

February 19, 2009

1

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

February 19, 2009

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District was held on Thursday, February 19, 2009 at 10:34 a.m., at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

DIRECTORS PRESENT:

Bill Long	Harold Miskel	Ann Nichols
Reed Dils	Gibson Hazard	Greg Johnson
Lissa Pinello	Howard "Bub" Miller	Carl McClure
Kevin Karney	Vera Ortégón	Shawn Yoxey
Alan Hamel-Advisory Board Member		

DIRECTORS ABSENT AND EXCUSED:

Edward Bailey, Scott Reed, and Lee Simpson.

ENTERPRISE 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; Administrative Associate Leann Noga; Attorneys Steve Leonhardt and Lee Miller; 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:

Chris Woodka, The Pueblo Chieftain; Pat Edelman, U. S. Geological Survey; Steve Witte, Colorado Division of Water Resources-Division 2; Kevin Meador and Bill Stoner, Black & Veatch; Bill Warmack, Applegate Group; Larry Patterson and Curtis Mitchell, Fountain Utilities; Bob Hartzman, City of Canon City; Roy Heald, Security Water District and Fountain Valley Authority; Wayne Vanderschuere and Carol Baker, Colorado Springs Utilities; Rick Stevens, Fountain Valley Authority; Dwight L. Gardner, Senator Michael Bennet's office; Mark Scott, Merrick & Co.; Jay Winner, Lower Arkansas Valley Water Conservancy District.

February 19, 2009

2

RECORD OF PROCEEDING

APPROVAL OF MINUTES:

President Long asked if the members of the Board had received their copy of the minutes of the December 4, 2008 Board meeting, and if there were any corrections or additions. Hearing none, Mrs. Ortegón moved, seconded by Mr. Johnson, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Ann Nichols reported that the financial reports for the months of November, December, and January for the District were mailed to the Board and moved for the acceptance of the financial reports for November, December, and January and payment of the February bills for the District, seconded by Mr. Howard Miller. Motion unanimously carried.

Chief Financial Officer Kathie Fanning summarized the 2008 budget and then gave an update of the 2009 budget. The 2009 Budget will be revised sometime during the year to reflect unexpected expenses and revenues that have a significant impact due to the economy.

MONTHLY REPORTS:

U.S. BUREAU OF RECLAMATION REPORT

Roy Vaughan reported as of February 17, there were 228,001 acre-feet of water stored in Pueblo Reservoir, 128,442 acre-feet of Project water, 44,359 acre-feet of water stored in If & When space, 17,176 acre-feet of Winter water carryover, and 38,024 acre-feet stored in new Winter water.

There is currently 128,507 acre-feet of Project space in Pueblo Reservoir, and 44,772 acre-feet of Project space available in Turquoise and Twin Lakes Reservoirs.

Mr. Vaughan said Reclamation is currently moving 250 c.f.s of Project water from Twin Lakes to Pueblo Reservoir. The total Project diversions for 2008 were 89,960 acre-feet.

Reclamation has moved approximately 18,000 acre-feet from the upper reservoirs to Pueblo Reservoir, and are planning on moving approximately 25,000 acre-feet more.

DIVISION ENGINEER'S REPORT

Steve Witte reviewed the Division Engineer's monthly report for February 19, 2009 and the Arkansas River Daily Report, Ditch and Reservoirs for February 18, 2009. The river call is Fort Lyon II 3/1/1910.

Mr. Witte said the current system grand total as of February 15 in the Winter Water Storage Program is 116,424 acre-feet, which is 96 percent of last year; 121 percent of last five year average; and 103 percent of last 18 year average. The Conservation Storage in John Martin Reservoir is 20,537 acre-feet, which is 156 percent of the 1950-1975 average of 13,102 acre-feet.

February 19, 2009

3

RECORD OF PROCEEDING

Mr. Witte reported on the Division of Water Resources budget concerns. He said there are vacant positions, overtime withdrawn, fee increase proposal, and salaries are frozen, merit pay suspended, and possible furloughs.

Mr. Witte said that Rob Phillips from the Alamosa office will replace Scott Lorenz as the Reservoir Operations Specialist. Mr. Lorenz will assume the general manager position with AGUA.

Mr. Witte reported there has been no news from the United States Supreme Court regarding the Compact matters. He said the Compact Irrigation Consumption Rules Advisory Committee will meet February 24 to review the revisions to the Rules, the general permits, and Kansas' comments.

Mr. Witte reviewed the following case settlement discussions:

- Tri-State change of Amity
- St. Charles Mesa change of Bessemer Ditch
- City of Salida's Tennessee Ditch

Mr. Witte discussed the Colorado Supreme Court Water Court Committee proposed rule changes. Mr. Leonhardt said the Board was provided a copy of the Solutions Sub-Committee recommendations to the Arkansas River Irrigation Consumption Rules Advisory Committee.

PRESENTATIONS:

FOUNTAIN CREEK ACTIVITIES UPDATE

Carol Baker from Colorado Springs Utilities gave a PowerPoint presentation reviewing the following:

- Outline
- Fountain Creek Watershed
- Regional Efforts
- Master Plan Goals
- Replicating Nature
- Bank Erosion Sites
- Getting Input
- Clear Spring Ranch
- Confluence Park
- Possible Funding

Mr. Broderick asked Ms. Baker if ditch companies had been contacted, as they are external to the project, and Ms. Baker said no. Mr. McClure said anytime you change the flow, water right owners should be contacted.

President Long recessed the meeting at 11:40 a.m. and reconvened at 12:23 p.m.

February 19, 2009

4

RECORD OF PROCEEDING

ACTION ITEMS:

OPEN MEETING RESOLUTION

Mr. Broderick read Resolution-No. 2009-1, A Resolution Relating to the Compliance by the Southeastern Colorado Water Conservancy District with the Colorado Open Meeting Law. Mrs. Ortegón moved, seconded by Mrs. Yoxey, to adopt Resolution-No. 2009-1. Motion unanimously carried.

WATER COURT RÉSUMÉ

Mr. Hamilton reported in Division 2, Case No. 08CW106 is an application by the Upper District for exchange on Cottonwood Creek. The application includes the use of Fry-Ark Project water as a source of water to replace depletions resulting from the use of an irrigation well located outside of the Southeastern Colorado Water Conservancy District. The Upper District also relies on Southeastern's rights to exchange Project water on Cottonwood Creek. Legal counsel discussed this application with the applicant's counsel before it was filed, and discussed the case in their Quarterly Legal Report last month. District staff recommends authorizing legal counsel to file a Statement of Opposition in order to protect the District's interests in allocation and restrictions on use of Project water, and in Cottonwood Creek exchange rights.

Mr. McClure moved, seconded by Mr. Dils, that the District file a Statement of Opposition in Case No. 08CW106, an application by the Upper Arkansas Water Conservancy District. Motion unanimously carried.

Mr. Hamilton reported that Case Nos. 08CW114 and 115 are applications by the City of Fountain. Case No. 08CW114 is an Application for Plan of Augmentation, Including Exchanges. Case No. 08CW115 is an Application for Change of Crabb Ditch Water Rights and Plan for Augmentation, Including Exchange.

These cases are similar, and District staff and legal counsel have concerns about some aspects of the applications. Fountain seeks to add new Fountain Creek sources to its decreed and pending exchange and augmentation plans, which include Fry-Ark return flows as a water source. The 08CW115 application includes exchange as a new use, but does not describe the reaches of the exchange. If the requested exchanges in either case go down Fountain Creek, then up the Arkansas River through the City of Pueblo to Pueblo Reservoir, then the "Six-Party IGA" (which includes Southeastern and Fountain as parties) must also be addressed.

Staff believes that these concerns likely can be addressed by a stipulation instead of having to file Statements of Opposition.

Mr. Hamilton recommended that the Board authorize legal counsel to enter into a letter agreement with the City of Fountain extending the deadline for the filing of Statements of Opposition, with the objective of negotiating stipulations in each case by the end of April 2009. The stipulations would ensure that the proposed exchanges be properly described, and include consideration of the Six-Party IGA concerning

February 19, 2009

5

RECORD OF PROCEEDING

the flows through the City of Pueblo. Mr. Hamilton also requests backup authority to file Statements of Opposition in these cases if we are unable to obtain an extension agreement this month.

Mr. Hazard moved, seconded by Mr. Johnson, that the Board adopt staff's recommendation for an extension letter agreement, with backup authority to file a Statements of Opposition, if necessary, in Case Nos. 08CW114 and 115. Motion unanimously carried.

Mr. Hamilton said there were no cases of interest to the District in the Water Division 5 Résumé for December 2008.

LEGAL MATTERS

Chilcott Ditch Change (Case No. 06CW119)

Mr. Leonhardt reported the City of Fountain and Security Water District (Applicants) have filed Case No. 06CW119 (Water Division 2), requesting changes to the water rights for their 20.5 shares of the Chilcott Ditch on Fountain Creek, to allow municipal and augmentation use of those shares. Southeastern's concerns with this case included (1) protection of the Winter Water Storage Program (WWSP) by ensuring that the decree includes an obligation to replace historical delayed return flows, and that headgate diversions for the Applicants' Chilcott Ditch water rights are limited to historical diversions during the WWSP season (November 15 – March 15); (2) appropriate decree provisions designed to accomplish revegetation as required by law; and (3) limiting the proposed change for augmentation, replacement, substitution and exchange uses so that it is not speculative. Since the proposed decree reflects a compromise, particularly on the revegetation requirements for previously irrigated acreage, we requested that it not be precedent for other future cases, except as law may require for other Water Court proceedings involving the water rights decreed to the Chilcott Ditch.

Based on recent settlement negotiations and upcoming litigation deadlines, legal counsel would like the Board to consider settlement of the case. Mr. Leonhardt recommended the Board authorize legal counsel to execute a stipulation, which includes agreement to entry of the current proposed decree, to resolve the District's participation in this case. Mrs. Pinello moved, seconded by Mrs. Yoxey, to approve Mr. Leonhardt's recommendation. Motion unanimously carried.

Stratmoor Hills (Case No. 08CW44)

Mr. Leonhardt reported Stratmoor Hills Water District's (Stratmoor) Case No. 08CW44 requests removal of 70 shares of Fountain Mutual Irrigation Company (FMIC) stock from Stratmoor's decreed augmentation plans in Case Nos. W-3935/W-4237 and 91CW24. Stratmoor is selling those shares to the Security Water District. Southeastern's concerns with this case were primarily to ensure that Stratmoor's Project water return flows remain a supplemental source under the augmentation plans to be amended by the proposed decree, and are not used to replace the FMIC water sold by Stratmoor. In negotiating Stratmoor's proposed decree, legal counsel also addressed the decree language describing Southeastern's decreed rights for, and allocations of, Fry-Ark Project water, and provisions regarding administration of transit loss on Fountain Creek. Those issues were satisfactorily addressed.

February 19, 2009

6

RECORD OF PROCEEDING

Based on the resolution of Southeastern's concerns in recent settlement negotiations, legal counsel would like the Board to consider settlement of the case. Southeastern is the only objector, and Stratmoor and Security both are eager to conclude the case so they may conclude their sale of the FMIC water. Mr. Leonhardt said Stratmoor has agreed to the changes legal counsel requested, and he believes the proposed decree and stipulation satisfy Southeastern's concern that the Water Court not approve uses of Fry-Ark return flows that are contrary to Southeastern's allocation principles and policies. Mr. Leonhardt recommended the Board authorize legal counsel to execute the stipulation, which includes agreement to entry of the current proposed decree, to resolve the District's participation in this case. Howard Miller moved, seconded by Mrs. Pinello, to approve Mr. Leonhardt's recommendation. Motion unanimously carried.

Mr. Leonhardt updated the Board on the recent settlements in Tri-State Generation and Transmission Association, Inc., Case No. 07CW74.

MONTHLY REPORTS CONTINUED:

U.S. GEOLOGICAL SURVEY REPORT

Mr. Edelmann gave a PowerPoint presentation reviewing the *Summary of Streamflows in the Arkansas River Basin*.

PRESENTATIONS CONTINUED:

BOARD MEMBER DOCUMENT CENTER WEBSITE

Leann Noga gave a presentation on the Board member document center website. The website was designed as a secure webpage for sharing District information. Each member of the Board and staff will have a unique login and password to enter the site. Once entered into the site members can view recently sent documents, meeting notices, etc.

BOARD PROTOCOL

Lee Miller gave a PowerPoint presentation titled, *SECWCD Board of Directors Roles, Responsibilities and Conflicts*. The following were reviewed:

- Board of Directors roles
- Officers & Duties
- Representing the District
- Directors as Fiduciaries
- Conflicts of Interest
- Financial Conflict Test
- Safe Harbors
- Appearance of Impropriety
- Board Member Bias
- Duty of Confidentiality

February 19, 2009

7

RECORD OF PROCEEDING

- Attorney-Client Privilege
- Waiver of Attorney-Client Privilege

ARKANSAS BASIN ROUNDTABLE MONTHLY REPORT

Mr. Broderick reported he will provide a quarterly report on the Arkansas Basin Roundtable activities.

INFORMATIONAL ITEMS:

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

- Water Court Résumé
- Inclusion Process Update
- Invasive Mussels Update
- Board Travel Policy Review
- Director Appointment
- Annual Meeting Calendar
- Board Meeting Schedule
- OM&R Quarterly Report
- State Legislation
- Federal Legislation
- Legal Matters

OTHER BUSINESS MATTERS:

President Long asked that the Board review the following:

- Board Travel Policy Review
- Annual Meeting Calendar
- Board Meeting Schedule

Mrs. Arbogast handed out an email from the American Land Rights Association which is opposing the S22 Omnibus Lands Bill.

Mr. Broderick congratulated Mrs. Yoxey on the birth of her son on December 22, 2008.

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 2:07 p.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary

SECWCD

February 19, 2009

8

RECORD OF PROCEEDING
