

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

February 18, 2016

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, February 18, 2016 at 9:37 a.m. at the District office, 31717 United Avenue, Pueblo, Colorado. President Long recessed the District meeting at 9:58 a.m., and reconvened at 10:25 a.m.

President Long announced a quorum was present.

DIRECTORS PRESENT:

Bill Long	Ann Nichols	Vera Ortegon
Kevin Karney	Gibson Hazard	Gary Bostrom
Carl McClure	Howard "Bub" Miller	Leonard Pruett
Jay Moore	David Simpson	Pat Edelmann
Curtis Mitchell	Alan Hamel-Advisory Board Member	

DIRECTOR(S) ABSENT AND EXCUSED:

Tom Goodwin and Harold Miskel

DISTRICT OFFICIALS PRESENT:

Executive Director James Broderick; General Counsel Lee Miller; Administrative Manager Toni Gonzales; Principal Engineer Kevin Meador; Finance Coordinator/IT Leann Noga; Administrative Support Associate, Patty Rivas; and Special Water Counsel Steve Leonhardt and Alix Joseph

VISITORS PRESENT:

Chris Woodka, The Pueblo Chieftain; Tom Simpson, Aurora Water; Doug Fitzgerald, U.S. Congressman Scott Tipton's office; Cathy Garcia, U.S. Senator Cory Gardner's office; Roy Vaughan, U.S. Bureau of Reclamation; Steve Witte and Bill Tyner, Colorado Division of Water Resources-Division 2; Curt Thompson, AECOM; Bill Banks and John Fulton, U.S. Geological Survey; Kevin Niles, AGUA;; Bob Hamilton, retired; Jim Baldwin, Otero County; Brett Gracely and Abby Ortega, Colorado Springs Utilities; Terry Book, Board of Water Works of Pueblo; Jack Goble, Lower Arkansas Valley Water Conservancy District; and Mike Weber and Kelei Proctor, Colorado Water Protective Development Association

MONTHLY/QUARTERLY REPORTS

U.S. BUREAU OF RECLAMATION REPORT

Roy Vaughan provided a PowerPoint presentation reviewing the following:

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- As of February 15, 2016 there were 265,756 acre-feet stored in Pueblo Reservoir; 150,312 acre-feet of Project water; 42,061 acre-feet of Excess Capacity water; 73,383 acre-feet of Winter water.
- There is currently 93,061 acre-feet of Project space in Pueblo Reservoir and 56,592 acre-feet of space in Turquoise and Twin Lakes Reservoirs.
- Charts illustrating storage amounts in Turquoise, and Twin Lakes.
- Project Reservoirs: Turquoise 89%; Twin Lakes 107%; Pueblo 141%
- Arkansas River Basin Time Series Snowpack Summary February 17, 2016
- Upper Colorado River Basin Time Series Snowpack Summary February 17, 2016
- Colorado SNOTEL Snow Water Equivalent Update Map with Site Data February 17, 2016

Mr. Vaughan reported Mt Elbert Conduit is running 250 cfs, but will reduce flows soon. Currently Reclamation is moving 112 cfs. From Twin Lakes to Pueblo. The movement of water will be adjusted according to the forecast and customer's needs.

Mr. Vaughan showed pictures of the Bessemer Ditch rehabilitation and of Fort Carson troops testing a new bridging system.

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 said the minutes of the December 3, 2015 Board meeting were posted to the Board website for review, and if there were any corrections or additions. Hearing none, Mrs. Ortegon moved, seconded by Mr. Pruet, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasure Nichols reported the financial statements for November, draft December, and January were posted to the Board website for review. Ms. Nichols moved, seconded by Mr. Karney, for acceptance of the November, draft December, and January financial statements and payment of the February 2016 bills. Motion unanimously carried.

CONSENT ITEMS:

None

PRESENTATIONS:

COLORADO WATER PLAN

Alan Hamel showed a video, which explained the Colorado Water Plan (Plan). Mr. Hamel provided the Board a copy of the Colorado's Water Plan Executive Summary. The Colorado Water Plan website is: <http://www.coloradowaterplan.com>. He thanked the District for their leadership in this process, and

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asked that they continue to serve as a leadership entity to reach the measurable objectives of the Plan. President Long thanked Mr. Hamel for all his work on the Plan.

Mr. Hamel said the next Colorado Water Conservation Board meeting will be held in La Junta, at Otero Junior College on March 16-17, 2016.

ACTION ITEMS:**LA JUNTA, CASE NO. 11CW13**

Alix Joseph reported the Board directed special water counsel to file a Statement of Opposition on April 28, 2011 to La Junta's Case No. 11CW13. On January 8, 2016, the Ad Hoc Committee authorized Special Water Counsel to execute a stipulation with La Junta consenting to entry of a decree in Case No. 11CW13 that is no less restrictive on La Junta and no less protective of the District than the proposed decree dated January 8, 2016.

Case No. 11CW13 is La Junta's change of its 883.7 shares in the Holbrook Mutual Irrigating Company (Holbrook), along with the Winter water associated with those shares. La Junta seeks a change of these shares from irrigation to municipal, irrigation, industrial, commercial, recreational, and domestic uses. Additionally, La Junta seeks to exchange its Holbrook shares from Holbrook's facilities to Pueblo Reservoir. La Junta applied for the option of operating this exchange into Pueblo Reservoir through this case, or of including this Holbrook water in the District's more senior exchange applied for in Case No. 06CW8.

The District's primary objectives in this case are to ensure that: (1) neither the change of water rights or exchange injure the District's water rights, including the exchange rights applied for in Case No. 06CW8; (2) the decree contains appropriate terms and conditions for use of the changed water rights in the District's exchange applied for in Case No. 06CW8; (3) the decree includes appropriate terms and conditions for use of Fryingpan-Arkansas Project (Project) facilities; (4) any water is used according to the terms of the Decree in Case No. 84CW179 to protect the Winter Water Storage Program (WWSP); and (5) historic winter return flows are replaced in a manner that avoids injury to the WWSP. General Counsel and Special Water Counsel believe the attached proposed decree satisfies these objectives.

La Junta's change of water rights and exchange will not injure the District's water rights because paragraph 15.8 of the proposed decree ensures that it will operate only in priority. The District's exchanges decreed in Case Nos. 06CW8 and 01CW151 are senior to La Junta's exchange. Thus, so long as La Junta's exchange is operated in priority, it is unlikely to injure the District's exchanges. The proposed decree further provides, in paragraphs 13.6 and 13.7.15, that La Junta may only use the District's exchange in Case No. 06CW8 by agreement with the District and consistent with any terms and conditions in a final decree entered in that case. Thus, we believe the terms and conditions of this Decree protect the District's exchanges.

The proposed decree includes the terms and conditions that the District proposed for use of Project facilities, in paragraphs 15.1.1 through 15.1.9. It also avoids injury to the Winter Water Storage Program

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(WWSP) by spelling out specific mechanisms for replacement of historic winter return flows in paragraphs 13.7.7.2 through 13.7.7.10. Finally, paragraph 15.1.8 of the proposed decree allows La Junta to book over water stored in Pueblo Reservoir to the WWSP account as necessary to prevent injury to the water rights included in WWSP.

On September 17, 2015, the Board directed special water counsel to request the Water Court's determination that the Repayment Contract between the District and the United States of America prohibits any Winter Water to be used for non-irrigation purposes from being stored in the Winter Water account in Pueblo Reservoir, and that any decree in this matter will include a term and condition prohibiting any Winter Water to be used for non-irrigation purposes from being stored in the Winter Water account in Pueblo Reservoir after the conclusion of the winter storage season. The Court granted the District's motion in an order on December 7, 2015. Please let Alix know if you would like a copy of that Order. Consistent with the Court's order, La Junta agreed to include the District's proposed language regarding the WWSP in the proposed decree (paragraphs 13.7.16 and 13.7.17). There is some language in addition to the District's standard language in these paragraphs. Unlike the cases where the District has previously used this standard language, Holbrook has its own off channel storage, and can store Winter Water either in these vessels or in Pueblo Reservoir. Thus, these paragraphs reflect that fact.

When settling with Tri-State, La Junta agreed to a no-precedent provision in the decree. It was important to the District that this no precedent provision not apply to the Order on the District's Rule 56 Motion. This is reflected in paragraph 17 of the proposed decree.

For the reasons explained above, special water counsel, general counsel, and District staff believe that this proposed decree satisfies the District's objectives. Per the Board's "Special Circumstances Necessitating Court Filings Policy," passed on July 17, 2014, the Ad Hoc Committee may authorize court filings where it is necessary to take legal action before the next regularly scheduled Board meeting. The Ad Hoc Committee is composed of the Executive Director and the President and/or Vice President of the Board, and its decision must be ratified by the Board. Trial in this matter was scheduled to begin January 11, 2016. The Ad Hoc Committee authorized a stipulation with La Junta on January 8, 2016, consenting to entry of a decree in this case that is no less restrictive on La Junta and no less protective of the District than the attached proposed decree. Consistent with stipulations between La Junta and all objectors, including the District, the Water Court entered a final decree in this matter on February 2, 2016. Accordingly, Special Water Counsel, General Counsel and District staff recommend that the Board ratify the Ad Hoc Committee's decision approving the stipulation with La Junta.

Mr. Edelmann moved, seconded by Mr. Bostrom, to ratify the decision of the Ad Hoc Committee authorizing special water counsel to enter into a stipulation with La Junta in Case No. 11CW13 consenting to entry of a decree that is no less restrictive on La Junta and no less protective of the District than the proposed decree dated January 8, 2016. Motion unanimously carried.

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PARK CENTER, CASE NO. 15CW3005

Alix Joseph reported Case No. 15CW3005 is Park Center's application for a change of water rights for its Canon Heights Irrigation and Reservoir Company (CHIRC) ditch system shares and the Mount Pisgah Reservoir Company (MPRC) shares. Park Center seeks to change 1,144 shares in the CHIRC and 1,153.808 shares in the MPRC to irrigation, municipal, replacement and augmentation use, and as a source of exchange. The changed shares will be used inside of Park Center's boundaries and outside of Park Center's boundaries when needed to replace historical return flows and for augmentation use to replace depletions from the Park Center Well (the subject of the Bureau of Land Management's and Park Center's Case No. 12CW125). Depletions from the Park Center Well will occur outside of District boundaries. Park Center intends to store the changed shares in Pueblo Reservoir.

Case No. 15CW3005 is currently before the water referee. The one-year deadline for entry of the referee's ruling is May 31, 2016.

The District's three primary objectives in this case include ensuring that: (1) Park Center has an appropriate contract to store the changed CHIRC and MPRC shares in Pueblo Reservoir; (2) the decree includes appropriate terms and conditions for use of Project facilities by including appropriate standard language terms; and (3) the decree includes a term and condition acknowledging that nothing in the decree constitutes an appropriative right of exchange. These objectives were accomplished by inclusion of the requested standard language in paragraph 16.B.1 and in paragraphs 16.B.3 through 16.B.8 of the proposed decree. Park Center also included in paragraph 11 a term and condition stating that nothing in the decree shall be construed as an appropriative right of exchange.

Mr. Bostrom moved, seconded by Mr. Hazard, to authorize special water counsel to enter into a stipulation with Park Center Water District consenting to entry of a decree that is no less restrictive on Park Center Water District and no less protective of the District than the proposed decree dated January 5, 2016. Motion unanimously carried.

APPROVAL OF STIPULATION WITH PARKS AND WILDLIFE, CASE NO. 06CW8

On February 21, 2006, the Board directed Special Water Counsel to file the Application in Case No. 06CW8 to preserve and retain exchange capacity for the District and its constituent entities to exchange non-Project water to Pueblo Reservoir, primarily for use in the Arkansas Valley Conduit (AVC). In Case No. 06CW8, the Board approved stipulations with the City of Pueblo in September 2014, the Board of Water Works of Pueblo (Pueblo Water) in November 2014, and the Colorado River Water Conservation District in May 2015. The Board and legal counsel discussed these cases in executive session in November 2015.

Case No. 06CW8 is the District's application for exchanges by the District or its constituent entities of non-Project water stored in Holbrook Reservoir No. 1 or Dye Lake, or diverted at the Catlin Canal, High Line Canal, Holbrook Canal, Oxford Farmers Ditch or Rocky Ford Ditch, to Pueblo Reservoir for use in the AVC and for other purposes within the District. The District filed this application filed on February 21, 2006. The application requested co-equal priority with exchange applications filed by the City of

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Aurora, Colorado Springs, and the City of Lamar in December 2005. Aurora's application was since dismissed, as was one of Colorado Springs' two December 2005 applications. Nineteen parties filed statements of opposition. A Ruling of the Referee was not entered by the December 15, 2014 deadline and, accordingly, the case was re-referred to the Water Judge on December 19, 2014.

Following comments from several Opposers and review with the Board in executive session last November, the District provided a revised proposed decree to all parties dated January 27, 2016. The revised proposed decree updates the legal descriptions of Holbrook Mutual Irrigating Company facilities used in the exchange in paragraph 9, clarifies the definition of non-Project water in paragraph 11.1, and limits the sources of water that can be used in the exchange to those ditches already being used in the exchange in paragraphs 11.2 and 11.5. It provides maximum aggregated exchange volumes and limits in paragraph 12.4, in response to some parties' comments. This paragraph also includes limits on exchanges from Holbrook facilities, consistent with the decree entered this month in La Junta's Case No. 11CW13. The proposed decree also provides that use of exchanged water will be consistent with any terms ultimately decreed in the participants' individual cases for changes of water rights and exchanges, in paragraph 15.5.

Accordingly, special water counsel, general counsel, and District staff believe that this stipulation satisfies the District's objectives.

Mr. Bostrom moved, seconded by Mr. Mitchell, to authorize special water counsel to execute a stipulation with Colorado Parks and Wildlife consenting to entry of a decree in Case No. 06CW8 that is no less restrictive on the District than the proposed decree dated January 27, 2016. Motion unanimously carried.

RECIPROCAL STIPULATIONS IN CS-U, CASE NO. 05CW96 AND THE DISTRICT'S CASE NO. 06CW8

Steve Leonhardt reported on February 21, 2006, the Board directed special water counsel to file a Statement of Opposition to Colorado Springs Case No. 05CW96, an application for exchanges upstream from the confluence of Fountain Creek and the Arkansas River, and to file the Application in Case No. 06CW8 to preserve and retain exchange capacity for the District and its constituent entities to exchange non-Project water to Pueblo Reservoir, primarily for use in the Arkansas Valley Conduit (AVC). In Case No. 06CW8, the Board approved stipulations with the City of Pueblo in September 2014, the Board of Water Works of Pueblo (Pueblo Water) in November 2014, and the Colorado River Water Conservation District in May 2015. The Board and legal counsel discussed these cases in executive session in November 2015.

Both Colorado Springs' Case No. 05CW96 and the District's Case No. 06CW8 involve exchanges that may compete for the movement of water into Pueblo Reservoir. Thus, we have negotiated with Colorado Springs to address this competition and resolve the District's concerns in Case No. 05CW96 and Colorado Springs' concerns in Case No. 06CW8 simultaneously.

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Colorado Springs' Case No. 05CW96

Case No. 05CW96 is Colorado Springs' application for exchanges of leased water from Pueblo Reservoir into upstream storage and diversion facilities, and of reusable return flows from such water from Fountain Creek into upstream storage. Colorado Springs filed this application on December 23, 2005.

The District's primary objectives in this case are to negotiate co-equal priority with the District's 2006 exchange rights in Case No. 06CW8, and to include appropriate terms and conditions in the proposed decree to protect Fryingpan-Arkansas Project (Project) facilities, the Winter Water Storage Program (WWSP), the Upper Arkansas Voluntary Flow Management Program (VFMP), and the Pueblo Flow Management Program. We believe that the attached proposed decree satisfies these objectives.

Colorado Springs agreed to share a priority with the District's exchanges in Case No. 06CW8. The stipulation between Colorado Springs and the District includes the terms of this agreement in paragraph 4. Paragraph 33 of the proposed decree confirms that the administration of Colorado Springs' exchanges are subject to the priority sharing agreement in the stipulation.

The proposed decree includes terms and conditions that protect Project facilities, in paragraphs 30.G, 30.I, 30.J, 30.O, and 30.U. These terms and conditions are consistent with the language agreed to by Colorado Springs, the District, and others in Case No. 06CW120, the ROY Application, except that they do not reference Colorado Springs' long-term excess capacity storage contract with the United States for Project facilities. That contract is inapplicable to this case because Colorado Springs is using temporary use water in the exchange, and the contract does not allow Colorado Springs to store this temporary use water in Project facilities. We revised these paragraphs to more broadly require compliance with the terms of an applicable contract with the United States and prevent Colorado Springs from delivering exchanged water outside of the District's boundaries. The proposed decree also avoids injury to the WWSP by prohibiting any of the decreed exchanges from operating during the WWSP season, in paragraph 30.N.

Paragraphs 12.A.3 and 30.H of the proposed decree contain terms and conditions to protect the VFMP. A term in paragraph 12.A.3, which provides that exchanges will be limited to one facility at a time, is broader than the term that the District proposed. Most terms included in paragraph 30.H are consistent with the District's standard language. Paragraph 30.H also contains an additional subparagraph 30.H(4), which recognizes Colorado Springs' contractual obligations to the VFMP, with an exception for emergency conditions involving drought recovery. This provision is consistent with Colorado Springs' long-term contract with Reclamation and with the Chaffee County MOU agreed to by the District, Colorado Springs and others. This provision provides for Colorado Springs to notify the District by June 1 when it invokes the emergency exception so that the District will have an opportunity to plan for VFMP operations impacted by these exchanges.

The final issue that arose in this case is the protection of the Pueblo Flow Management Program (PFMP). The District and Colorado Springs are parties to the Six-Party Regional IGA that created the

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PFMP for the reach of the Arkansas River through the City of Pueblo. The District's objective is to include terms and conditions in decrees that are agreed to by all the IGA parties. You will notice, however, that the terms for protection of the PFMP in this case and in Case No. 06CW8 are different. This is because the District included standard language regarding protection of the PFMP. Colorado Springs expressed a desire to change the agreed-upon language to the language included in the proposed decree in 05CW96 in paragraphs 30.L and 30.M. At this time, however, not all of the IGA parties have agreed to Colorado Springs' proposed language. In particular, the City of Pueblo, with whom the District already stipulated in Case No. 06CW8, has not agreed to the new language. Colorado Springs inserted placeholder footnotes into paragraphs 30.L and 30.M of the proposed decree, indicating that the decree terms might ultimately change if new terms are agreed to by all six IGA parties. Two of the other IGA parties, Pueblo Water and the City of Aurora, both stipulated to these placeholders. We believe it is appropriate for the District to stipulate to Colorado Springs' proposed decree with the same placeholders because the terms ultimately included in both decrees will be agreed to by all the IGA parties. Because we believe that this issue will ultimately work itself out, we do not believe that resolution of the precise language to protect the PFMP should hold up a stipulation in this matter.

District's Case No. 06CW8

Case No. 06CW8 is the District's application for exchanges by the District or its constituent entities of non-Project water stored in Holbrook Reservoir No. 1 or Dye Lake, or diverted at the Catlin Canal, High Line Canal, Holbrook Canal, Oxford Farmers Ditch or Rocky Ford Ditch, to Pueblo Reservoir for use in the AVC and for other purposes within the District. The District filed this application filed on February 21, 2006. The application requested co-equal priority with exchange applications filed by the City of Aurora, Colorado Springs, and the City of Lamar in December 2005. Aurora's application was since dismissed, as was one of Colorado Springs' two December 2005 applications. Nineteen parties filed statements of opposition. A Ruling of the Referee was not entered by the December 15, 2014 deadline and, accordingly, the case was re-referred to the Water Judge on December 19, 2014.

Following comments from several Opposers, including Colorado Springs, and review with the Board in executive session last November, the District provided a revised proposed decree to all parties on January 29, 2016, and then negotiated a few further revisions with Colorado Springs in a proposed decree dated February 1, 2016. The revised proposed decree updates the legal descriptions of Holbrook Mutual Irrigating Company facilities used in the exchange in paragraph 9, clarifies the definition of non-Project water in paragraph 11.1, and limits the sources of water that can be used in the exchange to those ditches already being used in the exchange in paragraphs 11.2 and 11.5. It provides maximum aggregated exchange volumes and limits in paragraph 12.4, in response to some parties' comments. This paragraph also includes limits on exchanges from Holbrook facilities, consistent with the decree entered this month in La Junta's Case No. 11CW13. The proposed decree also provides that use of exchanged water will be consistent with any terms ultimately decreed in the participants' individual cases for changes of water rights and exchanges, in paragraph 15.5. Finally, paragraphs 11.3 and 15.19 of the proposed decree, in response to Colorado Springs, clarify that this case does not modify the WWSP.

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The stipulation with Colorado Springs in Case No. 06CW8, like the stipulation in Case No. 05CW96, provides for operation of a shared exchange priority by the District and Colorado Springs. Both the recommended stipulation and revised proposed decree with Colorado Springs are consistent with the strategy that was outlined to the Board in the November 2015 Executive Session. Accordingly, for the reasons explained above, Special Water Counsel, General Counsel and District staff believe that this stipulation satisfies the District's objectives.

General and Special Water Counsel and District staff recommend that the District execute reciprocal stipulations with Colorado Springs that provide for (1) operation of a shared exchange priority; (2) the District's consent to entry of a decree in Case No. 05CW96 that is no less restrictive on Colorado Springs and no less protective of the District than the proposed decree dated February 3, 2016; and (3) Colorado Springs' consent to entry of a decree in Case No. 06CW8 that is no less restrictive on the District and no less protective of Colorado Springs than the proposed decree dated February 1, 2016.

Mr. Hazard moved, seconded by Mrs. Ortegon, to authorize special water counsel to execute reciprocal stipulations with Colorado Springs consistent with the form provided to the Board, that provide for (1) operation of a shared exchange priority; (2) the District's consent to entry of a decree in Case No. 05CW96 that is no less restrictive on Colorado Springs and no less protective of the District than the proposed decree dated February 3, 2016; and (3) Colorado Springs' consent to entry of a decree in Case No. 06CW8 that is no less restrictive on the District and no less protective of Colorado Springs than the proposed decree dated February 1, 2016. Motion unanimously carried.

WATER COURT RESUMESFirst Hand, LLC, Case No. 2015CW3055 and City of Fountain, Case No. 2015CW3068

Lee Miller reported First Hand, LLC submitted an application to amend an adjudication of a conditional water right and a plan for augmentation including an appropriate right of exchange. The applicant is outside District boundaries. First Hand is leasing water from Board of Water Works of Pueblo that is stored in Project facilities. Since this case involves the use of Fryingpan-Arkansas Project facilities, staff and counsel recommend filing a statement of opposition to ensure appropriate terms and conditions regarding use of Project facilities are included.

The City of Fountain submitted an application to quantify and change the Dr. Rogers Ditch for municipal use. Because Fountain has requested storage in Pueblo Reservoir, staff and counsel recommend filing a statement of opposition to ensure appropriate terms and conditions regarding use of Project facilities are included. The District has been in prior Fountain change cases, and will likely ensure that this case has terms and conditions consistent with those the District has requested in past cases.

Mr. Karney moved, seconded by Mr. McClure, to authorize special water counsel to file a Statement of Opposition in Case No. 2015CW3055 – FIRST HAND, LLC. and in Case No. 2015CW3068 – CITY OF FOUNTAIN. Motion unanimously carried.

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MONTHLY/QUARTERLY REPORTS (continued):

DIVISION ENGINEER'S REPORT

Steve Witte reported on the following:

A) River and Reservoir Report

- 1) Reference Arkansas River Daily Report. River Call is
 - i) 3/1/1910 Winter Water Storage Program (above John Martin)
 - ii) 5/31/1949 Compact Call (State line to John Martin)
<http://www.dwr.state.co.us/div2/aras/arascal.asp>
- 2) Current River/Res. Operations
 - i) Winter Water Storage
 - (1) Fort Lyon and Amity Substitute Water Supply Plan operations
 - (2) February 15 Status report
 - (3) Storage limitations 25k to be released by April 15
 - (a) Holbrook plans to begin taking delivery of 5.4 k carryover Winter water on February 21
 - (b) Colorado Canal current Winter water diversions to begin March 1
 - (c) Highline will begin release of 2.3k carryover and leased 3.5k If and When on March 15
 - (d) Oxford is working on a release date
 - (e) May need to increase Pueblo pass through for current year
 - ii) John Martin Storage = 236,546 af....spill at end of May

B) Compact Issues

- 1) Began storing inflow to John Martin on November 1, 2015
- 2) Arkansas River Compact Administration met in Garden City, KS on Thursday, December 10, 2015
 - i) Directed Special Engineering Committee to meet before July 1, 2016
 - (1) Additional source of water for John Martin Permanent Pool
 - (2) Remaining concerns related to the LAWMA decree 02CW181
 - (3) Unresolved administrative issues including upstream post-Compact storage
- 3) Operations Committee plans to meet 2/19/16 in Lamar, CO

C) Involvement in Water Court proceedings

- 1) In response to a question from Lee Miller at the November meeting, the reason that Mr. Witte was unfamiliar with the stipulation between Tri-State and Colorado Springs which was entered in case 07CW122 on November 12, 2015 is because the State and Division Engineers had previously stipulated with Colorado Springs, were not a party to the stipulation between Tri-State and Colorado Springs and are not bound by it.
 - i) The provision of the Tri-State stipulation Mr. Miller inquired about states: "Tri-State and Applicant agree to work together with the Division 2 Engineer's office in seeking to improve

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the administration of the “admin” account in Pueblo Reservoir under the prior appropriation system.”

- ii) Witte responded to Mr. Miller that he was unaware that any such meetings had been held.
 - iii) Subsequently, Mr. Witte recently visited with Tri-State’s attorney, Matthew Merrill, who indicated that to his knowledge no such meeting has occurred other than an informal meeting between engineers for Tri-State and Colorado Springs with Assistant Division Engineer, Bill Tyner in September of 2015. The subject of that meeting related to the manner in which water temporarily detained in Pueblo Reservoir as a consequence of flood control operations, has historically been redistributed. Merrill indicated no special urgency to resume such discussions in the future and Witte indicated his willingness to reconsider the matter at any point in the future that the parties might want to do so.
- 2) The Division Engineer’s Office has recently concluded several enforcement actions stemming from violations of administrative orders.
- i) On December 21, 2015 a consent decree was entered in a matter filed in 2014 resulting from tampering with flow meters during 2012 and 2013 in which the defendants admitted responsibility, were enjoined from further tampering and false reporting of pumping information and agreed to pay penalties of \$15,400 and a portion of the state’s fees and costs amounting to \$28,500, for a total of just under \$44,000. It is hoped that this will serve as a deterrent to others who may be similarly tempted.
 - ii) Consent decrees have also recently been entered by the Division 2 Water Court in two cases involving three large dams constructed without outlets near Cripple Creek on tributaries to Fourmile Creek. The owner of two of these structures is required to submit breach plans for review by February 29, 2016 and the other land owner where the third structure is located, has until March 31 to submit such a plan. The breaches are to be completed by October 1, 2016 barring delays stemming from trespass issues related the possible location of portions of these dams on BLM property. In the interim, the reservoir owners are required to pump from these reservoirs at the rate of inflow. Once these structures are breached, this will conclude a very longstanding effort to cause these structures to be operated consistent with the priority system.
 - iii) Although far from completed, the State and Division Engineers have filed complaints in the Division 2 Water Court and in Huerfano County District Court which have been consolidated and referred to the Division 2 Water Court seeking enforcement of an order to breach Cucharas Dam #5. Cucharas Dam #5 partially failed in 1987 and the spillway was subsequently lowered and more recently subjected to a zero storage restriction. However, none of these actions have been sufficient to satisfactorily reduce the risk to public safety and necessary repairs do not appear to be forthcoming, which resulted in the breach order. The owners of Cucharas #5 dam have filed a counter suit alleging misadministration of the Huerfano has made repairs of the dam infeasible, however, those claims have been dismissed and the only remaining claims allege that the Welton Ditch Company does not have a reasonably efficient means of diversion. All of these cases have now been consolidated and set for trial in August 2016 but have been scheduled for mediation by retired Justice Hobbs, possibly in March.

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- 3) The Division 2 office has been working diligently to reduce the active caseload of this office and since 2014 has been successful in reducing the number of active cases in which we have filed Statements of Oppositions from 77 to 31 (as of January 1, 2016). In 2015 we filed 108 Consultation Reports and only 1 Statement of Opposition. We believe that by May 2016 the number active cases in which we have filed Statements of Oppositions will be 22.

Bill Tyner presented a PowerPoint reviewing the Data Transparency in re 06CW120 Recovery of Yield scheduled for trial September 26, 2016, reviewing the following:

- Use of the Arkansas Basin Water Operations Dashboard

U.S. GEOLOGICAL SURVEY REPORT

Bill Banks introduced John Fulton, who presented a PowerPoint reviewing the following:

- Unmanned Aircraft Systems (UAS)
- Sources of Remote Sensing Data
- How to Operate in National Airspace System
- Who Can Operate a UAS in National Airspace System?
- UAS Data Production Process
 - Acquire, Process, Manage, Exploit, Disseminate and Archive
- U.S. Department of the Interior UAS Platforms
- Existing Sensors/Desired Sensors
- Field Operations
- Ground Control
- Acquiring Data with Good Geometry
- UAS Data Production Process
- Processing Methods
- UAS Derived Product Examples

STATE LEGISLATION UPDATE

Lee Miller reported the 2016 session of the General Assembly was called to order on January 13, 2016. The Colorado Constitution limits the length of regular legislative session to no more than 120 consecutive calendar days. The last day upon which the General Assembly may adjourn sine die is May 11, 2016. The General Assembly may adjourn earlier than that date, but not later than May 11. The District participates in the Colorado Water Congress State Affairs Committee, which generally meets on Monday mornings in Denver before the Legislature begins its work for the week.

Legislative activity related to water legislation has been slow starting this session. Some bills of interest to the District include:

HB16-1005: An issue returning from the last legislative session involves whether a residence could install and use rain barrels to capture rooftop runoff for application to the irrigation of flowerbeds, garden areas, and similar non-potable purposes. Last year's bill passed the House but was unsuccessful

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in the Senate. The issue has returned for the 2016 session with the introduction of HB16-1005 by Representative Esgar and Representative Danielson with Senator Merrifield. As introduced, the bill would simply authorize a residential property to have no more than two rain barrels with a maximum combined capacity of 110 gallons. The bill would exempt those rain barrels from all Colorado water laws.

There is a second bill that has been in drafting but not been released publicly as of yet. Senator Sonnenberg, who chairs the Senate Agriculture, Natural Resources and Energy Committee, has been working with a group of interested parties on a bill that would allow limited use of residential rain barrels but within the scope of existing Colorado water law and the Constitution's doctrine of prior appropriation. Senator Sonnenberg has not indicated whether he will introduce that bill or not.

HB16-1228: Representative Arndt and Representative J. Becker along with Senator Donovan have introduced HB16-1228. The bill has been assigned to House Agriculture, Livestock and Natural Resources and has been calendared for hearing on February 29, 2016. This bill revisits the "FLEX" concept, which has been the subject of unsuccessful bills in recent sessions. HB16-1228, while having its origins in the FLEX concept is a significantly modified approach to developing a mechanism whereby an irrigator can market some of his or her water without conflicting with water law.

The bill relies heavily on the State Engineer to oversee these transfers. The bill would require the State Engineer to promulgate rules that will establish the framework for regulatory review of the transfers. The rules are to be specific to reviews of leases, loans, or exchanges of water that will fall under an "agricultural water protection water right" which is identified and created under the bill. The rules to be promulgated by the State Engineer are to address the conditions that are to be imposed to protect other water users from material injury and a process whereby the State Engineer can reconsider an approval should there be a claim of injury filed by another water user.

Under the bill, effective July 1, 2017, the owner of an absolute decreed agricultural water right may apply to the water court to change the use of that water right to what the bill identifies as an "agricultural water protection water right." The term "agricultural water protection water right" is not defined in the bill but it is described in considerable detail.

Securing this change in use would enable the owner to transfer a portion of the water under the water right to another use while maintaining the agricultural use of the water right. One of the essential elements of the arrangement is that no more than 50 percent of the water can be committed to such an arrangement and the balance of the water must be continued in agricultural use. There is an additional requirement that the owner of the water right who is seeking the change in use to an agricultural protection water right must apply to the State Engineer for a substitute water supply plan.

The bill specifies that an agricultural protection water right be subject to certain conditions:

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- The amount of water that may be committed to a renewable one-year lease, loan, or exchange cannot exceed 50 percent of the historical consumptive use of the water. The initial lease, loan or exchange is subject to securing a substitute water supply from the State Engineer.
- The balance of the water must be used for agricultural purposes on the property served by the absolute decreed agricultural water right. There is a clause that allows this condition to be satisfied by use on another property that is served by the same ditch system.
- The owner of the water right must be contractually committed to participation in one or more of the following:
 - A federal, state, municipal, or nonprofit conservation program that conserves the land historically served by the water right and the water subject to that water right;
 - A water conservation program that conserves the water right (as approved by a state agency), water conservation district, or water conservancy district or as established through formal written action or ordinance of a municipality, its municipal water supplier, or other water provider within the municipality's jurisdictional boundaries;
 - A water banking program;
 - Colorado's conservation easement program as set forth in statute;
 - If the water right owner's participation in one of the programs that are identified in the bill ends, the owner's eligibility to transfer water subject to the agricultural water protection water right or to secure a substitute water supply plan is automatically suspended until eligibility is reestablished.
- Ownership of the water right is to remain with the owner who applied to change the absolute decree to the agricultural water protection water right.
- The owner may not lease, loan, or exchange water that is subject to the agricultural water protection water right outside the water division with jurisdiction over the location of the historical consumptive use.

With the forgoing conditions in mind, the owner of an absolute decreed agricultural water right may apply to the water court for a change in use from the absolute decreed water right to the newly created agricultural water protection right. The decree must satisfy several criteria and conditions:

- It must quantify the historical diversions and historical consumptive use of the absolute decreed agricultural water right;
- It must quantify the return flows associated with the historical use of the water right in time, place and amount;
- It must provide terms and conditions for a change in the type of use of the water right, including any return flow obligations in time, place, and amount, that prevent material injury to other vested water rights and decreed conditional water rights;
- As set forth in the bill, it must allow an amount of the consumptive portion of the changed water right and any appropriated return flows to be delivered to a point or points of diversion within the water division of historical use without designating the specific beneficial use or decree to which the water will be applied. The State Engineer must approve the proposed point or points of delivery.

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- It must identify a period of time that the water judge determines as necessary to remedy or preclude injury. The arrangement is subject to reconsideration by the water judge if questions arise with respect to injury to other vested water rights.

The remainder of the bill addresses the issue of substitute water supply plans. These conditions are generally consistent with the conditions set forth in the bill with the addition of the authority of the State Engineer to allow delivery of the water to a point of diversion that is located within a stream reach that is subject to a decreed instream flow right.

If enacted by the General Assembly, the bill would become effective on signature by the Governor.

The Board members were provided the Colorado Water Congress State Affairs Committee Water Legislation Bill Summary.

INFORMATIONAL ITEMS:

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

- Water Court Resume
- NWRA Federal Water Issues Conference – April 11-13-Washington, DC
- Arkansas River Basin Water Forum –April 27-28-Salida

Mr. Broderick reported that each member of the Board was provided a copy of the 2016 Adopted Budget. If anyone would like an electronic version of the document, contact the District office, and request it. It is also posted on the website.

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 12:13 p.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary

