

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

July 20, 2017

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, July 20, 2017 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	Kevin Karney
Gibson Hazard	Tom Goodwin	Howard "Bub" Miller
Carl McClure (arrived at 9:54)	Curtis Mitchell	Dallas May
Mark Pifher	Seth Clayton	Alan Hamel
Greg Felt		

DIRECTOR(S) ABSENT AND EXCUSED:

Gary Bostrom and Vera Ortegon

DISTRICT OFFICIALS PRESENT:

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

VISITORS PRESENT:

Tom Simpson, Aurora Water; Abby Ortega, Colorado Springs Utilities; Shane Hayden, U.S. Bureau of Reclamation; Doug Fitzgerald, Congressman Scott Tipton's office; Cathy Garcia, U.S. Senator Cory Gardner's office; Roy Heald, Security Water District and Fountain Valley Authority; Mark Scott, GHD; Jerry Peña, GEI Consultants; Katiana Dillon, Wells Fargo Securities; Kevin Niles, Arkansas Groundwater Users Association; Bob Hamilton, retired; and Steve Witte, Colorado Division of Water Resources.

INTRODUCTION OF VISITORS:

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

RECORD OF PROCEEDING

ACTION ITEMS:

SWEARING IN OF APPOINTED BOARD MEMBERS

Lee Miller said he had received a Court Order appointing Alan C. Hamel to fill the vacancy of Pat Edelmann, which will expire April 19, 2018. He asked that Mr. Hamel stand and repeat the oath. After reading the oath, Mr. Hamel was asked to sign the oath, for filing with the court.

President Long welcomed Mr. Hamel back as a voting member of the Board. Mr. Hamel has been serving as an Advisory Board member.

APPROVAL OF MINUTES:

President Long said the minutes of the June 15, 2017 Board meeting were posted to the Board website for review, and if there were any corrections or additions. Hearing none, Mr. Clayton moved, seconded by Mr. Howard "Bub" Miller, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

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

ACTION ITEMS CONTINUED:

GRAPE CREEK EXCHANGE DILIGENCE APPLICATION

Lee Miller reported the Board directed the District's legal counsel to file the application for exchange rights on Grape Creek in 1999, and approved stipulations with the opposing parties, leading to the Water Court (Division 2) decree entered on August 9, 2011.

The District holds conditional exchange rights on Grape Creek, decreed in Case No. 99CW160 (Water Division 2). The deadline is approaching to file a diligence case to continue those decreed conditional rights, and to make some of the rights absolute. In 99CW160, the District sought exchange rights allowing it to store Project water in DeWeese Reservoir and to deliver Project water to its constituents with water systems and facilities on Grape Creek, including the DeWeese-Dye Ditch & Reservoir Company (DeWeese-Dye).

Under the conditional exchange rights decreed in Case No. 99CW160, the District can exchange Project water from the confluence of the Arkansas River and Grape Creek upstream to storage in DeWeese Reservoir and for diversion at the DeWeese-Dye Main Ditch. The total exchange rate conditionally decreed in Case No. 99CW160 is a maximum of 31.85 c.f.s. to the DeWeese-Dye Main Ditch, with a limit of 4,132 a.f./year on exchange to DeWeese Reservoir. DeWeese-Dye and other constituents receiving allocated Project water through this exchange must use the water within District boundaries and subject to the District's allocation principles and policies.

Diligence applications must be filed every six years to show that the Applicant is working towards appropriating and using any conditionally-decreed water rights. The first diligence application for the Grape Creek Exchange must be filed no later than August 31, 2017. The conditional exchange rights will

RECORD OF PROCEEDING

be cancelled if no diligence application is filed by that date. If part of the conditional exchange right is made absolute in this first diligence case, the District will need to file another application for a finding of reasonable diligence six years later, but only for the portion that remains conditional.

With a diligence application, the District may also apply to convert some of its conditional rights to absolute rights, if it has sufficient evidence to do so. The District started exchanging Project water to the DeWeese-Dye structures on September 19, 2011. To date, the maximum volume of water exchanged to DeWeese Reservoir in a year is 300 a.f., and the maximum daily average flow rate exchanged was 29.95 c.f.s. The evidence for these amounts is sufficient to request that the conditional water rights decreed in 99CW160 be made absolute in part.

The Board was provided a copy of the proposed Resolution No. 2017-02D directing Special Water Counsel to file an application for diligence and to make part of the conditional exchange right absolute. It explains the need to seek a finding of reasonable diligence to maintain the District's conditional exchange rights decreed in Case No. 99CW160, and the basis to apply to make part of those conditional rights absolute. It directs Special Water Counsel to file an application for diligence and partially absolute rights, consistent with Attachment 2 (our current draft application). By adopting the proposed resolution, the Board will show the District's intent to seek a finding of reasonable diligence, to make part of the conditionally-decreed exchange rights absolute, and to continue development and use of the remaining conditional rights.

Mr. Goodwin moved, seconded by Mr. Felt, the Board adopt Resolution No. 2017-02D, which authorizes Special Water Counsel to file an application for diligence with the Water Court by August 31, 2017, including a claim to make part of the District's conditional Grape Creek Exchange rights absolute. Motion unanimously carried.

STIPULATION IN DISTRICT'S DIVISION 2 APPLICATION, CASE NOS. 16CW3076 AND 16CW3079

Lee Miller reported to the Board that legal counsel discussed these cases in executive session in September 2016. On October 20, 2016, through Resolution No. 2016-02D, the Board directed Special Water Counsel to file the Applications in these cases.

Several of the District's decreed Fryingpan-Arkansas Project (Project) water rights in Division 2, on the East Slope, are conditional. These rights include some of the storage rights decreed to Pueblo Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, and six rights related to the Project's unbuilt Arkansas Power Canal System (APCS): Malta Canal, Otero Conduit, Otero-Wapaco A, Otero-Wapaco B, Wapaco Diversion, and Chalk Creek Diversion (collectively, "six APCS rights").

On October 20, 2016, through Resolution 2016-02D, the Board authorized Special Water Counsel to file (1) an Application for Diligence with the Water Court during November 2016 to maintain the District's remaining conditional water rights decreed in Water Division 2 to Pueblo Reservoir, Turquoise Lake, Twin Lakes Reservoir, and the six APCS rights, and (2) an Application for Change of Conditional Water

RECORD OF PROCEEDING

Rights with the Water Court before November 30, 2016, to change the District's conditional water rights decreed in Division 2 for the six APCS rights to allow diversion and storage of those water rights at Pueblo Reservoir. The Board also authorized abandonment of ten other conditional water rights. Accordingly, Special Water Counsel filed a Diligence Application on November 29, 2016 (Case No. 16CW3079), which included notice of abandonment of the ten other conditional rights, and filed a Change Application on November 23, 2016 (Case No. 16CW3076) to change the District's six 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.

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.

Six parties filed Statements of Opposition in Case No. 16CW3079 in January 2017, including Pueblo Water, District 67, and Amity. Pueblo West Metropolitan District (Pueblo West) filed a motion to intervene in the case and a Statement of Opposition on June 22, 2017, and the Water Referee granted Pueblo West's motion and accepted its statement of opposition for filing on June 26, 2017. The District circulated a proposed decree to opposing parties on March 3, 2017. The District subsequently revised the proposed decree on June 13, 2017 for consistency with the First Amendment to the Application in Case No. 16CW3076. The proposed decree finds diligence and would continue the conditional rights in the Diligence Application for another six years. Pueblo Water will stipulate to entry of a decree no less restrictive on the District than the June 13 proposed decree, and counsel for District 67 and Amity is recommending that those parties' boards approve a similar stipulation to the June 13 proposed decree. The June 13 proposed decree was provided for the Board to review.

If the Board approves stipulations with District 67, Amity, and Pueblo Water, four opposing parties will remain: Colorado Water Conservation Board (CWCB), Lower Arkansas Water Management Association (LAWMA), Pueblo West, and Tri-State Generation and Transmission Association, Inc. (Tri-State). The case is on the Referee's docket through January 2018.

Case No. 16CW3076 - Change

The District's objectives in Case No. 16CW3076 are to (1) change the point of diversion for the District's six conditional APCS water 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 District's conditional water 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 legal descriptions.

RECORD OF PROCEEDING

Eleven parties filed Statements of Opposition in Case No. 16CW3076, including Pueblo Water, District 67, and Amity. The District circulated a proposed decree and a preliminary engineering report to opposing parties on March 23, 2017. The District then revised the proposed decree for consistency with First Amendment to the Application.

Pueblo Water requested revisions that the District obtain written permission for use of Clear Creek Reservoir, which Pueblo Water owns, and to add the Bureau of Land Management as one of the agencies that manages federal land at Clear Creek Reservoir. District 67 and Amity requested that the criteria used to determine when the District may divert the changed rights be based on when John Martin Reservoir is administered as spilling pursuant to *Kansas v. Colorado*. Wilson Water Group reviewed and approved this revision. These changes do not compromise the District's ability to achieve the objectives for this application. Thus, Special Water Counsel, General Counsel, and District staff believe that the proposed decrees dated June 12 and 13, 2017 satisfy the District's objectives.

If the Board approves stipulations with District 67, Amity, and Pueblo Water, eight opposing parties will remain: City of Aurora, City of Colorado Springs, CWCB, LAWMA, Penrose Water District, Public Service Company of Colorado, Pueblo West, and Tri-State. The case is on the Referee's docket through January 2018.

Mr. Hazard moved, seconded by Mr. Goodwin, to authorize Special Water Counsel to execute stipulations in the District's Change Case No. 16CW3076 and Diligence Case No. 16CW3079 with (1) Pueblo Water, consenting to entry of decrees that are no less restrictive on the District than the proposed decrees dated June 12, 2017 and June 13, 2017, respectively, and (2) District 67 and Amity, consenting to entry of decrees that are no less restrictive on the District than the proposed decrees dated June 13, 2017. Motion unanimously carried.

STIPULATION IN STONEWALL SPRINGS QUARRY LLC APPLICATION, CASE NO. 16CW3094
Lee Miller reported the Board authorized Special Water Counsel to file a Statement of Opposition in Case No. 16CW3094 in February 2017.

Applicants filed the application in Case No. 16CW3094 on December 28, 2016. The District filed a Statement of Opposition on February 16, 2017. Case No. 16CW3094 seeks a plan for augmentation to augment wells (some inside the District and some outside the District) with AGUA shares and water stored in the Stonewall Reservoir Complex or other leased water. Among the augmentation sources are AGUA water stored in Pueblo Reservoir, and Project Water and/or Project Water Return Flows allocated to AGUA and the Excelsior Ditch.

The District's objectives in Case No. 16CW3094 are to ensure that: (1) the proposed decree contains appropriate terms and conditions to protect the District's rights in the allocation and sale of Project water and Project water Return Flows; (2) all use of Excelsior water rights and revegetation of historically irrigated land is in accordance with the decree in Case No. 04CW62; (3) the proposed decree specifies that Applicants will use Pueblo Reservoir consistent with AGUA's excess capacity contract, the District's and Reclamation's policies, and Case Nos. 04CW62 and 03CW119; (4) all depletions to the Arkansas River

RECORD OF PROCEEDING

are replaced in an appropriate time, place, and manner; and (5) the Court retains jurisdiction for an appropriate time frame. The attached proposed decree satisfies all of these objectives.

Paragraph 9.C of the proposed decree specifies that Applicants may only use Project water and Project water Return Flows in a manner consistent with the District's terms and conditions, and includes relevant terms and conditions from the Standard Language Memorandum. The proposed stipulation specifies which wells are eligible to receive Project water/Project water Return Flows. Special Water Counsel believes these conditions protect the District's rights in the allocation and sale of Project water and Project water Return Flows.

Paragraph 13 of the proposed decree includes language requested by the District that specifies that use of Excelsior water rights and revegetation of historically irrigated land will be consistent with the terms of the decree in Case No. 04CW62. Similarly, paragraph 9.B specifies that Applicants will only use Pueblo Reservoir under AGUA's contract, consistent with the District's and Reclamation's policies, and Case Nos. 04CW62 and 03CW119. Paragraph 10.G of the proposed decree describes how the replacement sources will release to the Arkansas River, and paragraph 13 requires that replacement calculations are made in accordance with the decree in Case No. 04CW62. Paragraph 20 requires that the court retain jurisdiction for 5 years after the augmentation plan becomes 80% operational, which should be sufficient for the District to evaluate whether operation of the augmentation plan will result in injury.

Mr. Mitchell moved, seconded by Mr. Karney, to authorize Special Water Counsel to enter into a stipulation with Applicants consistent with Stipulation between Applicant and Southeastern Colorado Water Conservancy District, consenting to entry of a decree that is no less restrictive on Applicants and no less protective of the District than the proposed decree dated May 31, 2017. Motion unanimously carried.

CONSENT ITEMS:

None

PRESENTATIONS:

None

MONTHLY/QUARTERLY REPORTS

DIVISION ENGINEER'S REPORT

Steve Witte submitted a written report as follows:

- River and Reservoir Report
 - 1) Reference Arkansas River Daily Report. River Call is:
 - 1/6/90, 9/25/1889 Highline /Holbrook
 - 8/31/1893 Fort Lyon
 - 2/21/1887 Amity (local)
 - 5/31/1949 Compact Call

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

- 2) Current River/Reservoir Operations

RECORD OF PROCEEDING

- Pueblo Reservoir
- John Martin Conservation Storage ended July 17, 2017
 - (1) Estimated call thru 8 days (Agreement B)
 - (2) Kansas has called for a release 350 cfs.

- Compact Issues
 - 1) ARCA Special Engineering Committee – No progress
 - Topics
 - (1) Remaining concerns related to the LAWMA decree 02CW181
 - (2) New account in John Martin Reservoir
 - (3) Agreement we got with Kansas related to the new source for the Permanent Pool in John Martin Reservoir

- Administrative Activities
 - 1) Enforcement Actions
 - 17CW3032, WD-13
 - 17CW3030, WD-11
 - 17CW_____, (Eagle Rising) WD-10
 - 2) Arkansas River Decision Support Contracts have been finalized with
 - Wilson Water Group (Surface Water/Consumptive Use Model),
 - HRS Water Consultants (GIS and spatial data) and
 - Leonard Rice Engineers (Administrative tools for improvements for Division of Water Resources and Ark Basin Water Users).

- Personnel
 - 1) State Engineer – Kevin Rein
 - 2) CWCB Director (ARCA head of delegation) – Rebecca Mitchell
 - 3) WD 12 – Josh Kaspar transferred to Division 4

U.S. GEOLOGICAL SURVEY

None

STATE LEGISLATION UPDATE

None

INFORMATIONAL ITEMS:

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

- Water Court Resume
- State Legislative Update
- NWRA Western Water Seminar – August 8-10 – Santa Fe, NM
- Colorado Water Congress Summer Conference – August 23-25 – Vail

RECORD OF PROCEEDING

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 10:15 a.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary

