

RECORD OF PROCEEDING

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**SOUTHEASTERN COLORADO WATER  
CONSERVANCY DISTRICT**

**MINUTES**

**October 20, 2016**

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, October 20, 2016 at 9:58 a.m. at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

**DIRECTORS PRESENT:**

Bill Long	Gary Bostrom	Vera Ortegon
Gibson Hazard	Kevin Karney	Carl McClure
Pat Edelmann	David Simpson	Curtis Mitchell
Tom Goodwin	Dallas May	Mark Pifher
Jay Moore		

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

Howard "Bub" Miller, Ann Nichols and Alan Hamel-Advisory Board Member

**DISTRICT OFFICIALS PRESENT:**

Executive Director James Broderick; General Counsel Lee Miller; Administrative Manager Toni Gonzales; Principal Engineer Kevin Meador; Water Resource Specialist/Engineer Garrett Markus; Finance Coordinator/IT Leann Noga; Issues Management Program Coordinator Chris Woodka; Intern Wayne Pigott; Federal Lobbyist Ray Kogovsek; and Special Water Counsel Steve Leonhardt.

**VISITORS PRESENT:**

Tom Simpson, Aurora Water; Roy Vaughan, U.S. Bureau of Reclamation; Steve Witte, Colorado Division of Water Resources-Division 2; Curt Thompson, AECOM; William Banks, U.S. Geological Survey; Bob Hartzman, Canon City Water Department; Dwight Gardner, U.S. Senator Michael Bennet's office; Jerry Peña, GEI Consultants; Jay Winner, Michael Weber, and Jack Goble, Lower Arkansas Valley Water Conservancy District; Abby Ortega, Colorado Springs Utilities; Katiana Dillon, Wells Fargo Securities; Terry Scanga, Upper Arkansas Water Conservancy District; Scott Eilert, Pueblo West Metropolitan District; and Erin Wilson, Wilson Water Group.

**INTRODUCTION OF VISITORS:**

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

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**APPROVAL OF MINUTES:**

President Long said the minutes of the September 15, 2016 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. Bostrom, to approve the minutes. Motion unanimously carried.

**FINANCE COMMITTEE REPORT:**

Mr. Karney reported the financial statements for September were posted to the Board website for review. Mr. Karney moved, seconded by Mr. Goodwin, for acceptance of the September financial statements and payment of the October 2016 bills. Motion unanimously carried.

**CONSENT ITEMS:**

None

**PRESENTATIONS:**

None

**ACTION ITEMS:**

**AGRICULTURAL 80/20 RULE FOR PROJECT WATER STORAGE**

Garrett Markus reported Pueblo Reservoir is expected to reach the same high storage levels in the spring of 2017 as experienced in the spring of 2016. In the past the District has enacted the 80/20 Rule to limit large amounts of agricultural Project water to be stored during the winter months during times of high storage amounts in Pueblo Reservoir. District staff has contacted our main ag stakeholders to discuss the idea of new criteria for agricultural Project water winter storage season. All entities were very receptive to the idea for the 2017 Project water year because most entities have already executed plans to meet the current conditions of the 80/20 Rule for the 2016 Project water year. Staff recommends to enact the 80/20 Rule and continue discussions with ag and municipal stakeholders for the 2017 Project water year.

Mr. Goodwin moved, seconded by Dr. Moore, the District Board enact the Agricultural 80/20 Rule for Project water storage for the 2016-2017 winter water season. Motion unanimously carried.

**INCLUSION OF LAND ANNEXED BY THE CITY OF COLORADO SPRINGS**

Garrett Markus reported on the inclusion of land annexed by the City of Colorado Springs. Mr. Markus reported the Application of Assent has been submitted to the District and will be forwarded to Reclamation for these properties, with the exemption of the two that the District has obtained Secretarial Assent already.

The Resolutions for Inclusion are as follows:

<b>RESOLUTION NO.</b>	<b>More Commonly Known As</b>	<b>Legal</b>	<b>Ord. No.</b>	<b>Acres</b>
2016-01D INCL-AX	Airport Annexation Filing 1	Sec8 T14SR65	16-85	31.52
2016-02D INCL-AX	Airport Annexation Filing 2	Sec8 T14SR65	16-86	19.62
2016-03D INCL-AX	Airport Annexation Filing 3	Sec18 T14SR65	16-87	44.48

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2016-04D INCL-AX	Kum & Go Store 685	Sec12 T13SR66	16-62	4.61
2016-05D INCL-AX	Reserve at North Creek	Sec21 T12SR66		9.99
2016-06D INCL-AX	Hartsuiker Addition Annexation	Sec23 T13SR66		0.52
2016-07D INCL-AX	Bowen Addition Annexation	Sec23 T13SR66		1
2016-08D INCL-AX	Dublin North Addition No. 4 (6145 & 6235 Vickie Lane)	Sec7 T13SR65		10
2016-09D INCL-AX	Mountain Valley Preserve Annexation*	Sec16 T13SR65	15-102	44.72
2016-10D INCL-AX	Dublin Towne Centre*	Sec16 T13SR65	15-30	8.66

*\*Bureau of Reclamation Secretarial Assent has been received.*

Mrs. Ortegon moved, seconded by Mr. Hazard, that the Board approve, by individual Resolutions, the inclusion of the ten 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.

Motion unanimously carried.

**EVELYN DRIVE PETITION FOR INCLUSION RECOMMENDAITN TO SET PUBLIC HEARING**  
Mr. Markus reported in February of 2016, District staff was contacted by Jim Barlow the representative concerning the potential inclusion of a portion of land located in Fremont County, southwest of Canon City into the District. Staff provided the applicant with the documents and forms necessary to apply for inclusion. Initially the petition for inclusion included 74.9 acres, upon reviewing the parcels it is actually 47.03 acres that are outside of the District boundaries.

Staff sent a letter to the representative for the petition informing them of the next steps and once payment is received will continue with a public hearing to be held at the November Board meeting. The District cannot include any property without Reclamation's consent; however, after staff review, the conclusion was reached that the method of proceeding that is most consistent with the District's

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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 consent. Once Reclamation consents to this inclusion to the District, special counsel will submit the proper paperwork to the District Court for final approval.

District staff has received the necessary documents; and the administrative and back tax fees have been received.

Mrs. Ortegon moved, seconded by Mr. Goodwin, that the District set a public hearing to be held on Thursday, November 17, 2016 at 10:30 a.m. at the District office for consideration of the inclusion of Evelyn Drive 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.

## WATER COURT RESUME

Lee Miller reported Case No. 2016CW3055 – SECURITY WATER DISTRICT – Security Water District submitted an application to change five water rights on Hayden Creek (above Coaldale between Canon City and Salida) and adjudicate a plan for augmentation for wells located in the Widefield and Windmill Gulch aquifers. Since this case involves the use of Fryingpan-Arkansas Project facilities, staff and counsel recommend filing a Statement of Opposition to ensure appropriate terms and conditions regarding use of Project facilities are included. In addition, Security seeks to include Twin Lakes shares in a plan for augmentation. The District will likely request a term and condition related to accounting for water stored in Twin Lakes Reservoir to ensure that the accounting distinguishes between Project and non-Project space in Twin Lakes Reservoir. Terms and conditions to protect the Winter Water Storage Program may also be appropriate.

Case No. 2016CW3056 – COLORADO SPRINGS UTILITIES – Colorado Springs Utilities submitted an application for plan for augmentation, addition of replacement water sources and location of replacement, and conditional appropriative rights of substitution and exchange. The applicant seeks to add Chilcott Ditch Company (Chilcott) and Fountain Mutual Irrigation Company (FMIC) as sources to their augmentation plan, to add the return flows of their previous decreed sources to meet deliveries and replacement obligations, and to add appropriative exchanges on Fountain Creek and Monument Creek. Since this case involves the use of Fryingpan-Arkansas Project facility Sugar Loaf Dam, general counsel and District staff recommend filing a statement of opposition to ensure appropriate terms and conditions regarding use of Project facilities are included. In addition, this application involves Chilcott and FMIC shares that the District has addressed terms in previous cases, the District may request terms and conditions be included in this case consistent with the previous cases.

Mr. Goodwin moved, seconded by Dr. Moore:

1. To authorize special water counsel to file statements of opposition in Case No. 2016CW3055 – Security Water District, and;
2. To authorize special water counsel to file statements of opposition in Case No. 2016CW3056 – Colorado Springs Utilities.

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Motion unanimously carried.

FIRST HAND, LLC (CASE NO. 15CW3055): WITHDRAWAL OF STATEMENT OF OPPOSITION  
Steve Leonhardt reported First Hand's Case No. 15CW3055 is an application for a plan for augmentation in connection with a conditional groundwater right, for use in a marijuana grow operation in western Pueblo County. First Hand plans to withdraw up to 10 af per year of tributary groundwater from the Dakota Aquifer from a well on its property. Out-of-priority depletions will accrue to the main stem of the Arkansas River, above Pueblo Reservoir. First Hand will replace these depletions with water leased from the Board of Water Works Pueblo (Pueblo Water). Pueblo Water will release water from Clear Creek Reservoir monthly. The District's primary focus was to ensure that Pueblo Water will not deliver Fryingpan-Arkansas Project Water or Project Return Flows, or use Project facilities to deliver the leased water.

As part of broader ongoing discussions with Pueblo Water about its water leases, the District recently reached an understanding with Pueblo Water. On September 7, 2016, Pueblo Water's Executive Director signed a letter to the District agreeing to lease non-Project Water stored in Pueblo Reservoir consistent with its Bureau of Reclamation contract and only for use inside of the District's boundaries. Pueblo Water also agreed not to deliver Project Water for use outside of the City of Pueblo. These terms are similar to those that the District has requested and negotiated in cases involving Pueblo Water leases, including First Hand Case No. 15CW3055. Because Pueblo Water has separately agreed to these terms, they are no longer necessary for the District to negotiate as stipulated decree terms in First Hand Case No. 15CW3055.

The District's objectives in Case No. 15CW3055 are to ensure that: (1) Project Water and Project Return Flows are not used to replace depletions in this plan; (2) any decree includes appropriate terms and conditions for any use of Project facilities; (3) if the decree allows any use of Project facilities, ensure proper limits, consistent with Pueblo Water storage contract, on such use; (4) the augmentation plan operations do not cause injury to the District's water rights and operations; (5) the augmentation plan avoids injury to the Winter Water Storage Program (WWSP) by replacing out of priority depletions in time, place and amount; and (6) any decree includes appropriate terms and conditions to protect the Upper Arkansas River Voluntary Flow Management Program (VFMP), including by ensuring that the decree will not affect the VFMP.

General and Special Water Counsel and District Staff believe that these objectives are satisfied, primarily because Pueblo Water sent the letter. Additionally, Project facilities are not involved in Case No. 15CW3055. Pueblo Water will release water from Clear Creek Reservoir, which is not a Project facility. Proposed decree, ¶ 12.B. The Bureau of Reclamation's policy is still to prohibit use of Reclamation facilities or water for marijuana cultivation. Thus, Pueblo Water's contract with Reclamation assures that First Hand's lease will not use Project facilities in this plan. Additionally, the proposed decree will not cause injury from unreplaced depletions. The amount of depletions to the Arkansas River, less than 10 af/year, is de minimis. Proposed decree, ¶ 11.B. First Hand will replace its depletions monthly, year-round with releases from Clear Creek Reservoir, which is above the point of

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depletion. Proposed decree, ¶ 12.C. Monthly, year-round replacement to the Arkansas River above Pueblo Reservoir avoids injury to the WWSP and VFMP. Thus, because the District's objectives are satisfied, General and Special Water Counsel and District Staff recommend that the District withdraw its statement of opposition in Case No. 15CW3055.

Mr. Pifher moved, seconded by Mr. Edelmann, to authorize special water counsel to withdraw the District's statement of opposition from First Hand, Case No. 15CW3055. Motion unanimously carried.

**MONTHLY/QUARTERLY REPORTS:****U.S. BUREAU OF RECLAMATION REPORT**

Roy Vaughan provided a PowerPoint presentation reviewing the following:

- As of October 18, 2016 there were 184,032 acre-feet stored in Pueblo Reservoir; 121,615 acre-feet of Project water; 41,718 acre-feet of Excess Capacity water; 20,722 acre-feet of Winter water.
- There is currently 123,758 acre-feet of Project space in Pueblo Reservoir and 21,776 acre-feet of space in Turquoise and Twin Lakes Reservoirs.
- Charts illustrating storage amounts in Turquoise, Pueblo, and Twin Lakes.
- Project Reservoirs: Turquoise 102%; Twin Lakes 93%; Pueblo 136%
- First Use Project + PCO Municipal Water
- Total M&I Project water in the System as of September 30, 2016
- Imports to Date Charts
- U.S. Drought Monitor (west)

Mr. Vaughan reported the collection system has been winterized. Mt. Elbert Conduit is currently off. The plan is to move an additional 35,000 acre-feet from the upper reservoirs. The movement of water will be adjusted according to the forecast and customer's needs.

**DIVISION ENGINEER'S REPORT**

Mr. Witte reported on the following:

- River and Reservoir Report
  - Reference Arkansas River Daily Report. River Call is:
    - 12/3/1884                      Catlin Canal
    - 11/04/1886      Lamar Canal
    - 5/31/1949                      Compact Call (State line to John Martin)  
<http://www.dwr.state.co.us/div2/aras/arascal.asp>
- Current River/Reservoir Operations
  - Inflow to Pueblo is currently approx. 115 cfs below average
    - Winter Water Storage annual meeting at Otero Junior College, October 21, 2016, 10:30 a.m.
    - Big Johnson Substitute Water Supply Plan (SWSP) to store in Pueblo temporarily.

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- Ft. Lyon SWSP to store Amity's Winter water in Adobe (related to renewed dispute over Ft. Lyon carrier contract.
- Discussion of means to provide transparency regarding exchange operations
- John Martin Storage will resume November 1, 2016.
  
- Compact Issues
  - Arkansas River Compact Administration (ARCA) Special Engineering Committee met on May 27, 2016.
  - Anticipated topics
    - Additional source of water for John Martin Permanent Pool.
    - Remaining concerns related to the LAWMA decree 02CW181.
  - Next meeting set for November 8, 2016.
    - Unresolved administrative issues including upstream post-Compact storage.
  - Pre-ARCA meeting scheduled for November 15, 2016.
  - ARCA will meet in Lamar, CO December 8 & 9, 2016.
  
- Involvement in Water Court proceedings
  - May 2016, Mr. Witte reported: The Division Engineer's Office has recently concluded an enforcement action stemming from the violations of an administrative order.
  - The State and Division Engineers have filed complaints in the Division 2 Water Court and in Huerfano County District Court which have been consolidated and referred to the Division 2 Water Court seeking enforcement of an order to breach Cucharas Dam #5. Cucharas Dam #5 partially failed in 1987 and the spillway was subsequently lowered and more recently subjected to a zero storage restriction. However, none of these actions have been sufficient to satisfactorily reduce the risk to public safety and necessary repairs do not appear to be forthcoming, which resulted in the breach order. The owners of Cucharas #5 dam have filed a counter suit alleging misadministration of the Huerfano has made repairs of the dam infeasible, however, those claims have been dismissed and the only remaining claims allege that the Welton Ditch Company does not have a reasonably efficient means of diversion. The consent decree entered between the State and Two Rivers Water and Farming Company regarding the enforcement cases on April 26 provides:
    - A Compliance Plan is to be submitted to State Engineers Office by September 1, 2016 outlining plans to...
    - Remove the rockfill embankment of the dam across the entire width of the Dam above the grade of existing sedimentation.
    - Construct an open stabilized channel through the dam capable of allowing regular flows of at least 150 cfs.
    - Construct a "pilot channel" through the sedimented area of the existing reservoir bed capable of routing 150 cfs to the dam.
    - All work is to be completed within 180 days of written acceptance of the Compliance Plan.

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- Deferred \$100k penalty for failure to comply with State Engineer's order payable to Huerfano County upon failure to comply with the Consent Decree.
- The State was dismissed as a defendant in the counter suit, leaving the Welton Ditch Company as the sole defendant. The Welton has filed cross claims and successfully argued to join other necessary parties and may join others.
  - An interesting side note to this is that the Pryor Ditch rights have been resurrected...
- Breach plan submitted by Two Rivers Farming and Water, HCIC Holdings LLC and Huerfano-Cucharas Irrigation District on 8/31/16 has recently been approved (10/4/16)
- Breaches of Riss North, South and East, on tributaries to Fourmile creek, near Cripple Creek, are nearly complete
- Working on Lake County's blanket plan for augmentation (98CW173), Pioneer, XTO plan for augmentation (10CW02), New Elk Coal plan for augmentation
- A final decree has been entered in the Huerfano County Water Conservancy District in the blanket plan for augmentation application filed in 13CW3062.
- The Division Engineer's issues in each of these cases included concerns related to the potential for injury. In the future, the Division Engineer's Office will increasingly attempt to limit our involvement to issues of "administerability" and compact compliance, with the expectation that water users will accept the responsibility for protecting their own interests. Mr. Witte expressed concern about whether affected water users will recognize the significance of this shift in direction and act to protect themselves from future threats.
- Personnel
  - May 2016: Significant increase in personal involvement in the Water Court process by the Division Engineer as the result of the retirement of Asst. Division Engineer, Julie Pearson on April 30, 2016.
  - Rachel Zancanella has been appointed to replace Julie Pearson as Ass't Division Engineer.

## U.S. GEOLOGICAL SURVEY REPORT

Bill Banks reported on the following:

- Precipitation gages
- Emergency monitoring
- Networks for fires

Mr. Banks reported the U.S. Geological Survey (USGS) is cooperating with the Colorado Office of Emergency Management and the Fremont Office of Emergency Management to instrument the Hayden burn scar. Additionally, the USGS is working with the Colorado Office of Emergency Management to determine if similar needs might exist in the Beulah and Junkins burn scars.

## STATE LEGISLATION UPDATE

President Long said Mr. Lee Miller's state legislation update was in the Board binder for review.



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**EXECUTIVE SESSION**

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

1. Diligence and Change Application: District's Division 2 Conditional Water Rights
2. U.S. Patent No. 8,985,899

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 is requested at this Executive Session:

1. Non-Excused Board Members
2. Executive Director
3. General Counsel
4. Special Water Counsel
5. Engineering Consultant
6. Water Resources Specialist/Engineer

The minutes will be electronically recorded as required by the Colorado Open Meetings Act.

Mr. McClure moved, seconded by Mr. Edlmann, to enter into Executive Session. President Long recessed the District meeting at 11:12 a.m. and reconvened at 12:08 p.m.

**REPORT OUT OF EXECUTIVE SESSION**

Lee Miller said the Board received legal advice on the Diligence and Change Application: District's Division 2 Conditional Water Rights case and U.S. Patent No. 8,985,899 the Board was provided guidance to assist in negotiations. He stated that there was one action item resulting from the executive session.

**ACTION ITEMS (CONTINUED)**

**DILIGENCE AND CHANGE APPLICATIONS: DISTRICT'S DIVISION 2 CONDITIONAL WATER RIGHTS**

Mr. Goodwin moved seconded by Mr. Mitchell, the Board adopt Resolution No. 2016-02D, and authorize special water counsel to:

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1. File an Application for Diligence with the Water Court by November 30, 2016 to maintain the District's conditional water rights decreed in Water Division 2 to Pueblo Reservoir, Turquoise Lake, and Twin Lakes Reservoir;
2. File an Application for a change of water rights with the Water Court before November 30, 2016 to change the District's conditional water rights decreed in Division 2 for the Malta Canal, Otero Conduit, Otero-Wapaco A, Otero-Wapaco B, Wapaco Diversion, and Chalk Creek Diversion, and to correct errors in legal descriptions, and include these rights in the Diligence Application to maintain these conditional water rights; and
3. Abandon the District's conditional water rights for the proposed Princeton Forebay, Pancho Forebay, Salida Forebay, Salida Afterbay, Wapaco-Princeton, Princeton-Pancho, Pancho-Salida structures, and the Sangre de Cristo Power System's Canal A/Tenderfoot, Canal C, and Grape Creek Reservoir structures.

Motion unanimously carried.

**INFORMATIONAL ITEMS:**

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

- Water Court Resume
- 2017 Proposed Budget
- Legal Quarterly Report
- Winter Water Storage Program Annual Meeting
- NWRA 85<sup>th</sup> Annual Conference
- CRWUA Annual Conference
- December Board Meeting Date: December 8, 2016

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 12:10 p.m.

Respectfully submitted,

Toni Gonzales  
Administrative Manager

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Secretary

