

RECORD OF PROCEEDING

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**SOUTHEASTERN COLORADO WATER  
ACTIVITY ENTERPRISE**

**MINUTES**

**November 20, 2014**

A regular meeting of the Board of Directors of the Southeastern Colorado Water Activity Enterprise (Enterprise) was held on Thursday, November 20, 2014 at 9:35 a.m., at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

**DIRECTORS PRESENT:**

Bill Long	Ann Nichols	Vera Ortegon
Harold Miskel	Kevin Karney	Gibson Hazard
Carl McClure	Howard "Bub" Miller	Leonard Pruett
Jay Moore	David Simpson	Pat Edelman
Tom Goodwin		

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

Gary Bostrom, Curtis Mitchell, and Alan Hamel-Advisory Board Member.

**ENTERPRISE OFFICIALS PRESENT:**

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

**VISITORS PRESENT:**

Chris Woodka, The Pueblo Chieftain; Tom Simpson, Aurora Water; Doug Fitzgerald, U.S. Congressman Scott Tipton's office; Doris Morgan, U.S. Congressman Cory Gardner's office; Dwight Gardner, U.S. Senator Michael Bennet's office; Roy Vaughan, U.S. Bureau of Reclamation; Rodger Ortiz, U.S. Geological Survey; Steve Witte, Colorado Division of Water Resources-Division 2; Mark Scott, GEI Consultants; Terry Book, Board of Water Works of Pueblo; Kevin Niles, Arkansas Groundwater Users Association; Mark McCuiston, Oxford Farmers Ditch; Jerry Edwards, Bohannon Huston, Inc; Scott Lorenz, Brett Gracely, and Allison Plute, Colorado Springs Utilities; and Bill Stoner, Black and Veatch.

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**APPROVAL OF MINUTES:**

President Long said the minutes of the October 16, 2014 Board meeting were posted to the Board website for review, and if there were any corrections or additions. Hearing none, Mr. Hazard moved, seconded by Dr. Moore, to approve the minutes. Motion unanimously carried.

**FINANCE COMMITTEE REPORT:**

Treasurer Nichols reported the financial statements for October 2014 were posted to the Board website for review. Treasurer Nichols moved, seconded by Dr. Moore, for acceptance of the October 2014 financial statements and payment of the November 2014 bills. Motion unanimously carried.

**CONSENT ITEMS:**

None

**PRESENTATIONS:**

**FEDERAL LEGISLATION**

Christine Arbogast reported Congress is now in its second week of the lame duck session. Plans to proceed with FY 2015 appropriations are still unclear. There are three options most often discussed:

- Year-long Continuing Resolution at FY 2014 levels
- Passage of an omnibus with provisions as determined by subcommittee markup
- Passage of a short-term Continuing Resolution until January at which time the new Republican majority would be able to shape the subcommittee bills and pass an omnibus for the remainder of the year

Given language which is included in the Senate markup and the House amendment, which seek to make more funding available in the conservation and delivery category of Reclamation's budget, the best option is passage now of an omnibus.

The critical question is how does the appropriations process play out with the President's pending announcement to address immigration through executive order, and does Congress use funding legislation as a lever to pressure him not to or to stop him from doing so.

At the National Water Resources Association meeting, which was attended by Christine Arbogast, Jim Broderick, Lee Miller, and Board members Harold Miskel and Gib Hazard, they had the opportunity to meet with the nominee for Commissioner of Reclamation, who is currently the Principal Deputy Commissioner, Estevan Lopez. It is still hoped that he will be confirmed during the lame duck, but barring that, he is acting in the role of the head of the agency. It was stressed the importance of sufficient funding levels for the Arkansas Valley Conduit (AVC) and the efficiency of a regional solution rather than community by community solutions. Mr. Lopez was invited to visit the Fryingpan-Arkansas Project and learn more about the Project.

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It was also learned through various conversations, that the FY 2016 budget will be passed back from Office of Management and Budget to Reclamation in early to mid-December. District Federal lobbyists are working closely with the Colorado congressional offices, who are interfacing with the Administration.

Given the election results, it is appropriate that Mr. Kogovsek and Christine Arbogast thank Senator Mark Udall for his strong support for the AVC throughout his tenure in the Senate. Mr. Kogovsek and Ms. Arbogast also look forward to ongoing work with Senator-elect Gardner who has a long history with the AVC from his days on Senator Allard's staff. And they look forward to briefing and working with Congressman-elect Buck. Finally, they congratulate Congressman Tipton and look forward to their continuing working relationship with him, and with Senator Bennet. Once again, the bipartisan support they have had for the AVC will continue.

Congress is working on an omnibus resources bill. It is unclear at this time if it will include the legislation which will send the proposed waters of the United States rule back to the EPA for further consultation with states and local water interests. In the meantime, the deadline for comments is December 14, 2014.

President Long called the District meeting to order at 9:45 a.m., to hold the Public Hearing for the 2015 Proposed Budget jointly with the Enterprise.

## PUBLIC HEARING

Mr. Broderick presented a PowerPoint presentation titled, *2015 Proposed Budget*, reviewing the following:

- Budget Policy
- All District Activity
- Fryingpan-Arkansas Revenue
- Fryingpan-Arkansas Tax Revenue
- Fryingpan-Arkansas Expenditures
- Grant Revenue
- Grant Expenditures
- Operating Revenue
- Capital Outlay Expense Budget Compared to Actual
- Government Activity-Budget Comparison
- Enterprise
- Business Activity Consolidated
- Enterprise Revenue Grants
- Enterprise Grant Expenditures
- Enterprise Operating Revenue
- Partnership Contributions
- Enterprise Operating Expenditures

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- Enterprise Capital Outlay
- Government-Wide Overview
- Fund Balance Summary

President Long asked the Board members if there were any questions. The few that were asked were answered by Mr. Broderick. President Long then asked if there were any questions from the public, there were none. It was noted that the budget process and presentation has improved from past years.

President Long recessed the District meeting at 10:36 a.m.

**AVC AND EXCESS CAPACITY MASTER CONTRACT UPDATE**

Jean Van Pelt reported:

- A draft Operations Plan outline was delivered to Reclamation. District staff is reviewing existing data that could be used in the Plan and determining additional data that will need to be collected or updated in order to be included in the Plan.
- A draft outline of a Project Management Plan was delivered to Reclamation.
- Separate meetings are being scheduled with the City of Pueblo, Pueblo County, CDOT, and Reclamation to review the AVC alignment through Pueblo County.
- District staff reviewed the current AVC alignment and comments were provided to Reclamation's Eastern Colorado Area Office and the Technical Services Center (TSC). A meeting was held on November 5, 2014, in which TSC was directed to move the alignments that are outside of the EIS corridor back into the corridor.
- A grant application was prepared and delivered to the Arkansas Basin Roundtable Needs Assessment Committee to fund the development and facilitation of the CDPHE and AVC participants' Working Group. The Working Group will schedule a meeting in January.

District staff provided the Finance Team the proposed 2015 budgets for the AVC and Excess Capacity projects. A joint AVC and Excess Capacity/Enlargement Committees meeting is scheduled for Tuesday, November 25, 2014 at 9:00 a.m. to update the Committees on the projects and to review the budgets.

**ACTION ITEMS:**

**RESTORATION OF YIELD (ROY) EXCHANGE (CASE NO. 06CW120) APPROVAL OF STIPULATION WITH HOLBROOK**

Steve Leonhardt reported the Enterprise Board authorized special water counsel to join with the other co-applicants (the Board of Water Works of Pueblo and the Cities of Colorado Springs, Aurora, and Fountain) to file the application in this case in late 2006, and approved stipulations with several opposers, most recently with Penrose Water District and PC Water, LLC in July of 2014. The Board previously approved a related intergovernmental agreement (IGA) with the co-applicants and the City of Pueblo in 2004.

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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 appropriate rights of exchange of 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. Holbrook's attorney recently communicated with counsel for co-applicants that Holbrook will stipulate to the March 14, 2014 proposed decree. Holbrook owns and operates Holbrook Reservoir No. 1 and Dye Lake Reservoir, two of the alternate downstream storage locations in which Foregone Diversions will be stored prior to exchange to Pueblo Reservoir. The City of Aurora has entered into a temporary agreement with Holbrook for the use of its structures and storage facilities on behalf of the co-applicants.

The Board has approved previous stipulations to the March 14, 2014 proposed decree, which contains appropriate terms and conditions on the operation of the exchange in paragraph 15. The co-applicants removed Turquoise, Twin Lakes, and Clear Creek Reservoirs as additional exchange-to points in the March 14, 2014 proposed decree.

Mr. Leonhardt recommended the Board approve a standard stipulation by which Holbrook will consent to entry of a decree in the form of co-applicants' March 14, 2014 proposed decree. Counsel for co-applicant Aurora has provided counsel for Holbrook with such a stipulation for signature. If the stipulation is executed, nine parties will have fully settled their participation in this case.

Mr. Hazard moved, seconded by Mr. Howard "Bub" Miller, to authorize special water counsel to execute a Stipulation with the Holbrook Mutual Irrigating Company and the co-applicants, consenting to entry of the co-applicants' proposed decree dated March 14, 2014. Motion unanimously carried.

**WAIVER OF 80/20 RULE TO ALLOW THE CARRYOVER OF AG PROJECT WATER**

Garrett Markus reported historically, when there have been requests to carryover Ag Project water and if there was space in Pueblo Reservoir, the Board has waived the Rule, which according to Paragraph 8 of the Water Allocation Policy requires 80 percent of the Project water allocated for irrigation be used by November 15 of the year the allocation was made and the remainder by May 1, of the following year. The most recent waiver was in August of 2013 when the Board approved a carryover request from the Colorado Canal Company.

The Rule requires that Ag entities receiving an allocation of Fryingpan-Arkansas Project water use at least 80 percent of their allocation by November 15 of the year allocated and the remaining 20 percent by May 1 of the following year. The Rule was formally adopted by the District Board as an amendment to the Allocation Policy on January 15, 1998 for the purpose of the Safety of Dams restrictions.

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As of November 13, 2014, thirteen (13) Ag entities had 1,775 acre-feet of agricultural Project water in storage. Of those 13 entities, 7 were above the 20 percent allowed carryover. Five of those seven entities have not used any of their allocation portion.

The first request to waive the Rule was made by, Wayne Shoemaker, on behalf of the Garden Park and Terry Ditch, who formally requested on October 26, 2014 that the District waive the Rule for their entity. Garden Park and Terry Ditch was not able to use any of their 27 acre-foot allocation of Project water allocation due to circumstances involving Wrights Reservoir (Also known as Mt. Pisgah Reservoir). The Allocation Committee at its November 6, 2014 meeting voted unanimously to recommend: Waiver of the Rule for any entity applying in writing by November 15, 2014 [Garden Park and Terry Ditch , Hanna Ranches , and Collier Ditch requested in writing by the deadline]; and for the 2015 allocation, direct staff to accumulate data on DRY – AVERAGE – WET storage and flow conditions and to determine if there are thresholds that could be used to develop criteria to allow for the carryover of agricultural Project water in Pueblo Reservoir. Staff will bring back additional information at the February 2015 meeting.

Mr. Goodwin moved, seconded by Mr. Howard “Bub” Miller, the Board enforce the 80/20 Rule for the remaining 2014 allocation of agricultural Project water unless an entity requests a waiver in writing by November 15, 2014. All entities, whether over the twenty percent or not, must use their 2014 Project water by May 1, 2015 or it reverts to the Enterprise, and direct staff to develop criteria for agricultural Project water carryover for the 2015 allocation. Motion unanimously carried.

**INFORMATION 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

**OTHER BUSINESS MATTERS:**

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 10:50 a.m.

Respectfully submitted,

Toni Gonzales  
Administrative Manager

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Secretary

