

RECORD OF PROCEEDING

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**SOUTHEASTERN COLORADO WATER  
CONSERVANCY DISTRICT**

**MINUTES**

**May 19, 2016**

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, May 19, 2016 at 9:53 a.m. at the District office, 31717 United Avenue, Pueblo, Colorado. The District meeting was recessed at 10:02 a.m., and reconvened at 10:38 a.m.

President Long announced a quorum was present.

**DIRECTORS PRESENT:**

Bill Long	Ann Nichols	Gary Bostrom
Vera Ortegon	Gibson Hazard	Kevin Karney
Carl McClure	Howard "Bub" Miller	Pat Edelmann
David Simpson	Curtis Mitchell	Tom Goodwin
Jay Moore	Mark Pifher	

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

Dallas May and Alan Hamel-Advisory Board Member

**DISTRICT OFFICIALS PRESENT:**

Executive Director James Broderick; General Counsel Lee Miller; Administrative Manager Toni Gonzales; Principal Engineer Kevin Meador; Water Resource Specialist/Engineer Garrett Markus; Finance Coordinator/IT Leann Noga; and Special Water Counsel Steve Leonhardt and Alix Joseph.

**VISITORS PRESENT:**

Chris Woodka, The Pueblo Chieftain; Tom Simpson, Aurora Water; Roy Vaughan, U.S. Bureau of Reclamation; Steve Witte, Colorado Division of Water Resources-Division 2; Dan Hyatt, Town of Fowler; Jim Baldwin, Otero County; Mitchell Downs and Hillary Carlson, Osborne, Parsons & Rosacker, LLP; Terry Book, Board of Water Works of Pueblo; Mike Weber, Colorado Water Protective Development Association; Kevin Niles, Arkansas Groundwater Users Association; Curt Thompson, AECOM; Tammy Ivahnenko, U.S. Geological Survey; Bob Hartzman, Canon City Water Department; Kortney Kelly, Fountain Valley Authority; Cathy Garcia, U.S. Senator Cory Gardner's office; Erika Chaves, U.S. Representative Ken Buck's office; Harold Miskel, citizen; and Jerry Peña, GEI Consultants.

**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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**ACTION ITEMS:**

**SWEARING IN OF APPOINTED BOARD MEMBERS**

Lee Miller said he had received a Court Order appointing Vera Ortegon to a four-year term on the District Board. He asked Mrs. Ortegon to stand and repeat the oath. After reading the oath, Mrs. Ortegon was asked to sign the oath, for filing with the court.

President Long congratulated the reappointed member Mrs. Ortegon.

**APPROVAL OF MINUTES:**

President Long said the minutes of the April 21, 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. Karney, to approve the minutes. Motion unanimously carried.

**FINANCE COMMITTEE REPORT:**

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

**CONSENT ITEMS:**

None

**PRESENTATIONS:**

**2015 ANNUAL AUDIT**

President Long convened the District Board meeting to order at 9:53 a.m. to be held in conjunction with the Enterprise Board meeting to present the 2015 Annual Audit presentation.

Mitchell Downs, from Osborne, Parsons & Rosacker, LLP., who represents the firm that conducted the 2015 audit read the Independent Auditor's Report. Treasurer Nichols recognized the work of Leann Noga and the staff with assisting the auditors with the audit process.

**ACTION ITEMS-CONTINUED:**

**ACCEPTANCE OF 2015 ANNUAL AUDIT**

Treasurer Nichols moved, seconded by Dr. Moore, the audit of the 2015 finance statements of the District be approved as presented. Motion unanimously carried.

**APPROVAL OF 2015 FINANCIAL STATEMENTS**

Treasurer Nichols moved, seconded by Mr. Pifher, that the 2015 finance statements of the District be approved as audited. Motion unanimously carried.

**LAKE COUNTY (CASE NO. 98CW173): APPROVAL OF STIPULATION**

Mr. Leonhardt reported Case No. 98CW173 is Lake County's umbrella augmentation plan, including a change of water right and exchanges to augment stream depletions from structures within Lake County.

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Lake County will provide augmentation in two areas. Lake County will use its consumptive use water from its Derry Ditch No. 3 right, transmountain sources stored in Twin Lakes and available to Lake County pursuant to its 2014 Amended IGA with Aurora, and stored water from its Birdseye Gulch Reservoir conditional right as augmentation sources. Lake County is changing the Derry Ditch No. 3 water right (an 1884 priority on a tributary to Lake Creek) in this case for use in this augmentation plan.

The District's objectives for this case are to (1) evaluate Applicant's proposed decree and engineering for impacts to the District water rights and interests in Lake County; and ensure that (2) Applicant secures contract exchanges or other sources of replacement supply to sufficiently augment depletions, including depletions to Turquoise Reservoir and Lake Fork, or excludes augmentation at such locations if no suitably located replacement supplies are available; (3) the proposed decree contains terms and conditions establishing appropriate procedures, including notice to Opposers and approval by the Division Engineer, for adding new replacement water supplies and for inclusion of augmented structures in the plan for augmentation; (4) the augmentation plan makes sufficient provision for replacement of all out of priority depletions in time, place, and amount to the extent needed to avoid injury to the District's water rights; (5) the proposed decree includes terms and conditions to protect the VFMP; (6) the proposed decree contains terms and conditions protecting the District's exchanges from injury; (7) the proposed decree includes terms and conditions for the use of Twin Lakes Reservoir and Turquoise Reservoir, or by including appropriate terms and conditions confirming Lake County's right to use one or both Project facilities arising under Aurora's contractual rights and the County's Amended IGA with Aurora; and (8) the proposed decree includes terms and conditions to protect the WWSP.

General counsel and special water counsel believe that the proposed decree satisfies these objectives.

Trial is scheduled for January 9, 2017.

Mrs. Ortegon moved, seconded by Mr. Bostrom, to authorize special water counsel to enter into a stipulation with Lake County consenting to entry of a decree in Case No. 98CW173 that is no less restrictive on Lake County and no less protective of the District than the proposed decree dated April 29, 2016. Motion unanimously carried.

**CWPDA (CASE NO. 07CW128): APPROVAL OF STIPULATION**

Alix Joseph reported Case No. 07CW128 is Colorado Water Protective Development Associations (CWPDA) application for a plan for augmentation. In this case, CWPDA seeks court approval of an augmentation plan to replace out-of-priority depletions for approximately twenty-five member wells, which are not being replaced pursuant to other decreed augmentation or replacement plans. Depletions will accrue above and below Pueblo Reservoir. Replacement will be made from several sources including Project Return Flows. Case No. 07CW128 has been re-referred to the Water Judge and is set for trial beginning June 13, 2016.

The District's objectives in this case are to ensure: (1) all depletions are appropriately replaced to avoid injury to the District's water rights and exchanges; (2) the decree is clear that it does not adjudicate exchanges; (3) the decree includes appropriate terms and conditions for adding wells to the

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augmentation plan to avoid injury to water rights; (4) protect the Voluntary Flow Management Program (VFMP); (5) proper limits, consistent with the Board of Water Works Pueblo (Pueblo Water) contract, on storage of non-Project water in Pueblo Reservoir for use outside the District; (6) delivery and use of Project Water and Project Return Flows in CWPDA's plan for augmentation is consistent with the District's Policies; (7) appropriate use of Project facilities; (8) the decree clearly reflects when use of Twin Lakes Reservoir is pursuant to a contract with the Bureau of Reclamation for use of Project facilities and when it is pursuant to other rights CWPDA may have; (9) use of Winter Water is consistent with the Winter Water Storage Program (WWSP) Decree in Case No. 84CW179; (10) any depletions occurring outside of the irrigation season are replaced to avoid injury to the WWSP; (11) the decree clearly delineates which wells are located outside District boundaries; and (12) prior to use of Project Water or Project Return Flows, CWPDA demonstrates that lands on which irrigation water is used are eligible to receive Project Water. General and Special Water Counsel believe that the attached proposed decree satisfies these objectives.

Mr. Simpson moved, seconded by Mr. Karney, to authorize special water counsel to enter into a stipulation with CWPDA consenting to entry of a decree in Case No. 07CW128 that is no less restrictive on CWPDA and no less protective of the District than the proposed decree dated May 13, 2016. Motion unanimously carried.

**LAMAR (CASE NO. 05CW107 (B)): APPROVAL OF STIPULATION**

Alix Joseph reported Lamar filed its application in Case No. 05CW107 in December 2005. In January 2008, at Lamar's request, the Referee bifurcated the case into two parts. Part A of the application included a change of use of Lamar's Fort Bent Ditch Company shares for augmentation uses, as well as a plan for augmentation. Lamar proceeded with Part A first. The District Board approved a stipulation in Part A in October 2014. A final decree was entered on June 8, 2015.

Lamar then proceeded with Part B, which includes a change of use of the Fort Bent shares for exchanges, and three appropriative rights of exchange, including one into Pueblo Reservoir. This case was one of the exchanges with which the District's exchange in Case No. 06CW8 competes for priority. Case No. 06CW8 is the District's application to divert water by exchange upstream on the Arkansas River at Pueblo Reservoir, and to deliver to the downstream calling water right an equivalent amount of substitute supply water.

The District's objectives in Case No. 05CW107(B) are to ensure: (1) Lamar's priority date for any exchange into Pueblo Reservoir is the same as, or junior to, the priority date for the District's exchange in Case No. 06CW8; (2) no injury to the exchange in the District's Case No. 06CW8; (3) any decree contains appropriate terms and conditions for use of Project facilities; (4) water is used according to the terms and conditions of the Decree in Case No. 84CW179 to protect the Winter Water Storage Program (WWSP); and (5) the proposed decree does not injure the Pueblo Flow Management Program (PFMP). General counsel and special water counsel believe that the attached proposed decree satisfies these objectives.

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Mr. Goodwin moved, seconded by Mr. Howard “Bub” Miller, to authorize special water counsel to enter into a stipulation with Lamar consenting to entry of a decree in Case No. 05CW107(B) that is no less restrictive on Lamar and no less protective of the District than the proposed decree dated May 2, 2016. Motion unanimously carried.

**MOUNTAIN MUTUAL (CASE NO 14CW4): APPROVAL OF STIPULATION**

Alix Joseph reported Case No. 14CW4 is Mountain Mutual’s application for an augmentation plan and a right of exchange. Mountain Mutual originally filed its application in March 2014, and then filed an amended application in February 2015. Mountain Mutual seeks an augmentation plan to replace depletions caused by its shareholders’ ten wells with water leased from the Arkansas Ground Water Users Association (AGUA). Among the sources of water leased from AGUA is water that AGUA has leased from Pueblo Board of Water Works (Pueblo Water). In addition to a plan for augmentation, Mountain Mutual seeks an absolute exchange right for 0.25 c.f.s. from the confluence to Fourmile Creek and the Arkansas River to Mount Pisgah Reservoir. Mountain Mutual originally claimed storage rights in Pueblo Reservoir but later removed that claim, decreasing the District’s concerns in the case and eliminating the need for standard language regarding use of Project facilities in the proposed decree.

The District’s current objectives in this case include ensuring that: (1) the District’s deliveries on Fourmile Creek are protected; (2) the proposed exchanges on Fourmile Creek do not interfere with the District’s obligations to the Winter Water Storage Program (WWSP); and (3) water stored in Twin Lakes Reservoir is pursuant to the Twin Lakes water rights and is properly accounted for. These objectives were accomplished by the proposed decree, which the Board was provided, dated May 10, 2016, which includes the District’s requested terms and conditions regarding the WWSP in paragraph 22.K. At the District’s request, Mountain Mutual also included terms and conditions stating that it will not operate the exchange on Fourmile Creek in a manner that injures or interferes with the District’s deliveries (paragraph 28.C). The District can ensure that Mountain Mutual is not storing in Project Space in Twin Lakes reservoir by reviewing Pueblo Water’s accounting. In paragraph 6, Mountain Mutual included, at the District’s request, a statement that it has withdrawn its claim for use of Pueblo Reservoir.

Mr. Pifher moved, seconded by Mr. Mitchell, to authorize special water counsel to enter into a stipulation with the Mountain Mutual Water Augmentation Company consenting to entry of a decree that is no less restrictive on the Mountain Mutual Water Augmentation Company and no less protective of the District than the proposed decree dated May 10, 2016. Motion unanimously carried.

Mr. Broderick thanked special water counsel and general counsel for the outstanding job they are doing of clearing up the cases the District is involved in.

**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 16, 2016 there were 238,208 acre-feet stored in Pueblo Reservoir; 150,942 acre-feet of Project water; 30,074 acre-feet of Excess Capacity water; 56,650 acre-feet of Winter water.
- There is currently 94,431 acre-feet of Project space in Pueblo Reservoir and 60,298 acre-feet of space in Turquoise and Twin Lakes Reservoirs.
- Charts illustrating storage amounts in Turquoise, Pueblo, and Twin Lakes.
- Project Reservoirs: Turquoise 98%; Twin Lakes 96%; Pueblo 129%
- Arkansas River Basin Time Series Snowpack Summary May 18, 2016
- Upper Colorado River Basin Time Series Snowpack Summary May 18, 2016
- Imports to Date Charts

Mr. Vaughan reported Mt. Elbert Conduit is shut down. The plan is to move an additional 8,000-10,000 acre-feet down. The movement of water will be adjusted according to the forecast and customer's needs.

#### DIVISION ENGINEER'S REPORT

Mr. Witte reviewed the following:

- River and Reservoir Report
  - Reference Arkansas River Daily Report. River Call is:
    - 6/9/1890 Colorado Canal
    - 2/21/1887 Amity Canal
    - 5/31/1949 Compact Call (State line to John Martin)
  - <http://www.dwr.state.co.us/div2/aras/arascal.asp>
- Current River/Reservoir Operations
  - Winter Water Storage
    - Fort Lyon and Ft. Lyon Storage Canal are the only ditches currently calling for release of account water from Pueblo Reservoir above John Martin
  - John Martin Storage = 215,910 acre-feet
    - ❖ Only Amity Canal is currently able to call through John Martin
- Compact Issues
  - ARCA Special Engineering Committee is scheduled to meet on May 27, 2016
    - Anticipated topics
      - ❖ Additional source of water for John Martin Permanent Pool
      - ❖ Remaining concerns related to the LAWMA decree 02CW181
      - ❖ Unresolved administrative issues including upstream post-Compact storage
    - Operations Committee met February 19, 2016 in Lamar, CO
    - Tour of basin by ARCA and staff May 3-5, 2016
- Involvement in Water Court proceedings
  - The Division Engineer's Office has recently concluded an enforcement action stemming from the violations of an administrative order.
    - The State and Division Engineers have filed complaints in the Division 2 Water Court and in Huerfano County District Court which have been consolidated and referred to the Division 2 Water Court seeking enforcement of an order to breach Cucharas Dam

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#5. Cucharas Dam #5 partially failed in 1987 and the spillway was subsequently lowered and more recently subjected to a zero storage restriction. However, none of these actions have been sufficient to satisfactorily reduce the risk to public safety and necessary repairs do not appear to be forthcoming, which resulted in the breach order. The owners of Cucharas #5 dam have filed a counter suit alleging misadministration of the Huerfano has made repairs of the dam infeasible, however, those claims have been dismissed and the only remaining claims allege that the Welton Ditch Company does not have a reasonably efficient means of diversion. The consent decree entered between the State and Two Rivers Water and Farming Company regarding the enforcement cases on April 26 provides:

- ❖ A Compliance Plan is to be submitted to SEO by September 1, 2016 outlining plans to...
  - ❖ Remove the rockfill embankment of the dam across the entire width of the dam above the grade of existing sedimentation
  - ❖ Construct an open stabilized channel through the dam capable of allowing regular flows of at least 150 cfs
  - ❖ Construct a “pilot channel” through the sedimented area of the existing reservoir bed capable of routing 150 cfs to the dam
  - ❖ All work is to be completed within 180 days of written acceptance of the Compliance Plan
  - ❖ Deferred \$100k penalty for failure to comply with State Engineer’s order payable to Huerfano County upon failure to comply with the Consent Decree.
- The State was dismissed as a defendant in the counter suit, leaving the Welton Ditch Company as the sole defendant. The Welton has filed cross claims and successfully argued to join other necessary parties and may join others.
    - An interesting side note to this is that the Pryor Ditch rights have been resurrected...
  - On April 26, 2016 the State and Division Engineers stipulated with Colorado Springs regarding their absolute and conditional rights to exchange Temporary Use Water in 05CW96. The basis of that settlement was to have included in the decree certain findings to satisfy the Pagosa Springs anti-speculation standards under the municipal exception. As a result Colorado Springs was required to quantify their need for additional water supplies to be accomplished by these exchanges as of the date of appropriation.
  - The Division Engineers Office also believe that we have now resolved all of our remaining issues which will allow us to stipulate with the Huerfano County Water Conservancy District in the blanket plan for augmentation application filed in 13CW3062.
  - Significant increase in personal involvement in the Water Court process by the Division Engineer as the result of the retirement of Assistant Division Engineer, Julie Pearson on April 30, 2016.

U.S. GEOLOGICAL SURVEY REPORT  
No report

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**STATE LEGISLATION UPDATE**

Lee Miller reported the General Assembly has completed its session late on the night of May 11, 2016. As is frequently the case, many important bills were still in play during these last few hours of the legislature. The legislative journals for this day have not yet been published on the legislature's website. Once we have the final information on legislative activities, we will provide that information to the Board.

In addition, the Governor has 30 days to act on a bill that has reached his desk after the legislature adjourns. We will update you at the end of that period on any action by the Governor on bills of interest to the District.

Finally, plans are being made for the 2016 Water Resources Review Committee (WRRC). We understand that the WRRC may meet in the Arkansas River basin during September. We will keep you updated as we gain more information on the WRRC's plans.

Mr. Miller reviewed SB-16218. According to the fiscal note prepared by Legislative Council on the reengrossed version of SB16-218, a total of \$48.3 million in the Local Government Severance Tax Fund, a total of \$10.0 million in the Severance Tax Operational Fund, and \$19.1 million in the Severance Tax Perpetual Base Fund have been restricted. SB16-218 provides that the JBC may lift these restrictions. Until the full impact of the decision is really understood and steps can be taken to meet the requested refunds, the money allocated to those funds will likely sit idle until the JBC is confident that the restriction can be lifted. This suggests that there is no impact on the loan funds for the AVC.

President Long thanked Harold Miskel for his years serving on the Board, and said he enjoyed working with Mr. Miskel on Board issues. President Long said Mr. Miskel received the Wayne Aspinall Award in January from the Colorado Water Congress. Mr. Broderick presented Mr. Miskel with a buffalo statute. Mr. Miskel said he was privileged and honored to have been able to serve on the Board, which has accomplished a lot during the past several years, which is due to the leadership and staff of the District.

**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:

Memorandum of Understanding regarding the Arkansas Valley Conduit and other aspects of the Fryingpan-Arkansas Project

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)

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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)

The presence of the following persons is requested at this Executive Session:

1. Non-Excused Board Members
2. Executive Director
3. General Counsel
4. Principal Engineer

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

Mrs. Ortegon moved, seconded by Mr. Howard Miller, to enter into Executive Session. President Long recessed the District meeting at 11:34 a.m. and reconvened at 12:14 p.m.

**REPORT OUT OF EXECUTIVE SESSION**

**MEMORANDUM OF UNDERSTANDING REGARDING THE ARKANSAS VALLEY CONDUIT AND OTHER ASPECTS OF THE FRYINGPAN-ARKANSAS PROJECT**

Lee Miller said the Board received legal advice on the Memorandum of Understanding regarding the Arkansas Valley Conduit and other aspects of the Fryingpan-Arkansas Project case and was provided guidance to assist in negotiations. He stated that there was an action item resulting from the executive session.

Mr. Broderick reported the original authorizing legislation for the Fry-Ark Project, and the amendments made by P.L. 111-11, anticipated that the entire cost of single purpose M&I facilities, including the AVC, would be paid for with monies appropriated by Congress (i.e., the cost of planning and constructing the AVC would be federally financed, with those costs repaid, with interest, to Reclamation). However, in the recently completed negotiation of a contract between Reclamation and the District for the use of excess capacity in Pueblo Reservoir, it was agreed that under current law miscellaneous revenues are available without having to be appropriated by Congress and would be used by Reclamation to help finance the construction of the AVC as it was occurring.

While at this time there is no requirement for more non-federal financing of construction than what will be provided by the miscellaneous revenues under the Master Contract, it is likely that additional non-federal financing will be needed. The Office of Management and Budget continuously looks for ways to decrease federal outlays (i.e., appropriations) for infrastructure projects by increasing non-federal financing requirements in its ongoing effort to reduce the federal deficit. This is part of the reason we have engaged Reclamation and the Department in discussions about a long term funding plan. Accordingly, the District has been in discussions with Reclamation and the Department of the Interior regarding the possibility of the District providing about \$100 million in non-federal financing toward the construction costs of the AVC. The District anticipates obtaining non-federal financing by borrowing money from the Colorado Water Conservation Board (CWCB).

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S. 2616, introduced by Senators Gardner and Bennet, will prepare us for this eventuality. When utilizing the CWCB loan in conjunction with federally appropriated dollars allows project momentum to continue, the District will be able to draw upon the loan and then receive miscellaneous revenues from Reclamation to use in repaying the loan, thereby avoiding added costs to participants.

It is our goal to move the AVC forward in a timely fashion without the water providers and users in the lower Arkansas Valley having to incur costs for the upfront financing or repayment of the project. While not a binding document, the AVC MOU will provide a guiding framework for moving forward on planning and funding for the AVC and other aspects of the Fryingpan-Arkansas Project into the future.

Mrs. Ortegon moved, seconded by Mr. Bostrom, that the District Board authorize executing a Memorandum of Understanding regarding the Arkansas Valley Conduit and other aspects of the Fryingpan-Arkansas Project and related letters substantially similar to the draft provided to the Board. Motion unanimously carried.

**INFORMATIONAL ITEMS:**

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

- Committee Appointments
- Water Court Resume
- 2016 Xeriscape Tours – June 4-5, 2016
- Colorado Water Congress Summer Conference – August 24-26, 2016

Mr. Broderick said he provided each Board member with a red nose to wear on May 26, in support of Red Nose Day, which is a fundraising event organized to help prevent children's poverty. On Red Nose Day everyone is encouraged to cast inhibitions aside, put on a Red Nose.

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 12:25 p.m.

Respectfully submitted,

Toni Gonzales  
Administrative Manager

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Secretary

