RIO GRANDE WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS SPECIAL MEETING
June 18, 2021 at 10:00 A.M.
8805 Independence Way, Alamosa CO 81101
And By Zoom Teleconference

Present: Greg Higel, President; Armando Valdez, Vice-President; Dwight Martin, Secretary/ Treasurer; Peggy Godfrey, Director; Steve Keller, Director; Zeke Ward, Director; Mike Kruse, Director; Cory Off, Director; and Bill McClure, Director.

Staff and Consultants: David Robbins and Pete Ampe, Hill & Robbins, P.C.; Cleave Simpson, General Manager; Amber Pacheco, Program Manager; Marisa Fricke, Program Manager; Chris Ivers, Program Manager; Wylie Keller, Water Resource Specialist; Rose Vanderpool, Program Assistant; Linda Ramirez, Program Assistant; Clinton Phillips, Davis Engineering; Michael Carson, Database Administrator; and April Mondragon, Administrative Assistant.

Guests: Ed Nielsen, Kit Caldon, Deb Sarason, David Hofmann, William Myers, Corey Hill, Ryan Fox, Dale Gerstberger, Rachael Walke, David Schmittel, Brian Rue, Chance Baker, Josh Stoudt, Tom McCracken, Mark Allen, JoAnn Ortega, Lynn Sutherlynn, Anthony Lobato, Andrea Gerstberger, John Walke, George Whitten, Patrick Shea, Ryan Unterreiner, John Gerstle, Heather Dutton, Judy Lopez.

CALL TO ORDER

President Greg Higel called the meeting to order at 10:06 a.m. There was a quorum present for the meeting. The Pledge of Allegiance was recited.

INTRODUCTION OF STAFF AND GUESTS

President Greg Higel welcomed all those present and asked for introductions.

APPROVE AGENDA

President Higel asked for amendments or a motion to approve the agenda. A motion was made by Armando Valdez to approve the agenda as presented. The motion was seconded by Cory Off and unanimously approved.

PUBLIC COMMENT

President Higel asked for public comment. Peggy Godfrey commented as a member of the public that most of the items on the agenda were regarding Saguache County. George Whitten reported he was present representing Subdistrict No. 5 and as a water user on Saguache Creek, he read his statements into record. Dale Gerstberger commented on Subdistrict No. 5's lack of assistance from the Saguache County Commissioners. Ed Nielsen read his letter into record; a copy is attached to these minutes.

CONSIDER REQUEST FROM SUBDISTRICT #5 BOARD OF MANAGERS TO FILE OBJECTION TO THE STATE ENGINEER DENIAL OF 2021 ANNUAL REPLACEMENT PLAN (ARP)

President Higel asked the Board to consider a request from Subdistrict #5 Board of Managers to file an objection to the State Engineer's denial of their 2021 Annual Replacement Plan. Cleave Simpson provided the background information and some of the reasons Subdistrict No. 5 is the most challenging of the Subdistricts. Mr. Simpson also highlighted what lead up to the State Engineer's denial of the ARP and how the Subdistrict got to the point it is at today. He also described other potential remedies the Subdistrict is working towards on Saguache Creek. Mr. Simpson described a recent meeting held between himself, Peter Ampe, counsel for Subdistrict No. 5, representatives of the Division of Water Resources and representatives from the State Attorney General's office regarding the variance request filed by Subdistrict No. 5 to request an extension of the timeline for filing their first full-year Annual Replacement Plan. During the meeting, the group reviewed the Groundwater Rules and the phase-in process for well users. It was found that a scenario described within the language in the State's Groundwater Rules under Article 21.1.2.3 might allow the Subdistrict wells to continue to operate if their first full Annual Replacement was denied by the State Engineer and the denial is under a judicial review. David Robbins explained why the District Board of Directors would have to authorize the filing of the objection to the State Engineer's denial of the 2021 Annual Replacement Plan with the Saguache District Court. Discussion was held on the amount of acre feet of depletions Subdistrict No. 5 owes. Mike Kruse questioned the ability of an individual filing an objection. Bill McClure reported Subdistrict No. 5 Board of Managers voted unanimously in favor to file an objection to the State Engineer's denial of the 2021 ARP. Discussion was held in connection

with Well Injury Payment agreements, Ed Nielsen explained why he would refrain from participation. Mr. Simpson highlighted a document Pete Ampe is drafting that would enforce a 30% groundwater reduction. Ryan Fox publicly announced he would be listing his water for sale; discussion was held on the amount of water. Mr. Fox also reported on the abundance of properties in conservation easements in the area and the need to focus on other alternatives to Well Injury Payment agreements. Mr. Simpson explained what will happen if the Board of Directors vote to support the Subdistrict and move forward with the objection or if they vote to oppose. Armando Valdez commented on the challenges and intent of the Subdistricts. Kit Caldon reported on the different avenues Subdistrict No. 5 has explored to make replacements on Saguache Creek and the reasons the Board of Managers avoided the idea of constructing a pipeline from the beginning. George Whitten highlighted the limited strategies available to the Subdistrict and path forward.

The meeting recessed for lunch at 12:42 p.m. and resumed at 1:06 p.m.

A motion was made by Dwight Martin that the Rio Grande Water Conservation District Board of Directors file an objection to the State Engineer's denial of the Subdistrict No. 5 2021 Annual Replacement Plan. The motion was seconded by Armando Valdez. Roll call vote was taken:

Armando Valdez: Yes
Bill McClure: Yes
Dwight Martin: Yes
Cory Off: No
Mike Kruse: No
Peggy Godfrey: No
Steve Keller: No
Zeke Ward: Yes
Greg Higel: Yes

Motion passed with five (5) yes and four (4) no votes.

GENERAL MANAGER UPDATE:

- *Update on Bureau of Reclamation Closed Basin discussion including Russell Lakes Mitigation Wells*

Cleave Simpson reported receiving a copy of the letter from the Bureau of Reclamation to the Division of Water Resources which stated the wells at Russell Lakes were not subject to the Groundwater Rules and Regulation. Mr. Simpson asked the Board of Directors for authority for him, Greg Higel and David Robbins to travel to Salt Lake City to meet with the new regional director of the Bureau of Reclamation to discuss the Closed Basin Project.

- *Subdistrict #3 potential property acquisition overview*

Cleave Simpson highlighted a potential property acquisition with water rights that Subdistrict No. 3 is working on to support their Annual Replacement Plan.

- *Colorado General Assembly legislative update, including CDPHE dredge and fill permit program*

Cleave Simpson updated the Board on the CDPHE dredge and fill permit program briefly and how it is changing from the prior administrations.

- *Monte Vista Crane Festival economic impact report*

Mr. Simpson reported Jenny Nearing would like to present to the Board, Peggy Godfrey suggested at the Closed Basin Project meeting.

- *Consider appointment to the Rio Grande Basin Roundtable*

The Board of Directors were asked and in concurrence appointed Amber Pacheco to the Rio Grande Basin Roundtable.

- *Discuss next steps in response to a letter from Saguache County Commissioners*

Cleave Simpson reported potentially setting up a work session with the Saguache County Commissioners and anyone that would like to attend to discuss the letter received.

- *Discuss next steps for Subdistrict #5 Ex Officio Member*

Cleave Simpson reported Director Godfrey stepped down from her role as Ex Officio of Subdistrict No. 5. He explained who would qualify to volunteer or apply as Ex Officio Member of the Subdistrict and asked if anyone on the Board of Directors would be interested in volunteering.

A motion was made by Dwight Martin to nominate Bill McClure to serve as Ex Officio of Subdistrict No. 5. The motion was seconded by Zeke Ward and unanimously approved.

Cleave Simpson highlighted and provided updates on misc. bills and duties while serving at the State Capitol.

ADJOURN

A motion was made by Bill McClure to adjourn the meeting. The motion was seconded by Armando Valdez and unanimously approved.

The meeting was adjourned at 1:37 p.m.

The next scheduled quarterly meeting will be held on July 20, 2021.

Greg Hagee
President

Dwight Martin
Secretary/~~Treasurer~~

Notes presented on Sept. 27 to RGWCD prior to Subdistrict 5 vote for lease/purchase of Baxter property to drill well to replace depletions

Subdistrict 5 has been modeled by DWR as a confined aquifer subd. One water user looked into 50 well logs in the vicinity of Saguache Creek—48 had perforations in the unconfined aquifer. No study has been done to quantify the unconfined waters as a percentage of the wells' discharge. One of the two unconfined monitor wells north of the creek is 160 feet deep. Depletions to the creek based on confined withdrawals are smaller than would be expected from unconfined with-drawals in relatively close proximity to the creek. Senior surface water users of the creek have 60-80 years' seniority to Subd. 5 wells, which have had the freedom to pump decreed rights with no regard for injury to senior rights. Wells were asked by seniors as early as 2012 to cut back, as subdistricts were in early planning stages. The proposal you are being asked to approve is to move consumptive use water rights from a 160-acre parcel 5 miles away to a location 180 yards from the creek where a well will be drilled into the alluvium to provide water to replace Subd. 5 depletions. This well will be the westernmost high capacity well on the creek. I think this sets a dangerous precedent. I am empathetic with those exclusively confined aquifer well owners who are over a barrel thanks to the legal-engineering and model advisors…and the politics that wiped out your early appropriations. Early irrigation season in 2021 demonstrated the flow of an uninjured Saguache Creek. This board's decision on 6/20 changed everything. Ed Nielsen wrote the State Engineer in early July with information he'd gathered during that time. I can send it to you. There is acknowledgment by agencies and the court that valley aquifers are over-appropriated whether by favors, politics, or wet years. The goal of this board of directors should not be to arrive at unfair outcomes due to manipulations of legal and engineering details. The 6/20 judicial review amnesty for Subd.5 wells after two SE denials has only increased Subd. 5's dependence on paid staff to solve their problems. This proposal is a Subd. 5 convenience, not a solution.

June 17, 2021

Cleave Simpson, General Manager RGWCD
Board of Directors, RGWCD
8805 Independence Way
Alamosa, CO 81101

In the last ten years, beginning in 2011, Saguache Creek has yielded 416,142 total acre feet of water, an average of 41,614 annually. During that same period, sub district #5 has pumped 404,406 acre feet of water, an average of 40,440 acre feet annually. That calculates to groundwater removal of more than 97% of the total yield of Saguache Creek on an annual basis. Of that 404,406 acre feet of groundwater pumping, 30% is applied through sprinklers, which results in minimal recharge.

Sub district #5 is modeled as a confined aquifer response area, but in fact most of the wells draw from the unconfined aquifer. This means ground water depletions affect the creek and all diverted surface water almost immediately. The constant and ongoing depletions hitting the creek disrupt the historical function of surface water irrigation on Saguache Creek. Water runs downhill, so a depleted aquifer causes significant amounts of surface water to go vertically to recharge previous pumping injuries underground rather than going horizontally on the surface to irrigate a larger area. This re-routed path of the surface water almost eliminates return flows to Saguache Creek and instead goes to aquifer recharge. Return flows from surface irrigation back to the creek was a valuable and sustainable practice that made the Saguache Creek irrigation process benefit the maximum numbers of irrigators before pumps lowered groundwater levels. Without a major reduction in pumping to improve aquifer levels, the lack of return flows will continue to injure the surface water users. Surface water will continue to fill an ever expanding pumping void rather than return to the creek and be able to be diverted again. This is why depleted aquifers are so injurious to the historical function of surface water irrigation on Saguache Creek.

We have no ability to increase water flows in Saguache Creek, so the only solution to aquifer recovery is reduced groundwater consumption. While we don't have enough data to tell us where our aquifer levels are and are uncertain what "normal" is, the simple math tells us that consumptive use by surface irrigators plus recharge to the aquifer is less than groundwater withdrawals. Groundwater withdrawals and Saguache Creek flows must be brought back into balance so that surface irrigators are not deprived of their historical irrigation rights.

2002, 2012, 2018, and 2020 were disastrous years for many surface water users on Saguache Creek, much like this one year of 2021 has started out for sub district #5 irrigators. Finally, some of the sub district members have realized that we can no longer conduct business as usual while others choose to ignore the depleted aquifers and want to find enough replacement water to continue pumping at unregulated levels. It was in March of this year before the sub district board would even discuss reducing pumping levels. The surface water and ground water users' have made several attempts to mutually resolve the over-pumping issue, it oftentimes results in personal attacks on surface water users

because we are unwilling to allow groundwater users to continue to injure our senior surface water rights.

The State Engineer's office has already granted SD #5 a waiver for 2020. This was a double slap in the face for Saguache Creek surface irrigators, as we watched them pump at will and grow good crops while our ranches never even turned green.

If run off from the snow pack continues to decline, we may become unable to recover our aquifers even if we eliminate groundwater pumping. **Now** is the time to begin aquifer recovery, not resume over pumping.

If you want to choose short-term winners and losers in the groundwater/surface water issue on Saguache Creek and continue to kick the can down the road, follow the sub district #5 legal advice and approve the Judicial Review of their ARP. If you want to support the SEO's decision to deny the SD #5 ARP and choose a long term solution for aquifer recovery, deny their Judicial Review and let sub district #5 find our own solution. I hope you won't put your finger on the scale and will choose the only option that leads to aquifer recovery, which is hopefully the first priority of all San Luis Valley residents. The aquifer is a much more important issue than just agriculture.

Thank you,

Ed Nielsen
Saguache Creek surface water owner.