

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
ACTIVITY ENTERPRISE
MINUTES
March 17, 2022**

A meeting of the Board of Directors of the Southeastern Colorado Water Activity Enterprise (Enterprise) was held on Thursday, March 17, 2022, at the District office, 31717 United Avenue, Pueblo, Colorado. Vice President Mitchell called to order the Enterprise meeting at 9:31 a.m. The ZOOM platform was also made available for Board members and visitors. Mr. Mitchell asked for a role call by Margie Medina.

Vice President Mitchell established that a Quorum was present.

DIRECTORS PRESENT:

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

DIRECTOR(S) ABSENT AND EXCUSED:

Carl McClure

ENTERPRISE OFFICIALS PRESENT:

Executive Director James Broderick; General Counsel Lee Miller and Peter Levis; Senior Policy and Issues Manager Chris Woodka; Water Resource Engineer Garrett Markus; Principal Engineers Kevin Meador, and Mark Scott ; Administrator of Finance and Administration Leann Noga; Accountant Stephanie Shipley (remote); Accounting Specialist Lynette Holt (remote); Administrative Support Specialist's Margie Medina and Patty Rivas; and Christine Arbogast, Kogovsek & Associates.

VISITORS CONNECTED REMOTELY:

Abby Ortega, Colorado Springs Utilities; Barbara Crockett, Jacobs; Bill McDonald, McDonald Water Policy; Cathy Garcia, Congress-woman Lauren Boebert's Office; Curtis Thompson, AECOM; Jeffery DeHerrera, Pueblo West Metro District; Jerry Pena, Kennedy Jenks; Joe Stadterman, Colorado Parks & Wildlife Lake Pueblo; Kari Linker, Senator Hickenlooper's office; Rachel Duran Kansas City Dept of Ag; Rachel Zancanella Division Engineer; Renee Martinez private citizen (only on for a few minutes); Roy Heald, Security Water and Sanitation.

VISITORS PRESENT:

Bill Tyner, Division Engineer; Krystal Brown and Brandon Forbes, USGS; Mike Holmberg USBR; Oliver Wesley and Traves White, JHL Constructors; and Rick Kienitz Aurora Water.

RECORD OF PROCEEDING

INTRODUCTION OF VISITORS:

Vice President Mitchell welcomed the visitors to the meeting.

APPROVAL OF MINUTES:

Vice President Mitchell said the minutes of the February 17, 2022, Enterprise Board meeting were posted to OnBoard as well as the Board website for review and asked if there were any corrections or additions. Hearing none, Mr. Hamel moved, seconded by Mr. Garcia to approve the minutes. Motion unanimously carried.

TREASURER REPORT:

Mr. Karney reported the financial statements for February 2022, were posted to OnBoard and the Board website for review. Mr. Karney moved, seconded by Mr. Clayton, for acceptance of the February 2022 financial statements and payment of the March 2022 bills. Motion passed unanimously.

PRESENTATION ITEMS:

FEDERAL LEGISLATION UPDATE

Christine Arbogast reported the President has now signed the FY '22 omnibus appropriations bill, which includes a little over \$10 million for the AVC. While we are all aware that much larger numbers will be needed once we enter the construction phase, this demonstrates the ongoing commitment now to build the project.

There is not yet a real opportunity for plussing up for more funding. While the bill does increase the Bureau's budget by approximately \$266 million over FY '21, nearly all of those funds were prescribed for specific uses. Ms. Arbogast advises this may have been done because of the infrastructure funds being available for purposes like the conduit.

It remains unknown when the FY '23 budget will be coming out.

Ms. Arbogast advised she will continue working with the delegation in support of the accelerated plan the District and the Bureau have been discussing.

ACTION ITEMS:

ARKANSAS VALLEY CONDUIT THREE PARTY CONTRACT

Mr. Miller presented an action item recommending the Enterprise Board authorize execution of the Contract No. 22XX650034 with the Bureau of Reclamation (Reclamation) and the Pueblo Board of Water Works (Pueblo Water) for Reclamation and the Enterprise to become a customer of Pueblo Water. This will allow the unfiltered raw water supply for the Arkansas Valley Conduit (AVC) Project treated by Pueblo Water to be delivered via the Pueblo Water System to the AVC Project at one or more points of connection between the Pueblo Water System and the AVC Project, and for other purposes.

In 2009, the Fry-Ark Project Act was amended by sec. 9115 of Pub. L. 111-11 (123 Stat. 991, 1320). This amendment provides that payment would be: (i) reduced from 100 percent to 35 percent of the cost of the AVC, and (ii) comprised of revenues derived from contracts for the use of Fry-Ark Project excess capacity or from exchange contracts using Fry-Ark Project facilities. Amounts to be repaid still bear

RECORD OF PROCEEDING

interest and must be recovered within 50 years.

With the statutory change in repayment requirements, Reclamation initiated planning and environmental compliance activities on the AVC in 2010. This resulted in a 2013 Final Environmental Impact Statement (FEIS) and a 2014 Record of Decision (ROD) signed by the Regional Director, Great Plains Region.

The preferred alternative selected in the ROD called for AVC raw water to be delivered by Reclamation to Pueblo Water for treatment. The AVC raw water would be conveyed from Pueblo Reservoir via the existing Pueblo Water pipeline (referred to as the raw water pipeline or the joint use pipeline) that runs from Pueblo Dam's South Outlet Works to the treatment plant. Treated water would then be delivered by Pueblo Water to the AVC trunkline, which would start at the plant, go around the west and south sides of Pueblo, run across the St. Charles Mesa east of Pueblo, and then turn north and cross under the Arkansas River not far to the east of the Pueblo Airport. From there, the trunkline would run about 130 miles east to Lamar, with three main spur lines branching from the trunkline and delivery lines from the trunkline and spurs connecting to individual AVC participants. All these facilities would have been designed, constructed, paid for, and owned by Reclamation.

To find ways to reduce total project costs and the need for Reclamation appropriations, Reclamation and the District engaged in discussions in 2018-19 that led to an agreement to make two main changes in the AVC as compared to the ROD's preferred alternative. First, while AVC raw water will still be treated at the Whitlock Water Treatment Plant, Pueblo Water will now use its existing distribution system to deliver the treated water through the city to the east side of Pueblo. This eliminates the construction of the conduit around the west, south, and east sides of Pueblo. With this modified project configuration, the AVC trunkline will now start near the airport and connect to Pueblo Water's system at that point.

Second, the Enterprise, agreed that it would pay for the design and construction of the spurs and delivery lines, thus reducing the need for Reclamation appropriations. It also agreed that it will own, operate, and maintain these facilities, although they will continue to be part of the overall AVC project. Obtaining financing to cover design and construction costs is the Enterprise's responsibility.

With these changes, Reclamation decided to proceed with construction and in February 2020 it allocated \$24 million to the AVC from the "plus up" monies appropriated for FY 2020. Supplemental NEPA, realty, and engineering design work was, in turn, initiated in the third quarter of the fiscal year.

Reclamation needs to contract with Pueblo Water for the treatment and delivery of AVC water by Pueblo Water to the point of connection with the AVC trunkline. There are four components to the payments to be made to Pueblo Water for use of its system.

First, Pueblo Water will charge Reclamation a "Construction Recovery Fee" for the use of capacity in its existing system to treat and deliver AVC water to the east side of town. This fee will be a capital construction cost of the AVC.

Second, in addition to the Construction Recovery Fee, Reclamation will also make a one-time payment

RECORD OF PROCEEDING

of \$2 million to Pueblo Water for the cost of capital investments in the Pueblo Water System which are already in the planning process for the benefit of the AVC. This too will be a capital construction cost of the AVC.

Third, as more AVC participants are able to receive water from the AVC, and as demand grows over the next 50 years, Pueblo Water will need to increase the capacity of its system in order to meet the AVC's maximum projected demand. Reclamation will pay Pueblo Water for the cost of the features which it will have to add to its system solely for the benefit of the AVC. These too will be capital construction costs of the AVC.

Payment of Pueblo Water's Construction Recovery Fee and one-time \$2 million fee are addressed in Article 12 of the contract, and Exhibit E. Payment for the capital cost of Pueblo Water's future increases in the capacity of its system are addressed in Article 13. The manner in which the United States will use miscellaneous revenues from the Fry-Ark Project to pay these costs is covered in Article 14.

Fourth, Pueblo Water will collect from the Enterprise the volumetric charge that all customers pay, which represents the increment of annual OM&R costs associated with its treatment and delivery of AVC water. This will be a component of the AVC's total annual OM&R costs and is addressed in Article 15.

Since the Fry-Ark Project Act requires that the Enterprise bear all annual OM&R costs for the AVC, and since Reclamation wants to memorialize the District's agreement to rely on Pueblo Water in perpetuity to treat AVC water, both Pueblo Water and the District will be parties to this part of the proposed 3-party contract.

The financing and construction of the spurs and delivery lines by the District and repayment of Reclamation's costs to the extent required by the Fry-Ark Project Act will be addressed in a separate AVC repayment contract. This contract will be between only Reclamation and the Enterprise. Articles 1 through 3 of this Contract apply to all three Parties and become effective on the date of execution this contract. Following Article 3, this Contract is divided into three parts. Parts A, B, and C of this Contract apply to the Parties as follows:

- a. Part A of this Contract, which pertains to the treatment and delivery of AVC Project Water by Pueblo Water to the AVC Project and the OM&R of the AVC Project by the Enterprise, consists of Articles 4 through 18, inclusive, and applies to all three Parties. Part A will become effective on the date of execution this contract.
- b. Part B of this Contract, which pertains to the use of Excess Storage Capacity in Pueblo Reservoir by Pueblo Water, consists of Articles 19 through 30, inclusive, and applies only to the United States and Pueblo Water. Part B of this Contract will become effective on January 1, 2026.
- c. Part C of this Contract, which includes provisions applicable to the entire Contract, consists of Article 31 through the final Article and applies to all three Parties. Part C will become effective on the date of execution this contract.

RECORD OF PROCEEDING

Mr. May moved, seconded by Mr. Hamel that the Enterprise Board authorize execution of Contract No. 22XX650034. Mr. Clayton and Mr. Garcia abstained from the vote. Motion passed unanimously. A copy of the contract was provided to the Board.

President Long thanked Mr. Clayton and Mr. Garcia for their part in the negotiations.

APPROVAL OF AN AGREEMENT FOR OPERATIONS SERVICES AT THE JAMES W. BRODERICK HYDROPOWER PLANT BETWEEN THE SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT AND KLEINFELDER, INC.

Mr. Meador presented an action item that recommends that the Enterprise Board approve the Agreement for Operations Services between the Southeastern Water Activity Enterprise and Kleinfelder, Inc.

This agreement is the continuation of the past contract for operations services at the James W. Broderick Hydropower Plant (JWBHP). Kleinfelder, Inc. has provided the Lead Operator, Gordon Dillon, at the plant since its operations began in 2019. Mr. Dillon has provided excellent services for the operations and maintenance of the facility and the Enterprise desires to continue those services for 2022.

Mr. Goodwin moved, seconded by Mr. Pifher, that the Southeastern Colorado Activity Enterprise Board approve an Agreement for Operations Services Between the Southeastern Colorado Water Activity Enterprise and Kleinfelder, Inc. Motion passed unanimously.

A copy of the Agreement was provided to the Board.

POLICY CONCERNING SALE OF RETURN FLOWS FROM FRYINGPAN-ARKANSAS PROJECT WATER (MARCH 17, 2022)

Mr. Markus presented an action item that recommends the Board of Directors approve the revised Policy Concerning Sale of Return Flows form Fryingpan-Arkansas Water dated March 17, 2022 to supersede all previous versions of the Return Flow Policy.

Under the District's Return Flow Policy, the District sells return flows generated from first-use Fryingpan-Arkansas Project ("Project") Water to eligible entities within the District's boundaries. Under current practices, Project Water is allocated to both municipal and agricultural entities (i.e., ditch and canal companies). Each agricultural entity has a right, under certain conditions, to purchase the return flows generated by that entity's first use of its allocated Project Water. The Return Flow Policy currently includes three rights of first refusal for agricultural entities:

- Agricultural entities have the right to purchase the return flows they generate from their use of Project Water, where physically possible (the "Agricultural Right of First Refusal").
- Each agricultural entity has the right to purchase Project Return Flows it generated but did not claim at the time of initial allocation, to the extent those return flows remain unclaimed after the initial allocation and the District exchanges such return flows into Pueblo Reservoir pursuant to its Decree in Case No. 01CW151 (the "Agricultural Right to Exchanged Project Return Flows").
- Winter Water Storage Program participants ("WWSP Participants") without their own storage facilities may purchase agricultural Project Return Flows that the District exchanges into Pueblo

RECORD OF PROCEEDING

Reservoir to the extent storage of exchanged Project Return Flows prevents those WWSP Participants' from storing Winter Water in Pueblo Reservoir (the "WWSP Right of First Refusal").

The District included the Agricultural Right of First Refusal in its original Return Flow Policy adopted in 1994. The Agricultural Right to Exchanged Project Return Flows and the WWSP Right of First Refusal apply only to return flows exchanged into Pueblo Reservoir under Case No. 01CW151, the District's case adjudicating exchanges of Project Return Flows. These rights were developed and adopted in 2004, through settlement negotiations with AVDA and Catlin Canal Company in that case.

Revisions to Return Flow Policy

Under District staff's proposed modification to the basis for return flow allocations, agricultural entities will remain entitled to purchase Project Return Flows in the initial allocation, but this right will no longer be tied to the return flows generated by each entity's first use of its allocated Project Water. Instead, the District's initial allocation of Project Return Flows to each agricultural entity will be based upon the stated needs and beneficial uses for such water on eligible irrigated acres on individual farm units within that entity. See Paragraph 8, Revised Return Flow Policy. This paragraph clarifies that District staff will continue to determine an applicant's eligible irrigated acres in consultation with Reclamation, and includes a new provision defining a "farm unit," as discussed above.

As a result of the District's settlement stipulations with AVDA and Catlin in Case No. 01CW151, modifications to the Return Flow Policy may not (without their consent) alter AVDA's and Catlin's rights to purchase exchanged return flows under the Agricultural Right to Exchanged Project Return Flows and the WWSP Right of First Refusal. Thus, District staff proposes no changes to the existing Agricultural Right to Exchanged Project Return Flows or the WWSP Right of First Refusal. These rights of first refusal in exchanged return flows now appear in Paragraph 9 of the Revised Return Flow Policy. As a result of the Pilot Program, District staff proposes to add a new provision to the Return Flow Policy, specifying that agricultural Project Return Flows may be used for agricultural irrigation, including the replacement of depletions from wells used for agricultural irrigation (i.e., in Rule 14 plans) and for the replacement of net return flows diminished by surface irrigation improvements (i.e., in Rule 10 plans). See Paragraph 10, Revised Return Flow Policy. Paragraph 11, which addresses the District's decreed rights to exchange return flows, includes a new sentence to address the Division Engineer's Office's administration of replacement plans that involve administrative exchanges below Pueblo Reservoir.

Reorganization of the Policy

Many of the remaining revisions to the Return Flow Policy reorganize the Policy into new sections for municipal and agricultural allocations, and for general terms and conditions that are broadly applicable to the allocation and use of Project Return Flows. The Policy also now includes a separate, introductory section for the terms specific to the application process.

Mr. Hamel moved, seconded by Mr. Garcia that the Enterprise Board of Directors approve the revised Policy Concerning Sale of Return Flows from Fryngpan-Arkansas Project Water dated March 17, 2022, to supersede all previous versions of the Return Flow Policy. Mr. May abstained from the vote. Motion passed unanimously.

RECORD OF PROCEEDING

A copy of the revised draft of the policy was provided to the Board.

**APPROVAL OF A CONTRACT FOR PROFESSIONAL SERVICES BETWEEN THE
SOUTHEASTERN COLORADO WATER ACTIVITY ENTERPRISE AND GMS, INC.
CONSULTING ENGINEERS**

Mr. Meador presented an action item recommending that the Enterprise Board approve the 2022 Contract for Professional Services between the Southeastern Water Activity Enterprise and GMS, Inc. Consulting Engineers.

In 2021, GMS, Inc provided professional engineering services related to helping the Arkansas Valley Conduit (AVC) Participants determine their individual water system needs and how the AVC will connect to each of the them. The Enterprise desires to extend the contract into 2022 with GMS, Inc. Consulting to work with the Participants to 1) complete preliminary engineering reports for the remainder of Participants not completed in 2021, 2) assist the Enterprise with evaluation and implementation of consolidation opportunities with Crowley County Water and the City of La Junta, 3) provide assistance related to evaluation and application of funding options for the AVC and/or Participants, and 4) Assist with ongoing communication with the Participants related to AVC.

GMS was selected for this project because of their past and current working experience with many of the AVC Participants, knowledge of water issues in the Lower Valley, and knowledge of funding mechanisms for small communities.

Mr. Clayton moved, seconded by Mr. Garcia that the Southeastern Colorado Activity Enterprise Board approve a 2022 Contract renewal for Professional Services Between the Southeastern Colorado Water Activity Enterprise and GMS, Inc. Consulting Engineers. Motion passed Unanimously.

INFORMATION ITEMS:

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

- AVC Update
- JWBHP Update
- Excess Capacity Master Contract Update

Mr. Mitchell asked if there were any other matters to come before the Enterprise, hearing none the Enterprise meeting was adjourned @ 10:17 a.m.

Respectfully submitted,

Patty Rivas
Administrative Support Specialist

Secretary
