

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

May 15, 2014

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, May 15, 2014 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 | Harold Miskel |
| Gary Bostrom (arrived at 9:50) | Kevin Karney | Gibson Hazard |
| Leonard Pruett | Carl McClure | Tom Goodwin |
| David Simpson | Jay Moore | Pat Edelmann |
| Curtis Mitchell | Howard "Bub" Miller | |
| Alan Hamel-Advisory Board Member | | |

DIRECTOR(S) ABSENT AND EXCUSED:

Vera Ortegon

DISTRICT OFFICIALS PRESENT:

Executive Director James Broderick; General Counsel Lee Miller; Administrative Manager Toni Gonzales; Director of Engineering and Resource Management Bob Hamilton; Project Engineer Kevin Meador; Water Resources Specialist/Engineer Garrett Markus ; Project-Program Coordinator Jean Van Pelt; Special Water Counsel Alix Joseph; and Federal Lobbyists Ray Kogovsek and Christine Arbogast.

VISITORS PRESENT:

Chris Woodka, The Pueblo Chieftain; Tom Simpson, Aurora Water; Christina Thiebaut, U.S. Senator Mark Udall's office; Doug Fitzgerald, U.S. Congressman Scott Tipton's office; Doris Morgan, Congressman Cory Gardner's office; Dwight Gardner, U.S. Senator Michael Bennet's office; Roy Vaughan, U.S. Bureau of Reclamation; David Mau, U.S. Geological Survey; Jerry Peña, CDM Smith; Mark Scott, GEI Consultants; Jack Goble, Lower Arkansas Valley Water Conservancy District; Roy Heald, Security Water District and Fountain Valley Authority; Brett Gracely, Colorado Springs Utilities; Steve Witte, Colorado Division of Water Resources; Terry Book and Alan Ward, Board of Water Works of Pueblo; Scott Lorenz, Arkansas Groundwater Users Association; Ann Lopkoff, Colorado Water Protective Development Association; Dan Henrichs, High Line Canal Company; Keith Goodwin, Otero County; Ryan Hemphill, Fred Heckman, Bert Heckman, and Don McBee, Fort Lyon Canal Company.

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INTRODUCTION OF VISITORS:

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

APPROVAL OF MINUTES:

President Long said the minutes of the April 17, 2014 Board meeting were posted to the Board website for review, and if there were any corrections or additions. Hearing none, Mr. Hazard moved, seconded by Mr. Pruet, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Ann Nichols reported the financial statement for April 2014 was posted to the Board website for review. Treasurer Nichols moved, seconded by Dr. Moore, for acceptance of the April 2014 financial statement and payment of the May 2014 bills. Motion unanimously carried.

CONSENT ITEMS:

None

PRESENTATIONS:

BOARD MEMBERS' CONFLICT OF INTEREST

Lee Miller reported a conflict of interest exists when someone with a fiduciary responsibility is in a situation where their own self-interest and the interests of the organization might be in conflict. A common example of a conflict of interest comes up when a board member also runs a business that sells something the organization might need and has a chance to influence the purchasing decision.

The Board members were provided the following materials to assist in assessing when a conflict of interest exists and how to address the situation:

- Director's Oath of Office
- Excerpt from SDA Board Member Manual
- Colorado Statutory Provisions Concerning Ethics and Conflicts of Interest for Municipal Officials and Employees.

ACTION ITEMS

ELECTION OF OFFICERS

President Long reported the annual election of officers is done in May of each year. Nominations for the offices of President, Vice President, Secretary, and Treasurer are made.

The Executive Director serves as the Assistant Secretary-Treasurer. A nomination is required for that office.

President Long opened the floor for nominations. Dr. Moore moved to retain the current slate of officers and that Mr. Broderick serve as Assistant Secretary-Treasurer, seconded by Mr. Howard "Bub" Miller. Motion unanimously carried.

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The elected officers are as follows:

- President – Bill Long
- Vice President – Harold Miskel
- Treasurer – Ann Nichols
- Secretary – Vera Ortegon
- Assistant Secretary-Treasurer – James Broderick

President Long thanked the Board for their support of the re-elected slate of officers.

EXECUTIVE COMMITTEE APPOINTMENT

Mr. Hazard moved, seconded by Dr. Moore, to approve President Long's recommendation and appoint the following to the Executive Committee:

- Bill Long, President and Chairman of the Arkansas Valley Conduit Committee
- Harold Miskel, Vice President and Chairman of the Excess Capacity and Enlargement Committees
- Vera Ortegon, Secretary and Chairwoman of the Resource & Engineering Planning Committee
- Ann Nichols, Treasurer and Chairwoman of the Finance Committee
- Tom Goodwin, Chairman of the Colorado River Committee
- Gary Bostrom, Chairman of the Human Resources Committee
- Carl McClure, Chairman of the Allocation Committee
- James Broderick, Executive Director (nonvoting member ex officio)

Motion unanimously carried.

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 following cases:

1. Winter Water Storage Program (Case No. 84CW179)
2. Application of Exchange of Non-Project Water (Case No. 06CW7)
3. St. Charles Mesa Water District (Case No. 13CW19)

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)

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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)
 - a. [David Simpson is excused (for item 3)]
2. Executive Director
3. General Counsel
4. Special Water Counsel
5. Director of Engineering and Resource Management

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

Mr. Goodwin moved, seconded by Mr. Pruett, to convene into Executive Session. Motion unanimously carried.

President Long recessed the District meeting at 9:54 a.m. to go into Executive Session, the District meeting was reconvened at 10:09 a.m.

REPORT OUT OF EXECUTIVE SESSION:

Lee Miller reported discussion was had with legal counsel on the following cases, and that action on each will be taken under "Action Items":

1. Winter Water Storage Program (Case No. 84CW179)
2. Application of Exchange of Non-Project Water (Case No. 06CW7)
3. St. Charles Mesa Water District (Case No. 13CW19)

ACTION ITEMS CONTINUED:

WINTER WATER STORAGE PROGRAM, APPROVAL OF POLICY (Case No. 84CW179)

Ms. Joseph reported Winter Water Storage Program (WWSP) Decree requires the District to: (1) serve as the Chairman of the Board of Trustees of the WWSP; (2) deliver Winter water stored in Project facilities to WWSP participants; and (3) pay the Bureau of Reclamation for winter Water stored in Project facilities. In previous Water Court cases, the Board has examined historic consumptive use, study periods and other issues in an attempt to ensure changes of water rights do not reduce the amount of water available to the WWSP participants. As the Chairman of the Board of Trustees, the District has the obligation to protect the WWSP. Staff and legal counsel do not believe, however, that the District has an obligation to protect other participants' individual water rights.

As the Trustee of the WWSP, the District has an obligation to protect the WWSP. The question is what level of protection is required of the District. The District should protect the programmatic aspects of the WWSP, including ensuring that any Winter water is used in accordance with the terms of the Decree in Case No. 84CW179 and the Repayment Contract. Special water counsel and legal counsel have developed standard language to ensure consistency with these governing documents. Thus, with some cooperation from the Applicants, these issues can be resolved fairly quickly and expensively. Frequently, however, there is an issue as to whether an Applicant has appropriately quantified historic consumptive use for a change of water rights or is replacing depletions in the appropriate time, place and

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manner in augmentation plans. While these issues can impact the WWSP by changing the call pattern or inappropriately calculating non-irrigation season return flows or replacements, legal counsel believes that these issues are more likely to impact the individual water rights holders, including WWSP participants. While the District may continue to attempt to ensure that changes of water rights and plans for augmentation do not impact the amount of water able to be stored, Staff, legal counsel, and special water counsel do not believe that either the WWSP Decree or the Repayment Contract require this level of analysis.

Focusing on the programmatic aspects of the WWSP has several advantages for the District. (1) it protects the WWSP according to the terms of the Repayment Contract and the WWSP Decree; (2) it keeps the District in the role of Trustee without having the District scrutinize and dispute every change of water rights and plan for augmentation above or below Pueblo Reservoir, many of which are filed by District constituents who are beneficiaries of the WWSP; and (3) it allows water rights holders to protect their own interests. Finally, by enunciating a policy that clearly identifies the District's interests, Participants will be clear that it will be their responsibility to monitor issues related to protecting river conditions such as ensuring that historic consumptive use and return flows are appropriately quantified and that in any augmentation plan, depletions are replaced in the appropriate time, place and manner if they believe such operations will reduce the amount of water available for storage. Accordingly, District staff, legal counsel and special water counsel believe that enunciating a policy of protecting only the programmatic aspects of the WWSP is in the best interest of the District.

Dr. Moore moved, seconded by Mr. Bostrom, the District's objectives, in protecting the WWSP in Water Court cases, be to ensure that: (1) Winter water is used in accordance with the terms of the WWSP Decree; (2) any storage is consistent with the Contract between the District and the United States; and (3) any quantified non-irrigation season depletions are replaced to the WWSP at the appropriate location. Motion unanimously carried.

APPLICATION FOR EXCHANGE OF NON-PROJECT WATER (Case No. 06CW7)

Ms. Joseph reported that this case was originally filed in 2006 to compete with exchanges filed by Colorado Springs and Aurora. Because Aurora voluntarily dismissed Case No. 05CW105 without prejudice, the only case remaining for which this exchange would compete for priority is Colorado Springs's Case No. 05CW96. Unlike the exchange applied for in Case No. 06CW8, this exchange of non-Project water is not necessary to facilitate either Conduit operations or other Fryingpan-Arkansas Project activities. Accordingly, the benefit to the District of pursuing this exchange is unclear.

The District asked for additional time before the Referee to continue negotiations with opposers. The Judge denied the motion, and the case was rereferred to the Water Court on May 2, 2014, putting this case on a litigation track. If the case is not dismissed, the District, as the applicant, will need to proceed diligently toward trial. This will first involve holding a phone conference with the Court and parties' counsel within the first three months after the case is rereferred (*i.e.*, by July 2014), in order to schedule trial at a reasonably early date considering the schedule of the Court, the parties' attorneys and expert witnesses, and the time needed for the experts' studies and reports. Trial likely will be set sometime in

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2016, with the District required to produce any expert engineering evidence eight months before trial. It typically will involve considerable legal expense for an applicant to proceed to trial. In addition to any legal expense for proceeding through trial, The District would incur substantial engineering costs for the expert analysis, reports and testimony necessary to satisfy its burden of proof on issues such as water availability and feasibility.

Mr. Goodwin moved, seconded by Mr. Simpson, that the Board authorize special water counsel to move to dismiss Case No. 06CW7 without prejudice, each party to bear its own costs. Motion unanimously carried.

APPLICATION OF ST. CHARLES MESA WATER DISTRICT, APPROVAL OF STIPULATION (Case No.13CW19)

Ms. Joseph reported St. Charles filed its application on March 29, 2013, seeking approval of a plan for augmentation. St. Charles proposes to replace out-of-priority depletions from four tributary wells within its service area with its shares in the Bessemer Ditch as changed in Case Nos. 04CW08 and 09CW91, and to the extent no Bessemer water is available, purchased or leased Project water or Project return flows.

The District's primary concerns include: (1) ensuring the decree contains appropriate terms and conditions for use of Project water and Project return flows; (2) ensuring all structures to be augmented are located within Southeastern's District boundaries; (3) ensuring that water is used according to the terms of the Decrees in Case Nos. 04CW08 and 09CW91; and (4) ensuring that water is used according to the terms of the Decree in Case No. 84CW179 to protect the Winter Water Storage Program. District staff has not asked anyone to analyze whether the augmentation plan replaces out of priority depletions in time, place or amount. This decree, however, contains appropriate terms and conditions to protect the programmatic aspects of the WWSP.

The proposed decree dated April 11, 2014 contains terms and conditions ensuring appropriate use of Project water and return flows, ensures that the augmented structures are within District boundaries, that water is used according to the terms of the Decrees in Case Nos. 04CW08 and 09CW91, and protects the programmatic aspects of the WWSP, consistent with the WWSP Decree and the District's Repayment Contract.

Mr. Hazard moved, seconded by Mr. Edlmann, to authorize special water counsel to enter into a stipulation with St. Charles consenting to entry of a decree that is no less protective of the District and no less restrictive on the Applicant than the proposed decree dated April 11, 2014. Motion passed, with Mr. Simpson abstaining.

CRIPPLE CREEK AND VICTOR (Case No. 02CW122)

Ms. Joseph reported the Board authorized legal counsel to file a statement of opposition in Case No. 02CW122 in October 2002. In May 2010 the Applicant filed Case No. 10CW31. The District did not file opposition to this new case, having concluded that its issues could be resolved in the pending

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02CW122 case. In April 2011 these two cases were consolidated by the Water Referee under the 02CW122 case number.

These applications are designed to replace stream depletions from mining uses at Cripple Creek and Victor (CC&V's) mining operations near Victor. Claimed augmentation sources included water leased from the Board of Water Works of Pueblo (BWWP) and Colorado Springs Utilities. These sources of leased water, and others, were not very specific. The application also claimed the right to add unnamed water sources from CC&V's pending exchange Case No. 98CW115 (for exchanges on Four Mile Creek of unspecified water sources from the Arkansas River), and other sources, without further notice. The District filed a statement of opposition to ensure appropriate use of leased water that is stored in Project facilities, and to ensure that proposed augmentation sources were properly described, and would not injure the District's decreed rights.

Ms. Joseph said the proposed decree reasonably resolves the District's concerns. To alleviate potential concerns of unnamed new sources being added that could cause injury, legal counsel suggested, and CC&V agreed, that a sufficient notice and comment requirement, similar to that used in the Upper Arkansas Water Conservancy District's blanket augmentation plan to add new water sources, be included in the decree. Thus, paragraph 3.6.3 requires CC&V to give notice before using additional water rights in this plan, and provides that if any party wishes to object to the use of the added source, it may file a written objection with this Court. The deadline for objecting to a new permanent source is the last day of the second month following the month in which CC&V provided notice, with a shorter time for objection to temporary sources to be used for up to one year. This allows the District the opportunity to review and comment upon any new water source that is added to the augmentation plan, with a comment period that is similar to the standard time for objections for a new water rights application, or to the Substitute Water Supply Plan comment period for temporary sources.

To address use of water stored in Project facilities to which CC&V may not be entitled, CC&V has agreed to include language to which the District and the Board of Water Works of Pueblo have previously stipulated in its decree. This language establishes terms and conditions to prevent injury to the District. Legal counsel believes the decree satisfactorily addresses the District's concerns with unnamed future water sources, and restrictions on use of water stored in Pueblo Reservoir. Thus, the proposed decree reasonably addresses the District's objectives in filing its Statement of Opposition to protect the District's rights and interests.

Mr. Simpson moved, seconded by Mr. Karney, to authorize special water counsel to enter into a stipulation with Cripple Creek and Victor in consolidated Case Nos. 02CW122 and 10CW31, consenting to entry of a decree that is no less protective of the District than the proposed decree dated March 26, 2014. Motion unanimously carried.

MONTHLY/QUARTERLY REPORTS:

U.S. BUREAU OF RECLAMATION REPORT

Roy Vaughan provided a PowerPoint presentation reviewing the following:

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- As of May 12, there were 191,282 acre-feet stored in Pueblo Reservoir; 130,676 acre-feet of Project water; 39,016 acre-feet of Excess Capacity water; 21,421 acre-feet of Winter water.
- There is currently 126,273 acre-feet of Project space in Pueblo Reservoir and 78,111 acre-feet of space in Turquoise and Twin Lakes Reservoirs.
- Project Reservoirs: Turquoise 60%; Twin Lakes 89%; Pueblo 102%
- Boustead Imports 2,752 AF as of May 13, 2014
- Colorado SNOTEL Current Snow Water Equivalent (SWE) % of Normal Laramie and North Platte
- Time Series Snowpack Summary for Upper Colorado River Basin and Arkansas River Basin
- Diurnal Activity

Mr. Vaughan reported at the request of the various water districts in the west, Reclamation is currently evaluating how the Controlled Substances Act applies in the context of Reclamation Project water being used to facilitate marijuana related activities. Reclamation will work with the water districts once the evaluation is complete.

DIVISION ENGINEER'S REPORT

Mr. Witte reviewed the following:

- River and Reservoir Reports
 - Arkansas River Daily Report. River Call is:
 - (1) 3/11/1886 Rocky Ford Highline
 - (2) 2/21/1887 Amity Canal
 - (3) 5/31/1949 Colorado/Kansas Compac
- <http://www.dwr.state.co.us/div2/aras/arascal.asp>
- Current River/Reservoir Operations
 - John Martin Storage
 - Began transfer from Conservation Storage on April 7, 2014
 - Conservation Storage transfer completed on April 12, 2014
 - All ditches have evacuated summer stored water except X-Y, Sisson, and Manvel
- Compact Issues
 - Rule 10 Plans were approved May 1, 2014
 - LAVWCD-Non-Ft. Lyon; 35 farms with 74 improvements, 891 acre-feet replacement requirements;
 - LAVWCD-Ft. Lyon: 57 farms with 161 improvements, 1,006 acre-feet replacement requirements;
 - LAWMA (GP Resources); 4 farms with 37 improvements, 836 acre-feet replacements requirements;
 - Total; 272 improvements, 2,733 acre-feet replacement requirements.

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- GP Resources Substitute Water Supply Plan (SWSP) application (14CW3004) for their Stateline Farm was approved May 7, 2014
 - 16 wells.
 - 1,776.7 pre-1986 acres Rule 14; 2,143.3 post-1985 acres addressed by SWSP
 - 1,175 acre-feet stream depletions to be replaced using 1969 LAWMA shares

U.S. GEOLOGICAL SURVEY REPORT

David Mau presented a PowerPoint titled, *Arkansas River Basin Update USGS*, reviewing the following:

- <http://co.water.usgs.gov/>
- [http://www.dwr.state.co.us/Surface Water](http://www.dwr.state.co.us/Surface%20Water)

From this website you can get streamflow information, Colorado streamflow table, hydrologic unit, Colorado precipitation table, etc., you can also subscribe for water alerts.

STATE LEGISLATION UPDATE

Lee Miller reported the Colorado legislative session ended Wednesday, May 7. For the legislation transmitted to the governor within the last 10 days of the session, such as HB14-1333, the CWCB Construction Financing Bill, must be acted upon within 30 days after the last day of the session, or it becomes law without signature.

Information on the status of water bills was provided to the Board members.

Several bills of interest to the District and the Arkansas basin were acted upon in the last flurry of activity. HB14-1026, the FLEX Bill, was withdrawn by the sponsor. After several stakeholder meetings and a flurry of draft amendments, the bill finally came to Senate Agriculture Committee. It was in trouble with the first question from Senator Brophy, which addressed the anti-speculation doctrine. The proponents could not put together a satisfactory explanation as to why the FLEX use would be a narrow exception to the anti-speculation doctrine and the committee began to express its concerns. Senator Schwartz asked the bill to be laid over one day for preparation of amendments. When the committee reconvened, Senator Schwartz asked for the bill to be amended to refer it to the Water Resources Review Committee. Members of the committee noted that since she is the vice chairman of the Water Resource Review Committee, it was within her prerogative to simply put the issue on the list of study measures. She finally agreed and asked that the bill be postponed indefinitely. Assuming that the committee's other studies and duties are not so extensive as to preclude a review of FLEX, we will see it this summer.

SB14-115 that establishes the General Assembly's review of the statewide water plan has passed both houses and is pending signature by the Governor. Legislative Council granted the Water Resources Review Committee the authority to hold some of the SB14-115 public meetings on the state water plan in conjunction with and at the location of other meetings that will be held throughout the state. A schedule of dates and locations has not been finalized. The membership of the Water Resources Review

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Committee has not been announced, but we can expect Representative Fischer to chair it and Senator Schwartz to be the vice chairman.

Lee Miller updated the Board the SB14-023, the Agriculture Efficiency Bill. On the day that the bill was scheduled to be voted on in the House Agriculture Committee, the sponsor moved that the bill be sent from House Agriculture to House Judiciary. That vote passed and the bill was immediately calendared for House Judiciary for the next day and it was calendared for action only - meaning that the chairman, Rep. Kagan, had decided to take no testimony on the bill. Not surprisingly, there was opposition to that decision, and Rep. Kagan relented to the extent of allowing a panel of proponents and a panel of opponents to make comments. The House Judiciary committee hearing went long into the evening as members asked many detailed questions. In the end, the bill passed on a pure party line vote and without amendments.

The bill was the main item of debate on the House floor on final Friday of the session - and the reason the House worked until midnight. At least 4-5 hours were eaten up by the debate. Almost all the Western Slope legislators whose districts would be affected by the bill spoke in opposition. The Colorado River District was opposed, as was Club 20 and the City of Grand Junction. In the end, all amendments were rejected on pure party line votes.

Lee Miller reported that on July 16, 12-1:30pm, the Colorado Water Congress will offer an informational webinar providing factual overview of the bills' contents, intention, and process.

NRCS COLORADO BASIN OUTLOOK REPORT April 1, 2014

Mr. Hamilton reported the Colorado Basin Outlook Report for May 1, 2014 was posted to the Board website and a copy was in their Board binders. The monthly report will be posted and provided in their binders each month.

INFORMATIONAL ITEMS:

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

- Committee Appointments
- Water Court Résumé
- Bob Appel Award

Jean Van Pelt announced Mr. Greg Policky, Colorado Parks and Wildlife, was selected as the 2014 Bob Appel awardee. Mr. Policky has worked for 20 years helping to ensure improvement of the River's wild brown trout fishery, habitat improvement, aquatic education for schools, establishment and monitoring of quality fishing regulations. His professional abilities and his high level of achievement have been recognized by his peers, agencies, conservation groups, educators, businesses, and the public.

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Mr. Broderick introduced Garrett Markus who joined the District staff on May 1, 2014 as the Water Resources Specialist/Engineer and Patty Rivas, who also join the staff on May 1, 2014 as Administrative Support Associate.

Mr. Broderick announced the District will provide a tour of the upper Project facilities in August or September.

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 11:10 a.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary
