

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

January 19, 2017

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, January 19, 2017 at 10:08 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	Carl McClure
Howard "Bub" Miller	Jay Moore	Pat Edelmann
Tom Goodwin	Curtis Mitchell	Dallas May
Mark Pifher		
Alan Hamel-Advisory Board Member		

DIRECTOR(S) ABSENT AND EXCUSED:

Vera Ortegon and David Simpson

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; Special Water Counsel Alix Joseph and Katie McAuley; and Federal Lobbyists Ray Kogovsek and Christine Arbogast.

VISITORS PRESENT:

Tom Simpson, Aurora Water; Doug Fitzgerald, U.S. Congressman Scott Tipton's office; Roy Vaughan, U.S. Bureau of Reclamation; Bill Banks, U.S. Geological Survey; Jerry Peña, GEI Consultants; Alan Ward, Board of Water Works of Pueblo; Curt Thompson, AECOM; Bob Hartzman, City of Canon City Water; Roy Heald, Security Water District and Fountain Valley Authority; Gary Barber, citizen; Bob Hamilton, citizen; Brett Gracely, Colorado Springs Utilities; Kevin Niles, AGUA; Keith Goodwin, Otero County; and Mark Scott, GHD.

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 December 8, 2016 Board meeting were posted to the Board website for review, and if there were any corrections or additions. Hearing none, Mr. Bostrom moved, seconded by Mr. Howard “Bub” Miller, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Nichols reported the financial statements for November and draft December 2016 were posted to the Board website for review. Treasurer Nichols moved, seconded by Mr. Karney, for acceptance of the November and draft December 2016 financial statements and payment of the January 2017 bills. Motion unanimously carried.

CONSENT ITEMS:

None

PRESENTATIONS:

None

ACTION ITEMS:

OPEN MEETING RESOLUTION NO. 2017-01D

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 the 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. Edelman moved, seconded by Mr. Pifher, to adopt Resolution No. 2017-01D, A Resolution Relating to the Compliance by the Southeastern Colorado Water Conservancy District with the Colorado Open Meeting Law. Motion unanimously carried.

APPROVAL OF A STIPULATION IN THE APPLICATION OF FOUNTAIN (CASE NO. 15CW3068)

Alix Joseph reported the City of Fountain’s Case No. 15CW3068 is an application for a change of water right, plan for augmentation, and exchanges. The City of Fountain (Fountain) requests to quantify the historical consumptive use of its decreed water right for the Dr. Rogers Ditch, and to change the decreed uses from direct flow for irrigation use to irrigation, all municipal uses, and use for replacement, storage, exchange, and augmentation. The Ditch diverts water from Fountain Creek. Fountain plans to store the consumptive use credits from the Ditch, and any return flows resulting from use of the consumptive use credits, in Pueblo Reservoir (among other facilities). Fountain also plans to use the consumptive use credits and return flows to replace out-of-priority depletions from wells included in Fountain’s augmentation plan by releases from Pueblo Reservoir (of credits exchanged to storage) and deliveries from storage in Pueblo Reservoir to Fountain via the Fountain Valley Conduit or the Southern Delivery System Pipeline.

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Special water counsel provided comments on a proposed decree July 2016, and received a revised proposed decree dated December 6, 2016. The deadline for the ruling of the referee is February 28, 2017.

The District's objectives in Case No. 15CW3068 are to ensure that: (1) Fountain's proposed storage and use of Pueblo Reservoir is consistent with its storage contract terms; (2) appropriate terms and conditions govern Fountain's use of Project facilities, including Pueblo Reservoir and the Fountain Valley Conduit, by including the District's standard language terms on Project facilities; (3) Fountain's requested exchanges to Pueblo Reservoir do not interfere with the WWSP by including the District's standard language; and (4) terms and conditions are consistent with previous District stipulations (including stipulations in lieu of opposition) in previous Fountain cases.

Alix Joseph said that special water counsel, general counsel, and District staff believe that the December 2016 Proposed Decree satisfies the District's objectives.

Mr. McClure moved, seconded by Mr. Edelmann to authorize special water counsel to execute a stipulation in Case No. 15CW3068 with the City of Fountain consenting to entry of a decree that is no less restrictive on Fountain and no less protective of the District than the proposed decree dated December 6, 2016. Motion passed with Mr. Mitchell abstaining.

APPROVAL OF STIPULATIONS IN SOUTHEASTERN'S EXCHANGE CASE, (CASE NO. 06CW8)
Alix Joseph reported 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. Southeastern provided its expert disclosures and Wilson Water Group's expert report on October 5, 2016. Any remaining Opposers' expert disclosures are due January 30, 2017. The case is set for a ten-day trial beginning June 5, 2017.

Following comments from several Opposers and review with the Board in executive session in November 2015, the District provided a revised proposed decree to all parties dated January 27, 2016. The revised proposed decree limited the sources of water that can be used in the exchange to additional shares of those ditches already being used in the exchange. The proposed decree also provided 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. Several parties stipulated to this decree with minor modifications. Further minor modifications have been requested by Reclamation, Aurora, AVDA and High Line. Reclamation requested some changes in the description of the sources

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of water to be consistent with the AVC EIS. Aurora requested changes to the references to the High Line Canal and the ROY case (06CW120) and the applicable legal standards. AVDA and High Line requested clarification on use of structures owned by others. The U.S., Aurora, AVDA, and High Line each have signed stipulations agreeing to proposed decree terms with the revisions each requested.

After addressing the minor modifications requested by Reclamation, Aurora, AVDA, and High Line, District staff and legal counsel began considering how to address the more substantial concerns expressed by Tri-State. In particular, Tri-State wanted the proposed decree specify where the replacement water would be diverted, where the replacement water would be measured and discharged to the river and where the replacement water would actually reach the river. Addressing this concern resulted in reorganizing the proposed decree. The revised proposed decree also (1) includes additional findings ensuring this Application is not deemed speculative (§§15 and 25); (2) clarifies which of the sources of water included in the AVC EIS have been changed for use in this exchange (§11.4); (3) requires that additional structures used in operating the exchange be approved by the Division Engineer's Office (§9.7); (4) limits the mechanisms by which Southeastern or a Constituent Entity may obtain a temporary change of use of water rights for use in this exchange (§11.6); and (5) clarifies that the exchange will be used for municipal purposes, consistent with the AVC EIS (§12.3). Tri-State's counsel has agreed to settlement based on the January 10, 2017 proposed decree. If the Board authorizes all the stipulations recommended in this Action Item, there will be no remaining Opposers who have not stipulated to entry of a decree in this matter.

The District's objectives in this case are to (1) obtain a conditional decree for Southeastern's exchange of non-Project water; (2) negotiate co-equal exchange priority vis-à-vis applications in Case Nos. 05CW96 (CS-U) and 05CW107 (Lamar); (3) negotiate procedures for ditch company consent to use of facilities; (4) define the scope of the exchanges as supporting operations discussed in the EIS for the AVC and Excess Capacity; (5) confirm procedures with Division Engineer's Office for administration and accounting of Southeastern's exchanges. None of the changes requested by Tri-State compromise the District's ability to achieve the stated objectives, as this proposed decree adjudicates a conditional exchange with a priority that is shared with CS-U's exchange adjudicated in Case No. 05CW96 (pursuant to the District's February 2016 stipulation with CS-U) and senior to the exchange adjudicated by Lamar in Case No. 05CW107(B), which has an appropriation date of December 30, 2005. The proposed decree requires Southeastern or a Constituent Entity to obtain consent of the owner to use facilities prior to operation of the exchange, but not prior to entry of a decree in this matter. Finally, the proposed decree limits the water to be exchanged to those water rights analyzed in the AVC EIS for municipal purposes. Legal counsel does not anticipate there will be any issues with administration of this Decree because Wilson Water Group has been in communication with the Division Engineer's Office. Nonetheless, legal counsel is sending a copy of this proposed decree to the State for its consideration so that discussion of any concerns may be had before we asking the Court to enter a final Decree.

Mr. Bostrom moved, seconded by Mr. Hazard, to authorize special water counsel to execute stipulations in Case No. 06CW8 with (1) the United States Bureau of Reclamation consenting to entry of a decree

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that is no less restrictive on the District than the proposed decree dated July 21, 2016; (2) the City of Aurora consenting to entry of a decree that is no less restrictive on the District than the proposed decree dated August 29, 2016; (3) Arkansas Valley Ditch Association and High Line Canal Company consenting to entry of a decree that is no less restrictive on the District than the proposed decree dated October 24, 2016; and (4) Tri-State Generation and Transmission Association, Inc. consenting to entry of a decree that is no less restrictive on the District than the proposed decree dated January 10, 2017. Motion passed with Mr. Karney abstaining.

WATER COURT RESUMEColorado Water Protective and Development Association, Edison School District 54JT, and Fountain Mutual Irrigation Company (Case No. 16CW3080)

Garrett Markus reported the Colorado Water Protective and Development Association (CWPDA), Edison School District 54JT, and Fountain Mutual Irrigation Company (FMIC) submitted an application to include an additional augmented structure in CWPDA's plan for augmentation approved in Case No. 07CW128 (Post 1985 Augmentation Plan) pursuant to paragraph 13.210 for Edison School District. CWPDA also proposes a change of water rights of one share of FMIC on a pro-rata basis owned by Edison School District and leased to CWPDA. Staff and legal counsel recommend filing a statement of opposition to ensure the augmentation plan utilizes Fryingpan-Arkansas Project water Return Flows appropriately by the Allocation Principles and Policies, the winter time depletions do not interfere with the Winter Water Storage Program, and the Fryingpan-Arkansas Project water Return Flows are maintained in Fountain Creek.

Mr. Hazard moved, seconded by Mr. Pifher, to authorize special water counsel to file statements of opposition in Case No. 2016CW3080 – Colorado Water Protective and Development Association, Edison School District 54JT, and Fountain Mutual Irrigation Company. Motion unanimously carried.

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

Roy Vaughan presented a PowerPoint presentation reviewing the following:

- As of January 11, 2017 there were 214,296 acre-feet stored in Pueblo Reservoir; 134,442 acre-feet of Project water; 41,694 acre-feet of Excess Capacity water; 38,158 acre-feet of Winter water.
- There is currently 110,931 acre-feet of Project space in Pueblo Reservoir and 42,192 acre-feet of space in Turquoise and Twin Lakes Reservoirs.
- Project Reservoirs: Turquoise 98%; Twin Lakes 96%; Pueblo 127%
- Total M&I Project Water in the System
- Arkansas River Basin Time Series Snowpack Summary January 18, 2017
- Upper Colorado River Basin Time Series Snowpack Summary January 18, 2017
- U.S. Drought Monitor-West, January 17, 2017

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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 40,000 acre-feet from the upper reservoirs. The movement of water will be adjusted according to the forecast and customer's needs.

DIVISION ENGINEER'S REPORT

None

U.S. GEOLOGICAL SURVEY REPORT

Bill Banks presented a PowerPoint presentation reviewing the following:

- Runoff Hydrograph-Hydrograph of Cumulative 28 Average-Colorado
- Map of 28-Day Average Streamflow Compared to Historical Streamflow-January 18, 2017
- Animation of Daily Streamflow Maps-January 2017
- Duration Hydrograph
- Cumulative Hydrograph Arkansas River Near Avondale, CO
- Specific Conductance-January 18, 2017

STATE LEGISLATION UPDATE

Lee Miller reported the 2017 session of the General Assembly was called to order on January 11, 2017. The Colorado Constitution limits the length of regular legislative session to no more than 120 consecutive calendar days. The last day upon which the General Assembly may adjourn sine die is May 10, 2017. The General Assembly may adjourn earlier than that date, but not later than May 10. 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.

Bills are currently being introduced. Each of the legislators must file their first three bills by early next week; the deadline is different for the House and the Senate.

Lee Miller reported two Colorado Supreme Court cases, *St. Jude's Company v. Roaring Fork Club, LLC*, decided in 2015, and *Grand Valley Water Users Association v. Busk-Ivanhoe, Inc.*, decided this past December, have created interest in addressing concerns of the water community through legislation.

First, in the case of *St. Jude's Company*, the Colorado Supreme Court (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 its 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.

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The court's opinion in the *St. Jude's Company* 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.

Both west and east slope water users' attorneys have been meeting separately and together to fashion legislation that would address the St. Jude's holding.

Recently, the Colorado Supreme Court issued its decision in Aurora's Busk-Ivanhoe change case. The Court held that the right to store water in the basin of import is not an automatic incident of trans-mountain water rights, and that storage must either be:

- (1) reflected explicitly, or
- (2) implied in the decree.

The District's 1959 Supplemental Decree in C.A. 4613 (Garfield County) explicitly provides for eastern slope storage of its trans-mountain diversion rights in Sugar Loaf (Turquoise) Reservoir, Twin Lakes Reservoir, and Pueblo Reservoir. Therefore, the Court's holding in Busk-Ivanhoe does not put the District's trans-mountain storage rights at risk when Project water is stored in those reservoirs.

Many trans-basin and trans-mountain diverters are concerned about the Court's ruling regarding storage in the basin of import, because their decrees lack the specificity that appears in the District's 1959 Supplemental Decree.

There has been discussion among east slope water users about possibly addressing this issue, although no draft legislation has come forth.

INFORMATIONAL ITEMS:

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

- Water Court Resume
- Quarterly Legal Report
- Director Appointments
- 2017 Board Meeting Schedule
- Colorado Water Congress Annual Convention – January 25-27, Denver
- DARCA Convention – February 15-17, Ignacio
- Annual Family Farm Alliance Conference – February 23-24, Las Vegas

Mr. Broderick showed the Board the two binders that make up the 2017 Conservation and Management Plan, that staff has been working on. Staff has also been working on the business plan, strategic plan, and will begin the annual audit process.

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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 11:18 a.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary
