

SAN JUAN WATER CONSERVANCY DISTRICT

ARCHULETA COUNTY

STATE OF COLORADO

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NOTICE OF REGULAR MEETING

NOTICE IS HEREBY GIVEN that a Regular Meeting of the San Juan Water Conservancy District (SJWCD) Board of Directors has been scheduled for Monday, June 21, 2021, at 4:00 p.m. Due to the CDC and CDPHE recommendations regarding COVID – 19, the meeting will be held via Zoom. Participation via Zoom is highly recommended as the Board will be discussing and sharing documents related to the agenda below.

Meeting participation details below:

Join Zoom Meeting:

<https://us02web.zoom.us/j/85400077417?pwd=YVA1dUxUcHJ0RVhrNXhDSk5FQzhqQT09>

Dial by location:

+1 346 248 7799 US (Houston)

+1 669 900 9128 US (San Jose)

Meeting ID: 854 0007 7417

Password: 078345

For questions regarding how to participate via Zoom, please contact SJWCD President and Chairman, Al Pfister: 970-985-5764 or apfister.sjwcd@gmail.com.

Proposed Agenda is as follows:

1. Call to Order
2. Revisions to Agenda
3. Disclosure of Conflict of Interest
4. Public Comment
5. Consideration of Attorney Report
6. Consideration of Resolution 2021 – 03 – Decision Not to Seek Diligence for West Fork Water Rights
7. Consideration of Revisions to SJWCD Bylaws
8. Consideration of Treasurer's Report
9. Consideration of Attorney Attendance at District Meetings
10. Consideration of Approval of April 19, 2021 Regular Meeting, May 13, 2021 Special Meeting, and June 3, 2021 Special Meeting Minutes
11. Consideration of Scheduling July Special Meeting
12. Consideration of Upper San Juan Watershed Enhancement Partnership (WEP) Presentation – Phases II and III
13. Update Regarding Southern Ute Draft Water Quality Standards and Clean Water Act Section 401 Certification Procedures
14. Update Regarding Water Information Program (WIP)
15. Update Regarding Growing Water Smart Workgroup
16. Update Regarding State Park Nomination for San Juan River Headwaters Project

17. Consideration of Executive Session Pursuant to C.R.S. § 24-6-402(4)(b) – for the purposes of receiving advice from legal counsel on specific legal questions regarding the Consideration of Attorney Report, Consideration of Resolution 2021 – 03 – Decision Not to Seek Diligence for West Fork Water Rights, Consideration of Revisions to SJWCD Bylaws, and Update Regarding Southern Ute Draft Water Quality Standards and Clean Water Act Section 401 Certification Procedures agenda items.

SAN JUAN WATER CONSERVANCY DISTRICT

By /s/ Renee Lewis

For the Board of Directors

DISTRICT SEAL

FINAL



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MEMORANDUM

To: Board of Directors, San Juan Water Conservancy District
From: Jeffrey Kane
Date: June 17, 2021
Re: Attorney Report for June 21, 2021 Director Meeting
Attachments: (1) Draft Resolution 2021-03
(2) Director Hudson Examples of Objectionable Attorney Billing Entries
(3) Colorado Rule of Professional Conduct for Attorneys 1.4

I have the following items to report since the last regular meeting of the Board of Directors on April 19, 2021:

1. Draft Resolution 2021-03: Decision Not to Seek Diligence for the West Fork Water Rights.

As requested, I prepared a draft resolution to document the background and reasons for the decision not to file an application for diligence and to the change the location of the West Fork Reservoir and West Fork Canal water rights. It is attached for your consideration.

2. Review of Proposed Revisions to Bylaws

At the April 19 meeting, you requested my advice concerning proposed revisions to provisions of the Bylaws regarding geographical representation, vote requirements, a new bylaw regarding conferences with attorney, Secretary and Treasurer duties, and disclosure of conflicts of interest. The following is my advice concerning each of the proposed amendments.

(a) Section 4(b): geographical representation of directors

The Water Conservancy District Act requires that directors "shall be appointed so as to generally achieve geographical representation." C.R.S. § 37-45-114(1). As described in the current Bylaws, the 1987 organizational decree establishing the District specified that its initial board of directors include 7 to 11 directors, including two who are residents within the incorporated town limits of Pagosa Springs, two who are residents within the boundaries of the service area of PAWSD, three whose residence is outside the town limits of Pagosa Springs and outside the service area of the PAWSD, and with all other Directors selected at-large. As further noted, Pagosa Springs is now wholly incorporated within PAWSD, so any director residing within the Town will also reside within PAWSD.

Based on the foregoing, it is not clear that the proposed change to Section 4(b) of Bylaws is warranted. The proposal does not address the statutory requirement “to generally achieve geographical representation” of the District and would remove the explanation concerning how this was prescribed for its initial Board of Directors, which may be helpful to directors and the public. Because the organization decree only addressed the composition of the initial Board of Directors, those criteria may be interpreted as not controlling all subsequent boards. However, those criteria should at least be considered guidance for achieving geographical representation under the statute.

(b) Section 7(b): vote requirements in emergencies

This proposal is to delete a provision in the “vote requirements” subsection that governs actions taken by available directors “when special or emergency circumstances affecting the affairs of the District and the health and safety of District residents so dictate.” This was proposed because the provision in Section 6(g), concerning director meetings, already covers emergency actions. Section 6(g) requires the Chair and any two other directors to call a meeting in the event of an emergency before any action is taken. Section 7(b) does not have that limitation, requiring just “those Directors available.” It is possible that an emergency could arise where the Chair and two other directors are not available to make decisions on behalf of the District, in which case the current provision of Section 7(b) would authorize whichever director or directors are available to act on behalf of the District. Accordingly, I recommend that you consider whether Sections 6(g) and 7(b) really are duplicative or if there is another compelling reason to modify Section 6(g).

(c) Addition of a Section 7(h): conferences with attorney

This addition proposes to require a director to obtain approval from the other directors before seeking legal advice for the District from its attorney outside of a meeting of the Board of Directors. Director Hudson explained that the reason for this proposed addition is that over the past year Director Pfister, who was acting in his capacity as President, has had numerous conversations with the District’s counsel about matters that the Board had never talked about prior to Director Pfister doing so. After the April 19 meeting, Director Hudson emailed excerpts from our firm’s invoices that, in his opinion, described work that had never been authorized by decision or discussions by the Board of Directors.

Director Hudson’s transmittal email and his examples are attached. Please note that because the entries summarize requested legal advice, they are privileged and confidential attorney-client communications unless the directors decide to waive that privilege.

In evaluating this proposed change to the bylaws, you should consider how the proposed amendment would work in practice, whether it would permit timely communication as legal issues arise, and whether there are alternatives to achieving Director Hudson’s stated intent for the proposal. The Directors should also evaluate the billing entries Director Hudson provided, his characterization of them, how those matters arose, and who bears responsibility for the District having to seek that legal advice.

You should also consider that the proposed amendment implicates my ability to effectively serve as the District's counsel and meet my obligations under the Colorado Rules of Professional Conduct for attorneys. Timely attorney-client communication is implicated by a number of those Rules, with Rule 1.4 providing specific requirements attorneys must meet in communicating with clients.¹ Currently, timely communications are accomplished by the President and I using our discretion to communicate as legal matters arise.

To the extent other Directors share Director Hudson's stated concerns about unauthorized legal work and expense, you could consider alternatives to addressing the issue that would not risk impairing timely attorney-client communications. For example, you could create a bylaw or separate policy concerning the manner in which directors must communicate internally to attempt to resolve allegations of malfeasance against other directors in a manner that respects the director's fiduciary duties to the District and minimizes the need for involvement of counsel. You could also consider appointing a different officer or officers to communicate with legal counsel, forming a committee to review attorney invoices monthly, or distributing monthly attorney invoices to all directors. To the extent you are concerned about matters our firm has billed for or bills for in the future, it is in each party's interest to have those concerns raised timely and dealt with in a mutually agreeable manner.

(d) Sections 8(i) and 8(j): Secretary and Treasurer duties

The proposed amendment allocates each of the former Secretary/Treasurer duties separately to the Secretary and Treasurer and no longer provides that the Secretary/Treasurer shall step into the shoes of the Chair if she or he is not available (this is now addressed in the revisions for the Vice President's duties). Provided you each agree to the proposed allocations of the duties between the positions, this proposal achieves the objective of splitting the duties of the former combined position and promoting clarity in that regard. Further, you would still retain the ability to combine the positions pursuant to a clause in Section 8(d).

(e) Section 11 regarding disclosure of conflicts of interest

By statute, a director must disqualify himself or herself from voting on any issue in which he or she has a personal or private interest, unless that director's participation is necessary to obtain a quorum or otherwise to enable a board of directors to act and that director has disclosed the conflict of interest in writing to the Secretary of State and to the District on the record. C.R.S. §§ 24-18-109(3) and -110. A director with a conflict of interest must also refrain from attempting to influence the decisions of other directors voting on the matter. C.R.S. § 24-18-109(3)(a). And a director must not perform an official act directly and substantially to his or her economic benefit. C.R.S. § 24-18-109(2)(b). A director may be subject to criminal prosecution if he or she exercises any substantial discretionary function in connection with a government contract without having given 72 hours' actual advance written notice to the Secretary of State

¹ A copy of Rule 1.4 concerning communication is attached and each of the Rules can be viewed on the Colorado Bar Association website: <https://www.cobar.org/RulesOfProfessionalConduct>.

and to the Board of Directors of the existence of a known potential conflicting interest. C.R.S. § 18-8-308(1).

The proposed revision to Section 11 establishes an express policy of the Board of Directors requiring recusal and removal of a director from participation in a matter in which she or he has a financial conflict of interest. This is a bright-line way to assist a director in refraining from attempting to influence a decision on such a matter. But it would also preclude that director's participation in the situations carved out in the statute (i.e., to obtain a quorum or otherwise enable the Board of Directors to act). While the statutes do not mandate how a conflicted director should refrain from influencing a decision of the other directors, as Director Tedder posited on April 19, often it is in the best interest of an organization to go above and beyond what is expressly required to avoid even the potential appearance of any impropriety.

3. Proposed Water Quality Standards of the Southern Ute Indian Tribe

On May 17, the District's prior counsel, Kent Holsinger, forwarded a notice from the Southern Ute Indian Tribe concerning a new comment period regarding its proposed water quality standards. The District, through Mr. Holsinger, submitted comments on the proposed water quality standards in 2017.

Because of my former representation of the Tribe, I cannot participate in analyzing or commenting on the proposed water quality standards. I notified the executive committee of this and provided them a copy of the District's 2017 comments.

SAN JUAN WATER CONSERVANCY DISTRICT

RESOLUTION NO. 2021 – 03

DECISION NOT TO SEEK DILIGENCE FOR WEST FORK WATER RIGHTS

WHEREAS, San Juan Water Conservancy District (“SJWCD” or “District”) is a quasi-municipal corporation of the State of Colorado organized under §37-45-101 et seq. (“Act”) which provides that it is to be governed by a Board of Directors appointed by the Archuleta County District Court; and

WHEREAS, the District owns conditional water rights with a 1967 priority date for the (i) West Fork Reservoir for industrial, municipal, domestic, recreation, piscatorial, and irrigation uses and (ii) West Fork Canal for irrigation, industrial, and municipal uses, each originally decreed in favor of applicant Southwestern Water Conservation District in Case No. 73-308D, Water Division 7 (Dec. 19, 1968), and for which findings of diligence have been entered in several subsequent cases (collectively, “West Fork Water Rights”); and

WHEREAS, in the last diligence proceeding for the West Fork Reservoir water right, Case No. 11CW17, the District stipulated to certain reductions and limitations in the development of the West Fork Reservoir water right, including that the District would apply to change the location of West Fork Reservoir on or before its next diligence application would be due June 30, 2021; and

WHEREAS, in the last diligence proceeding for the West Fork Canal water right, Case No. 08CW37, the District stipulated to certain reductions and limitations in the development of the West Fork Canal water right, including that the District would apply to change the location of the point of diversion for the West Fork canal on or before its next diligence application would be due June 30, 2021; and

WHEREAS, in Case No. 04CW85 for the District’s Dry Gulch Reservoir water right, the District agreed to abandon the West Fork Water Rights if they are not used or perfected by the time the District constructs the San Juan River Headwaters Project (f/k/a Dry Gulch Project) facilities; and

WHEREAS, consulting engineers at Wilson Water Group (“WWG”) completed a study to investigate potential uses for the West Fork Water Rights for the District, which included analyses of (a) the District’s water rights portfolio and previous storage studies to understand opportunities and limitations based the original decrees, previous diligence efforts, and storage locations; (b) local water use and water demand to identify potential future uses for the District’s water rights; (c) the quantity of physically and legally available water under the District’s West

Fork and Dry Gulch Reservoir water rights; and (d) potential reservoir operations, as documented in WWG's Final Technical Report Memorandum dated March 3, 2021; and

WHEREAS, WWG's study did not identify a projected demand for the decreed direct flow use of the West Fork Canal water right; and

WHEREAS, WWG's study concluded that the most advantageous new reservoir site in the upper San Juan River basin is the Dry Gulch Reservoir site, the Dry Gulch Reservoir water right is of sufficient capacity to meet projected demands for water storage, and the 1967 priority of the West Fork Reservoir water right would provide limited benefit compared to the priority of the Dry Gulch Reservoir water right should it be moved and used for Dry Gulch Reservoir; and

WHEREAS, there would be substantial expense involved in applying for and prosecuting an application for diligence and change in place of use of the West Fork Reservoir water right to the Dry Gulch Reservoir site, additional structures and administration costs with using the West Fork water right at that location, and the outcome of a diligence proceeding uncertain; and

WHEREAS, the District completed outreach to the Southwestern Water Conservation District, Pagosa Area Water and Sanitation District, and other interested stakeholders to discuss the findings and conclusions of the WWG study and the implications of not seeking a finding of diligence for the West Fork Water Rights, but the parties failed to identify alternative uses that were not considered or third parties who might be able to use the West Fork Water Rights; and

WHEREAS, the District's directors noticed and held multiple regular and special meetings to discuss the West Fork water rights, the WWG study, and concerns of stakeholders; and

WHEREAS, the directors of the District have concluded that, based on the foregoing, the potential benefits of seeking a finding of diligence and to change the place of use of the West Fork Water Rights do not warrant the expense and risk of filing an application to do so in Water Court and, in so concluding, acknowledge that the legal effect of declining to file an application for diligence for the West Fork Water Rights is that they shall lapse and be abandoned;

NOW THEREFORE, be it resolved by the SJWCD Board of Directors, that the District will not file an application for diligence for the West Fork Water Rights.

ADOPTED this 21st day of June, 2021.

SAN JUAN WATER CONSERVANCY DISTRICT

President

ATTEST:

Secretary

Subject: Legal Expenses
Date: Tuesday, April 20, 2021 at 1:21:37 PM Mountain Daylight Time
From: Bill Hudson <bhudson.sjwcd@gmail.com>
To: Al Pfister <westernwildscapes@gmail.com>, Jeffrey Kane <jkane@swpropertylaw.com>
Attachments: 21-Pfister-Legal-Expenses.pdf

Hi Jeff, Al

Jeff and John had asked to see the breakdown of legal expenses related to issues that Al discussed, at length, with Jeff... discussions and assigned work that, in my opinion, had never been authorized by Board decisions or discussions, but were nevertheless initiated by Al.

If you look through the itemized discussions and assigned work, related to Al's concerns around my behavior as a Director — concerns which Al had not previously brought up with the Board as a whole, and also had not brought up with me previous to engaging Jeff's assistance, I believe you will find that the billings from those discussions and assigned legal work total more than \$3,000 — focused on discussions and work assignments aimed at raising questions about my behavior.

In my experience, the very best way to resolve personality conflicts is to discuss the problems with the very person with whom you are feeling conflicted.

Bringing in a third party — especially, bringing an attorney into the situation — prior to making an attempt to work things out “man to man” is, in my opinion, a recipe for failure, and for increasing the conflicts between the parties involved.

I would like to note that, during our Monday Board meeting, I did NOT bring up this issue — Al's unauthorized legal expenditures — until Susan and I were hearing push-back from Al, questioning why Susan and I felt the need for some Board control over legal expenditures.

My hope, on Monday, was that the Board would accept the well-considered and thoroughly discussed recommendations of the subcommittee.

That did not happen, and I therefore felt it necessary to fully explain my concerns about excessive legal work initiated by Al — around issues the Board as a whole had not previously discussed — and that the Board had never officially authorized.

I welcome your comments.

Bill

1/6/2021. Phone conference with A. Pfister re questions and advice re B. Hudson use of District email to requesting MSI's financials "in the interest of transparency" and re information learned from WWG in meeting yesterday – JK **\$64.50**

1/7/2021. Phone conference re A. Pfister contacted by MSI indicating that B. Hudson has made additional requests for its financial information using District email without disclosing his purpose and advice to indicate this is not a request authorized by Board and that up to MSI how to respond and that this conduct is squarely within that that the Board sought to address in resolution last year where B. Hudson appears to have personal agenda he is addressing to third parties as Director – JK **\$43.00**

1/21/2021. Review Pagosa Sun article re conflict of interest issues and identify errors and omissions in same (0.2); phone conference with A. Pfister re WWG report and re discussion of WEP funding and B. Hudson's accusations of unethical conduct and freelancing in contacting MSI re its budget, that I will work with VP to discuss those issues and options for proceeding, and his questions re what is required when a director recuses himself from an issue (0.3); outline issues and options re same for follow-up research and conferral with other Board members (0.3); review emails from M. Eskelson at MSI and B. Hudson re accusing A. Pfister of conflict; analyze situation and how to advise Board as a whole re same and confer with K. Perdue re same (0.4) – JK **\$258.00**

2/3/2021. Review proposed amendments to bylaws from B. Hudson; phone conference with A. Pfister re same and options for proceeding given that Board did not discuss or authorizing reviewing or amending bylaws and re approach to providing questions from other directors to WWG re water rights study and that he will organize and provide them to WWG on behalf of entire board rather than piecemeal (0.3); prepare and transmit email to S. Nossman and J. Porco re allegations against A. Pfister raised by B. Hudson at last board meeting and authorization to advise Board re same (0.3); phone conference with S. Nossaman re her perspective on B. Hudson's accusations, that she and other Board members felt blindsided and agreed letter at issue was a ministerial task, information she learned after Board meeting, and authorization to prepare memoranda for Board advising re substance of accusation and process by which it was brought up and potentially one or more resolutions re same (0.3) - JK - **\$193.50**

1/22/2021. Edit motion to reappoint M. Wheeler and proposed order re same and finalize for filing; update director roster (0.4); analyze emails between B. Hudson and M. Eskelson re explanation of purpose of his requests for financial info and MSI's request for letter to SWCD on 1/15 (0.2) - JK **\$129.00**

2/9/2021. Respond to R. Lewis and B. Hudson emails re B. Hudson proposed revisions to bylaws and recommendation to have Board discuss whether and objectives re amending bylaws and authorize legal review (0.2); phone conference with A. Pfister re B. Hudson individually emailed E. Wilson with questions re final report and concern re not coordinating with rest of board re same (0.1); review Jan. 18 agenda request and proposed MSI letter re WEP, minutes of meeting, my notes, and Pagosa Sun article re discussions and statements made; begin drafting memo to board re same, including incorporation of prior advice re conflicts of interest and fiduciary duties with additional research on conflict of interest statute, potential criminal liability, and defenses to same (1.8) – JK - **\$451.50**

2/12/2021. Prepare oath of office for M. Wheeler (0.1); research CGIA and District Bylaws provisions re indemnifying directors against liability for official acts and bylaws re lack of provision to address procedures for allegations of director malfeasance (1.2); complete memo to directors re Hudson allegations against Pfister and transmit to R. Lewis for board packet along with requested agenda item for same (1.3) – JK - **\$559.00**

2/15/2021. Review emails from A. Pfister, J. Porco, and B. Hudson re conflict of interest agenda item and email from R. Lewis re not renewing contract beyond 1 month; phone conference with A. Pfister re he spoke with other directors individually re conflict of interest issue and that may move to remove discussion from agenda (0.4); review agenda and bd. packet and prepare for Board mtg (0.3); attend board meeting (2.0) – JK **\$580.50**

2/17/2021. Per A. Pfister, review part 1 of B Hudson commentary in Daily Post re W Fork water rights – JK **\$21.50**

This was not the first instance of President Pfister piling up District legal fees researching an issue that the Board had never discussed or authorized.

May 20, 2020. President Pfister discussion about “three recent blog posts by B Hudson re local water demand growth, the role of conservation, and ag demands...”

\$86 dollars in legal fees

July 1, 2020. Conference with President Pfister to discuss the Town Council's decision to remove B. Hudson from the Planning Commission and "an option to propose a resolution for discussion related to same."

\$43 in legal fees.

August 14, 2020. "Review background documents and prepare draft resolution re director fiduciary duties, Hudson conduct, and Board action related thereto and proposed terms to address same; email to A. Pfister to review."

\$387 in legal fees.

August 16, 2020. "Review edits and comments on draft resolution re director duties from A. Pfister; add recital re necessity to work with other entities and individuals to achieve District mission; phone conversation with A. Pfister re same, concurrence in edits, and to send to Board for review; finalize edits and email to Board."

\$107 in legal fees.

August 17, 2020. Review and evaluate emails from B. Hudson re draft resolution re director duties and disclosure to certain directors and third parties... phone conversation with A. Pfister re legal issues raised; attend latter half of Board meeting."

Approximately \$237 in legal fees.

September 5, 2020. "Review revised resolution re directory fiduciary duties; email and phone conference with A. Pfister re same, re B. Hudson concerns re advice at last Board meeting, and prep for today's board meeting... attend BoD meeting."

Approximately \$645 in legal fees.

Curiously enough — during all of this rather expensive legal haggling in 2020 and into 2021, Mr. Kane never once reached out to make contact with Director Hudson to understand his side of the story. Mr. Kane apparently did all of this expensive and unauthorized work based exclusively on President Pfister's personal concerns and desires.

Rule 1.4. Communication.

Colorado Court Rules

Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2018(6), effective April 12, 2018

Rule 1.4. Communication

- (a) A lawyer shall:
- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Cite as RPC 1.4

History. Comment amended April 20, 2000, effective July 1, 2000; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

Note:

COMMENT

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who

receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations--depending on both the importance of the action under consideration and the feasibility of consulting with the client--this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[6A] Regarding communications with clients when a lawyer retains or contracts with other lawyers outside the lawyer's

own firm to provide or assist in the providing of legal services to the client, see Comment [6] to Rule 1.1.

[6B] Regarding communications with clients and with lawyers outside of the lawyer's firm when lawyers from more than one firm are providing legal services to the client on a particular matter, see Comment [7] to Rule 1.1.

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

Explanation of Fees and Expenses

[7A] Information provided to the client under Rule 1.4(a) should include information concerning fees charged, costs, expenses, and disbursements with regard to the client's matter. Additionally, the lawyer should promptly respond to the client's reasonable requests concerning such matters. It is strongly recommended that all these communications be in writing. As to the basis or rate of the fee, see Rule 1.5(b).



AGENDA ITEM REPORT

MEETING: June, 2021

FROM: Bill Hudson, Treasurer

SUBJECT: IMPACT FEES ACCOUNT

ACTION: Information and Possible Action

SJWCD began receiving Impact Fees collected by the Town government back in about 2008, for the intended purpose of helping to fund the Dry Gulch Reservoir project. Impact Fees can be collected by municipal governments, but not by special districts. The revenue must be used on new capital projects, not on maintenance or operations.

Impact fees are completely dependent on an active real estate market. There must be enough real estate activity to generate fees that can meaningfully contribute to the cost of the needed infrastructure within a reasonable time frame. A "reasonable time frame" usually means within 5 to 10 years from the date the county collects the impact fee. If collected fees will not cover all of the cost of the identified improvement (which is common), then the county or other service provider must either (1) make up the shortfall from other revenue sources, so that capital facilities serving the new development can be built during the 5 to 10 year time frame, or (2) rebate the fee.

The Board has discussed our Impact Fees account previously with our counsel and the consensus seems to be that the expenditure of the Impact Fees to pay for the recent Wilson Water Group study for the West Fork Reservoir.

The Board may want to consider a motion to allocate the Impact Fees for that purpose.

Board Agenda Item Report

	To	Action	Signature, Date		To	Action	Signature, Date
1	Renee Lewis	Review		6			
2	Board	Approve		7			
3				8			
4				9			
5				10			

Name of Action Official Renee Lewis/Al Pfister	Priority High Medium Low None <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Phone 970-985-5764	Presentation Date 6/21/21
Subject Proposed Revisions to SJWCD Bylaws			Approval Req Date 6/21/21

Summary:

Please find below a summary of the discussion re proposed revisions to the SJWCD Bylaws prepared for the purposes of the 4/19/21 meeting minutes. While the minutes have not yet been approved, this may be helpful to refresh your recollection in preparation for the 6/21/21 discussion.

Comments and decisions summarized as follows:

-Section 4(b) Geographical Representation. The October 22, 1987 District Court Order organizing the District specified that initial composition of the Board include two (2) Directors who are residents within the incorporated town limits of Pagosa Springs, two (2) other Directors who are residents within the boundaries of the service area of the Pagosa Area Water and Sanitation District, three (3) other Directors whose residence is outside the town limits of Pagosa Springs and outside the service area of the Pagosa Area Water & Sanitation District, and with all other Directors selected at-large. All Directors must be residents within the boundaries of the San Juan Water Conservancy District. After the District was organized, in 1993 the Town of Pagosa Springs service area was wholly incorporated into the Pagosa Area Water & Sanitation District, which may affect the ability to meet the original jurisdictional representation requirement. Therefore, all District recommendations to the District Court for Director appointments shall seek to generally maintain a balanced geographical and jurisdictional representation among the Board members even though strict adherence to the originally prescribed jurisdictional boundaries is no longer possible. Numerous Court appointment orders since the change in jurisdictional boundaries have acknowledged and affirmed this fact.

Proposed Revision – Section 4(b) Geographical Representation. All Directors must be residents within the boundaries of the San Juan Water Conservancy District.

Comments/Decision: The Board agreed to table this proposed revision to allow for the District's attorney to research the matter.

-Section 6(a) Regular Meetings. Regular meetings of the Board shall be conducted on the second Monday of each even month at 7:00 p.m. and held at the business office, unless otherwise noticed and posted.

Proposed Revision – Section 6(a) Regular Meetings. Regular meetings of the Board shall be conducted on the third Monday of each even month at 5pm and held at the business office, unless otherwise noticed and posted. During a health emergency, the Board President may arrange for meetings to be held via electronic means, while ensuring that the general public is able to participate.

Comments/Decisions: A motion was made by Chairman Pfister and seconded by Director Secrist to revise as follows proposed Section 6(a) Regular Meetings. Regular meetings of the Board shall be conducted on the third Monday of each even month at 4:00 p.m. and held at the business office, unless otherwise noticed and posted. During an emergency or other exigent circumstances, the Board President may arrange for meetings to be held via electronic means while ensuring the general public is able to participate. The motion passed unanimously with Director Hudson abstaining.

-Section 7(b) Vote Requirements. Any action of the Board shall require the affirmative vote of a majority of the Directors present and voting. When special or emergency circumstances affecting the affairs of the District and the health and safety of District residents so dictate, then those Directors available at the time may undertake whatever action is considered necessary and may so instruct the District's employees, agents and contractors. Such actions shall later be ratified by the Board.

Proposed Revision – Section 7(b) Vote Requirements. Any action of the Board shall require the affirmative vote of a majority of the Directors present and voting. Emergency actions are covered by Section 6, paragraph g.

Comments/Decisions: The Board agreed to table this proposed revision to allow for the District's attorney to research the matter.

-Section 7(e) Public Conduct at Meetings. Comments by members of the public shall be made only during the "Public Input" portion of the meeting unless additional opportunity is given at the Board's discretion. Disorderly conduct, harassment, or obstruction of or interference with meetings by physical action, verbal utterance, nuisance or any other means are hereby prohibited and constitute a violation of District rules. Such conduct may result in removal of person(s) responsible for such behavior from the meeting and/or criminal charges filed against such person(s). To the extent such occurrences arise and the person(s) responsible refuse to leave the premises, law enforcement authorities will be summoned. Prosecution will be pursued under all applicable laws, including without limitation Sections 18-9-108, C.R.S. (disrupting lawful assembly), 18-9-110, C.R.S. (public buildings – trespass, interference), and/or 18-9-117, C.R.S. (unlawful conduct on public property). Law enforcement may be requested to attend meetings at any time in which the Board believes their presence will be an asset to the keeping of peace and the conducting of public business. 9-1-1 will be called at any time that the Board or staff feels threatened or endangered during a public meeting.

Proposed Revision – Section 7(e) Public Conduct at Meetings. Comments by members of the public shall be welcomed during the "Public Input" portion of the meeting. Additional opportunities for public comment may be granted at the Board President's discretion, or at the suggestion of any Board member.

Comments/Decisions: A motion was made by Director Hudson and seconded by Director Tedder to approve the revision as proposed. The motion passed 3 – 1 with Chairman Pfister opposed and Directors Secrist and Nossaman abstaining.

-Section 7(h) *New Section*****

Proposed Revision – Section 7(h) Conferences with Attorney. A Director who wishes to discuss an issue with the District's legal counsel outside of a convened Board meeting will obtain Board approval before engaging with legal counsel on the issue.

Comments/Decisions: The Board agreed to table this proposed revision to allow for further review.

-Section 8(g) Chair and President. The Chair shall preside at all meetings. The Chair shall also be the President of the District. The President is authorized to sign all contracts, deeds, notes, debentures, warrants and other instruments on behalf of the District. The Chair may fully participate in deliberations and actions of the Board by making and seconding motions, providing opinions and voting on all matters. Prior to any absence from any meeting, the Chair shall designate another Director as Chair of such meeting.

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Comments/Decisions: The Board agreed to the proposed revision as presented.

-Section 8(h) Vice President. In absence of the Chair, the Vice President shall preside at all meetings. The Vice President shall have the authority to make all management or administrative decisions regarding District matters. The Vice President is also authorized to sign all contracts, deeds, notes, debentures, warrants, checks, and other instruments on behalf of the District.

Proposed Revision – Section 8(h) Vice President. In absence of the Chair, the Vice President shall preside at all meetings. If the Vice President is unavailable, the President shall designate another Board member to chair the meeting.

Comments/Decisions: The Board agreed to the proposed revision as presented.

-Section 8(i) Secretary/Treasurer. The Secretary/Treasurer shall be responsible for the records of the District; may act as Secretary at meetings of the Board and record all votes; shall be responsible for composing a record of the proceedings of the Board in a visual text format that may be transmitted electronically, which shall be an official record of the Board; shall be authorized to invest or cause to be invested all surplus funds or other available funds of the District in permitted investments authorized by law or as specified by the Board; shall keep or cause to be kept strict and accurate accounts of all money received by and disbursed for and on behalf of District in permanent records; and shall perform all other duties incident to that office. The Secretary/Treasurer shall be the designated election official of the District, unless otherwise determined by the Board, and the custodian of records and of the seal of District. The Secretary/Treasurer shall have the authority to affix such seal to and attest all contracts and instruments authorized to be executed by the Board. The Secretary/Treasurer shall file with the Clerk of the Court, at the expense of the District, a corporate fidelity bond in an amount determined by the Board of not less than \$5,000, conditioned on the faithful performance of the duties of the Treasurer's office. The Secretary/Treasurer shall be chairman of the Budget Committee and of the Audit Committee. In addition to the duties above described, in the absence of the Chair, the Secretary/Treasurer shall preside at meetings and shall have all authority of the Chair to make management or administrative decisions regarding District matters and to sign contracts, deeds, notes, debentures, warrants, checks, and other instruments on behalf of the District.

Proposed Revision – Section 8(i) and (j) Secretary/Treasurer.

i. Secretary. The Secretary shall be responsible for the records of the District; may act as Secretary at meetings of the Board and record all votes; shall be responsible for composing a record of the proceedings of the Board in a visual text format that may be transmitted electronically, which shall be an official record of the Board; shall be the designated election official of the District, unless otherwise determined by the Board, and the custodian of records and of the seal of District; shall have the authority to affix such seal to and attest all contracts and instruments authorized to be executed by the Board.

j. Treasurer. The Treasurer shall be authorized to invest or cause to be invested all surplus funds or other available funds of the District in permitted investments authorized by law or as specified by the Board; shall keep or cause to be kept strict and accurate accounts of all money received by and disbursed for and on behalf of District in permanent records; and shall perform all other duties incident to that office. The Treasurer shall file with the Clerk of the Court, at the expense of the District, a corporate fidelity bond in an amount determined by the Board of not less than \$5,000, conditioned on the faithful performance of the duties of the Treasurer's office. The Treasurer shall be chairman of the Budget Committee and of the Audit Committee.

Comments/Decisions: The Board agreed to table this proposed revision to allow for the District's attorney to research the matter.

-Section 11 Disclosure of Conflict of Interest. A potential conflict of interest of any Director shall be disclosed in accordance with State law, particularly Article 18 of Title 24, C.R.S., and Section 18-8-308, C.R.S.

Proposed Revision – Section 11 Conflict of Interest. A Director who has a financial interest in a matter coming before the Board shall

recuse himself/herself from participation in discussion or voting on the matter, and shall propose no motions or offer comments while the matter is before the Board. Whenever possible, recusal shall include removing himself/herself from the meeting while the matter is under consideration. A potential conflict of interest of any Director shall be disclosed in accordance with State law, particularly Article 18 of Title 24, C.R.S., and Section 18-8-308, C.R.S.

Comments/Decisions: A motion was made by Director Nossaman and seconded by Director Hudson to allow for the District's attorney to research the matter prior to approval. The motion passed unanimously with Chairman Pfister abstaining.

A motion was made by Director Hudson and seconded by Director Nossaman to approve all proposed revisions that were not tabled as provided above. The motion passed unanimously. Chairman Pfister offered to also provide a proposed revision regarding the meeting notices at the next regular meeting.

SIGNED



AGENDA ITEM REPORT

MEETING: June 21, 2021

FROM: Bill Hudson, Treasurer

SUBJECT: Treasurer Comments

ACTION: Information

These notes refer to the highlighted rows in the Actual-to-Budget report of June 17.

1. We've collected about 78% of our expected tax revenue, as of May 31.
2. It appear unlikely that we will collect \$1,000 in "Other" revenues (Line 1003387) this year.
3. We've expended 71% of our budgeted "Water Rights Defense" line item (1031006)
4. We didn't budget anything for "Water Rights Applications" this year, but have nevertheless expended 881.50 in the line item. (1031009).
5. Our "Board Expense" spending is more than twice what we budgeted. (Line 1090080)
6. We've expended 61% of our Legal District General" line item (1090162).
7. We are already over budget on "Dues" (Line item 1090410).
8. Overall expenditures are well below 50% of budget as of June 17.

San Juan Water Conservancy District
Profit & Loss Budget Performance
January 1 through June 17, 2021

	<u>Jan 1 - Jun 17, 21</u>	<u>YTD Budget</u>	<u>Annual Budget</u>
Income			
1003300 · Revenue			
1003370 · Impact Fees	0.00	0.00	0.00
1003371 · Senior / Veteran Exemption Tax	1,552.47	1,600.00	1,600.00
1003380 · Misc. (inc ColoTrust) Grant	0.00	0.00	0.00
1003381 · General Property Taxes	64,191.49	38,038.73	81,999.00
1003382 · Specific Ownership	3,988.19	3,596.17	7,750.00
1003383 · Current Tax Interest	17.56	150.87	325.00
1003384 · Delinquent Tax Interest	206.67	0.00	20.00
1003385 · Delinquent Tax	151.47	0.00	20.00
1003386 · PILT	60.10	0.00	8.00
1003387 · Other (e.g.CoTrust, abatement)	47.22	1,000.00	1,000.00
1003300 · Revenue - Other	0.00	0.00	
Total 1003300 · Revenue	70,215.17	44,385.77	92,722.00
 Total Income	 70,215.17	 44,385.77	 92,722.00
 Cost of Goods Sold			
50000 · Cost of Goods Sold (Costs of items	0.00	0.00	
Total COGS	0.00	0.00	
 Gross Profit	 70,215.17	 44,385.77	 92,722.00
 Expense			
1001301 · Prepaid Expenses	0.00	0.00	
1031000 · Capital Expenditures			
1031001 · SJRHP Settlement II	0.00	0.00	0.00
1031003 · Studies/Eng./Surveys	15,112.50	40,000.00	40,000.00
1031004 · Due Diligence	0.00	24,000.00	24,000.00
1031005 · SJRHP Land Acquisition (This	0.00	0.00	0.00
1031006 · Water Rights Defense	2,834.00	4,000.00	4,000.00
1031007 · SJRHP Settlement (2012)	0.00	0.00	0.00
1031008 · SJRHP General	0.00	0.00	0.00
1031009 · Water Rights Applications	881.50	0.00	0.00
1031000 · Capital Expenditures - Other	0.00	0.00	
Total 1031000 · Capital Expenditures	18,828.00	68,000.00	68,000.00
 1041200 · Expensed Capital Expenditures			
1041221 · Ditches and Streams	0.00	200.00	200.00
1041223 · Cloud Seeding	1,000.00	1,000.00	1,000.00
1041200 · Expensed Capital Expenditure	0.00	0.00	
Total 1041200 · Expensed Capital Expenditur	1,000.00	1,200.00	1,200.00
 1090000 · Expenditures			

San Juan Water Conservancy District
Profit & Loss Budget Performance
January 1 through June 17, 2021

	<u>Jan 1 - Jun 17, 21</u>	<u>YTD Budget</u>	<u>Annual Budget</u>
1090020 · Audit	750.00	750.00	750.00
1090080 · Board Expense	558.00	250.00	250.00
1090110 · Insurance	1,413.00	1,500.00	1,500.00
1090130 · Legal/CORA	0.00	0.00	0.00
1090160 · Office Supplies	64.08	500.00	500.00
1090161 · Office Lease	1,470.00	2,087.50	4,500.00
1090162 · Legal-District Gen	7,343.50	12,000.00	12,000.00
1090190 · Publications/Website	32.00	100.00	100.00
1090221 · Lower Blanco River Restorati	0.00	0.00	0.00
1090231 · Support Services (Acct used t	6,799.00	12,000.00	12,000.00
1090232 · Telephone/Internet	243.58	347.92	750.00
1090410 · Dues	861.87	500.00	500.00
1090439 · Training	0.00	2,500.00	2,500.00
1090440 · Travel	0.00	2,500.00	2,500.00
1090441 · Contributions/Sponsorships	0.00	500.00	500.00
1090442 · Water Information Program	2,500.00	2,500.00	2,500.00
1090443 · Water Education (Acct used t	0.00	750.00	750.00
1090460 · Treasurer's Fees	1,961.83	3,000.00	3,000.00
1090461 · Abatements	19.25	150.00	150.00
1090462 · Election Costs	0.00	0.00	0.00
1090463 · Grow Water Smart	0.00	500.00	500.00
1090464 · SJ Watershed Enhancement	0.00	2,000.00	2,000.00
1090465 · Forest Health Partnership	0.00	2,500.00	2,500.00
1090466 · Contingency	0.00	24,773.00	24,773.00
1090000 · Expenditures - Other	0.00	0.00	
Total 1090000 · Expenditures	24,016.11	71,708.42	74,523.00
 66900 · Reconciliation Discrepancies (Disc	 0.00	 0.00	
Total Expense	43,844.11	140,908.42	143,723.00
 Net Income	 26,371.06	 -96,522.65	 -51,001.00

RECORD OF PROCEEDINGS
SAN JUAN WATER CONSERVANCY DISTRICT
APRIL 19, 2021 REGULAR MEETING

Attendance

All Board Members and attendees present participated via the District's Zoom account in accordance with the CDC and CDPHE recommendations regarding COVID – 19.

The following Directors were present: Al Pfister, Susan Nossaman, John Porco, Bill Hudson, Doug Secrist, and Joe Tedder.

Also present were: JR Ford, Jeff Kane, Renee Lewis, Justin Ramsey, and Joe Napolitan.

Call to Order

The Regular Meeting for the San Juan Water Conservancy District (SJWCD) was called to order by Chairman Al Pfister at 4:03 p.m.

Revisions to Agenda

Director Secrist requested Consideration of State Park Nomination for San Juan River Headwaters Project be added to the agenda. Chairman Pfister requested Consideration of Acquiring Additional Funds for Support Services Position and Special Projects Identified in Strategic Plan. A motion was made by Director Hudson and seconded by Chairman Pfister to add the two requested items to the agenda. The motion passed unanimously.

Declaration of Conflicts of Interest

The Board considered Declarations of Conflicts of Interest. No conflicts were declared.

Public Comment

Chairman Pfister opened the meeting to public comment. No comments were offered.

Consideration of Further Development of West Fork Reservoir and Canal Water Rights

The Board considered Further Development of West Fork Reservoir and Canal Water Rights (copy attached). Chairman Pfister presented Consideration of Further Development of West Fork Reservoir and Canal Water Rights, stating an overview of the tasks he had completed since the last meeting to coordinate with Southwest Water Conservation District (SWCD) and the Pagosa Area Water and Sanitation District

(PAWSD) on development of the water rights. JR Ford, SWCD Board Member, stated his Board had reviewed the original conveyance documents, but did not have time to do any further work on the matter prior to the filing deadline for diligence of June 30, 2021. Justin Ramsey, PAWSD District Manager, stated he did not foresee a way for PAWSD to utilize the water rights in the future. Jeff Kane, SJWCD Attorney, recommended the Board consider a resolution documenting the abandonment of the water rights at its next meeting. A motion was made by Chairman Pfister and seconded by Director Secrist to have the Executive Committee work with Mr. Kane on a resolution documenting the intent to abandon the West Fork Reservoir and Canal Water Rights for Board consideration at the next meeting. The motion passed unanimously with Director Hudson abstaining.

Consideration of Attorney Report

The Board considered Attorney Report. Jeff Kane presented Consideration of Attorney Report stating an overview of his work on behalf of the District in the last month, specifically the development of the West Fork Reservoir and Canal water rights and employee versus independent contractor status of the Support Services position.

Consideration of Support Services Position

The Board considered Support Services position (copy attached). Chairman Pfister presented Consideration of Support Services Position, stating an overview of the application materials received and interviews conducted thus far. A motion was made by Director Hudson and seconded by Director Porco to have the hiring subcommittee present any candidate that meets the qualifications as provided in the job description for an interview before the full Board. The motion failed 2 – 3 with Chairman Pfister and Directors Secrist and Tedder opposed. Chairman Pfister and Directors Secrist and Tedder stated it was their understanding the hiring subcommittee would be conducting the review of application materials and conducting the interviews with possibly the final candidate(s) being presented for an interview with the full Board. A motion was made by Director Porco and seconded by Director Hudson to provide the full Board with the interview questions developed by the subcommittee, allow for the full Board to provide comments to the subcommittee on said questions, and to allow for the full Board to provide comments to the subcommittee on the application materials received thus far. The motion passed 4 – 1 with Director Secrist opposed. Director Secrist stated he did not believe this to be the hiring process the Board agreed to at the March meetings.

Consideration of Revisions to SJWCD Bylaws

The Board considered Revisions to SJWCD Bylaws (copy attached). Director Hudson presented Consideration of Revisions to SJWCD Bylaws, stating that he and Director Nossaman had worked on the proposed revisions and opened the discussion to comments from the Board. Comments and decisions summarized as follows:

-Section 4(b) Geographical Representation. The October 22, 1987 District Court Order organizing the District specified that initial composition of the Board include two (2) Directors who are residents within the incorporated town limits of Pagosa Springs, two (2) other Directors who are residents within the boundaries of the service area of the Pagosa Area Water and Sanitation District, three (3) other Directors whose residence is outside the town limits of Pagosa Springs and outside the service area of the Pagosa Area Water & Sanitation District, and with all other Directors selected at-large. All Directors must be residents within the boundaries of the San Juan Water Conservancy District. After the District was organized, in 1993 the Town of Pagosa Springs service area was wholly incorporated into the Pagosa Area Water & Sanitation District, which may affect the ability to meet the original jurisdictional representation requirement. Therefore, all District recommendations to the District Court for Director appointments shall seek to generally maintain a balanced geographical and jurisdictional representation among the Board members even though strict adherence to the originally prescribed jurisdictional boundaries is no longer possible. Numerous Court appointment orders since the change in jurisdictional boundaries have acknowledged and affirmed this fact.

Proposed Revision – Section 4(b) Geographical Representation. All Directors must be residents within the boundaries of the San Juan Water Conservancy District.

Comments/Decision: The Board agreed to table this proposed revision to allow for the District's attorney to research the matter.

-Section 6(a) Regular Meetings. Regular meetings of the Board shall be conducted on the second Monday of each even month at 7:00 p.m. and held at the business office, unless otherwise noticed and posted.

Proposed Revision – Section 6(a) Regular Meetings. Regular meetings of the Board shall be conducted on the third Monday of each even month at 5pm and held at the business office, unless otherwise noticed and posted. During a health emergency, the Board President may arrange for meetings to be held via electronic means, while ensuring that the general public is able to participate.

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138 action is considered necessary and may so instruct the District's employees, agents and
139 contractors. Such actions shall later be ratified by the Board.

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146 District's attorney to research the matter.

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151 obstruction of or interference with meetings by physical action, verbal utterance,
152 nuisance or any other means are hereby prohibited and constitute a violation of District
153 rules. Such conduct may result in removal of person(s) responsible for such behavior
154 from the meeting and/or criminal charges filed against such person(s). To the extent
155 such occurrences arise and the person(s) responsible refuse to leave the premises, law
156 enforcement authorities will be summoned. Prosecution will be pursued under all
157 applicable laws, including without limitation Sections 18-9-108, C.R.S. (disrupting lawful
158 assembly), 18-9-110, C.R.S. (public buildings – trespass, interference), and/or 18-9-
159 117, C.R.S. (unlawful conduct on public property). Law enforcement may be requested
160 to attend meetings at any time in which the Board believes their presence will be an
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162 called at any time that the Board or staff feels threatened or endangered during a public
163 meeting.

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166 of the public shall be welcomed during the "Public Input" portion of the meeting.
167 Additional opportunities for public comment may be granted at the Board President's
168 discretion, or at the suggestion of any Board member.

169
170 Comments/Decisions: A motion was made by Director Hudson and seconded by
171 Director Tedder to approve the revision as proposed. The motion passed 3 – 1 with
172 Chairman Pfister opposed and Directors Secrist and Nossaman abstaining.

173
174 **-Section 7(h) ***New Section*****

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177 discuss an issue with the District's legal counsel outside of a convened Board meeting
178 will obtain Board approval before engaging with legal counsel on the issue.

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181 further review.

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duties above described, in the absence of the Chair, the Secretary/Treasurer shall preside at meetings and shall have all authority of the Chair to make management or administrative decisions regarding District matters and to sign contracts, deeds, notes, debentures, warrants, checks, and other instruments on behalf of the District.

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Comments/Decisions: The Board agreed to table this proposed revision to allow for the District's attorney to research the matter.

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Proposed Revision – Section 11 Conflict of Interest. A Director who has a financial interest in a matter coming before the Board shall recuse himself/herself from participation in discussion or voting on the matter, and shall propose no motions or offer comments while the matter is before the Board. Whenever possible, recusal shall include removing himself/herself from the meeting while the matter is under consideration. A potential conflict of interest of any Director shall be disclosed in accordance with State law, particularly Article 18 of Title 24, C.R.S., and Section 18-8-308, C.R.S.

Comments/Decisions: A motion was made by Director Nossaman and seconded by Director Hudson to allow for the District's attorney to research the matter prior to approval. The motion passed unanimously with Chairman Pfister abstaining.

A motion was made by Director Hudson and seconded by Director Nossaman to approve all proposed revisions that were not tabled as provided above. The motion passed unanimously. Chairman Pfister offered to also provide a proposed revision regarding the meeting notices at the next regular meeting.

Consideration of Treasurer's Report

The Board considered the Treasurer's Report (copy attached). Director Hudson presented the Treasurer's Report, stating the highlights of the deposits, expenses, and ending balances.

Consideration of Approval of February 15, 2021 Regular Meeting, March 4, 2021 Special Meeting, and March 29, 2021 Special Meeting Minutes

The Board considered Approval of February 15, 2021 Regular Meeting, March 4, 2021 Special Meeting, and March 29, 2021 Special Meeting Minutes (copy attached). Chairman Pfister presented Consideration of Approval of February 15, 2021 Regular Meeting, March 4, 2021 Special Meeting, and March 29, 2021 Special Meeting Minutes, stating he had reviewed the minutes and provided his suggested revisions. A motion was made by Director Hudson and seconded by Chairman Pfister to approve the February 15, 2021 Regular Meeting, March 4, 2021 Special Meeting, and March 29, 2021 Special Meeting Minutes as presented. The motion passed unanimously.

Consideration of Resolution 2021 – 02 – Approving Exemption from Audit for Fiscal Year 2020

The Board considered Resolution 2021 – 02 – Approving Exemption from Audit for Fiscal Year 2020 (copy attached). Renee Lewis presented Consideration of Resolution 2021 – 02 – Approving Exemption from Audit for Fiscal Year 2020, stating she had prepared said resolution at the request of and according to the guidance provided by the District's auditor Ronny Farmer. A motion was made by Chairman Pfister and seconded by Director Porco to adopt Resolution 2021 – 02 – Approving Exemption from Audit for Fiscal Year 2020. The motion passed unanimously.

Consideration of Earth Day Event Materials

The Board considered Earth Day Event Materials (copy attached). Director Porco presented Consideration of Earth Day Event Materials, stating he and Chairman Pfister would be hosting a table on behalf of the District at the April 24, 2021 Earth Day Event, and he has updated the SJWCD trifold brochure as previously discussed at the March 4, 2021 meeting.

Consideration of Returning to In-person Board Meetings

The Board considered Returning to In-person Board Meetings. Director Hudson presented Consideration of Returning to In-person Board Meetings, stating that he

believed with vaccines being readily available the District could return to in-person meetings in June of this year. Following some discussion regarding office space available for the recommended social distancing, a motion was made by Director Hudson and seconded by Director Porco to return to in-person meetings in August 2021. The motion passed unanimously.

Consideration of State Park Nomination for San Juan River Headwaters Project

The Board considered State Park Nomination for San Juan River Headwaters Project (copy attached). Director Secrist presented Consideration of State Park Nomination for San Juan River Headwaters Project (SJRHP), stating Colorado Parks and Wildlife (CPW) has recently launched an initiative to identify potential future State Park opportunities around the state. He also stated CPW representatives are familiar with the SJRHP as he and Chairman Pfister have discussed State Park designation with representatives in the past. A motion was made by Director Secrist and seconded by Director Porco to proceed with the nomination process to determine eligibility and next steps and authorize Director Secrist and Chairman Pfister to discuss the matter with PAWSD and the Colorado Water Conservation Board. The motion passed unanimously.

Consideration of Acquiring Additional Funds for Support Services Position and Special Projects Identified in Strategic Plan

The Board considered Acquiring Additional Funds for Support Services Position and Special Projects Identified in Strategic Plan. Chairman Pfister presented Consideration of Acquiring Additional Funds for Support Services Position and Special Projects Identified in Strategic Plan, stating he suggests the Board research additional funding options to supplement the amount budgeted for the Support Services position and for special projects identified in the Strategic Plan as that may allow the District to accomplish more this year and in 2022. The Board agreed.

Other Business

Renee Lewis asked if the Board would like to continue to run the classified ad in the Pagosa SUN for the Support Services position. The Board agreed it was not necessary at this time.

There being no further business to come before the Board, the meeting was adjourned at 6:37 p.m.

Respectfully submitted,

Renee Lewis
Recording Secretary
For the Board of Directors

RECORD OF PROCEEDINGS
SAN JUAN WATER CONSERVANCY DISTRICT
MAY 13, 2021 SPECIAL MEETING

Attendance

All Board Members and attendees present participated via the District's Zoom account in accordance with the CDC and CDPHE recommendations regarding COVID – 19.

The following Directors were present: Al Pfister, Susan Nossaman, Bill Hudson, Doug Secrist, and Joe Tedder.

Also present were: Renee Lewis, Jeff Kane, and Joe Napolitan.

Call to Order

The Special Meeting for the San Juan Water Conservancy District (SJWCD) was called to order by Chairman Al Pfister at 8:06 a.m.

Revisions to Agenda

Chairman Pfister requested Update Regarding Growing Water Smart Workgroup be added to the agenda. A motion was made by Chairman Pfister and seconded by Director Hudson to add Update Regarding Growing Water Smart to the agenda. The motion passed unanimously.

Declaration of Conflicts of Interest

The Board considered Declarations of Conflicts of Interest. No conflicts were declared.

Public Comment

Chairman Pfister opened the meeting to public comment. No comments were offered.

Consideration of Support Services Position

The Board considered Support Services Position (copy attached). Chairman Pfister presented Consideration of Support Services Position, stating the Hiring Subcommittee's recommendation without reservation of Sally High for the position. Director Secrist confirmed this was a unanimous decision by the Hiring Subcommittee. Renee Lewis stated she believed Ms. High to be a highly qualified candidate for the position. A motion was made by Director Hudson and seconded by Director Secrist to extend an offer for the Support Services Position to Ms. High. The motion passed unanimously.

47
48 **Consideration of Recommendation Letter for Renee Lewis – RGL Consulting, LLC**
49

50 The Board considered Recommendation Letter for Renee Lewis – RGL Consulting, LLC
51 (copy attached). Chairman Pfister presented Consideration of Recommendation Letter
52 for Renee Lewis – RGL Consulting, LLC, stating that he and Director Hudson had
53 drafted said letter for the Board's consideration. The District's attorney, Jeff Kane,
54 suggested changing "Special District" language to Water Conservancy District as that is
55 the title under which the District is organized. Director Hudson suggested using the
56 approval date for the Volunteer Consulting Agreement of August 30, 2018 as that was
57 the starting date of the District's business relationship with Renee Lewis. A motion was
58 made by Director Hudson and seconded by Director Tedder to approve the
59 Recommendation Letter for Renee Lewis – RGL Consulting, LLC as amended above.
60 The motion passed unanimously.
61

62 **Consideration of Development of Grant Request to SW Basin Roundtable/CWCB**
63

64 The Board considered Development of Grant Request to SW Basin Roundtable/CWCB
65 (copy attached). Chairman Pfister presented Consideration of Development of Grant
66 Request to SW Basin Roundtable/CWCB, stating the purpose of the grant application
67 could be to assist in accomplishing objectives in the Strategic Plan such as
68 streamgages, and the deadline for said application being October 15, 2021. A motion
69 was made Director Tedder and seconded by Director Hudson to develop two grant
70 applications for SW Basin Roundtable/CWCB - one for research and outreach to
71 potential partners and one for the purchase and installation of the streamgages. The
72 motion passed unanimously.
73

74 **Update Regarding Growing Water Smart Workgroup**
75

76 The Board considered Update Regarding Growing Water Smart Workgroup. Chairman
77 Pfister presented Update Regarding Growing Water Smart Workgroup, stating an
78 overview of the discussions had and upcoming Zoom workshops the group is holding.
79

80 **Other Business**
81

82 Director Secrist provided an update on efforts thus far to begin preliminary discussions
83 regarding the nomination for the San Juan River Headwaters Project property to be
84 managed as a state park. The Board also discussed next steps for the Support
85 Services position. A motion was made by Director Hudson and seconded by Director
86 Tedder to authorize Chairman Pfister to review the current Profit & Loss Report in
87 conjunction with any outstanding invoices from RGL Consulting, LLC to determine the
88 resources available for the Support Services line item for the remainder for 2021, and
89 for Chairman Pfister to then negotiate a contract with the candidate for presentation at
90 the June 3, 2021 Special Meeting. The motion passed unanimously. A motion was
91 made by Chairman Pfister and seconded by Director Nossaman to extend the terms of

the Professional Consulting Agreement – RGL Consulting, LLC until June 30, 2021.
The motion passed unanimously.

There being no further business to come before the Board, the meeting was adjourned
at 8:55 a.m.

Respectfully submitted,

Renee Lewis
Recording Secretary
For the Board of Directors

DRAFT

RECORD OF PROCEEDINGS
SAN JUAN WATER CONSERVANCY DISTRICT
JUNE 3, 2021 SPECIAL MEETING

Attendance

All Board Members and attendees present participated via the District's Zoom account in accordance with the CDC and CDPHE recommendations regarding COVID – 19.

The following Directors were present: Al Pfister, Bill Hudson, Doug Secrist, Merlin Wheeler, and Joe Tedder.

Also present were: Renee Lewis, Sally High, Terri House, and Joe Napolitan.

Call to Order

The Special Meeting for the San Juan Water Conservancy District (SJWCD) was called to order by Chairman Al Pfister at 8:39 a.m.

Revisions to Agenda

The Board considered Revisions to Agenda. No revisions were requested.

Declaration of Conflicts of Interest

The Board considered Declarations of Conflicts of Interest. No conflicts were declared.

Public Comment

Chairman Pfister opened the meeting to public comment. No comments were offered.

Consideration of Support Services Position Professional Consulting Agreement –
Vida Verde, LLC

The Board considered Support Services Position Professional Consulting Agreement – Vida Verde, LLC (copy attached). Chairman Pfister presented Consideration of Support Services Position Professional Consulting Agreement – Vida Verde, LLC, stating the agreement provided in the meeting materials reflected negotiations between himself as the District’s representative and Vida Verde, LLC representative, Sally High, and had been reviewed by the District’s attorney, Jeff Kane. Director Secrist suggested the reimbursement for travel expenses be based on Federal Government standards established by the Internal Revenue Service as revised from time to time in lieu of a specific rate established annually by both parties. The Board agreed. The Board also agreed to the “not to exceed” amount of \$5,118.00 based on the remaining funds available for the Support Services line item in the 2021 budget. A motion was made by

Chairman Pfister and seconded by Director Secrist to authorize Chairman Pfister to execute the Professional Consulting Agreement – Vida Verde, LLC as amended above. The motion passed 4 – 0 with Director Hudson abstaining as he was late to the meeting and discussion.

Update Regarding State Park Nomination for San Juan River Headwaters Project

The Board considered Update Regarding State Park Nomination for San Juan River Headwaters Project. Director Secrist presented Update Regarding State Park Nomination for San Juan River Headwaters Project, stating he is moving forward in the nomination process as he had attended the May 20, 2021 Pagosa Area Water and Sanitation District (PAWSD) meeting, and the PAWSD Board was in favor of moving forward with the nomination.

Other Business

Chairman Pfister stated he would be attending the annual shareholders meeting for the Park Ditch on June 7, 2021 on behalf of the District. He also stated Director Tedder had attended the Growing Water Smart Workshop in May, and there will likely be other workshops in the near future.

There being no further business to come before the Board, the meeting was adjourned at 8:54 a.m.

Respectfully submitted,

Renee Lewis
Recording Secretary
For the Board of Directors

Board Agenda Item Report

	To	Action	Signature, Date		To	Action	Signature, Date
1	Renee Lewis	Review		6			
2	Board	Approve		7			
3				8			
4				9			
5				10			

Name of Action Official Al Pfister	Priority High Medium Low None <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Phone (970) 985-5764	Presentation Date 6/21/21
Subject Upper San Juan Watershed Enhancement Partnership Presentation			Approval Req Date

Summary:

-Discussion on whether the Board wants a presentation from the WEP on Phase II and III at our next regular meeting (August?).

SIGNED

Board Agenda Item Report

	To	Action	Signature, Date		To	Action	Signature, Date
1	Renee Lewis	Review		6			
2	Board	Approve		7			
3				8			
4				9			
5				10			

Name of Action Official Al Pfister	Priority High Medium Low None <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Phone 970-985-5764	Presentation Date 6/21/21
Subject Update on Southern Ute Draft Water Quality Standards & Clean Water Act Section 401 Certification Procedures			Approval Req Date 6/21/21

Summary:

The Southern Utes have applied to the EPA and received approval for treatment in similar manner as a state for the purposes of administering water quality standards and certification program under the Clean Water Act. In 2017, the SJWCD filed a comment letter on the Tribe assuming “state authority” under the Clean Water Act. Since SJWCD filed that letter in 2017, we received advance notice for comment on their Draft Water Quality Standards and CWA Section 401 Certification Procedures. We were not able to file any comments by the deadline of June 15, 2021. The SW Conservation District did file comments (see attached). Additional background materials are also attached. Need to discuss future SJWCD involvement.

SIGNED



THE SOUTHWESTERN WATER CONSERVATION DISTRICT

Developing and Conserving the Waters in the
SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES
West Building – 841 East Second Avenue
DURANGO, COLORADO 81301
(970) 247-1302

June 15, 2021

Ms. Alexandra Ratcliff
Environmental Programs Manager
Southern Ute Indian Tribe
P.O. Box 737 MS# 81
Ignacio, Colorado 81137
aratcliff@southernute-nsn.gov

RE: Southern Ute Indian Tribe's Proposed Water Quality Standards

Dear Ms. Ratcliff:

The Southwestern Water Conservation District (SWCD) appreciates the opportunity to comment on the Southern Ute Indian Tribe's (the Tribe) proposed water quality standards for Tribal Waters and Section 401 certification procedures. SWCD is a political subdivision of the State that was established by the Colorado General Assembly in 1941 to protect, conserve, use and develop the water resources of, as relevant here, the San Juan River Basin as well as to safeguard all waters to which the state of Colorado is equitably entitled. The rivers that flow through the Southern Ute Indian Reservation are all located within the San Juan River Basin. Consequently, SWCD has a significant interest in the Tribe's proposed water quality standards.

The Tribe has given parties that commented last year on its Treatment as a State (TAS) application to EPA a thirty-day time period to comment on the Tribe's proposed water quality standards. Thirty days is a short timeframe for SWCD to develop comments, particularly since SWCD's board has regular meetings every two months. Our understanding is that the Tribe will have a general public comment period starting sometime in July. With more time to better understand the implications of the Tribe's proposal, SWCD may provide additional comments during the public comment period.

These comments pertain to how certain water quality protections will be implemented on fee land within the Reservation and how they will affect people upstream of the Reservation boundaries. Most of SWCD concerns center on uncertainties in the implementation of sections of the Clean Water Act (CWA) that are tangential to the proposed water quality standards. In

addition, SWCD seeks further clarification regarding whether the Tribe's proposed water quality standards will apply to the owners of fee land within the Reservation's exterior boundaries.

Implementation of Water Quality Protections

Water quality protection includes more than developing water quality standards. Some of those additional components include the following. An assessment methodology needs to be applied to water quality data to determine if there is a violation of standards. Those assessments are also an integral part of developing impaired waters lists under section 303(d) of CWA. Tribes or states need to certify under section 401 of CWA that activities occurring under a federal license or permit, including under section 404 permits and Federal Energy Regulatory Commission (FERC) licenses, will not violate applicable Tribal and State water quality standards. Anti-degradation reviews must be conducted for the issuance of National Pollution Discharge Elimination System (NPDES) permits. Questions of how these processes will be implemented and who will implement them are potential sources of angst for those needing water-quality related permits on fee lands within the Reservation's exterior boundaries and lands upstream of Tribal Waters.

1. SWCD requests that the Tribe develop a document or tables listing what assessment parameters will be used for each of the water quality standards listed in the Tribe's proposal. The Tribe is adopting EPA criteria for a number of water quality constituents. Those criteria typically include assessment parameters for determining if a violation of the criteria has occurred. (For example, for a chronic criterion, the 85th percentile of data collected may not be higher than the criterion over a thirty-day period). This list will directly help the Tribe in assessing possible violations of its standards. In addition, the Tribe did not apply for, and EPA did not delegate authority, under section 303(d) to develop impaired waters lists. As a result, we presume EPA will develop 303(d) lists for Tribal Waters and possibly for other waters within the exterior boundaries of the Reservation. Clearly, having an assessment document or table would be beneficial in developing an impaired waters list. It will also help those upstream of Tribal Waters in understanding what constituents might be treated differently by the Tribe in comparison to the State. This is important because there are constituents where the State has adopted EPA's numeric criteria, but uses different assessment parameters than what EPA suggests.
2. SWCD requests that the Tribe not adopt water quality standards that are currently not being met because of natural conditions, particularly if it is likely that those standards may need to be revisited at a triennial review in the next few years. Levels of some water quality constituents whose sources are predominately natural currently exceed or may exceed the Tribe's proposed standards. For example, concentrations of manganese in the Animas River on the reservation are 100 to 150 micrograms per liter (ug/l) and most of the manganese originates from naturally mineralized areas upstream in San Juan County. The proposed tribal standard for public water supply is 50 ug/l, far less than existing concentrations in the river. We understand that the La Plata River also has high

manganese concentrations, although we haven't yet seen any data. Our concern is that it is much easier and less resource intensive process to apply stricter standards in the future if needed than to loosen standards in the future if they are determined to be too stringent given natural sources. Temperature, manganese, and aluminum are constituents that we have identified so far where there may be concerns. Although we have not seen aluminum data for the Animas River on the Reservation, EPA's relatively new, chronic aquatic life criteria is far exceeded in the Animas River just below the confluence with Cascade Creek. The State has not adopted EPA's aquatic life aluminum criteria and currently has retained its older standard because of concerns that the criteria does not provide the appropriate level of protection.

3. SWCD requests clarification as to who will do 401 certifications. The Army Corps of Engineers issues 404 permits for Tribal and State waters. Outside of the Reservation boundaries, the State will conduct 401 certifications and consider downstream tribal standards in that process. It is unclear who (Tribe, State, or EPA) will conduct 401 certifications on fee land within the Reservation boundaries. We are also discussing this issue with the State.
4. Similarly, SWCD requests clarification as to who will issue NPDES permits on fee land within the Reservation boundaries and perform anti-degradation reviews.
5. As a corollary, SWCD requests clarification on if the Tribe's described anti-degradation review process in its standards proposal is different than the State's, would the permitting authority for fee land have to use both the State's process on fee land and the Tribe's process on Tribal Waters? We note that the Tribe's anti-degradation policy and the State's appear very similar, but we are not clear they are identical. Again, we are also discussing this issue with the State.

Application of Water Quality Standards

1. It is unclear whether the Tribe's water quality standards will apply to *all* lands within the exterior boundaries of the Southern Ute Indian Reservation or, instead, only to a subset of those lands (*i.e.*, currently held tribal trust lands located within the Reservation's exterior boundaries). On the one hand, EPA only delegated treatment-as-a-state authority to the Tribe for those water bodies located on currently held trust lands. While on the other, the Tribe's proposed water quality standards reference a possible jurisdictional dispute between the State of Colorado and the Tribe over fee land located within the Reservation's exterior boundary and go on to apply to all "Tribal Waters", which is then defined as consisting of "all waters within the exterior boundary of the Southern Ute Indian Reservation over which the Tribe has authority for establishing water quality standards." The question of whether the Tribe's water quality standards will apply to fee lands located within the exterior boundaries of the Reservation should be answered before the Tribe's proposed standards go into effect. Otherwise, the owners of fee land within the Reservation's exterior boundaries are put in the impossible position of not knowing where to apply for a permit and who will be conducting 401 certifications.

We understand that adopting water quality standards for Tribal Waters is a new and complicated process. As noted above, there are a number of implications that are not addressed in the Tribe's proposal that create uncertainty. SWCD would like to see as many of these issues resolved as possible before the Tribe acts on its draft proposal to reduce uncertainty for those on fee lands and others upstream of Tribal Waters. We look forward to working with the Tribe, the State and EPA to reduce uncertainty associated with the Tribe adoption of its own water quality standards and believe that some discussion on these issues would be beneficial before the public comment period begins.

Regards,

A handwritten signature in blue ink that reads "Steve Wolff". The signature is written in a cursive, flowing style.

Steve Wolff
General Manager
Southwestern Water Conservation District



Tribal Member Hearing and Supplemental Comment Period:

Draft Water Quality Standards & Clean Water Act Section 401 Certification Procedures



For all interested tribal members, a live on-line hearing regarding the Tribe's draft Water Quality Standards for Surface Waters on the Southern Ute Indian Reservation and Clean Water Act Section 401 Water Quality Certification Procedures will be held on:

October 15, 2020 1:00 p.m. to 4:00 p.m.

Tribal members can register and attend the meeting via Web-Ex on the Tribal Member Portal. *The live-online hearing will be recorded and posted on the Tribal Member Portal for tribal members to view at their convenience.*

A 60-day tribal member comment period on the Environmental Programs Division's proposed tribal water quality standards and Clean Water Act section 401 certification procedures will be from **Monday August 31, 2020 through Friday October 30, 2020.**

You can submit your comments by one of the following methods:

- **E-mail:** wqs@southernute-nsn.gov
- **Mail:** Water Quality Standards Committee, Environmental Programs Division, Southern Ute Indian Tribe, P.O. Box 737 #81, 71 Mike Frost Way, Ignacio, Colorado 81137.
- **Phone:** (970) 563-4705, extension 7901 to comment on the water quality standards and Clean Water Act section 401 certification procedures.

Proposed Water Quality Standards for Surface Waters & Clean Water Act Section 401 Certification Procedures

What does this mean for the Tribe?



- Protecting the Tribe's water resources from pollution.
 - Protecting tribal member health and welfare.
 - Protecting wildlife and aquatic species.
 - Exercising tribal sovereignty.
-

What are water quality standards?



- A legal basis for controlling pollutants entering tribal waters (such as those from wastewater plants and industrial facilities).
 - Describes the condition of the waterbody.
 - Classify water bodies into designated uses (such as, recreation, agriculture, public water supply, protection of fish and wildlife).
 - Establish numeric and narrative criteria for pollutants in tribal waters.
-

To what water bodies will the Tribe's water quality standards apply?



- All water bodies within the exterior boundary of the Southern Ute Indian Reservation (such as, rivers, streams, lakes, ponds, and wetlands) over which the Tribe has authority for establishing water quality standards.
-

What are Section 401 Certification Procedures?



- Procedures the Tribe will follow to issue 401 water quality certifications.
 - A 401 water quality certification is needed for projects that require a federal permit (such as, pipeline construction projects that may impact water quality).
 - Under Clean Water Act section 401, the Tribe has the authority to review and certify certain projects for impacts to water quality.
 - If the Tribe believes a project could negatively impact tribal waters, the Tribe can add conditions to the federal permit that provide increased protection of tribal waters (such as, installing erosion control berms).
-

October 15, 2020 1:00 PM - 4:00 PM

June 28, 2017

VIA EMAIL TO parrish.george@epa.gov

George Parrish
EPA Region 8, OWP-WQU
1595 Wynkoop Street
Denver, Colorado 80202-1129

**Re: Southern Ute Indian Tribe's Application for Program Authority under
Clean Water Act Sections 303(c) and 401 (TAS Status)**

Dear Mr. Parrish:

We are submitting these comments on the above referenced matter on behalf of the San Juan Water Conservancy District ("SJWCD"). SJWCD is a Colorado Water Conservancy District organized under the Colorado Water Conservancy District Act, C.R.S. § 37-45-101 *et seq.* SJWCD is located in Pagosa Springs, Colorado, and serves an area encompassing the majority of Archuleta County, Colorado. The primary function of SJWCD is to address future water supply needs in Archuleta County, which it does by appropriating and maintaining water rights, sponsoring water resources projects, and developing water storage projects.

We have reviewed the Southern Ute Indian Tribe's ("SUIT") application for treatment in similar manner as a state for the purposes of administering water quality standards and certification program under the Clean Water Act ("Application"). SJWCD holds multiple water rights in the San Juan River Basin that may be affected by the SUIT Application and therefore has a number of comments and concerns relating to the Application. Specifically, SJWCD submits the following comments:

- SJWCD is generally concerned about the potential for inconsistent SUIT and Colorado water quality standards creating an onerous patchwork system of regulation to which SJWCD would be required to comply. SJWCD is in favor of a consistent set of water quality standards that allows it and other water users to efficiently and effectively utilize their water rights in a beneficial manner in compliance with a clear and consistent water quality regulatory regime.

George Parrish
June 28, 2017
Page 2

- SJWCD intends to take part in Watershed Management Plan for the Upper San Juan River Basin. SJWCD is concerned that the SUI Application could harm its ability to adequately create a Watershed Management Plan that protects the San Juan River Basin above the SUI lands.
- SJWCD is in the process of developing an off-channel reservoir project that will cause SJWCD to divert its water rights from the San Juan River. If the SUI Application is approved, patchwork water quality standards would impair SJWCD's ability to fully develop and divert its water rights.
- The Colorado Water Plan highlights the need for local land use policies to incorporate water use, conservation, and protection provisions. SJWCD is in a leadership role in Archuleta County to develop high-quality water and land use policies and is concerned approval of the SUI Application will confuse property owners on which standards to follow and could hamper or impair local water protection efforts.

In the event the SUI Application is approved, SJWCD requests the SUI and EPA provide sufficient notice to affected water rights holders and permittees and conduct a comprehensive and inclusive public process for development of SUI water quality standards.

In sum, SJWCD urges the EPA to reject the SUI Application. Such a delegation would be harmful to SJWCD and other area landowners and water rights holders.

We appreciate the opportunity to comment on the SUI Application and look forward to participating in the Application process as it proceeds.

Sincerely,

HOLSINGER LAW, LLC



Austin Rueschhoff, *Attorney*

cc: Rod Proffitt, President/Chairman, San Juan Water Conservancy District
Bruce Whitehead, Executive Director, Southwestern Water Conservation District

Growing Water Smart Workshop Overview

Growing Water Smart is a workshop program offered and facilitated by the Sonoran Institute. The Growing Water Smart program introduces communities to communications, public engagement, planning, and policy implementation tools to realize their watershed health and community resiliency goals. Through Growing Water Smart, Colorado communities can learn how they can integrate land use and water planning.

Pagosa Springs / Archuleta County was awarded a grant to participate as a joint team in the three-day Growing Water Smart workshop in May 2021. Our team consisted of James Dickhoff (Planning Director, Town of Pagosa Springs), Al Pfister (President, San Juan Water Conservancy District), Mat deGraaf (Council member, Town of Pagosa Springs), Warren Brown (County Commissioner, Archuleta County), Pamela Flowers (Director of Development Services, Archuleta County), Justin Ramsey (District Engineer/Manager, Pagosa Area Water and Sanitation District), Robin Young (Director, Colorado State University Extension Office), Joe Tedder (Board Member, San Juan Water Conservancy District), Mary Jo Coulehan (Director, Pagosa Springs Chamber of Commerce).

The team developed four strategic goals to meet the perceived regional growth objectives in the face of current and future water issues. These goals are:

- 1) We will have a full understanding of the water demand/supply via a consolidated water supply/demand study;
- 2) We as a community will have common understanding of water issues through a communication and outreach program;
- 3) We will reduce water usage by specified targets by implementing a community-wide water efficiency program;
- 4) We will have an ongoing program that focus on watershed health improvements.

A list of stakeholder organizations/persons is being compiled as it is clear that the ambitious goals will not be accomplished without the help of the many organizations and persons already working on water issues in our town and county. We plan to have a “kick-off” meeting with these stakeholders in late summer to introduce the Growing Water Smart goals and better define action plans for the achievement of the goals.

The Pagosa Springs.Archuleta County team crafted an “elevator speech” message intended to raise awareness of the water issues facing our community. While our communication plan will become better developed in the coming weeks, I believe this initial message is quite effective and can be used by our Board members as an introduction to our Growing Water Smart when discussing water issues with our community. The message:

“Our livelihoods and recreation have always been linked to our healthy forests and flowing waters AND our natural beauty attracts us all,

BUT our watershed faces a crisis due to lower snowfalls and quicker seasonal melting that impacts our water supply and risks our future growth and sustainability,

THEREFORE, our individual actions to protect our precious water resources are critical for community success.”