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**SOUTHEASTERN COLORADO WATER  
ACTIVITY ENTERPRISE**

**MINUTES**

**May 16, 2019**

A regular meeting of the Board of Directors of the Southeastern Colorado Water Activity Enterprise (Enterprise) was held on Thursday, May 16, 2019 at 10:50 a.m., at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

**DIRECTORS PRESENT:**

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

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

None

**ENTERPRISE OFFICIALS PRESENT:**

Executive Director James Broderick; General Counsel Lee Miller; Administrative Manager Toni Gonzales; Principal Engineer Kevin Meador; Water Resources Engineer Garrett Markus; Senior Policy and Issues Manager Chris Woodka; Finance Manager Leann Noga; and Federal Lobbyist Christine Arbogast.

**VISITORS PRESENT:**

Doug Fitzgerald, U.S. Congressman Scott Tipton's office; Cathy Garcia, U.S. Senator Cory Gardner's office; Roy Vaughan, U.S. Bureau of Reclamation; Judy Leonard and Jim Quam, Pueblo West Metropolitan District; Bill Tyner, Colorado Division of Water Resources; Krystal Brown, U.S. Geological Survey; Brett Gracely, Matrix Design Group; Jenny Bishop and Earl Wilkinson, Colorado Springs Utilities; Kevin Niles, Arkansas Groundwater Users Association; Jerry Peña, GEI Consultants; Rick Kienitz, Aurora Water; and Roy Heald, Security Water District and Fountain Valley Authority.

**APPROVAL OF MINUTES:**

President Long said the minutes of the April 18, 2019 Board meeting were posted to the Board 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.

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**FINANCE COMMITTEE REPORT:**

Treasurer Nichols reported the financial statements for April 2019 were posted to the Board website for review. Treasurer Nichols moved, seconded by Mr. Clayton, for acceptance of the April 2019 financial statements and payment of the May 2019 bills. Motion unanimously carried.

**CONSENT ITEMS:**

None

**PRESENTATIONS:**

**FEDERAL LEGISLATION**

Ms. Arbogast reported the FY 2020 appropriations process is getting started. The House Energy and Water bill has been marked up and includes a nearly half a billion plus up for the Bureau of Reclamation. The Senate has not yet started marking up bills, Chairman Shelby wants a budget deal setting spending caps before beginning, but the White House wants to wait until fall.

More talk is going on about an infrastructure package. Talks have indicated a goal of \$2 trillion, but the problem is how to pay for it. The House Transportation and Infrastructure Committee is proposing to pay for its bill with a doubling of the gas tax. Question is whether gas tax revenue would go for anything besides roads. Speaker Pelosi has been a loud voice for including water infrastructure.

The Energy and Commerce Committee released a bill, and it will include \$21 billion for safe drinking water projects.

The Senate Energy and Natural Resources Committee has a limited Bureau of Reclamation infrastructure bill. Ms. Arbogast has sent it to District legal counsel for review.

The House Interior Appropriations bill was marked up, but includes no funding for reorganization of the Department of the Interior. And, Secretary Bernhardt told the House Natural Resources Committee yesterday that he has questions and concerns about the unified regional commander approach, and so that is being tweaked. Secretary Bernhardt did say that they will proceed this summer with some reorganization, including a possible move of BLM and perhaps USGS to the West. Congressman Lamborn pushed Bernhardt to move them to Grand Junction, Colorado Springs, or Denver.

**JAMES W. BRODERICK HYDROELECTRIC POWER FACILITY UPDATE**

Kevin Meador reported the James W. Broderick Hydroelectric Power Facility operational testing began on May 8, 2019 and is anticipated to be completed by May 16, 2019 when the facility officially begins operation. The electrical transformer was energized on May 6, 2019 by Black Hills Energy, which allowed full scale testing to begin. The table below summarizes the status of major construction items:

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**Progress of Work**

<b>April/May 2019</b>			
	<b>Progress Completed</b>	<b>Anticipated Completion</b>	<b>Additional Notes</b>
<b>Powerhouse Electrical</b>	Complete		
<b>Set and Install HPU Skids</b>	Complete		
<b>SCADA Interface</b>	Complete		
<b>Dan Batdorf to Complete Offsite Programming for Hydro PLC</b>	Complete		
<b>Golden Automation LLC to Complete Offsite Programming for Reclamation PLC</b>	Complete		
<b>Phase 1 Dry Checkouts</b>	Complete		
<b>Phase 2 Wet Checkouts</b>	Complete		
<b>Phase 3 Operation Checkout – Manual Operation</b>		May 8-12	
<b>Phase 4 and 5 Operation Checkout – Auto Mode and Reclamation Demo</b>		May 13-16	
<b>Operational</b>		May 2019	Target Date May 16
<b>Board Tour</b>		May 16, 2019	After Board Meeting

Chris Woodka presented a PowerPoint reviewing the following:

- Completed Building Exterior Views
- Inside the Powerhouse
- Some High-Tech Electronics
- High-Tech Operations, but Cross-Checked with Pencil and Paper
- Training Day, with Ted Sorenson
- “Nickel Test” Generator is Running, but Nickel Stands on End
- Getting Under the Hood to Make Some Final Adjustments

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AVC UPDATE

Mr. Woodka provided an update on the Arkansas Valley Conduit (AVC) reviewing the following:  
Media Coverage: The AVC received major attention at the Arkansas River Basin Water Forum (Forum) on April 24, 2019 in Pueblo. Senator Cory Gardner spoke to more than 200 attendees at the Forum about the importance of the AVC, which was authorized in 1962 as part of the Fryingpan-Arkansas Project.

Senator Gardner also was interviewed by KRDO Channel 13 on the day he spoke at the Forum. Senator Gardner made a strong statement for funding the AVC project, saying that every year the AVC costs increase, and the time to build the pipeline is now. During the interview, he said he has spoken to President Trump, Vice-President Pence, and Reclamation officials about the need for the AVC. Senior Policy and Issues Manager Chris Woodka was also interviewed in the news report, and presented an update of the AVC at a workshop later in the day.

The Pueblo Chieftain, La Junta Tribune-Democrat, and other media throughout the state published articles about the need for AVC funding.

Prior to his keynote address at the Forum, Senator Gardner met with District officials and water providers from La Junta and McClave about the urgency of the AVC.

Pueblo Water Contract: District officials will meet with Bureau of Reclamation (Reclamation) officials in late May to explain the changes in AVC, which will result in cost and time savings. The District, Reclamation, and Pueblo Water are preparing for Contract negotiations that will allow the AVC to use capacity in Pueblo Water's system to reach the eastern edge of Pueblo immediately. This amounts to the equivalent of 25 miles of pipeline in the ground.

Final Design: Reclamation continues to work on final design for the Boone reach, which will allow the AVC to serve its first water provider.

Regionalization Study: CDM Smith is completing the first task of its contract with Reclamation on Regionalization. District staff remains active in advising the contractors on the study, which is designed to provide interim options for water providers until the AVC is built. The study may produce efficiencies similar to the "New Concept" in Pueblo that could reduce costs and accelerate service.

Colorado Water Conservation Board (CWCB): The District has met with officials from the CWCB to discuss funding options. The CWCB still holds \$43 million in loan capacity for the AVC that could be accessed in support of federal funding. Of the original \$60.6 million authorized by the Colorado General Assembly, \$17.2 million was loaned to complete construction of the James W. Broderick Hydroelectric Power Facility (Hydro Plant). Revenues from the Hydro Plant are envisioned as a way to support AVC operation, maintenance, and replacement costs.

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**EXECUTIVE SESSION:**

Lee Miller said a request has been made for the Southeastern Colorado Water Activity Enterprise to enter Executive Session for the purpose of:

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)

To discuss the following matters:

1. Use of Fryngpan-Arkansas Project water for hemp cultivation pursuant to a Colorado Pilot Project

The presence of the following persons is requested at this Executive Session:

- Non-Excused Board Members
- Executive Director
- General Counsel
- Water Resources Engineer
- Senior Policy and Issues Manager

Minutes will be electronically recorded as required by the Colorado Open Meeting Act.

Mr. Howard “Bub” Miller moved, seconded by Mr. Pifher, to enter into Executive Session. Motion unanimously carried.

At this time the Board will enter into Executive Session. The District meeting was recessed at 11:10 a.m. to enter into Executive Session, and reconvened at 11:35 a.m.

**REPORT OUT OF EXECUTIVE SESSION:**

Lee Miller reported that the District Board received legal advice and positions relative to matters that may be subject to negotiations, developing strategy for negotiations; and instructing negotiators in the use of Fryngpan-Arkansas Project water for hemp cultivation pursuant to a Colorado Pilot Project. The District Board has one action item as a result of the Executive Session.

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**ACTION ITEMS:**

**APPROVAL OF USE OF FRYINGPAN-ARKANSAS PROJECT WATER FOR HEMP CULTIVATION PURSUANT TO A COLORADO PILOT PROJECT**

Lee Miller reported that during the February 21, 2019 Board meeting, Eastern Colorado Area Office Deputy Area Manager Monica Griffitt made a presentation to the Board regarding the status of using federal water and facilities for industrial hemp cultivation. Lee Miller has provided updates at monthly Board meetings on further activities on this issue.

The legal status of hemp has changed in recent years. Although Colorado has legalized hemp production as a matter of state law, the exact status of hemp under federal law has gone through several iterations. In the 2014 Farm Bill, Congress provided for legal cultivation of hemp pursuant to pilot and study programs. More recently, the 2018 Farm Bill removed hemp from Schedule I of the Controlled Substances Act and provided for legal cultivation of hemp if conducted in compliance with either a state program approved by the US Department of Agriculture (USDA) or a program of the USDA. As of the date of this memorandum, no Colorado program has been approved by USDA and the USDA has not implemented its own program. Because hemp no longer is a Schedule I Controlled Substance and Colorado has legalized hemp production and implemented a registration program, but no federal permitting program has been implemented, questions have arisen as to whether Project water can be allocated for hemp cultivation use. Colorado Department of Agriculture has an existing industrial hemp permitting program.

On March 8, 2019, Brenda Burman, Commissioner of the Bureau of Reclamation provided a letter to Senator Michael Bennet in which Commissioner Burman stated that because the 2018 Farm Bill removed hemp “from the Controlled Substances Act list of controlled substances, it is no longer subject to [Reclamation’s 2014 policy *Use of Reclamation Water or Facilities for Activities Prohibited by the Controlled Substances Act of 1970.*]” Consequently, “Reclamation is able to provide water for hemp cultivation in accordance with current law.” The Board was previously provided a copy of the letter dated March 8, 2019 from Commissioner Burman to Senator Bennet.

Follow-up conversations with Reclamation officials have revealed that Reclamation has no intention of providing any further policy guidance beyond the March 8, 2019 letter.

In an email from Eastern Area Manager Signe Snortland to Lee Miller on March 4, 2019, she reaffirmed the comments of Monica Griffitt at the March 2019 District Board meeting:

Reclamation now regards industrial hemp as any other crop *and has no concern if the District provides Federal water to irrigate certified, industrial hemp in Colorado*; you are not required to seek our approval before you make a decision to do so.

Emphasis added. The Colorado legislature recognized in 2017 that industrial hemp could be grown under the 2014 Farm Bill when it passed SB17-117 (signed by the governor), confirming that hemp could be grown with water rights decreed for agricultural purposes.

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In light of the lack of policy guidance, and recognizing Reclamation's favorable attitude toward hemp as an irrigated crop, the lack of any further USDA guidance, and the legislative recognition of industrial hemp as an irrigated crop in Colorado, it appears that the District is able to provide Project water for the cultivation of industrial hemp to water users that have a permit to do so from the Colorado Department of Agriculture.

Since the District provides water to mutual ditch companies or to augmentation associations and not to individual water users, the District should request that the ditch companies and augmentation associations maintain records of the Colorado permits for irrigating industrial hemp.

Mr. McClure moved, seconded by Mr. Hamel, that the Board permit Project water to be used to irrigate industrial hemp reported by the mutual ditch companies and augmentation associations to be cultivated pursuant to a permit from the Colorado Department of Agriculture. Motion unanimously carried.

FRYINGPAN-ARKANSAS PROJECT WATER AND RETURN FLOW ALLOCATION

Garrett Markus thanked Margie Medina and Patty Rivas for their assistance in the allocation process.

Mr. Markus provided a PowerPoint reviewing the following:

- Fry-Ark Collection Basin Snowpack vs Annual Basin Average w/Assoc. Fry-Ark Imports-May 15, 2019
- Fry-Ark Collection Basin Snowpack w/Individual Sites – May 15, 2019
- Fry-Ark Imports
- May 1 Official Forecast
- One Month and Three Month Outlook Temperature Probability
- Municipal Allocation
  - Fountain Valley Authority
  - West of Pueblo
  - Pueblo
  - Individual Entities
  - East of Pueblo
- Agricultural Allocation
- NPANIW

Mr. Markus reported Reclamation has forecasted an import basis for allocation of 84,000 acre-feet (AF) based on the snowpack of May 1, 2019, which will net 63,000 AF for allocation. The recommended municipal allocation is 12,070 AF of Project water with 2,262 AF of NPANIW to total 14,332 AF for municipal. The agricultural allocation calculates to be 48,668 AF of Project water producing 17,293 AF of Return Flows.

Mr. McClure moved, seconded by Mr. Hamel, the Board allocate 63,000 AF of Project water and 17,293 AF of Return Flows. Project water allocations would be available initially at seventy percent (70%) of

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the projected import amount available to municipal and agricultural entities following payment for 100 percent (100%) of the allocation. The remaining thirty percent (30%) would be made available when the District is confident that imports will meet Project obligations. If any portion of the thirty percent (30%) of allocated Project water is not available to the entities at that time, that portion of their Project water payments will be refunded. Motion unanimously carried.

**APPROVAL OF TRANSFER OF PROJECT WATER FROM BUENA VISTA TO UPPER ARKANSAS WATER ACTIVITY ENTERPRISE FOR AUGMENTATION PURPOSES**

Lee Miller reported Buena Vista has applied to have the Upper Arkansas Water Activity Enterprise augment two wells. Buena Vista proposes to provide the Upper Arkansas Water Activity Enterprise with Project water for this purpose, as opposed to purchasing water from the Upper Arkansas Water Activity Enterprise.

Mr. Clayton moved, seconded by Mr. Garcia, the Board approve the transfer of Project water from Buena Vista to Upper Arkansas Water Activity Enterprise for augmentation purposes. Motion passed with Mr. Goodwin and Mr. Felt recusing.

**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 said the Board members and staff will leave to tour the James W. Broderick Hydroelectric Power Facility at 12:45 p.m.

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 11:56 a.m.

Respectfully submitted,

Toni Gonzales  
Administrative Manager

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Assistant Secretary



