

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO
WATER CONSERVANCY
DISTRICT MINUTES
March 21, 2024**

A meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, March 21, 2024, at 9:32 a.m., at the District office, 31717 United Avenue, Pueblo, Colorado. The ZOOM platform was also made available for Board members and visitors.

President Long asked Margie Medina for a roll call of those connected via ZOOM.

DIRECTORS PRESENT:

Alan Hamel	Dallas May (9:38)	Matt Heimerich
Andy Colosimo	Greg Felt	Pat Edelmann
Ann Nichols	Howard "Bub" Miller	Patrick Garcia
Bill Long	Kevin Karney	Seth Clayton
Curtis Mitchell	Mark Pifher	Tom Goodwin

DIRECTOR(S) ABSENT AND EXCUSED:

None

President Long established that a Quorum was present.

INTRODUCTION OF VISITORS:

President Long asked all present to introduce themselves and welcomed the visitors to the meeting.

DISTRICT STAFF:

Executive Director Leann Noga; General Counsel Lee Miller; Staff Attorney Peter Levish; Senior Policy and Issues Manager Chris Woodka; Water Resources Principal Engineer Garrett Markus; Principal Engineer's Kevin Meador and Mark Scott; Principal Engineer/Operations Coordinator Gordon Dillon; Administrative Support Specialist's Margie Medina and Patty Rivas (remote); Former Executive Director Jim Broderick.

DISTRICT OFFICIALS:

H2O Consultant, Roy Vaughan (remote); Kogovsek & Associates, Christine Arbogast; McDonald Water Policy, Bill McDonald (remote); and Burns Figa and Will, Stephen Leonhardt (remote).

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VISITORS PRESENT:

JHL Construction, Travis White; Kennedy Jenks, Jerry Pena; Aurora Water, Rick Kienitz and Abba Ahmed; Colorado Springs Utilities, Scott Lorenz and Lisa Windom; USGS, Andy Klakulak; and Bureau of Reclamation, Mike Holmberg.

VISITORS CONNECTED VIA ZOOM:

Assistant Attorney General Interstate Water Unit, Luke Mecklenburg; Wilson Water Group, Lisa Brown; and Kansas Department of Agriculture, Rachel Duran.

APPROVAL OF MINUTES:

President Long said the minutes from the January 18, 2024, District Board Meeting and February 21, 2024, and March 8, 2024, Special District Board Meetings were posted to OnBoard and the Website for review and asked if there were any corrections or additions. Hearing none, Mr. Garcia moved, seconded by Mr. Felt, to approve all the minutes. Motion unanimously carried.

TREASURER REPORT:

Ms. Nichols reported the financial statements for January and February 2024, were posted to OnBoard and the Website for review. Ms. Nichols moved, seconded by Mr. Clayton, for acceptance of the January and February 2024 financial statements and payment of the March 2024 bills. Motion unanimously carried.

MONTHLY/QUARTERLY REPORTS:

U.S. BUREAU OF RECLAMATION

Mr. Mike Holmberg provided a written report reviewing the following, March 17, 2024:

- 256,005 acre-feet stored in Pueblo Reservoir
- 133,149 acre-feet of Project Water
- 50,127 acre-feet of Excess Capacity Water
- 50,500 acre-feet of Winter Water
- 112,224 acre-feet of Project Water Space Available in the System
- 47,957 acre-feet of Project Space in Twin & Turquoise Lake
- Project Reservoirs (Percent of Average):
 1. Ruedi 110%
 2. Turquoise 121%
 3. Twin Lakes 100%
 4. Pueblo 115%
 5. SYSTEM 112% not including Ruedi
- Project Reservoirs as of March 17, 2023
 1. Ruedi 96%
 2. Turquoise 100%
 3. Twin Lakes 100%
 4. Pueblo 99%
 5. SYSTEM 99% not including Ruedi

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- Snowpack
- Import Forecast:
 1. February 1 – 52,400 AF
 2. March 1 – 58,000 AF
- Potential for an account spill/account release
 1. 256,005 in Pueblo Reservoir
 2. New winter water 0
 3. M&I Inflow 3,295
 4. Total Releases 5,998 (no release in anticipation of a spill included)
 5. Evaporation 3,244
- **April 15 250,482 – 245,373 = 5,109 AF**
- WWCO and Project AG Release expected: 10,248 AF, as of March 17, 2024:
 1. Spill Priority 1 storage: 3,254 AF
 2. Spill Priority 2 Storage: 13,614 AF

Questions were asked of Mr. Holmberg.

President Long convened the Enterprise meeting @ 9:49 to be held in conjunction with the District meeting for the purpose of Executive Sessions.

EXECUTIVE SESSION:

Mr. Lee Miller introduced the Executive Sessions as a request made for the Southeastern Colorado Water Conservancy District to enter Executive Session for the purpose of discussion with legal counsel on the on the following matters:

Applicability of 2003 IGA between Southeastern and Aurora to proposed Catlin purchase.

The request is made 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 and 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.

Mr. Hamel moved, seconded by Mr. Clayton, to enter into Executive Session. Motion carried unanimously.

President Long convened the Enterprise meeting @ 9:49 to be held in conjunction with the District meeting for the purpose of Executive Sessions.

EXECUTIVE SESSION CONCLUSION:

Mr. Lee Miller summarized the executive session:

Aurora Water Purchase, District Staff has been tasked with:

1. Set a Special Board Meeting for April 9, 2024 @ 1:00 p.m., with a request that the City of Auora make a presentation on the Auroa water purchase.
2. Before that time, staff and legal counsel were directed to meet with other entities in the

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- Arkansas Basin to discuss the Aurora Water purchase.
3. Prepare a resolution addressing the 2003. Aurora / SECWCD IGA.

President Long recessed the Enterprise meeting @ 12:28 p.m.

PRESENTATIONS:

Mr. Woodka presented to the Board the 2024 Budget, Business Plan, and Strategic Plan publications. Copies of each publication were provided to the Board.

ACTION ITEMS:

**EXTENSION OF RECOVERY OF STORAGE PHASE III CONTRACT COMPLETION
AGREEMENT**

Mr. Woodka presented an action item recommending ratification of a letter extending the time period for the Phase III Fryingpan-Arkansas Recovery Study Continuing Work with Mott MacDonald to April 12, 2024, at a cost not to exceed \$25,940.

The District has budgeted \$494,936 for 2024 for the Recovery of Storage Study (\$250,000 for upstream diversion projects, and \$244,936 for Pueblo Reservoir sedimentation). The funding for Phase III is part of a Bureau of Reclamation (Reclamation) appropriation of \$1 million under the Bipartisan Infrastructure Law. The \$25,940 will be credited against the 2024 budget and exceeds the Executive Director's discretionary limit.

As part of Phase III, Reclamation performed sonar (bathymetric) and lidar surveys of Pueblo Reservoir and took core samples in 2023, at an estimated cost of \$343,685.

Mott MacDonald will make the final report on Phase III of the Sedimentation Study at the April Resource and Engineering Planning Committee (REPC) meeting. The reason for the delay is that there have not been any REPC meetings since November 2023. In order for Mott MacDonald to prepare the final report presentation, a contract was needed on March 1, 2024, and was signed by the Executive Director.

The Board of Directors is being asked to ratify this decision.

Mr. Mitchell moved, seconded by Mr. May, that the District Board ratify a letter extending the time period for the Phase III Fryingpan-Arkansas Recovery Study Continuing Work with Mott MacDonald to April 12, 2024, at a cost not to exceed \$25,940. Motion carried unanimously.

Questions were asked of Mr. Woodka.

ELECT AN ASSISTANT SECRETARY-TREASURER

Mr. Lee Miller presented an action item stating that with the appointment of Leann Noga as Executive Director on March 8, 2024, it would be appropriate to elect her as Assistant Secretary-Treasurer. The Assistant Secretary-Treasurer may sign any documents that may require the signature of the Board's Secretary or Treasurer.

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Mr. Hamel moved, seconded by Mr. Clayton, that the Board of Directors elect Leann Noga as Assistant Secretary-Treasurer. Motion carried unanimously.

RATIFY AD HOC COMMITTEE AUTHORIZATION OF STATEMENT OF OPPOSITION IN THE APPLICATION OF THE CITY OF COLORADO SPRINGS CASE NO. 23CW3052 (WATER DIVISION 2)

Mr. Lee Miller advised the Ad Hoc Committee, General and Special Water Counsel, and District Staff recommend that the Board of Directors ratify the Ad Hoc Committee's authorization of Special Water Counsel to file a Statement of Opposition to the Application of the City of Colorado Springs (CS-U) in Case No. 23CW3052.

CS-U entered into an IGA with Bent County in 2022, authorizing CS-U to develop up to 15,000 acre-feet of fully consumable annual water supplies through "Authorized Water Development Projects." CS-U acquired 3,292 shares of stock in the Fort Lyon Canal Company (FLCC) as part of one of its Authorized Water Development Projects intended to assist farmers under the FLCC in transitioning from flood irrigation to center pivot irrigation. In Case No. 23CW3052, CS-U seeks approval of conditional appropriative rights of substitution and exchange, under which water attributable to CS-U's FLCC shares will ultimately be exchanged and delivered to CS-U's municipal water supply system.

In Case No. 23CW3052, CS-U seeks approval of conditional exchange rights, under which water attributable to CS-U's FLCC shares will be delivered to the Arkansas River at or upstream of John Martin Reservoir and an equivalent amount will be diverted and stored upstream in the Colorado Canal System (including in Lake Meredith, Lake Henry, or a new reservoir to be constructed on Haynes Creek) or in Pueblo Reservoir, or will be diverted directly at the intake of the Fountain Valley Conduit and/or the Southern Delivery System. The water will then be delivered to CS-U's municipal system where it will be stored, used, reused, successively used and/or used to extinction, directly, after storage, and/or by exchange. The water from CS-U's FLCC shares will also be considered "Temporary Use Agreement Water" or "TU Water" and may be exchanged or used under any existing or future decree that provides for the exchange of TU Water, subject to the terms of CS-U's previous decrees. This exchange case is similar in many respects to CS-U's pending Case No. 21CW3015, for exchange of the water from CS-U's LAWMA shares, including water attributable to LAWMA's FLCC shares. CS-U has not yet filed an application for change of its FLCC shares for CS-U's uses; it plans to do so after obtaining appropriate approvals from the FLCC Board and Bent County.

Staff and counsel recommend filing a statement of opposition in Case No. 23CW3052 to ensure that (1) the proposed decree contains appropriate terms for the use of Project facilities, including Pueblo Reservoir and the FVC; (2) the proposed decree includes appropriate terms to prevent CS-U's proposed exchanges from injuring or interfering with the Winter Water Storage Program; (3) the proposed decree is consistent with CS-U's obligations under the May 27, 2004 IGA among CS-U, the District, and others, and includes appropriate terms to protect the Pueblo Flow Management Program; (4) the proposed decree includes terms and conditions to protect releases of stored Fryngpan-Arkansas Project water from Pueblo

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Reservoir for decreed purposes (including hydropower) from impairment by exchange; (5) CS-U's exchanges of water into its municipal system under the Colorado Canal/Lake Meredith exchange decree (Consolidated Case Nos. 84CW62, 84CW63, and 84CW64) are subject to all terms and conditions of that decree and of all related stipulations and agreements between CS-U and the District (including the WWSP stipulation with CS-U and the 2004 IGA); (6) any exchange of CS-U's FLCC shares as Tributary Units (TU)Water occurs in a manner consistent with CS-U's prior decrees; and (7) an appropriate agreement is reached with the ROY Parties for CS-U's use of storage space in the future Haynes Creek Reservoir, and that the proposed decree include appropriate terms and conditions to require that CS-U secure the ROY Parties' approval before exchanging water to this future reservoir under this decree.

Following the Ad Hoc Committee's authorization, Special Water Counsel filed a statement of opposition to CS-U's application in Case No. 23CW3052 on February 13, 2024.

Mr. May moved, seconded by Mr. Goodwin, to ratify the Ad Hoc Committee's authorization for Special Water Counsel to file a Statement of Opposition to the Application of the City of Colorado Springs in Case No. 23CW3052. Mr. Colosimo and Mr. Long recused themselves from the vote. Motion carried unanimously.

RATIFY AD HOC COMMITTEE AUTHORIZATION OF STIPULATION IN THE APPLICATION OF TRIVIEW METROPOLITAN DISTRICT, CASE NO. 21CW3044, WATER DIVISION 2
Mr. Lee Miller advised the Ad Hoc Committee, General and Special Water Counsel, and District Staff recommend that the Board of Directors ratify the Ad Hoc Committee's authorization of Special Water Counsel to execute a stipulation with Triview Metropolitan District ("Triview") in Case No. 21CW3044, Water Division 2, consenting to entry of a decree that is no less restrictive on Triview and no less protective of the District's water rights than the proposed decree dated February 2, 2024.

On October 21, 2021, the Board authorized Special Water Counsel to file a statement of opposition to Triview Metropolitan District's application to change the water right decreed to the Arkansas Valley Irrigation Canal. In February 2024, the Ad Hoc Committee authorized Special Water Counsel to execute a stipulation with Triview in Case No. 21CW3044. The District's objectives in Case No. 21CW3044 include: (1) ensuring appropriate terms and conditions for the use of Project facilities, by including appropriate Standard Language terms in the proposed decree; (2) ensuring that all historic return flows are replaced in a manner that avoids injury to Southeastern's rights and operations, including the District's exchange right on Cottonwood Creek (96CW17) and the VFMP flows at the Wellsville Gage; (3) ensuring appropriate quantification of the water rights to avoid injury; and (4) ensuring the Water Court retains jurisdiction for an appropriate timeframe to evaluate injury that may result from Triview's proposed change.

Following the Ad Hoc Committee's authorization, Special Water Counsel executed a stipulation with Triview, consenting to the entry of a decree in Case No. 21CW3044 that is no less restrictive on Triview and no less protective of the District's water rights than the proposed

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decree dated February 2, 2024. The Water Court entered an order approving that stipulation on February 14, 2024.

Mr. Pifher moved, seconded by Mr. Hamel, to ratify the Ad Hoc Committee's authorization for Special Water Counsel to enter a stipulation with Triview consenting to entry of a decree in Case No. 21CW3044 that is no less restrictive on Triview and no less protective of the District's water rights than the proposed decree dated February 2, 2024. Motion carried unanimously.

RATIFY AD HOC COMMITTEE AUTHORIZATION OF GRAPE CREEK EXCHANGE DILIGENCE APPLICATION

Mr. Lee Miller advising the Ad Hoc Committee, General and Special Water Counsel, and District Staff recommend that the Board of Directors adopt a resolution ratifying the Ad Hoc Committee's authorization for Special Water Counsel to file an application for a finding of reasonable diligence to maintain the District's conditional exchange rights decreed in Case No. 99CW160 and to make a portion of those rights absolute.

The Board was provided with the proposed resolution confirming the Board's intent for Special Water Counsel to file an application for diligence and to make part of the conditional exchange right absolute. It explains the need to seek a finding of reasonable diligence to maintain the District's conditional exchange rights decreed in Case No. 99CW160 and the basis to apply to make part of those conditional rights absolute. The resolution would ratify the Committee's direction for Special Water Counsel to file an application for diligence and partially absolute rights. By adopting the proposed resolution, the Board will show the District's intent to seek a finding of reasonable diligence, to make part of the conditionally-decreed exchange rights absolute, and to continue development and use of the remaining conditional rights. Following the Ad Hoc Committee's authorization, Special Water Counsel filed an application for reasonable diligence, including a claim to make part of the District's conditional Grape Creek Exchange rights absolute, on February 27, 2024.

Mr. Karney moved, seconded by Mr. Hamel, that the Board adopt the attached resolution, ratifying the Ad Hoc Committee's authorization for Special Water Counsel to file an application for diligence with the Water Court, including a claim to make part of the District's conditional Grape Creek Exchange rights absolute. Motion carried unanimously.

APPROVAL OF STIPULATION IN THE APPLICATION OF PENROSE WATER DISTRICT CASE NO. 23CW3033, WATER DIVISION 2

Mr. Peter Levish presented an action item advising General and Special Water Counsel and District staff recommend that the Board authorize special Water Counsel to execute a stipulation with Penrose Water District ("Penrose") in Case No. 23CW3033, consenting to entry of a decree that is no less restrictive on Penrose and no less protective of the District's water rights than the proposed decree dated February 16, 2024 ("Proposed Decree").

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Penrose seeks approval of absolute and conditional appropriative rights of exchange involving the release of stored Fryingpan-Arkansas Project (Project) Water from Pueblo Reservoir to facilitate the diversion or storage of an equivalent amount of water at various upstream locations on the Arkansas River and Grape Creek, in Fremont and Custer Counties. Penrose claims a total exchange rate of 2.4 cfs, of which 1.35 cfs is claimed absolute and 1.05 cfs conditional, up to a total of 100 acre-feet per year. Penrose claims to have operated the absolute portion of this exchange with the prior approval of the Division Engineer in 2015 and in subsequent years.

The District's objectives in Case No. 23CW3033 are to: (1) ensure that Penrose's use of Project Water and Project Water return flows is in accordance with the District's Policies by including appropriate Standard Language terms in the proposed decree; (2) ensure that Penrose's proposed decree includes appropriate terms and conditions for any use of Project facilities; and (3) ensure that the proposed decree includes terms and conditions appropriate to protect the Winter Water Storage Program (WWSP) and Voluntary Flow Management Program (VFMP). Special Water Counsel, General Counsel, and District staff believe that the February 16, 2024 proposed decree satisfies the District's objectives.

Mr. Goodwin moved, seconded by Mr. Pifher, to authorize Special Water Counsel to enter a stipulation with Penrose Water District, consenting to entry of a decree in Case No. 23CW3033 that is no less restrictive on Penrose and no less protective of the District's water rights than the proposed decree dated February 16, 2024. Motion carried unanimously.

MONTHLY/QUARTERLY REPORTS:

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

- State Legislative Update
- Colorado River Issues
- Water Court Resume
- NWRA April 9-11, Washington DC
- Club20 Spring Conference

With no other matters to come before the District Board, President Long adjourned the District Meeting at 1:13 p.m.

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Respectfully submitted,

Patty Rivas
Administrative Support Specialist

Seth Clayton – Secretary

Bill Long – President

Howard “Bub” Miller

Curtis Mitchell – Vice President

Kevin Karney

Ann Nichols – Treasurer

Mark Pifher

Alan Hamel

Matt Heimerich

Andy Colosimo

Pat Edelmann

Dallas May

Patrick Garcia

Greg Felt

Tom Goodwin