



**March 18, 2010**

**Meeting Minutes of the Board of Directors**

Directors Present: Wayland Anderson, Lisa Darling, Greg Dewey, Dennis Harmon, Kim Hutton, John Kolanz, Randy Rhodes and Kevin Urie

Directors Absent: Alan Berryman

**1. CALL TO ORDER / INTRODUCTIONS**

Kevin Urie, Executive Director of SPWRAP, called the SPWRAP Board of Directors Meeting to order at 10:10 am at the Shadow Mountain Room of Northern Water.

There was a quorum of Directors.

**2. ADDITIONS/CHANGES TO THE AGENDA**

The following additions/changes to the agenda were made:

- Agreement between the State of Colorado, the Jackson County Water Conservancy District, and the South Platte Water Related Activities Program, Inc. Concerning New Depletions within the North Platte River Basin in Colorado
- City of Lakewood and coverage under SPWRAP
- Ducks Unlimited Recharge Project

**3. MINUTES FROM THE JANUARY 21, 2010 BOARD MEETING**

*MOTION:* Dennis Harmon moved that the board approve the minutes from the January 21, 2010 board meeting with one minor change: Item 4 refers to a "Form 1090", and it should read "Form 990". Wayland Anderson seconded the motion and it was approved unanimously by the directors present.

**4. FINANCIAL REPORT**

Dennis Harmon presented the SPWRAP financial report, including a financial statement from beginning of fiscal year through March 17, 2010. Dennis handed out copies of an independent auditor's report. Dennis also said the following bills needed to be paid:

- Brock and Company – 1<sup>st</sup> installment for audit services (February) – \$2,950.50
- Trout, Raley, Freeman, et al. for legal services (January) – \$1,702.50
- Duncan, Ostrander & Dingess for legal services (January) – \$1,231.26

*MOTION:* Randy Rhodes moved that the board approve payment of the bills listed in the financial report. Greg Dewey seconded the motion. John Kolanz asked for clarification on the Brock and Company bill. Dennis Harmon mentioned that the bill was a partial payment toward a maximum of \$3,500. The motion was approved unanimously by the directors present.

## 5. UPDATE ON PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM (PRRIP) ACTIVITIES

- Water Action Committee

Jon Altenhofen reported that he will be giving an oral presentation/annual report at the May WAC Meeting on Colorado's Plan for Future Depletions. There was some discussion about whether or not populations from the state demographer needed to be included in a verbal or written report and was agreed that it will be in Ted's written report.

Ted Kowalski mentioned that various attorneys from the three states were formulating a contract which sets forth ownership and responsibilities for a future re-regulation reservoir. The intent is that the contract could be used as a template for future projects.

Beorn Courtney was present to discuss actions under the Executive Director's Office:

- Olsson Associates is under contract to do field work on a proposed reregulation reservoir in Nebraska.
- Preliminary scoring appears to show a yield of 30,000 to 40,000 acre-feet for a reservoir which is approximately 14,000 acre-feet in size.
- Preliminary cost estimates originally appeared prohibitive; however, during the recent scoring, the unit cost per acre-foot of water yielded appears very favorable.
- Agreement between the PRRIP and Central Nebraska Public Power and Irrigation District needs to be finalized which would outline ownership and operation obligations for the reservoir.

- Governance Committee

Ted Kowalski mentioned that crediting was discussed. The Governance Committee approved a method of adjusting for inflation starting on Oct 1, 2008, after the bill was passed and adjusting every year thereafter, as in the PRRIP authorization legislation. Colorado's money is conveyed to the Nebraska Community Foundation. Inflation is being adjusted on money that is not being expended. Important that the interest earned on Colorado's money stays with Colorado's obligation and is used to offset the inflation (feds don't start counting inflation until the money is expended.) There is about \$20 million already in the bank. Another \$3million will be requested from the Species Conservation Trust Fund (originally set aside for the DUSEL, or Deep Underground Science and Engineering Laboratory) through 2012. Ted Kowalski recommended submitting a support letter for the state legislation.

Federal legislation is requesting \$12.7 million for the PRRIP. Ted Kowalski recommended submitting support letters for this line item in the federal budget, and he will send Greg Dewey some example letters for distribution to SPWRAP.

Independent Science Advisory Committee (ISAC) held a workshop recently in Denver. The intent was to review the PRRIP adaptive management plan. Kevin mentioned that the Executive Director's Office, especially Chad Smith, is doing a great job at making the information available.

Wet Meadows is an issue that has been a concern for some time. There will be some extensive dialogue in the future about this topic. Stay tuned.

Dr. David Freeman, a sociology professor from Colorado State University, attended several meetings leading up to the establishment of the PRRIP. Dr. Freeman took note of the roles and negotiating positions of the federal agencies, the three states, and the water users. Dr. Freeman compiled these notes and written a manuscript that will be released in October 2010. The context is that this might be a text book for sociologists or anyone looking to negotiate a basin-wide program with a limited resource, like water.

In January, an environmental group, known as WildEarth Guardians, sued the US Fish & Wildlife Service to list the Platte River caddisfly, the known range of which coincides with the Platte River Recovery Implementation Program (Program) habitat area in the central Platte River. The Governance Committee raised concerns at their last meeting about how little the Service knows about the Platte River caddisfly. There are also concerns about how this potential listing might impact Program activities or the Program itself, such as the habitat for the four endangered species already covered by the Program.

## 6. UPDATE ON FINALIZING TAMARACK DECREE

Austin Hamre reviewed contractual provisions between SPWRAP and the State of Colorado regarding SPWRAP's obligations in connection with re-timing of South Platte River flows to meet Colorado's obligations under the Program, and specifically with regard to assisting the State with the adjudication of the pending water court application filed by the Division of Wildlife in Case No. 96CW1063 (the Tamarack Case). The proposed decree itself was not discussed; moving the decree forward was discussed. Getting the decree finalized is of utmost importance to help Colorado meet its water obligations under the Program.

Chad Wallace and Scott Steinbrecher from the Colorado Attorney General's office were present to discuss the status of the Tamarack Case. The case is still before the Water Court referee. There are only 2 or 3 parties which still have concerns with the case. The next step will be to re-refer the case back to the Water Court judge, which means a trial date will likely be 12 to 18 months away. Chad said it would be desirable to have the same engineers who worked on the case previously: Mary Halstead and Calvin Miller. Chad thought that because Mary is an employee of the State, there would not be any additional cost to be paid by SPWRAP for her to be available as an expert witness, and

also estimated that \$50,000 would be the budget for both engineering experts in the event that: a] Mary is not available and another expert is retained; and b] the case goes to trial. Discussion ensued about SPWRAP's potential role in assisting financially (i.e. paying for the engineering / expert witness costs) to resolve the case. Lisa Darling stressed that if SPWRAP were to contribute money, it does not mean that SPWRAP has a say in the outcome.

*MOTION:* Dennis Harmon moved that the board table the discussion and move into an executive session at the end of the meeting to discuss the issue further. Wayland Anderson seconded the motion, and it was approved unanimously by the directors present.

Austin Hamre mentioned that he would like to talk further with Ted Kowalski, Chad Wallace and Scott Steinbrecher about the mechanics, if SPWRAP were to contribute funds to help resolve the Tamarack decree.

7. AGREEMENT BETWEEN THE STATE OF COLORADO, THE JACKSON COUNTY WATER CONSERVANCY DISTRICT, AND THE SOUTH PLATTE WATER RELATED ACTIVITIES PROGRAM, INC. CONCERNING NEW DEPLETIONS WITHIN THE NORTH PLATTE RIVER BASIN IN COLORADO

Ted Kowalski provided background on this subject, addressing federal depletions on the North Platte. The Program Governance Committee previously approved an amendment to the North Platte Future Depletions Plan addressing baseline entitlements for new depletions. The SPWRAP board also previously approved an MOA between the feds, the State, SPWRAP and Jackson County related to coverage for 87.5 acre-feet/year of annual federal depletions in Jackson County. A subsequent agreement, which the feds are not party to or interested in, addresses issues internal to the State and was being considered by the SPWRAP board today.

Deb Freeman said that the agreement before the board today addresses 3 key issues:

1. Indication of support for the baseline entitlement for depletions, in the context of the PRRIP.
2. Crediting federal payment for coverage against Jackson County WCD SPWRAP dues.
3. Jackson County WCD certification that Program coverage is available for future depletions within the overall North Platte baseline entitlement.

Deb Freeman indicated that Kevin Urie, Alan Berryman, Jon Altenhofen and John Kolanz had already reviewed the agreement and provided comments to Ted Kowalski and the Jackson County WCD.

*MOTION:* Greg Dewey moved that the board authorize Lisa Darling, Chairman of SPWRAP, to sign the Agreement between the State of Colorado, the Jackson County Water Conservancy District, and the South Platte Water Related Activities Program, Inc. Concerning New Depletions within the North Platte River Basin in Colorado, as circulated by Ted Kowalski prior to today's meeting.

Kevin Urie seconded the motion, and it was approved unanimously by the directors present.

## 8. CITY OF LAKEWOOD AND COVERAGE UNDER SPWRAP

The City of Lakewood has a pre-1997 “stand alone” Biological Opinion from the US Fish and Wildlife Service that required Lakewood to provide 96 acre-feet of replacement water to cover depletions at Fox Hollow Golf Course. However, Lakewood, through its membership in SPWRAP is covered for their water uses under the PRRIP. The US Fish and Wildlife Service is asking if SPWRAP agrees that Lakewood depletions can be covered under their SPWRAP membership.

*ACTION:* Kevin Urie will ask Sandy Vana-Miller to provide the number of such remaining pre-1997BO’s and/or BA’s, as well as the quantity of associated water depletions. The SPWRAP board will discuss this at the May 20, 2010 meeting.

## 9. DUCKS UNLIMITED RECHARGE REPORT

Jon Altenhofen introduced this item. Greg Kernohan of Ducks Unlimited was present to discuss this item as well. Jon discussed the Fender Project and asked for the SPWRAP board to consider participating in the project. It is a similar project to the Heyborne Project, except that Ducks Unlimited is the landowner. SPWRAP would pay for some capital (construction) costs and would pay for pumping and other operation and maintenance costs. Operation would be contracted to staff from Lower South Platte Water Conservancy District. Sedgwick County Well Users, Inc. will hold the water rights for the recharge wells that are being planned. Jon Altenhofen and Joe Frank are looking at the costs and yields. DU has already bid out much of the construction items.

Jon Altenhofen, Joe Frank and Greg Kernohan are recommending that SPWRAP consider partnering in the Fender Project, and would like to do more investigation regarding the benefit to SPWRAP. Jon Altenhofen expects to send a draft agreement to Austin Hamre in the next few months for the SPWRAP board to consider which would define roles and responsibilities.

*MOTION:* Kevin Urie moved that the board authorize Jon Altenhofen, Joe Frank, Greg Kernohan and Austin Hamre to continue discussions with the intent of SPWRAP becoming a partner in the Fender Project, pending a favorable review. Dennis Harmon seconded the motion, and it was approved unanimously by the directors present.

Greg Kernohan mentioned that Ducks Unlimited often solicits for letters of support. He sent two different requests to Kevin Urie and Lisa Darling, on behalf of SPWRAP. Discussion ensued. Lisa Darling mentioned that she and Kevin would forward the letters to the board.

## 10. SPWRAP ADMINISTRATIVE AND CORPORATE ISSUES

Deb Freeman mentioned that on March 10, a lawsuit was filed against the Texas Commission on Environmental Quality. It is an ESA case brought under Section 9 for unauthorized take. The claim is that by administering water there was less fresh water flow in the estuaries where cranes inhabit, resulting in unauthorized take. The request

seeks to enjoin further water resource permitting. This does not apply directly to SPWRAP, but it is something to note for any governmental entities that also deal with land use issues.

Kevin Urie and Joe Frank gave a brief update on the contractual relationship between SPWRAP and Lower for administrative support.

#### 11. SPWRAP EXECUTIVE SESSION

*MOTION:* Dennis Harmon moved that the board go into executive session for the purpose of receiving specific legal advice. Kevin Urie seconded the motion, and it was approved unanimously by the directors present.

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#### **March 18, 2010** **Executive Session of the Board of Directors**

Directors Present: Lisa Darling, Greg Dewey, Dennis Harmon, Kim Hutton, John Kolanz, Randy Rhodes and Kevin Urie

Others Present: Austin Hamre, legal counsel for SPWRAP and Deb Freeman, legal counsel for SPWRAP

The Executive Session began at 11:40 am at the Shadow Mountain Room of Northern Water and concluded at 12:00 pm. The purpose was to get legal advice on specific legal questions.

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#### 12. ADJOURN

The meeting adjourned at 12:00 pm.

Next Meeting of the Board of Directors:  
May 20, 2010 – 9am – Northern Water

Respectfully submitted,



Greg Dewey  
Secretary, SPWRAP, Inc.