

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
ACTIVITY ENTERPRISE**

MINUTES

August 15, 2013

A regular meeting of the Board of Directors of the Southeastern Colorado Water Activity Enterprise (Enterprise) was held on Thursday, August 15, 2013 at 9:41 a.m., at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

DIRECTORS PRESENT:

Bill Long	Ann Nichols	Harold Miskel
Tom Goodwin	Vera Ortegon	Kevin Karney
Carl McClure	Greg Johnson	David Simpson
Leonard Pruett	Jay Moore	Gary Bostrom
Shawn Yoxey	Howard "Bub" Miller	

DIRECTOR(S) ABSENT AND EXCUSED:

Gibson Hazard and Alan Hamel-Advisory Board Member

ENTERPRISE OFFICIALS PRESENT:

Executive Director James Broderick; General Counsel Lee Miller; Director of Engineering and Resource Management Bob Hamilton; Administrative Support Specialist, Leann Noga; Finance Manager Tina White; Project-Program Coordinator Jean Van Pelt; Special Water Counsel Steve Leonhardt and Bernard Gehris; and Federal Lobbyists Ray Kogovsek and Christine Arbogast.

VISITORS PRESENT:

Chris Woodka, The Pueblo Chieftain; Steve Witte, Colorado Division of Water Resources-Division 2; Terry Book, Board of Water Works of Pueblo; Roy Vaughan, Bureau of Reclamation; Kevin Bergschneider, HDR Engineering; Dwight Gardner, Senator Michael Bennet's office; Terry Scanga and Chelsey Nutlee, Upper Arkansas Water Conservancy District; David Mau, U.S. Geological Survey; Curt Thompson, Merrick & Company; Mark Scott, GEI Consultants; Jerry Pena, CDM Smith; Roy Heald, Security Water District and Fountain Valley Authority; Scott Campbell, Colorado Canal and Twin Lakes; Tom Simpson, Aurora Water; Doris Morgan, Congressman Cory Gardner's office; Tim Payne, Fremont County.

RECORD OF PROCEEDING

APPROVAL OF MINUTES:

President Long asked if the members of the Board had received their copy of the minutes of the June 20, 2013 Board meeting, and if there were any corrections or additions. Hearing none, Dr. Moore moved, seconded by Mr. Johnson, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Nichols reported the financial statements for June and July were posted to the Board website for review. Treasurer Nichols moved, seconded by Dr. Moore, for acceptance of the June and July 2013 financial statements and payment of the August 2013 bills. Motion unanimously carried.

CONSENT ITEMS:

None

PRESENTATIONS:

FEDERAL LEGISLATION

Ms. Christine Arbogast reported that she, James Broderick, Bill Long, Consultant Bill McDonald, and Governor Hickenlooper's water advisor John Stulp traveled to Washington, D.C. on July 22, 2013 to meet with the congressional delegation and the Office of Management and Budget (OMB). On August 8, 2013 the congressional delegation sent a letter of budgetary support for the Arkansas Valley Conduit Project to Anne Castle, Assistant Secretary for Water and Science and Michael Connor, Commissioner of the Bureau of Reclamation.

Ms. Arbogast added that Commissioner Michael Conner has been nominated for the position of Deputy Secretary of the Department of Interior. A hearing for his nomination has not been scheduled. She suggested that the District Board provide a letter of support for Commissioner Conner's nomination, the Board agreed. Due to Commissioner Conner's possible departure, Ms. Arbogast approached the delegation offices to write a letter requesting Commissioner Conner have the Record of Decision (ROD) for the *Final Environmental Impact Statement (EIS) of the Arkansas Valley Conduit and Long-Term Excess Capacity Master Contract*, signed as soon as possible after the thirty day comment period.

AVC, EXCESS CAPACITY MASTER CONTRACT, AND NEPA UPDATE

Mr. James Broderick explained that each member of the Board was given a copy of the *Executive Summary Final Environmental Impact Statement (EIS) of the Arkansas Valley Conduit and Long-Term Excess Capacity Master Contract*. The EIS was released August 9, 2013 and after a thirty day comment period a ROD was anticipated in September 2013. He expressed

RECORD OF PROCEEDING

sincere thanks to the U.S. Bureau of Reclamation staff including Signe Snortland, EIS Project Manager, and District staff Jean Van Pelt and Bob Hamilton, that contributed to the completion of the Final EIS.

Mr. Broderick then reviewed the following:

- Purpose of the EIS
- Identification of the Preferred Alternative – Comanche North
- Cost Comparison
- Principles and Guidelines Analysis Draft Report
- Next Step Process and ROD
- Future Schedule

LEASE OF POWER PRIVILEGE – HYDROELECTRIC POWER

Mr. Broderick explained that the partnership agreement between Activity Enterprise, Colorado Springs Utilities, and Board of Water Works of Pueblo had been signed and completed. The next steps include an economic analysis and a preliminary review of previously completed studies. He explained that Kevin Meador would provide a review of the preliminary engineering.

UPPER COLORADO RIVER ENDANGERED FISH RECOVERY PROGRAM, RECOVERY IMPLEMENTATION, AND ACTION PLAN PARTICIPATION AGREEMENT

Mr. Lee Miller reported that in 1999, the U.S. Fish and Wildlife Service (FWS) issued a programmatic biological opinion (POB) for a critical reach of the Colorado River in Colorado related to recovery efforts for four fish species listed as endangered under the Endangered Species Act (ESA) 10,825 Project: Upper Colorado River Endangered Program was established to restore endangered fish for the brink of extinction: the humpback chub, bonytail, Colorado pike minnow, and razorback sucker. The PBO provided ESA compliance for five U.S. Bureau of Reclamation (Reclamation) projects including the Fryingpan-Arkansas Project.

As a part of the PBO, Colorado water users agreed to provide 10,825 a.f. per year for fish recovery from interim water sources until 2010, by which time permanent sources of water must be identified and agreements completed between water users and the FWS to provide the permanent source(s) of water. Water users have identified the required permanent sources of water for endangered fish. As a matter of convenience and accounting, the obligation to provide 10,825 a.f. of water committed to the Program was split equally between the west slope and the east slope water users. The east slope water users will provide 5,412.5 a.f. to the Program by purchasing Red Top Ditch water and modifying the operations of the ditch and other facilities. The Executive Director recently signed the agreement authorized by the Board in April. The District's pro rata share is 10.19 percent of the, or \$1,750,479.

RECORD OF PROCEEDING

The operations contemplated to effectuate delivery of the Red Top Ditch water could, under certain hydrologic conditions, adversely affect the operations of the City of Colorado Springs and Denver Water (collectively, "Cities") and Green Mountain Reservoir by increasing the amount of water the Cities must "substitute", or replace, to Green Mountain Reservoir pursuant to the Blue River Decree, and/or decreasing the amount of water available in Green Mountain Reservoir for use pursuant to Senate Document No. 80. A second agreement, addressing the Ruedi Insurance Water, necessary to mitigate this potential adverse impact, is nearly completed and will be presented to the Colorado River Committee prior to the next Board meeting for a recommendation. Under the draft agreement, the District will reimburse Denver Water for the District's pro rata share of the \$2,579,800 of sunk capital costs paid by Denver Water, \$262,881.62. In addition, the District will pay OM&R costs for 2013 of \$513.58, and additional OM&R cost each year.

ACTION ITEMS:

APPOINTMENT OF BUDGET OFFICER

Treasurer Nichols moved, to appoint Finance Manager Tina White as Budget Officer for the 2014 Enterprise budget preparations, seconded by Mrs. Yoxey. Motion unanimously carried.

RECOVERY OF YIELD (ROY) APPLICATION (CASE NO. 06CW120) STIPULATION WITH ARKANSAS RIVER OUTFITTERS ASSOCIATION (AROA)

Mr. Steve Leonhardt reported that the applicants (also known as the ROY participants) are parties to the 2004 six-party intergovernmental agreement (IGA) with the City of Pueblo, which provides for the ROY participants to forego certain diversions to maintain specified flow levels on the Arkansas River through Pueblo. They can then recover the foregone yield through downstream storage, followed by exchanges to upstream storage (mainly Pueblo Reservoir) when the flows are sufficient. The application seeks appropriative rights of exchange of Foregone Diversions (within the meaning of the six-party IGA) through the reach of the Arkansas River from its confluence with Timpas Creek, in Otero County, upstream to Pueblo Reservoir, Twin Lakes, Clear Creek, and Turquoise Reservoirs. Twenty-one parties filed statements of opposition in this case, three of which subsequently withdrew their statements of opposition. Rocky Ford recently stipulated, and AROA is one of the seventeen remaining objectors.

The Applicants retained MWH as their shared engineering consultants for this case. While MWH prepared an initial engineering report, the co-Applicants' attorneys prepared a draft proposed ruling to circulate to counsel for the objectors. The Water Referee approved a schedule that called for the Applicants to circulate a proposed ruling and engineering report by April 12, 2013, and the objectors to provide any comments by July 12, 2013.

RECORD OF PROCEEDING

In response to the Applicants' proposed ruling and engineering, AROA's attorney responded that AROA had no comments and could stipulate to the co-Applicants' proposed ruling dated April 12, 2013. This is the same proposed ruling to which the co-Applicants recently stipulated with Rocky Ford.

Legal counsel recommends that the Enterprise Board authorize legal counsel to execute a standard stipulation with the Arkansas River Outfitters Association (AROA) and the Enterprise co-Applicants on the ROY exchange application (Case No. 06CW120, Water Division 2).

Mr. Johnson moved, seconded by Mr. Pruett, to authorize legal counsel to execute a Stipulation with AROA and the co-Applicants, consenting to entry of the co-Applicants' proposed ruling dated April 12, 2013. Motion unanimously carried.

COLORADO CANAL REQUEST TO CARRYOVER 2013 ALLOCATIONS OF PROJECT WATER

On July 19, 2013 the District received a letter from the Colorado Canal requesting the District allow the Colorado Canal to carryover its 2013 allocation of 414 acre- feet until May 1, 2014.

The Colorado Canal has a junior direct flow water right and has not been in priority for more than one day since September of 2011. Due to the extended drought and their canal being so dry, without other waters in the canal it is almost impossible to deliver water to their farms. The Colorado Canal would like to utilize their 2013 allocation of Project water either during or immediately following the 2013-2014 Winter Water Storage Program. This would allow them to minimize the ditch loss and maximize their deliveries to the farms.

The Allocation Committee met on August 1, 2013 and recommends the Board waive the 80/20 Rule for the 2013 allocation of agricultural Project water to the Colorado Canal.

Mr. McClure moved, seconded by Dr. Moore, to waive the 80/20 Rule for the Colorado Canal's 2013 Allocation of Project water until May 1, 2014 and any 2013 Project water allocated to the Colorado Canal not used by May 1, 2014 would revert back to the Enterprise. Motion unanimously carried.

INFORMATION ITEMS:

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

- AVC, Excess Capacity Master Contract, and NEPA Update
- 2013 Project Water Update

RECORD OF PROCEEDING

President Long recessed the Enterprise Board Meeting at 11:52 a.m. to convene for the District Board Meeting. The Enterprise Board meeting reconvened at 12:12 p.m. for the purpose of considering a request to enter executive session.

EXECUTIVE SESSION:

Lee Miller stated a request has been made for the Southeastern Colorado Water Activity Enterprise to enter Executive Session for the purpose of:

Discussion with legal counsel on the Return Flow Exchange Application (Case No. 01CW151, Water Division 2)

Pursuant to:

- C.R.S. §24-6-402(4)(b):** (Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions.)
- C.R.S. §24-6-402(4)(e):** (Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators.)

The presence of the following persons is requested at this Executive Session:

1. Non-Excused Board Members (state for the record any who are excused)
2. Executive Director
3. General Counsel
4. Special Water Counsel
5. Director of Engineering and Resource Management

MINUTES WILL BE ELECTRONICALLY RECORDED AS REQUIRED BY THE COLORADO OPEN MEETING ACT.

Mr. McClure moved, seconded by Mr. Johnson, to enter into Executive Session. Motion unanimously carried. The Enterprise meeting was recessed at 12:12 p.m. At this time the Water Activity Enterprise Board entered into Executive Session. The Enterprise meeting was reconvened at 12:30 p.m.

