

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

November 13, 2008

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District was held on Thursday, November 13, 2008 at 9:51 a.m., at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

DIRECTORS PRESENT:

Bill Long	Harold Miskel	Scott Reed
Ann Nichols	Edward Bailey	Lee Simpson
Gibson Hazard	Greg Johnson	Carl McClure
Lissa Pinello	Reed Dils	Kevin Karney
Shawn Yoxey		
Alan Hamel-Advisory Board Member		

DIRECTORS ABSENT AND EXCUSED:

Howard "Bub" Miller and Vera Ortegón.

DISTRICT OFFICIALS PRESENT:

Executive Director James Broderick; Administrative Manager Toni Gonzales; Projects Manager Phil Reynolds; Chief Financial Officer Kathie Fanning; Director of Engineering and Resource Management Bob Hamilton; Engineering Support Specialist Margie Medina; Conservation Outreach Coordinator Jean Van Pelt; Attorneys Lee Miller and Alix Joseph; and Federal Lobbyists Ray Kogovsek and Christine Arbogast.

INTRODUCTION OF VISITORS:

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

VISITORS PRESENT:

Roy Vaughan, U.S. Bureau of Reclamation; Chris Woodka, The Pueblo Chieftain; Steve Witte, Colorado Division of Water Resources-Division 2; Michael Fink, City of Fountain Water Utility; Brett Gracely, Colorado Springs Utilities; Kevin Meador, Black & Veatch; Bob Hartzman, City of Cañon City; Roy Heald, Security Water District; Steve Howell, Ninyo & Moore; Curt Thompson, Merrick & Co; Rick Stevens, Fountain Valley Authority; H.E. Cap Proal, Security Water District; Scott Lorenz, AGUA; Larry Patterson, City of Fountain; and Doris Morgan, Senator Allard's office.

RECORD OF PROCEEDING

APPROVAL OF MINUTES:

President Long asked if the members of the Board had received their copy of the minutes of the October 16, 2008 Board meeting, and if there were any corrections or additions. Hearing none, Mr. Reed moved, seconded by Mr. Johnson, to approve the minutes. Motion unanimously carried.

TREASURER REPORT:

Treasurer Ann Nichols noted, per Chief Financial Officer Kathie Fanning's District Financial Summary, directly related to the economy, specific ownership tax revenues continue to be slightly lower than anticipated.

Treasurer Ann Nichols reported that the financial report for October for the District was mailed to the Board and moved for the acceptance of the financial report for October and payment of the November bills for the District, seconded by Mrs. Yoxey. Motion unanimously carried.

CONSENT ITEMS:

NONE

ACTION ITEMS:

ALLOCATION COMMITTEE

Bob Hamilton reported the Allocation Committee met on November 3 and recommends that the Board adopt Resolution No. 2008-1WR amending the Water Allocation Policy Regarding the Use of Project Water to Maintain Historical Return Flows from Changed Water Rights.

The proposed paragraph 12: is as follows:

12: Inasmuch as Fryingpan-Arkansas Project water is designed to supply supplemental water, the Board of Directors of the Southeastern Colorado Water Conservancy District declare that it is the Policy of the District not to replace with Project water decreed water sold by persons or entities. In applying this rule, the Board shall consider the total supply of the applicant and the percentage thereof sold or replaced. (2-19-81) Furthermore, Project water shall not be used to maintain or replace return flows from historical irrigation use of agricultural water rights in any change of such water rights from agricultural to municipal or other uses.

Mr. McClure moved, seconded by Mrs. Pinello, that the Board Adopt Resolution 2008-1WR amending the Water Allocation Policy. Motion unanimously carried.

President Long recessed the District meeting at 9:59 a.m. to convene the Public Hearing for the 2009 Proposed Budget in conjunction with the Enterprise Board meeting.

RECORD OF PROCEEDING

PRESENTATION:

PUBLIC HEARING

Chief Financial Officer Kathie Fanning began the Public Hearing at 10:00 a.m. Mrs. Fanning reviewed the 2009 Proposed Budget in detail.

Mrs. Fanning recognized the whole District staff for their help in providing information that was used to prepare the 2009 Proposed Budget. President Long thanked Mrs. Fanning for the well prepared document.

President Long reconvened the District meeting at 10:58 a.m.

ACTION ITEMS CONTINUED:

LEGAL MATTERS

Southeastern's Exchange of Non-Project Water Below Pueblo Reservoir (Case No. 06CW8)

Alix Joseph reported on Southeastern's exchange of non-Project water below Pueblo Reservoir (Case No. 06CW8). Southeastern filed Case No. 06CW8 for exchanges by Southeastern 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 Arkansas Valley Conduit (AVC) and for other purposes within the Southeastern District. Southeastern filed the application in February 2006 to seek co-equal priority with exchange applications filed by the City of Aurora, Colorado Springs Utilities (CS-U) and the City of Lamar in December 2005. This exchange was designed to facilitate AVC operations using non-Project water, in addition to Project water, should the AVC be constructed.

The Board approved a series of agreements with AVC participants, most recently last year, allowing them until November 30, 2008 to intervene without opposition from Southeastern, in the event we were unable to reach agreements with them regarding this proposed exchange prior to that time. When that extension was approved, it was thought that the year of 2008 would provide adequate time for enactment of federal legislation and reaching agreement on cost sharing, water supply and related matters with the Conduit participants. As you know, Southeastern is still working with Congress toward approval of a funding authorization bill that will allow the AVC to be constructed. After such legislation is passed, AVC participants will also have to reach an agreement regarding operation of the AVC.

Given that it will be difficult to move forward with the details of this exchange until AVC participants have reached agreement on how the AVC will be operated, District staff and legal counsel recommend that Southeastern offer a further extension of two years for AVC participants to reach agreement or file statements of opposition, through and including November 30, 2010. To the extent legal counsel may need to settle related cases with AVC participants (such as St. Charles Mesa and Rocky Ford) during the next two years, legal counsel will request they identify any issues of concern in Southeastern's exchange case prior to settlement. Mr. McClure moved, seconded by Mrs. Yoxey, to have District Staff offer a further extension of two years for AVC participants to reach agreement or file statements of opposition, through and including November 30, 2010. Motion unanimously carried.

RECORD OF PROCEEDING

St. Charles Mesa's Change of Bessemer Shares (Case No. 04CW8)

Alix Joseph reported St. Charles Mesa Water District's (St. Charles) Case No. 04CW08 requests changes of St. Charles' Bessemer Ditch shares to allow municipal use and storage of those shares. The Board was provided a copy of the most recent proposed decree (including Exhibit G, the exhibit describing revegetation procedures) and draft stipulation with St. Charles.

St. Charles has made progress on revising the proposed decree in such a manner that protects Southeastern from injury. St. Charles provided us with a revised proposed decree on Wednesday afternoon that has been passed out to the Board. Revegetation is the most significant unresolved issue at this time. Exhibit G to the proposed decree now contains most of the revegetation provisions. Ms. Joseph noted that these provisions are different from provisions included in AGUA's Case No. 04CW62 and LAWMA's Case No. 02CW181 in that instead of having a timeframe by which revegetation must be completed or the Applicant loses the right to use the new water, St. Charles must seed the dried-up parcel within three years and is not permitted to use the associated shares for the new uses until revegetation is completed. Legal counsel believes that this approach is more stringent than the one adopted by AGUA and LAWMA, and therefore recommend its approval by the Board. If this revegetation concept is acceptable to the Board, then we believe that St. Charles has addressed the remaining issues of concern to the Board and recommend settlement along the lines of the proposed decree distributed to the Board at the meeting.

Mr. Hazard moved, seconded by Mrs. Pinello, to approve the recommendation. Motion unanimously carried.

Security Water District's Venetucci Well Augmentation Plan (Case No. 07CW51-Division 2)

Lee Miller reported on Case No. 07CW51, which is an application filed by Security Water District to augment depletions from the Venetucci tributary wells in the Widefield Aquifer near Fountain Creek, using its Fountain Mutual shares, Fry-Ark Project water allocations and return flows, and other decreed consumable water rights as augmentation sources. The City of Fountain filed a similar case involving augmentation of the Venetucci wells (Case No. No. 07CW68), as has Widefield Water & Sanitation District (Case No. 07CW54). Southeastern stipulated last year in the Fountain case, and the Widefield case remains pending.

Security provided a draft decree for legal counsel's review last month, and legal counsel provided written comments to Security's counsel later in October, addressing Security's use of Fry-Ark water. Legal counsel has reached agreement on the terms of a revised proposed decree based on Security's favorable response to the comments provided. Lee Miller recommended the Board authorize legal counsel to execute a standard stipulation, agreeing to entry of the revised proposed decree, to resolve the District's participation in this case. Mrs. Yoxey moved, seconded by Miss Nichols, to authorize legal counsel to execute a stipulation, agreeing to entry of the revised proposed decree. Motion unanimously carried.

RECORD OF PROCEEDING

WATER COURT RÉSUMÉS

Mr. Hamilton reported in Water Division 2: There is one (1) case of interest to the District in the October 2008 Résumé.

Case 08CW83 is an application by Five Rivers Ranch Cattle Feeding LLC d/b/a Colorado Beef. This is the feedlot west of Lamar just south of where Highway 50 intersects Highway 287. The application is for a Change of Water Rights and for a Conditional Water Storage Right. The applicant has purchased 492 shares of the Fort Lyon Canal Company. The Applicant plans to change the use of those shares to all beneficial uses associated with the feedlot including commercial, stock watering, and other purposes. The application states that the applicant could use Fry-Ark Project water attributable to those shares for augmenting their wells and storage. Uses associated with a feedlot are likely to be considered to be an industrial purpose pursuant to the terms of the Allocation Principles. Accordingly, Project water is not available for such uses until the requirements of municipal, domestic, and irrigation uses have been satisfied. Additionally, the applicant is eligible for water to irrigate 640 acres but only at the full cost rate of \$206.30 per acre-foot not the \$7.00 per acre-foot that is now charged. The wells that will be augmented by this water are used in areas that are not within the District. The proposed site of the reservoir may be on lands considered excess by the Reclamation Reform Act and not eligible for Fry-Ark Project water.

Mr. Hamilton recommended authorizing legal counsel to file a statement of opposition to: (1) protect the District's water rights; (2) protect the District's interest in the allocation and sale of Project water and return flows; (3) ensure use of Winter water consistent with Reclamation contract and decree; (4) ensure revegetation of historically irrigated lands; (5) monitor potential precedent or preclusive effect on future changes of FLCC shares; (6) keep the river whole; and (7) assure replacement of delayed return flows to avoid injury to the Winter Water Storage Program.

Mrs. Pinello moved, seconded by Mr. Johnson, that legal counsel file a Statement of Opposition in Case 08CW83 to make sure that Fry-Ark Project water is not used on excess lands or lands outside of the District. Motion unanimously carried.

UPPER ARKANSAS WATER CONSERVANCY DISTRICT (UAWCD) LETTER OF SUPPORT

Mr. Broderick reported the UAWCD has requested a letter of support from SECWCD to be used as part of a grant application submittal to the Arkansas Basin Roundtable. The project involves a joint UAWCD - USGS hydrologic water balance study. The phased study begins in Chaffee County and eventually covers four Arkansas headwater counties: Lake, Chaffee, Fremont, and Custer. The primary goal of the study is to determine how much water can be made available in the upper basin (above Pueblo Reservoir) for the next 25+ years. The estimated cost is \$362,000 for phase one.

The data and results from these studies may be useful in the development of the Arkansas River Decision Support System by the State. These studies will also help to: 1) define the importance of groundwater in the local hydrology and of the Arkansas Headwater region; 2) provide data that can be used in evaluating/preparing water-supply reports for proposed subdivisions and in evaluating or

RECORD OF PROCEEDING

developing rules for individual sewage disposal systems; and 3) provide data for the constraints to water-resource models that may be developed for the upper basin.

Mrs. Pinello moved, seconded by Mr. Bailey, that the District provide a letter of support to UAWCD for the development of a hydrologic water balance study in the upper basin. Motion unanimously carried.

MONTHLY REPORTS:

U.S. BUREAU OF RECLAMATION REPORT

Roy Vaughan reported as of November 9, there was 176,104 acre-feet of water stored in Pueblo Reservoir, 115,748 acre-feet of Project water, 41,480 acre-feet of water stored in If & When space, and 18,558 acre-feet of Winter water.

There is currently 141,201 acre-feet of Project space in Pueblo Reservoir, and 26,227 acre-feet of Project space available in Turquoise and Twin Lakes Reservoirs.

Mr. Vaughan reported the reservoir status is as follows:

- Turquoise Reservoir: 111% of average
- Twin Lakes Reservoir: 106% of average
- Pueblo Reservoir: 141% of average

Mr. Vaughan said that a review of Pueblo Reservoir for invasive mussels will be held on November 24.

DIVISION ENGINEER'S REPORT

Mr. Witte reviewed the 11/12/08 daily report and the 11/13/08 monthly report. The river call will be changed to March 1, 1910 on 11/15/2008 pursuant to the provisions of the Winter Storage Program decree. The river call was 3/1/1887 Fort Lyon II.

Mr. Witte reported the storage in John Martin Reservoir was initiated on 11/1/2008 pursuant to the provisions of the Arkansas River Compact.

Mr. Witte reported Colorado and Kansas have exchanged analysis of the adequacy of Colorado's amended groundwater use rules to assure future compliance with the Arkansas River Compact. This has resulted in preliminary confirmation of an earlier agreement, which resulted in the increase of the supplemental presumptive depletion factor to 39 percent. However, both state's experts are also in agreement that further analysis is warranted.

The fifth meeting of the Arkansas River Irrigation Consumption Rules Advisory Committee will be held November 13, at CSU-Pueblo. Several additional revisions were suggested at the October 22 meeting. At the meeting November 13 additional comments and questions concerning the most current draft of the Rules will be taken, there will be discussion on General Permits, there will be a brief report from the Engineering Subcommittee, and direction provided to the Solutions Subcommittee.

RECORD OF PROCEEDING

Since the last meeting, attempts have been made to flesh out the concept of General Permits that may be issued in instances where the effects are unlikely to be translated as an impact to the HI model domain. The tasks assigned to the Engineering Subcommittee thus far have been, or are nearly completed. As previously reported an Excel spreadsheet tool developed by Bill Tyner that incorporates many of the parameters included in the HI model has been reviewed. This tool was developed in response to many criticisms received regarding the potential cost of analysis that might be associated with the proposed rules. Efforts will now be focused on the formulation of procedures and organization of an entity to facilitate compliance, through a Solutions Subcommittee.

U.S. GEOLOGICAL SURVEY REPORT

No representative was present.

INFORMATIONAL ITEMS:

Written material was provided to the Board on the following topics:

- Invasive Mussel Update
- Legal Matters
- Colorado Water Congress Annual Meeting

OTHER BUSINESS MATTERS:

Mr. Broderick said each Board member was provided a copy of the Citizen's Guide to Colorado Climate Change prepared by the Colorado Foundation for Water Education.

The Board members were also provided a 2009 calendar from the Applegate Group, Inc. featuring Colorado's historic water projects.

Mr. Broderick reminded the Board that the December Board meeting will be **Thursday, December 4**, beginning at 11:00 a.m. followed by the holiday luncheon at 12:30 p.m.

Doris Morgan from Senator Allard's office said that Senator Allard is retiring and his office will close on December 5. She said she has thoroughly enjoyed working with the District. President Long said that Ms. Morgan has done a great job of representing southeastern Colorado serving on the staff for Senator Allard.

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 11:31 a.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary

RECORD OF PROCEEDING
