

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

February 21, 2019

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, February 21, 2019 at 9:36 a.m. at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

DIRECTORS PRESENT:

Bill Long	Ann Nichols	Curtis Mitchel
Carl McClure	Tom Goodwin	Dallas May
Alan Hamel	Seth Clayton	Mark Pifher
Andy Colosimo	Patrick Garcia	

DIRECTOR(S) ABSENT AND EXCUSED:

Greg Felt, Gibson Hazard, Kevin Karney, and Howard “Bub” Miller

DISTRICT OFFICIALS PRESENT:

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

VISITORS PRESENT:

Earl Wilkinson and Jenny Bishop, Colorado Springs-Utilities; Doug Fitzgerald, U.S. Congressman Scott Tipton’s office; Cathy Garcia, U.S. Senator Cory Gardner’s office; Dwight Gardner, U.S. Senator Michael Bennet’s office; Roy Vaughan and Monica Griffitt, U.S. Bureau of Reclamation; Jerry Peña, GEI Consultants; Mark Scott, GHD Inc.; Gordon Dillon and Steve Howell, Kleinfelder; Judy Leonard and Jim Quam, Pueblo West Metropolitan District; Bill Tyner and Rachel Zancanella, Colorado Division of Water Resources; Krystal Brown, U.S. Geological Survey; Tom Simpson, Aurora Water; Jay Yaklich, High Line Canal; Jack Goble, Lower Arkansas Valley Water Conservancy District; Ron Fillmore, citizen; Bob Hamilton, citizen; Shawn Yoxey, citizen; Kent Ricken, Colorado Water Protective Development Association; Brett Gracely, Matrix Design Group; Kevin Niles, Arkansas Groundwater Users Association

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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 January 17, 2019 Board meeting were posted to the Board website for review, and asked if there were any corrections or additions. Hearing none, Mr. May moved, seconded by Mr. Pifher, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Nichols reported the financial statements for January 2019 were posted to the Board website for review. Treasurer Nichols moved, seconded by Mr. Clayton, for acceptance of the January 2019 financial statements and payment of the February 2019 bills. Motion unanimously carried.

CONSENT ITEMS:

None

PRESENTATIONS:

FARM BILL, HEMP CULTIVATION AND RECLAMATION

Monica Griffitt presented the following:

- Colorado Amendment 64, passed on November 6, 2012, led to the State legalization of marijuana and hemp in January 2014.
 - Conflict with federal law: Controlled Substances Act of 1970
- In May 2014, Reclamation issues a temporary policy, known as PEC TRMR 63
 - Which stands for: Program Economics, Revenues, and Contracts (PEC) Temporary Reclamation Manual Releases (TRMR)
 - Renewed annually
- PEC TRMR-63: Reclamation water and facilities cannot be used for activities prohibited by the Controlled Substances Act of 1970
- Eastern Colorado Area Office (ECAO) received inquiries before and after the passage of Amendment 64 of whether Reclamation water and facilities could be used to grow marijuana and hemp
- January 11, 2017, ECAO sent letter to contractors
 - *“Hemp and marijuana cultivation, while legal in Colorado, is currently subject to the Federal Controlled Substances Act, codified in various sections of Title 21, U.S.C. and Reclamation policy, PEC TRMR 63.”*
- June 2018, Irrigation Leader published a story about how Reclamation facilities and water were legally used to grow hemp in Montana.
 - Limited cultivation of hemp allowed under the 2014 Farm Bill
 - Required research and pilot programs under higher education institutions or state departments of agriculture

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- September 17, 2018, ECAO sent clarifying letter to contractors alerting them to the exemption under the 2014 Farm Bill
- Agriculture Improvement Act of 2018 (aka 2018 Farm Bill) signed by the President on December 20, 2018
 - Removed industrial hemp from the Controlled Substance Act, subject to:
 - Less than 0.3% THC
 - Compliance with state law
- With hemp removal from the Controlled Substance Act, subject to less than 0.3% THC, and state law, hemp is like any other crop and Reclamation water and facilities can be used to grow it.
- Reclamation is drafting a response to a January 15, 2019, request from Senators Bennett (CO) and Tester (MT) regarding Reclamation's policy regarding hemp cultivation
 - When finalized will share with SECWCD

FINANCIAL STRATEGY AND SUSTAINABILITY STUDY

Leann Noga presented a PowerPoint presentation reviewing the following:

- Framing the Future Presentations in 2017 and 2018
- Request for Qualifications and Selection Process
- JACOBS
- Scope of Service
- Financial Plan
- Policy Analysis
- Capital Improvement and Capital Project Plan
- Revenue Requirement Analysis
- Cost of Service Analysis
- Rate Design Analysis
- Communication and Workshops
- Schedule
- 2019 Budget and Cost of Study

Mrs. Noga reported in an effort to include District customer representation and involvement in the 2019 Finance Strategy and Sustainability Study, President Long appointed the following advisors:

- Seth Clayton, Pueblo Water
- Curtis Mitchell, Fountain Valley Authority
- Terry Scanga, Upper Water Conservancy District
- Kent Ricken, Colorado Water Protective and Development Association
- District's Executive Committee

ACTION ITEMS:

FINANCIAL STRATEGY AND SUSTAINABILITY STUDY: JACOBS PROFESSIONAL SERVICE AGREEMENT

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Leann Noga reported in November 2018, a staff team made up of Jim Broderick, Leann Noga, Chris Woodka, and Garrett Markus was created to conduct a Request for Qualifications (RFQ) for a Cost of Service Study. The District received five RFQ responses, in which the top three consultants were interviewed. Through this RFQ process, staff recognized that the District and Enterprise were seeking more than a Cost of Service Study. Staff has re-named the study to the Financial Strategy and Sustainability Study.

The Financial Strategy and Sustainability Study will provide a full analysis of the District and Enterprise finances as well as provide any suggested adjustments for future sustainability. The study includes the following main elements:

- a. Financial Planning
- b. Policies Analysis
- c. Capital Improvement and Capital Project Plan
- d. Revenue Requirement Analysis
- e. Cost of Service Analysis
- f. Rate Design Analysis
- g. Communications, Workshops, and Board Meetings

In December 2018, the team determined that JACOBS Engineering Group would be the best fit to conduct the study.

On January 24, 2019, the Executive Committee was provided a presentation outline of the Request for Qualification process, the main elements of the study (as listed above), the costs of the study, and the proposed JACOBS contract. At this meeting the Committee approved the JACOBS Professional Services Agreement. The Executive Committee requested this action be ratified at the February 21, 2019 Board of Directors meeting.

The Board was provided a copy of the final signed JACOBS Professional Services Agreement including the scope, task alignment, cost, and timeline.

Mr. Clayton moved, seconded by Mr. Goodwin, the Board of Directors ratify the approval of the signed JACOBS Professional Services Agreement as aligned in the Financial Strategy and Sustainability Study. Motion unanimously carried.

FRYINGPAN-ARKANSAS PROJECT RESERVE FUND INVESTMENT ACCOUNT

Mrs. Noga reported the Fryingpan-Arkansas (Fry-Ark) Contract Amendment 11 was signed in September 2018. Amendment 11 allows the District to create a Project reserve fund for contract ad valorem taxes held by the District.

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Staff recommends opening an independent investment account with Wells Fargo for the purpose of the investment of the Fry-Ark Project Reserve Funds. This investment account, as stated in Amendment 11 of the Fry-Ark Contract states that the reserve funds “be invested only in federally insured, interest or dividend bearing account, and/or in securities guaranteed by the federal government”.

Staff recommends a lateral investment strategy based on possible cash need for the Fry-Ark Project and/or the current investment market curve.

District staff has reviewed the possibilities of investing the Project reserve funds in COLOTrust Prime, a liquid local investment option used by other District funds. At this point, with the current portfolio options, the District believes that the Project Reserve funds are unable to be invested in COLOTrust, due to the investment requirement language in the Amendment 11 of the Fry-Ark Contract.

Mr. Clayton moved, seconded by Mr. Hamel, the Board of Directors approve opening an independent Wells Fargo account for the investment of the Fry-Ark Project reserve fund as aligned in Amendment 11 of the Fry-Ark Contract. Motion unanimously carried.

STATEMENT OF OPPOSITION IN THE APPLICATION OF UPPER ARKANSAS WATER CONSERVANCY DISTRICT, CASE NO. 2018CW3076

Lee Miller reported the Upper Arkansas Water Conservancy District’s (UAWCD) new regional or umbrella augmentation plan seeks to expand the geographic scope of UAWCD’s augmentation service to include portions of Custer, Fremont, and El Paso counties. All of Custer County is outside of the District’s boundaries, as are significant parts of the expanded area in Fremont and El Paso counties.

UAWCD’s allocated Project water is one source of augmentation water in this application. UAWCD also proposes to use Project facilities, particularly Pueblo Reservoir and Twin Lakes Reservoir. Water leased from Board of Water Works of Pueblo (“BWWP”), including stored water at Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, and Pueblo Reservoir, will be another augmentation source. The application does not reflect the limit agreed to by UAWCD and BWWP, that their water stored in Pueblo Reservoir can only be used within the District’s boundaries. UAWCD’s application also has a provision for adding water rights for augmentation, which may include receiving an allocation of more Project water; such an addition would only require notice to the Division Engineer.

UAWCD also requests an exchange on Grape Creek to DeWeese Reservoir to facilitate augmentation to Custer County, claiming an antedated March 2005 priority as against any rights decreed with priority junior to March 2005. The District’s exchange on Grape Creek was decreed in Case No. 99CW160 with a 1999 priority date, which is senior to the priority Upper Arkansas claims on Grape Creek.

UAWCD’s application includes Standard Language related to Project facilities and Project Water Use in paragraphs 6.d. and 6.e., but we expect the District will likely want them to include additional Standard Language in a decree. UAWCD intends to integrate its accounting and reporting with 06CW32.

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District staff discussed the case with Terry Scanga in late January, and he was supportive of the District entering the case through a Statement of Opposition.

Mr. Hamel moved, seconded by Mr. Pifher, the District Board authorize the filing of a Statement of Opposition by Special Water Counsel in the Application of Upper Arkansas Water Conservancy District, Case No. 2018CW3076. Motion passed with Mr. Goodwin recusing.

STATEMENT OF OPPOSITION IN THE APPLICATION OF LAWMA, CASE NO. 18CW3072

Lee Miller reported in addition to seeking approval of an additional LAWMA structure under the LAWMA augmentation plan, this application seeks to modify the augmentation plan by adding “greenhouse irrigation” as an approved use of water under the plan, with a 100 percent consumptive use.

The application states that the wells and the location of use are in the District boundaries, and therefore Fryingpan-Arkansas water will be used to replace depletions.

Lee Miller recommended filing a Statement of Opposition in this case to assure that Project water is not put to an unauthorized use, such as marijuana cultivation, and to require terms such as those included in the recent Stonewall Springs Quarry augmentation plan case.

Because this application seeks to modify the allowed uses of augmentation water, it does not qualify for waiver of protest rights pursuant to the Amended and Restated Agreement between the District and LAWMA.

Mr. Goodwin moved, seconded by Mr. Hamel, the District Board authorize the filing of a Statement of Opposition by Special Water Counsel in the Application of LAWMA, Case No. 18CW3072. Motion unanimously carried.

APPROVAL OF STIPULATION IN THE APPLICATION OF PUEBLO WATER, CASE NO. 17CW3050

Lee Miller reported Case No. 17CW3050 is Pueblo Water’s application to change 5,540.88 Bessemer Irrigating Ditch Company shares (Bessemer shares), which is equivalent to 28.071 percent of all issued and outstanding Bessemer shares, for use in its municipal system and water leases. Pueblo Water’s Bessemer shares include direct flow rights and Winter water allocated to the Bessemer Ditch, but do not include Project water that is allocated to the Bessemer Ditch. Pueblo Water’s application seeks to: (1) add municipal and related uses, including rights of reuse and successive use after replacing historical Return Flows; (2) change the place of use to all areas Pueblo Water provides water; (3) divert the Bessemer shares at the Pueblo Dam, the Pueblo Dam Outlet Works, Pueblo Water’s Arkansas River Intake Works, or the Bessemer Ditch; (4) store the Bessemer shares in Pueblo Reservoir; and (5) quantify the amounts of water available for exchange in its related exchange application in Case No. 16CW3103. Pueblo Water would continue irrigation use in the Bessemer Irrigating Ditch Company system until it needs the Bessemer shares for changed uses. The Bessemer Irrigating Ditch Company

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approved Pueblo Water's application in this case with conditions in an Agreement entered August 21, 2017. The Company's conditions address several issues including Project water, Winter water, and revegetation.

The District's objectives in this case are to ensure that: (1) The decree contains appropriate terms and conditions for any use of Project facilities; (2) Pueblo Water does not change Project water allocated to the Bessemer's agricultural allocation; (3) Any use of Project water and Project Return Flows is in accordance with the District's policies; (4) Any Winter water use is consistent with the Winter Water Storage Program (WWSP) Decree in Case No. 84CW179; (5) All historic Return Flows are replaced in a manner that avoids injury to the District rights and operations; and (6) Historically irrigated areas are appropriately revegetated.

The proposed decree contains Standard Language terms regarding use of Project facilities and protecting Project water. (§§ 8.3, 6.7.1.3). The decree also contains terms and conditions regarding the WWSP Decree that are generally consistent with the District Standard Language. Notably, the stipulated decree allows Pueblo Water to take delivery of Winter water from March 16 through April 30 of the following year, instead of through November 14 as set forth in the Standard Language. This alternative language is consistent with actual historical operations and the obligation in the WWSP Decree to release any water that is not used by May 1 of the subsequent water year. In addition, the proposed decree allows Pueblo Water to continue to store Winter Water beyond May 1 of the following water year, so long as the water was delivered at the same time and proportionate rate as all other Winter water deliveries to the Bessemer Irrigation Ditch Company. Pueblo Water also will use 10 percent of its annual changed Bessemer shares for non-storage beneficial purposes, which will assure annual usage of water in an amount approximately equal to the average annual Winter water delivery associated with the shares. Any Winter Water not delivered by May 1 will be released consistent with the Winter Water Decree. Wilson Water has reviewed the proposed decree and supporting engineering report, and has concluded that historic Return Flows will be replaced in a manner that avoids injury to the District rights and operations. Finally, the proposed decree includes appropriate dry-up and revegetation obligations. (§§ 6.2 and 6.3.)

Mr. Goodwin moved, seconded by Mr. Colosimo, to authorize Special Water Counsel to execute a stipulation in the Board of Water Works of Pueblo's Change Case No. 17CW3050, consenting to entry of a decree in the case that is no less restrictive on Pueblo Water and no less protective of the District than the proposed decree dated February 12, 2019. Motion passed, with Mr. Hamel, Mr. Clayton, and Mr. Garcia recusing.

MONTHLY/QUARTERLY REPORTS:**U.S. BUREAU OF RECLAMATION REPORT**

Roy Vaughan presented a PowerPoint presentation reviewing the following:

- As of February 18, 2019 there were 212,615 acre-feet stored in Pueblo Reservoir; 128,914 acre-feet of Project water; 36,508 acre-feet of Excess Capacity water; 40,828 acre-feet of Winter water.

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- There is currently 116,459 acre-feet of Project space in Pueblo Reservoir and 45,809 acre-feet of space in Turquoise and Twin Lakes Reservoirs.
- Project Reservoirs: Turquoise 68%; Twin Lakes 101%; Pueblo 103%
- Total M&I Project Water in the System
- Colorado Snotel Snow Water Equivalent (SWE) Update Map with Site Data-Current as of Feb 19, 2019
- Colorado River Basin Time Series Snowpack Summary-Feb. 19, 2019
- Arkansas River Basin Time Series Snowpack Summary-Feb. 19, 2019
- U.S. Drought Monitor-West, February 19, 2019
- U.S. Drought Monitor-Colorado, February 19, 2019

Mr. Vaughan reported the collection system has been winterized. Mt. Elbert Conduit is currently running 350 cfs. Currently Reclamation is moving 177 cfs. of Project water from Twin and Turquoise to Pueblo. The movement of water will be adjusted according to the forecast and customer's needs.

DIVISION ENGINEER'S REPORT

Bill Tyner presented a PowerPoint reviewing the following:

- Primer on Augmentation and SECWCD Role
- Rule 14 Plans
- AGUA Historical Sources
- CWPDA Historical Sources
- LAWMA Historical Sources
- Plans for Augmentation
- Notable Examples of Plans for Augmentation
- Where are Decreed Aug Plans?
- Irrigation Improvement Rules
- Most Common Improvement Conversion of Irrigation Method
- Lower Arkansas Valley Water Conservancy District Rule 10 Plan Post Improvement Acreages as of 2018-19 Plans
- Lower Arkansas Water Management Association and Purgatoire River Water Conservancy District Rule 10 Plan Post Improvement Acreages

U.S. GEOLOGICAL SURVEY REPORT

Krystal Brown presented a PowerPoint titled, *Evaluation of Selected Water-Quality Issues*, reviewing the following:

- pH
- Discrete pH Values 2000-2019
- Pueblo Reservoir 2018 Monitoring Locations
- 2018 Pueblo Reservoir Profiles 7B
- Median Manganese Concentration 1986-1989

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- Arkansas River Above Pueblo Discrete Manganese Samples
- National Atmospheric Deposition Program 2017
- National Atmospheric Deposition Program 1997

Mr. Hamel left the meeting at 11:39 a.m.

STATE LEGISLATION UPDATE

Lee Miller reported the Colorado Water Congress State Affairs Committee has taken positions or is monitoring approximately a dozen bills of interest to the water community.

Senator Larry Crowder has introduced the two memorials regarding Arkansas River basin issues that passed the Water Resources Review Committee last fall. Since the last Board meeting, the memorial has passed both Houses and has been sent to our Congressional delegation and the appropriate federal departments.

Excluding the Senate Joint Memorials addressing Arkansas Valley issues, very few of the bills of interest to the CWC State Affairs Committee are of particular interest to the District. A few of the bills that may have greater implications for the District include:

- **HB19-1006:** During the interim Wildfire Matter Review Committee, members heard from the Forest Health Advisory Council, various homeowners' groups, the Nature Conservancy and others concerning the risk to life and property from build-up of slash and other fuels in the interface area and the cost of mitigation versus the failure to mitigate. This bill is a result of committee discussions. Although the bill was originally conceived as a tax credit program for homeowners who mitigated property, it was amended in Interim committee to a grant program administered by the state forest service. However, it turns out the state forest service has an appropriate program, so the sponsors are currently reworking the bill.
- **SB19-096:** This bill, sponsored by the Senate Agriculture and Natural Resources Committee chair, Senator Kerry Donovan, with support of the Governor's Office and the environmental community, purports to address climate change by requiring the Air Quality Control Commission to collect data on greenhouse gas (GHG) emissions, report on the date, and adopt rules governing 1) reporting emissions and 2) measures to reduce emissions. Specifically, the Air Quality Control Commission is directed to improve data collection under an existing system and propose a rule by December 31, 2019 requiring emitting sources that must report, using those under the federal rule or expanding the class of reporting entities. By December 31, 2020 the Commission must propose a rule to implement measures that would most cost-effectively allow the state to meet its GHG reduction goals. As a practical matter, greenhouse gas emissions come from a wide variety of sources, some of which are not under the jurisdiction of the Air Quality Control Commission (for example are related to building codes, agricultural practices, etc.). The bill calls for a rule to be proposed by 2020 to implement measures that would allow the state to meet its GHG reduction goals. However, any effective strategy will

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require a broad range of activities dealing with all aspects of the economy and will require significant planning and implementation time. The time frame set forth in the bill is too short for adequate consideration.

The last day upon which the General Assembly may adjourn sine die is May 4, 2019. The General Assembly may adjourn earlier than that date, but not later than May 4.

COLORADO RIVER ISSUES STATUS

Lee Miller reported on December 13, 2018, during her presentation to the Colorado River Water Users Association, Commissioner Burman announced that if the Drought Contingency Plans (DCP) were not approved by January 31, 2019, Reclamation would publish in the Federal Register a 30-day request for comments and proposals that Reclamation could implement as early as August 2019. By January 31, 2019, the Arizona legislature passed, and the Governor signed, legislation authorizing signature of the DCP documents. However, this did not complete the approval process for the Lower Basin, as the Imperial Irrigation District (IID) in California failed to give final approval. IID's board approved the drought plan in December, but it put three conditions on that action, including a demand for roughly \$200 million in federal funds for the Salton Sea. IID is an important player in the river negotiations, based on sheer volume. It delivers up to 2.6 million acre-feet per year of Colorado River water — and has the rights to about 500,000 acre-feet more. California's entire allocation of Colorado River water is 4.4 million acre-feet.

In response to the failure to reach complete approval, Commissioner Burman posted a notice concerning “Responding to Historic Drought and Ongoing Dry Conditions in the Colorado River Basin” on the Reclamation website, which was published in the Federal Register on February 6, 2019. The notice can be found here: <https://www.federalregister.gov/documents/2019/02/06/2019-01340/responding-to-historic-drought-and-ongoing-dry-conditions-in-the-colorado-river-basin-request-for>. The notice indicates that the Department will accept input from the Basin states representatives beginning on March 4, 2019, for a 15-day period. As stated in the Notice, the Department will ensure that information received from the Governors’ representatives will be promptly shared with Tribes, interested parties, and the general public at the end of the comment period. In a transmittal electronic mail to the Governors’ representatives, Commissioner Burman said that should the States complete work on the DCP, she anticipates terminating the request for further input and rescinding the request contained in the Federal Register notice.

During the CWCB meeting in late January, CWCB staff and the Attorney General’s Office made a presentation on the status of Colorado River issues (this was before the January 31, 2019 deadline and Commissioner’s response) and a Demand Management Program work plan. Staff’s presentation made several points clear:

- The current work plan effort is **not** setting up a Demand Management program.
- This effort is **not** exploring the administrative impacts of a compact curtailment.

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- The current efforts **are** exploring the array of issues that Colorado (and potentially other Upper Basin states) may need to understand to commit to implementation of a demand management program in the future.
- The current efforts **are developing a framework for investigating** Colorado's interests and position regarding whether and how any Colorado River Demand Management Program could or should operate within Colorado.
- This position **will** be based on evaluation and consideration of policy, legal, and technical aspects with water user/stakeholder input and technical expertise.

The initial tasks include issue identification, establishing work groups, conducting workshops, and provide a final status report of CY 2019 scopes of work, progress, and recommended next steps in January 2020. The proposed work groups would consist of:

- Law and Policy;
- Monitoring, Verification, and Accounting;
- Water Rights Administration;
- Environmental Considerations;
- Economic Considerations;
- Funding;
- Education and Outreach;
- And possibly others.

The presentation slides can be found here:

<http://cwcb.state.co.us/Documents/ShortTermHomePage/ColoradoRiverDroughtContingencyPlanningDemandManagement.pdf>. The CWCB approved this work plan framework during the January CWCB meeting. It is not clear how the work groups will be established. CWCB staff will bring more information to the March 20, 2019 CWCB meeting.

INFORMATIONAL ITEMS:

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

- Water Court Resume
- Financial Strategy and Sustainability Study Schedule of Meeting
- Financial Strategy and Sustainability Advisory Representation
- NWRA Federal Water Issues Conference April 1-3 – Washington, DC
- Arkansas River Basin Water Forum – April 25-26 - Pueblo

Mr. Broderick announced that on Thursday, March 7, 2019 the Resource and Engineer Planning Committee will meet at 10:00 a.m., the Allocation Committee will meet at 12:00 p.m., and the Human Resources Committee will meet at 1:30 p.m.

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President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 11:50 a.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary

