

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO
WATER CONSERVANCY
DISTRICT MINUTES
July 18, 2024**

A meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, July 18, 2024, 9:32 a.m., at the District office, 31717 United Avenue, Pueblo, Colorado. The ZOOM platform was also made available for Board members and visitors.

President Long asked Margie Medina for a roll call of those connected via ZOOM.

DIRECTORS PRESENT:

Alan Hamel	Justin DiSanti	Seth Clayton
Andy Colosimo	Kevin Karney	Tom Goodwin
Bill Long	Mark Pifher	
Curtis Mitchell	Matt Heimerich	
Howard "Bub" Miller(remote)	Pat Edelmann	

DIRECTOR(S) ABSENT AND EXCUSED:

Ann Nichols, Greg Felt and Dallas May.

President Long established that a Quorum was present.

INTRODUCTION OF VISITORS:

President Long asked all present to introduce themselves and welcomed the visitors to the meeting.

DISTRICT OFFICIALS:

Executive Director Leann Noga; General Counsel Lee Miller; Staff Attorney Peter Levish (remote); Senior Policy and Issues Manager Chris Woodka; Principal Engineer/Operations Coordinator Gordon Dillon; Finance Manager Stephanie Shipley; Administrative Support Specialist's Margie Medina and Patty Rivas; H2O Consultant Roy Vaughan; and Kogovsek & Associates Christine Arbogast.

VISITORS PRESENT:

Aurora Water, Abba Ahmed; USGS, Krystal Brown and Andrew Klakulak; and USBR, Mike Holmberg.

VISITORS CONNECTED VIA ZOOM:

Wilson Water Group, Lisa Brown; Otero County Commissioners, Tim Knabenshue, and Otero County Administrator, Amy White-Oquist; Colorado Springs Utilities, Chris Olney and Kelly

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Roesch; Colorado Department of Law, Luke Mecklenburg; Kansas Dept of Agriculture, Rachel Duran; Aurora Water, Rick Kienitz; and Security Water and Sanitation, Roy Heald.

APPROVAL OF MINUTES:

President Long said the minutes from the June 20, 2024, District Board meeting was posted to OnBoard and the Website for review and asked if there were any corrections or additions. Hearing none, Mr. Hamel moved, seconded by Mr. Pifher, to approve the minutes. Motion unanimously carried.

TREASURER REPORT:

Mr. Kevin Karney reported the financial statements for June 2024, were posted to OnBoard and the Website for review. Mr. Karney moved, seconded by Mr. Clayton, for acceptance of the June 2024 financial statements and payment of the July 2024 bills. Motion unanimously carried.

PRESENTATION ITEMS:

GFOA DISTINGUISHED BUDGET PRESENTATION AWARD FOR THE 2024 BUDGET PUBLICATION

Mr. Chris Woodka presented that The District has now earned the award for the 13th time for the 2024 Budget Publication. The District first applied for the Government Finance Officers Association Distinguished Budget Presentation Award in 2012. The District earned the award for the 2012 through 2023 Budgets.

Government Finance Officers Association (GFOA) established the Distinguished Budget Presentation Awards Program to encourage and assist state and local governments in preparing budget documents with a very high quality that reflect both the guidelines established by the National Advisory Council on state and local budgeting and the GFOA's best practices on budgeting. In addition, to then recognize these individual governments with the success in achieving this goal. The guidelines are designed to assess how well an entity's budget serves as; a policy document, a financial plan, an operations guide, and a communications device. The GFOA Distinguished Budget Presentation Award is the highest form of recognition in governmental budgeting.

The 2024 Distinguished Budget Presentation Award is presented to the Finance Team of the Southeastern Colorado Water Conservancy District. The Finance Team is made up of Leann Noga, Chris Woodka, Stephanie Shipley and Meg Scarlett. Contributing to the 2024 Budget Publication were Jim Broderick (retired) and Lynette Holt.

President Long thanked, on behalf of the Board, all involved in producing the report.

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ACTION ITEMS:

AUTHORIZATION OF STIPULATION IN THE APPLICATION OF CATLIN AUGMENTATION ASSOCIATION, CASE NO. 21CW3072, WATER DIVISION 1

Mr. Lee Miller presented an action item recommending that the Board of Directors authorize Special Water Counsel to execute a stipulation with Catlin Augmentation Association (“CAA”) in Case No. 21CW3072, Water Division 2, consenting to entry of a decree that is no less restrictive on CAA and no less protective of the District’s water rights and interests than the proposed decree dated June 12, 2024.

In Case No. 21CW3072, CAA seeks approval of an augmentation plan to replace out-of-priority depletions associated with the pumping of new and existing irrigation wells tributary to the Arkansas River; new conditional water rights for some of the irrigation wells; and further changes of the Catlin Canal Company shares that were previously changed in CAA’s Case No. 12CW94 (Water Division 2), which allowed use of the changed shares for augmentation and replacement of out-of-priority depletions and storage of the changed shares in Pueblo Reservoir. The additional changes of the Catlin Canal shares would allow CAA to divert the changed shares to recharge facilities, to store the changed shares in facilities other than Pueblo Reservoir, and to use the changed shares by exchange and/or in water exchange projects. To facilitate its use of the Catlin Canal shares changed in the 12CW94 decree, CAA requests approval of appropriative rights of exchange into various storage facilities, including Pueblo Reservoir. CAA also applied to use Project return flows allocated and purchased from the District as one of its augmentation sources and as a source of water for the requested exchanges into upstream storage (in Pueblo Reservoir) and diversion facilities (the Colorado Canal and Rocky Ford Highline Canal).

The District’s objectives in Case No. 21CW3072 are to: (1) determine whether CAA’s proposed exchange of Project return flows upstream into Pueblo Reservoir can be allowed consistent with the District’s applicable decrees and policies, and if so, then negotiate terms and conditions that are consistent with those imposed on the District by the decree in Case No. 01CW151; (2) ensure appropriate terms and conditions for use of Project facilities, by including appropriate Standard Language terms; (3) ensure that CAA’s proposed exchanges will not injure the Winter Water Storage Program (WWSP); (4) ensure appropriate terms and conditions, including Standard Language terms, to protect the Flow Management Program below Pueblo Reservoir; (5) ensure appropriate terms and conditions, including Standard Language terms, for the allocation and use of Project return flows; (6) ensure appropriate terms and conditions to protect releases of stored Project water from impairment by exchange; (7) ensure CAA’s proposed change of water rights and appropriative rights of exchange are consistent with its decree in Case No. 12CW94; and (8) ensure the Water Court retains jurisdiction for an appropriate timeframe to evaluate injury to water rights that may result from CAA’s proposed changes and augmentation plan.

CAA’s proposed decree dated June 12, 2024, addresses each of the District’s objectives. Paragraphs 8.1 through 8.3 of the proposed decree address CAA’s previous change of its Catlin Canal shares in Case No. 12CW94, and these terms are sufficient to ensure that CAA’s

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exchanges and further change of some of those shares in this case are consistent with the previous decree's terms and conditions.

A copy of the Proposed Decree was provided to the Board.

Mr. Hamel moved, seconded by Mr. Clayton, to authorize Special Water Counsel to enter a stipulation with CAA consenting to entry of a decree in Case No. 21CW3072 that is no less restrictive on CAA and no less protective of the District's water rights than the proposed decree dated June 12, 2024. Mr. Matt Heimerich recused himself from the vote. Motion carried unanimously.

Questions were asked of Mr. Miller.

STATEMENT OF OPPOSITION IN THE APPLICATION OF DONALA WATER AND SANITATION DISTRICT CASE NO. 24CW3019, WATER DIVISION 2.

Mr. Lee Miller presented an action to the Board recommending that the District Board authorize Special Water Counsel to file a Statement of Opposition to the Application of Donala Water and Sanitation District (Donala) in Case No. 24CW3019.

In Case No. 24CW3019, Donala seeks a finding of reasonable diligence for its conditional appropriative rights of exchange that were originally decreed in Case No. 09CW73, and to make a portion of these exchanges absolute. Case No. 09CW73 involved Donala's changes to several irrigation water rights from the Willow Creek Ranch in Lake County, south of Turquoise Reservoir, including for storage in Turquoise Reservoir, Twin Lakes Reservoir, and Pueblo Reservoir. That decree also adjudicated several conditional rights of exchange involving releases of water from those reservoirs. As part of these exchanges, Donala may also transfer water among storage accounts in Pueblo Reservoir. These exchanges are intended to facilitate delivery and use of the changed water rights to Donala's service area, which is outside of the District's boundaries and, in part, outside of the Arkansas River basin. The 09CW73 Decree recognized that Donala may contract with Colorado Springs Utilities (CS-U) for the delivery of water to Donala's service area. Donala's application in Case No. 24CW3019 indicates that Donala cooperated with CS-U, the City of Aurora, and the Board of Water Works of Pueblo to operate a contract exchange from Turquoise and Twin Lakes Reservoirs to Pueblo Reservoir. On this basis, Donala anticipates amending its application in this case to make all or an additional portion of its exchange rights absolute.

At the time the 09CW73 Decree was entered, Donala did not have a contract in place for the use of Fryingpan-Arkansas Project (Project) facilities but had requested a long-term excess capacity contract for storage in Pueblo Reservoir. The 09CW73 Decree and Donala's stipulation with the District included specific terms and conditions to protect the Project and its operations.

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These terms provide that Donala's use of Project facilities may only occur with Reclamation's permission, that any long-term storage contract must limit Donala's use of water to the Arkansas River basin, and that the Water Court may consider the completion and sufficiency of Donala's long-term excess capacity storage contract in future diligence proceedings involving the conditional exchange rights. In 2019, Donala finalized its long-term contract with Reclamation for storage in Pueblo Reservoir, and Case No. 24CW3019 is Donala's first diligence filing since the finalization of that contract.

Staff and counsel recommend filing a statement of opposition in Case No. 24CW3019 to (1) ensure that Donala's Reclamation contract is consistent with the requirements of the 09CW73 Decree and the District's stipulation in that case; (2) ensure that the decree includes appropriate terms confirming that Donala's use of Project facilities, including but not limited to Pueblo Reservoir, occurs in a manner consistent with the contract allowing such use; (3) ensure that the decree appropriately describes Donala's long-term excess capacity contract and its limitations, including appropriate restrictions confirming that Donala will not use water stored in Pueblo Reservoir for beneficial use outside of the Arkansas River basin; (4) ensure that any contract between Donala, CS-U, and/or Aurora concerning the delivery of Donala's water stored in Pueblo Reservoir sufficiently confirms that such water may not be not delivered outside of the Arkansas River basin; and (5) ensure that Donala provides sufficient evidence supporting any claim to make its conditional rights of exchange absolute in whole or in part.

Mr. Goodwin moved, seconded by Mr. DiSanti, that the District Board authorize Special Water Counsel to file a Statement of Opposition to the Application of Donala Water and Sanitation District in Case No. 24CW3019. Motion carried unanimously.

PALMER LAND CONSERVANCY – MARISOL SPONSORSHIP REQUEST

Mrs. Noga presented to the Board an action of a request from Palmer Land Conservancy on June 13, 2024. The sponsorship request is to support multiple Mirasol film showings in the Northern Colorado area to increase awareness about water, agriculture, conservation, and what happens when land and water is taken out of agriculture production and the effect on rural agricultural communities. The goal is for a minimum of 10,000 people to see the film through in-person events within the first year of its release and to ensure key policymakers, elected officials, business, civic, and community leaders, and decision-makers are in attendance and a part of these conversations.

Proposed tour locations in Northern Colorado include:

- Adams County
- Arapahoe County
- Douglas County
- Boulder County
- Denver County
- Larimer County
- Weld County

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This sponsorship request is in the amount of \$100,000. The District has not made a contribution like this or any similar amount in the past.

With the most recent Aurora Water purchase in the Arkansas Valley and the targeted areas of the film showing such as Arapahoe, Adams and Douglas Counties in which Aurora resides, the Board could entertain a discussion and possible action in the form of a sponsorship. A copy of the Sponsorship Letter was provided to the Board.

After much discussion, it was agreed by the Board that the sponsorship amount needs to be reduced significantly. President Long advised the action item will be postponed to the August Board meeting.

MONTHLY/QUARTERLY REPORTS:

UNITED STATES BUREAU OF RECLAMATION

Mr. Mike Holmberg presented a PowerPoint to the Board that reviewed the following topics.

As of July 15, 2024:

- 240,694 acre-feet stored in Pueblo Reservoir
- 170,550 acre-feet of Project Water
- 53,592 acre-feet of Excess Capacity Water
- 30,803 acre-feet of Winter Water
- 74,823 acre-feet of Project Water Space Available in Pueblo
- 3,060 acre-feet of Project Space in Twin & Turquoise Lake

Frying Pan-Arkansas Project as of 7/15/2024

- a. Turquoise 96% full
- b. Ruedi 99% full
- c. Mt. Elbert 77% full
- d. Twin Lakes 93% full
- e. Pueblo 77% full

Import Forecast:

- a. February 1 – 52,400 AF
- b. March 1 – 58,000 AF
- c. April 1 – 60,400 AF
- d. May 1 – 60,600 AF

As of 7/15/2024 – 66,795 AF imported

Mt. Elbert Power Plant

- a. Shaft installed on unit 1, not yet commissioned
 - b. Bringing Tennessee Valley Authority on board for expert help in disassembling Unit 2
 - c. Optimistic return for U1 is late August
- An update on the Interlaken Fire was given.

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Mrs. Noga advised the Board that the District is in talks with Colorado Springs Utilities, Pueblo Water, Aurora Water, Pueblo West, and potentially Twin Lakes, to contract with USGS for water quality in the Pueblo Reservoir. The cost share would be approximately 5,000.00. As more information is received, it will be shared with the Board.

Questions were asked of Mr. Holmberg.

COLORADO RIVER ISSUES

Mr. Lee Miller updated the Board with the Upper Division States (UDS) sent a letter to the Bureau of Reclamation (Reclamation) Commissioner on June 11, 2024 (UDS letter), regarding Reclamation's consideration of existing Colorado River Basin Project Act storage volume provisions. The UDS letter points out that the "Section 602(a)" storage volumes were not properly included in Reclamation's "no action alternative" in the National Environmental Policy Act (NEPA) analysis of post-2026 guidelines for operating Lakes Powell and Mead. The letter requested that the issue be properly addressed before continuing with the NEPA analysis. The letter provoked a response letter from the Lower Basin, a copy was provided to the Board.

Representatives of the Colorado River District and Xcel Energy have made presentations throughout the state, including a presentation at the Arkansas Basin Roundtable meeting, in an effort to promote the "Shoshone Water Right Preservation" or the "Shoshone Permanency." Information on this effort can be found at <https://keepshoshoneflowing.org/>. During the Colorado River and Water Supply Committee meeting, which will follow the Board meeting, representatives of the Colorado River District will make their presentation to the Committee.

INFORMATIONAL ITEMS:

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

- Water Court Resume
- NWRA Western Water Seminar – July 23-25
- Colorado Water Congress Summer Conference – August 19-22

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

President Long reconvened the District Board meeting for the purpose of going into Executive Session at 11:48 a.m.

Mr. Lee Miller announced that a request has been made for the Southeastern Colorado Water Conservancy District to enter Executive Session for the purpose of discussion with legal counsel on the following matter: Common Interest and Limited Joint Defense Agreement.

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Pursuant to:

- C.R.S. §24-6-402(4)(b): (Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions)
- C.R.S. §24-6-402(4)(e): (Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators)

The presence of the following persons was requested at the Executive Session:

1. Non-Excused Committee and Board Members (state for the record any who are excused)
2. Executive Director
3. General Counsel
4. Staff Attorney
6. Senior Policy and Issues Manager
8. Administrative Support Associate

Mr. Hamel moved, seconded by Mr. Pifher for the District Board to move into Executive Session. Motion unanimously carried.

When reconvened at 12:04 p.m., Mr. Lee Miller announced that during the executive session the Board received legal advice and provided direction to negotiators regarding the Aurora Water Purchase, the Common Interest and Limited Joint Defense Agreement.

The Parties desire to continue to pursue their separate but common interests in defending against potential harm and injury from the Aurora acquisitions. In order to pursue their common interests effectively, the Parties have also each concluded that, from time to time, their interests will be best served by sharing documents, factual material, mental impressions, memoranda, interview reports, strategies and other information, including the confidences of each client. The Parties desire to avoid any suggestion of waiver of the confidentiality or immunity of communications and documents protected by the attorney-client privilege, the attorney's work product doctrine or any other applicable privilege or immunity visa-vis potentially adverse parties.

Mr. Clayton moved, seconded by Mr. Mitchell, the District Board authorize entering into a Common Interest and Limited Joint Defense Agreement that is substantially similar to the document provided by the General Counsel during executive session.

President Long adjourned the District Board Meeting at 12:09 p.m.

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Respectfully submitted,

Patty Rivas
Administrative Support Specialist

Seth Clayton – Secretary

Bill Long – President

Howard “Bub” Miller

Curtis Mitchell – Vice President

Justin Disanti

Ann Nichols – Treasurer

Kevin Karney

Alan Hamel

Mark Pifher

Andy Colosimo

Matt Heimerich

Dallas May

Pat Edelmann

Greg Felt

Tom Goodwin