

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

August 16, 2018

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, August 16, 2018 at 9:35 a.m. at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

DIRECTORS PRESENT:

Bill Long	Ann Nichols	Curtis Mitchell
Gibson Hazard	Kevin Karney	Carl McClure
Tom Goodwin	Dallas May	Greg Felt
Mark Pifher	Alan Hamel	Seth Clayton
Andy Colosimo	Patrick Garcia	Howard "Bub" Miller

DIRECTOR(S) ABSENT AND EXCUSED:

None

DISTRICT OFFICIALS PRESENT:

Executive Director James Broderick; General Counsel Lee Miller; Administrative Manager Toni Gonzales; Principal Engineer Kevin Meador; Water Resources Engineer Garrett Markus; Issues Management Program Coordinator Chris Woodka; Finance Manager Leann Noga; and Federal Lobbyist Christine Arbogast.

VISITORS PRESENT:

Roy Vaughan, Bureau of Reclamation-Pueblo Office; Doug Fitzgerald, U.S. Congressman Scott Tipton's office; Bill Banks, U.S. Geological Survey; Curt Thompson, AECOM; Judy Leonard and Kim Swearingen, Pueblo West Metropolitan Board; Bill Tyner, Division Engineers Office; Tom Simpson, Aurora Water; Fortney Kelly, Fountain Valley Authority; Taylor Murphy, City of Fountain; Brent Gardner-Smith, Aspen Times; Mark Scott, GHD, Kevin Bergschneider, HDR; Bob Hilton, retired SECWCD; Bob White, Arkansas Headwaters recreation Area; and Jason Meyer and Tom McClernan, GMS.

INTRODUCTION OF VISITORS:

President Long welcomed the visitors to the meeting, and asked them to introduce themselves and identify the organization they represented.

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APPROVAL OF MINUTES:

President Long said the minutes of the June 21, 2018 Board meeting were posted to the Board website for review, and asked if there were any corrections or additions. Hearing none, Mr. Howard “Bub” Miller moved, seconded by Mr. Hamel, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Nichols reported the financial statements for June and July were posted to the Board website for review. Ms. Nichols moved, seconded by Mr. Clayton, for acceptance of the June and July financial statements and payment of the August 2018 bills. Motion unanimously carried.

CONSENT ITEMS:

None

PRESENTATIONS:

INTRODUCING THE ART OF WATER DISPLAY

Chris Woodka presented the information depicted in the display was first published as part of the Legacy of Service publication presented to the Board in February.

As part of the continuing celebration of the 60th Anniversary of the Southeastern Colorado Water Conservancy District (District), a wall of artwork has been added to the meeting room.

The artwork was presented to recipients of the Wayne N. Aspinall Water Leader of the Year Award by the Colorado Water Congress (CWC). The award has been presented annually since 1981 to a living water leader to recognize sustained contributions to the development of water in Colorado. Along with the award, a piece of artwork depicting water features in Colorado is presented to the recipient. Facsimiles of the artwork also are on display at CWC headquarters in Denver.

District staff recognized the need to create a tribute to water leaders from the Arkansas River basin in a location closer to home, so collected its own facsimiles or serially numbered prints to display at the District headquarter’s.

All eight of the recipients from the Arkansas River basin had strong ties to the District. They are:

- Charles L. “Tommy” Thomson (1984) – General Manager of the District from 1966-94
- Raymond D. Nixon (1988) – President of the Board from 1973-2001
- Frank Milenski (1994) – Board member from 1958-98
- Ralph Adkins (1997) – President of the Board from 1991-2002
- Ray Kogovsek (2003) – Former Congressman and Lobbyist for the District
- Alan Hamel (2010) – Board President from 2002-04, and current Board member
- Harold Miskel (2016) – Board member from 2002-2016
- Mark Pifher (2018) – Current member of the Board

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These men all contributed in important ways to both the development of water in the Arkansas River basin, and in fostering important relationships among all the state's water users.

RECAP ON THE FRY-ARK TOUR AND RUEDI 50TH CELEBRATION

Mr. Woodka reported on July 16-17, 2018 District staff, board members, and guests participated in a tour of Project features. As part of the tour, the District sponsored the 50th Anniversary Celebration of Ruedi Reservoir. There were 36 people in attendance.

Among highlights on the first day were a visit to the Leadville National Fish Hatchery and a tour of the Mount Elbert Hydroelectric Power facility.

Completed in 1968, Ruedi Dam was the first element of the Project to be constructed. The Colorado Water Conservation Board, and Colorado River District participated in the celebration to mark their roles in developing the Project Operating Principles. The Aspen Yacht Club, which also formed in 1968 when Ruedi was completed, hosted the celebration and offered sailboat rides. The Ruedi Water and Power Authority provided a tour of the hydroelectric facility which was completed in 1985.

The group stayed overnight in Basalt, which earlier had been threatened by the Lake Christine Fire. The fire was not an issue during the tour.

Mr. Woodka presented a PowerPoint showing pictures of the tour.

The staff was thanked for their participation in the planning of the tour, and Mr. Woodka was presented with a gold microphone.

ARKANSAS RIVER VOLUNTARY FLOW MANAGEMENT PROGRAM RECAP

Rob White from the Arkansas Headwaters Recreation Area wanted the opportunity to thank the Bureau of Reclamation, the Southeastern Colorado Water Conservancy District, Colorado Springs Utilities, and the Board of Water Works of Pueblo, for their cooperation from the entities to provide releases that enabled private boaters, commercial outfitters, and for the trout to survive until cooler weather arrives with the releases that were made to assist in the Voluntary Flow Management Program. President Long said this is a perfect example of working together.

Mr. White distributed copies to the Board of a Colorado Parks and Wildlife News Release.

ACTION ITEMS:

APPROVAL OF EASEMENT FOR FIBER OPTIC LINE

Leann Noga reported the owners of the property to the east of the District's office property have sought fiber optic cable service from Secom. In order to service the property, Secom must pull a line off of its main line located near Reyes Street. To get from Reyes Street to the property, the line must cross the District's property. Therefore, Secom has requested an easement to install and maintain the line.

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The easement agreement, as revised by the District's Special Water Counsel, would be across the northern 10 feet of the District's property and would require the District to keep the easement area clear of buildings and other structures, except for any buildings, structures, or landscaping that currently exist or that replaces such buildings, structures or landscaping. All of Secom's work in the easement would be at its own expense, and Secom would be required to repair any damage to the property and return it to the condition that existed prior to entry. Secom will pay a fee for the easement, which will cover the value of the easement and District's legal expenses incurred in reviewing and negotiating the easement agreement totaling \$1,201.92. The Board was provided a copy of the Right of Way Easement Contract and property map.

Special Water Counsel, General Counsel, and District staff believe that the easement will have minimal impact on the District and will support good relations with the District's neighbors. Mr. Mitchell indicated the Resource and Engineering Planning Committee recommends the execution of the easement agreement.

Mr. Mitchell moved, seconded by Mr. Goodwin, to authorize the Executive Director to execute an easement agreement, granting an easement across the District's property to Secom, Inc. for the purposes of installing and maintaining a fiber optic line. The motion passed, with Mr. Karney and Mr. Garcia abstaining.

APPROVAL OF STIPULATION IN DISTRICT'S DIVISION 2 DILIGENCE AND CHANGE CASES (CASE NOS. 16CW3076 AND 16CW3079)

Lee Miller reported the Board directed Special Water Counsel to file the Applications in these cases on October 20, 2016, through Resolution No. 2016-02D. With the Board's authorization through Resolution No. 2016-02D, Special Water Counsel filed a Diligence Application on November 29, 2016 (Case No. 16CW3079), and filed a Change Application on November 23, 2016 (Case No. 16CW3076) to change the District's APCS Rights to allow diversion and storage of those water rights at Pueblo Reservoir, to allow diversion and storage of the Otero-Wapaco A right in Clear Creek Reservoir, and to correct three legal descriptions. The District's First Amendment to the Application in Case No. 16CW3076, which revised corrections to legal descriptions following the Division Engineer's review, was accepted by the Court for filing on May 4, 2017.

A. Case No. 16CW3076 - Change

The District's objectives in Case No. 16CW3076 are to (1) change the point of diversion for the District's APCS Rights to Pueblo Reservoir, and for the Otero-Wapaco Subsection A right, to Pueblo Reservoir and Clear Creek Reservoir; (2) obtain a decree that allows storage of the APCS Rights in Pueblo Reservoir (including future enlargement space), and for the Otero-Wapaco Subsection A right, in Pueblo Reservoir and Clear Creek Reservoir; and (3) correct the errors in some previously decreed legal descriptions.

There are eleven opposers in Case No. 16CW3076. Nine have stipulated: Pueblo Water, District 67, Amity, Penrose, Tri-State, Aurora, CWCB, CS-U, and PSCo. The most recent previously stipulated

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proposed decrees are dated May 18 and 21, 2018, which were filed with the CS-U and PSCo stipulations on the same day.

LAWMA's counsel is recommending that LAWMA stipulate to the revised proposed decree dated July 24, 2018. To resolve LAWMA's concerns, this proposed decree includes an extra time period for opposers to review the District's accounting forms after a final decree is entered and before the District diverts the APCS Rights pursuant to this decree. Paragraphs 13.3 and 34 provide for this review and clarify the procedures for opposers and the Division Engineer to review, comment on, and approve the initial and revised accounting forms. This extra time period for review is becoming more common in decrees and it does not impact the District's objectives. Thus, the July 24, 2018 proposed decree satisfies the District's objectives, consistent with the previously approved stipulations. Attachment 1 to this Action Item is a proposed decree showing the changes, in redline, from the May 18 and 21, 2018 proposed decrees.

B. Case No. 16CW3079 - Diligence

The District's objectives in Case No. 16CW3079 are to (1) obtain a decree finding reasonable diligence on the District's remaining conditional Division 2 water rights, and (2) not materially limit the District's conditional rights.

There are seven opposers in Case No. 16CW3079. Five have stipulated: Pueblo Water, District 67, Amity, Tri-State, and CWCB. The most recent prior proposed decree is dated May 4, 2018, which was filed with the CWCB stipulation. If the District approves the July 24, 2018 revised proposed decree in Case No. 16CW3076, LAWMA's counsel is also recommending stipulation to the proposed decree dated May 4, 2018 in Case No. 16CW3079. The Board was provided the Proposed Decree in Case No. 16CW3076, dated July 24, 2018.

Lee Miller reported that if the Board approves the stipulations with LAWMA, Pueblo West Metropolitan District will be the only opposing party remaining in both Case Nos. 16CW3076 and 16CW3079.

Case Nos. 16CW3076 and 16CW3079 have been re-referred to the Water Judge and consolidated for trial, which is set for ten days beginning on July 22, 2019. The District's expert disclosures and report are due by October 15, 2018.

Mr. Hamel moved, seconded by Mr. Pifher, to authorize Special Water Counsel to execute stipulations with the Lower Arkansas Water Management Association in the District's Change Case No. 16CW3076 and Diligence Case No. 16CW3079, consenting to entry of decrees in both cases that are no less restrictive on the District than the proposed decrees dated July 24, 2018 and May 4, 2018, respectively. Motion unanimously carried.

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DISTRICT OFFICE PARKING LOT ASPHALT PAVEMENT REPLACEMENT BID RESULTS

Mr. Meador reported the Resource and Engineering Planning Committee met on August 2, 2018 to review the proposal that Martin Marietta Material, Inc. submitted for the District's pavement replacement project. The 2018 and 2019 budgets included \$50,000 per year for the pavement replacement project. The proposal price submitted was for \$131,127.75, which exceeds the budgeted amount by \$31,127.75. The higher cost can be attributed to the strong economic conditions in the region and the rising cost of materials due to rising oil prices since the project was originally budgeted.

There were 12 paving firms contacted to solicit a bid for the pavement project, with six that expressed an interest. Only Martin Marietta Materials, Inc. submitted a bid. The Board was provided a copy of the bid form and the Engineer's Opinion of Estimated Construction Cost.

Mr. Mitchell indicated the Resource and Engineering Planning Committee recommends the award of the asphalt pavement replacement project to Martin Marietta Material, Inc.

Mr. Hazard moved, seconded by Mr. Clayton, to award the District office parking lot asphalt pavement replacement project to Martin Marietta Materials, Inc. in the amount of \$131,127.75. Motion unanimously carried.

MONTHLY/QUARTERLY REPORTS:**U.S. BUREAU OF RECLAMATION REPORT**

Roy Vaughan provided a PowerPoint presentation reviewing the following:

- As of August 14, 2018 there were 208,574 acre-feet stored in Pueblo Reservoir; 138,879 acre-feet of Project water; 47,168 acre-feet of Excess Capacity water; 20,715 acre-feet of Winter water
- There is currently 106,494 acre-feet of Project space in Pueblo Reservoir and 38,408 acre-feet of space in Turquoise and Twin Lakes Reservoirs
- Charts illustrating storage amounts in Turquoise, Pueblo, and Twin Lakes
- Total M&I Project Water in the System
- Project Reservoirs: Turquoise 93%; Twin Lakes 84%; Pueblo 138%
- Total M&I Project Water in the System as of July 31, 2018
- Upper Colorado River Basin High/Low Snowpack Summary as of August 14, 2018
- ARKWELCO NATIVE FLOWS August 5-11, 2018
- U.S. Drought Monitor-West/Colorado August 7, 2018

Mr. Vaughan reported the collection system is being winterized. The Mt. Elbert Conduit is currently off. At present Reclamation is not moving any Project water from Twin Lakes to Pueblo. Reclamation is ramping down the Voluntary Flow Management Program water and will be at native flow on August 17, 2018. Movement of water will be adjusted according to the forecast and customer needs.

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DIVISION ENGINEER'S REPORT

Mr. Bill Tyner discussed the following:

A) River and Reservoir Report

1) Reference Arkansas River Daily Report. River Call is:

- i) 5/4/1881 Bessemer
- ii) 4/15/1884 Fort Lyon
- iii) 2/21/1887 Amity
- iv) 5/31/1949 CO/KS Compact

<http://www.dwr.state.co.us/div2/aras/arascal.asp>

Mr. Tyner presented a PowerPoint reviewing the following:

- Water Supply Pueblo-John Martin
- Composite Gage Index-Pueblo and Las Animas
- Composite Index Flows in Acre-Feet Per Year
- Arkansas River Basin Monthly Snowpack Summary March 1 and May 1, 2018
- Conclusions
 - Generally a Dry to Very Dry Year with portions of the basin more severely impacted than others
 - Headwaters snowpack was the only source of snowmelt runoff of significance
 - Availability of stored water mitigated some impacts
 - Monsoonal rains provided some degree of relief in area, but often included damaging consequences (hail, flooding, etc.)

Discussion was had on the possibilities of a multi-year drought. Mr. Tyner provided the Board copies of a chart, Year Ranking Dry to Wet form Composite Index Flows and a chart showing the Year-Type by Composite Index Flow Data (values in acre-feet)

U.S. GEOLOGICAL SURVEY

Bill Banks presented a PowerPoint titled, *USGS Update-Evaluation of Selected Water-Quality Issues*, reviewing the following:

- Controls on Arkansas River Selenium, Uranium, and Salts: Avondale-Las Animas 1989-2017
- Data from USGS and State Gages 1989-2017
- Discharge and Salt Concentrations
- Precipitation and Salt loads, Sources
- Uranium Loads and Selenium Loads
- What Have We Learned from the 28-Year Record?

STATE LEGISLATIVE UPDATE

Lee Miller reported, while the Water Resources Review Committee (WRRC) is only halfway through its meeting, the deadline for members of the WRRC to request bill drafts (general concepts) to be considered as Interim Committee sponsored bills for the coming session has already passed. During the August 7, 2018 meeting, there were ten conceptual requests with more specific information required by

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Friday, August 10, 2018. One contact or point person will work with drafters and approve a "finalized" draft by September 6, 2018, for distribution to other committee members and affected state agencies for purposes of a fiscal note. The committee will meet again at the Capitol on September 27, 2018, to consider the bills and vote whether to move them forward.

Two of the proposed conceptual requests are of particular interest to the District. Senator Larry Crowder requested drafting of a measure (likely a Senate Joint Memorial) urging the federal government to fund the Arkansas Valley Conduit. Lee Miller has reached out to Senator Crowder to offer the District's assistance in drafting the measure.

A second measure the District is watching is a follow-up to HB18-1151, which did not pass last session, sponsored by Representative Jenny Arndt. This bill originated with the Lower Arkansas Valley Water Conservancy District and seeks to expand the types of programs that can be approved by the CWCB for inclusion in the crop fallowing pilot programs. The bill seeks to add deficit irrigation to the allowable projects. The water generated from a deficit irrigation project could be used for lease.

President Long recessed the District meeting at 10:46 a.m. and reconvened 11:14 a.m.

EXECUTIVE SESSION:

Lee Miller said a request had been made for the Southeastern Colorado Water Conservancy District to enter Executive Session for the purpose of:

Discussion with legal counsel on the on the following matter:
Contract No. 5-07-70-W0086 Amendment No. 11

Pursuant to:

- C.R.S. §24-6-402(4)(b): (Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions)
- C.R.S. §24-6-402(4)(e): (Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators)

The presence of the following persons is requested at this Executive Session:

1. Non-Excused Board Members (state for the record any who are excused)
2. Executive Director
3. General Counsel
4. Finance Manager
5. Issues Management Program Coordinator
6. Water Resources Engineer

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Minutes will be electronically recorded as required by the Colorado Open Meeting Act.

Mr. Garcia moved, seconded by Mr. Clayton, to enter into Executive Session. President Long recessed the District meeting at 11:16 a.m. The District meeting was reconvened at 11:32 a.m.

REPORT OUT OF EXECUTIVE SESSION:

Lee Miller reported that the District Board received legal advice regarding the Contract No. 5-07-70-W0086 Amendment No. 11.

ACTION ITEM-CONTINUED

CONTRACT NO. 5-07-70-W0086

Lee Miller reported neither the proposed contract amendment nor the contract conversion will increase overall costs either on an annual basis or over the authorized Project repayment period. Changing to advance payment of OM&R could change the timing of OM&R payment, which should be able to be managed within annual mill levy revenues, but may require payment from reserves.

The Board has authorized 10 previous amendments to the contract between the United States of America and the District. During the September 21, 2017 Board meeting, the Board unanimously approved:

immediately entering into negotiations with the Bureau of Reclamation to negotiate an amendment to the contract between the United States of America and the District to address extending the repayment period for the District's allocated share of the construction costs of the Fryingpan-Arkansas Project to the maximum period permitted under the authorizing legislation, Reclamation's requirement for eventually changing to advance payment of annual operation, maintenance and replacement (OM&R) costs, and Reclamation's requirement to create an OM&R reserve fund to finance extraordinary maintenance and replacement work on the Project

The Contract between the District and the Bureau of Reclamation was signed on January 21, 1965. It was a far-reaching document that framed the issues surrounding the repayment to the federal government for the local municipal, industrial, and agricultural share of the Fryingpan-Arkansas Project.

The repayment obligation of the District is the primary, but not the only, purpose of the contract with Reclamation first signed in 1965 and amended 10 times since. It was amended in 1981 to state that it took effect on January 1, 1982, to reflect final construction costs and repayment requirements. For this reason we will refer to the contract as the "1982 Contract."

Negotiations on Contract No. 5-07-70-W0086 Amendment No. 11 were held the afternoon of July 27, 2018. The Board members were provided a copy of the final draft contract amendment. The District's negotiation team consisted of Lee Miller, Jim Broderick, Leann Noga, and Bill McDonald, with staff support from Chris Woodka and Garrett Markus. Ms. Noga was thanked for the financial documentation she provided for the process.

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Key Elements of the Contract Amendment

Application of Ad Valorem Tax Revenues

The amendment would provide that:

- Ad valorem tax remains at 0.9 mills.
- Extend repayment of construction costs to the full 50 years allowed by statute (2031).
- Application of tax revenues:
 - 1st to annual OM&R costs (including extraordinary maintenance and replacements);
 - 2nd to the reduced annual construction payment; and
 - Remainder, if any to a new OM&R reserve fund.

The first two items are payments to Reclamation. The reserve fund will be kept by the District (must be federally insured or in U.S. Treasury bonds) and any earnings from the investment of the monies in the fund will be available for the District to use at it sees fit.

Winter Water Storage Payments

Payments for Winter Water Storage will remain at the current \$2.80/AF until the 1982 contract is converted to a new repayment contract, which will be December, 2021, at the latest. Currently, payments go to assist repayment of the Fry-Ark Project. Reclamation proposed that future payments be applied as follows:

- 1st to the Fry-Ark Project's annual construction obligation and annual OM&R in years when ad valorem revenues, Other Contractor payments for OM&R, and the District's use of the Reserve Fund covers the construction obligation and annual OM&R; and
- 2nd to accumulated Winter storage revenues so accumulated shall be applied as upfront funding, available without appropriation, for the actual cost (planning, environmental compliance, design, construction, and interest) of the Arkansas Valley Conduit (AVC).

Reserve Fund

There are several reasons for the creation of the reserve fund.

- Fry-Ark facilities are aging.
- Increasing extraordinary maintenance over time, leading to increased and increasingly expensive repairs.

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- Large replacement costs are coming, and they may not always be anticipated or scheduled.

Since this is only an amendment of the 1982 contract, it will be superseded within a couple of years.

Mr. Pifher moved, seconded by Mr. Clayton, the District Board authorize execution of Contract No. 5-07-70-W0086 Amendment No. 11. Motion unanimously carried.

Mr. Broderick thanked President Long and Mr. Pifher for attending the contract negotiation's meeting.

INFORMATIONAL ITEMS:

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

- Water Court Resume
- District's Division 5 Diligence (Case No. 18CW3063)

Mr. Broderick thanked Andy Colosimo from Colorado Springs Utilities and Seth Clayton from Pueblo Water for the interaction from their water division staff members in working with the District on the Hydro Project. The meetings have been a very beneficial process.

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 11:43 a.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary

