

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO
WATER CONSERVANCY
DISTRICT
MINUTES**

October 21, 2021

A meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, October 21, 2021, at 9:35 a.m., at the District office, 31717 United Avenue, Pueblo, Colorado. The ZOOM platform was also made available for Board members and visitors. Mr. Long asked Patty Rivas for a roll call.

President Long established that a Quorum was present.

DIRECTORS PRESENT:

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

DIRECTOR(S) ABSENT AND EXCUSED:

Kevin Karney, Seth Clayton, and Carl McClure.

DISTRICT OFFICIALS PRESENT:

Executive Director James Broderick; General Counsel Lee Miller; Senior Policy and Issues Manager Chris Woodka; Principal Engineer Kevin Meador (remote); Water Resource Engineer Garrett Markus; Administrator of Finance and Administration Leann Noga; Administrative Support Specialist Margie Medina; Administrative Support Associate Patty Rivas; and Kogovsek and Associates Christine Arbogast (arrived @ 9:45).

VISITORS PRESENT:

Barbara Crockett (remote) Jacobs Engineering; Bill Tyner Colorado Division of Water Resources; Brandon Bernard (remote) Widefield Water & Sanitation; Brett Graceley (remote @ 10:12) LRE Water; Curtis Thompson AECOM; Dan Phipps (remote) Tetra Tech; Jeffery Deherrera Pueblo West Metro; Jenny Bishop (remote) Colorado Springs Utilities; Jerry Pena (remote) Kennedy Jenks; Mark Scott Providence Infrastructure Consulting; Mike Holmberg (remote) USBR; Rick Kienitz (remote) Aurora Water; and Travis White JHL Constructors, Inc.

INTRODUCTION OF VISITORS:

President Long welcomed the visitors to the meeting.

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APPROVAL OF MINUTES:

President Long said the minutes of the September 16, 2021, Board meeting were posted to the Board website for review and asked if there were any corrections or additions. Hearing none, Mr. Garcia moved, seconded by Mr. Pipher to approve the minutes. Motion unanimously carried.

TREASURER REPORT:

Treasurer Nichols reported the financial statements for September 2021, were posted to the Board website for review. Ms. Nichols moved, seconded by Mr. Edelman for acceptance of the September 2021 financial statements and payment of the October 2021 bills. Motion unanimously carried.

PRESENTATION ITEMS:

None

ACTION ITEMS:

STATEMENT OF OPPOSITION IN TRIVIEW METROPOLITAN DISTRICT, CASE CO. 21CW3044
Mr. Lee Miller presented an action item recommending that the District Board authorize Special Water Counsel to file a Statement of Opposition to the Application of Triview Metropolitan District in Case No. 21CW3044, Water Division 2.

The Triview Metropolitan District (Triview) filed an application in Water Division 2 (Case No. 21CW3044) to change the type and place of use of the entire 18.05 cfs Arkansas Valley Irrigation Canal ("AVIC") right on Cottonwood Creek near Buena Vista. The application seeks to change the decreed use from irrigation to municipal purposes for use in Triview's service area near Monument Creek, north of Colorado Springs. The application also seeks to store the water in Big Johnson, Stonewall Springs, and Pueblo Reservoirs. Triview has a pending request with the Bureau of Reclamation for a long-term excess capacity contract to store 999 acre-feet in Pueblo Reservoir. The application proposes to replace historical return flows to calling rights on Cottonwood Creek and the Arkansas River with fully consumable water from the AVIC or from Triview's Denver Basin groundwater sources, in addition to water decreed for replacement use from Triview's share ownership in the Fountain Mutual and Excelsior Ditches, and its unchanged rights in the Bale 1 and 2 Ditches on the South Arkansas River.

Triview's application involves storing water in Pueblo Reservoir to ultimately transport it to Triview's service area using the Southern Delivery System or by exchange. The application may impact the District's rights in Pueblo Reservoir, absent appropriate terms and conditions in the decree and an excess capacity contract for use of Project facilities to store water for use outside the District's boundaries. Staff and counsel recommend filing a statement of opposition to seek standard terms regarding Triview's use of Pueblo Reservoir, to ensure no injury to the District's rights in Pueblo Reservoir. The application is similar in some respects to the Upper Arkansas WCD's pending Case No. 19CW3089. As in that case, the District will also want to assure that the quantification of the changed water right, and terms and conditions for return flow replacement, protect the District's exchange right on Cottonwood Creek (96CW17) and VFMP flows at the Wellsville Gage.

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Mr. Hamel moved, seconded by Mr. Edelman, that the District Board authorize Special Water Counsel to file a Statement of Opposition to the Application of Triview Metropolitan District in Case No. 21CW3044, Water Division 2. Motion unanimously carried.

APPROVAL OF STIPULATION IN THE APPLICATION OF CITY OF FOUNTAIN, CASE NO. 19CW3081 AND 19CW3082 (WATER DIVISION 2)

Mr. Lee Miller presented an action item recommending that the Board authorize Special Water Counsel to execute stipulations with the City of Fountain (“Fountain”) in Case Nos. 19CW3081 and 19CW3082, consenting to entry of a decree in each case that is no less restrictive on Fountain and no less protective of the District than the proposed decrees dated October 6, 2021.

In both Case Nos. 19CW3081 and 19CW3082, Fountain seeks approval of changes of water rights, plans for augmentation, and exchanges of water, including exchanges from the confluence of Fountain Creek and the Arkansas River up to Pueblo Reservoir. In Case No. 19CW3081, Fountain seeks to change the type, manner, and place of use of 2.125 cfs of its Laughlin Ditch Enlargement water right, and in Case No. 19CW3082, Fountain seeks to change the use of 92 Fountain Mutual Irrigation Company (“FMIC”) shares. Fountain intends to use the consumptive use water and reusable return flows of the water rights changed in both cases for municipal use and other purposes, including in Fountain’s proposed augmentation plans and exchanges. Case No. 19CW3082 was rereferred to Water Judge Schwartz on August 31, 2021, and is set for a five day trial beginning on November 7, 2022. Case No. 19CW3081 remains on the Water Referee’s docket until December 1, 2021.

The District’s objectives in Case Nos. 19CW3081 and 19CW3082 are to ensure that (1) the proposed decrees include appropriate terms and conditions for Fountain’s use of Project facilities, including Pueblo Reservoir; (2) Fountain’s requested exchanges to Pueblo Reservoir do not interfere with the Winter Water Storage Program (“WWSP”); (3) Fountain’s requested exchanges to Pueblo Reservoir are subject to May 27, 2004 IGA among Fountain, the District, and others; (4) the proposed decree includes appropriate language to protect releases of stored Project water from Pueblo Reservoir for decreed purposes (including hydropower) from impairment by exchange; and (5) the proposed decree includes terms and conditions consistent with the District’s stipulations (including stipulations in lieu of opposition) in previous Fountain cases, including 15CW3068, 01CW108, and 01CW146.

Special Water Counsel, General Counsel, and District Staff believe that the October 6, 2021 proposed decrees satisfy the District’s objectives, as follows:

Fountain’s proposed decrees include the District’s requested Standard Language terms concerning the use of Pueblo Reservoir (Case No. 19CW3081, ¶¶ 14.2.5.2 and 14.3.2.1, Case No. 19CW3082, ¶¶ 15.2.5.2 and 15.3.2.1). Fountain’s proposed decrees also include appropriate Standard Language to protect the WWSP in Paragraph 14.3.2.5 (Case No. 19CW3081) and Paragraph 15.3.2.5 (Case No. 19CW3082). Fountain’s proposed decrees include the District’s requested Standard Language terms concerning the May 27, 2004 IGA and the protection of the Arkansas River Flow Management Program (Case No. 19CW3081, ¶¶ 14.3.2.2, 14.3.2.3, and 14.3.2.6; Case No. 19CW3082, ¶¶ 15.3.2.2, 15.3.2.3, and 15.3.2.6). With the terms outlined above, the proposed decrees are consistent with the District’s previous stipulations with Fountain in Case Nos. 01CW108, 01CW146, and 15CW3068. After several discussions, Fountain has also included appropriate language in its proposed decrees to protect the

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District's releases of stored Project water from Pueblo Reservoir for hydropower purposes (Case No. 19CW3081, ¶ 14.3.2.8; Case No. 19CW3082, 15.3.2.1.7). This language acknowledges Fountain's agreement with the District that when the District is releasing Project water from Pueblo Reservoir for hydropower generation at flow rates from 35 to 900 cfs, Fountain will not exchange water into Pueblo Reservoir to the extent such exchanges would interfere with the District's ability to generate hydropower.

A copy of the Proposed Decree's case No. 19CW3081 & 19CW3082, were provided to the Board.

President Long stated for the record that Board member Curtis Mitchell will abstain from the vote.

Mr. Edelmann moved, seconded by Mr. Hamel to authorize Special Water Counsel to enter into stipulations with the City of Fountain in Case Nos. 19CW3081 and 19CW3082, consenting to entry of a decree in each case that is no less restrictive on Fountain and no less protective of the District than the proposed decrees dated October 6, 2021. Motion carried.

MONTHLY/QUARTERLY REPORTS:

U.S BUREAU OF RECLAMATION REPORT

Mr. Mike Holmberg provided a written report reviewing the following, as of October 12, 2021:

- There were 179,973 acre-feet stored in Pueblo Reservoir; 126,249 acre-feet of Project water; 46,189 acre-feet of Excess Capacity water; 5,306 acre-feet of Winter water.
- There is currently 119,124 acre-feet of Project space in Pueblo Reservoir and 34,732 acre-feet of space in Turquoise and Twin Lakes Reservoirs.
Charts illustrating storage amounts in Turquoise, Twin Lakes, and Pueblo Reservoir
- Project Reservoirs: Turquoise 75%, Twin Lakes 98%, Pueblo 113% as of October 12, 2021
- Busted Stored Cumulative Imports
- Total M&I PW in the system:
 - a) East 22,435
 - b) West 9,609
 - c) Pueblo 17,323
 - d) Other 4,096
 - e) FVA 72,430
 - CSU 52,283
 - Fountain 6,607
 - Security 4,968
 - Stratmoor 2,127
 - Widefield 5,445
- Winter Operations:
 - a) Anticipate moving around 25 KAF down from the upper reservoirs beginning October. Net 22.5 KAF in Pueblo
 - b) Winter water ends March 15
 - c) Use of Joint Pool ends April 15
 - d) After April 15, all winter water will be stored up 70 KAF plus what room is

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- available after project and Spill 4 water is accounted for
- e) Winter and Prj Ag water out by May 1
 - f) Movement of water will be adjusted according to the forecast and customers needs

DIVISION ENGINEER REPORT

Mr. Bill Tyner presented a report titled, *Determining River Transit Loss*, topics of discussion:

- History of Transit Loss Studies
- Current Methods Used in Various Basin Locations
- Prospects for the future

KEY COURT CASE IN 1945 (SUNNYSIDE PARK DITCH COMPANY VS M.C. HINDERLIDER, STATE ENGINEER)

Judgment and Decree (CA-3345) Stated Two Key Duties of the State Engineer and his subordinate officers:

- State Engineer has the duty to accurately determine all losses accruing to the stream from the storage of water in Twin Lakes, Sugar Loaf (Turquoise) and Clear Creek Reservoirs;
- State Engineer has the duty to deduct losses from the release of such waters
- Hinderlinder Prepared a Report to the Court Establishing the 0.07 percent per mile for transit loss downstream

1974 TRANSIT LOSS STUDY “U.S. GEOLOGICAL SURVEY REPORTS ON TIME OF TRAVEL AND TRANSPORTATION LOSS, UPPER ARKANSAS RIVER BASIN, COLORADO”:

- Colorado Water Resources Circular No. 20
- Study conducted by Russell K. Livingston in cooperation with the Colorado Division of Water Resources, Office of the State Engineer, and the Southeastern Colorado Water Conservancy District

1975 STUDY “RESERVOIR ROUTING MODEL FOR THE UPPER ARKANSAS RIVER BASIN OF COLORADO”:

- Colorado Water Resources Circular No. 27
- Study conducted by Russell K. Livingston in cooperation with the Colorado Division of Water Resources, Office of the State Engineer and the Southeastern Colorado Water Conservancy District

UPPER ARKANSAS BASIN TO PUEBLO RESERVOIR:

- Still User “Sunnyside” Transit Loss Values Based on 0.07 percent per river mile
- Turquoise Reservoir to Pueblo Reservoir 10.97% Transit Loss
- Twin Lakes Reservoir to Pueblo Reservoir 10% Transit Loss
- Clear Creek Reservoir to Pueblo Reservoir 9.57% Transit Loss

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MIDDLE ARKANSAS BASIN PUEBLO RESERVOIR TO JOHN MARTIN RESERVOIR:

- Russ Livingston produced another key report entitled “Transit Losses and Traveltimes of Reservoir Releases Along the Arkansas River from Pueblo Reservoir to John Martin Reservoir, Southeastern Colorado”
- Report prepared as Water Resources Investigation 78-75 in 1978
- In cooperation with SECWCD and DWR
- Study showed that for the more expansive alluvial aquifer downstream of Pueblo Reservoir,
transit losses should vary depending on physical factors:
 - Size of flow in river (high or low)
 - Size of release
 - Duration of release
 - Time of Year

UPDATED LIVINGSTON STUDY 2011:

- In cooperation with SECWCD and DWR as well as multiple other contributors including the CWCB, Pueblo Board of Water Works, LAVWCD and numerous ditch companies
- Provided the current high performance spreadsheet model used today to determine transit losses on a run by run basis

Mr. Tyner concluded his presentation with items that he will be covering in the future: Future presentations will discuss in more detail the “science” of transit loss calculations Also, will present about the Fountain Creek Transit Loss Model and the Livingston Model below John Martin Reservoir

STATE LEGISLATION UPDATE

Mr. Lee Miller provided an update to the Board by reporting, Draft bills requested by 2021 Water Resources Review Committee (WRRC) members have been posted and will be considered during the meeting scheduled for October 27, 2021, at the State Capitol.

Bill 1	Groundwater Compact Compliance and Sustainability
Bill 2	Investment Water Speculation Prohibition
Bill 3	Time Period to Object to Groundwater Management Notices
Bill 4	Water Efficiency Savings
Bill 5	Expand Water Resources Review Committee to Include Agriculture
Bill 6	Procedure for Water Rights that Concern Headwaters
Bill 7	Agriculture Water Rights Deed Affidavit No Investment Speculation

Each bill recommended by the WRRC must be approved by a two-thirds vote of the committee members, or at least seven members. The WRRC is limited to recommending three bills to the Legislative Council, unless two-thirds of the WRRC members vote to recommend a greater number. Such greater number may not exceed one bill or other measure per member, or up to ten bills and resolutions. In odd-numbered years, like this year, the Legislative Council must review interim

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committee recommendations by November 15. Bills approved by the Legislative Council do not count against a member's five-bill limit for the regular legislative session. Bills not approved by Legislative Council may be introduced in the regular session, but such bills will count against a member's five-bill limit.

COLORADO RIVER ISSUES STATUS

Mr. Lee Miller reported the quarterly Colorado River and Water Supply Committee meeting has been moved from October to November so that we can better preview the activities of the Upper Colorado River Committee's regular meeting and events at the Colorado River Water Users Association annual meeting in December 2021.

In September 2021, the Colorado Water Conservation Board adopted a decision-making roadmap for moving forward with the feasibility investigation, a copy of which is attached. The roadmap identifies specific elements of the major outstanding questions of whether such a program would be achievable, worthwhile, and advisable from the perspective of Colorado.

Mr. Miller provided to the Board a copy of the CWCB's Demand Management Decision-Making Roadmap – October 2021.

Mr. Miller also reported that the U.S. Fish and Wildlife Service announced that it has reclassified the humpback chub from endangered to threatened under the Endangered Species Act (ESA). Monday's announcement follows the publication of the proposed rule in January 2020 and subsequent public comment period.

INFORMATIONAL ITEMS:

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

- Water Court Resume
- Phase 2 SECWCD Feature Condition Assessment Update
- Recovery of Storage Update
- 2022 Proposed Budget
- NWRA Annual Conference November 8-10
- December Board Meeting December 9
- Colorado River Water Users Association December 14-16

President Long asked if there were any other matters to come before the District Board. Mr. Broderick mentioned that Paul Fanning from Board of Water Works has been the recipient of the AWWA award.

Governor Polis announced he has appointed Dan Gibbs as Director of Contract Negotiations for Colorado Department of Natural Resources.

