

**RECORD OF PROCEEDINGS**  
SAN JUAN WATER CONSERVANCY DISTRICT  
APRIL 18, 2021 REGULAR MEETING

**Attendance**

The following Directors were present at the San Juan Water Conservancy District office at 46 Eaton Drive Suite 5: Al Pfister, Susan Nossaman, John Porco, Bill Hudson, Doug Secrist.

Also present in person were: Sally High (SJWCD Executive Assistant), Kathy Campbell and Jason Wallace (Log Park/Log Hill subdivision residents), and Josh Pike (Pagosa SUN).

Attending by Zoom were: Joe Tedder (SJWCD Director), Jeffrey Kane (SJWCD Attorney), Mavis Fitzgerald and Kathleen Wanatowicz (Project Resource Studio), and Terri House (Pagosa SUN).

**Call to Order**

The Regular Meeting of the San Juan Water Conservancy District (SJWCD) was called to order by Chairman Al Pfister at 4:04 p.m.

**Revisions to Agenda**

The Board considered Revisions to the Agenda. No changes were needed.

**Declaration of Conflicts of Interest**

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

**Public Comment**

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

**Consideration of Approval of Minutes**

Directors considered approval of the 2/21/2022 Regular Meeting and 3/10/2022 Special Meeting Records of Proceedings. Director Hudson moved to approve the minutes. Director Secrist seconded. Unanimous approval.

**Consideration of the Attorney Report**

Attorney Jeffrey Kane provided a written report to Directors and the public. Treasure Pass Ditch water rights cases were heard last week in two Status Conferences, Rio Grande River Basin (Water Division 3) and San Juan River Basin (Water Division 7). The Bureau

of Land Management (BLM) received comments from some of the groups opposing their requests, but not all groups. Forty-five days remain to submit comments. The Water Courts will respond 45 days after that. Southwestern Water Conservation District (SWCD) submitted comments in opposition. Director Pfister will reach out to Steve Wolfe, director of SWCD, to learn of the Conservation District's comments. Attorney Kane will reach out to the SWCD attorney, Beth Van Vurst, if necessary. Comments will then be prepared and submitted on behalf of SJWCD.

As requested by Director Hudson, Attorney Kane sent a confidential report to all Directors. The confidential report contained all SJWCD Directors' emails to Counsel. All Directors were reminded that those communications, as well as the SJWCD attorney's report, are confidential.<sup>56</sup> Attorney Kane described recent and pending Court judgements against public boards that violate the meetings laws, including daisy chain meetings. The quorum rule, no discussion outside a public meeting, is advised. Discussion of public policy should take place in public meetings on the record. Directors were urged to avoid daisy chain, one-on-one, discussions even in emails, out of an abundance of caution. Any unnoticed meeting to discuss District business among three Directors is against the law.

#### **Update from Project Resource Studio on Community Engagement Services Contract**

Mavis Fitzgerald and Kathleen Wanatowicz provided a brief presentation summarizing the meetings they conducted with Directors. Power Point slides were shared onscreen.

Recommendations, so far, include:

- Project Goals: a multi-year approach, strengthen relationships, improve SJWCD reputation with consistency, educate the public about the importance of SJWCD, demonstrate leadership in water issues, identify key advocacy initiatives
- Measurement of Success: establish sustainable outreach program, foster open dialogue, focus on 2 or 3 specific tasks, develop quantifiable strategic plan and timeline, expect ~5 years to produce paradigm shift to life with less water
- Identify how SJWCD should be known: solutions based, protector, champion, able to meet all water needs, keeping water in our district
- SJWCD's water message
- Define "active leader in all issues affecting water resources"
- Next Steps

Directors responded with discussion about identifying the district's "north star," protection vs conservation, water future, living with less water and SJWCD's legal commitment to store water, use of upcoming WWG data, timing of release of WWG findings, and the reservoir. Director Hudson emphasized his opposition to the Dry Gulch project as originally conceived and advised that SJWCD wait to begin community outreach until the WWG data was released. Other directors disagreed with suggestion that SJWCD wait. They agreed with PRS that they get started now to encourage the community to think about our water future. The process of identifying strategic partners in local water decisions is ongoing. The Project Resource Studio principals will conduct their next meeting with SJWCD in person in May 2022.

### **Consideration of Treasurer's Report**

The first quarter Profit and Loss report and Expense reports were in the Board Packet. Director Secrist advised that the P&L and Expense reports be presented with the yearly budget in the Treasurer's Report. Director Hudson, Treasurer, said he would do that. No other comments were voiced.

### **Consideration of Updates to the Mitigation Plan for Running Iron Ranch**

Director Hudson's request was no longer feasible or relevant, because the PAWSD board recently voted not to extend the lease with the Weber family for Running Iron Ranch. The lease expires on January 3, 2023. Justin Ramsey, PAWSD Manager, and Al Pfister, SJWCD President, will serve both boards as a sub-committee to research long-term management and remediation of the land, reclamation of the gravel mine, possible effects for the State Park nomination, and access to the property. Directors discussed pros and cons of possible relationships with PAWSD and the Weber family. The board agreed that more specificity is needed in order to move forward. Included in the Board Packet was the (never signed) Intergovernmental Agreement Concerning the San Juan Headwaters (aka Dry Gulch) Project between PAWSD and SJWCD. A detailed Power Point presentation, "Running Iron Ranch Purchase," was also included for Directors' consideration. Director Hudson moved to allow the lease to expire, supporting the PAWSD decision. Director Secrist seconded. Unanimous approval.

Director Tedder moved to form the subcommittee with PAWSD to research long-term management, including guidelines from Colorado Division of Reclamation, Mining, and Safety, to determine SJWCD responsibilities, with Director Pfister representing SJWCD. Director Hudson seconded. Unanimous approval.

### **Discussion of Individual Director's Conduct when in Opposition to SJWCD Board, Approved SJWCD Projects, and Statutory Duties**

The Board Packet included a 2019 Memorandum prepared by Jeff Kane, "Director Duties and Conflicts of Interest." The memo described Directors' duties and guiding principles, and cited state laws that define those responsibilities. Conflicts of Interest were defined in specific detail. Attorney Kane explains that Directors need to always have the best interests of the District in mind, acting as prudent individuals. Director Porco expressed his concerns of many years that Pagosa Daily Post articles have undermined the actions of the District. He pointed out that once a person is on the SJWCD board, allegiance is due the District, as described in the 2019 Memorandum.

Director Hudson referred to a "whereas" phrase in Resolution 2020-02 that upholds the right of a Director to express opinions not held by other Directors.

Director Porco resigned and left the meeting, telling the Board to expect his letter of

resignation. He expressed his disappointment in the dysfunction of the SJWCD Board, recent

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Pagosa Daily Post blogs that implied disagreement with SJWCD decisions, and Director Hudson's attempt to interview the PRS principals as an independent action, not a SJWCD action. Director Pfister asked Director Porco to stay, but Director Porco declined.<sup>136</sup> Attorney Kane explained that Resolution 2020-02 does not cover the full scope of the Directors' fiduciary duties and ethical responsibilities. Directors Secrist and Nossaman agreed and tried to explain their positions, quoting the "therefore" that followed the "whereas." Attorney Kane offered to provide citations upholding his written opinion. Attorney Kane explained that a "Whereas" phrase is the recital of the reasoning behind the need for a resolution. The resolution is the "Therefore" statement.

Director Pfister moved that Jeff revise Resolution 2020-02 to reflect Colorado law and fiduciary duties of Directors. Director Hudson began to play a recording from a previous meeting. More than one Director repeatedly asked Director Hudson to turn off the recording, but he refused. Attorney Kane stated that he has never seen a public body undermined by a single director who sows mistrust and "lobs grenades and accusations" at professionals, consultants, and other directors. He expressed doubt that Director Hudson would take his advice. For this reason, Director Pfister's motion was dropped for lack of a second. Attorney Kane left the meeting.

Director Hudson then accused Director Pfister of breaking Colorado law and violating the District's bylaws. His accusations resulted from the Watershed Enhancement Partnership's accepting SJWCD grant money to build river enhancements at Yamaguchi South. Director Secrist advised that Attorney Kane be asked to interpret these accusations. Director Hudson accused Attorney Kane of "twisting" information. Director Secrist moved to get a legal opinion about this matter. Director Tedder seconded. Unanimous approval.

#### **Consideration of Reappointment of Director Hudson**

Directors considered the reappointment of Director Hudson. The Court Clerk and the SJWCD attorney advised the board to provide motions to the judge regarding reappointments of Directors. Director Secrist confirmed with Director Hudson that he will be appointed to be PAWSD Board in May. More than one Director has expressed concern about Director Hudson being on two water boards that may not agree about SJWCD decisions, suggesting that Director Hudson recuse himself in any decision regarding San Juan Headwaters Project. It was again suggested that the SJWCD was dysfunctional. It was pointed out that Director Hudson does not "get along" with at least two fellow directors. Director Hudson admitted that he came on this board to help the district take a different perspective. Director Nossaman expressed her concern that the district is being prevented from moving forward. Director Secrist reminded the board of their legal obligation to move water storage and the San Juan Headwaters Project forward. Contentious discussion continued. Director Secrist moved that Director Hudson not be reappointed. Director Pfister seconded. The motion failed in a 3 to 2 vote. Directors Nossaman, Tedder, and Hudson voted no.

### **Update on San Juan Watershed Enhancement Partnership Public Meeting**

The WEP public meeting was held at the Archuleta County Extension Building on Thursday April 7. The purpose of the meeting was to prioritize water projects through public input. Only two or three projects, out of the 25 presented, received disapproval at the in-person meeting. Director Pfister described increased public participation in four in-person sessions: Agriculture, Wildlife and Biodiversity, Recreation, and Wildfire and Drinking Water. The public was also able to provide input on-line. WEP will provide outcomes and analysis when information is tallied.

### **Discussion of Action Items regarding Revisions to Strategic Plan**

At the Special Meeting on March 10, Directors agreed to revise certain topics:

Doug Secrist - Running Iron Ranch update re: management and State Park nomination status

Bill Hudson - West Fork water rights

Al Pfister - Project Resource Studio's community work

Tedder – Review all objectives

Directors will send revisions to the Executive Assistant by May 20. The Executive Assistant will send reminders ahead of May 20 and compile revisions by June 6. The next Regular Meeting is on June 20.

### **Discussion of Earth Day Participation**

Earth Day is in Centennial Park on Saturday April 23 from 10 am to 1 pm. Director Pfister will set up a table to represent SJWCD to the public. Director Nossaman will join him for part of the time.

### **Discussion of the Approved Motion that Attorney Advise SJWCD about Director Pfister's alleged conflict of interest**

Director Hudson asked Director Secrist to help write the request for legal advice. Director Secrist agreed.

There being no further business to come before the Board, the meeting was adjourned at 6:21 pm MST.

SAN JUAN WATER CONSERVANCY DISTRICT

By /s/ Sally High, Executive Assistant

For Board of Directors

DISTRICT SEAL