

OVERLAND DITCH AND RESERVOIR CO.

Board of Directors Meeting

June 13, 2019

Meeting was called to order at 5:10 p.m. by President Dave Kuntz

In attendance were:

Directors: Jerry Adams, Debbie Gray and Wyatt Wilson and Bryan Klaseen

Overland Ditch Manager: Robert Stephenson

Overland Ditch Rider: Andy Kasper

Secretary/Treasurer: Shellie Gies

Redlands Mesa Water Users President: Reg Cridler

Overland Shareholder: Ray Penland, Phil Ceriani, Terry O'Brien (Roatcap Cattle Company)

AGENDA:

Terry O'Brien, representing Roatcap Cattle Company, asked to add 2 items to old business and 2 items to new business. Jerry Adams said he would like to get an attorney before we discuss the matters regarding Roatcap Cattle Company. It was agreed that the Board would hear his agenda items. It was discussed and agreed to add these 4 items to Shareholder concerns. (See Below)

MINUTES OF THE PREVIOUS MEETINGS:

The minutes of the May 9, 2019 meeting were presented.

MOVED BY: Jerry Adams, to approve May 9, 2019 minutes.

SECONDED BY: Wyatt Wilson

MOTION CARRIED: with no opposing votes.

TREASURER REPORT:

Shellie handed out Bills to Pay and a Budget Comparison

David asked to add a bill to pay Paul Schmucker back for adding the boards to the Overland/Cow creek structure. Discussion was had about how much to pay him. It was decided to contact Paul and get a cost of materials and labor. Shellie will contact him, and we will address the bill at the July meeting.

MOVED BY: Bryan, to accept the Treasures Report and pay the bills.

SECONDED BY: Jerry Adams

MOTION CARRIED: with no opposing votes.

OPERATIONS:

Robert Stephenson said there was about 200 feet running in the Hubbards, he was not sure the release could handle that amount of water. He is still unable to get to the Reservoir, because of the amount of snow still on the road. There are 6-foot-high drifts in some spots. Robert said he would have to get to the reservoir soon to start releasing water. The Hubbard road has a lot of trees blocking the road. Bryan Klaseen asked if Robert could legally remove the 20 or so tree on the Hubbard road. Robert stated he has always done this in the past and there have not been any issues. Robert would like to rent a dozer and finish opening the ditch.

MOVED BY: Jerry, to rent and dozer and get the rest of the ditch opened as soon as possible.

SECONDED By: Wyatt Wilson

MOTION CARRIED: with no opposing votes.

David said we may have 2 to 3 more weeks of Leroux Creek water, before we start using Reservoir water. Right now, there is about 100 feet running on Redlands Mesa, 65 feet of Overland and 35 to 40 feet of Project Water.

Ray Penland stated that the 15-mile on the Overland Ditch was not as bad as he originally thought. He stated the road was fairly dry. He said the work done in the fall of 2018 really made a big difference on condition of the ditch this year.

On May 16, 2019, Robert discovered a slide on the ditch. Board members were contacted and agreed to hire Roop Excavation to help Robert clear the slide out of the ditch. The same day Jeff Roop transported his track hoe to the ditch, from Leroux Creek. He arrived around 1:30 PM. Robert and Jeff worked on the slide for roughly 6 hours that day. They went up the next day and worked another 8 hours. Robert said Jeff did a good job helping clean the slide out.

On June 7, 2019, Robert received a call there was another slide, just passed the first slide. Above Paul Schmucher's cabin. Wyatt Wilson went up the next morning to assess the slide. Wyatt said it was not an emergency and Robert could clean it up when he was back up opening the ditch. Robert said there are a few more minor slides that will clean themselves out.

PRESIDENTS REPORT: None

OLD BUSINESS:

Bryan and Robert both spoke with Pat Stucker, regarding a head gate he would like to place at the Main Hubbard. They told him that it may be this fall before a gate is able to be placed, because the water flow in the ditch will be too high. Pat Stucker is working on a head gate design that will be approved by the Overland Board. Robert said he thought Doug Christner would have some input on the design also. David stated we would have to talk to the Water Commissioners, they have turned water out of various head gates on the Overland Ditch in the past several years, but he thinks they want to have Overland set all boxes on the Overland from now on. Discussion was had about locks on the various head gates along the ditch. There are state locks on some of them. Overland would like to get their own locks and place on the chains, so both Overland and the Commissioners would have access to them. This will be discussed with the Water Commissioners. Phil Ceriani asked who he should call when the Roatcap gate plugs up. He said in the past it was the Water Commissioners. Having a lock for the Stucker Mesa users was discussed so they can clean their own release out. Overland Board will talk to the Commissioners and get a plan together of Overland's duties and Water Commissioner's duties along the Overland Ditch.

1. Grant/CWCB Replace Reservoir Gauge Rod. The CWCB gave final approval of the grant. Shellie will get all the required information to them, to start the project this fall. There is concern rather we will be able to do this project this year. The water level in the reservoir will be too high this fall. Shellie stated that we had 2 years to complete the project, but she will contact the CWCB to verify.
2. Grant/Delta Conservation District Out-of-pocket costs for gauge rod. Received a letter from the Delta Conservation District, stating they did not receive the grant funds to help with the out of pocket costs. Shellie will continue to search for other funding opportunities to help.

NEW BUSINESS:

Shellie asked the Board if we can get a proper Rules and Regulation statement in place, to send Overland Shareholders and post on the website. This will set forth the responsibilities of the Overland Board and The Overland Shareholder, so there will be no further confusion. This will take a few months to put together. There is several years' worth of minutes to go through. Reg Cridler said he may have some information to help. The Board and an Attorney will approve before they are finalized. The Board agreed this was a good idea.

Shellie would like to retype the By-Laws as amended. This has not been done for several years. Terry O'Brien stated they would have to be approved by the Shareholders. Shellie stated we will **not** be changing the amendments or by-laws, just retyping as amended. Shareholders will be able to see them at the annual meeting, before filed.

STOCKHOLDER'S CONCERNS:

Terry O'Brien, representing Roatcap Cattle Company:

1. Review of Terry O'Brien May 30, 2019 email to the Overland Board, regarding the August 2018 meeting.

a. Terry stated he had spoke with Aaron Clay about recreation use of the Overland Ditch road on his property. He stated Aaron said the Overland would not be responsible for an injury that may happen while property owners used the Overland Ditch road. Wyatt Wilson ask Terry if he had proof that this was Aaron Clays statement, Terry said yes, but we can get our own attorney to verify. Discussion was had about the Forest Service land where the Overland Ditch runs through and the Overland would be responsible to injuries of recreational users. The Ditch Road had been closed on Forest Service Property to any public use. David stated we would contact and attorney for further advise on this matter.

2. Review of the unofficial Overland Board Statement sent June 5, 2019 to Kevin O'Brien, RCC General Partner, and Terry O'Brien.

a. Terry asked if all Board members had approved the statement sent on June 5, 2019, regarding his 1 share being delivered to the Oak Mesa/Patterson head gate. All 5 Board members said yes. Bryan Klaseen stated, after he thought about the statement, he would like to take his name off the statement. Terry said he would ignore the statement, since it was not voted on at an open Board meeting. (statement is attached).

Water Commissioners had told Terry, Roatcap Cattle Company would need permission from the Shareholders of the Patterson Ditch, for them to turn his 1 share into the Patterson Ditch, back in 2017. The Water Commissioners had removed his 1 share, until Roatcap could provide written permission. Terry stated he had permission from all the Patterson Ditch Shareholders but did not provide written proof of permission. So, the Water Commissioners held Roatcap Cattle Company's 1 share back, until written permission was obtained. In May and June this year, there were several emails back and forth between Terry and Luke Reschke (Lead North Fork Water Commissioner, District 40), regarding the written permission from the Patterson Ditch Shareholders. Luke again told him he needed written permission. In an email dated June 1, 2019, from Luke Reschke, Luke stated "This whole issue of whether or not to allow Terry into the Patterson Ditch with RCC's one share of Overland Ditch water is a down-ditch issue. I have no authority to either grant or deny Terry's request to get into the Patterson Ditch.....

Before I (or the Overland Ditch Company for that matter... in my opinion) can start adding Terry's share into the Patterson Ditch, there needs to be some form of written proof that Terry has been given permission to become a member of the Patterson Ditch, or that the Patterson Ditch had granted him some kind of Carriage Contract to carry his one share the short distance to his place."

Board members agreed this is a down ditch issue and Overland should not be involved. Our responsibility ends at the Oak Mesa/Patterson Ditch head gate. As for turning the Roatcap Cattle Company's 1 share to the Oak Mesa/Patterson head gate, it was agreed the Overland Board needs to consult an attorney.

Reg Cridler stated the Water Commissioner had no authority to remove Roatcap Cattle Company's 1 share of Overland Water from the Oak Mesa/Patterson Ditch head gate.

Terry and Reg stated they did not believe the Overland needed an attorney for this issue.

MOVED BY: Debbie Gray, to consult with an attorney on this matter, and other questions the Board has.

SECONDED BY: Bryan Klaseen

MOTION CARRIED: with no opposing votes

3. Status of my request to Shellie Gies to provide access to Overland's books and records as Is my legal right as an Owner

- a. Shellie said Terry had requested a Shareholder list. She gave Terry a Shareholder list with the name of the Shareholder, total of shares owned and their address. Terry was satisfied with the list.
4. CIC Research and Education Case Study of the Overland Board
 - a. Terry stated the Overland Board members needed to learn how to run Board correctly. He thought the Board was overstepping their authority. He discussed what the Overland insurance would cover and what it would not, with the Board's actions in a lawsuit. Terry said he thought the requirement that the Board was asking in regard to, the written permission, was a personal issue of certain Board member, in retaliation from the August 2018 Board meeting. When the new proposed Overland Ditch road access was discussed. He was told this had nothing to do with that matter. This had to do with the recommendation given to the Board by the Water Commissioners, of getting written permission from Patterson Ditch Shareholders to run 1 share of Roatcap Cattle Company's Overland water in the Patterson Ditch. Terry disagreed with Shellie on what the Water Commissioners recommendation was on the recent emails sent by Water Commissioner, Luke Reschke. (See attached emails)

Reg Cridler made a statement regarding Board members; Reg will send Shellie a condensed version to add to the minutes.

Statement sent to Shellie via email on June 15, 2019, from Reg Cridler

"My shareholder's concern is to insure the Board understands their liability as a board member of a nonprofit water company. I was a board member at one time and was concerned about this. The D&O insurance protects your assets from Law suits because of your Board actions if you follow the Company's Articles of Incorporation, Bylaws, Colorado Revised Statutes (Title 7 -Nonprofit Corporations) and others that may apply, do what a reasonable person would do and follow the (DUTY of CARE).

You may want to check with an Attorney on your situation.

If you or the Board are negligent of these requirements, your assets may be at risk, and the O&M insurance may not be available to you.

If you are unsure of a Board action or legality, voting No may be of some value.

Reg Cridler OL owner, President of RLMWU."

BOARD CONCERNS:

ADJOURN: The Board adjourned the regular meeting at 6:30pm

Shellie Gies, Secretary