

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

February 16, 2017

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, February 16, 2017 at 10:25 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	Kevin Karney	Gibson Hazard
Carl McClure	Tom Goodwin	David Simpson
Howard "Bub" Miller	Jay Moore	Pat Edelmann
Curtis Mitchell	Dallas May	
Alan Hamel-Advisory Board Member		

DIRECTOR(S) ABSENT AND EXCUSED:

Mark Pifher

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 Coordinator/IT Leann Noga; and Federal Lobbyists Ray Kogovsek and Christine Arbogast.

VISITORS PRESENT:

Tom Simpson, Aurora Water; Doug Fitzgerald, U.S. Congressman Scott Tipton's office; Cathy Garcia, U.S. Senator Cory Gardner's office; Roy Vaughan, U.S. Bureau of Reclamation; Steve Witte and Phil Reynolds, Colorado Division of Water Resources; Jerry Peña, GEI Consultants; Seth Clayton, Board of Water Works of Pueblo; Scott Lorenz, Colorado Springs Utilities; Mark Scott, GHD; and Steve Howell, SCI Engineering.

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 January 19, 2017 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. Howard “Bub” Miller, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Nichols reported the financial statements for January 2017 were posted to the Board website for review. Treasurer Nichols moved, seconded by Mr. Bostrom, for acceptance of the January 2017 financial statements and payment of the February 2017 bills. Motion unanimously carried.

Leann Noga reported the 2017 Adopted Budget will be posted to the Board and public websites. The document will be submitted to the GFOA for the award process. The document has historical and forecasting information, which includes a Strategic Plan and Business Plan.

President Long complimented the Budget Officer and staff for the outstanding document.

CONSENT ITEMS:

None

PRESENTATIONS:

None

ACTION ITEMS:

Garrett Markus reported that District staff and counsel recommended filing statements of opposition in two applications in the December 2016 resume:

Stonewall Springs, Case No. 16CW3094 (Plan for Augmentation)

In this Application, Stonewall Springs Water LLC and Stonewall Springs Quarry LLC seek a plan for augmentation to augment several wells. The wells will be augmented with AGUA shares and water stored in the Stonewall Reservoir Complex or other leased water. AGUA is allocated Project Return Flows for augmentation of wells within the District. Thus, the District will want to ensure that all structures to be augmented are located within District boundaries and eligible to receive Project Water Return Flows. If they are not eligible for an allocation of Project Water Return Flows, then any proposed decree should be clear on that point. Similarly, the proposed decree should include appropriate terms and conditions for use of Project Return Flows as an augmentation source. To protect the District’s exchanges through the Excelsior Ditch reach, the District may also need to ensure that all depletions to the Arkansas River are replaced in an appropriate time, place, and manner.

Board of Water Works of Pueblo, Case No. 16CW3103 (Exchange)

This is Pueblo Water’s application for conditional appropriative rights of exchange, to exchange water from Pueblo Water’s Bessemer Ditch shares that are to be changed in a future application. Pueblo Water seeks exchanges into Pueblo Reservoir, Twin Lakes, Turquoise Lake, and Clear Creek Reservoir,

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as well as Pueblo Water's intakes and "ROY storage" facilities when upstream exchanges are unavailable. Return Flow exchanges are from wastewater treatment plants and lawn irrigation Return Flows, along with exchanges of Bessemer water from Bessemer Ditch deliveries and from ROY and other storage. The application also includes a claim for contract exchanges involving Bessemer water; it is unclear how this claim relates to the requested appropriative exchange rights. Pueblo Water claims a 2016 priority with a 2007 appropriation date for exchanges at aggregate rates up to 98.6 cfs. The ROY exchanges are claimed at the same rates decreed in Case No. 06CW120, but it is unclear how this will affect Pueblo Water's or others' exchanges under 06CW120. Pueblo Water requests to exchange water for leasing to other parties when water is available in excess of its own needs. The District will want to ensure that the decree includes appropriate conditions for Pueblo Water's use of Pueblo Reservoir and other Project facilities, that the exchanges remain subject to the 2004 IGAs and Pueblo Flow Program, and that the new exchanges involving ROY storage are subordinate to those decreed in 06CW120. Given the similarities to Case No. 06CW8 regarding exchanges of irrigation ditch shares from points under the ditch, the District may want to assure a level playing field with conditions no less restrictive than those in its more senior decree. The District may also want to confirm that the water exchanged will be limited to fully consumable water as determined in the to-be-filed change case, that such water (including lawn irrigation return flows and other return flows) will be properly accounted for in the exchange, and that these exchanges will not adversely affect Fry-Ark Return Flows on the Arkansas River, including those from Bessemer Project water.

Mr. Goodwin moved, seconded by Dr. Moore, to authorize special water counsel to file Statements of Opposition in Case Nos. 16CW3094, Application of Stonewall Springs Water LLC and Stonewall Springs Quarry LLC and 16CW3103, Application of Board of Water Works of Pueblo. Motion unanimously carried.

Lee Miller reported the Water Court recently decreed the District's exchange right, Case No. 06CW8.

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

Roy Vaughan presented a PowerPoint presentation reviewing the following:

- As of February 13, 2017 there were 239,254 acre-feet stored in Pueblo Reservoir; 146,179 acre-feet of Project water; 40,646 acre-feet of Excess Capacity water; 52,427 acre-feet of Winter water.
- There is currently 99,194 acre-feet of Project space in Pueblo Reservoir and 53,011 acre-feet of space in Turquoise and Twin Lakes Reservoirs.
- Project Reservoirs: Turquoise 74%; Twin Lakes 103%; Pueblo 127%
- Total M&I Project Water in the System
- Arkansas River Basin Time Series Snowpack Summary February 15, 2017
- Upper Colorado River Basin Time Series Snowpack Summary February 15, 2017
- U.S. Drought Monitor-West, February 14, 2017
- Pictures of the Pueblo West 24 Inch Water Line Replacement

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- Safety of Dams Program-Regulation, Review, and Inspections

Mr. Vaughan reported the collection system has been winterized. Mt. Elbert Conduit is running 350 cfs. Currently Reclamation is moving 205 cfs. from Twin Lakes to Pueblo, and Reclamation is planning on moving an additional 20,000 acre-feet from the upper reservoirs. The movement of water will be adjusted according to the forecast and customer's needs.

The February 1, 2017 forecast of Project water is 77,000 acre-feet.

DIVISION ENGINEER'S REPORT

Steve Witte reported on the following:

- River and Reservoir Report
 - Reference Arkansas River Daily Report. River Call is:
 - (1) 3/1/1910 Winter Water
 - (2) 5/31/1949 Compact Call (State line to John Martin)
 - <http://www.dwr.state.co.us/div2/aras/arascal.asp>
- Current River and Reservoir Operations
 - The System Grand Total as of February 1 for Winter Water Storage is currently 92,058 af which is approximately 12.8 percent below last year (105,593 af) but 2.7 percent above of the previous 20 year average (89,585 af)
 - (1) Too unbalanced in lower basin to balance at the present time
 - (2) Program will end before next scheduled District Board meeting on March 16, 2017
 - John Martin Storage resumed November 1, conservation storage as of February 1 (17,530 af) is 22.6 percent below last year (22,655 af) but 33.7 percent above the 1950-1975 average (13,103 af)
- Anticipating Ground Water Use Rules Replacement Plan Submittals March 1, 2017
- Compact Issues
 - ARCA Special Engineering Committee met in Burlington, CO on February 14, 2017
 - Topics
 - (1) Additional source of water for John Martin Permanent Pool
 - (2) Remaining concerns related to the LAWMA decree 02CW181
 - Next meeting will occur on March 7 or 11, 2017 in either Burlington, CO or Garden City, KS

Mr. Phil Reynolds, Division 2 Reservoir Operations Coordinator, shared historical data regarding the volumes of water stored in Pueblo Reservoir over the life of the reservoir and shared some related observations in a PowerPoint presentation titled, *Pueblo Reservoir 42 Years of Storage*.

U.S. GEOLOGICAL SURVEY REPORT

None

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STATE LEGISLATION UPDATE

Lee Miller reported the General Assembly has completed more than a quarter of the no more than 120 consecutive calendar days allowed for the 2017 session. The last day upon which the General Assembly may adjourn sine die is May 10, 2017. 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. Summaries of the weekly State Affairs Committee meetings are posted on the Board Legislation page. The Board was provided the Colorado Water Congress State Affairs 2017 Bill Status Sheet, and weekly updates are posted to the Board website.

As reported in the last Board meeting, work continues on legislation to address the Colorado Supreme Court's (the Court) decision in *St. Jude's Company v. Roaring Fork Club, LLC*, decided in 2015. In the case of *St. Jude's*, the Court held that direct diversions of water from a river to a private flow-through ditch for proposed uses as aesthetic, recreational, and piscatorial amenities to a private golf course development, private fishing habitat, and private fly-fishing stream do not qualify as beneficial uses of water under Colorado water law.

In reaching the holding, the Court reasoned that recognition of such uses would substantially undermine the intent of Colorado's instream flow and recreational in-channel diversion water rights statutes. The Court specifically stated that it was for the general assembly to approve such unconventional uses as it has done with instream flows and recreational in-channel diversions.

The Court's opinion in the *St. Jude's* case has created uncertainty with regard to how the holding affects a number of existing direct diversion water rights decreed for these purposes that are not authorized and how such water rights should be administered. The Court's opinion has also created uncertainty regarding written water use agreements for such uses of water released from storage.

Lee Miller said two other bills of interest involve the Open Records Act and allowing Project water to be used for hemp. He will keep the Board updated on these issues.

INFORMATIONAL ITEMS:

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

- Water Court Resume
- Catlin Augmentation Association (Case No. 12CW94)
- NWRA Federal Water Issues Conference
- Arkansas River Basin Water Forum

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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 11:30 a.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary

