

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

October 18, 2018

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, October 18, 2018 at 9:40 a.m. at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

DIRECTORS PRESENT:

Bill Long	Curtis Mitchell	Gibson Hazard
Ann Nichols	Kevin Karney	Carl McClure
Tom Goodwin	Dallas May	Greg Felt
Mark Pifher	Alan Hamel	Seth Clayton
Andy Colosimo	Patrick Garcia	

DIRECTOR(S) ABSENT AND EXCUSED:

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:

Roy Vaughan and Shane Hayden, Bureau of Reclamation-Pueblo Office; Curt Thompson, AECOM; Bill Tyner, Division Engineers Office; Mark Scott, GHD, Ruben Cruz, Kleinfelder; Jenny Bishop, Colorado Springs Utilities; Kevin Niles, Arkansas Groundwater Users Association; Cathy Garcia and Michael Flora, Senator Cory Gardner's office; Doug Fitzgerald, Congressman Scott Tipton's office; Kim Swearingen and Judy Leonard, Pueblo West Metropolitan District; Roy Heald, Security Water and Sanitation District and Fountain Valley Authority; Tim Gates, John Labadie, and Faizal Rohmat, Colorado State University.

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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APPROVAL OF MINUTES:

President Long said the minutes of the September 20, 2018 Board meeting were posted to the Board website for review, and asked if there were any corrections or additions. Hearing none, Mr. Hazard moved, seconded by Mr. Pifher, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Nichols reported the financial statements for September were posted to the Board website for review. Ms. Nichols moved, seconded by Mr. Clayton, for acceptance of the September financial statements and payment of the October 2018 bills. Motion unanimously carried.

CONSENT ITEMS:

None

PRESENTATIONS:

ARKANSAS RIVER WATER QUALITY STUDIES

Tim Gates presented a PowerPoint titled, *Tackling Water Quality Problems While Keeping Agriculture Productive and the River Whole*, reviewing the following:

- Return Flow Processes in an Irrigated Stream-Aquifer System
- Impacts of Irrigation Return Flow
- Water Quality Problems Facing Irrigated Agriculture and the Environment in the Lower Arkansas River Basin
- Objectives
- Field Data 1999-2014
- Modeling
- Regional-Scale Modeling
- Modeled BMPs
- Water BMPs
- Land BMPs
- Combined BMPs
- Selenium in Arkansas River, USR
- Selenium Reduction
- Nitrate Reduction
- Average Groundwater Salinity in USR (TDS, mg/L)
- Average Root Zone Soil Salinity in USR (TDS, mg/L)
- Average Simulated Impact of CS 80 BMP on Salinity in USR

John Labadie continued the presentation reviewing the following:

- GeoMODSIM Model of LARB
- Advantages of ANN Approach
- Artificial Neural Network (ANN)
- ArcMap as GUI for GeoMODSIM

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- Geo-spatial Data Input
- Import Time Series Tool
- Water Rights Import Tool
- ArcMap as MODSIM GUI
- GeoMODSIM Customization
- ANN Performance
- Storage Account in John Martin
- BMP Flows Summary
- Comparison of the Flow at the Stateline
- Comparison of the Relative Flow at the Stateline
- Comparison of the Relative Flow at the Stateline with Storage Account Implementation
- Conclusions
- On-Going Work
- Acknowledgements

CONTRACT NO. 5-07-70W0086 AMENDMENT NO. 11

Lee Miller reported the Contract No. 5-07-70-W0086 Amendment No. 11 (Contract Amendment) does not change the total amount of ad valorem taxes which are collected under the 0.9-mill Contract Mill Levy. However, it will alter how those revenues are applied in the following ways:

1. Repayment of the Fryingpan-Arkansas Project (Project) debt to the Bureau of Reclamation (Reclamation) will be made in payments of \$733,786.07 on December 31 and June 30 of every year until December 31, 2031. (Exhibit A in the Contract Amendment)
2. Advance payment of Operations, Maintenance and Replacement (OM&R) to Reclamation will be applied in December 2018.
3. Ad valorem taxes which are not needed for payments to Reclamation will be transferred to an account held by the District for extraordinary OM&R or catastrophic expenses.
4. The interest on the account will be available for use by the District.

The Board has authorized 10 previous amendments to the contract between the United States of America and the District. During the August 16, 2018 Board meeting, the Board unanimously approved entering Amendment No. 11.

The Contract between the District and Reclamation was signed on January 21, 1965. It was a far-reaching document that framed the issues surrounding the repayment to the federal government for the local municipal, industrial, and agricultural share of the Project.

The repayment obligation of the District is the primary, but not the only, purpose of the contract with Reclamation first signed in 1965 and amended 10 times since. It was amended in 1981 to state that it took effect on January 1, 1982, to reflect final construction costs and repayment requirements. For this reason we will refer to the contract as the "1982 Contract." Negotiations on The Contract Amendment were held the afternoon of July 27, 2018, and resulted in the final draft contract amendment. The

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District's negotiation team consisted of Lee Miller, Jim Broderick, Leann Noga, and Bill McDonald, with staff support from Chris Woodka and Garrett Markus. The Contract Amendment was signed on September 20, 2018.

Key Elements of the Contract Amendment

Application of Ad Valorem Tax Revenues

The Contract Amendment provides that:

- Ad valorem tax remains at 0.9 mills.
- Repayment of construction costs are extended to the full 50 years allowed by statute (2031).
- Application of tax revenues:
 - First, to annual OM&R costs (including extraordinary maintenance and replacements);
 - Second, to the reduced annual construction payment; and
 - Remainder, if any to a new OM&R reserve fund.

The first two items are payments to Reclamation. The reserve fund will be kept by the District (must be federally insured or in U.S. Treasury bonds) and any earnings from the investment of the monies in the fund will be available for the District to use at it sees fit.

Winter Water Storage Payments

- Payments for Winter Water Storage will remain at the current \$2.80/AF until the 1982 Contract is converted to a new repayment contract, which will be December, 2021, at the latest.
- Currently, payments go to assist repayment of the Project. Future payments will be applied as follows:
 - First, to the Fry-Ark Project's annual construction obligation and annual OM&R in years when ad valorem revenues are available, Other Contractor payments for OM&R, and the District's use of the Reserve Fund covers the construction obligation and annual OM&R; and
 - Second, Winter Water Storage revenues so accumulated shall be applied as upfront funding, available without appropriation, for the actual cost (planning, environmental compliance, design, construction, and interest) of the Arkansas Valley Conduit (AVC).

Reserve Fund

There are several reasons for the creation of the reserve fund:

- Fry-Ark facilities are aging.
- Increasing extraordinary maintenance over time, leading to increased and increasingly expensive repairs.
- Large replacement costs are coming, and they may not always be anticipated or scheduled.

ACTION ITEMS:

APPROVAL OF STIPULATIONS WITH PUEBLO WEST IN THE DISTRICT'S DIVISION 2 DILIGENCE AND CHANGE CASES (CASE NOS. 16CW3076 AND 16CW3079)

Lee Miller reported the Board directed Special Water Counsel to file the Applications in these cases on October 20, 2016, through Resolution No. 2016-02D. The Board has authorized stipulations with ten of

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the eleven opposers in Case No. 16CW3076: Pueblo Board of Water Works (Pueblo Water), District 67 Irrigation Canals Association (District 67) and The Amity Mutual Irrigation Company (Amity) on July 20, 2017, with Tri-State Generation and Transmission Association, Inc. (Tri-State) and Penrose Water District (Penrose) on January 18, 2018, with the City of Aurora (Aurora) on April 19, 2018, with the Colorado Water Conservation Board (CWCB) on May 17, 2018, with Colorado Springs Utilities (CS-U) and Public Service Company of Colorado (PSCo) on June 21, 2018, and with Lower Arkansas Water Management Association (LAWMA) on August 17, 2018. The Board has authorized stipulations with six of the seven opposers in Case No. 16CW3079: Pueblo Water, District 67, Amity, Tri-State, CWCB, and LAWMA, on the same dates as in Case No. 16CW3076. Legal counsel provided the Board a confidential executive session memorandum on these cases in November 2017.

The District's remaining conditional Fryingpan-Arkansas Project (Project) Water rights in Water Division 2, on the East Slope, include some of the storage rights for Pueblo Reservoir, Twin Lakes Reservoir, and Turquoise Reservoir, and six rights related to the Project's unbuilt Arkansas Power Canal System (APCS): Malta Canal, Otero Conduit, Otero-Wapaco Subsection A, Otero-Wapaco Subsection B, Wapaco Diversion, and Chalk Creek Diversion (collectively, "APCS Rights").

With the Board's authorization through Resolution NO. 2016-02D, Special Water Counsel filed a Diligence Application on November 29, 2016 (Case No. 16CW3079), and filed a Change Application on November 23, 2016 (Case No. 16CW3076) to change the District's APCS Rights to allow diversion and storage of those water rights at Pueblo Reservoir, to allow diversion and storage of the Otero-Wapaco A right in Clear Creek Reservoir, and to correct three legal descriptions. The District's First Amendment to the Application in Case No. 16CW3076, which revised corrections to legal descriptions following the Division Engineer's review, was filed on May 4, 2017.

A. Case No. 16CW3076 - Change

The District's objectives in Case No. 16CW3076 are to (1) change the point of diversion for the District's APCS Rights to Pueblo Reservoir, and for the Otero-Wapaco Subsection A right, to Pueblo Reservoir and Clear Creek Reservoir; (2) obtain a decree that allows storage of the APCS Rights in Pueblo Reservoir (including future enlargement space), and for the Otero-Wapaco Subsection A right, in Pueblo Reservoir and Clear Creek Reservoir; and (3) correct the errors in some previously decreed legal descriptions.

There are eleven opposers in Case No. 16CW3076. Ten have stipulated: Pueblo Water, District 67, Amity, Penrose, Tri-State, Aurora, CWCB, CS-U, PSCo, and LAWMA. The most recent previously stipulated proposed decree is dated July 24, 2018, which was filed with the LAWMA stipulation on August 17, 2018.

Pueblo West will stipulate to the revised proposed decree dated September 19, 2018. Attached is a redline showing the revisions from the July 24, 2018 version. In paragraph 12.3.11, the proposed decree confirms that any calls by the changed APCS Rights will not be placed in a manner contrary to the stipulations with Pueblo West, PSCo and Penrose. (As the Board previously approved, the District's stipulations with PSCo and Penrose provide certain protections for those parties' decreed rights above Pueblo Reservoir, in the event of any Pueblo Reservoir call for the changed APCS Rights.) Pueblo West owns exchange rights on

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the Arkansas River, decreed in Case No. 01CW152, to exchange its changed water rights from their decreed locations near Nathrop (downstream from the original APCS Rights locations) into Twin Lakes, Turquoise and Clear Creek Reservoirs. To ensure that any calls by the changed APCS Rights do not injure Pueblo West's exchange rights, the District and Pueblo West negotiated the following stipulation term:

Southeastern and Pueblo West agree that, if and to the extent Southeastern's APCS Rights changed in this case place any priority call at Pueblo Reservoir, either formally, through State water administration officials, or informally, such call shall not operate to curtail Pueblo West's 01CW152 Exchange Right in response to such a call, either directly or indirectly.

Because Pueblo West has agreed to sign a stipulation that includes this term, General and Special Water Counsel are requesting authorization to agree to a stipulation with this term. Paragraph 12.3.11 of the proposed decree includes a similar assurance that any Pueblo Reservoir call for these rights will not curtail Pueblo West's exchange right.

The proposed decree also contains retained jurisdiction provisions in paragraph 34. Pueblo West requested an additional retained jurisdiction, specific to protecting its exchange right that includes exchange into Clear Creek Reservoir enlargement space. To ensure that Pueblo West's exchange rights will not be injured by the District's change to storage in the Clear Creek Reservoir enlargement, the District and Pueblo West negotiated a term in paragraph 34.3 for retained jurisdiction for five years from the completion of any enlargement to Clear Creek Reservoir, to consider and resolve any claim by Pueblo West alleging injury to its exchange rights decreed in Case No. 01CW152 from the District's Clear Creek Reservoir change.

There are minor updates, clarifications, and grammatical or stylistic revisions to the proposed decree in paragraphs 6, 10, 12 and its subparagraphs, and 13.1. In particular, Pueblo West's attorney wanted some changes to clarify (most explicitly in paragraph 12.4) that these rights will be stored, and will not be diverted from the stream. Attachment 1 to this Action Item is a proposed decree showing the changes, in redline, from the previously stipulated July 24, 2018 proposed decree.

General and Special Water Counsel and District staff believe that the September 19, 2018 proposed decree satisfies the District's objectives, consistent with the previously approved stipulations.

B. Case No. 16CW3079 - Diligence

The District's objectives in Case No. 16CW3079 are to (1) obtain a decree finding reasonable diligence on the District's remaining conditional Division 2 water rights, and (2) not materially limit the District's conditional rights.

There are seven opposers in Case No. 16CW3079. Six have stipulated: Pueblo Water, District 67, Amity, Tri-State, CWCB, and LAWMA. The most recent prior proposed decree is dated May 4, 2018, which was filed with the CWCB and LAWMA stipulations. If the District approves the September 19, 2018 revised

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proposed decree in Case No. 16CW3076, Pueblo West also approves a stipulation to the proposed decree dated May 4, 2018 in Case No. 16CW3079.

If the Board approves the stipulations with Pueblo West, there will be no opposing parties remaining in both Case Nos. 16CW3076 and 16CW3079. Case Nos. 16CW3076 and 16CW3079 have been re-referred to the Water Judge and consolidated for trial, which is set for five days beginning on July 22, 2019. The District's expert disclosures and report were due October 15, 2018, but the Court approved our request (with Pueblo West's consent) for a 3-week extension of this deadline, to November 5, 2018. If these final stipulations can be finalized (with the Board's approval) before then, expert disclosures will not be needed. After the Court approves the final stipulations, Special Water Counsel will finalize proposed decrees in both cases and request Judge Schwartz to enter both decrees.

Mr. Hamel moved, seconded by Mr. Garcia, to authorize Special Water Counsel to execute stipulations with Pueblo West in the District's Change case No. 16CW3076 and Diligence Case No. 16CW3079, consenting to entry of decrees in both cases that are no less restrictive on the District than the proposed decrees dated September 19, 2018 and May 4, 2018, respectively. Motion unanimously carried.

APPROVAL OF STIPULATION WITH U.S. AIR FORCE ACADEMY (CASE NO. 15CW3016)

Lee Miller reported this case is U.S. Air Force Academy (USAFA's) plan for augmentation to replace stream depletions from several lakes located on the USAFA grounds north of Colorado Springs. These facilities are located outside of Southeastern's District boundaries. The USAFA plans to use fully consumable water leased from Colorado Springs Utilities (CS-U) to augment its out-of-priority depletions. CS-U has leased augmentation water to USAFA and will release augmentation water through sewer Return Flows discharged at CS-U's Las Vegas Wastewater Treatment Plant or J.D. Phillips Wastewater Treatment Plant, or as non-sewered Return Flows to Fountain Creek.

The District's objectives in Case No. 15CW3016 are to ensure that: (1) Project Water and Project Return Flows are not used to augment USAFA structures; (2) if any non-Project water used by USAFA is stored in or delivered through Project facilities, that such use is consistent with CS-U's contracts with Reclamation, including Excess Capacity Contract No. 11XX6C0002; (3) augmentation plan operations do not cause injury to the District's water rights and operations; (4) CS-U's non-sewered Return Flows used for augmentation are quantified consistent with past CS-U decrees to which the District has stipulated; (5) any terms and conditions regarding transit loss are consistent with other Fountain Valley entities; and (6) the proposed decree will not cause adverse impacts to the WWSP.

Special Water Counsel, General Counsel, and District staff believe that the attached September 25, 2018 Proposed Decree (PD) satisfies the District's objectives.

USAFA is not leasing or using Project Water or Project Return Flows, and removed reference to those sources from the Proposed Decree. Additionally, USAFA is no longer using sources of water that are exchanged into or delivered through Pueblo Reservoir. CS-U has provided the District with a letter (attached) confirming it will abide by the terms of its Excess Capacity Contract with Reclamation in this

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regard. CS-U is supplying USAFA with water from twelve reusable sources. The non-sewered Return Flows from these sources will be quantified consistent with past CS-U decrees. PD ¶ 16.3.

USAFA confirmed that it will make replacements monthly, or as requested by the Division Engineer for Water Division 2. PD ¶ 17, Table 1; PD ¶ 20.1. Replacements will be made to Fountain Creek, which is below the point of depletion. ¶ 16.3. Further, there are no transit losses, as the replacement will be made downstream of the point of depletion. PD ¶ 16.3. This timing and location is sufficient to prevent injury to the District's rights, including deliveries on Fountain Creek and the WWSP.

Mr. Goodwin moved, seconded by Mr. Colosimo, to authorize Special Water Counsel to execute a stipulation in Case No. 15CW3016 with the United States Air Force Academy, consenting to entry of a decree that is no less restrictive on USAFA and no less protective of the District than the proposed decree dated September 25, 2018. Motion unanimously carried.

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

Shane Hayden provided a PowerPoint presentation reviewing the following:

- As of October 14, 2018 there were 186,065 acre-feet stored in Pueblo Reservoir; 131,425 acre-feet of Project water; 43,914 acre-feet of Excess Capacity water; 9,002 acre-feet of Winter water
- There is currently 113,948 acre-feet of Project space in Pueblo Reservoir and 39,331 acre-feet of space in Turquoise and Twin Lakes Reservoirs
- Charts illustrating storage amounts in Turquoise, Pueblo, and Twin Lakes
- Total M&I Project Water in the System
- Project Reservoirs: Turquoise 89%; Twin Lakes 86%; Pueblo 137%
- Typical Wintertime Pattern El Nino

Mr. Hayden reported the October 2018-May 2019 reservoir operation plans are:

- Maintain minimum flows out of upper reservoirs
- Keep Project water in upper reservoirs until snowpack develops
- Move Project water to Pueblo if more space is needed to create additional space
- Winter Water Storage Program begins November 15.

DIVISION ENGINEER'S REPORT

Mr. Tyner presented a PowerPoint reviewing the following:

- Winter Water Storage Program Overview
- Idealized Map of Arkansas River
- Relative Priorities of Senior Rights
- From 1950 to 1975 During November 15-Mar 14
- Reasons to Stop Doing Same Thing
- Innovate/Cooperate
- Key Elements of the Winter Water Decree

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- Amount Stored or Direct Flow Irrigated

U.S. GEOLOGICAL SURVEY

No representative present.

STATE LEGISLATIVE UPDATE

Lee Miller submitted a written report:

The Water Resources Review Committee (WRRC) completed its Committee work for the year at the end of September, forwarding two proposed bills and two memorials to the Legislative Counsel, and ultimately for consideration during next year's legislative session. The two bills passing the WRRC included a bill to enlarge the boundaries of the Republican River Water Conservation District and one to change Severance Tax Operational Fund Distribution Methodology.

The two memorials both addressed issues in the Arkansas River basin. Senator Larry Crowder requested drafting and succeeded in passing through the WRRC a Senate Joint Memorial urging the federal government to fund the Arkansas Valley Conduit. As mentioned last month, Jim Broderick and Seth Clayton made a presentation to the WRRC regarding the status of the Arkansas Valley Conduit. The second memorial, also sponsored by Senator Crowder, urges the U.S. Army Corps of Engineers to dredge the lower Arkansas River.

The proposal by the Lower Arkansas Valley Water Conservancy District seeking to add deficit irrigation to the types of programs that can be approved by the CWCB for inclusion in the crop following pilot programs did not receive the votes necessary to pass the WRRC. The WRRC requires 7 of the 10 WRRC members to vote for measure for it to be referred out of the Committee. Despite the failure to be referred, the bill will likely be reintroduced next legislative session.

The 2019 legislative session will convene on January 4, 2019. This date is earlier than usual and particularly unusual because it is a Friday. The General Assembly has to be in session and completed the formalities of certifying the election and related measures in order for the Governor and other statewide officers to be sworn in.

INFORMATIONAL ITEMS:

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

- Water Court Resume
- 2019 Proposed Budget
- Winter Water Meeting
- NWRA 87th Annual Conference
- 2018 CRWUA Annual Conference
- December Board Meeting

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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 11:20 a.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary

