

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

January 16, 2014

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, January 16, 2014 at 10:21 a.m. at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

DIRECTORS PRESENT:

Bill Long	Harold Miskel	Vera Ortegon
Ann Nichols	Greg Johnson	Kevin Karney
Gibson Hazard	Tom Goodwin	Carl McClure
Howard “ Bub” Miller	Jay Moore	Shawn Yoxey
Leonard Pruett		
Alan Hamel-Advisory Board Member		

DIRECTOR(S) ABSENT AND EXCUSED:

Gary Bostrom and David Simpson

DISTRICT OFFICIALS PRESENT:

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

VISITORS PRESENT:

Chris Woodka, The Pueblo Chieftain; Terry Book, Board of Water Works of Pueblo; Rick Kienitz, Aurora Water; Christina Thiebaut, U.S. Senator Mark Udall’s office; Doris Morgan, U.S. Congressman Cory Gardner’s office; Dwight Gardner, U.S. Senator Michael Bennet’s office; Ian Lyle, U.S. Congressman Scott Tipton’s office; Roy Vaughan, U.S. Bureau of Reclamation; David Mau, U.S. Geological Survey; Steve Witte, Colorado Division of Water Resources; Curtis Mitchell, City of Fountain; Dick Brown Pikes Peak Regional Water Authority; Tim Payne, Fremont County; Terry Scanga, Upper Arkansas Water Conservancy District; Chris Piper and Jeannine Shaw, Denver Water; Steve Harris, Southwestern Colorado IBCC representative; Curt Thompson, Consultant; Jerry Peña, CDM Smith; and Mark Scott, GEI Consultants.

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INTRODUCTION OF VISITORS:

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

APPROVAL OF MINUTES:

President Long said the minutes of the December 5, 2013 Board meeting were posted to the Board website for review, and if there were any corrections or additions. Hearing none, Mr. Goodwin moved, seconded by Mr. Johnson, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Nichols reported the financial statements for November and December were posted to the Board website for review. Treasurer Nichols moved, seconded by Mr. Pruet, for acceptance of the November and Draft December 2013 financial statements and payment of the January 2014 bills. Motion unanimously carried.

CONSENT ITEMS:

None

PRESENTATIONS:

GEOGRAPHIC INFORMATION SYSTEMS CERTIFICATE

James Broderick recognized Margie Medina for completing the required five classes to obtain her certificate in Geographic Information Systems. The District supports continuing education and training, which improve the skills, qualifications, and performance of their employees. Ms. Medina thanked the District for the opportunity to enhance her skills.

LAWN CONSERVATION LEGISLATION

Lee Miller introduced Steve Harris, Southwestern Colorado IBCC representative. Mr. Harris provided the Board members with a copy of Senate Bill 14-017, A Bill for an Act concerning a limitation on the approval of real estate developments that use water rights decreed for agricultural purposes to irrigate lawn grass.

Mr. Harris reviewed the Lawn Conservation Legislation Summary:

- **LEGISLATION:** Discourages the permanent dry up of irrigated agriculture by limiting in certain circumstances the amount of lawn grass on new residential lots.
- **BACKGROUND:** Colorado's Water Plan is considering how to meet Colorado's 2050 water demand while using as little agriculture dry up as possible. This legislation would assist by discouraging ag dry-up through lawn conservation while the Identified Projects and Programs and New Supply are being developed.

Statewide approximately 50 percent of the annual municipal water supply is used for in-house and 50 percent for lawn irrigation. The in-house use is approximately 5 percent consumed, leaving 95 percent

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for subsequent use. The lawn water is approximately 75 percent consumed, leaving only 25 percent for use.

The proposed legislation described here is complementary to in-house fixture legislation being considered by others.

- **TRIGGER:** Local governments must limit the maximum amount of lawn grass on new residential developments that will use a permanent dry up of irrigated lands for all or part of its water source provided through a water court change application filed after January 1, 2016.
- **LAWN GRASS LIMITATION:** If a development will use a permanent dry up of irrigated lands as its water source, the amount of lawn grass on residential lots in the new development will be limited to no more than 15 percent of the total aggregate area of all residential lots in the development. The local government and/or developer will decide how the total of 15 percent is distributed to each lot in the development; some lots may have more than 15 percent and some less.
- **LEGISLATION DOES:**
 - Reduce the annual residential lawn water use from about 50 percent of municipal demand to about 15 percent.
 - Reduce the annual water use for new residential lots by approximately 33 percent.
 - Help meet the 2050 municipal and domestic water demand.
 - Leave implementation of the limitation solely to local governments using existing development approval processes.
 - Applies statewide.
 - Complements fixture legislation that may be proposed.
- **LEGISLATION DOES NOT:**
 - Limit lawn grass at parks and common areas.
 - Limit Xeriscaping.
 - Limit lawns using raw water for irrigation.
 - Affect existing decreed change cases.
 - Require each residential lot to have 15 percent lawn grass; some lots can have more and some less.
 - Affect existing residential lots.
 - Affect irrigators' ability to sell their water.

PHASE OUT WASTEFUL WATER FIXTURES LEGISLATION

Lee Miller introduced Chris Piper from Denver Water and Mr. Piper introduced Conservation Specialist Jeannine Shaw also from Denver Water. Mr. Piper reviewed the Colorado Water Efficiency Legislative Proposal for Wise Water Use-Technical Memo and A Bill for an Act, reviewing the following:

- Technical Research
- Water Savings Estimates
- Single Family Households: Annual Water and Cost Savings

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- Market Research
 - Showerheads
 - Lavatory Faucets
- Drainline Carry Research

STATEMENTS OF OPPOSITION IN WATER COURT

Lee Miller presented a PowerPoint reviewing the following regarding Statements of Opposition in Water Court:

- Factors
- Planning and Reporting
- Why Statements of Opposition are Filed
- Statements of Opposition Criteria
 - Protecting the District's Rights and Interests
 - Winter Water Storage Program
 - Legal Precedent Concerns
 - Other Policy Considerations
- Tools for the Efficiently Managing Cases
 - Standard Language
 - General Agreements
 - Litigation Plans
- 90-day Reports

Shawn Yoxey left the meeting at 11:30 a.m.

ACTION ITEMS:

OPEN MEETING RESOLUTION NO. 2014-01D

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. Goodwin moved, seconded by Dr. Moore, to adopt Resolution No. 2014-01D, A Resolution Relating to the Compliance by the Southeastern Colorado Water Conservancy District with the Colorado Open Meeting Law. Motion unanimously carried.

H.R. 3189

Lee Miller reported the District received a letter from the Upper Arkansas Water Conservancy District (Upper Arkansas District) this past November requesting that the District send letters of support for H.R. 3189, the Water Rights Protection Act.

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H.R. 3189, introduced by Representative Scott Tipton (R-CO-3), prohibits the Secretary of the Department of Interior and the Secretary of the Department of Agriculture (USDA) from: (1) conditioning the issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement on the transfer or relinquishment of any water right directly to the United States, in whole or in part, granted under state law, by federal or state adjudication, decree, or other judgment, or pursuant to any interstate water compact and such Secretaries; and (2) requiring any water user to apply for a water right in the name of the United States under state law as a condition of such a land use or occupancy agreement. H.R. 3189 has 14 co-sponsors, including Representative Jared Polis (D-CO-2). A Senate companion bill, S. 1630, has been introduced by Senator John Barrasso of Wyoming, and has 7 co-sponsors.

On November 14, 2013, the House Resource Committee considered the bill and held a mark-up, and on a 19 – 14 vote the Committee ordered H.R. 3189 to be reported as amended. H.R. 3189 has been sent to a second committee, the House Agriculture Committee. The House Agriculture Committee referred the bill to the Subcommittee on Conservation, Energy, and Forestry, who has not yet taken any action on the bill. Just before the November 14 markup, Forest Service Chief Tom Tidwell issued a statement saying his agency had agreed to a policy change, brokered with the help of U.S. Senator Mark Udall of Colorado that would protect water resources without asking ski areas to turn over water rights to the federal government.

In addition to the Upper Arkansas District, the following entities have endorsed the bill according to Representative Tipton's office: National Ski Areas Association, American Farm Bureau, National Cattlemen's Beef Association, Family Farm Alliance, Public Lands Council, National Association of Conservation Districts, Pacific Northwest Ski Area Association, California Ski Industry Association, Colorado Water Congress, Colorado Ski Country USA, Associated Governments of Northwest Colorado, Colorado River Water Conservation District, Southwestern Water Conservation District, Rio Grande Water Conservation District, Rio Grande Watershed Association of Conservation Districts, Montrose County Commissioners, Mesa County Commissioners, Montezuma County Commissioners, Conejos County Commissioners, Gunnison County Commissioners, Rio Grande County Commissioners, Montezuma Valley Irrigation Company, Garfield County Commissioners, Aspen Ski Company, Durango Mountain Resort, Crested Butte Mountain Resort, San Luis Valley Water Conservancy District, Center Conservation District and Club 20.

Mrs. Ortegon moved, seconded by Mr. Hazard, the Board authorize the Executive Director to send a letter of support to Congressional leaders on H.R. 3189. Motion unanimously carried.

WATER COURT RESUME

City of Lamar, Colorado (Case No. 2013CW3060)

Mr. Hamilton reported in the December 2013 Resume in Water Division 2 there is one case that staff and General Counsel believe the District should oppose. This case is an application by Lamar for Approval of Plan for Augmentation and Appropriative Right of Exchange in Prowers County. The structures to be augmented by the plan are three (3) Lamar North Gateway Park ponds that were

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formerly gravel pits Lamar recently acquired and in conjunction with Colorado Parks and Wildlife utilize the ponds for recreational, wildlife, and piscatorial uses. Lamar proposes to use its shares in the Fort Bent Ditch Company, Fryingpan-Arkansas Project water (Project water) and sewer and non-sewered return flows to replace 95.35 acre-feet of annual evaporative depletions from the ponds.

These ponds are all located outside of the District boundary. Project water cannot be used outside of the District boundaries or to replace depletions resulting from withdrawal and beneficial use of water outside of the District boundaries. For this reason, it is recommended the District file a Statement of Opposition in Water Division 2 Case No. 2013CW3060.

Mr. Johnson moved, seconded by Dr. Moore, the Board authorize special water counsel to file a Statement of Opposition in Water Division 2 Case No. 2013CW3060 because of the proposed use of Project water outside of the District boundaries, and to replace depletions from withdrawal and use of water outside of the District boundaries. Motion passed with Mr. Pruett abstaining.

Harold Miskel left the meeting at 11:59 a.m.

MONTHLY REPORTS:

U.S. BUREAU OF RECLAMATION REPORT

Roy Vaughan provided a PowerPoint presentation with the following information:

- As of January 13, there were 151,919 acre-feet stored in Pueblo Reservoir; 109,143 acre-feet of Project water; 21,735 acre-feet of Excess Capacity water; 18,630 acre-feet of Winter water.
- There is currently 147,806 acre-feet of Project space in Pueblo Reservoir and 42,130 acre-feet of space in Turquoise and Twin Lakes Reservoirs.
- Project Reservoirs: Turquoise 93%; Twin Lakes 87%; Pueblo 89%

Mr. Vaughan reported currently Reclamation is moving 3 cfs of Project water from Turquoise, 6 cfs through the Leadville Fish Hatchery, and 15 cfs from Twin Lakes Reservoir. Reclamation will continue to meet the minimum flow requirements. Reclamation will be moving 9,000 to 12,000 acre-feet down from the upper reservoirs. Movement of water will be adjusted according to the forecast and customers' needs.

Mr. Vaughan reported on the Resource Management Plan for Lake Pueblo:

- Reclamation in cooperation with Colorado Parks and Wildlife (CPW), is seeking public input on a Resource Management Plan for Lake Pueblo State Park and the Lake Pueblo Wildlife area.
- The agencies will kick-off a 30-day public comment period on January 22, 2014 with an open house at the Lake Pueblo State Park Visitor Center in Pueblo from 5:30 to 8:30 p.m.
- Comments are due to Reclamation by close-of business February 21, 2014
- Written comments can be provided to Ms. Tara Piper at tpiper@usbr.gov or (970) 663-3212.
- Information for the CPW Supplemental Park Management Plan is available at <http://www.parks.state.co.us/parks/lakepueblo/Pages/LakePuebloStatePark.aspx>.

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Mr. Vaughan shared some pictures of the Southern Delivery System project showing the trench that is being dug to the wye connect.

Mr. Vaughan reported that Unit 2 at Mt. Elbert is under a scheduled outage and that Unit 1 at Mt. Elbert has had an unscheduled or forced outage. He explained that one unit has to be available for Reclamation to move water from Turquoise to Twin Lakes because there is not a method to bypass the units. The repairs to Unit 1 are scheduled to be completed by the end of February. He reported that they have moved some water from Turquoise to Twin Lakes but would likely need to move more based on what the snowpack does.

DIVISION ENGINEER'S REPORT

Mr. Witte reviewed the following:

- River and Reservoir Report
 - Reference Arkansas River Daily Report. River Call is
 - (1) 3/1/1910 Winter Water Storage Program
 - (2) 5/31/1949 Compact Call
 - <http://www.dwr.state.co.us/div2/aras/arascal.asp>
- Current River/Reservoir Operations
 - Winter Water Storage status as of 12/31= 180 percent last year and 82 percent of 5 year average
 - John Martin Storage status as of 12/31 = 160 percent of last year
- Compact Issues
 - Began storing inflow to John Martin on November 1, 2013
 - Plan to meet with Assistant Operations Secretary in Lamar on January 23, 2014 in an effort to resolve the continuing concern related to the procedure used to determine the portion of John Martin inflow that is credited to the Winter water storage interests from that which is credited to Compact conservation storage, which has prevented Kansas from approving any operational accounting since 1997.
- Abandonment proceedings
 - U.S. Army – Court agreed with State
 - Bessemer – Court disagreed with State

STATE LEGISLATION UPDATE

Lee Miller reported the 2014 session of the General Assembly was called to order on January 8, 2014. 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 8, 2014. The General Assembly may adjourn earlier than that date, but not later than May 8.

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. A meeting was held Monday, January 13, 2014.

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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. Based on the Water Resources Review Committee (WRRC) work of last year, the following bills will be introduced:

Bill A	Hydroelectric Generation Incentives
Bill B	Water Flexible Markets
Bill C	Wastewater Treatment Small Communication Grants
Bill D	Division of Water Resources Remove Printing Requirements
Bill E	Oppose Federal Special Use Permit Water Right Term

Bills not recommended by the WRRC to the Legislative Council, as well as several concepts not requested to be drafted, such as the Agriculture Efficiency proposal, are still likely to be introduced by individual legislators during the upcoming legislative session. In addition, there are two “water conservation” bills planned; advocates for these bills made presentations at the meeting.

EXECUTIVE SESSION

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

1. Discussion with legal counsel on the Lower Arkansas Water Management Association (Case No. 02CW181, 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)

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

1. Non-Excused Board Members
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.

Mr. McClure moved, seconded by Mr. Karney, to convene into Executive Session. Motion unanimously carried. The District Board entered into Executive Session at 12:26 p.m.

President Long reconvened the District meeting at 12:30 p.m.

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REPORT OUT OF EXECUTIVE SESSION

Lee Miller reported that the Board received legal advice regarding on the Lower Arkansas Water Management Association (Case No. 02CW181, Water Division 2) to determine positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators. There was no action recommended from the Executive Session.

INFORMATIONAL ITEMS:

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

- Water Court Resume
- Legal Quarterly Report
- 2013 Dry-Land Farming Reports
- Director Appointment
- Other Business Matters
 - Colorado Water Congress –January 29-30, Denver
 - Colorado Rural Water Association – February 3-6, Colorado Springs
 - Family Farm Alliance – February 19-21, Las Vegas
 - DARCA – March 26-28, Longmont

OTHER BUSINESS MATTERS:

President Long announced the possibility the February Board meeting may be cancelled. The Board will get notice if it is cancelled.

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 12:32 p.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary

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