

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

April 20, 2017

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, April 20, 2017 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	Gary Bostrom
Vera Ortegon	Kevin Karney	Gibson Hazard
Tom Goodwin	Carl McClure	Curtis Mitchell
Dallas May	Mark Pifher	Seth Clayton
Greg Felt		
Alan Hamel-Advisory Board Member		

DEPARTING BOARD MEMBER:

David Simpson

DIRECTOR(S) ABSENT AND EXCUSED:

Howard "Bub" Miller, Departing Board Members Pat Edelman and Jay Moore.

DISTRICT OFFICIALS PRESENT:

Executive Director James Broderick; General Counsel Lee Miller; Administrative Manager Toni Gonzales; Principal Engineer Kevin Meador; Issues Management Program Coordinator Chris Woodka; Finance Coordinator/IT Leann Noga; Accounting Specialist Stephanie Shipley; and Federal Lobbyist Christine Arbogast.

VISITORS PRESENT:

Tom Simpson, Aurora Water; Dwight Gardner, U.S. Senator Michael Bennet's office; Cathy Garcia, U. S. Senator Cory Gardner's office; Abby Ortega, Colorado Springs Utilities; Terry Dawson, U.S. Bureau of Reclamation; Curt Thompson, AECOM; Bill Banks, U.S. Geological Survey; Mark Scott, GEI Consultants; Kevin Niles, Arkansas Groundwater Users Association; Michael Weber and Pierre-Edouard Schadeck, Lower Arkansas Valley Water Conservancy District; Jerry Peña, GEI Consultants; Mark Scott, GHD; and Willard Behm.

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INTRODUCTION OF VISITORS:

President Long welcomed the visitors to the meeting, and asked them to introduce themselves and identify the organization they represented.

ACTION ITEMS:

SWEARING IN OF APPOINTED BOARD MEMBERS

Lee Miller said he had received a Court Order appointing Gary Bostrom, Seth Clayton, Greg Felt, Carl McClure, and Howard “Bub” Miller to four-year terms on the District Board. He asked that Mr. Bostrom, Mr. Clayton, Mr. Felt, and Mr. McClure, stand and repeat the oath. After reading the oath, the appointed Board members were asked to sign the oath, for filing with the court. Mr. Howard Miller was not present.

President Long welcomed Mr. Clayton and Mr. Felt as the new members appointed to serve on the Board, and congratulated the reappointed members Mr. Bostrom and Mr. McClure.

President Long reported that Pat Edelmann had resigned his Board position, and that the process to fill that seat is under way.

President Long asked Mr. David Simpson to come to the podium and presented him a glass sculpture, thanking him for his eight years serving on the Board. It was mentioned that David’s dad, Lee Simpson served on the Board for 28 years, which was the seat David filled when Lee Simpson’s retirement, and that David’s brother, Tom Simpson, worked for the District also. There has been a “Simpson” involved and representing the District for 36 years. David Simpson said he has enjoyed his time on the Board and working with the committees.

APPROVAL OF MINUTES:

President Long said the minutes of the March 16, 2017 Board meeting were posted to the Board website for review, and if there were any corrections or additions. Hearing none, Mrs. Ortegon moved, seconded by Mr. Pifher, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Nichols reported the financial statements for February and March were posted to the Board website for review. Ms. Nichols moved, seconded by Mr. Karney, for acceptance of the February and March financial statements and payment of the April 2017 bills. Motion unanimously carried.

CONSENT ITEMS:

None

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PRESENTATIONS:

2016 ANNUAL AUDIT

President Long convened the Enterprise Board meeting to order at 9:43 a.m. to be held in conjunction with the District Board meeting to present the 2016 Annual Audit presentation.

Treasurer Nichols introduced Mitchell Downs and Hillary Carlson, from Osborne, Parsons & Rosacker, LLP., who represents the firm that conducted the 2016 audit. Mr. Downs read the Independent Auditor's Report. Treasurer Nichols recognized the work of Leann Noga and the staff with assisting the auditors with the audit process.

ACTION ITEMS-CONTINUED:

APPROVAL OF 2016 ANNUAL AUDIT

Treasurer Nichols moved, seconded by Mrs. Ortegon, the audit of the 2016 finance statements of the District be approved as presented. Motion unanimously carried.

APPROVAL OF 2016 FINANCIAL STATEMENTS

Treasurer Nichols moved, seconded by Mr. Bostrom, that the 2016 finance statements of the District be approved as audited. Motion unanimously carried.

President Long recessed the Enterprise meeting at 9:54 a.m.

PRESENTATIONS-CONTINUED:

STATEMENTS OF OPPOSITION IN WATER COURT STANDARD LANGUAGE FOR DIVISION 2

Lee Miller said the District' special water counsel prepared a memorandum explaining the Standard Language for Water Division 2 Decrees. The memorandum describes standard language to include in Water Division 2 Decrees to address certain common issues. The purpose of standard language is to ensure that constituents with common issues are treated in the same manner. This memorandum addresses use of: (I) Project Water; (II) Project Water Return Flows; (III) Project Facilities; and (IV) Winter Water. It then suggests standard language for Water Court decrees that: (V) may affect the Upper Arkansas Voluntary Flow Management Program ("VFMP"); (VI) may affect the Pueblo Flow Program and RICD; (VII) seek to participate in the District's exchanges; and (VIII) require revegetation of historically irrigated land. Section IX contains other terms and conditions that may be needed to protect the District's interests. Finally, Section X includes definitions from the Master Excess Capacity Contract with Reclamation that the District may seek to use in decrees to promote consistency.

Lee Miller presented a PowerPoint reviewing the following:

- Statements of Opposition in Water Court
- Purpose
- Standard Language
- Where Did It Come From?
- How Is It Used?
- Distribution

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Mr. Broderick asked that the Board members read the memorandum and provide feedback. Lee Miller said this document is not a confidential document, so it can be shared. Several Board members said it is a very useful document, and complimented legal counsel for preparing it.

BOARD MEMBER CONFLICT OF INTEREST

Lee Miller said a conflict of interest exists when someone with a fiduciary responsibility is in a situation where their own self-interest and the interests of the organization might be in conflict. A common example of a conflict of interest comes up when a board member also runs a business that sells something the organization might need and has a chance to influence the purchasing decision.

The Board was provided materials that may help Board members in assessing when a conflict of interest exists and how to address the situation.

ACTION ITEMS-CONTINUED:

INCLUSION OF LAND ANNEXED BY THE CITY OF COLORADO SPRINGS

The Resource and Engineering Planning Committee met April 13, 2017 and recommends the Board approve the inclusion of four (4) parcels of land annexed by the City of Colorado Springs into the Southeastern Colorado Water Conservancy District (District) with the standard terms and conditions. Once approved by the Board of Directors, staff will send the annexations to the Bureau of Reclamation (Reclamation) for assent. The District will submit the inclusion to the District Court for final decree.

Chris Woodka presented a PowerPoint showing maps of the four parcels of land annexed by the City of Colorado Springs.

Mr. Hazard moved, seconded by Mr. Pifher, that the Board approve, by individual Resolutions, the inclusion of the four parcels annexed by the City of Colorado Springs subject to the following terms and conditions:

1. Approval of these inclusions into the Southeastern Colorado Water Conservancy District will not increase the amount of Fryingpan-Arkansas Project water available to the City of Colorado Springs. Any Fryingpan-Arkansas Project water used on these included lands will need to come from the water allocated to the City of Colorado Springs through Fryingpan-Arkansas Project water allocations made pursuant to the District's Allocation Principles and Policies; and
2. Any use of Fryingpan-Arkansas Project water on the included lands is subject to the decrees for the Fryingpan-Arkansas Project, and to all lawful rules, regulations, principles, policies, and contractual obligations of the District; and
3. The annexed lands will be subject to ad valorem taxes levied by the District as any other similarly situated lands in the District at the time of this inclusion; and
4. Prior to the District filing a petition for District Court approval of this inclusion, the Municipality, and/or owner(s) of the annexed lands shall have paid all the costs charged by the United States in connection with the contracting officer's assent to this inclusion.

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Motion unanimously carried.

CHAPMAN PETITION FOR INCLUSION RECOMMENDATION TO SET PUBLIC HEARING
Chris Woodka reported Jim Chapman originally approached the District staff in 2014 to include farm lands in both Teller and Fremont Counties along Fourmile Creek. Teller County is not part of the nine counties that encompass the District and was declined at that time. Mr. Chapman has since submitted his Application for Assent including only the lands located in Fremont County which totals 440 acres outside of the District boundaries.

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 have been received. Therefore, it is appropriate to request the District Board to set a public hearing to consider the inclusion of the Applicant's property.

Chris Woodka presented a PowerPoint showing maps of the Chapman property requested to be included into the District.

Mrs. Ortegon moved, seconded by Mr. Goodwin, the District set a public hearing to be held on Thursday, May 18, 2017 at 9:30 a.m. at the District office for consideration of the inclusion of the Chapman 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.

MONTHLY/QUARTERLY REPORTS:

U.S. BUREAU OF RECLAMATION REPORT

Terry Dawson provided a PowerPoint presentation reviewing the following:

- As of April 16, 2017 there were 239,733 acre-feet stored in Pueblo Reservoir; 156,571 acre-feet of Project water; 33,832 acre-feet of Excess Capacity water; 49,042 acre-feet of Winter water.
- There is currently 88,802 acre-feet of Project space in Pueblo Reservoir and 69,263 acre-feet of space in Turquoise and Twin Lakes Reservoirs.
- Charts illustrating storage amounts in Turquoise, Pueblo, and Twin Lakes.
- Total M&I Project Water in the System.
- Project Reservoirs: Turquoise 70%; Twin Lakes 105%; Pueblo 122%
- Arkansas River Basin Time Series Snowpack Summary April 17, 2017
- Upper Colorado River Basin Time Series Snowpack Summary April 17, 2017
- Fryingpan Weighted by VIPER Results

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- April 1 Forecast-78,000 Acre-Feet

Mrs. Dawson reported there was no water spilled on April 15. The Collection System is now open.

DIVISION ENGINEER'S REPORT

None

U.S. GEOLOGICAL SURVEY

Bill Banks presented a PowerPoint titled, *Summary of Hydrologic Conditions in the Arkansas River Basin*, reviewing the following:

- Runoff Hydrograph
- Map of 28-Day Average Streamflow Compared to Historical Streamflow for the Day of the Year
- Map of Monthly Streamflow Compared to Historical Streamflow for the Month of Year (Arkansas-White-Red)
- Duration Hydrograph
- Unmanned Aircraft Systems (UAS)-A Tool for Monitoring Snow Water Resources
- Importance of SNOTEL
- Why Consider UAS for Snow Depth Monitoring
- Remote Sensing of Snow Depth Using Lidar
- Airborne Lidar Based Snow Depth Example
- Existing USGS Snow Monitoring in Upper Arkansas
- Specific Conductance
- Cumulative Hydrograph Arkansas River Near Avondale, CO

STATE LEGISLATION UPDATE

Lee Miller reported there will only be three weeks left of the no more than 120 consecutive calendar days allowed for the 2017 General Assembly session. The last day upon which the General Assembly may adjourn sine die is May 10, 2017. The District participates in the Colorado Water Congress State Affairs Committee, which generally meets on Monday mornings in Denver before the Legislature begins its work for the week. Summaries of the weekly State Affairs Committee meetings are posted on the Board Legislation page. The CWC State Affairs 2017 Bill Status Sheet is attached to this report.

Currently in the 2017 legislative session, the State Affairs Committee is tracking 31 bills. While the legislative session got off to the slow start, it has recently proven to be just as dynamic as sessions past. Over the last few weeks, a handful of new and more complex bills have popped onto the horizon.

Among those CWC bills that the District has taken an active involvement in includes SB17-117, introduced by Senator Don Coram. SB17-117 recognizes industrial hemp as part of Colorado's agricultural production to which an irrigation water right may be applied. The ability to irrigate all crops is covered in a State Engineer's policy. The bill is intended to create a shield for hemp growers to use federal Reclamation water and facilities as long as they comply with state law; however, this "safety

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net” does not appropriately address the federal Controlled Substances Act of 1970 issue. Hemp, just like marijuana, is a Schedule I controlled substance under federal law. The State Affairs Committee has voted to oppose this bill and, as reported at the last Board meeting, Lee Miller has been testifying against passage of the bill on the grounds that it does not achieve the sponsor’s goal, but may have adverse impacts on water providers who contract with Reclamation, such as the District. The bill passed the Senate and the House Agriculture Committee on April 17, 2017.

HB17-1190, a bill to address the Colorado Supreme Court’s (the Court) decision in *St. Jude's Company v. Roaring Fork Club, LLC*, has passed the House and will have a hearing on April 20, 2017 in the Senate Agriculture Committee. In the case of *St. Jude's*, the Court held that direct diversions of water from a river to a private flow-through ditch for proposed uses as aesthetic, recreational, and piscatorial amenities to a private golf course development, private fishing habitat, and private fly-fishing stream do not qualify as beneficial uses of water under Colorado water law. This bill limits the interpretation of “beneficial use” as applied by the Court in the *St. Jude’s* case to cases with similar factual situations arising after July 15, 2016. The bill states that the interpretation in the case does not apply to previously decreed absolute and conditional water rights and does not impact the appropriation of instream water by the CWCB nor for RICDs pursuant to statute. This bill reflects the narrowest approach considered by advocates of addressing the *St. Jude’s* case. The State Affairs Committee voted to support this legislation.

A new bill introduced by Senator Jerry Sonnenberg, SB17-282, attempts to address issues related to Northern Colorado Water Conservancy District’s (Northern Water) mitigation requirements for permitting of its Northern Integrated Supply Project. The bill creates a process whereby an owner of a storage water right may obtain a decree that authorizes releases from storage to a downstream point of diversion or delivery for decreed beneficial uses to be dedicated to, and used by, the Colorado Water Conservation Board in the intervening stream reach to preserve or improve the natural environment to a reasonable degree if specified conditions are satisfied. Steve Leonhardt and Lee Miller worked with Northern Water to assure that the bill would not impact the Upper Arkansas Voluntary Flow Management Program (VFMP) and agreement that the District has been instrumental in effectuating since 1991. The bill will have a hearing in the Senate Agriculture Committee on April 20, 2017.

A non-water-related bill that we have been working with SB-40, Public Access to Government Files, applies CORA requirements to a variety of electronic files retained by governmental entities including state agencies, special districts, institutions of higher education, counties and municipalities. New definitions are added to cover the type of information stored in cell format (structured data) as well as documents and requires custodians of records to provide the information to requestors in searchable format. The State Affairs Committee provided opposition testimony and has also worked on amendment language to make the bill more palatable, if passed, to our members who are water suppliers. This amendment was included in the version of the bill that passed the Senate. The House sponsor, Representative Dan Pabon, has called together a group of about twenty-five stakeholders to work with each other and share potential amendments, however, it appears that opponents and proponents are having difficulty coming to an agreement. Some proponents are hoping to pull any amendments added

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in the Senate from the bill, which would include the State Affairs Committee’s water infrastructure amendment. Lee Miller stated he will update the Board as we have more information.

INFORMATIONAL ITEMS:

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

- Water Court Resume
- Legal Quarterly Report
- Arkansas River Basin Water Forum –April 26-27-Colorado Springs

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 11:23 a.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary

