

RECORD OF PROCEEDING

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**SOUTHEASTERN COLORADO WATER  
ACTIVITY ENTERPRISE**

**MINUTES**

**May 19, 2016**

A regular meeting of the Board of Directors of the Southeastern Colorado Water Activity Enterprise (Enterprise) was held on Thursday, May 19, 2016 at 9:31 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	Gibson Hazard	Kevin Karney
Carl McClure	Howard "Bub" Miller	Pat Edelmann
David Simpson	Curtis Mitchell	Tom Goodwin
Jay Moore (arrived at 9:35)	Mark Pifher	

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

Dallas May and Alan Hamel-Advisory Board Member

**ENTERPRISE 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.

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**APPROVAL OF MINUTES:**

President Long said the minutes of the April 21, 2016 Board meeting were posted to the Board website for review, and asked if there were any corrections or additions. Hearing none, Mr. Howard “Bub” Miller moved, seconded by Mr. Goodwin, to approve the minutes. Motion unanimously carried.

**FINANCE COMMITTEE REPORT:**

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

**CONSENT ITEMS:**

None

**PRESENTATIONS:**

**FEDERAL LEGISLATION**

Mr. Broderick reviewed the District’s proposed amendatory language, which was introduced on March 2, 2016 by Senator Gardner as S. 2616, is set forth in Attachment A. It does five things, as follows:

1. Clarifies and confirms that Reclamation can, and is directed to, use miscellaneous revenues to pay for costs incurred during construction without those revenues having to be appropriated by Congress. This confirms the agreement reached in the recent negotiation of the Master Contract.
2. Authorizes and directs Reclamation to pay to the District, without appropriation, the miscellaneous revenues which it collects to the extent needed by the District to repay the money which it borrows to provide non-federal financing for a portion of the cost of constructing the AVC. This revision is needed since P.L. 111-11 assumed that the cost of the AVC would be financed entirely with federal appropriations with no funds contributed by the District during construction. Thus, P.L. 111-11 does not make miscellaneous revenues available to the District to repay a loan from the Colorado Water Conservation Board.
3. Provides that miscellaneous revenues will still be used to repay, with interest, 35 percent of the federal appropriations for the project.
4. Directs Reclamation to enter into one or more agreements with the District that specify the distribution of miscellaneous revenues, in amount and timing, as among the three foregoing uses of those revenues
5. Confirms that all miscellaneous revenues will be credited against the costs of the Ruedi Dam and Reservoir, the Fountain Valley Pipeline, and the South Outlet Works at Pueblo Dam and Reservoir, plus interest, until those costs are fully repaid. This ensures that the current effect of P.L. 111-11 on the repayment of these three projects is still realized, with miscellaneous revenues not available for the AVC until those projects are paid off.

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President Long testified on May 17, 2016 in support of S. 2616 in Washington, D.C. in front of the Senate Water and Power Subcommittee.

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.

**2015 ANNUAL AUDIT**

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.

**FRYINGPAN-ARKANSAS PROJECT WATER AND RETURN FLOW ALLOCATION**

Garrett Markus presented a PowerPoint presentation titled, *Fryingpan-Arkansas Project Water 2016 Project Water & Project Water Return Flow Allocation*, reviewing the following:

- Fry-Ark Snowpack (Individual Sites, Average Compared to Last 7 Years, and Associated Fry-Ark imports)
- Fry-Ark Allocation May 1, Forecast
- Municipal Allocation
- West of Pueblo Allocation
- Pueblo Allocation
- Individual Entities Allocation
- East of Pueblo Allocation
- Agricultural Allocation
- Fort Lyon First Right of Refusal Pilot Project Allocation

**ACTION ITEMS:**

**ACCEPTANCE OF 2015 ANNUAL AUDIT**

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

President Long recessed the District Board meeting at 10:02 a.m.

**FRYINGPAN-ARKANSAS PROJECT WATER AND RETURN FLOW ALLOCATION**

Mr. Markus reported Reclamation has forecasted 65,000 acre-feet (AF) of imports based on the snowpack of May 1, 2016, which will net 52,495 AF for allocation. There is 831 AF of Project water that would be left unallocated, as a result of reducing the Town of Fowler's request to their authorized allocation of 169 AF. The recommended municipal allocation is 6,556 AF of Project water with 1,885

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AF of NPANIW to total 8,441 AF for municipal. The agricultural allocation calculates to be 43,223 AF of Project water producing 15,242 AF of Return Flows.

Mr. McClure moved, seconded by Mr. Howard ‘Bub’ Miller, the Board allocate 52,495 AF of Project water based on Reclamation’s May 1, 2016 forecast and 15,424 AF of Return Flows. Project water allocations would be available initially at eighty percent (80%) of the allocated amount available to municipal and agricultural entities following payment of 100 percent (100%) of the allocation. The remaining twenty percent (20%) would be made available when the District is confident that imports will meet Project water obligations. If any portion of the twenty percent (20%) of allocated Project water is not available to the entities at that time, that portion of their Project water payments will be refunded. Motion unanimously carried.

Mr. Broderick referenced the model Mr. Markus created, that assists in accurate numbers when changes occur.

President Long and Mr. Broderick said that a policy will need to be established to address storage space capacity.

**ROY (CASE NO. 06CW120): APPROVAL OF STIPULATION WITH USA**

Steve Leonhardt reported the Enterprise Board authorized legal counsel to join with the other co-applicants (the Board of Water Works of Pueblo and the Cities of Colorado Springs, Aurora, and Fountain) to file the application in this case in late 2006, and approved stipulations with several parties, most recently with Colorado Division of Parks and Wildlife in April 2016.

The applicants (also known as the ROY participants) are parties to the 2004 six-party IGA with the City of Pueblo, which provides for the ROY participants to forego certain diversions to maintain specified flow levels on the Arkansas River through Pueblo. They can then recover the foregone yield through downstream storage, followed by exchanges to upstream storage (mainly Pueblo Reservoir) when the flows are sufficient. The application seeks appropriative rights of exchange of Foregone Diversions (within the meaning of the six-party IGA) through the reach of the Arkansas River from its confluence with Timpas Creek, in Otero County, upstream to Pueblo Reservoir. The case is set for a five-day trial beginning September 26, 2016.

The co-applicants filed a revised proposed decree and engineering report with their expert witness disclosures on January 26, 2016. The January 26, 2016 proposed decree includes the revisions special water counsel negotiated and agreed to with the attorney for the USA. The main substantive change from the March 14, 2014 proposed decree (agreed to by the co-applicants and other parties in several previously approved stipulations) is to add subparagraph 15.5, a 100 c.f.s. flow requirement below Pueblo Dam. The USA requested this condition, which is consistent with the co-applicants’ previous commitments in their 2004 IGA with the City of Pueblo, and in several storage contracts with Reclamation. The January 26, 2016 proposed decree contains appropriate terms and conditions on the

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operation of the exchange in paragraph 15, including language agreed to with the co-applicants and the USA's attorney on the co-applicants' use of Pueblo Reservoir in subparagraph 15.10.

Special water counsel recommended the Board approve a standard stipulation by which the USA will consent to entry of a decree in the form of co-applicants' January 26, 2016 proposed decree. Counsel for co-applicant Pueblo Water is circulating the stipulation for signature, and counsel for the USA has signed. If the stipulation is executed, fifteen parties will have fully settled their participation in this case, with just six objectors remaining.

Mr. Hazard moved, seconded by Mr. Pifher, to authorize special water counsel to execute a Stipulation with the United States of America and the co-applicants, consenting to entry of the co-applicants' proposed decree dated January 26, 2016. Motion unanimously carried.

**INFORMATION ITEMS:**

None

**OTHER BUSINESS MATTERS:**

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 10:38 a.m.

Respectfully submitted,

Toni Gonzales  
Administrative Manager

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Secretary

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