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AMOUNT DUE THIS STATEMENT **\$228.19**

PREVIOUS AMOUNT DUE

PAYMENT - THANK YOU

TOTAL AMOUNT DUE **\$228.19**

HELTON & WILLIAMSEN, P.C.



Duane D. Helton

DDH/nlm

Upper Gunnison River Water Conservancy District

M E M O R A N D U M

TO: Board Members,
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: October 28, 1993

SUBJECT: Agenda Item 7, November 8, 1993, Board Meeting --
Continuation of Proposed 1994 Budget.

Attached is the proposed budget for 1994 for the Upper Gunnison River Water Conservancy District as revised following board discussion at the October 11, 1993 board meeting.

The following changes have been made in the proposed budget:

- 1) Administrative salary has been increased to \$47,500.00 from \$45,000.00.
- 2) Payroll taxes and benefits have been increased to \$8,500.00 from \$7,000.00.
- 3) Legal retainer fees have been decreased from \$600.00 to \$0.00.
- 4) The legal expenses and engineering related line item has been revised to include legal expenses only.
- 5) A new line item for engineering services has been added in the amount of \$10,000.00. Engineering services may be needed in the following areas:
 - * Engineering in connection with the Arapahoe County Union Park water availability appeal.
 - * Calculation of historic use of the refill above the 13,777 acre-feet currently decreed absolute.
 - * Determination of the yield of the refill.
 - * Examination of refill accounting under different reservoir operation, administration, and water supply conditions.

*Thoughts
? done*

*get
Bureau*

- * Estimation of requirements for replacement water in the Upper Gunnison basin.
- * Initiation of development of an augmentation plan for the Upper Gunnison basin.
- * Investigation of options for developing and constructing projects associated with the Upper Gunnison conditional decrees.

The level of expenditures in 1994 will depend on the pace at which the District moves forward on the Taylor Park Water Management Agreement, Development of a basin-wide augmentation plan, and development of the District's conditional water rights. The amount of engineering services needed to address all of these areas may exceed \$10,000.00.

- 6) Stream gages O&M has been increased to \$12,800.00 from \$12,300.00 to account for U. S. Geological Survey price increases for 1994.
- 7) The "Increase in Water Resource Protection and Development Reserves" has been reduced from \$16,500.00 to \$2,000.00 so that total expenditures for the District will remain unchanged.
- 8) I have underlined a number of recommended revisions to the budget message.

At the November 8, 1993 board meeting I recommend that the board:

- 1) Provide direction concerning any needed revisions to the proposed 1994 budget, and budget message.
- 2) Authorize staff to make preparations for adoption of the budget at the December 6, 1993 board meeting.

PROPOSED BUDGET
UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT
January 1 - December 31, 1994

GENERAL FUND

Estimated Revenues

	1992 ACTUAL	1993 ESTIMATED	1994 PROPOSED
Beginning Unreserved Fund Balance (Designated and Undesignated)	\$113,611.00	\$27,943.00	\$1,521.00
Non-Operating Revenues			
General Property Tax	\$211,639.00	\$210,778.00	\$210,778.00
Specific Ownership Tax	17,149.00	17,500.00	15,750.00
Other (Interest & Refunds)	1,897.00	5,000.00	5,000.00
Total Funds Available	<u>\$344,296.00</u>	<u>\$261,221.00</u>	<u>\$233,049.00</u>

Estimated Expenditures

	1992 ACTUAL	1993 ESTIMATED	1994 PROPOSED
Administrative Salary	\$40,739.00	\$43,000.00	\$47,500.00
Secretary Salary	5,809.00	12,000.00	14,000.00
Board Treasurer Salary	3,254.00	4,000.00	4,000.00
Payroll Taxes & Benefits	4,850.00	6,000.00	8,500.00
Staff Conference & Training	230.00	500.00	500.00
State Compensation Insurance	216.00	0.00	0.00
Legal Retainer Fees	600.00	600.00	0.00
Legal Expenses	88,040.00	93,000.00	70,000.00
Audit & Accounting	1,058.00	1,200.00	1,200.00
Engineering Services	0.00	0.00	10,000.00
Rent and Utilities	1,500.00	1,500.00	1,500.00
Stream Gages O&M	0.00	7,000.00	12,800.00
Stream Gages Construction	8,150.00	0.00	4,000.00
Bonding	125.00	200.00	200.00
Insurance	0.00	300.00	300.00
Office Telephone	1,299.00	2,200.00	2,500.00
Attorney Telephone	396.00	100.00	0.00
Legal Printing	1,247.00	1,200.00	1,400.00
Administrative Travel	3,533.00	2,500.00	3,000.00
Attorney Travel	2,082.00	800.00	0.00
Board of Directors Travel	122.00	200.00	500.00
Office Supplies	2,961.00	1,300.00	1,500.00
Postage	1,360.00	1,000.00	1,200.00
Copying	0.00	1,100.00	1,200.00
Publications Acquisition	0.00	300.00	500.00
Office Equipment	13,271.00	6,500.00	1,000.00
Board of Directors Fees	4,200.00	5,000.00	5,000.00
Board of Directors Mileage	1,009.00	1,400.00	1,400.00
Uncompahgre Water Users	2,000.00	3,000.00	3,000.00
Taylor Park Water Management	0.00	0.00	10,000.00
CWC Membership	400.00	400.00	500.00
WSC Water Workshop	1,000.00	1,200.00	1,200.00
Water Resources Study	10,000.00	5,000.00	0.00
Promotion & Guest Expense	77.00	1,500.00	1,700.00
County Treasurer's Fees	6,825.00	7,000.00	7,000.00
Subtotals	<u>\$206,353.00</u>	<u>\$211,000.00</u>	<u>\$217,100.00</u>
Contingency	\$0.00	\$0.00	\$10,000.00
Increase (Decrease) in Emergency Reserves	0.00	2,700.00	2,500.00
Increase (Decrease) in Water Resource Protection and Development Reserves	110,000.00	46,000.00	2,000.00
Total Expenditures	<u>\$316,353.00</u>	<u>\$259,700.00</u>	<u>\$231,600.00</u>
Ending Unreserved Fund Balance	\$27,943.00	\$1,521.00	\$1,449.00

?
New
letter
↓

Total Fund Balance Analysis

	1992 ACTUAL	1993 ESTIMATED	1994 PROPOSED
Revenues Over (Under) Expenditures	(\$85,668.00)	(\$26,422.00)	(\$72.00)
Increase (Decrease) in Reserve Fund Balances	110,000.00	48,700.00	4,500.00
Total Fund Balance Increase (Decrease)	<u>\$24,332.00</u>	<u>\$22,278.00</u>	<u>\$4,428.00</u>
Total Fund Balance Beginning	113,611.00	137,943.00	160,221.00
Ending	<u>\$137,943.00</u>	<u>\$160,221.00</u>	<u>\$164,649.00</u>

Ending Fund Balance Analysis

	1992 ACTUAL	1993 ESTIMATED	1994 PROPOSED
Unreserved Fund Balance	\$27,943.00	\$1,521.00	\$1,449.00
Reserved Fund Balances			
Emergency Reserves	0.00	2,700.00	5,200.00
Water Resource Protection and Development Reserves	110,000.00	156,000.00	158,000.00
Ending Total Fund Balance	<u>\$137,943.00</u>	<u>\$160,221.00</u>	<u>\$164,649.00</u>

**PROPOSED
 CALCULATION OF MILL LEVY**

1. Amount of General Property Tax required	\$210,778.00
2. Assessed Valuation: \$145,609,686	
3. Required Mill Levy: 1.448 Mills	

P R O P O S E D B U D G E T
 UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT
 January 1 - December 31, 1994
 Page 3

PROPOSED BUDGET MESSAGE

The Upper Gunnison River Water Conservancy District was formed on June 1, 1959 pursuant to the provisions of and for the purposes described in the Water Conservancy Act of Colorado, Section 149-6-1, et seq., C.R.S., 1953. The District was reorganized on October 8, 1991. The District is located within Gunnison, Hinsdale, and Saguache Counties and is generally defined as that area of the Upper Gunnison watershed which lies above the outlet of Blue Mesa Reservoir. The District is largely supported through a mill levy which is assessed on real property located in the District.

The District uses the modified accrual basis of accounting in which revenues are recognized when they become measurable and available as net current assets. Expenditures are recognized when the related fund liability is incurred.

The accounts of the Upper Gunnison River Water Conservancy District are organized on the basis of funds. The District maintains only a General Fund in which all activity is reported.

Principal activities of the District in 1994 will include on-going water rights litigation to protect the water resources of the Upper Gunnison basin, protection of Upper Gunnison basin interests in discussions concerning the re-operation of the Aspinall Unit to meet the needs of endangered species, participation in the development of an Environmental Impact Statement for a contract to deliver water from the Aspinall Unit to the Black Canyon of the Gunnison National Monument, protection of Upper Gunnison basin interests in connection with the quantification of the federal reserved water right in the Black Canyon, development of an agreement for the use of water in the upper basin from Taylor Park Reservoir, development of an Upper Gunnison basin augmentation plan to protect upper basin water users from downstream calls, participation in legislative efforts to protect water uses in the Upper Gunnison basin, development of computerized basin-wide water accounting and planning tools, planning for water resource development to meet water needs throughout the Upper Gunnison basin, installation and operation of new stream gaging stations to obtain information needed for developing and protecting the District's water resources, and participation in an analysis of water supply and water quality needs in the East River basin.

The following is a description of major line items included in the 1994 budget:

Administrative Salary. The amount shown is for a full-time manager for the District.

Secretary Salary. The amount shown is for a half-time position plus attendance at board meetings.

Legal Expense and Engineering. Legal expenses include the anticipated legal costs associated with the Arapahoe County Union Park water availability appeal, the NECO Rocky Point Project, the Arapahoe County Upper Gunnison Basin Project, negotiation of contracts including the Taylor Park Water Management Agreement with the Bureau of Reclamation, involvement in Gunnison River issues with the Bureau of Reclamation, endangered species matters, development of a basin-wide augmentation plan, the Nature Conservancy water right donation to the Colorado Water Conservation Board, the Dominguez Reservoir litigation, development of an application for an exchange for the first fill in Taylor Park Reservoir, and on-going district activities including development of the District's water rights, feasibility studies, and miscellaneous administrative matters. ~~In conjunction with these~~

Jennifer

P R O P O S E D B U D G E T
 UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT
 January 1 - December 31, 1994
 Page 4

~~legal activities, it is anticipated that consulting engineering services may be necessary.~~

Engineering Services. This line item has been included in the District's budget for the first time in 1994. In previous years legal expenses and engineering were combined under one line item. Engineering expenses may be incurred in conjunction with any of the activities described under legal expenses. Activities in 1994 may include the estimation of the yield of the refill water right in Taylor Park Reservoir, examination of the refill accounting under different reservoir operation, administration, and water supply conditions, estimation of requirements for replacement water in the Upper Gunnison basin, initiation of development of an augmentation plan for the Upper Gunnison basin, and engineering work in connection with the development and construction of projects associated with the Upper Gunnison District's conditional decrees.

Stream Gages O&M. The amount shown is for the cost of operation of stream gages on Castle Creek, Cochetopa Creek, Slate River, and Tomichi Creek.

Stream Gages Construction. The amount shown is for one-half of the local cost share for the construction of the Slate River stream gage.

Taylor Park Water Management. This line item has been included in the District's budget for the first time in 1994. The amount is budgeted in anticipation that the District may decide to enter into the Taylor Park Water Management Agreement with the Bureau of Reclamation in 1994. Principle purposes of the Water Management Agreement would be to provide for the release of stored water from Taylor Park Reservoir in order that agricultural water users throughout the Upper Gunnison basin may continue to divert when downstream senior calls are placed on the lower Gunnison River, and to provide fishery and recreation benefits. As of the time of adoption of this budget the District has not committed to execute the agreement with the Bureau of Reclamation.

*for which
 as funds
 change
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Contingency. This line item includes expenses which may be incurred in 1994 but which are uncertain at the time of budget adoption. It is the Board's intention that should the amount of contingency needed for any one line item exceed \$1,000.00 the amount shall be paid out of the contingency in accordance with the requirements of Sections 29-1-109 and 29-1-111, C.R.S., 1973. It is intended that contingency may be used to cover any line item expense in the budget. Payments from contingency may also be made to cover a new district expense for water purchase costs and contracting costs for providing water supplies to water users in the district. Such costs have been included in contingency because they are dependent in large part on future circumstances which cannot now be foreseen.

Increase in Water Resource Protection and Development Reserve. The amount budgeted under this line item for 1994 has been included to pay the costs of litigation to protect water resources in the District and for development of water resources in the future. ~~The amount budgeted may also be used to pay consulting engineering costs for the development of a basin-wide augmentation plan so that water released from upper basin reservoirs including Taylor Park Reservoir can be used to prevent downstream senior calls from adversely affecting water users throughout the District.~~ The amount has not been budgeted as individual line item expenses in the budget because it is not certain that the funds will be expended in 1994 of uncertainty concerning the timing and amount of the expenses.

P R O P O S E D B U D G E T
UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT
January 1 - December 31, 1994
Page 5

In 1994 the Upper Gunnison River Water Conservancy District will maintain two reserve balances in the general fund.

Emergency Reserve. The District will appropriate at least 1% of fiscal year spending to this fund in 1994 as required by Amendment #1.

Water Resource Protection and Development Reserve. The District established this reserve in 1992 so as to have funds available to pay legal and engineering expenses associated with the protection of water resources within the District, to pay for potential new District expenses for water purchase costs and contracting costs for augmenting water supplies within the district, and to pay costs of developing, and constructing water supply projects decreed under the District's conditional water rights new water supplies. It is the Board's intention that when transfers or payments from the Water Resource Protection and Development Reserve are required the amount shall first be approved by the Board in accordance with the requirements of Section 29-1-109, C.R.S., 1973.

The Board of Directors of the Upper Gunnison River Water Conservancy District anticipate that this budget will allow the District to carry out its purposes and statutory responsibilities for 1994.

Source: Gary Bishop representative before

RALPH E. CLARK III

519 EAST GEORGIA AVENUE
GUNNISON, COLORADO 81230
(303) 641-2907

October 29, 1993

Mr. Tyler Martineau, Manager
Upper Gunnison River Water
Conservation District
275 South Spruce Street
Gunnison, Colorado 81230

received
11/2/93

Dear Tyler:

The summary of the meeting on October 6th of the Interim Committee on Water and State Land Issues noted a presentation about the proposed Roan Creek project by Mr. Gary Bishop representing Chevron Oil Company. Attached is a copy of his handout entitled "Summary of Invalid Arguments Against The Project." Mr. Andy Williams followed Mr. Bishop and also discussed the project's advantages.

I would call your attention to a portion of the response given to Argument A. It suggests a possible change of direction for water resource policy which is relevant to the future significance and value of conditional rights. The origin of the change is in litigation over compact obligations. Policy positions already expressed by Colorado in regard to interstate water allocation may be extended by analogies for application in intrastate water allocation. I am writing to draw attention to this possibility for policy change, to suggest consideration of its implications in the Union Park situation, and to suggest reconsideration of this expressed policy and its application from a state-wide perspective.

In response to an argument that leasing Roan Creek water to Lower Basin users would destroy the compact, proponents answered in part:

... Colorado itself has argued (in *Kansas v. Colorado*) that when economics and equities have been built up in a Compact state in reliance on water not due to that state under the Compact, that the state that is violating the Compact should still retain the use of the water. ... (reference and emphasis added)

I recognize that the allocation of water between states with compacts has been based on equity apportionment and that within Colorado the allocation of water has been based on appropriation apportionment. In part because of Roan Creek, there is growing interest in changing water allocation policy applied within the state. One reason is the prospect that current operations of some large water projects could be curtailed in the future because of the building and operation of more senior but presently still conditional water rights.

The direction for this policy change is suggested by what has already been developed, justified, and formally adopted by the State of Colorado in the *Kansas v. Colorado* case. In summary, the possible new policy direction would be to resolve operational conflicts between projects within the state by

RALPH E. CLARK III

519 EAST GEORGIA AVENUE
GUNNISON, COLORADO 81230
(303) 641-2907

October 29, 1993

received
11/2/93

Mr. Tyler Martineau, Manager
Upper Gunnison River Water
Conservation District
275 South Spruce Street
Gunnison, Colorado 81230

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The direction for this policy change is suggested by what has already been developed, justified, and formally adopted by the State of Colorado in the Kansas v. Colorado case. In summary, the possible new policy direction would be to resolve operational conflicts between projects within the state by

determining and balancing economies and equities built up on reliance and use of physically available water. This is balancing for determination of the greater public good is very different from adhering strictly to the priority system.

Some water project developers historically have wanted a "wait and see" policy approach to the determination of water availability with respect to existing conditionals. Then came "build and see" approach as shown for example by the Windy Gap project. Now the quoted expression of policy suggests a "build and then defend" approach.

We must expect strong efforts to defend the out of priority operation of existing projects in which large investments have been made. Using analogies derived from the above expression of Colorado's interstate policy in the Kansas v. Colorado case, developers anticipating this situation may seek policy changes to achieve their purposes. They might justify adopting state policy direction as protecting the economies of communities and industries which have become dependent on a project's operation, honoring commitments to holders of municipal debt, respecting governmental service obligations to property owners, and sustaining regional economic and social balances. All this could be framed in terms of economics and equity to justify a project's continued use of water in violation of Compact or appropriation priority.

An alternative policy direction would be to support and refine the approach suggested by the water court's decision on water availability for the Union Park Project. It was to consider major conditionals in the context of the "can and will" tests. In effect this says that if a basin's water has been committed by absolutes and conditions or there is "over appropriation", a proposed new project can not even be started. This avoids building up economies and equities which may later be used to justify out of priority use of water by the project. It avoids devaluation of existing conditionals by the prospect of them eventually having to defend commencement of their operations against in-place, operating, but junior projects in terms of economies and equities. Finally, the policy suggested by the water court's decision may avoid creation of some type of probability filter to determine the likelihood of existing conditionals becoming reality.

Again I would urge that you keep the Upper Gunnison Board appraised of policy development and changes as suggested by the quotation. Perhaps Mr. Williams might help in this as he may have been instrumental in directing attention to the situation. Also perhaps the Colorado Water Conservation Board may be reexamining this line of policy development in the future. What information may be relevant to its considerations may also be relevant to our Board's.

Respectfully:


Ralph E. Clark III

c. Bratton and McClow

ROAN CREEK PROJECT
SUMMARY OF INVALID ARGUMENTS AGAINST THE PROJECT

Source: ^C
Cary Bishop's represent
Chevron. before
Interim Commission
on Water and Soil
Loss Issues
Oct 6, 1993
Dennis

I. Commonly Quoted Arguments Against the Project

- A. The project lease will destroy the Compact by moving water out of the Upper Basin to the Lower Basin for use in the Lower Basin.
- B. If the Compact is destroyed, agricultural water in the Upper Basin will be sold and moved to the Lower Basin.
- C. The State of Nevada is not interested in the project.
- D. Colorado should participate with the Upper Basin states in "allowing Colorado's unused water to go to the Lower Basin to help provide a Lower Basin solution to a Lower Basin problem."

II. Each of the Arguments Raised is Incorrect and Does Harm to the People of Colorado

- A. The Compact protection afforded to unused Compact water cannot be destroyed by the lease. Colorado has already destroyed any protection it had by its arguments in Kansas v. Colorado. Colorado itself has argued that when economies and equities have been built up in a Compact state in reliance on water not due to that state under the Compact, that the state that is violating the Compact should still retain the use of the water. This destroys, by our own admission, any argument that could be made that the Compact will protect Colorado in the future if Colorado does not build projects to store its water. California will use Colorado's arguments in the Arkansas River litigation against Colorado if it ever attempts to get its water back if Colorado does not now build projects to protect that water use.
- B. Agricultural water will not be moved to the Lower Basin because of the Roan Creek Project:
1. Arizona has too much unmarketed Central Arizona Project water now to have any market for the purchase of Colorado water. It cannot sell its own water at the present time.
 2. California has been ordered by the federal government to look to California agriculture before it looks to building new projects or looks to additional allocations out of the Colorado River. It has embarked on aggressive agricultural conversion projects now, so there is no incentive for California to try and buy Colorado agricultural water.
 3. Nevada is attempting, by the Roan Creek project lease, to get an interim solution using conditional industrial and municipal water rights, not agricultural water rights. They have said they are not interested in decreed agricultural water rights.
- C. Nevada is interested in the project; the newly reconstituted Colorado River Commission has sent out bids for water project proposals to meet Nevada's needs and the Roan Creek project will be making a presentation to that Commission in early November.
- D. The Upper Basin states' proposal to solve Nevada's problem as described by Wayne Cook on August 17th in Grand Junction, shows that in reality the only "solution" is to let unused Upper Basin water flow to the Lower Basin to be distributed among the Lower Basin states. This builds additional equities against Colorado and the Upper Basin states because of their cooperation in providing for Lower Basin use of Upper Basin water; the very same argument made by Colorado in its Arkansas River brief against Kansas. This leads to an argument that will prevent Colorado from getting the unused water back after the Lower Basin has developed reliance upon it.

M E M O R A N D U M

TO: Board Members,
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: October 27, 1993

SUBJECT: Agenda Item 9, November 8, 1993, Board Meeting --
Taylor Park Water Management Agreement.

The fourth negotiating session concerning the Taylor Park Water Management Agreement was held with the Bureau of Reclamation (USBR) on October 21. At the negotiating session the following topics were discussed:

- * The USBR does not know of any mechanism (including the Warren Act) whereby refill water in Taylor Park Reservoir could be moved down to Blue Mesa Reservoir and carried over for use in dry years. The USBR urged everyone to continue to try to find an acceptable approach for providing carryover storage.
- * The USBR said they would provide more detail concerning the administrative charges by the next negotiating session.
- * The USBR indicated that they have provided copies of all applicable reclamation laws which would affect the agreement. These laws are all specifically referenced in the agreement.
- * The USBR said that they do not want to get too specific concerning the steps they will take to operate the Aspinall Unit to ensure a refill each year. The USBR said they would consider adding the following type of language to page 10, paragraph 5.a.: "Said management of operations may include but not be limited to operation of the Aspinall Unit to prevent an Aspinall call from limiting the refill, or operation of the Aspinall Unit (through making power releases) so as to ~~limit~~ downstream calls which may prevent the exercise of the refill right." Taylor?
- * The negotiators discussed what the minimum storage and release of water under the refill should be in the first sentence of paragraph 5.a. Information on the yield is not likely to be available until after the planning model is completed at the end of January, 1994. The

10/27/93

USBR expressed concern about slowing down the approval process for the agreement. It was suggested as an alternative that some percentage of the water physically available to Taylor Park Reservoir above that needed for the first fill be used.

- * The other participants in the negotiation appeared to be ready to move quickly towards approving the agreement. The USBR recommended approval of the agreement in the next month or two because of a new deadline of the U. S. Fish & Wildlife Service (FWS) for delivery of flows in April, 1994 for endangered fish in the Gunnison River.
- * The USBR said it would like to receive preliminary approval for the agreement from the Upper Gunnison District and the other parties after one or two more negotiating sessions. The USBR will then proceed with NEPA compliance, the section 7 consultation, and the record of decision for the agreement.

The following tasks were identified at the negotiating session as needing to be completed:

- * The USBR needs to calculate how much water would be physically available to Taylor Park Reservoir after the first fill is completed.
- * The USBR needs to determine what the yield of the refill will be under past and future administration scenarios.
- * The USBR will look at language that it will use to provide a commitment to the Upper Gunnison District concerning the operation of the Aspinall Unit.
- * The USBR will provide a schedule for complying with NEPA requirements.
- * There is a need to prove how much historic use of the refill has occurred above the 13,777 acre-feet decreed absolute in the 203 decree. The information is needed for NEPA and the Section 7 consultation.
- * There is a need to look at how refill accounting will be carried out under different river administration conditions.

Today I talked with Brent Uilenberg at the USBR. In a meeting with the Fish & Wildlife Service on October 25 the FWS agreed to delay seeking administration of flows below the Redlands diversion from April, 1994 until April, 1995. He said that after April, 1995 the Upper Gunnison District needs to be prepared for downstream calls to come on the river. In the interim the USBR will operate the Aspinall Unit so as to guarantee a minimum flow of 200-300 cfs in the Gunnison River

10/27/93

below Redlands, and will also insure that there is enough water in the lower Gunnison River to satisfy existing rights. The FWS backed off on the April, 1994 deadline because it had not completed studies to quantify the amount of test flows needed below Redlands. Brent's opinion was that the new deadline will allow us to slow down the negotiations and use the time to develop answers concerning the yield of the refill. He suggested that the next negotiating session not be held until such information is available (perhaps 3 - 4 months).

In my opinion there is a very difficult (if not impossible) schedule to complete if the District is to be ready for basin-wide administration by April, 1995. In addition to a dependable source of augmentation water, the District will have to have a plan for augmentation completed and approved by the water court.

In today's telephone conversation Brent Uilenberg reiterated that the USBR believes that the CRSP Act makes no provisions for providing carryover storage in a facility such as Blue Mesa Reservoir.

The next negotiating session has been tentatively scheduled for December 1, 1993 at 9:30 a.m. in Montrose, but may now be delayed for several months. At the November 8, 1993 meeting I recommend that the board provide direction as to:

- 1) How fast the District should move towards approval of the agreement.
- 2) How much certainty the District should have regarding the yield of the refill and its use as a replacement source in an augmentation plan before proceeding with the agreement.
- 3) How the District should proceed to obtain needed information. Options include: waiting for the planning model to be available, waiting until others develop needed information, or hiring our own engineering consultant.

*// send to
Review
what's going
on*

*Wait for
others*

November 2, 1993

Mr. Tyler Martineau, Manager
Upper Gunnison River Water
Conservation District
275 South Spruce Street
Gunnison, Colorado 81230

Dear Tyler:

Your memorandum on the Taylor Park Water Management Agreement dated October 27, 1993, suggests the possibility of delay in the negotiation process but also notes that other participants in the negotiation want to move quickly to approve the agreement.

We would prefer a delay. If delay occurs it should provide time to complete the tasks listed on page 2 relating to calculation of physical quantity, safe yield, and refill accounting. Having all this information in hand before consideration of final approval of the agreement process would allow all parties to understand exactly what is to be received for exactly what is to be given. If there is delay in negotiations, these tasks should still go forward.

Whether or not there is a delay, the agreement should provide that the Bureau of Reclamation annually submits a statement of amounts and purposes for which water was managed under the agreement during the proceeding year. Having such records would greatly reduce the burdens, costs, and uncertainties facing the District in making absolute what remains conditional under the decree in Case 86-CW-203.

Sincerely:

Three handwritten signatures in cursive script. The first signature is 'James Clark', the second is 'Remon Reed', and the third is 'James Clark'.

Upper Gunnison River Water Conservancy District

M E M O R A N D U M

TO: Board Members,
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: October 29, 1993

SUBJECT: Agenda Item 9, November 8, 1993, Board Meeting --
Taylor Park Water Management Agreement.

Attached is a news release from the Bureau of Reclamation concerning settlement of a lawsuit which will have major implications involving the Reclamation Reform Act of 1982. In the settlement the Bureau agrees to propose new regulations as part of a new rulemaking proceeding that comprehensively reexamines the implementation of the RRA on a westwide basis.

Paragraph 3 of the attached settlement describes the range of issues to be addressed in the new regulations.

The new rulemaking could have effects on the District in connection with the proposed Taylor Park Water Management Agreement, or with other agreements with the Bureau of Reclamation that may involve RRA issues.

*Attached
in with
Gathering Data
etc
books*

Upper Gunnison River Water Conservancy District

M E M O R A N D U M

TO: Board Members,
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau TM

DATE: October 28, 1993

SUBJECT: Agenda Item 10, November 8, 1993, Board Meeting --
1994 Performance Goals for District Manager.

As one of the outcomes of my recent performance evaluation Bill Trampe and I have discussed whether it might be useful to develop a written goal setting and evaluation process for the manager each year. This process would establish performance goals at the beginning of each year against which progress can be measured at the end of the year. The following timetable might be used:

- 1) At the November meeting the board would be presented with a draft set of annual performance goals developed by the board and the manager for the following year.
- 2) At the December meeting the board would finalize the performance goals, and consider approval of the manager's contract.
- 3) At the October meeting in the following year the board would consider the extent to which the manager has met the performance goals, and provide the manager with a written evaluation. This information would then be used as necessary to revise the evaluation goals, and the manager's contract for subsequent years.

There are several approaches that could be used for setting up the annual performance evaluation. The evaluation can be as simple as a review of the list of stated goals or it can be carried out through a numerical scoring and grading system.

Attached are four principle performance goals for 1994 which could serve as a starting point for discussion by the board. I have also provided examples of specific performance measures that could be used to assess the attainment of the goals.

PERFORMANCE GOALS FOR 1994
FOR THE DISTRICT MANAGER

- 1) To prepare the District for upcoming water rights administration in the Upper Gunnison Basin.

Examples of specific performance measures:

- * Evaluate the Taylor Park Reservoir refill as an augmentation source.
- * Evaluate the feasibility of obtaining other stored water for augmentation.
- * Estimate needs for replacement water in the Upper Gunnison basin.
- * Establish parameters for the development of a basin-wide augmentation plan.
- * Effectively assist the board in reaching its decision on the Taylor Park Water Management Agreement.
- * Effectively communicate Upper Gunnison basin needs and concerns to the U. S. Fish & Wildlife Service and Bureau of Reclamation.
- * Ensure that new water rights accounting and administration procedures are developed and implemented properly by the USBR, Fish & Wildlife Service, State Engineers Office, and other water users.
- * Optimize the District's use of the daily accounting spreadsheet, and monthly planning model for addressing administration issues.

- 2) To provide the board with information needed for decision making concerning the Upper Gunnison District conditional decrees.

Examples:

- * Investigate the role of the rights in meeting the water needs of the basin.
- * Investigate the feasibility of assigning rights to other users.
- * Investigate the feasibility of acquiring storage space in existing reservoirs.
- * Provide information on construction of new storage and delivery systems.
- * Provide information on the use of water rights to control water within streams.

provide the board with administrative and programmatic leadership.

Examples:

- * Provide agendas, presentations, and written information.
- * Keep the board informed of important activities.
- * Assure that board members are meaningfully engaged in the policy matters of the District.
- * Work constructively with the public and other organizations with water interests.
- * Effectively manage the District's human resources.
- * Effectively administer and prepare District budgets.

4) To carry out the District's obligations to meet water user needs.

Examples:

- * Meet water user needs through the Taylor Park Reservoir annual operations meetings.
- * Address water needs in connection with the East River Studies.

Upper Gunnison River Water Conservancy District

M E M O R A N D U M

TO: Board Members,
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: November 1, 1993

SUBJECT: Agenda Item 11, November 8, 1993, Board Meeting --
Miscellaneous Matters - CWCB Participation.

The following is in response to the board's request that I identify circumstances where I do not participate in the discussions or decision making at Colorado Water Conservation Board Meetings in order to avoid a conflict of interest. At CWCB meetings I am currently refraining from participating in executive session discussions of:

- 1) The Arapahoe County/Union Park Supreme Court Appeal.
- 2) The Nature Conservancy, CWCB application for a change of water right to instream flow purposes in the Gunnison Gorge.

I expect that there will be a significant discussion of the Arapahoe Case in executive session at the November 9 & 10, 1993 meeting of the CWCB.

Upper Gunnison River Water Conservancy District

MEMORANDUM

TO: Tyler Martineau
Manager

FROM: Patrice Thomas
Office Secretary

DATE: November 3, 1993

RE: Appointment to Colorado Water Quality Control Commission

As you requested this morning, I contacted Marla Biberstine to ask about the requirements for the appointment to the current vacancy on the Water Quality Control Commission.

Marla Biberstine said that there are no professional requirements for appointment to the position. She did say that although there are no requirements for political party an appointee that shared political party membership with the Governor would be preferred. She said that there is no requirement by geographic region, but that reappointments are usually made to represent the same general area in which a resignation occurred.

Ms. Biberstine said that the vacancy which currently exists had been represented by the Denver area and that there are no other representatives from the Denver area on the Colorado Water Quality Control Commission. She said that the vacancy which will occur in February 1994 is currently represented by an appointee from Grand Junction and she expects that the appointee to fill that position will be someone from the Western Slope.

Ms. Biberstine said that she will send an application for appointment and a packet of general information and orientation for service so that it will be available if anyone from this area is interested in appointment by the Governor to the Colorado Water Quality Control Commission.

STATE OF COLORADO

WATER QUALITY CONTROL COMMISSION
WQCC-CC-B2
4300 Cherry Creek Drive South
Denver, Colorado 80222-1530
Phone: (303) 692-3520



NOTICE

Roy Romer
Governor
Patricia A. Nolan, MD, MPH
Executive Director

To: All Interested Persons

From: Water Quality Control Commission

We are requesting your assistance in helping the Governor's Office find individuals who would be interested in appointment to the Colorado Water Quality Control Commission. One vacancy currently exists on the 9-member board, and there will be one additional vacancy in February, 1994, due to a resignation. This term will be up for reappointment in February, 1995.

If you or other members of your organization are interested in serving on the Colorado Water Quality Control Commission, please contact Marla Biberstine, 303 692-3525 for more information.

Upper Gunnison River Water Conservancy District

SPECIAL MEETING

Monday, October 25, 1993
1:00 p.m.

Multi-Purpose Building - County Fairgrounds
Gunnison, Colorado

A G E N D A

- | | |
|-----------|---|
| 1:00 p.m. | 1. Call to Order. |
| | 2. Legal Matters: |
| 1:05 p.m. | a. Update on the Arapahoe County/Union Park Project Supreme Court Appeal. |
| 1:15 p.m. | b. Alternatives for Considering Conditional Water Rights in Determinations of Water Availability. |
| 1:45 p.m. | 3. Public Comment Concerning Agenda Item 2. |
| 2:15 p.m. | 4. Discussion of Approaches for Considering Conditional Water Rights in Determinations of Water Availability. |
| 2:45 p.m. | 5. Miscellaneous Matters. |
| 3:00 p.m. | 6. Adjournment. |

UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT

SPECIAL BOARD MEETING MINUTES

October 25, 1993

The Board of Directors of the Upper Gunnison River Water Conservancy District conducted a Special Meeting on October 25, 1993 at 1:00 p.m. in the Multi-Purpose Building at the Rodeo Grounds, Gunnison, Colorado.

Board members present were: Robert Arnold, Ralph E. Clark, III, Susan Lohr, Ramon Reed, Mark Schumacher, Peter Smith, Lee Spann, Dennis Steckel, Doyle Templeton, William S. Trampe, and Purvis Vickers.

Others present were:

Dick Bratton, Attorney
Tyler Martineau, Manager
Patrice Thomas, Office Secretary
Keith Kepler, Division of Water Resources
Marlene Zanetell, Gunnison County Commissioner
Phyllis Guerrieri, League of Women Voters
Lucy High
Gary Sprung, HCCA
Steve Glazer
Laura Anderson, Crested Butte Chronicle & Pilot
Enid Pepperd, KKYY

1. CALL TO ORDER

President Trampe called the meeting to order at 1:12 p.m. He explained that the meeting was called in regard to concern about litigation and that the board attorney had mailed a memorandum to the board summarizing the meeting of the opposer's attorneys on October 15, 1993.

2. LEGAL MATTERS

2a. Update on the Arapahoe County/Union Park Project Supreme Court Appeal

Dick Bratton reported that an extension had been granted for the filing of the opposer's brief and that it would now be due January 7, 1994. He said that Colorado

Springs had been given permission to file their amicus brief. He reported that Steve Sims of the state attorney general's office had requested a 30 day extension but that a 60 day extension had already been granted.

2b. Alternatives for Considering Conditional Water Rights in Determinations of Water Availability

Dick Bratton referred the board to his memorandum of October 20, 1993 on the availability appeal and pointed out that the paragraph beginning at the bottom of page 2 indicates the lack of information and uncertainties which make him hesitant to discuss what policy the board may want to develop.

Dennis Steckel said that he has no problem with using Judge Brown's decision as the base for the law.

Ramon Reed asked what the downside would be if Judge Brown's approach were upheld. He asked if there would be any negative impacts to the Upper Gunnison River Water Conservancy District. Dick Bratton responded that all the ramifications have not been reviewed and that it would be premature for him to answer without full consideration of all the factual and technical legal issues in this case.

Ramon Reed said that he is concerned that it is important for this part of Colorado to provide our viewpoint to the other state entities when they consider policy statements on the issue of conditional water rights. Dick Bratton replied that the attorneys for the opposers are waiting for input and at the same time all the ramifications and legal considerations are so complex it is inappropriate for him to provide guidance at this time. He suggested that the board members state their problems and that he will take these concerns into consideration when the attorneys for the opposers deliberate.

Butch Clark requested that Mr. Bratton outline the process that Judge Brown used in developing his decision, the theory that the Upper Gunnison River Water Conservancy District took into the case at that time, and the theory that Arapahoe County used at that time.

Dick Bratton suggested it might be more appropriate to this meeting to consider the range of options in addressing the availability appeal and what the water law should be. He said that one option is to accept 100% of all existing conditional and absolute water rights. Another option is not to consider existing water rights at all. Mr. Bratton said that there is an intermediate range option, as in Judge Brown's decision, to consider all water rights but that you consider the major conditional water rights on an ad hoc basis. Mr. Bratton said that an option under exploration by the attorneys is that you consider all existing water rights but if there's been a change in circumstances since the last conditional water right was entered or a diligence proceeding was held, you could consider that change. Mr. Bratton

said that the main issue is how do you address speculation and accumulation of existing decrees that aren't being utilized.

Butch Clark said that he is interested in the evaluation of the probability of any conditional water right becoming reality. Dick Bratton said that is a consideration and gave some examples.

President Trampe indicated that the discussion was moving away from the agenda item.

Lee Spann said that the board members need to remember in their discussion that the District is in litigation on the matter being discussed.

Dick Bratton said that he would prefer that the theoretical questions be addressed to other board members rather than to him. He said that he has reservations about drafting and handling litigation in a public meeting but thinks that board and public input on the major policy issues is appropriate.

Ramon Reed said that his opinion is that the board should adopt a policy in favor of the court decision to consider all conditional water rights or at least the major conditional water rights like Judge Brown did in his decision and convey this position to other involved entities. Mr. Reed said that he does not know if there is a negative side to this approach.

Purvis Vickers asked if the Colorado Water Conservation Board(CWCB) has made any moves to acquire conditional decrees. Dick Bratton said that the CWCB has acquired some conditional decrees for their instream flow program. Tyler Martineau responded that he did not know of any thrust in that direction other than the Nature Conservancy donation in the Black Canyon. Mr. Vickers said that he thought the Colorado Water Congress is drafting legislation in that direction. Mr. Martineau said that Mr. Vickers was correct about the Colorado Water Congress drafting legislation.

Doyle Templeton arrived at the meeting.

Butch Clark said that he does not want the Upper Gunnison River Water Conservancy District to be a vehicle for state policy issues but that these issues are swirling about the state and that the board needs to discuss consideration of conditional water rights as a policy matter. He said he has specific questions about how people with a small amount of conditional water rights would be affected by development. Mr. Clark said that there needs to be focus on how to deal with this policy, as developed, as a community.

Susan Lohr said that any discussion by the board at this time could have an impact on the availability appeal case. She said that she would be opposed to the board developing a position on these matters but would like to receive public input and then meet with the board attorney in closed session.

Butch Clark said that he would also like to hear from the public.

Ramon Reed said that he would like to hear the opinions of Lee Spann and Bill Trampe as holders of conditional water rights.

Lee Spann said that as a rancher not having conditional decrees upheld would be a problem and he is concerned that it would become necessary to have an attorney for each small filing.

Bill Trampe said that from a personal perspective he agrees with Mr. Spann but that considering all conditional water rights may mean that the valley is totally appropriated and he would not be able to obtain an additional decree if needed to build a reservoir. He said that this could put pressure on to make projects developed now, to make diligence hearings tougher and to make it more difficult for the smaller enterprises to protect their water rights.

3. PUBLIC COMMENT CONCERNING AGENDA ITEM 2

President Trampe opened the meeting for public comment on Agenda Item 2.

Laura Anderson asked if this is the first time that the Colorado Supreme Court has considered these issues. Dick Bratton replied that it has considered variations on similar issues but that it is essentially the first consideration as it relates to surface rights.

Gary Sprung said that he is not speaking for the High Country Citizens Alliance(HCCA) but that the board of HCCA appears to be heading toward the position of consideration of all conditionals. Mr. Sprung said that the prior appropriation system is rigorous and thorough and therefore there is a good process in place to determine conditional water rights. He said that combined with the can and will doctrine that the Colorado water law is good. Mr. Sprung said that already issued conditionals should not be relegated to 2nd class status. He said that he is concerned about the point made by Lee Spann and that diligence hearings will be more difficult because water is limited. He said that he favors sticking with prior appropriations and property right law and, therefore, giving consideration to 100% of the conditional water rights.

Marlene Zanetell said that the Gunnison County Commissioners' brief discussion on this issue indicated that they favor upholding Judge Brown's decision.

Marlene Zanetell said that from a personal perspective she thinks that whatever complexities have to be dealt with to keep the water from being exported from this basin should be dealt with and that she hopes that the District board will clarify the basic issues which are important in these considerations. She said that her impression from testimony at the Interim Water Committee hearings is that the Denver Water Board thinks that because all

rights are taken they will move away from dam building and in other directions to utilize the water available to them.

Steve Glazer said that he thinks that Judge Brown's decision should be upheld. He gave as reason for support the advances in technological data collection to measure the use of water and the concern that senior conditional water rights could be threatened by holders of junior conditional water rights.

Phyllis Guerrieri asked if you don't consider conditional water rights aren't you taking away a property right. She asked who would reimburse those people who might lose their conditional water rights.

David Baumgarten reviewed his method for analyzing this issue and its impacts. Mr. Baumgarten said that he sees four screens which could be applied to the analysis of this case for the District board. He said that screen one is how will the Supreme Court look at what the District does with Judge Brown's decision. He said if the District abandons Judge Brown's decision, in whole or part, then they are providing an opportunity for the Supreme Court to return the case to the lower court. Mr. Baumgarten said that screen two is how the District's position on this case affects the District's allies. He said that screen three and four are how the board policy would affect the District and this basin and how the board policy would play statewide. He said that if conditionals are not counted, it is his opinion that people in this basin who have observed a system of water law that has developed over generations would now be abandoned by the District. He said that statewide an incremental change such as additional proof for diligence might be encouraged but that a policy which led to abandonment of a long-standing system of water law would not be appropriate. Mr. Baumgarten said that he thought that the board could agree with Judge Brown's decision that recognizes that water is a finite resource. Mr. Baumgarten also clarified that Judge Brown's decision, in effect, said that there is not water available in this basin for project developers but that his number indicates that there may be enough water for inbasin concerns and that the basin is not fully appropriated.

Laura Anderson said that the board should support 100% of conditional water rights and Judge Brown's decision because it would not be efficient to have to prove diligence in response to so many challenges and in so many ways.

Lucy High asked who, in addition to Arapahoe County, are on the other side of this case. Dick Bratton responded that Colorado Springs, Thornton, and Douglas County have filed briefs stating that all conditionals should be discounted. Mr. Bratton said that the state has not developed a position yet.

President Trampe asked if there were any additional public comments. There were no additional comments.

4. DISCUSSION OF APPROACHES FOR CONSIDERING CONDITIONAL WATER RIGHTS IN DETERMINATIONS OF WATER AVAILABILITY

Butch Clark said that Judge Brown's approach to tallying water rights in this basin was efficient. Mr. Clark said that David Baumgarten's comment and method of analysis is a good approach for the legislative process. Mr. Clark said that he would like to hear comments from Keith Kepler of the Colorado Division of Water Resources on the role of conditionals in a basin such as this one.

Keith Kepler said that he could provide general information but that he is not prepared to state a position of his office. Mr. Kepler gave a brief historical review of conditional water rights, priority determination, diligence and the can and will doctrine.

Ramon Reed said that Arapahoe County has asked for consideration of only the historical use of absolute decrees. Mr. Reed said that he thought the state engineer has a process in place to determine that and that it seems to him that Arapahoe County is asking the court to usurp that process. Keith Kepler responded that he had not thought of it from that perspective and that he would need to review Judge Brown's decision but that the current process for reviewing absolute water rights are the abandonment hearings every ten years.

Butch Clark said that it might be necessary to consider what kind of tests might be appropriate for diligence in the future.

Lee Spann said that a legislative approach to diligence is a new subject.

President Trampe said that he agrees that this item needs to be discussed but that the board is trying to keep to the agenda.

Butch Clark said that it is difficult to look at just conditional water rights and to separate any other factors which affect them.

Lee Spann said that the District is near the end of the legal process begun in 1986. Mr. Spann said that the board members are supporters of Judge Brown's decision and that he has confidence in the board attorneys to make the necessary legal evaluations to represent the board.

Ramon Reed said that he would like the board to be clear to this basin's representative on the Colorado Water Conservation Board(CWCB) because the CWCB is a central player in development of the state's position on this issue.

Dennis Steckel said that his earlier opinion has not been changed by this discussion and that he does not believe that Judge Brown's decision should be tampered with without a very good reason. He said that he agrees with Lee Spann but that there should be only a limited negotiating room for the board attorney without the board's input and direction.

Butch Clark said that he thinks the board should review any changes that might be proposed by the attorneys of the opposers.

Bob Arnold said that he agrees with Lee Spann as to approach and agrees with Dennis Steckel that the limits for negotiation by the board attorney should be narrow.

Susan Lohr suggested that the board meet in executive session to define those limits.

Dick Bratton said that he would like to discuss a specific procedural matter on this case with the board.

Bob Arnold moved adjournment to executive session to discuss litigation. Susan Lohr seconded the motion.

Susan Lohr said that she had an item to bring up under the agenda item for miscellaneous matters and that she would like it discussed prior to the executive session so that she could ask for public input.

Bob Arnold moved to table his motion until Susan Lohr could discuss her item and the board could conclude the agenda item of miscellaneous matters. Ramon Reed seconded the motion. The motion to table carried.

5. MISCELLANEOUS MATTERS

Susan Lohr said that she is a finalist for a position with Great Outdoors Colorado. She asked the audience to provide information to her as to how the Gunnison basin could benefit from the GO Colorado program for her interview presentation.

Marlene Zanetell, Gunnison County Commissioner, asked if the District could provide information on the human effect on the Gunnison River channel near Neversink. President Trampe said that the report on this subject by International Engineering is available in the District office.

Dick Bratton reported that he still has not received a formal draft from Bruce Driver on maximum utilization. Gary Sprung of HCCA said that Bruce Driver, HCCA attorney, and David Getches expect to have a draft ready for review soon and that the draft he is preparing is a collaborative effort among several entities.

President Trampe asked if the board was ready to reconsider the motion for executive session.

Bob Arnold moved to take the motion for executive session from the table. Dennis Steckel seconded the motion. The motion carried.

President Trampe asked if there was additional public comment before the board convened in executive session. There was none. President Trampe announced that the board would meet in executive session for the purpose of discussing matters related to current litigation in which the District is involved.

6. ADJOURNMENT

President Trampe reconvened the special meeting of the board with no official action needing to be taken as a result of the discussion of litigation in executive session.

President Trampe adjourned the special board meeting at 3:23 p.m.

Respectfully submitted,

Mark Schumacher, Secretary

APPROVED:

William S. Trampe, President

UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT

SCHEDULED BOARD MEETING MINUTES

October 11, 1993

The Board of Directors of the Upper Gunnison River Water Conservancy District conducted a Scheduled Meeting on October 11, 1993 at 1:30 p.m. in the Multi-Purpose Building at the Rodeo Grounds, Gunnison, Colorado.

Board members present were: Robert Arnold, Ralph E. Clark, III, Susan Lohr, Ramon Reed, Mark Schumacher, Lee Spann, Peter Smith, Doyle Templeton, William S. Trampe, and Purvis Vickers. Board member not present was: Dennis Steckel.

Others present were:

L. Richard Bratton, Board Attorney
John McClow, Board Attorney
Tyler Martineau, Manager
Patrice Thomas, Office Secretary
Rita McDermott, Treasurer
Evan Lukassen, Gunnison Country Times Reporter
Laura Anderson, Crested Butte Chronicle/Pilot Reporter
Diane Lothamer, City of Gunnison
Lynnee Preston, Citizen
Gary Sprung, HCCA
Steve Glazer, HCCA
Marlene Zanetell, Gunnison County

1. CALL TO ORDER

President Trampe called the meeting to order at approximately 1:50 p.m. President Trampe explained that the board had just adjourned a special meeting and executive session to review the performance of Tyler Martineau and a possible contract renewal.

2. APPROVAL OF SEPTEMBER 13, 1993 MINUTES

President Trampe stated that the first item on the agenda was approval of the September 13, 1993 minutes which had been circulated to the Board by mail.

Bob Arnold moved that the September 13, 1993 minutes be approved as circulated to the board. Mark Schumacher seconded the motion. The motion carried.

3. LENGTH OF MEETINGS

President Trampe stated that this agenda item was presented for discussion in an effort to resolve the board's desire for an efficient and improved decision making process.

Tyler Martineau reviewed some of the issues he and President Trampe had discussed about the length of meetings. The first issue was the scheduling of public hearings and conversation between the public and the board during meetings. The second issue was the scheduling of board meetings and public hearings on holidays and possible additional expenses. President Trampe asked for board discussion.

Ramon Reed said that he favors the interchange between the public and the board during public hearings. Butch Clark said that he agreed with Mr. Reed.

Susan Lohr said that she would prefer the public hearing followed by questions to the public from board members if clarification is needed.

Board members supported the current meeting schedule of the 2nd Monday of each month and adherence to this schedule even if the 2nd Monday of the month is a holiday. President Trampe determined that there was consensus on this approach and also agreement that public hearings could be scheduled during meetings which occur on a holiday.

President Trampe asked about time and a half pay for hourly employees who work on holidays to attend board meetings.

Board members clarified that this payment would apply only to hourly employees and suggested that the option of compensatory time be given if it does not interfere with the workload of the District.

Ramon Reed moved that hourly employees be compensated with time and a half for work performed on holidays. Butch Clark seconded the motion. The motion carried.

Tyler Martineau asked if the board wanted public hearings scheduled at the beginning of board meetings. Susan Lohr said she would agree if there is not repetitive discussion of the issues. Peter Smith said that he agreed with Ms. Lohr.

Tyler Martineau asked the board for their thoughts on the length of meetings. President Trampe asked each member to state their opinion on this subject. Susan Lohr asked for more control by the chairperson to reduce repetitive discussion. Doyle Templeton said that it was important to stick to the subject under discussion. Peter Smith said that he felt there is too much repetition during discussions. Mark Schumacher said that he agreed with all of the previous comments. Bob Arnold suggested that the board may want to consider one presentation and one rebuttal by each board member during any agenda item under discussion. Lee Spann said the chairperson needs to keep the discussion confined to the subject at hand for board members and for the public and it is not necessary to go over legal items, such as the Taylor Park Water Management Agreement, point by point. Ramon Reed said that he thinks the biggest problem is getting off the subject during discussions. Purvis Vickers said that it is a tough balance to let people express their opinions and to limit their time to do so. Butch Clark said that board members need to do their homework before meetings so that the meetings can be shortened and still be productive. Mr. Clark also said that the length of a meeting will also depend on the number and types of items on the agenda for each meeting and on the things that need to be accomplished at each meeting.

President Trampe said that if the board wants more control by the chairperson he can provide it but that the board members will need to wait to be recognized and the public will probably be dissatisfied with a termination of the free-for-all discussions.

Susan Lohr said that informality can be productive but that the board and public have taken advantage of President Trampe's willingness to accomodate discussion.

Ramon Reed said that some of the issues before the board will necessitate longer meetings.

President Trampe said that he is not concerned about lengthy discussions which are productive but is concerned about free-for-all discussions. He said that he is concerned that a split is occuring on the board because of this situation and he would like to address it. *split*

Butch Clark said that it is important to encourage public involvement but how to control it is difficult.

Peter Smith said that the back and forth banter between board members and the public is not productive and some of this discussion could take place outside of the board meeting.

Susan Lohr said that she would like guidelines from the manager on how to be a productive board when there are opposite positions on issues. She asked if the board is risking not accomplishing anything by not making decisions.

Tyler Martineau said that how to protect and utilize conditional water rights is a major issue before the District and that focus is needed in this area.

Mark Schumacher suggested that agendas for board meetings and public hearings be prepared in such a way that they can assist the chairperson in providing structure to the meetings.

President Trampe summarized the consensus of the board as more control from the chairperson to keep on task, more self-discipline from board members to focus on the agenda item under discussion, and less repetition during discussions.

Dick Bratton said that the primary responsibility for productive meetings should be on individual board members and does not belong solely to the chairperson. He supported Mark Schumacher's suggestion that there be more structure to the agenda and planning of the meeting and Butch Clark's suggestion that there be preparation prior to the board meetings.

Tyler Martineau offered three options: (1) Limit the overall agenda to a specific amount of time, (2) schedule specific times for each item on the agenda, and (3) limit amount of time for debate on a particular motion or the amount of turns to speak.

Peter Smith replied that option 1 would lead to not completing work at board meetings. He said that option 2 seemed reasonable. He suggested that option 3 be structured so that board members can talk as long as needed during their first presentation of their views but then limit board members to one rebuttal.

Susan Lohr said that she favored a combination of option 1 and option 2 as a guideline.

Lee Spann said that he favored self-regulation by the board members under the supervision of the chairperson. He said if this approach does not solve the problem then the board can reconsider other alternatives in a few months.

Butch Clark said that new items are sometimes introduced to the board during meetings and can cause the meeting to slow down. He asked that items to be discussed be on the agenda and that the board discuss and deal with the items on the agenda.

President Trampe asked if the board concurred with Lee Spann's suggestion and there was consensus.

Dick Bratton said that putting an estimated time schedule on the agenda for each item would help President Trampe structure the meeting.

Mark Schumacher said that he agrees with Mr. Bratton and that this approach is common practice for other organizations.

Tyler Martineau said that he and President Trampe could review the agenda prior to the meeting to determine an approximate time schedule.

President Trampe asked about public hearings.

Mark Schumacher suggested setting a limited time for public hearings. Tyler Martineau said that public hearings could be scheduled at the beginning of the meetings with the understanding that there would not be redundant discussion.

Tyler Martineau said that the District needs to be clearer about when the board is in executive session so that it can be recorded properly.

4. CONSIDERATION OF OPERATIONAL EXPENSES PAID

Bob Arnold moved to approve Operational Expenses Paid, as prepared by the treasurer, for January 1993. Ramon Reed seconded the motion. The motion carried.

5. CONSIDERATION OF OTHER EXPENSES PAYABLE

Rita McDermott, treasurer, asked if she should pay the board members for attendance at the special meeting and the regular board meeting on this date. President Trampe said that the board members should be paid for attendance at one meeting not both meetings.

Bob Arnold asked about the Helton & Williamsen bill of \$737.50 which was provided to the board members today. Tyler Martineau said that the invoice for the September 1993 billing period had been faxed to him on October 8, 1993 so that the board could consider it for payment at this board meeting.

Bob Arnold moved to approve Other Expenses Payable, including the September invoice of \$737.50 from Helton & Williamsen, except for payment of board of directors' fees and mileage to members not present at this meeting. Mark Schumacher seconded the motion. The motion carried.

6. MONTHLY BUDGET REPORT

Rita McDermott, treasurer, reported that she had redeposited \$40,000 at the 1st National Bank of Lake City, Colorado.

There were no other comments on the Monthly Budget Report prepared by the treasurer.

7. PUBLIC HEARING: PROPOSED AMENDMENTS TO 1993 BUDGET

President Trampe opened the public hearing and asked for comments from the audience on the proposed amendments and changes to the 1993 budget of the Upper Gunnison River Water Conservancy District.

Steve Glazer asked why the line item for stream gages construction and the contingency line item had both been reduced to \$0. Tyler Martineau explained that these funds had been transferred to the line item for legal expenses and engineering related. Mr. Martineau said that the District will not pay for stream gages construction in 1993.

Steve Glazer asked if all Amendment #1 procedures had been followed in preparing the proposed amendments to the 1993 budget. He also asked if the board had been briefed on why the legal expenses and engineering related line item will exceed the budgeted amount for 1993.

Tyler Martineau responded that Amendment #1 limitations apply to total revenues and expenditures of a budget and they have been complied with. The aspects of these amendments which deal with transfers between line items are not an Amendment #1 issue. President Trampe responded that Bratton & McClow had provided a memorandum to the board about the increase in legal expenses.

There were no other comments on the proposed amendments to the 1993 budget. President Trampe closed the public hearing on this matter.

8. CONSIDERATION OF RESOLUTION TO AMEND THE 1993 BUDGET

President Trampe asked if the board members had any questions about the proposed amendments to the 1993 budget or the resolution to amend the 1993 budget.

Tyler Martineau said that there are increases in three line items in the proposed amendments to the 1993 budget: (1) An increase in the secretary salary line item due to increased hours worked and payment in September 1993 to Lorna Dotts for an expense incurred in October 1992, (2) an increase in the legal expenses and engineering related line item, and (3) an increase in the water resource protection and development reserves line item. He explained that the line items which show a decrease were changed so that the amount decreased could be transferred to the line items which were increased.

Lee Spann asked why the water resource protection and development reserves line item is being increased if there is no potential for expenditures in 1993. Tyler Martineau said that the increased amount could be carried over to 1994 but that in terms of Amendment

#1 provisions it is better to include it in this line item so that the funds will remain available to the Upper Gunnison River Water Conservancy District.

Ramon Reed asked if these were final amendments to the 1993 budget. Mr. Martineau replied that this proposed amended budget is his best effort.

Bob Arnold moved adoption of Resolution 93-7, A Resolution of the Board of Directors of the Upper Gunnison River Water Conservancy District Transferring Funds Between Various Line Items and Appropriating Additional Sums of Money to Defray Expenses in Excess of Amounts Budgeted for the 1993 Fiscal Year. Butch Clark seconded the motion. The motion carried.

9. PUBLIC HEARING: PROPOSED REVISIONS TO BYLAWS

President Trampe opened the public hearing and asked for audience comments.

Diane Lothamer said that her comments were personal and did not represent the City of Gunnison. She suggested that Article II, Section 10 be reworded so that Robert's Rules of Order would be followed in case of a dispute on parliamentary procedure rather than in all instances in which they are applicable.

There were no further comments and President Trampe closed the public hearing on the proposed revisions to the bylaws of the Upper Gunnison River Water Conservancy District.

10. CONSIDERATION OF RESOLUTION TO REVISE THE BYLAWS

Butch Clark asked that Article II, Section 10 of the proposed bylaws be changed to reflect the suggestion by Diane Lothamer. Peter Smith agreed with Mr. Clark. There was board discussion on suggestions for wording changes to clarify Article II, Section 10.

Bob Arnold moved that the words, "... they are applicable.." in Article II, Section 10 of the proposed bylaws be deleted and "there is a question as to procedure" be inserted in that place. Susan Lohr seconded the motion. The motion carried.

Ramon Reed moved adoption of Resolution 93-8, A Resolution Of The Board Of Directors Of The Upper Gunnison River Water Conservancy District Amending The Bylaws Of The District, and with the correction to Article II, Section 10 as adopted by the board. Bob Arnold seconded the motion. The motion carried.

11. PROPOSED 1994 BUDGET

Tyler Martineau referred the board to his memorandum and the proposed 1994 budget which were mailed to the board. He pointed out that this budget is based on holding property tax revenues constant which would result in a reduction of the mill levy for 1994. He also stated that the proposed budget is about \$15,000 below the Amendment #1 limitations for the District's budget. He said that the following activities have not been included in the proposed budget: (1) Development of an augmentation plan, (2) diligence costs, and (3) potential change in staff duties.

Butch Clark asked if the increase in the secretary salary line item is a change in duties or an increase in hourly salary. Mr. Clark asked if some attorney fees for development of the augmentation plan could be budgeted.

Lee Spann asked about the local growth calculation for Amendment #1. Tyler Martineau replied that it is 2.5% for the District with 4% inflation based on the Denver-Boulder CPI which is a total 6.5% increase.

Butch Clark asked if the potential change in agricultural reassessments had been included in the calculation of property tax revenue. Tyler Martineau responded that he was required to use the figures provided by the county assessors.

Purvis Vickers asked why Dominguez Reservoir is included in the list of legal tasks. Dick Bratton replied that the board had asked Bratton & McClow to monitor it.

Susan Lohr asked what is the basis for budgeting in anticipation of the augmentation plan. Tyler Martineau said that the Water Resource Protection and Development Reserves line item can be built up. Susan Lohr asked if the District should collect more property tax revenues to stock up for funding for the augmentation plan. Mr. Martineau said that he did not think it was necessary.

Lee Spann asked if the attorney fees will be drastically reduced after the Supreme Court appeal. Mr. Bratton said that they would not.

Ramon Reed said that any changes in the secretary's duties and salary should be included in the proposed budget.

Butch Clark asked if the monitoring of Dominguez Dam activity by the attorneys would also include Austin Reservoir and that area which could affect the Upper Gunnison basin. Dick Bratton said the monitoring will probably fluctuate within this area.

Bob Arnold asked if this proposed budget or a more accurate budget would be used for the public hearing. Tyler Martineau replied that it was only necessary to have a proposed budget and that the board has the flexibility to make changes after the public

hearing. President Trampe said that he would like the proposed budget to be as accurate as possible in the public hearing notice.

President Trampe noted that in Bratton & McClow's memorandum they request a separate line item of \$10,000 for engineering expenses. He said that he does not see that request included in the proposed 1994 budget and that it should be included.

Ramon Reed asked for clarification on the relation of revenue to expenditures in the proposed 1994 budget. Tyler Martineau explained that these amounts vary based on the inclusion of carryover from the previous fiscal year.

Bob Arnold moved that the manager's salary be increased to \$47,500 for the proposed 1994 budget and that the necessary adjustments to reflect this increase be made in the line item for payroll taxes and benefits, and a separate line item be added for engineering expenses at an amount of \$10,000. Susan Lohr seconded the motion.

Butch Clark asked if there would be an adjustment to the reserve fund. Mr. Arnold said that he did not include intent as to where the money for these increased expenses would come from. Butch Clark said that he thought the board needed to determine where the money for the increases would come from. The board discussed alternatives to provide the necessary funds and maintain a buffer in the budget for other possible increases.

Ramon Reed moved to amend the motion on the floor to include reduction of the Water Resource Protection and Development Reserves line item by the amount of the money needed for the increases stated in the motion. Butch Clark seconded the motion. The motion to amend carried.

Tyler Martineau asked if the board wanted to continue the legal retainer fee line item. Dick Bratton said that there would be a contract for the legal services so a retainer would not be necessary.

The amended motion carried.

Butch Clark moved to set the public hearing date for the proposed 1994 budget on the date of the next scheduled board meeting and to publish the Notice of Budget. Ramon Reed seconded the motion. The motion carried.

12. LEGAL MATTERS

12a. Union Park Project Water Availability Appeal

Dick Bratton reported that this weekend he had received briefs filed by Colorado Springs, Thornton, and Arapahoe County in the Supreme Court appeal, but had not yet received a brief from Douglas County. A meeting has been set for October 15, 1993 to

discuss the position that the opposers will take. Mr. Bratton said that his quick review indicates that the amicus briefs focus on how to handle conditional water rights and absolute water rights in determining water availability. He said that the points contained in the amicus briefs are: (1) Conditional water rights should not be considered and (2) Do you consider the full amount decreed or the amount historically used in the consideration of absolute water rights. Mr. Bratton said that he would like to have the support of the State of Colorado and the United States for the position that the opposers take.

Ramon Reed said that he had discussed this issue of conditional water rights with John McClow and he thinks that more input and discussion is needed by the board. Mr. Reed asked what the legal grounds are for the other side of the issue. Mr. Reed asked if conditionals aren't considered and a portion of the absolutes aren't considered it really changes what we're dealing with in the whole arena of water issues.

Dick Bratton responded that a purpose of the Can & Will Doctrine is to avoid speculation and why have a Can & Will statute if you don't give consideration to conditional water rights. Mr. Bratton gave examples of projects and how they could be affected if different positions on this issue were applied. Mr. Bratton said that the attorney's opinion is that it ought to be an ad hoc decision in each case. He pointed out that Judge Brown did not in fact apply all conditional rights in the District's case in arriving at his decision that there is not more than 20,000 acre feet available in the basin.

Ramon Reed said that it seems that a ruling against Judge Brown's decision could threaten holders of existing conditional water rights and force them to prove whether their project will be developed each time a water availability trial is held. Dick Bratton responded that this hearing cannot affect these conditional rights and that they stand on their own in their own diligence hearings. Ramon Reed expressed concern about how the state engineer might apply the decisions.

Susan Lohr asked why the State Attorney General does not have to file on the side that upholds existing state law. Dick Bratton explained that this lawsuit is about what is state law.

Butch Clark said that there could be an opportunity for a proponent of a water project to question the probability of a longstanding conditional water right ever being developed. Dick Bratton said that could occur only in a diligence hearing but not in this hearing.

Butch Clark said that he sees this case as being in the middle of developing state policy. He said that there are people concerned about deviating from Judge Brown's decision and perhaps a thorough discussion of these issues by the board would be a good idea.

Purvis Vickers said that he thought that it would be difficult for the court to separate conditional water rights from the availability of water and that there could be adverse affects on senior decrees.

President Trampe asked if there was interest by the board to have a discussion and develop a board policy on these issues.

John McClow said that the board attorneys could provide a summary of the issues with alternative positions to begin the discussion and that could provide a base for citizen input before the board takes a position.

Lee Spann supported Mr. McClow's suggestion and asked that the summary be provided to the board in the next week.

Susan Lohr asked that the summary contain information about any disagreements among the opposers.

President Trampe presented two options to execute Mr. McClow's suggestion. The first option would be for Mr. Bratton to summarize the October 15, 1993 meeting in a memorandum to the board and then for the board to hold a public hearing on these issues. The second option would be for Mr. Bratton to verbally summarize the issues to the board at one meeting and then to have another meeting for the board consideration of a policy on these issues.

Lee Spann moved that the board adopt option 1 as suggested by President Trampe and that a special board meeting be scheduled for two weeks from today for the board to formulate a policy on these issues. Peter Smith seconded the motion.

Butch Clark said that there needs to be an opportunity for input from other citizens and suggested an open meeting rather than a public hearing.

President Trampe asked if the board can make a policy decision in the environment of an open meeting. Dick Bratton said that it is a complicated issue and that the legal issues are separate from the administrative issues of determining a board policy.

Butch Clark said that he would like input from those citizens who have conditional water rights in the Upper Gunnison basin.

Peter Smith suggested that a half hour be scheduled for Mr. Bratton's presentation and that another half hour be scheduled for public input following Mr. Bratton's presentation.

Dick Bratton said that all the opposers agree on defending Judge Brown's decision but how to get there is under discussion.

Butch Clark said that if everyone adheres to Judge Brown's decision on conditional water rights a meeting of the board might not be necessary.

Tyler Martineau clarified that Mr. Bratton will provide the board with a memorandum on the position of the opposing attorneys after their meeting on October 15, 1993 and John McClow will provide a summary of the issues with possible alternative positions.

Susan Lohr said that she thought a meeting was necessary to receive an update on the availability appeal.

Ramon Reed suggested a format for the meeting: One half hour of legal presentation followed by one half hour of public input with board discussion to follow. He suggested that if time allows at this meeting on October 25, 1993 that availability issues can be examined.

The motion carried.

After a short break, President Trampe reconvened the meeting.

12b. Other Legal Matters

John McClow said that the board had received a copy of a letter prepared by David Baumgarten for the Gunnison County Commissioners to try to obtain a dismissal of the Rocky Point project. Mr. McClow asked if the board wanted to sign this letter.

Purvis Vickers moved that the President of the Upper Gunnison River Water Conservancy District sign the letter prepared by Mr. Baumgarten. Peter Smith seconded the motion. The motion carried.

President Trampe referred the board to the draft legal services agreement which was submitted by Bratton & McClow.

Dick Bratton said that the draft legal services agreement addresses the increase in fees by his firm beginning on January 1, 1994. Mr. Bratton attributed this increase to an increase in overhead costs. President Trampe asked if this increase in fees was factored into the amount of legal services in the proposed 1994 budget. Mr. Bratton replied that he will leave the total budgeted amount for 1994 at \$70,000.

Purvis Vickers asked Mr. Bratton to estimate how much time John Hill would bill for his services. Mr. Bratton said that using Mr. Hill's services saves time because of Mr. Hill's expertise with the Colorado River issues and experience with the United States agencies.

Butch Clark suggested that computer legal research services be included as a type of expense in item 4, Expenses, of the draft legal services agreement.

Susan Lohr said that she was concerned about the billing of travel and lodging expenses for John Hill. Dick Bratton said that those costs are billed only when his work is specific to the business of the District. Mr. Bratton delineated the hourly cost for legal services provided by professionals associated with the firm.

Ramon Reed asked for confirmation that there would not be a legal retainer fee. Mr. Bratton said that there would not be a legal retainer fee and that the absence of a retainer fee would not change the legal relationship of his firm and the District.

Butch Clark asked about the use of a retainer fee to address administrative questions and phone questions from board members. Mr. Bratton suggested that the current informal practices be kept in place. John McClow said that item 2b of the draft legal services agreement addresses billable legal time and that questions from board members to date have been minimal and handled without a fee.

President Trampe asked if the time between board approval and payment of a billing could be extended. John McClow said that it would not be a material breach of the contract to miss a payment by one or two days. Dick Bratton said that he could change the time period to five business days in item 5, Billing and Payment, of the draft legal services agreement.

Tyler Martineau wanted to clarify item 2b of the draft legal services agreement. Mr. Martineau said that the attorney relationship is with the board, not with the manager, and that item 2b states that a duty of the attorneys is to provide legal advice, counsel, and opinion upon the request of the manager of the District. The board members made clear that the position of manager remain in this item and that the manager should request legal advice, counsel and opinion from the District's attorneys.

Bob Arnold moved to adopt the legal services agreement as submitted by Bratton & McClow with the addition of electronic legal services to item 4 and the change of four to five business days in item 5 and that this legal agreement become effective on January 1, 1994. Susan Lohr seconded the motion. The motion carried.

13. TAYLOR PARK WATER MANAGEMENT AGREEMENT

Tyler Martineau referred the board to his October 4, 1993 memorandum and summarized the information. Mr. Martineau said that the issue of water in drought years has still not been addressed in Section 3 but work continues on this issue.

Mr. Martineau announced that the next negotiating session with the Bureau of Reclamation will be held in Montrose on October 21, 1993.

Tyler Martineau said that the negotiations may be slowed down to see what information is available from the new hydrological model to determine the benefits of the agreement. Lee Spann said that the negotiations should not be slowed down because this agreement will not address all of the water situations in the Upper Gunnison basin and potential staff changes at the Bureau of Reclamation could alter what the negotiations have already achieved.

Ramon Reed asked if the historical figures on yield had been received from the Bureau of Reclamation. Mr. Martineau said that he had not received this information.

Bob Arnold said that he agrees with Lee Spann that the negotiations for the agreement should be finalized as soon as possible.

Butch Clark said that the definition of recreation needs to be separate from fish and wildlife and consistent with the 1975 Agreement.

Tyler Martineau referred to item 2 in his memorandum about administrative charges by the Bureau of Reclamation. President Trampe and Mr. Martineau pointed out paragraph 4b of the draft agreement which now has language which would mean that administrative charges will be constant for the first two years and if the costs are not recouped at the end of two years then the United States will evaluate the charges at the end of two years. Susan Lohr made several suggestions about determining administrative charges. Lee Spann suggested that the board leave the determination of administrative charges and time periods for those charges up to the District's negotiating team.

14. STREAM GAGING PROGRAM

Tyler Martineau referred the board to his October 4, 1993 memorandum. He asked if the board wanted to assume the local cost share of the existing stream gage on Cochetopa Creek.

Peter Smith moved that the Upper Gunnison River Water Conservancy District fund the local cost share of the existing stream gage on Cochetopa Creek. Butch Clark seconded the motion. The motion carried.

Lee Spann asked for input on the Taylor River steam gage above Taylor Park Reservoir so that he can discuss whether the board of the Colorado River Water Conservation District should agree to assume the funding of that gage.

Susan Lohr moved that the Upper Gunnison River Water Conservancy District support the Colorado River Water Conservation District in their funding of the cost of the Taylor River stream gage above Taylor Park Reservoir. Butch Clark seconded the motion.

Purvis Vickers asked what the cost would be for the Colorado River Water Conservation District. Tyler Martineau said the cost would be about \$3500.00.

The motion carried.

15. MISCELLANEOUS MATTERS

Tyler Martineau asked if the board wanted to continue to participate on the State Affairs Committee of the Colorado Water Congress.

Lee Spann questioned if the District had the manpower or resources to meet the time and travel commitment necessary to participate. Dick Bratton suggested that attendance at the committee meetings might be shared. Mr. Bratton said that it was important to be a part of this committee to affect the legislature. Lee Spann asked Mr. Bratton if his participation on this committee would be billed as a part of his legal fee. Mr. Bratton said that it would not but that it would be helpful if travel expenses could be paid by the District. Butch Clark suggested the possibility of phone meetings to eliminate travel expenses.

Tyler Martineau supported Dick Bratton's suggestion to have the District represented on the Colorado Water Congress State Affairs Committee. President Trampe suggested a member and alternates to share the time commitment.

Ramon Reed suggested that the board policy be to have a member on the Committee but not commit to the expenditure of funds unless the board decides that attendance at the State Affairs Committee meetings is needed.

Ramon Reed moved that the District pay the membership fee of \$50.00 for membership on the State Affairs Committee of the Colorado Water Congress. Peter Smith seconded the motion.

Mark Schumacher suggested that Dick Bratton be appointed as the Committee member and that Tyler Martineau and John McClow be named as alternates. Butch Clark asked if this would create a conflict with Mr. Martineau's membership on the Colorado Water Conservation Board. Dick Bratton said that he or Mr. McClow could attend if it appeared that there might be a conflict for Mr. Martineau.

The motion carried.

Tyler Martineau provided the board with copies of the draft of the Colorado Executive Branch Statement Regarding the Clean Water Act Reauthorization. He asked the board members to let him know if they wanted to provide any comments to the State on the draft. Mr. Martineau said that he had no recommendations regarding the draft provided.

Dick Bratton said that the board might want to appoint a committee to review the draft. Bob Arnold said that comments might need to be sent individually since he noticed that the deadline for providing comments to the Governor's Office is October 14, 1993.

Tyler Martineau provided the board with copies of the Colorado Water Conservation Board notice of public rulemaking hearings on the proposed Instream Flow and Natural Lake Level Rules and Regulations. Mr. Martineau asked if the District wants party status. Ramon Reed asked Mr. Martineau if he has any conflict of interest with his membership on the Colorado Water Conservation Board. Mr. Martineau replied that if the District seeks party status that he will have a conflict of interest. Mr. Reed suggested that the District not seek party status. President Trampe confirmed that the consensus of the board was to not seek party status in the matter of rulemaking hearings on the proposed Instream Flow and Natural Lake Level Rules and Regulations.

Lee Spann said that he would like to provide a brief update on the Colorado River Water Conservation District. He reported that Andy Williams' bill should be paid by the River District after board action next week. He said that the Wolford Mountain project is going smoothly. He said that no settlement has been reached with Grand Junction or the Clifton Water District. Butch Clark asked if there is any new information on the Roan Creek proposal. Mr. Spann replied that he did not know of any new information. Lee Spann said that the quarterly board meeting of the Colorado River Water Conservation District will be held on October 19, 1993.

On behalf of the Colorado Water Education Foundation Dick Bratton presented a Colorado Resources Map to the District. He said that the Colorado Water Education Foundation is also planning to do a historical water map and book.

16. UNSCHEDULED CITIZENS

There were no remarks by unscheduled citizens.

17. FUTURE MEETINGS

The next regularly scheduled board meeting will be held November 8, 1993 at 1:00 p.m. at the Multipurpose Building and a special meeting will be held October 25, 1993 at 1:00 p.m. at the Multipurpose Building.

Ramon Reed asked that the manager of the District proceed with a personnel review and report to the board.

18. ADJOURNMENT

President Trampe adjourned the meeting at approximately 5:45 p.m.

Respectfully submitted,

Mark Schumacher, Secretary

APPROVED:

William S. Trampe, President

BRATTON & McCLOW
Attorneys at Law
232 West Tomichi Avenue, Suite 202
P.O. Box 669
Gunnison, Colorado 81230
Telephone (303) 641-1903
Telecopier (303) 641-1943

Denver Office:
999 Eighteenth Street, Suite 1350
Denver, Colorado 80202
Telephone: (303) 295-3613
Telecopier: (303) 294-9933

L. Richard Bratton
John H. McCLOW

John R. Hill, Jr.
Of Counsel

October 20, 1993

Board of Directors
Upper Gunnison River Water Conservancy District
Gunnison, Colorado 81230

Re: Availability Appeal
Suggested Cancellation of 10/25/93 Board Meeting

Dear Susan and Gentlemen:

As you know, at the meeting last week it was decided to have a special meeting on Monday, October 25, 1993, to discuss the appeal of the Arapahoe County/Union Park availability case and in particular the Board's input on policy related to the consideration of conditional water rights in determining water availability.

I was in Denver Wednesday and Thursday of last week, working on the appeal and preparing for the meeting of the opposers' attorneys on Friday. Among other things, I had several telephone conversations with Steven Sims of the Attorney General's office, Andy Williams, Mike Gheleta and Andy Mergen of the Department of Justice, and Wayne Foreman of Barney White's office. On Friday the attorneys for the opposers met, and part of this meeting was devoted to consideration of the conditional water rights issue. There was general agreement at that meeting by all of the opposers as to the approach to be taken by the opposers, i.e., that all conditional water rights would be considered in the determination of water availability under the "Can and Will" statute. The sole exception to the full consideration of conditional water rights was that we would consider whether an applicant could introduce evidence related to a change of a conditional right based on facts which have arisen since the original decree or diligence decree. (This position will support Judge Brown's ruling regarding conditional water rights. *? No*)

In addition, a major position, and one on which we all generally agreed that, even under Arapahoe's own theory of the case, they have not met their factual burden of proof for two reasons. (1) The first reason is that their contemplated draft approach of existing decrees looks only at the aggregate future projected demands within the basin generally but fails to consider the demands of specific existing validly decreed water rights; (2) in addition, they failed to meet their burden of proof regarding future need in the basin.

We discovered in the course of the conversations last week that there is considerable concern about the consideration of conditional water rights this case by several state

Too low down
hard to reach
Curtis

BRATTON & McCLOW

Board of Directors

Page 2

October 20, 1993

agencies, the Attorney General's office, Division of Natural Resources, State Engineer, and Colorado Water Conservation Board. It was decided that until we know precisely what position the state is going to take, we would not develop a final strategy as to the consideration of the conditional water rights. In the meantime, we agreed to pursue an inquiry to the various state agencies mentioned above.

There is also a concern by the state with regard to the Court's decision as to the meaning of "domestic" and "municipal" under the Colorado River Storage Project Act. The group tentatively agreed with the Attorney General's office that the Court was probably wrong under the law but that we would not address that in the appeal as it would not affect the outcome of the case. The state may want to pursue it because of future consequences.

At the meeting, Bruce Driver and David Getches also reviewed briefly their position with regard to maximum utilization doctrine that they plan to raise in this case. The issue was raised slightly by the City of Thornton in its *amicus* brief. Bruce will not have their brief by October 25, but I am hopeful that he will have his draft of a brief ready prior to the next regular Board meeting, and we can consider both of these issues then.

Curtis

It was my opinion following the meeting on Friday that the Board's time and money would be better spent if the Board would wait until we have a better idea as to the state's position on the consideration of conditional water rights and Bruce Driver's position on maximum use. In addition to consideration of the time and, therefore, money cost to the Board, I believe the Board needs additional information before it actually addresses these issues. It was agreed by the various attorneys that we should keep the conditional rights issue confidential as long as possible. Consideration of this matter in a public meeting or even in executive session leaves open the possibility that the applicant and the parties who have filed the *amicus* briefs and the various state agencies could obtain misinformation to our detriment prior to the time that any final decision was reached by them. *As a matter of fact*, at the present time I believe my recommendation will be that this matter be discussed by the Board in an actual executive session. In the past we have allowed substantial leeway as to what is or is not to be considered in an executive session. Because of the significance of this case, it is my present opinion that we should be more strict in the interpretation of "executive session" than in less serious matters previously considered.

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At the present time it would be very difficult for me to relate to you in writing or orally all of the facts that must be considered in order for you to participate in a meaningful discussion involving the policy related to conditional water rights. We have nothing to

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Board of Directors
Page 3
October 20, 1993

discuss now on maximum utilization. The additional time will assist us in preparing for such a presentation and assist you in addressing it.

All of the attorneys present on Friday signed a motion with the Supreme Court requesting sixty days of additional time to file an answer brief, i.e., a total of ninety days from the date that Arapahoe filed its brief on October 8. It is likely that the extension of time will be granted. In that event, there will be more than sufficient time for the Board to discuss these matters after the appropriate facts have been developed and the positions of the other parties are known. My recommendation to Bill Trampe was that the meeting now scheduled for Monday, October 25, 1993, at 1 p.m., be canceled and that the matter be considered at the next regular Board meeting. Bill has agreed and has tentatively canceled the meeting, subject to the understanding that, if any Board members would prefer that the meeting go on as scheduled, they call Tyler sometime on or before 5 p.m. on Friday, October 22, 1993. If a majority of members call Tyler requesting such a meeting, then it will go on as scheduled. If not, you may consider the meeting canceled. It is my understanding that Tyler will call each of you no later than Monday morning to inform you of the decision. You may call him in the meantime if you prefer.

Very truly yours,

L. Richard Bratton

jr

c Mr. Tyler Martineau

Martineau

Expectations level
Talking about when
meeting will take
place - possible
then both of parties
in separate

New procedural
challenge -
did they not
come to court's

Rec 3

BRATTON & McCLOW
Attorneys at Law
232 West Tomichi Avenue, Suite 202
P.O. Box 669
Gunnison, Colorado 81230
Telephone (303) 641-1903
Telecopier (303) 641-1943

*River
District
?*

Denver Office:
999 Eighteenth Street, Suite 1350
Denver, Colorado 80202
Telephone: (303) 295-3613
Telecopier: (303) 294-9933

*Get copy
writing
commitment*

L. Richard Bratton
John H. McCLOW

John R. Hill, Jr.
Of Counsel

September 30, 1993

Board of Directors
Upper Gunnison River Water Conservancy District
Gunnison, Colorado 81230

Re: Legal Budget - Balance of 1993

Dear Susan and Gentlemen:

As we discussed at the last meeting, it is expected that the legal expenditures for the remainder of 1993 will exceed the budget. You requested that we explain the reasons for this, which are several.

First, miscellaneous and administration expenses increased over what was anticipated. They included a number of unanticipated matters, such as requirements for an application for a bond for Board members, meetings which have lasted longer than expected, Taylor Park operations, and private instream rights. In addition, the Board became more actively involved in a number of administrative matters than had been the practice of the Board previously, which raised legal questions for which you requested answers. The availability appeal involved substantially more than anticipated.

Secondly, in this regard, we have assumed additional responsibilities in the availability appeal, which were not planned. Specifically, it became apparent a few months ago that the workload needed to be spread out more among the participating attorneys; therefore, other parties requested that we assume responsibility for addressing the matter of absolute and conditional water rights as related to the availability of water and the issue of the water rights which had been dismissed on East River. I suggested a third issue, which was not addressed previously, which relates to the quantification of water on Cement Creek, Deadman Gulch, and Spring Creek, utilizing the position on absolute and conditional water rights as espoused by Arapahoe. These three issues are all in addition to the 620f issue for which we previously agreed to assume responsibility. We also assumed that Andy Williams

Tyler

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Me

BRATTON & McCLOW

Board of Directors
Page 2
September 30, 1993

could devote a substantial amount of time to this, for which he would be compensated by the River District. When the River District elected not to do so, an additional expense was passed to the Upper Gunnison Board.

Ⓟ
we thought
we were
promised

Very truly yours,

L. Richard Bratton
by jr

L. Richard Bratton

jr

c Mr. Tyler Martineau

Upper Gunnison River Water Conservancy District

MEMORANDUM

TO: Board Members
Upper Gunnison River Water Conservancy District

FROM: William S. Trampe
President

DATE: October 7, 1993

RE: Performance Review of District Manager

The Upper Gunnison River Water Conservancy District Board will assemble on October 11, 1993 at 1:00 p.m. to conduct a performance review of Tyler Martineau, District Manager. This evaluation will immediately precede the board meeting which is scheduled for 1:30 p.m. at the Gunnison County Multipurpose Building.

Upper Gunnison River Water Conservancy District

SPECIAL MEETING

Monday, October 11, 1993
1:00 p.m.

Multipurpose Building
Downstairs Conference Room
County Fairgrounds
Gunnison, Colorado

A G E N D A

1. Call To Order
2. Executive Session for Performance Evaluation of District Manager
3. Miscellaneous Matters
4. Adjournment