

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT
MINUTES**

March 18, 2021

A virtual meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, March 18, 2021 at 9:30 a.m. via ZOOM.

President Bill Long welcomed all in attendance to the virtual meeting. Mr. Long asked Patty Rivas to do a roll call. Mr. Long established that a Quorum was present.

DIRECTORS CONNECTED:

Alan Hamel	Curtis Mitchell	Pat Edelmann
Andrew Colosimo	Greg Felt	Patrick Garcia
Ann Nichols	Howard “Bub” Miller	Seth Clayton
Bill Long	Kevin Karney	
Carl McClure	Mark Pifher	

DIRECTOR(S) ABSENT AND EXCUSED:

Tom Goodwin, and Dallas May

DISTRICT OFFICIALS CONNECTED:

Executive Director James Broderick; General Counsel Lee Miller; Principal Engineer Kevin Meador; Senior Policy and Issues Manager Chris Woodka; Water Resource Engineer Garrett Markus; Finance Manager Leann Noga; Administrative Support Specialist Margie Medina; Accounting Specialist Stephanie Shipley; Accounting Specialist Support Lynette Holt; and Patty Rivas Administrative Support Associate; Christine Arbogast, Kogovsek and Associates.

VISITORS CONNECTED:

Bill Tyner, Division Engineers Office; Cathy Garcia, Congress Woman Lauren Boebert’s office; Curtis Thompson, AECOM; Jeffery Deherrera, Pueblo West Metro District; Jenny Bishop, Colorado Springs Utilities; Jerry Pena, Kennedy Jenks; Kevin Bergschneider, HDR Engineering; Krystal Brown, USGS; Mark Scott, Providence Infrastructure; Mike Holmberg, USBR; and Abba Ahmed, Aurora Water; and Barbara Crockett, Jacobs Engineering Group.

PRESENTATION ITEM:

Mrs. Noga presented an update on the implementation of the “OnBoard” software. As a result of the Covid-19 pandemic and the need for virtual meetings in 2020, District staff began the investigation of a platform for increased communication. The District found that Zoom was the most usable virtual meeting platform. Staff then began viewing several demonstrations of meeting management software, to assist in the controls during meetings. Staff found the OnBoard software to be most compatible with the District’s needs. The

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software is designed to manage meetings of all types. The software organizes and publishes a calendar of meetings, Zoom connection information, pre-meeting materials such as agendas, reports, presentations, etc. The software also includes tools for use during a meeting, such as attendance record, recording audio and visual, vote count, gathering authorized signatures, and much more.

It is important to note that staff will continue to update the Board login landing pages on the District website. As we move through implementation of OnBoard, Board of Directors and staff will still have access to the same way of receiving information as they have in the past.

The staff have worked over the past three months to design the District's OnBoard software and an implementation plan for Board Members and staff (users).

The goal of this OnBoard Implementation Plan:

1. Get all users signed into OnBoard
2. One on One training sessions, providing each user with a tour of the software including:
 - o Location of meeting calendar
 - o How to connect to a meetings
 - o Location of meeting material (Agenda, reports, presentations, etc.)
3. Provide Support to each user.

The implementation plan and timeline were provided to the Board beginning with product purchase thru last section of users roll out. There are many features that the software offers, but staff wants to ensure a high level of comfortability before moving past the above listed three goals.

Staff will be reaching out to each Board Member over the next few weeks to accomplish the three goals listed. Please keep in mind that this is a very user-friendly software that will make attending meetings and finding information simpler in the future, whether in-person or online

APPROVAL OF MINUTES:

President Long said the minutes of the February 18, 2021 Board meeting were posted to the Board website for review and asked if there were any corrections or additions. Mr. Karney moved, seconded by Mr. Garcia approve the minutes. Motion unanimously carried.

TREASURER REPORT:

Treasurer Nichols reported the financial statements for February 2021, were posted to the Board website for review. Ms. Nichols moved, seconded by Mr. Clayton for acceptance of the February 2021 financial statements and payment of the March 2021 bills. Motion unanimously carried.

PRESENTATION ITEMS (continued):

STATE LEGISLATION UPDATE

Mr. Lee Miller provided a written report updating the Board. The General Assembly is in full swing now having returned to the Capitol on February 16, 2021, following the temporary adjournment in January. The temporary recess caused the legislative leadership to revise the operational calendar for the session. The

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Colorado Constitution limits a regular session to no more than 120 calendar days. Under ordinary circumstances, those days run consecutively – including weekends and holidays. However, under a public health emergency declared by the Governor, the legislature may take a temporary recess and reconvene at a date in the future. The days expended during such a recess are then added to the date when the legislature returns, and the 120 calendar clock begins again. This temporary recess has extended the date by which the legislature must adjourn *sine die* to June 16, 2021. The legislature may adjourn *sine die* sooner than that date, but not later – absent another public health emergency that prompts another recess.

With the return came a deluge of bills being introduced, as all of the bill filing deadlines were substantially collapsed by the temporary recess. More than 400 bills have been introduced to date. Fortunately, only a few of these bills are water-related bills, and even fewer directly impact the District.

One of the bills we are monitoring more closely, although it would not directly impact the District, is SB21-034 regarding “Financing Water Needs.” Senator Don Coram has reintroduced his concept for establishing a reliable revenue system with the revenues dedicated to the water needs of the state. He brought a similar bill in 2020 but the intervention of COVID made it impossible for the bill to get a hearing and explanation. The Senate Agriculture & Natural Resources committee postponed indefinitely the bill during a hearing on March 11, 2021, ending consideration of the bill for this session.

As in past years, we participate in the Colorado Water Congress State Affairs Committee (CWC/SAC), which meets most Mondays during the legislative session. CWC/SAC has identified the following additional bills of interest:

- HB21-1008 Forest Health Project Financing
- HB21-1043 Study Underground Water Storage Maximum Beneficial Use
- HB21-1105 Low-Income Utility Payment Assistance Contributions
- SB21-028 Promulgation of Public Health Rules and Orders
- SB21-054 Transfers for Wildfire Mitigation and Response
- SB21-113 Firefighting Aircraft Wildfire Mgmt and Response
- SB21-136 Sunset Forest Health Advisory Council
- SB21-145 Extending Expiring Tax Check-offs
- SB21-164 Uniform Easement Relocation Act
- SB21-170 Wildland Fire Mitigation Cooperative Electric Association
- HJR21-1002 Water Projects Eligibility Lists

Mr. Miller also informed the Board that the Water Quality Control Division was beginning stakeholder meetings on a possible new bill regarding a state dredge and fill permit program. This effort was a result of recent litigation over the Trump-era “waters of the United States” regulation. Burns, Figa and Will lawyers represented the Colorado Water Congress in this litigation, so Mr. Miller has asked them to advise the District on any new state legislation that may result from the stakeholders meetings.

2021 BUDGET, BUSINESS PLAN, STRATEGIC PLAN PUBLICATIONS

Mrs. Noga & Mr. Woodka presented a slide show on three publications for 2021. The Budget, Business Plan, and Strategic Plan.

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1. 2021 Adopted Budget Publication consists of:
 - a. Executive Summary
 - b. Offices and Human Capital
 - c. Financial Planning
 - d. Budget Overview Description & Comparison Data
 - e. Major Fund-Driving Factors, Programs, Projects & Partnerships
 - f. Strategic Long-Range Planning
 - g. Appendix
2. 2021 Business Plan Publication consist of:
 - a. A 3-year work plan for District and Enterprise operations, projects and programs
 - b. Summarizes past activities
 - c. Outlines future activities
 - d. Organized by funds and Component Classes
3. 2021 Strategic Plan consists of:
 - a. Road map for District and Enterprise operations, projects and programs
 - b. Long-term strategic initiatives, rather than specific actions
 - c. Updated to reflect changes

UNEMPLOYMENT FRAUD

Mrs. Noga presented an item on the issue of Unemployment Fraud. Since the start of the pandemic due to Covid-19 the State of Colorado has reported more than a million applications for unemployment benefits flagged as potentially fraudulent. In February, staff sent a communication email to all Board members and staff to inform them of the fraudulent issue. The email explained that each Board member and/or staff would be contacted directly by Leann Noga if they had been affected by this fraudulent activity.

The District received its first fraudulent unemployment claim on January 7, 2021. As of March 11, 2021, the District has received notice that 36 percent of District employees (which includes Board Members and staff) have been compromised. Since January 7, staff have reviewed the District's online portal with the CO Department of Labor and Employment (CDLE) daily for possible new cases to address them as soon as possible.

Mrs. Noga provided a press release from March 4, 2021 from CDLE explaining that a statewide task force has been created to investigate and prosecute fraud and identity theft as a result of these unemployment claims. A State of Colorado video on the steps to take to protect against identity theft was played as part of the presentation. Mrs. Noga noted that other resources can be located on the Colorado Department of Labor and Employment website: <https://cdle.colorado.gov/fraud-prevention>.

Mrs. Noga stated that the District holds a crime insurance policy with the Special District Liability Pool. This coverage is offered to current Board of Directors and staff members. This is not a preventive policy. This policy assists with cost recovery after the fact of identity theft. The policy could assist with the cost of credit bureau reports, fees for reapplying for declined loans, postage and shipping fees, notary and filing fees, and mental health counseling caused by the identity theft.

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Mrs. Noga pointed out that the District has been diligent in trying to catch the fraudulent items quickly by reviewing daily, the Online Portal thru the State of Colorado, in an attempt to minimize the potential damage caused by this identity theft.

ACTION ITEM:

799 EVELYN DRIVE PETITION FOR INCLUSION RECOMMENDATION TO SET PUBLIC HEARING

Mr. Markus provided an action item that the Resource & Engineering Planning Committee recommend the Board set the date and time for a public hearing for consideration of the inclusion of the 799 Evelyn Drive property in Fremont County into the Southeastern Colorado Water Conservancy District (District) for Thursday, April 15 at 9:30 a.m. at the District office during our Board Meeting.

Irmina Solak contacted the District staff February 19, 2021 to include a tap from Canon City lands in Fremont County at 799 Evelyn Drive Canon City, CO 81212, Section 20 T19SR70 120 acres. In a Water Service Contract between the City of Canon City and Irmina Solak the city requires inclusion to Southeastern Colorado Water Conservancy District.

Staff will send a letter to the representative for the petition informing them of the next steps and request payment.

The District cannot include any property without Reclamation's assent; however, after staff review, the conclusion was reached that the method of proceeding that is most consistent with the District's statutory and contractual requirements is for the District to hold a hearing on the inclusion request, and should the District approve the inclusion request, that approval would be conditioned upon Reclamation's assent. Once Reclamation assents to this inclusion to the District, special water counsel will submit the proper paperwork to the District Court for final approval.

In summary, staff has received the necessary documents and the administrative and back tax fees will be invoiced. Therefore, it is appropriate to request the District Board to set a public hearing to consider the inclusion of the Applicant's property into the District once payment is received.

Mr. Hamel moved, seconded by Mr. Garcia that the District set a public hearing to be held on Thursday, April 15, 2021 at 9:30 a.m. at the District office for consideration of the inclusion of 799 Evelyn Drive property into the District and that staff arrange for the publication of the necessary notices of this hearing as required by statute. Motion unanimously carried.

APPROVAL OF STIPULATION IN THE APPLICATION OF CITY OF AURORA, CASE NO. 19CW3159, WATER DIVISION 5

Mr. Lee Miller reported General and Special Water Counsel and District staff recommend that the Board authorize Special Water Counsel to execute a stipulation with the City of Aurora ("Aurora") in Aurora's application for appropriative rights of exchange, Case No. 19CW3159, consenting to entry of a decree that is no less restrictive on Aurora and no less protective of the District than the proposed decree dated March 5, 2021.

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In Case No. 19CW3159, Aurora seeks approval of (1) an appropriative right of exchange (up to 900 acre-feet) from the confluence of the Roaring Fork and Fryingpan Rivers to Ruedi Reservoir, and (2) another appropriative right of exchange (up to 450 acre-feet of the 900 acre-feet) up Ivanhoe Creek to Ivanhoe Reservoir. This application was contemplated by the 2018 settlement agreement between Aurora and several West Slope parties in Aurora's Busk-Ivanhoe change case (Case No. 09CW142, Water Division 2).

The District's objectives in Case No. 19CW3159 are to: (1) ensure that Aurora's proposed exchange does not cause injury to the District's water rights and Project operations by depleting the flow of the Fryingpan River at the Thomasville Gage or reducing the water available for Project diversion and stream flow bypass at the Ivanhoe Creek diversion structure; and (2) ensure that Aurora's proposed decree includes appropriate terms and conditions for its use of Ruedi Reservoir, including any terms necessary to ensure that Aurora's use of Ruedi Reservoir is consistent with any contract authorizing such use. Special Water Counsel, General Counsel, and District Staff believe that the March 5, 2021 Proposed Decree (provided to the Board) satisfies the District's objectives, as follows:

The proposed decree includes appropriate terms ensuring that Aurora's proposed exchanges will not injure the District's water rights and Project operations by depleting flows at the Thomasville Gage. The proposed decree provides that Aurora will not exchange water from Ruedi Reservoir into Ivanhoe Reservoir if Fryingpan River flows at the Thomasville Gaging Station are less than the levels established in the Project's Operating Principles (§ 17.6.1). To further ensure that the necessary flows at the Thomasville Gage are maintained, this paragraph also states that Aurora will only exercise an exchange when the average Fryingpan River flows at Thomasville are at least 15 c.f.s. greater than the flow level prescribed in the Operating Principles on the day prior to the exchange. At our request, Aurora attached an engineer's memorandum to its proposed decree (Exhibit C), clarifying Aurora's criteria and protocols for operating its river exchange into Ivanhoe Reservoir.

Furthermore, the proposed decree includes terms to ensure that Aurora's exchanges will not reduce water available for the Project's diversions and bypass on Ivanhoe Creek. The proposed decree provides that Aurora will not operate its river flow exchange unless and until the Project's diversions from Ivanhoe Creek are being fully met (§ 17.4) and that Aurora's exchange shall not deplete Ivanhoe Creek flows at the Project's diversion structure if those flows are necessary to satisfy the Project's decreed diversions or required bypass flows on Ivanhoe Creek (§ 17.6.2).

The proposed decree also states that Aurora may only store water in or otherwise use Ruedi Reservoir as part of its exchange operations if Aurora has obtained the required contracts from Reclamation (§ 17.3, § 17.6.6). In Paragraph 17.6.6, the proposed decree includes several terms and conditions applicable to Aurora's negotiation, execution, and operation of such a contract with Reclamation, which has not yet been negotiated or approved. In particular, Aurora must provide the District with any further contract requests or approvals concerning Aurora's storage of water in, or exchange of water to or from, Ruedi Reservoir, and the District may comment on or object to any such contract.

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Paragraph 17.6 of the proposed decree states that Aurora may not operate its exchange rights in a manner that interferes with Project operations. To ensure that the operation of Aurora's exchanges will not interfere with Reclamation's operation of the Project, the proposed decree requires that Aurora provide reasonable notice to the Division Engineer and Reclamation before operating its exchanges. (§ 17.7). Additionally, Paragraph 17.6 of the proposed decree includes additional terms to ensure that Aurora's use of Ruedi Reservoir is consistent with the Project's Operating Principles. Paragraph 17.6.3 provides that Aurora may not exercise an exchange into Ruedi Reservoir if the bypass flow requirements below Ruedi Reservoir are not satisfied. Paragraph 17.6.4 requires that Aurora may not take any actions that would require Reclamation to release additional uncontracted flows from Ruedi Reservoir, or to increase the Project's collection system bypasses to satisfy instream flows. Paragraph 17.6.5 provides that any water stored in Ruedi Reservoir under Aurora's contract with Reclamation shall be spilled upon Reclamation's determination that Ruedi Reservoir space is needed for Project operations. Paragraph 17.6.7 provides that Aurora may only exercise its exchanges if Ruedi Reservoir is projected to fill.

Mr. Clayton moved, seconded by Mr. Pifher, to authorize Special Water Counsel to enter into a stipulation with the City of Aurora, consenting to entry of a decree in Case No. 19CW3159 that is no less restrictive on Aurora and no less protective of the District than the proposed decree dated March 5, 2021. Motion unanimously carried.

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

Mr. Mike Holmberg provided a written report reviewing the following, as of March 14, 2021:

- There were 210,994 acre-feet stored in Pueblo Reservoir; 127,738 acre-feet of Project water; 41,267 acre feet of Excess Capacity water; 33,368 acre-feet of Winter water.
- There is currently 117,635 acre-feet of Project space in Pueblo Reservoir and 43,536 acre-feet of space in Turquoise and Twin Lakes Reservoirs
- Charts illustrating storage amounts in Turquoise, Twin Lakes, and Pueblo Reservoir
- Project Reservoirs: Turquoise 137%, Twin Lakes 82%, Pueblo 95% as of March 14, 2021
- First Use Project + PCO Municipal Water
- Total M&I PW in the system is 127,020 acre-feet as of February 28, 2021

U.S. GEOLOGICAL SURVEY REPORT

Krystal Brown provided a written report reviewing the *USGS NATIONAL WATER DASHBOARD*.

Slides included the following:

- An overview of the Dashboard
- Streamflow Stations
- Water-Quality Stations
- Precipitation and Atmospheric Stations
- Real-time Weather Conditions
- Hydrology Layers

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COLORADO RIVER ISSUES STATUS

Mr. Lee Miller was asked to go over the Colorado River issues. Instead of a written report, Mr. Miller provided a report prepared by the Congressional Research Service titled *Management of the Colorado River: Water Allocations, Drought, and the Federal Role*, updated December 15, 2020. The purpose of providing this report was to refresh Board members of the information on the context of the issues that have the potential to impact District water activities.

Mr. Lee Miller did an overview of the report, noting the complexities of Colorado River Issues. Mr. Miller emphasized that the Upper Colorado River Basin States have never been in curtailment, and under historical hydrologic conditions, will not face a curtailment in foreseeable future. Historical record, however, is not necessarily indicative of the future, he noted, He assured the Board that District staff along with other state leaders are working diligently to address the challenges of drought in the Colorado River and compliance with the Colorado River Compact.

Mr. Long encouraged all to review this document that was provided, as it has a wealth of information.

INFORMATIONAL ITEMS:

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

- Water Court Resume
- NWRA – Federal Water Issues Conference

President Long asked if there were any other matters to come before the District Board. Hearing none, Mr. Long adjourned the District Meeting @ 10:28 am.

Respectfully submitted,

Patty Rivas
Administrative Support Associate

Secretary

SECWCD
March 18, 2021
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