

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

January 21, 2010

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District was held on Thursday, January 21, 2010 at 9:55 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	Scott Reed	Greg Johnson
Lissa Pinello	Howard "Bub" Miller	Carl McClure
Kevin Karney	Vera Ortegón	Shawn Yoxey
Gary Bostrom	David Simpson	

DIRECTORS ABSENT AND EXCUSED:

Gibson Hazard and Alan Hamel-Advisory Board Member.

ENTERPRISE OFFICIALS PRESENT:

Executive Director James Broderick; Administrative Manager Toni Gonzales; Projects Manager Phil Reynolds; Director of Engineering and Resource Management Bob Hamilton; Engineering Support Specialist Margie Medina; Legal Counsel 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:

Roy Vaughan, U.S. Bureau of Reclamation; Chris Woodka, The Pueblo Chieftain; Pat Edelmann, U. S. Geological Survey; Steve Witte, Colorado Division of Water Resources- Division 2; Kevin Meador and Dan Kugler, Black & Veatch; Bob Hartzman, City of Cañon City; Roy Heald, Security Water District and Fountain Valley Authority; Abby Ortega, Colorado Springs Utilities; Gloria Gutierrez, U.S. Senator Mark Udall; Bill Hower, Beulah Water District; Shirley Klipfel; Tony Keenan, Arkansas River Outfitters Association; Mark Carmel, Merrick & Co.; Curtis Mitchell, City of Fountain; Rick Kienitz and Tom Simpson, Aurora Water; Bill VanDerveer and Jerry Peña, MWH; and Ken Weber.

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APPROVAL OF MINUTES:

President Long asked if the members of the Board had received their copy of the minutes of the December 3, 2009 Board meeting, and if there were any corrections or additions. Hearing none, Mr. Bostrom moved, seconded by Mrs. Ortegón, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

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

ACTION ITEMS:

OPEN MEETING RESOLUTION

Mr. Broderick said Resolution-No. 2010-1, A Resolution Relating to the Compliance by the Southeastern Colorado Water Conservancy District with the Colorado Open Meeting Law is required under Colorado Revised Statute §37-45-101 *et seq.* The resolution defines where the public notice of each meeting will be posted at least 24 hours prior to a meeting. Mr. Johnson moved, seconded by Mrs. Yoxey, to adopt Resolution-No. 2010-1. Motion unanimously carried.

MILL LEVY RESOLUTION

Mr. Broderick said the Board approved the Resolution and Order No. 2009-03DF at the December 3, 2009 Board meeting. Since that time the District staff certified the recalculated mill levies to the nine counties, and prepared an amended Resolution and Order No. 2009-03DF for approval so that the District's budget resolution will be consistent with the mill levies that were certified in order to meet legal requirements. Mrs. Pinello moved, seconded by Mr. Howard Miller to approve Resolution and Order No. 2009-03DF Amended. Motion unanimously carried.

WATER COURT RÉSUMÉS

Mr. Hamilton reported there is one case in the December Résumé for Division 2 in which staff and legal counsel feel the District should file a statement of opposition. Staff will continue to investigate other December 2009 applications.

Case 09CW140 is an application by Woodmoor Water and Sanitation District for exchanges on the Arkansas River and Fountain Creek. Woodmoor is located in Northern El Paso County, outside the Southeastern District. The application has several exchange-from points on the Arkansas River between the confluence of Horse Creek with the Arkansas below the Ft. Lyon Canal Co. diversion dam and headgate, upstream to Pueblo Reservoir. The application proposes to exchange water from the Holbrook, High Line and Excelsior Ditches, but the résumé is vague on the specific sources of water for these proposed exchanges.

Because there is potential injury to the District's water rights and pending exchange cases (both for Project water return flows and non-Project water owned by our constituents), the proposed storage in Pueblo Reservoir for use outside the Southeastern District, and the vagueness of the application, Mr.

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Hamilton recommended the District file a Statement of Opposition in Division 2 Case 09CW140. Mrs. Pinello moved, seconded by Mrs. Yoxey, to file a Statement of Opposition in Case 09CW140, Woodmoor Water and Sanitation District. Motion unanimously carried.

CITY AND COUNTY OF BROOMFIELD (Case No. 2009SA213, Colo. Supreme Court)

Mr. Leonhardt reported in Broomfield's exchange case in Water Division 1, there was considerable dispute regarding the variety of exchange water sources claimed in Broomfield's application, including several that Broomfield did not own or control, but hoped to acquire sometime in the future. Two objectors, the City of Boulder and Centennial Water & Sanitation District, took the position that Broomfield could obtain a decree only to exchange water from sources it presently owns or controls. The Water Judge decided, after trial, that the statutory "can and will" standard governs exchange rights, like other appropriations of conditional water rights for future use. Thus, he rejected Boulder and Centennial's position that Broomfield could not obtain any rights to exchange water it did not presently own or control. Instead, he analyzed Broomfield's evidence regarding whether it "can or will" likely acquire and use each of the disputed exchange water sources, allowing some and rejecting others.

Boulder and Centennial appealed the Water Judge's legal ruling on this issue to the Colorado Supreme Court, asking the Court to reverse Broomfield's exchange decree to the extent Broomfield did not own or control exchange water sources when the decree was entered. Boulder and Centennial filed an opening brief making this argument on December 18, 2009. Broomfield has been granted an extension to February 10, 2010 to file its answer brief; an *amici* brief in response to the Boulder/Centennial arguments is due at the same time.

Mr. Leonhardt recommended that the Board authorize legal counsel to prepare and file an *amici curiae* (friends of the court) brief on behalf of the Southeastern District, supporting the Water Judge's ruling on legal criteria for exchange rights in the Broomfield case. Two other clients of his firm (Castle Pines Metro District and Coors Brewing Co.) have asked them to file such a brief on their behalf, so he proposes to file a single brief on behalf of our three clients. Mr. Bostrom moved, seconded by Mr. Dils, to authorize legal counsel to prepare and file an *amici curiae* (friends of the court) brief on behalf of the Southeastern District, supporting the Water Judge's ruling on legal criteria for exchange rights in the Broomfield case. Motion unanimously carried.

MONTHLY REPORTS:**DIVISION ENGINEER'S REPORT**

Steve Witte reviewed the Division Engineer's monthly report for January 21, 2010 and the Arkansas River Daily Report, Ditch and Reservoirs for January 20, 2010.

Mr. Witte said the Winter Water Storage Program (WWSP) began on November 15, 2009. The river call will be set to March 1, 1910 pursuant to the terms of 84CW179. The mid-January update for the WWSP will be distributed January 21. As of the end of December, the system was a little behind last year and the 20 year average, but ahead of the average for the previous five years. There is concern that storage in Pueblo relative to downstream entitlements are lagging, so an operational adjustment is being

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considered, but not to the gates at Pueblo Reservoir. John Martin Conservation Storage does not appear to be adversely affected by operations of the Winter Water Storage Program upstream.

Mr. Witte reported the Arkansas River Compact Administration (ARCA) will hold a special telephonic meeting February 11, 2010 for the purpose of approving revisions to the 1980 Operating Plan resolution. The revisions are consistent with individual resolutions passed by ARCA within the past two to three years.

Mr. Witte said Charlie DiDomenico is back with the Division Engineer's office. He is the lead hydrographer, and Justin Zeisler is augmentation coordinator. They have vacant positions for Professional Engineer and receptionist at this time. The next furlough day will be February 12, 2010.

U.S. GEOLOGICAL SURVEY REPORT

Pat Edelmann gave a PowerPoint presentation titled, *Summary of Hydrologic Conditions in the Arkansas River Basin* reviewing the following:

- Current Stream flows-January 21, 2010
- Summary of 2009 Annual Flows Compared to 2008 and Historical Averages

U.S. BUREAU OF RECLAMATION REPORT

Roy Vaughan presented a PowerPoint reviewing the following:

- As of January 21, there were 245,662 acre-feet of water stored in Pueblo Reservoir, 160,722 acre-feet of Project water, 47,204 acre-feet of water stored in Excess Capacity, and 37,736 acre-feet of Winter Water.
- There is currently 106,227 acre-feet of Project space in Pueblo Reservoir, and 53,543 acre-feet of Project space available in Turquoise and Twin Lakes Reservoirs.
- As of January 21, 2010 Project Reservoirs, Turquoise is 88% of average, Twin Lakes is 106% of average, and Pueblo is 157% of average.
- Data for November 2009 Comparison of 2010, 2009 and Average Monthly Content, for Pueblo, Turquoise, and Twin Lakes Reservoirs.

A discussion was had regarding the process for moving water.

PRESENTATIONS:

EAST OF PUEBLO ALLOCATION

Mr. Hamilton presented copies of the two Draft Resolutions that are the result of the work of the Arkansas Valley Conduit Advisory Committee, the District Arkansas Valley Conduit Committee, and the District Allocation Committee. The resulting resolutions show the apportionment of the 12 percent east of Pueblo Allocation of Project water and Carryover storage space. This item is scheduled for

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action by the Board at the February 18, 2010 meeting. Mr. Hamilton asked that the Board members review the resolutions and if they have any questions or comments, please contact him.

PROPOSED WILDERNESS AREAS

Bob Hamilton gave a PowerPoint presentation titled, *The Hidden Gems Wilderness Campaign and the Fry-Ark Collection System*, reviewing the following:

- Coalition Partners
- What is Hidden Gems?
- What's Allowed in Wilderness?
- How is the Fry-Ark Affected?
- What is Being Done to Protect East Slope Diversion Projects
- The Next Steps

Mr. Hamilton reported the Hidden Gems Wilderness Campaign is seeking designation of major new wilderness additions on the White River and Gunnison National Forests and nearby Bureau of Land Management lands.

Their proposal would create several brand new stand alone wilderness areas, while significantly enlarging ~~the several~~ existing wilderness areas.

SECWCD / BOR CONTRACT PART 1 PAYMENT OF WATER

Mr. Broderick reviewed the section Payment for Water in Contract No. 5-07-70-W0086 United States Department of the Interior Bureau of Reclamation Fryingpan-Arkansas Project, Colorado Contract Between the United States and the Southeastern Colorado Water Conservancy District.

Mr. Broderick said he will breakdown sections of the contract and present them to the Board. The next review will be the surcharge section.

STATE LEGISLATION UPDATE

Mr. Broderick provided the Board copies of the Colorado State Legislature 2010 report. He reviewed bills of interest to the District.

Mr. Broderick said Board members can go to the Colorado Water Congress website and monitor bills of interest. He gave a demonstration of what is available on the website. He said the District will provide a link to the Colorado Water Congress website.

Mr. Broderick said he would prepare a resolution honoring _____ Dan Law for his great work with the Colorado Water Resources and Power Development Authority _____.

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

- Quarterly OM&R Update

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- Invasive Mussels Update
- Water Court Résumé
- Director Appointment
- Quarterly Legal Report

OTHER BUSINESS MATTERS:

President Long said the Allocation Committee would meet after lunch.

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 12:09 p.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary
