

RECORD OF PROCEEDING

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**SOUTHEASTERN COLORADO WATER  
CONSERVANCY DISTRICT**

**MINUTES**

**April 21, 2016**

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, April 21, 2016 at 9:32 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
Kevin Karney	Gibson Hazard	Tom Goodwin
Carl McClure	Howard "Bub" Miller	Jay Moore
David Simpson	Pat Edelmann	Curtis Mitchell
Dallas May	Mark Pifher	
Alan Hamel-Advisory Board Member		

**DIRECTOR(S) ABSENT AND EXCUSED:**

Harold Miskel, Vera Ortegon and Leonard Pruett

**DISTRICT OFFICIALS PRESENT:**

Executive Director James Broderick; General Counsel Lee Miller; Administrative Manager Toni Gonzales; Water Resource Specialist/Engineer Garrett Markus ; Finance Coordinator/IT Leann Noga; Special Water Counsel Steve Leonhardt and Alix Joseph; and Federal Lobbyists Ray Kogovsek and Christine Arbogast.

**VISITORS PRESENT:**

Chris Woodka, The Pueblo Chieftain; Tom Simpson, Aurora Water; Dwight Gardner, U.S. Senator Michael Bennet's office; Scott Lorenz, Colorado Springs Utilities; Doug Fitzgerald, U.S. Congressman Scott Tipton's office; Roy Vaughan, U.S. Bureau of Reclamation; Philip Reynolds, Colorado Division of Water Resources-Division 2; Curt Thompson, AECOM; Bill Banks, U.S. Geological Survey; Bob Hamilton, retired; Paul Blanchard, Northwest Pipe Company; Bob Hamel, Arkansas River Outfitters Association; Katiana Dillon, Wells Fargo Securities; Bob Hartzman, Canon City Water Department; Kortney Kelly, Fountain Valley Authority; and Mark Scott, GEI Consultants.

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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.

**ACTION ITEMS:**

**SWEARING IN OF APPOINTED BOARD MEMBERS**

Lee Miller said he had received a Court Order appointing Gibson Hazard, Kevin Karney, Dallas May, Vera Ortegon, and Mark Pifher to four-year terms on the District Board. He asked that Mr. Hazard, Mr. Karney, Mr. May, and Mr. Pifher, stand and repeat the oath. After reading the oath, the appointed Board members were asked to sign the oath, for filing with the court. Mrs. Ortegon was not present.

President Long welcomed Mr. May and Mr. Pifher as the new members appointed to serve on the Board, and congratulated the reappointed members Mr. Hazard and Mr. Karney.

**APPROVAL OF MINUTES:**

President Long said the minutes of the February 18, 2016 Board meeting were posted to the Board website for review, and if there were any corrections or additions. Hearing none, Mr. Howard Miller moved, seconded by Mr. Goodwin, to approve the minutes. Motion unanimously carried.

**FINANCE COMMITTEE REPORT:**

Treasurer Nichols reported the financial statements for February and March were posted to the Board website for review. Ms. Nichols moved, seconded by Dr. Moore, for acceptance of the February and March financial statements and payment of the April 2016 bills. Motion unanimously carried.

**CONSENT ITEMS:**

None

**PRESENTATIONS:**

**INVESTMENT STRATEGY AND UPDATE**

Kitiana Dillon from Wells Fargo Securities presented a PowerPoint reviewing the following:

- Comparison Report
- Portfolio History
- Sector
- Rate Shock
- Call Projection
- Cash Flow
- Portfolio Alerts
- Positions by Sector
- Positions by Maturity

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**ACTION ITEMS-CONTINUED:**

OPEN MEETING RESOLUTION NO. 2016-01D

Lee Miller reported a Resolution Relating to the Compliance by the Southeastern Colorado Water Conservancy District with the Colorado Open Meeting Law is required under Colorado Revised Statute §37-45-101 *et seq.* This resolution defines where the public notice of each meeting will be posted at least 24 hours prior to a meeting. After the approval of the resolution, notice will be sent to the County Clerk and Recorder of each of the nine counties within the District boundaries.

Mr. Hazard moved, seconded by Mr. Simpson, to adopt Resolution No. 2016-01D, A Resolution Relating to the Compliance by the Southeastern Colorado Water Conservancy District with the Colorado Open Meeting Law. Motion unanimously carried.

ELECTION OF OFFICERS

Mr. Karney moved, seconded by Ms. Nichols, to nominate the following slate of officers:

- Bill Long – President
- Gary Bostrom - Vice-President
- Vera Ortegon – Secretary
- Ann Nichols - Treasurer
- James Broderick to serve as Assistant Secretary-Treasurer

Motion unanimously carried.

VOLUNTARY FLOW MANAGEMENT PROGRAM AGREEMENT

Mr. Broderick reported the Board authorized the execution of the “2006 Voluntary Flow Management Program “VFMP” Agreement” that is very similar to the 2010 VFMP Agreement as part of the settlement in the Chaffee County Recreational In-Channel Diversion (RICD) water rights application. The 2016 VFMP Agreement is very similar to the 2010 VFMP Agreement with minor name changes. Prior to this settlement, the Board has reviewed and approved, with appropriate conditions, the annual VFMP flow recommendations from DNR to the Bureau of Reclamation (Reclamation) each year since 1991.

Since 1991 the Colorado Department of Natural Resources (CDNR) on behalf of the Division of Wildlife (DOW), and the Division of Parks and Outdoor Recreation (DPOR), now Colorado Parks and Wildlife or CPW, has made annual recommendations, with annual concurrence and implementation by Reclamation and the Southeastern Colorado Water Conservancy District (District), for operation of a Voluntary Flow Management Program. An integral part of the VFMP is the method in which Reclamation operates Twin Lakes and Turquoise Reservoirs to manage flows in the Arkansas River above Pueblo Reservoir. The flows are managed to benefit recreational and fishery purposes while fully satisfying the primary purposes of the Fryingpan-Arkansas Project (Project) and other contractual obligations, pursuant to its recommendations made by the CDNR in consultation with the District. The District participates in the VFMP as the holder of the decreed water rights for Project water.

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The VFMP participants have a strong interest in the continued operation of the VFMP in a similar manner to the operations conducted under the “2006 Agreement.” The specifics are described in the “Agreement.”

All of the other participants have approved and executed the agreement. The agreement will run from July 1, 2016 until June 30, 2021. The only substantive changes to the 2016 Agreement are a few clarifications acceptable to all parties, such as name changes and items in 3.B.

Mr. Mitchell moved, seconded by Mr. Bostrom, the Board of Directors authorize the Executive Director to execute the Upper Arkansas Voluntary Flow Management Program Five-Year Contract Renewal as presented. Motion unanimously carried.

Bob Hamel thanked the Board for their quick review an process of the long-time agreement.

**SOUTHEASTERN’S EXCHANGE (CASE NO. 06CW8): APPROVAL OF STIPULATION WITH STATE AND DIVISION ENGINEERS**

Alix Joseph reported on February 21, 2006, the Board directed special water counsel to file the Application in Case No. 06CW8 to preserve and retain exchange capacity for the District and its constituent entities to exchange non-Project water to Pueblo Reservoir, primarily for use in the Arkansas Valley Conduit (AVC). The Board and legal counsel discussed these cases in executive session in November 2015. The Board has approved stipulations with five of the opposers, most recently with Colorado Springs Utilities (CS-U) and Colorado Parks and Wildlife (CPW) in February 2016.

Case No. 06CW8 is the District’s application for exchanges by the District or its constituent entities of non-Project water stored in Holbrook Reservoir No. 1 or Dye Lake, or diverted at the Catlin Canal, High Line Canal, Holbrook Canal, Oxford Farmers Ditch or Rocky Ford Ditch, to Pueblo Reservoir for use in the AVC and for other purposes within the District. The application requested co-equal priority with exchange applications filed by the City of Aurora, Colorado Springs, and the City of Lamar in December 2005. Aurora’s application was since dismissed, as was one of Colorado Springs’ two December 2005 applications. Nineteen parties filed statements of opposition. A Ruling of the Referee was not entered by the December 15, 2014 deadline and, accordingly, the case was re-referred to the Water Judge on December 19, 2014.

Following comments from several opposers and review with the Board in executive session last November, the District provided a revised proposed decree to all parties dated January 27, 2016. The revised proposed decree limits the sources of water that can be used in the exchange to additional shares of those ditches already being used in the exchange in paragraphs 11.2 and 11.5. The proposed decree also provides that use of exchanged water will be consistent with any terms ultimately decreed in the participants’ individual cases for changes of water rights and exchanges, including limits on exchanges from Holbrook facilities, consistent with the decree entered in La Junta’s Case No. 11CW13. CPW and CS-U stipulated to entry of a decree in February that was consistent with the version circulated in

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January. The Engineers requested further clarification of the legal description of a structure used by La Junta. This information is included in paragraph 9.3 of the proposed decree dated April 5, 2016.

Special water counsel, general counsel and District staff believe that this stipulation satisfies the District's objectives.

Mr. Bostrom moved, seconded by Mr. Edelman, to authorize special water counsel to execute a stipulation with the Engineers consenting to entry of a decree in Case No. 06CW8 that is no less restrictive on the District than the proposed decree dated April 5, 2016. Motion passed, with Mr. Karney abstaining.

**COLORADO WATER PROTECTIVE AND DEVELOPMENT ASSOCIATION (CWPDA) CHANGE (CASE NO. 07CW127): APPROVAL OF STIPULATION**

Alix Joseph reported Case No. 07CW127 is CWPDA's application for a change of use of its Bessemer Ditch water rights to add replacement and augmentation as decreed uses. CWPDA plans to continue diverting its water through the Bessemer Ditch, but will measure its share of those water rights through its augmentation station. The augmentation credits will then replace out-of-priority depletions for the member wells located in the Fountain Creek and Arkansas River basins. CWPDA also plans to store some of its Bessemer Ditch water in Pueblo Reservoir.

The District's objectives in this case are to ensure: (1) that any use of Project Return Flows by CWPDA is in accordance with the District's policies; (2) appropriate use of Project facilities; (3) all historic Return Flows are replaced in a manner that avoids injury to the District; and (4) that any Winter water used is consistent with the WWSP Decree in Case No. 84CW179. General counsel and special water counsel believe that these objectives are all satisfied by the proposed decree dated April 7, 2016.

CWPDA has generally agreed to include the District's standard language regarding use of Project water and Project Return Flows, use of Project facilities and use of Winter water. Terms and conditions regarding use of Project water and Project Return Flows are included in paragraph 12. Similarly, the District's terms regarding use of Project facilities are included in paragraph 14 and Winter water terms and conditions are in paragraphs 12 and 13. Counsel believes these terms and conditions are sufficient to protect the District from injury. Paragraph 12.11 allows replacement for historic Return Flows accruing during the non-irrigation season to either be released to the Arkansas River or booked over from CWPDA's account in Pueblo Reservoir to the WWSP account. Case No. 07CW127 has been rereferred to the Water Judge and is set for trial beginning June 6, 2016.

Mr. Goodwin moved, seconded by Mr. Pifher, to authorize special water counsel to enter into a stipulation with CWPDA consenting to entry of a decree in Case No. 07CW127 that is no less restrictive on CWPDA and no less protective of the District than the proposed decree dated April 7, 2016. Motion unanimously carried.

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LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION (LAWMA) (CASE NOS. 14CW3004 AND 15CW3014): APPROVAL OF AGREEMENT AND STIPULATIONS

Alix Joseph reported LAWMA filed its application in Case No. 15CW3014 on April 30, 2015, and its application in Case No. 14CW3004 on January 31, 2014. The District filed statements of opposition on June 19, 2015 and March 27, 2014, respectively. Both cases seek to add structures to LAWMA's blanket augmentation plan decreed in Case No. 02CW181. The District's primary focus is to ensure that neither Project water or Project Return Flows are used to augment wells that are ineligible to receive an allocation of Project water or Return Flows.

LAWMA has, in the past, filed several applications seeking to add structures to the augmentation plan decreed in Case No. 02CW181. In each of these cases, the District has filed a statement of opposition to ensure that Project water and Project Return Flows are used appropriately. As part of our settlement discussions in Case Nos. 15CW3014 and 14CW3004, special water counsel negotiated the agreement with LAWMA. This agreement is designed to govern future circumstances in which LAWMA seeks to add structures to the augmentation plan decreed in Case No. 02CW181. The agreement sets forth a procedure for LAWMA and the District to confer regarding any structures to be added to the augmentation plan. The hope is that in the process of this conferral, the District and LAWMA can agree whether Project water and Project Return Flows are appropriate augmentation sources. In the event that the District and LAWMA can reach such an agreement, the District will not need to file a statement of opposition.

The District's objectives in Case Nos. 15CW3014 and 14CW3004 are to ensure that: (1) LAWMA may not use Project water or Return Flows to replace well depletions located outside of the District's boundaries; (2) terms and conditions related to use of Project water and Return Flows are consistent with the District's previous stipulations; (3) any wells added to the augmentation plan in Case No. 02CW181 are subject to terms and conditions at least as restrictive as those decreed in Case No. 02CW181; (4) all terms and conditions are consistent with those in Case No. 02CW181.

General counsel and special water counsel believe the proposed decree satisfies these objectives. The proposed stipulations both state that Project water and Project Return Flows may not be used as an augmentation source for the additional structures. The structures in Case No. 15CW3014, while located within District boundaries, are currently ineligible to receive an allocation of Project water. The 20 structures involved in Case No. 14CW3004 are allocated outside of District boundaries, and thus ineligible to receive Project water. Where applicable, the proposed decrees incorporate terms and conditions from Case No. 02CW181. Special water counsel believe these references are sufficient to satisfy the District's objectives for protecting its Project water rights. Similarly, the proposed decrees state that they do not change any provisions of the Decree in Case No. 02CW181, other than inclusion of the additional LAWMA structures and require LAWMA to account for and replace all out-of-priority stream depletions in accordance with the terms and conditions of the Decree in Case No. 02CW181. *See* Case No. 15CW3014 at ¶¶ 10 and 26; Case No. 14CW3004 at ¶¶ 10 and 28.

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Mr. Hazard moved, seconded by Mr. Karney, to authorize the District to execute the Agreement with LAWMA governing addition of structures to the augmentation plan decreed in Case No. 02CW181 that is consistent with the Agreement and special water counsel to execute stipulations with LAWMA in Case Nos. 15CW3014 and 14CW3004, consistent with the proposed stipulations and proposed decrees dated February 19, 2016 and January 29, 2016. Motion unanimously carried.

**CRIPPLE CREEK AND VICTOR GOLD MINING (CC&V) EXCHANGE (CASE NO. 98CW115):  
APPROVAL OF STIPULATION**

Steve Leonhardt reported Case No. 98CW115 is CC&V's application for appropriative rights of exchange up Fourmile Creek from the Arkansas River and for a surface water right on Fourmile Creek. CC&V later withdrew its claim for a new surface water right; accordingly, the proposed decree only includes rights of exchange. CC&V seeks a direct flow exchange for 3.0 c.f.s. from the confluence of Fourmile Creek and the Arkansas River to CC&V Diversion Point No. 3, which is below the Carlton Tunnel. CC&V also seeks a storage exchange for 30.0 c.f.s. from the confluence of Fourmile Creek and the Arkansas River to Wrights Reservoir (aka Mt. Pisgah Reservoir).

The District's three primary objectives in this case include ensuring that: (1) the decree and engineering do not negatively impact the District's interests, particularly on exchanges above Pueblo Reservoir and delivery of Project water on Fourmile Creek, and that CC&V has a non-speculative factual basis of claimed water sources and amounts; (2) the decree includes appropriate terms and conditions necessary to protect the District's water rights, applied-for exchanges, and Project operations; and (3) the decree includes appropriate terms and connections for exchange sources and amounts, consistent with the District's approach in Case No. 06CW8. These objectives were accomplished by the March 31, 2016 proposed decree, which includes the District's requested standard language in paragraphs 9.6, 9.9, and 9.10 of the proposed decree. At the District's and others' request, CC&V also included detailed exchange-to and exchange-from locations in paragraphs 3.2.1 and 3.2.2 and limits on exchange rates and annual volumes, consistent with the District's approach for its own exchange rights in Case No. 06CW8, in paragraph 6. CC&V also added terms regarding procedures for adding new sources of exchange to paragraph 8.3.2 and regarding use of leased water stored in Project facilities to paragraph 9.11.

Mr. Simpson moved, seconded by Mr. Pifher, to authorize special water counsel to enter into a stipulation with the Cripple Creek and Victor Gold Mining Company consenting to entry of a decree that is no less restrictive on the Cripple Creek and Victor Gold Mining Company and no less protective of the District than the proposed decree dated March 31, 2016. Motion unanimously carried.

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

Roy Vaughan provided a PowerPoint presentation reviewing the following:

- As of April 18, 2016 there were 241,309 acre-feet stored in Pueblo Reservoir; 153,422 acre-feet of Project water; 26,934 acre-feet of Excess Capacity water; 60,686 acre-feet of Winter water.
- There is currently 91,951 acre-feet of Project space in Pueblo Reservoir and 60,814 acre-feet of space in Turquoise and Twin Lakes Reservoirs.

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- Charts illustrating storage amounts in Turquoise, Pueblo, and Twin Lakes.
- Project Reservoirs: Turquoise 91%; Twin Lakes 104%; Pueblo 123%
- Arkansas River Basin Time Series Snowpack Summary April 20, 2016
- Upper Colorado River Basin Time Series Snowpack Summary April 20, 2016
- Snow Forecast through April 30, 2016
- Pictures of the snow in the collection system

Mr. Vaughan reported Mt Elbert Conduit is shut down. The movement of water will be adjusted according to the forecast and customer's needs.

Mr. Broderick thanked Mr. Vaughan and Reclamation staff for assisting the entities in moving water, so spilling did not occur.

#### DIVISION ENGINEER'S REPORT

Philip Reynolds reported on water that has been moved to John Martin Reservoir. He also reviewed a chart that showed the contents in Trinidad Reservoir between 2010-2016.

#### U.S. GEOLOGICAL SURVEY REPORT

Bill Banks presented a PowerPoint reviewing the following:

- Map of 28-day Average Streamflow Compared to Historical Streamflow for the Day of the Year, Thursday April 21, 2016
- Streamflow (in cfs)
- Duration Hydrograph
- Cumulative Hydrograph
- Arkansas River Basin Snow Water Equivalent Summary
- Colorado SNOTEL Snow Water Equivalent Update Map with Site Data, April 20, 2016

#### STATE LEGISLATION UPDATE

There are less than 30 legislative days left of the no more than 120 consecutive calendar days allowed under the Colorado constitution. The last day upon which the General Assembly may adjourn sine die is May 11, 2016. The General Assembly may adjourn earlier than that date, but not later than May 11. The District participates in the Colorado Water Congress State Affairs Committee, which generally meets on Monday mornings in Denver before the Legislature begins its work for the week.

Some bills of interest to the District include:

**HB16-1005:** An issue returning from the last legislative session involves whether a residence could install and use rain barrels to capture rooftop runoff for application to the irrigation of flowerbeds, garden areas and similar non-potable purposes. The bill has passed the full Senate without amendments and is being enrolled in Act format for consideration by the Governor. The bill was delayed in Senate Agriculture, Natural Resources & Energy following the public testimony phase of its consideration.



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Senator Sonnenberg was not satisfied with some of the information that the committee received concerning how the bill would be implemented. When the bill was brought back to the committee for action, clarifying information was provided and the bill moved forward without amendment. The bill awaits action by the Governor.

**HB16-1228:** Representative Arndt and Representative J. Becker along with Senator Donovan have introduced HB16-1228. This bill revisits the “FLEX” concept, which has been the subject of unsuccessful bills in recent sessions. After passing the House as a completely rewritten bill, the bill had its initial public testimony in Senate Agriculture, Natural Resources & Energy but was taken off the table for action in order to allow the sponsors to prepare amendments. The issue that raised concern came from West Slope interests that wish to be excluded from the bill.

**SB16-174:** Senator Sonnenberg and Representative Vigil introduced the annual Colorado Water Conservation Board (CWCB) funding bill that specifies and funds a variety of projects approved by the CWCB. The only change to the introduced version of the bill was in Section 8. That section had identified \$200,000 for the CWCB to pursue a study of the feasibility of aquifer storage along the Front Range. At the request of Senator Sonnenberg, the committee amended the use of the funds from a study to an actual pilot and removed the limitation of requiring it to be along the Front Range. The bill is currently being considered by the Senate Appropriations Committee.

**HB16-1392:** The Lower Ark District proposed a new state water bank bill, sponsored by Representative Arndt as a late bill. After a few meetings to address concerns with the very complex legislation, the sponsors decided to wait until the summer Water Resources Review Committee to continue work on the legislation. Lee Miller played an active role in the Colorado Water Congress (CWC) subcommittee working on the bill.

President Long reconvened the District meeting at 11:30 a.m.

**EXECUTIVE SESSION**

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

Colorado River Common Interest and Limited Joint Defense Agreement.

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
2. Executive Director
3. General Counsel
4. Water Resources Specialist/Engineer

The minutes will be electronically recorded as required by the Colorado Open Meetings Act.

Mr. Howard Miller moved, seconded by Mr. McClure to enter into Executive Session. President Long recessed the District meeting at 11:31 a.m. and reconvened at 11:42 a.m.

**REPORT OUT OF EXECUTIVE SESSION**

**COLORADO RIVER COMMON INTEREST AND LIMITED JOINT DEFENSE AGREEMENT**

Lee Miller said the Board received legal advice on the Colorado River Common Interest and Limited Joint Defense Agreement case and was provided guidance to assist in negotiations. He stated that there was an action item resulting from the executive session.

Lee Miller reported last fall, Denver Water and Northern Water entered into a Common Interest and Limited Joint Defense Agreement (JDA) to pursue common strategies and share information to address Colorado River issues. Specifically, issues include lowering levels in Lake Powell, and legislation or regulations to prevent, mitigate or enforce the Colorado River Compact and Upper Colorado River Compact. Denver Water and Northern Water recognized that other members of the Front Range Water Council, including Southeastern, have similar interests as Colorado River transmountain water users, and extended the offer to join the JDA, through the proposed Amended JDA. The Board and legal counsel will discuss this JDA further in executive session.

Mr. Goodwin moved, seconded by Mr. Howard Miller, that the District Board authorize the Executive Director to execute the Amended Common Interest and Limited Joint Defense Agreement with Denver Water and Northern Colorado Water Conservancy District. Motion unanimously carried.

**INFORMATIONAL ITEMS:**

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

- Water Court Resume
- Bureau of Reclamation Status Report on Proposed Inclusions into the SECWCD
- Legal Quarterly Report
- Arkansas River Basin Water Forum –April 27-28-Salida

President Long said the Allocation Committee will meet at 1:00 p.m. today (April 21, 2016)

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President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 11:45 a.m.

Respectfully submitted,

Toni Gonzales  
Administrative Manager

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Secretary

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