

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
ACTIVITY ENTERPRISE**

MINUTES

September 15, 2016

A regular meeting of the Board of Directors of the Southeastern Colorado Water Activity Enterprise (Enterprise) was held on Thursday, September 15, 2016 at 9:38 a.m., at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

DIRECTORS PRESENT:

Bill Long	Ann Nichols	Gary Bostrom
Vera Ortegon	Gibson Hazard	Kevin Karney
Carl McClure	Howard "Bub" Miller	Pat Edelmann
David Simpson	Curtis Mitchell	Tom Goodwin
Dallas May	Mark Pifher	

DIRECTOR(S) ABSENT AND EXCUSED:

Jay Moore and Alan Hamel-Advisory Board Member

ENTERPRISE OFFICIALS PRESENT:

Executive Director James Broderick; General Counsel Lee Miller; Administrative Manager Toni Gonzales; Principal Engineer Kevin Meador; Water Resource Specialist/Engineer Garrett Markus; Finance Coordinator/IT Leann Noga; Finance Specialist Stephanie Shipley; Issues Management Program Coordinator Chris Woodka; Federal Lobbyist Ray Kogovsek; and Special Water Counsel Alix Joseph.

VISITORS PRESENT:

Tom Simpson, Aurora Water; Roy Vaughan, U.S. Bureau of Reclamation; Bill Tyner, Colorado Division of Water Resources-Division 2; Terry Book and Seth Clayton, Board of Water Works of Pueblo; Curt Thompson, AECOM; William Banks, U.S. Geological Survey; Bob Hartzman, Canon City Water Department; Erika Chaves, U.S. Representative Ken Buck's office; Dwight Gardner, U.S. Senator Michael Bennet's office; Jerry Peña, GEI Consultants; Jack Goble, Lower Arkansas Valley Water Conservancy District; Scott Lorenz and Brett Gracely, Colorado Springs Utilities; Roy Heald, Security Water District and Fountain Valley Authority; Jason Bird, Ben Sartain, Luke Schilperoot Ted Sorenson, Teddy Sarenson; Henry Stamschror, and Rick Sartain, Mountain States Hydro; Mark Scott, citizen; and Bob Hamilton, citizen.

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INTRODUCTION OF NEW STAFF MEMBERS:

Leann Noga introduced Stephanie Shipley who was hired as the Accounting Specialist and James Broderick introduced Chris Woodka who was hired as the Issues Management Program Coordinator. They both started their position on September 12. Each brings extensive knowledge, which will be a great benefit to the District. President Long welcomed the new employees.

APPROVAL OF MINUTES:

President Long said the minutes of the May 19, 2016 Board meeting were posted to the Board website for review, and asked if there were any corrections or additions. Hearing none, Mrs. Ortegon moved, seconded by Mr. Howard "Bub" Miller, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Nichols reported the financial statements for May, June, July, and August were posted to the Board website for review. Ms. Nichols moved, seconded by Mr. Bostrom, for acceptance of the May, June, July, and August financial statements and payment of the September 2016 bills. Motion unanimously carried.

CONSENT ITEMS:

Lee Miller reported general and special water counsel recommend that the Board ratify the ad hoc committee's decisions authorizing special water counsel to execute stipulations with the City of La Junta (La Junta), Fort Lyon Canal Company (Fort Lyon), Amity Mutual Irrigation District and the District 67 Irrigation Canals Association (Amity/District 67), Stonewall Springs Quarry, LLC (Stonewall Springs) and Chaffee County, and the District's co-applicants on the ROY exchange application (Case No. 06CW120, Water Division 2), each stipulation consenting to the Applicants' proposed decree dated June 10, 2016. These stipulations are with the only remaining objectors in the ROY Exchange Case.

The Enterprise Board authorized legal counsel to join with the other co-applicants (the Board of Water Works of Pueblo and the cities of Colorado Springs, Aurora, and Fountain) to file the application in this case in late 2006, and approved stipulations with several parties, most recently with the United States of America in May 2016.

The co-applicants filed a revised proposed decree and engineering report with their expert witness disclosures on January 26, 2016; they circulated a revised proposed decree on January 27, 2016, with minor editorial changes to the January 26 version. The June 10, 2016 proposed decree includes changes approved by the Applicants' technical committee to address the main concerns of the objectors in the case that had not settled. The primary substantive change from the January 2016 proposed decree (agreed to by the co-applicants and other parties in the previously approved stipulation with the USA) is the addition of intermediate exchange rates in subparagraph 11.8 to govern exchanges between specified points. Similarly, the June 10, 2016 proposed decree contains new terms and conditions in subparagraph 15.14 for future additional points of diversion and/or storage located along the exchange reach, with retained jurisdiction added in paragraph 32 to review these future additions. Finally, subparagraph 15.4.1 has been revised to clarify the extent to which exchanges from the Lake Meredith Outlet will be constrained by flows at the Avondale Gage.

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On July 14, 2016, on the recommendation of general and special water counsel and District staff, the District's ad hoc committee approved standard stipulations by which La Junta, Fort Lyon, Amity/District 67, and Stonewall Springs consent to entry of a decree in the form of co-applicants' June 10, 2016 proposed decree, and approved the same terms for stipulation with Chaffee County. Per the Board's "Special Circumstances Necessitating Court Filings Policy," passed on July 17, 2014, the ad hoc committee may authorize court filings where it is necessary to take legal action before the next regularly scheduled Board meeting. The ad hoc committee is composed of the Executive Director and the President and/or the Vice President of the Board, and its decision must be ratified by the Board. Trial in this matter was scheduled to begin September 26, 2016, with several pretrial deadlines over the summer.

In addition to standard stipulation terms, the Fort Lyon and Amity/District 67 stipulations include a requirement, at those parties' request, for the co-applicants to annually mail to those parties the annual exchange accounting report required by the decree. The stipulations with La Junta, Fort Lyon, Amity/District 67, and Stonewall Springs were signed and filed on July 14, 2016. The stipulation with Chaffee County, based on the same decree terms described above for other parties' stipulations, was signed and filed on August 8, 2016. All parties having settled, Water Judge Schwartz vacated the trial and entered a final decree on August 17, 2016. That decree was provided to the Board members.

Mr. Edelmann moved, seconded by Mr. Pifher to ratify the decision of the ad hoc committee authorizing special water counsel to execute the co-applicants' Stipulations with the City of La Junta, Fort Lyon Canal Company, Amity Mutual Irrigation District and District 67 Irrigation Canals Association, Stonewall Springs Quarry, LLC, and Chaffee County, each stipulation consenting to entry of the co-applicants' proposed decree dated June 10, 2016 in Case No. 06CW120. Motion passed with Mr. May abstaining.

PRESENTATIONS:

FEDERAL LEGISLATION

Mr. Broderick reported on the written report Christine Arbogast submitted:

As Congress prepares to break until after the November 8 election, an update on the status of the Arkansas Valley Conduit and other federal issues is in order.

The FY' 17 appropriations process is stalled. Congress hopes to pass a Continuing Resolution to fund the government through early December, and at that time the two possible next steps will be an omnibus appropriations bill which includes all government programs and projects, or an extended Continuing Resolution until after the new President is inaugurated.

In any event, both the House and Senate have included \$3 million for the AVC. Through our work with the delegation, they have also increased the spending category under which AVC is funded, and the possibility of additional funding is very good.

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The pending Memorandum of Understanding (MOU) is awaiting signature by the Commissioner of Reclamation, but the Office of Management and Budget has voiced opposition to it, contending that it sets precedent for entering into an agreement on how a project might be funded in the future without statutory authority for the agreement.

As we have previously reported, this MOU is intended to serve as a guidance document for the District and the Bureau of Reclamation and future Administrations, and is not legally binding.

The Deputy Secretary's office, along with Senator Michael Bennet, continue to push for approval of the MOU.

Finally, S. 2616 has been reported out of the Energy and Natural Resources Committee and is awaiting final action in the Senate. We have anticipated for some time that this bill would likely be included in an end-of-the-year omnibus natural resources package.

The bill faces a significant hurdle at this juncture.

When legislation moves out of Committee, the Congressional Budget Office (CBO) is required to "score" the legislation. That means to analyze the cost of the legislation to the federal Treasury because the legislation calls for spending dollars. We received the score for S. 2616 recently.

The CBO concludes that the bill, which authorizes the miscellaneous revenues generated by the Fryingpan-Arkansas Project to be used to repay a loan of up to \$100 million from the Colorado Water Conservation Board (CWCB) to contribute non-federal dollars to project costs, scores, or spends, \$60 million in the next ten years and another \$108 million in the next 20 years.

Their conclusion is based on their interpretation that the miscellaneous revenues are income to the Treasury, which will then leave the federal Treasury, in other words are "spent," when used to make loan payments to CWCB. Thus, the "score" shows an increase in spending triggering the requirement of an offset to the loss to the federal Treasury.

In order for the legislation to move forward with that score, we are now challenged to identify an "offset" for that amount. Simply put, an offset means cutting funding from another federal project or program and spending it on the AVC.

Offsets are required when there is a "score" or an expenditure of funds as a result of a piece of legislation. This requirement comes from previously passed budget acts which call for the Congress to "pay as you go" for new projects or programs.

The AVC is not in any way being singled out to meet this requirement.

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The staff of Senators Bennet and Gardner are working with the Senate Budget and the Energy and Natural Resources Committees to determine what the “boundaries” are for identifying the offset. For example, because AVC is a Reclamation project, must the offset come from within Reclamation’s budget? Or can it come from anywhere within the Department of the Interior, or from anywhere in the federal government?

And they are working to determine if we must offset the near-term \$60 million score, or the longer term total score of \$168 million.

Given that Congress is preparing to break until after the election on November 8, we and the Senators’ offices have a good amount of time to work on identifying the offset as well as moving the other congressional AVC issues forward.

We are grateful for their support and that of our House delegation as well.

Additional updates will be provided as we move forward, and we anticipate that meeting of the project participants will be scheduled during the period of the congressional break between now and the election.

On other issues, the Waters of the United States remains in limbo as the courts consider lawsuits over the rule. There are riders attached to appropriations bills to negate the rule, but they are not expected to be enacted.

In addition, legislation regarding forest and watershed management is moving forward in the Senate Agriculture Committee. This issue is a heightened priority for water users and providers as the connectivity between healthy watersheds, catastrophic forest fires and water supplies becomes increasingly apparent.

Feel free to contact Christine at 720-373-3655 or rkogovsek@aol.com if you have questions.

HYDROPOWER UPDATE

Kevin Meador asked Mr. Stamschror to introduce each of the representatives from Mountain States Hydro. Mr. Stamschror said they put together a three week plan, and the Board is welcome out to the hydro site at any time.

Mr. Meador presented a PowerPoint presentation titled, *Pueblo Dam Hydroelectric Project Update and Schedule*, reviewing the following:

- Lease of Power Privilege
- Environmental Assessment
- Electrical Interconnect Agreement
- Power Purchase Agreement and Letter of Intent

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- Design-Build Contract
- CWCB Loan
- Schedule

CONSENT ITEMS-CONTINUED:

Mr. Meador reported the Executive Committee met on August 18, 2016. The Executive Committee approved an Interim Agreement with Mountain States Hydro, LLC to complete 60 percent engineering design for the Pueblo Dam Hydroelectric Project. On June 6, 2016 the Resource and Engineering Planning Committee recommended approval of up to \$300,000 to continue design of the hydro facility pending confirmation that a 20-year power purchase contract could be obtained from Colorado Springs Utilities and Fort Carson Army Base. The 20-year contract term was confirmed with both parties in July.

Mr. Goodwin moved, seconded by Mrs. Ortegon, to ratify the decision of the Executive Committee approving the Interim Contract with Mountain States Hydro, LLC including an expenditure not-to-exceed \$300,000 to complete the 60 percent engineering design of the Pueblo Dam Hydroelectric Project. Motion unanimously carried.

There was discussion regarding the concerns of keeping the timelines of the project, since there are parties that are having their legal counsels reviewing the documents, which this time to review was not considered in the timeframe.

ACTION ITEMS:

APPOINTMENT OF BUDGET OFFICER

The first action the governing board must take under the Budget Law is to designate or appoint a Budget Officer to prepare and submit a proposed budget (Section 29-1-104 C.R.S).

Ms. Nichols moved, seconded by Mr. Karney, to appoint Finance Coordinator Leann Noga as the Budget Officer for the 2017 Enterprise budget. Motion unanimously carried.

SET PUBLIC HEARING FOR 2017 PROPOSED BUDGET

Ms. Nichols reported the Board conducts a Public Hearing each year prior to adopting the annual budget, which a published notice is required.

Ms. Nichols moved, seconded by Mr. Karney, the Board set November 17, 2016 at 9:45 a.m. at the office of the Southeastern Colorado Water Conservancy District for a Public Hearing for the 2017 Proposed Budget. Motion unanimously carried.

INFORMATION ITEMS:

The Board was provided written material on the following topics, which were posted to the Board website:

- ROY (Case No. 06CW120)

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OTHER BUSINESS MATTERS:

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 10:45 a.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary

