

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO
WATER CONSERVANCY
DISTRICT MINUTES
August 17, 2023**

A meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, August 17, 2023, 9:34 a.m., at the District office, 31717 United Avenue, Pueblo, Colorado. The ZOOM platform was also made available for Board members and visitors.

President Long asked Margie Medina for a roll call of those connected via ZOOM.

DIRECTORS PRESENT:

Alan Hamel	Dallas May	Matt Heimerich
Andy Colosimo	Greg Felt	Pat Edelmann
Ann Nichols	Howard "Bub" Miller	Patrick Garcia
Bill Long	Kevin Karney	Seth Clayton
Curtis Mitchell	Mark Pifher	Tom Goodwin

DIRECTOR(S) ABSENT AND EXCUSED:

None

President Long established that a Quorum was present.

INTRODUCTION OF VISITORS:

President Long asked all present to introduce themselves and welcomed the visitors to the meeting.

DISTRICT OFFICIALS:

Executive Director James Broderick; General Counsel Lee Miller; Staff Attorney Peter Levish; Senior Policy and Issues Manager Chris Woodka; Water Resources Principal Engineer Garrett Markus; Principal Engineer's Kevin Meador (remote), and Mark Scott; Administrator of Administration and Finance Leann Noga; Administrative Support Specialist's Margie Medina and Patty Rivas; Finance Manager Stephanie Shipley; H2O Consultant Roy Vaughan; and Kleinfelder Gordon Dillon.

VISITORS PRESENT:

Abba Ahmed, Aurora Water; Abby Ortega, Colorado Springs Utilities/Fountain Valley Authority; Scott Lorenz, Colorado Springs Utilities; Jeffery DeHerrera, Pueblo West Metro District; Mike Holmberg and Tim Miller, U.S. Bureau of Reclamation; and Roy Heald, Security Water District.

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VISITORS CONNECTED VIA ZOOM:

Erin Wilson, Wilson Water Group; Jerry Pena, Kennedy Jenks @ 9:42; Lauren Duncan, Colorado Water Conservation Board; Luke Mecklenburg, Assistant Attorney General Water Unit; Taylor Murphy, City of Fountain; and Terry Scanga, UAWCD @ 9:43.

APPROVAL OF MINUTES:

President Long said the minutes from the July 20, 2023, District Board meeting were posted to OnBoard and the website for review and asked if there were any corrections or additions. Hearing none, Mr. Garcia moved, seconded by Mr. Hamel, to approve the minutes. Motion unanimously carried.

TREASURER REPORT:

Ms. Nichols reported the financial statements for July 2023, were posted to OnBoard and the website for review. Ms. Nichols moved, seconded by Mr. Clayton, for acceptance of the July 2023 financial statements and payment of the August 2023 bills. Motion unanimously carried.

ACTION ITEMS:

STATEMENT OF OPPOSITION IN THE APPLICATION OF PENROSE WATER DISTRICT CASE NO. 23CW3033

Mr. Peter Levish presented an action item recommending that the District Board authorize Special Water Counsel to file a Statement of Opposition to the Application of Penrose Water District (Penrose) in Case No. 23CW3033.

In Case No. 23CW3033, Penrose seeks approval of absolute and conditional appropriative rights of exchange involving the release of stored Fryingpan-Arkansas Project (Project) Water from Pueblo Reservoir to facilitate the diversion, pumping, or storage of an equivalent amount of water at various upstream locations on the Arkansas River and Grape Creek, in Fremont and Custer Counties. Penrose claims a total exchange rate of 2.4 cfs, of which 1.35 cfs is claimed absolute and 1.05 cfs conditional, up to a total of 100 acre-feet per year. Penrose claims to have operated the absolute portion of this exchange with the prior approval of the Division Engineer, beginning in 2015 and in subsequent years. Prior to Penrose's filing of this application, Special Water Counsel had initial discussions with Penrose regarding appropriate terms and conditions to address Penrose's use of Project Water and Project Facilities.

Staff and counsel recommend filing a statement of opposition in Case No. 23CW3033 to ensure that Penrose's storage and use of Project Water is consistent with the District's policies and to ensure that the decree includes appropriate terms and conditions for Penrose's use of both Project Water and Project Facilities. Because Penrose is claiming the right to exchange water upstream from Pueblo Reservoir, the District will also want to ensure that any decree entered in this case includes appropriate terms and conditions to protect the Voluntary Flow Management Program and the Winter Water Storage Program.

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Mr. Garcia moved, seconded by Mr. Pifher that the District Board authorize Special Water Counsel to file a Statement of Opposition to the Application of Penrose Water District in Case No. 23CW3033. Motion carried unanimously.

APPROVAL OF STIPULATION OF THE UPPER ARKANSAS WATER CONSERVANCY DISTRICT, CASE NO. 22CW3093, WATER DIVISION 2.

Mr. Peter Levish presented an action item recommending that the Board authorize Special Water Counsel to execute a stipulation with the Upper Arkansas Water Conservancy District (“UAWCD”) in Case No. 22CW3093, consenting to entry of a decree that is no less restrictive on Lamar and no less protective of the District’s water rights than the proposed decree dated August 2, 2023 (“Proposed Decree”).

In Case No. 22CW3093, UAWCD seeks approval of a conditional water storage right for Wenke Pond (in Custer County, outside of the Southeastern District’s boundaries) and conditional appropriative rights of exchange to facilitate the storage of water in Wenke Pond. UAWCD also seeks to amend its augmentation plan decreed in 2021 in Case No. 18CW3076 by (1) adding the Wenke Pond as a structure used for storage and release of augmentation water; (2) adding water stored in Wenke Pond as a source of augmentation water; and (3) revising its augmented area to add the portion of UAWCD’s service area in the Grape Creek drainage above the Taylor Creek confluence. This expanded area is located in Custer County, outside of the Southeastern District’s boundaries. Project Water and Project Return Flows were decreed as a source of augmentation water in Case No. 18CW3076, which involved UAWCD’s replacement of depletions both within and outside of the Southeastern District’s boundaries.

The District’s objectives in this case include: (1) ensuring that UAWCD’s use of Project Water and Project Return Flows is consistent with the District’s policies, including confirmation that Project Water and Project Return Flows will not be used to augment depletions from water use outside of the District’s boundaries; and (2) ensuring that any decree entered in this case is consistent with UAWCD’s augmentation plan decreed in Case No. 18CW3076.

Special Water Counsel, General Counsel, and District staff believe that the August 2, 2023 Proposed Decree satisfies the District’s objectives, as follows:

The Proposed Decree, and the proposed stipulation between UAWCD and the District, includes appropriate language to ensure that Project Water and Project Return Flows will not be used to augment depletions from beneficial uses occurring outside of the Southeastern District’s boundaries. Paragraph 9 of the Proposed Decree states that, pursuant to a stipulation between UAWCD and the District, Project Water and Project Return Flows will not be exchanged to or stored in the Wenke Pond and will not be used to replace depletions resulting from beneficial uses outside of the District’s boundaries. Paragraph 11.g further clarifies that the source of substitute supply for UAWCD’s exchange into Wenke Pond includes all of the augmentation sources decreed in Case No. 18CW3076, except for Project Water and Project Return Flows.

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A copy of the Proposed Decree in Case No. 22CW3093, dated August 2, 2023 and the Proposed Stipulation were provided to the Board.

Mr. Hamel moved, seconded by Mr. Garcia to authorize Special Water Counsel to enter a stipulation with the Upper Arkansas Water Conservancy District, consenting to entry of a decree in Case No. 22CW3093 that is no less restrictive on UAWCD and no less protective of the District's water rights than the proposed decree dated August 2, 2023. Mr. Goodwin recused himself from the vote. Motion carried unanimously.

MONTHLY/QUARTERLY REPORTS:

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

- State Legislation Update
- Colorado River Issues

INFORMATIONAL ITEMS:

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

- Water Court Resume
- Colorado Water Congress Summer Conference August 22-24, Steamboat

President Long asked if there were any other matters to come before the District Board. Hearing no other matters to come before the Board, Mr. Long adjourned the District Meeting at 9:40 a.m.

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Respectfully submitted,

Patty Rivas
Administrative Support Specialist

Seth Clayton – Secretary

Bill Long – President

Howard “Bub” Miller

Curtis Mitchell – Vice President

Kevin Karney

Ann Nichols – Treasurer

Mark Pifher

Alan Hamel

Matt Heimerich

Andy Colosimo

Pat Edelmann

Dallas May

Patrick Garcia

Greg Felt

Tom Goodwin