

RECORD OF PROCEEDING

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**SOUTHEASTERN COLORADO WATER  
CONSERVANCY DISTRICT**

**MINUTES**

**September 15, 2016**

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, September 15, 2016 at 10:45 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	Gibson Hazard	Kevin Karney
Carl McClure	Howard "Bub" Miller	Pat Edelmann
David Simpson	Curtis Mitchell	Tom Goodwin
Dallas May	Mark Pifher	

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

Jay Moore 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; Finance Specialist Stephanie Shipley; Issues Management Program Coordinator Chris Woodka; Federal Lobbyist Ray Kogovsek; and Special Water Counsel Alix Joseph.

**VISITORS PRESENT:**

Tom Simpson, Aurora Water; Roy Vaughan, U.S. Bureau of Reclamation; Bill Tyner, Colorado Division of Water Resources-Division 2; Terry Book and Seth Clayton, Board of Water Works of Pueblo; Curt Thompson, AECOM; William Banks, U.S. Geological Survey; Bob Hartzman, Canon City Water Department; Erika Chaves, U.S. Representative Ken Buck's office; Dwight Gardner, U.S. Senator Michael Bennet's office; Jerry Peña, GEI Consultants; Jack Goble, Lower Arkansas Valley Water Conservancy District; Scott Lorenz and Brett Gracely, Colorado Springs Utilities; Roy Heald, Security Water District and Fountain Valley Authority; Jason Bird, Ben Sartain, Luke Schilperoort Ted Sorenson, Teddy Sarenson; Henry Stamschror, and Rick Sartain, Mountain States Hydro; Mark Scott, citizen; and Bob Hamilton, citizen.

RECORD OF PROCEEDING

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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.

**APPROVAL OF MINUTES:**

President Long said the minutes of the May 19, 2016 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 Mr. Howard "Bub" Miller, to approve the minutes. Motion unanimously carried.

**FINANCE COMMITTEE REPORT:**

Treasurer Nichols reported the financial statements for May, June, July, and August were posted to the Board website for review. Ms. Nichols moved, seconded by Mrs. Ortegon, for acceptance of the May, June, July, and August financial statements and payment of the September 2016 bills. Motion unanimously carried.

**CONSENT ITEMS:**

**SOUTHEASTERN'S EXCHANGE (CASE No. 06CW8) APPROVAL OF STIPULATIONS WITH DISTRICT 67 IRRIGATING CANALS ASSOCIATION, AMITY MUTUAL IRRIGATING COMPANY, FORT LYON CANAL COMPANY, HOLBROOK MUTUAL IRRIGATING COMPANY, AND BOARD OF COUNTY COMMISSIONERS OF OTERO COUNTY**

Case No. 06CW8 is the District's application for exchanges by the District or its constituent entities of non-Project water stored in Holbrook Reservoir No. 1 or Dye Lake, or diverted at the Catlin Canal, High Line Canal, Holbrook Canal, Oxford Farmers Ditch or Rocky Ford Ditch, to Pueblo Reservoir for use in the AVC and for other purposes within the District. The application requested co-equal priority with exchange applications filed by the City of Aurora, Colorado Springs, and the City of Lamar in December 2005. Aurora's application was since dismissed, as was one of Colorado Springs' two December 2005 applications. Nineteen parties filed statements of opposition. A Ruling of the Referee was not entered by the December 15, 2014 deadline and, accordingly, the case was re-referred to the Water Judge on December 19, 2014.

Following comments from several Opposers and review with the Board in executive session last November, the District provided a revised proposed decree to all parties dated January 27, 2016. The revised proposed decree limited the sources of water that can be used in the exchange to additional shares of those ditches already being used in the exchange in paragraphs 11.2 and 11.5. The proposed decree also provided that use of exchanged water will be consistent with any terms ultimately decreed in the participants' individual cases for changes of water rights and exchanges, including limits on exchanges from Holbrook facilities, consistent with the decree entered in La Junta's Case No. 11CW13. CPW and CS-U stipulated to entry of a decree in February that was consistent with the version circulated in January. The Engineers requested further clarification of the legal description of a structure used by La Junta. This information was included in paragraph 9.3 of the April 5, 2016 proposed decree, to which the Engineers stipulated. District 67, Amity and Fort Lyon have all agreed to stipulate to the April 5, 2016 version of the proposed decree without any further changes. Holbrook requested some

RECORD OF PROCEEDING

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minor changes pertaining to the ability of the District or its constituent entities to use Holbrook's facilities. Special water counsel, general counsel, and District staff believe that these stipulations satisfy the District's objectives.

Mr. McClure moved, seconded by Mr. Bostrom, to ratify the ad hoc committee's decision authorizing special water counsel to execute stipulations in Case No. 06CW8 with: (1) District 67, Amity, and Fort Lyon, consenting to entry of a decree that is no less restrictive on the District than the proposed decree dated April 5, 2016; and (2) Holbrook and Otero County, consenting to entry of a decree that is no less restrictive on the District than the proposed decree dated June 20, 2016. Motion passed with Mr. May and Mr. Karney abstaining.

**PRESENTATIONS:**

**DISTINGUISHED BUDGET PRESENTATION AWARD FOR THE 2016 BUDGET PUBLICATION**

President Long reported the Government Finance Officers Association (GFOA) awards the Distinguished Budget Presentation Award to governments with very high quality that reflects both the guidelines established by the National Advisory Council on state and local budgeting and the GFOA's best practices on budgeting.

President Long read the letter notifying the District of its receipt of the Distinguished Budget Presentation Award for the current budget from the GFOA. When the Distinguished Budget Presentation Award is granted to an entity a Certificate of Recognition for Budget Presentation is also presented to the individual or department designed as being primarily responsible for its having achieved the award. The Finance Team was presented the Certificate of Recognition for Budget Presentation. The Finance Team was made up of James Broderick, Leann Noga, Jean Van Pelt, and Toni Gonzales. President Long presented the Distinguished Budget Presentation Award to the Finance Team. This is the fifth consecutive year the District has received this award.

**ACTION ITEMS:**

**APPOINTMENT OF BUDGET OFFICER**

The first action the governing board must take under the Budget Law is to designate or appoint a Budget Officer to prepare and submit a proposed budget (Section 29-1-104 C.R.S).

Ms. Nichols moved, seconded by Mr. Goodwin, to appoint Finance Coordinator Leann Noga as the Budget Officer for the 2017 Enterprise budget. Motion unanimously carried.

**SET PUBLIC HEARING FOR 2017 PROPOSED BUDGET**

Ms. Nichols reported the Board conducts a Public Hearing each year prior to adopting the annual budget, which a published notice is required.

Ms. Nichols moved, seconded by Mr. Howard "Bub" Miller, the Board set November 17, 2016 at 9:45 a.m. at the office of the Southeastern Colorado Water Conservancy District for a Public Hearing for the 2017 Proposed Budget. Motion unanimously carried.

RECORD OF PROCEEDING

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AGREEMENT BETWEEN THE SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT AND PENROSE WATER DISTRICT CONCERNING EXCHANGE STORAGE AND USE OF FRYINGPAN-ARKANSAS PROJECT WATER

Mr. Markus reported, to address storage of Project water in non-Project facilities, the District and Penrose Water District have negotiated an agreement to establish terms and conditions for Penrose Water District storage, exchange, and use of Project water in non-Project facilities. Legal counsel for the District and Penrose Water District ultimately negotiated an agreement which accomplishes the District's objective to clarify the conditions under which Penrose Water District may exchange and store its allocation Project water. The Board was provided a copy of the Agreement.

Mr. Goodwin moved, seconded by Mr. Mitchell, the Board execute the Agreement between the Southeastern Colorado Water Conservancy District and Penrose Water District Concerning Exchange, Storage, and Use of Fryingpan-Arkansas Project Water. Motion unanimously carried.

SETTLEMENT AGREEMENT WITH LAVWCD FOR JOINT RESOLUTION OF CASE NO. 10CW4 (SUPER DITCH EXCHANGE) AND SOUTHEASTERN'S EXCHANGE (CASE NO. 06CW8)

Alix Joseph reported on February 21, 2006, the Board directed Special Water Counsel to file the Application in Case No. 06CW8 to preserve and retain exchange capacity for the District and its constituent entities to exchange non-Project water to Pueblo Reservoir, primarily for use in the Arkansas Valley Conduit ("AVC"). The Board has approved stipulations with six of the Opposers. In July, the District ad hoc committee approved stipulations with another five Opposers, which have since been executed and approved by the Court. Ratification of the ad hoc committee's approval is Agenda Item III.a. for the September 15, 2016 meeting.

On April 15, 2010, the Board directed Special Water Counsel to file a statement of opposition to Super Ditch Case No. 10CW4, an application for exchanges that will allow the Super Ditch to operate, including exchanges into Pueblo Reservoir from several downstream ditch systems.

Both Super Ditch Exchange Case No. 10CW4 and the District's Case No. 06CW8 involve exchanges into Pueblo Reservoir. The District filed a statement of opposition in Case No. 10CW4 to protect its interests in the Fry-Ark Project and its water rights, including the applied-for exchange in Case No. 06CW8. Consistent with the Board's direction, we have been working with the Opposers in Case No. 06CW8 to stipulate to entry of a decree. The Lower Arkansas Valley Water Conservancy District (LAVWCD) stated that, to stipulate, it wanted a Settlement Agreement that addresses LAVWCD's eligibility to participate in the 06CW8 exchange and provides for the District to stipulate to entry of a decree in Super Ditch Exchange Case No. 10CW4. General and special water counsel and District staff believe the Settlement Agreement and reciprocal stipulations are the best way to protect the District's interests and facilitate resolution of both cases.

The Settlement Agreement resolves LAVWCD's concerns in the District's Case No. 06CW8 and protects the District's interests. LAVWCD's primary concerns in Case No. 06CW8 are that the District

RECORD OF PROCEEDING

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recognizes that LAVWCD is a constituent entity that may be eligible to participate in the 06CW8 exchange, and that a future Board of Directors allocating participation in the 06CW8 exchange will do so in an open meeting. The Agreement resolves LAVWCD's concerns by (1) acknowledging that LAVWCD is eligible to participate in the District's 06CW8 exchange, unless its participation is precluded by terms and conditions in a decree entered in Case No. 06CW8, and (2) that the District must consider LAVWCD's eligibility to participate in the 06CW8 exchange at a meeting that is open to the public. Among the terms and conditions in the 06CW8 decree that may limit LAVWCD's participation are limits on the sources of water that may be exchanged and limits on the use of the exchange for AVC purposes. Further, the District retains discretion to determine the extent to which and the terms by which LAVWCD may participate in the 06CW8 exchange. General and Special Water Counsel believe that this Settlement Agreement protects the District's interests because it provides a process for resolving whether LAVWCD may participate in the 06CW8 exchange, but it does not obligate the District to allow LAVWCD to participate in the 06CW8 exchange.

The District's Case No. 06CW8 is the District's application for exchanges by the District or its constituent entities of non-Project water stored in Holbrook Reservoir No. 1 or Dye Lake, or diverted at the Catlin Canal, High Line Canal, Holbrook Canal, Oxford Farmers Ditch or Rocky Ford Ditch, to Pueblo Reservoir for use in the AVC and for other purposes within the District. The District filed this application filed on February 21, 2006. The application requested co-equal priority with exchange applications filed by the City of Aurora, Colorado Springs, and the City of Lamar in December 2005. Aurora's application was since dismissed. Nineteen parties filed statements of opposition. The case was re-referred to the Water Judge on December 19, 2014, and is set for trial in June 2017

LAVWCD will stipulate to the same June 20, 2016 proposed decree recently approved by the Board, provided that the District executes the Settlement Agreement addressing LAVWCD's eligibility to participate in the Case No. 06CW8 exchange.

Super Ditch Exchange Case No. 10CW4 is an application for exchanges that will allow the Super Ditch to operate, including exchanges into Pueblo Reservoir from several downstream ditch systems. Super Ditch is composed of ditch shareholders located in the Lower Arkansas River Valley. This case will allow these shareholders to negotiate voluntary water leases through the Super Ditch with municipal and other water users. For example, LAVWCD and Super Ditch are operating a pilot lease project with the Catlin Canal Company for approximately 500 acre-feet of water to be used by the City of Fountain, the Security Water District, and the Town of Fowler. Irrigators will also be able to lease water from other irrigators for agricultural purposes in the Lower Arkansas River Valley.

The District's primary objectives in this case are to ensure that the proposed decree (1) contains terms and conditions sufficient to protect the District's senior water rights and exchanges from injury, including the rights in Case Nos. 06CW8 and 01CW151; (2) contains appropriate terms and conditions to protect the Winter Water Storage Program (WWSP); (3) contains appropriate terms and conditions for the use of Pueblo Reservoir; and (4) avoids injury to deliveries of Fryingpan-Arkansas Project Water ("Project Water") and the WWSP by increased transit loss at low flows below Pueblo Reservoir. We believe that the attached proposed decree satisfies these objectives.

RECORD OF PROCEEDING

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The District's senior water rights and exchanges are protected because they will be administered as senior to the Super Ditch Exchanges. The Super Ditch Exchange claimed appropriation date (November 18, 2009) and priority date (December 2009) are junior to the District's appropriation and priority dates in its exchange cases, Case Nos. 06CW8 and 01CW151. The District's exchanges in the 01CW151 Decree have 2001 priority dates. The District claims a priority date of December 2005 in Case No. 06CW8, and should have at least a 2006 priority based on when the application was filed. Thus, if the District is awarded exchange rights in 06CW8, the exchanges in Case Nos. 06CW8 and 01CW151 will be administered as senior because the District will have an earlier priority date. LAVWCD's proposed decree also confirms that it is junior to any rights senior to November 18, 2009.

The WWSP is protected because LAVWCD and Super Ditch will not operate the exchanges into Pueblo Reservoir during the Winter Storage Program Season, when the WWSP is generally the calling right. Prior to using Winter Water, LAVWCD will obtain legal authorization for such use, either through a decree or administrative approval. LAVWCD and Super Ditch will comply with the applicable rules, regulations, and policies to store Winter Water in Pueblo Reservoir. The proposed decree also includes terms and conditions that protect Project facilities.

The proposed decree will avoid exacerbating transit losses below Pueblo Reservoir because the Super Ditch Exchange will not operate when flows at the USGS Gauge at Avondale are less than 500 c.f.s. Studies in previous cases have shown that such Avondale Gage flows are a good way to avoid excessive transit losses below Pueblo Reservoir, and the same condition is in the District's proposed decree in Case No. 06CW8. The Super Ditch Exchange also will not exchange water to Pueblo Reservoir when flows immediately below Pueblo Reservoir are below 100 cfs, or to cause such flows to be less than 100 cfs. Thus, General and Special Water Counsel and District staff believe this proposed decree satisfies the District's objectives.

General and special water counsel and District staff recommend that the Board (1) authorize the District to execute a Settlement Agreement with the LAVWCD concerning LAVWCD's eligibility to participate in the exchange to be adjudicated in the District's Case No. 06CW8, and that provides for reciprocal stipulations in the District's Case No. 06CW8 and Super Ditch Exchange Case No. 10CW4; and (2) authorize Special Water Counsel to execute such reciprocal stipulations, that provide for (a) the District's consent to entry of a decree in Case No. 10CW4 that is no less restrictive on LAVWCD and Super Ditch and no less protective of the District than the proposed decree dated August 15, 2016; (b) LAVWCD's consent to entry of a decree in Case No. 06CW8 that is no less restrictive on the District and no less protective of LAVWCD than the proposed decree dated June 20, 2016.

Mr. Hazard moved, seconded by Mr. McClure, to (1) authorize the District to execute a Settlement Agreement with the LAVWCD concerning LAVWCD's eligibility to participate in the exchange to be adjudicated in the District's Case No. 06CW8, and that provides for reciprocal stipulations in the District's Case No. 06CW8 and Super Ditch Exchange Case No. 10CW4; and (2) authorize Special Water Counsel to execute such reciprocal stipulations that provide for (a) the District's consent to entry of a decree in Case No. 10CW4 that is no less restrictive on LAVWCD and Super Ditch and no less protective of the District than the proposed decree dated August 15, 2016; and (b) LAVWCD's consent

RECORD OF PROCEEDING

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to entry of a decree in Case No. 06CW8 that is no less restrictive on the District and no less protective of LAVWCD than the proposed decree dated June 20, 2016. Motion unanimously carried.

**MONTHLY/QUARTERLY REPORTS:**

**U.S. BUREAU OF RECLAMATION REPORT**

Roy Vaughan provided a PowerPoint presentation reviewing the following:

- As of September 13, 2016 there were 190,391 acre-feet stored in Pueblo Reservoir; 122,856 acre-feet of Project water; 39,996 acre-feet of Excess Capacity water; 27,480 acre-feet of Winter water.
- There is currently 122,517 acre-feet of Project space in Pueblo Reservoir and 21,242 acre-feet of space in Turquoise and Twin Lakes Reservoirs.
- Charts illustrating storage amounts in Turquoise, Pueblo, and Twin Lakes.
- Project Reservoirs: Turquoise 101%; Twin Lakes 92%; Pueblo 138%
- Arkansas River Basin Time Series Snowpack Summary June 11, 2016
- Upper Colorado River Basin Time Series Snowpack Summary June 11, 2016
- Imports to Date Charts
- U.S. Drought Monitor (west)

Mr. Vaughan reported the collection system has been shut down and is being winterized. Mt. Elbert Conduit is currently off. The plan is to move an additional 38,000 acre-feet down. The movement of water will be adjusted according to the forecast and customer's needs.

**DIVISION ENGINEER'S REPORT**

Mr. Tyner presented a PowerPoint reviewing the features of the Arkansas Basin Water Operations Dashboard. Reviewing the following:

- Transparency on the River-Remember When Things Were Simple?
- Then Things Got Complicated
- How Do We Make Things Clearer?

Lee Miller said the Division Engineer's office will provide a presentation after the Winter Water Storage Program meeting on October 21 to show how exchanges are being administered.

**U.S. GEOLOGICAL SURVEY REPORT**

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

- Runoff Hydrograph
- 28-day Average Streamflow Compared to Historical Streamflow for the Day of the Year
- Duration Hydrographs
- Cumulative Hydrographs
- Stream Stats (web app): <http://water.usgs.gov/osw/streamstats/>

RECORD OF PROCEEDING

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STATE LEGISLATION UPDATE

Lee Miller reported the Water Resources Review Committee (WRRC) has met several times over the summer. The WRRC's scheduled a tour of the Arkansas River Basin for September 12-13, 2016.

At the August 16, 2016 meeting, WRRC members requested the following bills to be drafted:

1. Joint resolution to urge the Department of Interior to cooperate with Division of Parks and Wildlife and private owners for control of aquatic nuisance species;
2. Bill to authorize the Colorado Water Conservation Board to provide moneys for dredging reservoirs in the South Platte Basin;
3. Bill to update 1921 Irrigation District Act (Section 37-42-101, C.R.S., et seq);
4. Bill to exempt certain graywater research from graywater use regulations;
5. Bill increase water well inspection fees;
6. Bill to expand the boundaries of the Republican River Water Conservation District; and
7. Bill to cleanup statutes that authorize the Division of Water Resources to collect obsolete fees.

On Tuesday, September 20, the WRRC will vote on final recommendations to Legislative Council. Legislative Council will meet on Friday, October 14 to consider bills recommended by interim committees.

**INFORMATIONAL ITEMS:**

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

- Water Court Resume
- Budget Calendar
- 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 announced there would be an October 20 Board meeting and the December Board meeting is scheduled for December 8.

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 11:52 a.m.

Respectfully submitted,

Toni Gonzales  
Administrative Manager

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Secretary



