

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
ACTIVITY ENTERPRISE**

MINUTES

April 17, 2014

A regular meeting of the Board of Directors of the Southeastern Colorado Water Activity Enterprise (Enterprise) was held on Thursday, April 17, 2014 at 11:23 a.m., at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

DIRECTORS PRESENT:

Bill Long	Vera Ortegon	Ann Nichols
Gary Bostrom	Kevin Karney	Gibson Hazard
Tom Goodwin	Leonard Pruett	Carl McClure
Jay Moore	David Simpson	Pat Edelman
Curtis Mitchell		

DIRECTOR(S) ABSENT AND EXCUSED:

Howard "Bub" Miller, Harold Miskel, and Alan Hamel-Advisory Board Member

ENTERPRISE OFFICIALS PRESENT:

Executive Director James Broderick; General Counsel Lee Miller; Administrative Manager Toni Gonzales; Director of Engineering and Resource Management Bob Hamilton; Project-Program Coordinator Jean Van Pelt; Special Water Counsel Steve Leonhardt and Alix Joseph; and Federal Lobbyist Ray Kogovsek.

VISITORS PRESENT:

Chris Woodka, The Pueblo Chieftain; Tom Simpson, Aurora Water; Christina Thiebaut, U.S. Senator Mark Udall's office; Doug Fitzgerald, U.S. Congressman Scott Tipton's office; Doris Morgan, Congressman Cory Gardner's office; Dwight Gardner, U.S. Senator Michael Bennet's office; Terry Dawson, U.S. Bureau of Reclamation; David Mau and Rodger Ortiz, U.S. Geological Survey; Jerry Peña, CDM Smith; Mark Scott, GEI Consultants; Terry Scanga, Upper Arkansas Water Conservancy District; Jack Goble, Lower Arkansas Valley Water Conservancy District; Bob Hartzman, City of Canon City Water Department; Roy Heald, Security Water District and Fountain Valley Authority; Brett Gracely, Colorado Springs Utilities; Steve Witte, Colorado Division of Water Resources; and Bob Leach, Scanio Family LTD.

RECORD OF PROCEEDING

APPROVAL OF MINUTES:

President Long said the minutes of the March 20, 2014 Board meeting were posted to the Board website for review, and if there were any corrections or additions. Hearing none, Mrs. Ortegon moved, seconded by Dr. Moore, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Nichols reported the financial statement for March 2014 was posted to the Board website for review. Treasurer Nichols moved, seconded by Dr. Moore, for acceptance of the March 2014 financial statement and payment of the April 2014 bills. Motion unanimously carried.

CONSENT ITEMS:

None

PRESENTATIONS:

FEDERAL LEGISLATION

Mr. Broderick reported Christine Arbogast was unable to be present, she provided the following report which Mr. Broderick presented:

Since the release of the Administration's disappointing budget request for the Arkansas Valley Conduit (AVC), we have been working diligently with the congressional delegation on not only FY '15, but ahead to FY '16, which is a budget in its early stages of formulation now.

Mr. Broderick, Bill McDonald, and Ray Kogovsek traveled to Washington, D.C. in early April and met with both Senate offices as well as Congressmen Tipton and Gardner's offices.

Since then, we have formulated a strategy which seeks to give Reclamation the ability to direct more than the \$500,000 in the Administration's budget request. As we have said many times before, we are lucky to have the full support of our elected officials.

The appropriations season was kicked off with promises by committee chairmen to follow the regular path by marking up and passing individual appropriations bills. The House subcommittee chair has a primary election on May 9 and has announced he will not schedule a markup of the bill until after that primary. In the Senate, the chair is Diane Feinstein of California, who is working on an authorization bill to address Central California's drought issues. It is assumed at this point that she will not mark up her subcommittee's appropriations bill until after the Senate has passed her drought relief authorization bill.

The water community is very focused at this time on preliminary release of the rulemaking regarding the Clean Water Act, which seeks to clarify the act's authority after years of congressional attempts to do so failed. The early announcement has not generally been met with support from water providers and many water users. EPA has not yet started the clock on the 90-day comment period but that is expected soon.

RECORD OF PROCEEDING

In the meantime, the EPA Administrator has appeared before several congressional committees and when the rule has been criticized, she has said "if we got it wrong, let's fix it." We are working through other organizations, including the National Water Resources Association, to offer substantive criticism and possible solutions. There will no doubt be bills introduced in Congress and attempts made to withhold funding for implementation of the proposed rule.

AVC AND EXCESS CAPACITY MASTER CONTRACT UPDATE

Mr. Broderick reported Reclamation has approximately \$3.1 million available for FY 2014. There is an estimated \$2.1 million obligated for AVC work, but not expended in earlier fiscal years and thus carried forward, and there is \$1 million appropriated by Congress for FY 2014. It is staff's understanding that nearly all of this \$3.1 million will be expended by the end of this fiscal year. The District will seek a total appropriation of 3.5 million for FY 2015 for the AVC feasibility design work. This is an additional \$3 million to the \$500,000 already included in the FY 2015 budget.

Reclamation has agreed to proceed with negotiations on the use of Board of Water Works of Pueblo's Whitlock Treatment Plant and the joint use pipeline with a reduced amount of funding. This would enable the project to move forward at a hastened pace. Negotiations are scheduled to begin this summer.

Reclamation has provided the District with a cost and planning schedule to review and to provide comments. The cost and planning schedule includes a breakdown for design, procurement, construction, and construction management by contract.

A meeting is scheduled for April 21, 2014 with Reclamation to discuss the alignment of the AVC.

ACTION ITEMS:

RESTORATION OF YIELD (ROY)(Case No. 06CW120)

Mr. 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 a stipulation with the City of Rocky Ford in June 2013 and a stipulation with the Arkansas River Outfitters Association in August 2013. The Board previously approved a related intergovernmental agreement (IGA) with the co-applicants and the City of Pueblo in 2004.

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.

RECORD OF PROCEEDING

The co-applicants circulated a proposed decree and supplemental engineering on March 14, 2014. The application and earlier proposed decree had listed Turquoise, Twin Lakes, and Clear Creek Reservoirs as additional exchange-to points in this case, but the co-applicants removed those facilities from the March 14, 2014 proposed decree. The co-applicants' decision to remove the upstream storage facilities from this case facilitated the proposed stipulations with Canon City, Florence, and Round Mountain.

The March 14, 2014 proposed decree contains appropriate terms and conditions on the operation of the exchange in paragraph 15, including revised language on the co-applicants' use of Pueblo Reservoir in subparagraph 15.9. With the removal of the upstream facilities from the proposed decree, terms and conditions related exclusively to the exchange reach above Pueblo Reservoir were also removed from the proposed decree.

Mr. Leonhardt recommended the Board approve simple standard stipulations by which Canon City, Florence, and Round Mountain will consent to entry of a decree in the form of co-applicants' March 14, 2014 proposed decree. The attorney for Canon City, Florence, and Round Mountain has approved the stipulations, and the co-applicants' attorneys are circulating the stipulation for signature. If the stipulations are executed, five parties, including Canon City, Florence, and Round Mountain, will have fully settled their participation in this case.

Mr. Hazard moved, seconded by Mr. Simpson, to authorize legal counsel to execute Stipulations with Canon City, Florence, and Round Mountain and the co-applicants', consenting to entry of the co-applicants' proposed ruling dated March 14, 2014. Motion unanimously carried.

INFORMATIONAL ITEMS:

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

- AVC and Excess Capacity Master Contract Update

EXECUTIVE SESSION

Lee Miller reported a request has been made for the Southeastern Colorado Water Activity Enterprise to enter Executive Session for the purpose of:

Discussion with legal counsel on the Return Flow Exchange Application (Case No. 01CW151, Water Division 2)

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)
- 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)

RECORD OF PROCEEDING

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

1. Non-Excused Board Members (state for the record any who are excused)
2. Executive Director
3. General Counsel
4. Special Water Counsel
5. Director of Engineering and Resource Management

Minutes will be electronically recorded as required by the Colorado Open Meeting Act.

Dr. Moore moved, seconded by Mr. Goodwin, to enter into Executive Session. Motion unanimously carried. The Enterprise entered into Executive Session at 11:53 a.m., and reconvened the regular Enterprise meeting at 12:50 p.m.

REPORT OUT OF EXECUTIVE SESSION

Alix Joseph reported the Board received legal advice regarding the Return Flow Exchange Application (Case No. 01CW151, Water Division 2).

It was recommended that the Board appoint a committee of Bill Long, James Broderick, and Lee Miller to approve a settlement with Catlin Canal Company, subject to Board ratification. Mr. Goodwin moved, seconded by Mr. Bostrom to approve the recommendation. Motion unanimously carried.

OTHER BUSINESS MATTERS:

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 12:51 p.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary

