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**SOUTHEASTERN COLORADO WATER  
ACTIVITY ENTERPRISE**

**MINUTES**

**May 15, 2014**

A regular meeting of the Board of Directors of the Southeastern Colorado Water Activity Enterprise (Enterprise) was held on Thursday, May 15, 2014 at 11:10 a.m., at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

**DIRECTORS PRESENT:**

Bill Long	Harold Miskel	Ann Nichols
Gary Bostrom	Kevin Karney	Gibson Hazard
Tom Goodwin	Leonard Pruett	Carl McClure
Jay Moore	David Simpson	Pat Edelman
Howard "Bub" Miller	Curtis Mitchell	
Alan Hamel-Advisory Board Member		

**DIRECTOR(S) ABSENT AND EXCUSED:**

Vera Ortegon

**ENTERPRISE OFFICIALS PRESENT:**

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

**VISITORS PRESENT:**

Chris Woodka, The Pueblo Chieftain; Tom Simpson, Aurora Water; Christina Thiebaut, U.S. Senator Mark Udall's office; Doug Fitzgerald, U.S. Congressman Scott Tipton's office; Doris Morgan, Congressman Cory Gardner's office; Dwight Gardner, U.S. Senator Michael Bennet's office; Roy Vaughan, U.S. Bureau of Reclamation; David Mau, U.S. Geological Survey; Jerry Peña, CDM Smith; Mark Scott, GEI Consultants; Jack Goble, Lower Arkansas Valley Water Conservancy District; Roy Heald, Security Water District and Fountain Valley Authority; Brett Gracely, Colorado Springs Utilities; Steve Witte, Colorado Division of Water Resources; Terry Book and Alan Ward, Board of Water Works of Pueblo; Scott Lorenz, Arkansas Groundwater Users Association; Ann Lopkoff, Colorado Water Protective Development Association; Dan Henrichs, High Line Canal Company; Keith Goodwin, Otero County; Ryan Hemphill, Fred Heckman, Bert Heckman, and Don McBee, Fort Lyon Canal Company.

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**APPROVAL OF MINUTES:**

President Long said the minutes of the April 17, 2014 Board meeting were posted to the Board website for review, and if there were any corrections or additions. Hearing none, Mr. Pruett moved, seconded by Dr. Moore, to approve the minutes. Motion unanimously carried.

**FINANCE COMMITTEE REPORT:**

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

**CONSENT ITEMS:**

None

**PRESENTATIONS:**

**FEDERAL LEGISLATION**

Christine Arbogast reported on Tuesday, May 13, 2014 the Senate Energy and Natural Resources Committee held the confirmation hearing for Commissioner of Reclamation nominee Estevan Lopez of New Mexico. It went smoothly and Chairwoman Landrieu and Ranking member Murkowski stated that the committee would vote on the nominations in the near future.

Prior to the hearing, Senator Udall, who is a member of the committee, had a meeting with Mr. Lopez to discuss Colorado Reclamation issues including the Arkansas Valley Conduit (AVC). He urged the Commissioner to fight for the necessary funding in the next few years to move the project into construction status.

Both Senators Udall and Bennet are in an engagement process with administration officials at the Department of the Interior and the Office of Management and Budget, urging support for the needed funding in FY '16, given that that budget process is now underway. Along with Congressmen Gardner and Tipton, the Senators are working on funding levels for FY '15 for the Reclamation appropriations account. The District is fortunate to have, and are grateful for, the strong bipartisan support for the project.

The Energy and Water Development Appropriations subcommittees in both the House and the Senate have indicated plans to mark up their FY '15 legislation between Memorial Day and the Fourth of July; this amid many pledges from leadership and committee chairs to follow the formal appropriations process of passing and enacting individual bills. And again, all four of Colorado's delegation representing the AVC area are fully engaged in that process.

The EPA formally issued its proposed rule on the Clean Water Act. In numerous hearings on Capitol Hill, Administrator McCarthy pledged to work with Congress and interested parties to reach agreement on how to clarify the reach of the Act and the definition of "waters of the United States."

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There are numerous actions taking place: proposals to extend the comment period an additional 90 days; proposals to return the rule to the agency for rewrite; appropriations riders to deny funding for any further activity or implementation of the proposed rule, and congressional hearings. A hearing in the House Transportation and Infrastructure 's Water Subcommittee was scheduled and postponed. It is tentatively rescheduled for June 11, 2014.

Colorado is actively engaged in this discussion through the National Water Resources Association (NWRA), Mark Pifher has been invited to testify at the hearing and his testimony reflects the active outreach of NWRA to the committee on this and other issues.

The recently enacted farm bill included a reorganization of conservation programs. It included an expansion of regional "landscape" or broadbased conservation efforts like those previously undertaken in the Chesapeake Bay and Everglades areas. The Secretary will be designating eight areas of critical concern. It is expected that many of them will be the existing large scale efforts, but that two new ones will be added. There is an effort underway to designate the entire Colorado River basin as one of the eight. It is our understanding that this is primarily driven by Lower basin large metropolitan interests, but we are working to get additional information. The designations are expected to be made yet this month, although that timeline could slip.

#### AVC AND EXCESS CAPACITY MASTER CONTRACT UPDATE

Jean Van Pelt reported:

- Reclamation continues to progress on the surveys and the surveys should be completed by the end of September 2014
- District staff met with Bob Leach who represents Scanio Family and Reclamation regarding the AVC route
- The Board was provided an updated map of the AVC route
- District staff has been working on the Regional Conservation Plan.

Mr. Hamel said the Colorado Water Conservation Board will be on a tour, and that the AVC and hydro project update will be presented to them. He said there is still \$60 million reserved for the AVC.

#### **ACTION ITEMS:**

##### ALLOCATION OF PROJECT WATER

Mr. Hamilton presented a PowerPoint reviewing the following:

- Fry-Ark Collection System Area Snowpack, Snow Water Equivalent (SWE) May 15, 2014
- Upper Arkansas Basin Snowpack Snow Water Equivalent (SWE) May 15, 2014
- Colorado's Surface Water Conditions
- Allocation Calculations
- Forecasted 2014 Imports of 64,000 Acre-feet
- Price for Project Water 2014

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Reclamation has forecasted, based on the higher than average snowpack, there will be 64,040 acre-feet (AF) of imports. District staff is using 51,985 AF as the net forecasted amount. The below charts show the allocation of each entity:

<b>2014 Municipal Project Water Allocation</b>	
<b>Pueblo</b>	
<b>Entity</b>	<b>Allocation</b>
Board of Water Works of Pueblo	<b>0</b>
<b>Fountain Valley Authority (FVA)</b>	
<b>Entity</b>	<b>Allocation</b>
Colorado Springs Utilities with Payback	9,000
Fountain	3,000
Security	1,900
Stratmoor Hills	1,261
Widefield	1,200
<b>Total to FVA</b>	<b>16,361</b>
<b>West of Pueblo</b>	
<b>Entity</b>	<b>Allocation</b>
Acres of Ireland	8
Buena Vista, Town of	200
Canon City, City of	175
Florence, City of	100
Fremont Cty. Dept. of Transportation	6
Park Center Water District	200
Salida, City of	400
Upper Arkansas WCD	1,000
<b>Total West of Pueblo</b>	<b>2,089</b>
<b>Others</b>	
<b>Entity</b>	<b>Allocation</b>
Manitou Springs, City of	182
Pueblo West Metro District	177
<b>Total Other</b>	<b>359</b>

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<b>East of Pueblo</b>	<b>Allocation</b>
<b>Entity</b>	<b>AF</b>
96 Pipeline Co.	34
Avondale Water & Sanitation District	75
Bents Fort Water Company	300
Crowley County Water Association	500
Crowley, Town of	50
Fowler, Town of	500
Homestead Improvement Assn.	12
Joseph Corporation	80
La Junta, City of	1,864
Lamar, City of	3,000
Las Animas, City of	300
Manzanola, Town of	100
May Valley Water Association	3
McClave Water Association, Inc.	14
Olney Springs, Town of	45
Ordway, Town of	200
Rocky Ford, City of, & Hancock Water	1,400
South Swink Water Company	40
St. Charles Mesa Water District	800
Sugar City, Town of	110
Swink, Town of	125
<b>East of Pueblo Totals</b>	<b>9,552</b>
<b>Total Municipal Allocation AF</b>	<b>28,361</b>

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<b>2014 Ag Project Water Allocations</b>	
<b>23,624</b>	<b>2014 Allocation of 23,624 AF</b>
<b>Acre-Feet</b>	
<b>Entity or Ditch</b>	
Banister Ditch	-
Beaver Park Water	50
Bessemer Irrigation Ditch Co.	2,989
Cactus Ditch	8
Canon City & Oil Creek Ditch	-
Canon Heights Irrigation & Res.	133
Catlin Canal Co.	2,263
Cherry Creek Farms	2
Collier Ditch	103
Colorado Canal	550
DeWeese Dye Reservoir	176
Ewing Koppe Ditch	1
Excelsior irrigating Co.	-
Fort Lyon Canal Co.	9,619
Frost Livestock	52
Garden Park and Terry Ditch	27
Clark Hanna, Hanna Ranch # 14	-
Hanna Ranches Inc.	-
Herman Klinkerman Ditch	-
Highline Canal Co.	3,477
Holbrook Mutual Irrigation Co.	2,536
Las Animas Consolidated	-
Michigan Ditch	-
Otero Ditch	548
Oxford Farmers Ditch Co.	844
Potter Ditch	11
Reed & BLSH	-
Riverside Dairy	10
Saylor-Knowles Seep Ditch	-
Steele Ditches (HR & MW)	-
Sundance Investment	120
Titsworth Ditch 0 per T. Goodwi	-
Ward, Charles D.	1
West Maysville Ditch	2
Wood Valley Ditch	102
<b>Totals</b>	<b>23,624</b>

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Mr. McClure moved, seconded by Dr. Moore, the Board allocate 51,985 AF of Project water based on Reclamation's May 1, 2014 forecast. These allocations would be based on the percentages and requests shown in the charts, for M&I and Agriculture, and as was done in the past four years, making eighty percent (80%) of the allocation available to M&I and Ag entities following payment for 100 percent (100%) of the allocation, the remaining twenty percent (20%) would be made available no later than July 18, 2014. If any portion of the twenty (20%) of allocated water is not available to the entities at that time, that portion of their water payments will be refunded. Motion unanimously carried.

**CREATION OF A FIRST RIGHT OF REFUSAL PILOT PROJECT FOR THE ALLOCATION OF PROJECT WATER RETURN FLOWS AND THE ALLOCATION OF PROJECT WATER RETURN FLOW**

Mr. Hamilton presented a PowerPoint presentation reviewing the following:

- Fort Lyon Canal Company Allocation Distribution and Return Flow Calculations
- Divide the Return Flows from the Fort Lyon Only Lands Between Rule 10 and Rule 14
- Rule 10 Use

Mr. Hamilton reported the Allocation Committee has discussed the allocation of return flows at every meeting this year. The primary subject has been "How does the District address the Agricultural First Right of Refusal (First Right)". In 2013, the Fort Lyon Canal Company (FLCC) exercised its First Right requesting 300 AF of return flows they generated, because the request was small the Enterprise was easily able to allocate their request. In 2014, the FLCC told staff they were going to exercise their First Right for all return flows they generate. Board President Bill Long, Jim Broderick, and Bob Hamilton met with the full FLCC Board of Directors and discussed the complexities of the issues involved. As a result of these discussions and Committee meetings, the Allocation Committee recommends the development of a "Pilot Project" in conjunction with the FLCC to address the allocation of agricultural return flows to ditch companies exercising their First Right for the return flows they generate.

The Allocation Committee voted to recommend the Board allocate the return flows FLCC generates to be used for Rule 10 Plans of the "Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River basin in Colorado", and Rule 14 Plans of the "Amended Rules and Regulations Governing the Diversions and Use of Tributary Ground Water in the Arkansas River basin, Colorado." And specifically:

1. Allocate the 2014 return flow the FLCC generates to be used 42.4 percent for Rule 10 and 57.6 percent for Rule 14 Plans for lands under the FLCC system, and;
2. Direct staff to create a team of involved entities, including the Division Engineer's Office, to annually evaluate each previous year's operation and results beginning with the 2014 Plan Year and running through the 2018 Plan Year, and;

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3. FLCC will use up to the full Rule 10 return flow allocation to meet the 2014 Rule 10 demands on a “Time Forward” basis and these return flows cannot be used for previously incurred “Lagged” return flows which must be replaced by the Lower Arkansas Valley Water Conservancy District (LAVWCD), and;
4. Any Rule 10 return flows not needed to meet the Rule 10 demands will be transferred to the Rule 14 Plans/Accounting, and
5. FLCC will make arrangements necessary with the well augmentation groups, the LAVWCD, and the Division Engineer’s Office for accounting and distribution of these return flows to the Rule 10 and Rule 14 Plans.

The Allocation Committee also voted to recommend the Board allocate return flows as presented in the below chart.

<b>2014 Ag Return Flows Allocations</b>	
<b>8,033</b>	<b>2014 Allocation of 8,033 AF</b>
<b>Acre-Feet</b>	
<b>Entity or Ditch</b>	
Entity	Allocation AF
AGUA	653
Banister Ditch	78
Catlin Canal Co.	112
Collier Ditch	14
CWPDA	2,915
Excelsior Irrigating Co.	191
Ft. Lyon Canal Co.	3,264
Hanna Ranches, Inc.	15
Herman Klinkerman Ditch	89
Las Animas Consolidated	107
LAWMA	441
Oxford Farmer's Ditch Co.	129
Steele Ditches (HR &MW)	25
<b>Total Ag Return Flows</b>	<b>8,033</b>

Mr. McClure moved, seconded by Mr. Howard “Bub” Miller, the Pilot Project be developed in cooperation with the Fort Lyon Canal Company to address the allocation of Agricultural Fryingpan-



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Arkansas Project water return flows to ditch companies that exercise their “First Right of Refusal” for the return flows they generate, and;

The Board allocate the return flows the FLCC generates to be used for Rule 10 Plans of the “Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River basin in Colorado”, and Rule 14 Plans of the “Amended Rules and Regulations Governing the Diversions and Use of Tributary Ground Water in the Arkansas River basin, Colorado.” specifically:

1. Allocate the 2014 return flow the FLCC generates to be used 42.4 percent for Rule 10 and 57.6 percent for Rule 14 Plans for lands under the FLCC system, and;
2. Direct staff to create a team of involved entities, including the Division Engineer’s Office, to annually evaluate each previous year’s operation and results beginning with the 2014 Plan Year and running through the 2018 Plan Year, and;
3. FLCC will use up to the full Rule 10 return flow allocation to meet the 2014 Rule 10 demands on a “Time Forward” basis and these return flows cannot be used for previously incurred “Lagged” return flows which must be replaced by the Lower Arkansas Valley Water Conservancy District (LAVWCD), and;
4. Any Rule 10 return flows not needed to meet the Rule 10 demands will be transferred to the Rule 14 Plans/Accounting, and
5. FLCC will make arrangements necessary with the well augmentation groups, the LAVWCD, and the Division Engineer’s Office for accounting and distribution of these return flows to the Rule 10 and Rule 14 Plans, and;

The Board allocate 8,033 acre-feet (AF) of agricultural return flows based on the allocation of 23,622 AF of Agricultural Project water and Municipal return flows. And as was done in the past four years, making eighty percent (80%) of the allocation available to M&I and Ag entities following payment for 100 percent (100%) of the allocation, the remaining twenty percent (20%) would be made available no later than July 18, 2014. If any portion of the twenty percent (20%) of allocated water is not available to the entities at that time, that portion of their water payments will be refunded. Motion unanimously carried.

**APPLICATION FOR EXCHANGE OF PROJECT WATER RETURN FLOWS, APPROVAL OF STIPULATION (Case No.01CW151)**

Ms. Joseph reported Case No. 01CW151 is the District’s pending application for an appropriative right of exchange into Pueblo Reservoir for return flows generated from the Municipal and Agricultural use of Fryingpan-Arkansas Project water (“Fry-Ark return flows”) from below Pueblo Reservoir. The District has entered into Court-approved stipulations with all Opposers except Catlin.

Catlin’s primary objection has been to the District’s claimed exchange of agricultural return flows. The Agricultural return flows that the District seeks to exchange are Fry-Ark return flows generated from the use of Project water for Agricultural irrigation purposes that accrue to the Arkansas River below Pueblo Reservoir. These return flows are not delivered to the Arkansas River at a defined point by means of a

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structure or facility. Rather, they accrue to the river as a natural result of their use through surface return and groundwater percolation. The Division Engineer accounts for the amount, timing and location of agricultural Fry-Ark Return Flows. The District sells a substantial portion of agricultural Fry-Ark return flows for well augmentation and replacement purposes within District boundaries. However, at times there is a surplus of agricultural Fry-Ark return flows accruing to the Arkansas River beyond the amount sold or repurchased for well augmentation. The District seeks to exchange these surplus agricultural Fry-Ark return flows into Pueblo Reservoir with a 1996 appropriation date in this case.

Catlin has claimed the District's proposed exchange of Agricultural Fry-Ark return flows is prohibited by the District's 1989 Stipulation with the Arkansas Valley Ditch Association (AVDA) and others. To resolve this dispute with Catlin, special water counsel filed a motion for determination of question of law (Rule 56 Motion) in 2013, asking Judge Schwartz to hold that the 1989 Stipulation does not prevent the exchanges of Fry-Ark return flows claimed in this case. The Court ruled that the 1989 Stipulation only applies to the District's 1939 priority exchanges, and does not limit the exchanges claimed in the current Case No. 01CW151. The Court's Order granting the District's Rule 56 Motion denies Catlin's primary argument that the 1989 Stipulation prohibits the District from ever exchanging Agricultural Fry-Ark return flows, in this case or otherwise. The only way Catlin can revive this argument is by appealing the Court's Order. This settlement stipulation with Catlin allows the District to operate the Agricultural Fry-Ark return flow exchanges as originally proposed by the District.

By agreeing to this Stipulation, the District is not agreeing to anything that is has not already agreed to with AVDA. Unlike the Stipulation with AVDA, this does not contain an agreement by Catlin not to assert the 1989 Stipulation applies to certain exchanges. With the Court's Order saying that the 1989 Stipulation only applies to the 1939 Priority, and not other exchange claims, special water counsel believe this provision is unnecessary.

At the April 17, 2014 Board meeting, it was unsure what Catlin's counsel would do with the proposed stipulation given that the Catlin Board had met the night before the District's Board meeting. Accordingly, the Board gave Mr. Long, Mr. Broderick, and Mr. Miller the authority to negotiate a settlement subject to Board ratification. Catlin made no changes to the stipulation that was presented to the Board in April, so the Committee authorized special water counsel to execute the stipulation on behalf of the District.

Mr. Goodwin moved, seconded by Mr. Howard "Bub" Miller, to approve the Stipulation with Catlin Canal Company dated April 18, 2014. Motion unanimously carried.

**RESTORATION OF YIELD (ROY), APPROVAL OF STIPULATION(S) (Case No. 06CW120)**  
Ms. Joseph reported the applicants (also known as the ROY participants) are parties to the 2004 six-party IGA with the City of Pueblo, which provides for the ROY participants to forego certain diversions to maintain specified flow levels on the Arkansas River through Pueblo. They can then recover the foregone yield through downstream storage, followed by exchanges to upstream storage (mainly Pueblo Reservoir) when the flows are sufficient. The application seeks appropriative rights of exchange of

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Foregone Diversions (within the meaning of the six-party IGA) through the reach of the Arkansas River from its confluence with Timpas Creek, in Otero County, upstream to Pueblo Reservoir.

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

The March 14, 2014 proposed decree was provided last month, for the Board's consideration of stipulations with Canon City, Florence, and Round Mountain. It contains appropriate terms and conditions on the operation of the exchange in paragraph 15, including language on the co-applicants' use of Pueblo Reservoir in subparagraph 15.9 (the same language the District proposed to address the United States' comments). With the removal of the upstream facilities from the proposed decree, terms and conditions related exclusively to the exchange reach above Pueblo Reservoir were also removed from the proposed decree.

Special water counsel recommended the Board approve a standard stipulation similar to the other stipulations signed in this case. Salida has agreed to a stipulation similar to those the co-applicants have entered into with other parties, with additional language stating neither the stipulation nor the final decree will have precedential effect on future cases. If the stipulation is executed, six parties, including Salida, will have fully settled their participation in this case.

Mr. Simpson moved, seconded by Mr. Bostrom, to authorize special water counsel to execute a stipulation with Salida and the co-applicants, consenting to entry of the co-applicants' proposed ruling dated March 14, 2014. Motion unanimously carried.

**INFORMATIONAL ITEMS:**

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

- AVC and Excess Capacity Master Contract Update

**EXECUTIVE SESSION**

It was determined that there was not a need for the Board to go into Executive Session to discuss the Application for Exchange of Project Water Return Flows (Case No. 01CW151).

Mr. Miskel left the meeting at 12:03 p.m.

**OTHER BUSINESS MATTERS:**

President Long reported the Board members had been provided a chart indicating what committees each had been assigned to, and asked if there were any concerns to the assignments, to please contact him within the next couple of weeks.

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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 12:07 p.m.

Respectfully submitted,

Toni Gonzales  
Administrative Manager

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Secretary

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