

RECORD OF PROCEEDING

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**SOUTHEASTERN COLORADO WATER  
CONSERVANCY DISTRICT**

**MINUTES**

**June 16, 2011**

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District was held on Thursday, June 16, 2011 at 9:49 a.m., at the District office, 31717 United Avenue, Pueblo, Colorado. The meeting was recessed at 9:59 a.m. and reconvened at 10:00 a.m.

President Long announced a quorum was present.

**DIRECTORS PRESENT:**

Bill Long	Ann Nichols	Scott Reed
Howard "Bub" Miller	Carl McClure	Kevin Karney
Greg Johnson	Vera Ortegón	Lissa Pinello
Reed Dils	David Simpson	Gibson Hazard
Harold Miskel (arrived at 11:55)	Shawn Yoxey	

**DIRECTORS ABSENT AND EXCUSED:**

Gary Bostrom and Alan Hamel-Advisory Board Member.

**DISTRICT OFFICIALS PRESENT:**

Executive Director James Broderick; Administrative Manager Toni Gonzales; Project Manager Phil Reynolds; Finance Coordinator Tina White; Director of Engineering and Resource Management Bob Hamilton; Conservation Outreach Coordinator Jean Van Pelt; Legal Counsel Lee Miller and Bernie Gehris; and Federal Lobbyists Ray Kogovsek and Christine Arbogast.

**VISITORS PRESENT:**

Valda Terauds and Roy Vaughan, U.S. Bureau of Reclamation; Mark Carmel, Merrick & Company; Larry Patterson, City of Fountain; Chris Woodka, The Pueblo Chieftain; Kevin Meador and Dan Kugler, Black & Veatch; Doris Morgan, Congressman Cory Gardner's office; Dwight Gardner, Senator Michael Bennet's office; Joe Rall, Congressman Lamborn's office; Sean Chambers, Cherokee Metro; Roy Heald, Security Water District and Fountain Valley Authority; Bob Hartzman, City of Canon City; Rick Kienitz and Tom Simpson, Aurora Water; Wayne Vanderschuere and Tyler Allison, Fountain Valley Authority; Jay Winner, Lower Arkansas Valley Water Conservancy District; Eric Norwood, Wilson & Company, Inc.; Jim Spaccamonti, Spac Group; John Stulp, Governor's Office-IBCC; Jennifer Gimbel, Colorado Water Conservation Board; David Mau, U.S. Geological Survey; Clint Bulkley and Melanie Morgan, Osborne, Parsons & Rosacker, LLP; Scott Lorenz, Arkansas Groundwater Users Association and Excelsior; Steve Witte, Colorado Division of Water Resources; and Ken Weber.

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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 asked if the members of the Board had received their copy of the minutes of the May 19, 2011 Board meeting, and if there were any corrections or additions. Hearing none, Mrs. Ortegón moved, seconded by Mrs. Pinello, to approve the minutes. Motion unanimously carried.

**FINANCE COMMITTEE REPORT:**

Treasurer Ann Nichols reported the financial statement for May was posted to the Board website for review. Treasurer Nichols moved, seconded by Mr. Johnson, for acceptance of the May financial statement and payment of the June 2011 bills. Motion unanimously carried.

**CONSENT ITEMS:**

None

**PRESENTATIONS:**

**WATER ADVISOR TO GOVERNOR JOHN HICKENLOOPER**

John Stulp said he has been with Governor John Hickenlooper for five months and is Director of the Interbasin Compact Committee (IBCC). Mr. Stulp reported the IBCC has brought people together to recognize the concerns of east and west slope water issues. Mr. Stulp said through the roundtables, issues are brought to IBCC. Mr. Stulp said that Governor Hickenlooper is very knowledgeable on water issues and takes a regional thinking approach.

President Long and Mr. Broderick thanked Mr. Stulp for keeping the District notified of issues of interest to the District and region.

**COLORADO WATER CONSERVATION BOARD**

Executive Director Jennifer Gimbel from the Colorado Water Conservation Board (CWCB) said it was wonderful to have Mr. Stulp as part of the team.

Ms. Gimbel said she had just returned from an upper Colorado basin tour, and it was very inspiring.

She said that the CWCB has been well represented by the Southeastern District now and in the past. She also thanked the Southeastern District's staff, legal counsel, and lobbyist for the great working relationship. Lee Miller expressed that CWCB is doing a wonderful job addressing Colorado River issues. Because of their processes they respond to the short timelines and get things done, which make it easier for all entities involved to do what they need to do in the process.

Mr. Broderick acknowledged that Ms. Gimbel works with districts all over the country, not just in Colorado, and her knowledge is a benefit to Colorado.

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Ms. Gimbel said that they have funds available for loans from the construction fund. There are approximately 25 projects ready to begin in 2012 that will benefit from the loans.

Ms. Gimbel reviewed what the CWCB is working on.

**STRATEGIC PLAN**

Mr. Broderick presented a PowerPoint reviewing the Six-Year Strategic Plan Draft (Plan). President Long has assigned an ad-hoc sounding board to review the Plan. The members of the ad-hoc sounding board are: Bill Long, Harold Miskel, Ann Nichols, Vera Ortegón, and Lissa Pinello. After the Plan is taken to the ad-hoc sounding board, it will be taken to each District committee for review, and then Mr. Broderick will meet individually with each Board member.

Staff members have reviewed the Plan and have already started to work on the Key Results Areas.

**2010 ANNUAL AUDIT**

The District and Enterprise meetings were held in conjunction for the 2010 Annual Audit presentation.

Treasurer Ann Nichols said a copy of the final 2010 Annual Financial Report was provided to the Board members for review. She said the Finance Committee met before the Board meeting and reviewed in detail the 2010 Annual Financial Report.

Clint Bulkley from Osborne, Parsons & Rosacker, LLP, the District's auditor, read the Independent Auditor's Report to the Board. He asked if there were any questions, and there were none.

**ACTION ITEMS:**

**APPROVAL OF 2010 ANNUAL AUDIT**

Miss Nichols moved, seconded by Mr. Johnson, that the audit of the 2010 Financial Statements of the District be accepted and approved as presented. Motion unanimously carried.

**APPROVAL OF 2010 FINANCIAL STATEMENTS**

Miss Nichols moved, seconded by Mr. Howard Miller, that the 2010 Financial Statements of the Southeastern Colorado Water Conservancy District be approved as audited. Motion unanimously carried.

**INCLUSIONS-MUNICIPAL ANNEXATIONS**

Mr. Hamilton reported there are three methods of including lands into the District:

1. Vote of the property owners
2. Petition of the property owners
3. Annexation by a town or city located in the District

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All three of these methods require assent from the Secretary of Interior, for which the Bureau of Reclamation (Reclamation) requires a National Environmental Policy Act (NEPA) review on the land to be included in the District boundaries. Once the District receives assent from Reclamation, and the Board approves the inclusion by resolution, the inclusion is then submitted to the District Court for final approval.

Mr. Jim Spaccamonti, a consultant for Black Hills Energy, filled out the NEPA Questionnaires for these parcels located in the City of Pueblo. Black Hills had done in depth environmental studies for many other permitting agencies and believes there is sufficient information for Reclamation to begin their environmental review. Mr. Spaccamonti met with Brian Little at the Bureau of Reclamation's Eastern Colorado Area Office in Loveland and submitted the NEPA Questionnaire and supporting documents to Reclamation for Reclamation's NEPA review of the proposed inclusion into the District. Reclamation has previously informed staff that assent will only be given once there is action by the Board. The recommended action should provide the action necessary to receive assent for these parcels from Reclamation.

The Resource and Engineering Planning Committee met on June 9, 2011 and reviewed this proposed inclusion.

There will be tax revenues from a new natural gas power plant being constructed on the parcels owned by Black Hills/Colorado Electric Utility Company, LP (Black Hills), Ordinance Nos. 8209, 8210, and 8211. The other two parcels, Ordinance Nos. 8165, and 8166 were deeded to the City of Pueblo by Black Hills and there will be no tax revenues from those parcels.

The Board has previously included properties located outside of the District which were annexed by towns and cities in the District, subject to standard terms and conditions and to the necessary Secretarial Assent and District Court confirmation.

The Resource and Engineering Planning Committee's recommends, and Mrs. Ortegón moved, seconded by Mrs. Pinello, that the Board approve the inclusion of the five (5) parcels annexed by the City of Pueblo by Ordinances Numbers 8165, 8166, 8209, 8210 and 8211, subject to Secretarial Assent followed by final Board action with the following terms and conditions:

1. Approval of this inclusion into the Southeastern Colorado Water Conservancy District (District) will not increase the amount of Fryingpan-Arkansas Project water available to the City of Pueblo or the Board of Water Works of Pueblo, Colorado. Any Fryingpan-Arkansas Project water used on these included lands will need to come from the water allocated to the City of Pueblo or the Board of Water Works of Pueblo, Colorado through Fryingpan-Arkansas Project water allocations made pursuant to the District's Allocation Principles and Policies; and

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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 Southeastern Colorado Water Conservancy 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 Southeastern Colorado Water Conservancy District at the time of this inclusion.

and request such assent from Reclamation.

Motion unanimously carried.

Mrs. Ortegón said before final approval by the Board, Mr. Spaccamonti is to provide the Board with copies of the agreements between Black Hills Energy and the City of Pueblo and the Board of Water Works of Pueblo.

**MONTHLY REPORTS:**

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

Roy Vaughan presented a PowerPoint presentation reviewing the following:

- As of June 13, there were 223,553 acre-feet stored in Pueblo Reservoir; 172,186 acre-feet of Project water; 31,771 acre-feet of Excess Capacity water; 19,312 acre-feet of Winter water.
- There is currently 88,763 acre-feet of Project space in Pueblo Reservoir and 73,244 acre-feet of space in Turquoise and Twin Lakes Reservoirs.
- There is 29,990 acre-feet of imports
- Project Reservoirs: Turquoise 72%; Twin Lakes 79%; Pueblo 122%.
- Upper Colorado River Basin Time Series Snowpack Summary.
- SNOTEL Graphs for:
  - Independence Pass

Mr. Vaughan showed pictures of the work being done on the Southern Delivery System and South Outlets Works.

**DIVISION ENGINEER'S REPORT**

Steve Witte reviewed the Arkansas River Daily Report for June 15. The call is 3/3/1890 (Otero), 3/10/1889 (Ft. Bent), and 7/22/1889 (X Y Canal).

Mr. Witte said his staff has completed the review of the Lower Arkansas Valley Water Conservancy District's (LAVWCD) Rule 10 Plan submitted on April 1, 2011. There are 81 improvements covered by the LAVWCD Plan on 62 farms. The majority of those structures are under the Fort Lyon Canal, but structures under the Bessemer, Catlin, Holbrook, Rocky Ford Highline, Rocky Ford, Consolidated, Fort Bent, Lamar, and Amity Canals are also included in the plan.

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The estimated return flow deficit for the plan was 930 acre-feet requiring a release of 1,247 acre-feet from LAVWCD's If & When account in Pueblo Reservoir. Most of the deficit occurs below John Martin Reservoir (JMR) and deliveries must be shepherded through JMR to the points of deficit for the reaches below JMR. Mr. Witte conducted a release operation for April based on plan estimates.

An approval has been drafted for the plan which will be issued within 15 days. Plans are being prepared to enforce the Rules against those that are discovered that have not submitted Plans as required by the Rules.

U.S. GEOLOGICAL SURVEY REPORT  
None

President Long postponed the reports for a future meeting for the Arkansas Basin Roundtable, Colorado Water Conservation Board, and the Colorado Water Resources and Power Development Authority.

President Long recessed the meeting at 12:05 p.m., and reconvened at 12:50 p.m.

**ACTION ITEMS CONTINUED:**

City of Lamar

Mr. Hamilton reported there are three methods of including lands into the District:

1. Vote of the property owners
2. Petition of the property owners
3. Annexation by a town or city located in the District

All three of these methods require assent from the Secretary of Interior, for which the Bureau of Reclamation (Reclamation) requires a National Environmental Policy Act (NEPA) review on the land to be included in the District boundaries. Once the District receives assent from Reclamation, and the Board approves the inclusion by resolution, the inclusion is then submitted to the District Court for final approval.

Mr. Hamilton assisted the City of Lamar in completing the NEPA Questionnaires for these parcels as they were previously disturbed before annexation. The City of Lamar has submitted the NEPA Questionnaires for these properties to Reclamation for assent. Reclamation responded that assent will be signed after action by the Board. The recommended action should provide the action necessary to receive assent for these parcels from Reclamation, after which the Board may adopt a resolution giving final approval.

The Resource and Engineering Planning Committee met on June 9, 2011 and reviewed this proposed inclusion for the City of Lamar.

There will be tax revenues from all twelve (12) of the parcels from the properties annexed by the City of Lamar Ordinance Numbers 990, 1160, 1161, 1162, and 1141 through 1148 inclusive.

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The Resource and Engineering Planning Committee's recommends, and Mrs. Ortegón moved, seconded by Mrs. Pinello, that the Board approve the inclusion of the twelve (12) parcels annexed by the City of Lamar in Ordinance Numbers 990, 1160, 1161, 1162, and 1141 through 1148 inclusive, subject to Secretarial Assent followed by final Board action with the following terms and conditions:

1. Approval of this inclusion into the Southeastern Colorado Water Conservancy District (District) will not increase the amount of Fryingpan-Arkansas Project water available to the City of Lamar. Any Fryingpan-Arkansas Project water used on these included lands will need to come from the water allocated to the City of Lamar 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 Southeastern Colorado Water Conservancy 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 Southeastern Colorado Water Conservancy District at the time of this inclusion.

and request such assent from Reclamation.

Motion unanimously carried.

#### LEGAL MATTERS

##### Southeastern's Grape Creek Exchange (Case No. 99CW160)

Mr. Gehris reported the Board had been provided a copy of the settlement stipulation legal counsel had negotiated with Round Mountain in Southeastern's case, with an attached proposed decree to which both Southeastern and Round Mountain would consent by the stipulation.

In this case, Southeastern seeks conditional exchange water rights to exchange Project water on Grape Creek to the DeWeese-Dye Ditch in Fremont County and/or into storage in DeWeese Reservoir in Custer County. The purposes of the exchange are (1) for Southeastern to deliver allocated Fryingpan-Arkansas Project Water to DeWeese-Dye Ditch Co., which owns DeWeese Reservoir and diverts from Grape Creek; and (2) to store unallocated Project Water if necessary when space is available in DeWeese Reservoir. The Project water is to be released from upstream Project facilities into the Arkansas River, to replace amounts diverted or stored by exchange on Grape Creek. The only opposers in this case are the City of Aurora and the Round Mountain Water & Sanitation District. Southeastern reached a stipulation with Aurora in 2002. Bob Hamilton then had discussions with representatives of the DeWeese-Dye Ditch Co. that concluded with an agreement on contract terms for storage of Project water in DeWeese Reservoir (approved by the District Board and executed in October 2009). DeWeese-

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Dye is eligible for allocation of Project water, to use for irrigation on lands within the District in Fremont County, along lower Grape Creek near Canon City.

Following this agreement, legal counsel prepared a proposed Referee's ruling that incorporated the terms required by the Aurora stipulation, and provided the proposed ruling to Round Mountain's counsel (Bob Krassa). Round Mountain challenged Southeastern's 1999 exchange priority in an effort to advance the priority of its own 2006 exchange application on Grape Creek. Bob Hamilton then met twice with Round Mountain's engineer (Bruce Kroeker) to discuss ways that both Southeastern and Round Mountain can operate their exchanges on Grape Creek with minimal interference to each other's exchanges. They reached an agreement that would equally share available capacity on those occasions when both Southeastern and Round Mountain desire to conduct exchange operations. Bob Hamilton also cleared the sharing concept with Ron Dorn, President of the DeWeese-Dye Ditch and Reservoir Company. Legal counsel then drafted provisions to implement the sharing agreement and provided them to Mr. Krassa. Incorporating his comments, the following term is in Southeastern's proposed decree:

Paragraph 13.f. Round Mountain Water and Sanitation District (Round Mountain) has applied for exchange rights in Case No. 06CW115 that include an exchange through the same reach of Grape Creek described in paragraph 9.f above. Round Mountain also owns certain water storage rights in DeWeese Reservoir. At those times when Round Mountain's exchange right in Case No. 06CW115 would be in priority but for the priority awarded to Southeastern by this decree, and upon notice from Round Mountain that it will exercise its exchange if exchange capacity is available, Southeastern will confer with Round Mountain regarding the coordinated operation of their Grape Creek exchanges. Unless otherwise agreed between Southeastern and Round Mountain at the time of such operations, Southeastern will limit its exchange operation under this decree to no more than 50% of the exchange capacity on Grape Creek that is available to Southeastern under this decree and would otherwise be available in-priority to any exchange decreed to Round Mountain in its Case No. 06CW115, during the time when Round Mountain is operating its exchange.

Round Mountain has approved settlement based on this language, and the proposed stipulation that affirms (in paragraph 2) the parties' agreement to coordinate their exchange operations in this fashion. The stipulation also provides both parties' consent to the proposed decree. The proposed decree is consistent with Aurora's stipulation, with the 2009 agreement with DeWeese-Dye, and with Southeastern's recent decree for similar exchange of Project water on the South Arkansas River (Case No. 97CW160).

Mr. Gehris recommended that the Board approve and authorize counsel to sign the proposed stipulation with Round Mountain Water and Sanitation District, and then to request entry of the attached proposed decree as the Water Court's final decree. Mrs. Pinello moved, seconded by Mr. Simpson, to approve Mr. Gehris' recommendation. Motion unanimously carried.

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Round Mountain Water and Sanitation District (Case No. 99CW115)

Mr. Gehris reported Round Mountain provided a draft decree, on which legal counsel provided comments last May. Their comments focused on provisions regarding Round Mountain's use of Pueblo Reservoir to store water for use outside Southeastern District boundaries, and Round Mountain's exchange priority claims. Round Mountain had recognized it needed to comply with all rules and regulations governing Project facilities, and agreed to all changes Southeastern requested in its draft decree to address the use of Pueblo Reservoir. These provisions (paragraphs 19 and 113 in the proposed decree) protect Southeastern's interests in Fry-Ark facilities, in similar fashion to provisions Southeastern has stipulated to with other entities outside the District.

Legal counsel also reviewed Round Mountain's claim to antedate its priorities based on historical operation of these exchanges, which might conflict with the District's pending Arkansas River and Grape Creek exchange applications. Round Mountain now claims an August 2006 priority to exchange on the Arkansas River, and the proposed decree provides this will not injure Southeastern's Arkansas River exchange claimed in Case No. 06CW7. Round Mountain's antedation claim on Grape Creek would be junior to the District's requested 1999 exchange right on Grape Creek. Round Mountain now is willing to stipulate to Southeastern's more senior priority on Grape Creek, subject to the exchange sharing agreement discussed above. Southeastern and Round Mountain would agree to equally share any exchange capacity, in the event that they attempt exchanging to DeWeese Reservoir simultaneously. This provision is referenced and quoted in paragraph 21 of Round Mountain's proposed decree.

Mr. Gehris reported with the Project facilities language and exchange capacity sharing agreed upon, legal counsel believe the proposed decree is acceptable for Southeastern's settlement. Round Mountain still has several objectors in its case, mainly dealing with main-stem Arkansas River exchange issues. Mr. Gehris recommended that the Board approve a stipulation with Round Mountain Water and Sanitation District in Round Mountain's pending exchange case. Mrs. Pinello moved, seconded by Mr. Johnson, to approve the recommendation of Mr. Gehris. Motion unanimously carried.

Mr. Gehris reported the Water Court Résumé for Division 5 was received just a few days ago and that there are two cases of potential interest to the District that legal counsel and Mr. Hamilton will review.

1. Case No. 11CW77 is an application for "Finding of Reasonable Diligence and to make Absolute" conditional water rights by the Eagle Park Reservoir Company in Eagle, Summit, Grand, Pitkin, and Garfield counties. The District was in the original case and stipulated out of the case. Staff and legal counsel are still reviewing the Résumé to verify that appropriate language from the stipulation is included in the application.
2. Case No. 11CW96 is an application for "Finding of Reasonable Diligence and to make Absolute in Part (Basalt Project)" conditional water rights by the Colorado River Water Conservation District and the Basalt Water Conservancy District. The Fryingpan-Arkansas Project shares a priority with the Basalt Project.

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**INFORMATIONAL ITEMS:**

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

- Water Court Résumé
- Inclusion Team Report Update
- Annual Raft Trip-date to be determined
- National Water Resources Association 2011 Western Water Seminar – July 25-27 Colorado Springs.

**OTHER BUSINESS MATTERS:**

President Long said the Human Resources Committee will meet at 12:45 p.m. today (June 16).

President Long announced there will be no July 21, 2011 Board meeting.

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 1:05 p.m.

Respectfully submitted,

Toni Gonzales  
Administrative Manager

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Secretary

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