

Call on the river goes into effect today

A call on the White River goes into effect today (Dec 1, 2022) following a decision by the Rio Blanco Water Conservancy District (RBWCD) board of directors last month to request administration of the river. As reported in the Nov. 17 edition of the HT, Colorado's Division of Water Resources (DWR) will curtail or shut off junior water right diversions upstream of the Taylor Draw Dam in order to meet this administration request.

today, Dec. 1. The Division of Water Resources will curtail or shut off junior water right diversions upstream of the Taylor Draw Dam to meet this administration request. | CAITLIN WALKER PHOTO

POWER GENERATION

RBWCD's stated reason to initiate the call is to continue operations of the hydroelectric dam, which has generated significantly less revenue for the district in the last two years, according to budget reports and board meeting minutes requested by the HT. From 2017 to 2020 the district's hydroelectric budget reports listed an average \$448K/year in "power sales" revenue. Power sales in 2021 dropped to just \$161K (see graph.)

Power sales for 2022 are projected even lower than last year, in part due to the fact that the plant's generator underwent

extensive repairs that necessitated a shut down for "most of 2022" according to RBWCD Board Chairman Timothy Winkler. "Because of operational problems we had to buy a lot of stuff to fix our generator and that's why we're operating in the red," said Winkler, adding later that the board feels it owes tax paying citizens of the district "to operate it so it doesn't lose money, and it's losing money."

District staff, including Director Alden Vanden Brink, have also alluded to agreements with the Federal Energy Regulatory Commission (FERC) and Army Corps of Engineers that require a certain amount of water to flow through the Taylor Draw Dam. RBWCD board minutes from Aug. 31 state "a minimum 200 CFS must be released from Taylor Draw Dam for the endangered fish and other beneficial uses." In the same meeting Vanden Brink stated, "there is no longer augmentation water to offset the shortages with Kenney Reservoir's water storage now 100% depleted."

Division 6 water engineer Erin Light told the HT that this was in fact not because of FERC requirements, since the Kenney Reservoir is a "run of the river" reservoir meaning "what comes in goes out."

"You can't put 200 CFS through the turbine when there's not 200 CFS in the river, which is why it didn't make a lot of sense to me if FERC had some cubic feet per second

requirements ... you can't makewater, and it's not there," said Light. Either way, the District 6 engineer will move forward with administrative actions to deliver more water to the reservoir. "As the agency that has to administer this call, we have to respect the fact that they do have this water right, water rights, two of them, and they're not being met," Light said

TRANSPARENCY REVIEW

To verify RBWCD claims about power generation and public discussions of a call on the White River, the HT requested board meeting agendas, minutes and budgets from district staff. These documents answered some and raised other questions including

- Notice of executive sessions
- Non-specificity in meeting agenda items regarding executive sessions
- Participation of elected officials from other public boards including the RBC Board of Commissioners, possibly without proper notice

RBWCD director Alden Vanden Brink told the HT, "The District has had numerous discussions and public meetings concerning this issue," when asked about public awareness of a call on the river. He also stated "during board meetings, we talked about water rights quite a bit." The first reference

to the subject is from the July 27, RBWCD Board meeting minutes, listed as "possibility of administration on the White River to help the endangered fish." Specifics of the discussion that took place are not listed. Alden Vanden Brink told the HT that discussions of an imminent call on the river have been taking place for at least the last year and generally happen during general discussion of the board.

The next reference to the topic is from the Aug. 31, meeting in which the RBWCD board entered executive session for 38 minutes to discuss "water rights" and "agreements."

According to Deirdre McNabb, who said she attended the meeting, the executive session also included Rio Blanco County Commissioners Ginny Love and Jennifer O'Hearon, enough to represent a quorum of the BOCC. Vanden Brink confirmed that both commissioners participated in the executive session.

EXECUTIVE SESSIONS & BOARD ACTIONS

Colorado open meetings laws provide specific statutes which public boards can cite to enter executive sessions, including discussions of property transactions, specialized details of security arrangements/investigations, meetings with attorneys for advice on legal questions, personnel matters, and matters required to be kept confidential by state or federal laws. RBWCD's notices do not include statute citations or specifics about what is to be discussed.

Vanden Brink told the HT that he cites the appropriate statute during the meeting, in this case "Determining positions relative to matters that may be subject to negotiations with employees or employee organizations; developing strategy for and receiving reports on the progress of such negotiations; and instructing negotiators."

Following the executive session on Aug. 31, the district board summarized the discussion to members of the public.

Vanden Brink noted that the district was "being pushed to put administration on the White River." The board then convened another executive session that lasted 62 minutes. The meeting minutes do not list any topic, statute or otherwise as to the subject of the second executive session, but Vanden Brink stated it was also related to negotiations.

Following the second executive session on Aug. 31, the board took action authorizing district staff to negotiate a Memorandum of Understanding between the Project Management Assistance and Consultation (PMAC), Bureau of Land Management and RBWCD. Other actions taken after the second executive session included:

- allowing RBWCD staff to move bond from Bank of San Juan to ColoTrust in the amount of \$519,816.71
- allowing RBWCD staff to begin process to negotiate a third party to start process on NEPA for the Environmental Impact Statement

- Action to table the administration of the White River till the next meeting

At the next meeting on Sept. 28, 2022, the board met with DWR Division 6 water engineer Erin Light to “understand the district’s ability and impact to water rights administration of the White River.” They also reviewed their water decree portfolio for beneficial use to the district before they voted unanimously “to initiate the process of exercising the district’s water rights portfolio to the maximum extent allowable by law for Taylor Draw Dam and associated Kenney Reservoir for the benefit of the district.” On Oct. 26 the board again convened an executive session, noticed as “Discussion of Confidential Matters related to district water rights.” Aside from the three executive sessions on Aug. 31 and Oct. 26, the board has not had any other executive sessions going back through at least April of this year.

All meeting minutes, agendas and budgets referenced in this article can be viewed at <https://bit.ly/3H1RDA7>

EDITOR’S NOTE: In the Nov. 17 article about the RBWCD, we inadvertently referred to the district as the White River Water Conservancy District in one place. We regret the error.

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