

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO
WATER ACTIVITY ENTERPRISE
MINUTES
March 16, 2023**

A meeting of the Board of Directors of the Southeastern Colorado Water Activity Enterprise (Enterprise) was held on Thursday, March 16, 2023, at the District office, 31717 United Avenue, Pueblo, Colorado. President Long called to order the Enterprise meeting at 11:04 a.m. The ZOOM platform was also made available for Board members and visitors.

President Long established that a Quorum was present.

DIRECTORS PRESENT:

Alan Hamel	Howard “Bub” Miller(remote)	Patrick Garcia
Andy Colosimo	Kevin Karney(remote)	Seth Clayton
Ann Nichols(remote)	Mark Pifher	Tom Goodwin(remote)
Bill Long	Matt Heimerich	
Curtis Mitchell	Pat Edelman	

DIRECTOR(S) ABSENT AND EXCUSED:

Dallas May, and Greg Felt.

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 Kevin Meador; Administrator of Administration Leann Noga; Finance Manager Stephanie Shipley; Administrative Support Specialist’s Margie Medina and Patty Rivas; Kogovsek and Associates Christine Arbogast; Kleinfelder, Gordon Dillon and H2O Consultants Roy Vaughan.

VISITORS PRESENT:

Abba Ahmed and Rick Kienitz, Aurora Water; Bill Tyner; Curtis Thompson, AECOM; Jerry Pena, Kennedy Jenks; Krystal Brown, USGS; Mike Holmberg, USBR; Rachel Zancanella, Colo Division of Water Resources; and Travis White, JHL Constructors (@ 9:45).

VISITORS CONNECTED VIA ZOOM:

Jeffery DeHerrera, Pueblo West Metro; Lisa Wade, Wilson Water; Luke Mecklenburg, Assistant Attorney General, Federal and Interstate Water Unit; Scott Lorenz, Colorado Springs Utilities.

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APPROVAL OF MINUTES:

President Long said the minutes of the January 19, 2023, Enterprise Board meetings were posted to OnBoard and the website for review and asked if there were any corrections or additions. Hearing none, Mr. Hamel moved, seconded by Mr. Pifer to approve the minutes. Motion unanimously carried.

TREASURER REPORT:

Mr. Clayton reported the financial statements for January and February 2023, were posted to OnBoard and the Board website for review. Mr. Clayton moved, seconded by Mr. Edelman, for acceptance of the January and February 2023 financial statements and payment of the March 2023 bills. Motion unanimously carried.

PRESENTATION ITEMS:

FEDERAL LEGISLATION UPDATE

Ms. Arbogast updated the Board as follows:

The Administration's FY '24 budget is out. The Arkansas Valley Conduit number is the same as FY '23: \$10.059 million. We are disappointed that this is not a bigger number, but we are anticipating significant spending from the infrastructure money, sometime in late spring.

There is a delegation letter being prepared to the Bureau of Reclamation (BOR) expressing their disappointment as well but strongly encouraging a substantial number from infrastructure dollars.

We are not requesting an earmark for AVC. The amount of money that can be earmarked overall is small, and earmarks rarely exceed \$2-3 million. Instead, we will continue to push for higher baseline requests and large chunks from IJA (Infrastructure Investment and Jobs Act)

Also being monitored are the farm bill discussions, particularly focused on the conservation programs and the forest title. Senator Bennet chairs the subcommittee which will write both of those titles.

The House has passed a resolution striking down the Biden Administration's WOTUS rule under the Congressional Review Act. Nine Democrats voted for it, and one Republican voted against it. The Senate is expected to act soon, but it is delayed because of absences in the Senate due to illness.

Reclamation is still looking at April 28 for an AVC groundbreaking event.

ACTION ITEMS:

APPROVAL OF 2023 KLEINFELDER AGREEMENT

Mr. Kevin Meador presented to the Board an action item that recommends that the Enterprise Board approve the 2023 Agreement of Hydropower Operations Services between the Southeastern Water Activity Enterprise and Kleinfelder, Inc.

This agreement is the continuation of the current agreement 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

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operations and maintenance of the facility and the Enterprise desires to continue those services for 2023. A copy of the Agreement was provided to the Board.

Mr. Heimerich moved, seconded by Mr. Hamel that the Southeastern Colorado Activity Enterprise Board approve the 2023 Agreement for Operations Services between the Southeastern Colorado Water Activity Enterprise and Kleinfelder, Inc. Motion carried unanimously.

FIRST AMENDMENT TO THE FISCAL AGENT IGA WITH OTERO COUNTY

Mr. Lee Miller presented to the Board an action item recommending that the Enterprise Board authorize execution of the First Amendment to the Intergovernmental Agreement (IGA) between Southeastern Colorado Water Conservancy District, acting by and through its Water Activity Enterprise and the County of Otero allowing for Otero County to serve as the fiscal agent to receive Colorado Water Conservation Board (CWCB) grant funding for use in construction of AVC spur and delivery lines.

In 2020, the Colorado General Assembly approved a \$100 million financing package for the Arkansas Valley Conduit (AVC). The \$100 million in state funding includes \$90 million in loans and \$10 million in grants. Because of TABOR limitations restricting the amount of grant money that the Enterprise can receive from state or local governments in a single year and maintain its Enterprise status, the Enterprise is not able to effectively utilize the grant funds. Otero County has received voter permission to accept grant funds such that they do not have the same TABOR constraints as the Enterprise and can partner with the Enterprise in effectively spending the grant funds. We anticipate that the current General Assembly will authorize an additional Non-Reimbursable Investment of \$20 million from the CWCB to provide non-federal cost-share funding for the AVC.

Otero County has approved the First Amendment form. Adding Otero County as a recipient of CWCB grant funds will require a change to the statutory authorization by the General Assembly. SB23-177 includes both the statutory authorization and the additional \$20 million, as discussed in the State Legislative Update.

A copy of the Agreement was provided to the Board.

Mr. Clayton moved, seconded by Mr. Garcia, that the Enterprise Board authorize execution of the First Amendment to the Intergovernmental Agreement Between Southeastern Colorado Water Conservancy District, acting by and through its Water Activity Enterprise and the County of Otero allowing for Otero County to serve as the fiscal agent to receive Colorado Water Conservation Board grant funding for use in construction of AVC spur and delivery lines. Motion unanimously carried.

APPROVAL OF ENGINEERING DESIGN CONTRACTS FOR AVC SPURS AND DELIVERY LINES

Mr. Meador presented to the Board and action item that recommends that the Enterprise Board approve AVC Spurs and Delivery Lines engineering design contracts to the firms of Kennedy Jenks, Inc. (KJ) for Design Package 1 and AECOM, Inc. for Design Package 2. Design Package 1 includes spurs and delivery lines in Otero County. Design Package 2 includes spurs and delivery lines in Crowley, Bent, Prowers, and Kiowa Counties.

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A PowerPoint Presentation was provided to the Board covering:

- Recommendation for Approval of Engineering Design Contracts for Spurs and Delivery Lines for the Engineering companies of Kennedy Jenks, Inc- Otero County Participants (design Package 1) and AECOM, Inc – Crowley, Bent, Prowers, and Kiowa Counties (design package 2)
- Engineering Design, The Procurement Process
- Engineering Design Contracts for Spurs and Delivery Lines Design
- AVC Spurs and Delivery Lines Plan for Design
- AVC Spurs and Delivery Lines Schedule:
 1. March 2023 – Approval of Design contracts
 2. April 2023 – Issue Notice to Proceed
 3. April – December 2023 – Engineering Design for ARPA funded activities
 4. January- December 2024 – Complete all designs
 5. January 2025 – December 2026 – spurs and Delivery Line Construction
- AVC Spurs and Delivery Lines Next Steps

A written report was also provided to the Board expanding on the PowerPoint.

In 2022, a Request for Qualification (RFQ) was conducted to shortlist qualified engineering firms for the AVC Spur and Delivery Lines engineering design east of Pueblo County. KJ, Inc. and AECOM, Inc. were selected as the most qualified firms to perform the design work.

In November 2022, a Request for Proposals (RFP) was sent to the two firms requesting a design schedule, proposed scope of services, and estimated design fees. The RFP split the overall project into two design packages based on an evaluation of the size, scope, schedule, and objectives of the project:

Design Package 1 includes the delivery lines for all Participants located in Otero County including the La Junta Spur Line.

Design Package 2 includes delivery lines for Participants in the remaining counties including the Eads Spur Line.

Proposals were received from the two firms on January 23, 2023. Each firm made a proposal on both design packages. Further discussions on scope of services and fees were conducted during February 2023 resulting in the final recommendation to approve engineering design contracts as follows:

Design Package 1 – KJ, Inc.: \$3,075,000
Design Package 2 – AECOM, Inc.: \$3,800,000
Total Contingency - Enterprise: \$370,000

The estimated design and construction schedule is as follows:

March 2023 – Approval of Engineering Design Contracts
April 2023 – Notice to Proceed for Engineering Contracts
April 2023 – December 2024 – Engineering Design

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January 2025 – December 2026 – Construction of the Spurs and Delivery Lines.

A separate proposal selection process was completed in 2022 for the design of the Avondale and Boone Delivery Lines in Pueblo County. GMS, Inc. was selected to provide the design services for this portion of the project and will be completed in March 2023.

Contracts were included and are in legal review and may be subject to minor changes prior to Board action. The Board will be notified of any changes prior to executing the contracts.

Mr. Jerry Pena, Kennedy Jenks, and Mr. Curtis Thompson, AECOM thanked the Board and Staff for the opportunity to be part of the AVC project.

Questions were asked of Mr. Meador.

Mr. Heimerich moved, seconded by Mr. Hamel that the Enterprise Board approve engineering design contracts with the firms of Kennedy Jenks, Inc. for Design Package 1 in the amount of \$3,255,000 and AECOM, Inc. for Design Package 2 in the amount of \$3,990,000, subject to available funds. Motion unanimously carried following a discussion regarding funding not being immediately available and the motion being modified to make the authorization subject to available funds.

Mr. Markus was called upon to give a summation of Monday, March 13th Executive Committee.

The District was notified of a depletion of the river by augmentation and the State-line accounting by both Lower Arkansas Water Management Association (LAWMA) and Arkansas Groundwater and Reservoir Association (AGRA) on February 21, 2023. District staff reached out to LAWMA, AGRA, and Division 2 Division Engineers Office for information on the issue and if the District was able to assist in the situation. LAWMA's accounting was specific to the State-line depletions and not relative to the District's boundaries. AGRA's accounting showed that a majority of their depletion deficit could be fulfilled through municipal back payments under the Rule 14 Plans; however, Sugar City and Swink didn't have enough Fryingpan-Arkansas Project Water (Project Water) in their Project Water account to meet their obligation. The Division 2 Division Engineer's office needs the water to be paid to the injured senior water right, the Winter Water Storage Program, by March 14, 2023 at the risk of "red tagging" (no pumping order) for the wells in AGRA's Rule 14 Plan.

The District has the ability to allocate Project Water to Sugar City and Swink, 654 acre-feet for M&I use and approximately 800 acre-feet for agricultural use through the emergency Project Water account in Pueblo Reservoir. This will fall under an emergency second allocation and will be charged the associated Project Water costs and will be paid back through the normal allocation process.

The Executive Committee reviewed the allocation of up to 1,454 acre-feet of Project Water from the emergency Project Water account to be paid in full by Sugar City, Swink, and AGRA upon delivery.

The ratified item will be brought to the Board at a later date.

