

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
ACTIVITY ENTERPRISE
MINUTES
February 17, 2022**

A meeting of the Board of Directors of the Southeastern Colorado Water Activity Enterprise (Enterprise) was held on Thursday, February 17, 2022, at the District office, 31717 United Avenue, Pueblo, Colorado. President Long called to order the Enterprise meeting at 12:12 p.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	Curtis Mitchell	Kevin Karney
Andy Colosimo	Dallas May	Pat Edelmann
Ann Nichols(remote)	Greg Felt(remote)	Patrick Garcia(remote)
Bill Long	Howard Miller(remote)	Tom Goodwin

DIRECTOR(S) ABSENT AND EXCUSED:

Carl McClure, Mark Pifher, and Seth Clayton

ENTERPRISE OFFICIALS PRESENT:

Executive Director James Broderick; General Counsel Lee Miller and Peter Levish; Senior Policy and Issues Manager Chris Woodka; Water Resource Engineer Garrett Markus; Principal Engineer Kevin Meador (remote); Administrator of Finance and Administration Leann Noga; Accountant Stephanie Shipley (remote); Accounting Specialist Lynette Holt (remote); Administrative Support Specialist's Margie Medina and Patty Rivas; Burns, Figa & Will Special Water Counsel Stephen Leonhardt.

VISITORS CONNECTED REMOTELY:

Barbara Crockett, Jacobs; Brandon Bernard, Security Water District; Cathy Garcia, Congress-woman Lauren Boebert's Office; Curtis Thompson, AECOM; Jim Blasing, Pueblo West Metro District; Kevin Salter, Kansas Department of Agriculture @ 10:40; Kim Swearington, Pueblo West Metro District Board; Roy Heald, Security Water and Sanitation; and Scott Lorenz, Colorado Springs Utilities @ 10:46.

VISITORS PRESENT:

Abby Ortega Colorado Springs Utilities; Bobby Banham Pueblo West Metro; Darin Pytlik and Dillon Cowlin Providence Infrastructure; Jeffery Deherrera Pueblo West Metro; Krystal Brown USGS; Mark Scott private citizen; and Rick Kienitz Aurora Water.

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APPROVAL OF MINUTES:

President Long said the minutes of the January 20, 2022, Enterprise Board meeting was posted to the Board website for review and asked if there were any corrections or additions. Hearing none, Mr. Goodwin moved, seconded by Mr. Colosimo to approve the minutes. Motion unanimously carried.

TREASURER REPORT:

Mr. Karney reported the financial statements for January 2022, were posted to the Board website for review. Mr. Karney moved, seconded by Mr. Hamel, for acceptance of the January 2022 financial statements and payment of the February 2022 bills. Motion unanimously carried.

PRESENTATION ITEMS:

AGRICULTURAL FIRST RIGHT OF REFUSAL PILOT PROJECT SUMMARY

Mr. Garrett Markus reported with a PowerPoint the Fort Lyon Pilot Project began in 2014 to investigate the feasibility of a future District-wide plan to ensure that return flows are allocated equitably and to maximize utilization of all Fry-Ark Project water and Return Flows. The Fort Lyon Canal Company was the first to participate in the agricultural first right of refusal. On the sixth year, the Rocky Ford Highline and Oxford Farmers Ditch offered a solution that would help the District understand what other options are available to the agricultural stakeholders. However, there still was not a clear understanding of what a basin-wide agricultural first right of refusal would look like and if it was possible to implement. In the 2020 February Committee meeting, Wilson Water Group provided a scope of scenarios of possible long-term outcomes of the Agricultural First Right of Refusal (AFRR) Program. The scenarios provided are to aid in policy decisions. The three metrics that each of the scenarios are compared against are:

- 1) Beneficiaries: Who will be able to benefit from the Return Flows in relation to the District's irrigated acreage?
- 2) Equitability: How many Return Flows per acre are allocated by utilizing the AFRR and who loses access to their Return Flows?
- 3) Administration: What accounting and modeling is required for each scenario and understand the feasibility and complexity of administration for each scenario?

By direction from the 2020 March Committee meeting, Lisa Brown from Wilson Water Group embarked on a "usage study" to help the Committee understand the relative use of replacement water for sole-source wells, supplemental wells, and efficiency 'Rule 10' acres on an acre-foot per acre basis.

District staff worked internally to summarize the lessons learned from the operation of the ongoing Fort Lyon Pilot Program and the Wilson Water Groups studies mentioned above, to draft an agricultural first right of refusal program to be vetted through Wilson Water Group and Burns, Figa, & Will to ensure that we are adhering to past decrees, stipulations, and engineering. Through this process, Burns, Figa, & Will revised the Policy Concerning Sale of Return Flows from Fryingpan-Arkansas Project Water to reflect the agricultural first right of refusal and reorganized the policy for clarity.

Stakeholders that receive Fryingpan-Arkansas Project Water and Return Flow allocations were notified of the changes to the Policy Concerning Sale of Return Flows from Fryingpan-Arkansas Project Water by a letter with four stakeholder outreach meetings.

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Area	Date	Location	Time
North	November 29, 2021, Monday	Fountain Municipal Building, 116 S. Main Street, 2 nd Floor Council Chambers, Fountain CO 80817	10-noon
East	December 1, 2021, Wednesday	Otero Junior College, 2001 San Juan Avenue, Banquet Room, La Junta CO 81050	10-noon
West	December 2, 2021, Thursday	Upper Arkansas Water Conservancy District 339 E. Hwy 50, Board Room, Salida CO 81201	10-noon
Pueblo	December 3, 2021, Friday	Southeastern Colorado Water Conservancy District 31717 United Avenue, Pueblo CO 81001	10-noon

There was not any substantive feedback from the stakeholders and a suggested motion is recommended to approve the Policy Concerning Sale of Return Flows from Fryingpan-Arkansas Project Water at the March 17, 2022 Board Meeting.

LEGISLATION UPDATE

Christine Arbogast was unable to present, Chris Woodka gave a brief update under Ms. Arbogast instruction: “A continued Resolution is expected to continue thru March 11, 2022 , as far as funding for the AVC for 2022. At this time, the process will begin, for funding for year 2023.”

PROPOSED AMENDMENTS TO POLICY CONCERNING SALE OF RETURN FLOWS FROM FRYINGPAN-ARKANSAS PROJECT WATER

Mr. Garrett Markus introduced Mr. Stephen Leonhardt that provided a PowerPoint presentation covering the District’s Return Flow Policy, the District sells return flows generated from first-use Fryingpan-Arkansas Project (“Project”) Water to eligible entities within the District’s boundaries. Under current practices, Project Water is allocated to both municipal and agricultural entities (i.e., ditch and canal companies). Each agricultural entity has a right, under certain conditions, to purchase the return flows generated by that entity’s first use of its allocated Project Water. The Return Flow Policy currently includes three rights of first refusal for agricultural entities:

- Agricultural entities have the right to purchase the return flows they generate from their use of Project Water, where physically possible (the “Agricultural Right of First Refusal”).
- Each agricultural entity has the right to purchase Project Return Flows it generated but did not claim at the time of initial allocation, to the extent those return flows remain unclaimed after the initial allocation and the District exchanges such return flows into Pueblo Reservoir pursuant to its Decree in Case No. 01CW151 (the “Agricultural Right to Exchanged Project Return Flows”).
- Winter Water Storage Program participants (“WWSP Participants”) without their own storage facilities may purchase agricultural Project Return Flows that the District exchanges into Pueblo Reservoir to the extent storage of exchanged Project Return Flows prevents those WWSP Participants’ from storing Winter Water in Pueblo Reservoir (the “WWSP Right of First Refusal”).

The District included the Agricultural Right of First Refusal in its original Return Flow Policy adopted in 1994. The Agricultural Right to Exchanged Project Return Flows and the WWSP Right of First Refusal apply only to return flows exchanged into Pueblo Reservoir under Case No. 01CW151, the District’s case adjudicating exchanges of Project Return Flows. These rights were developed and adopted in 2004, through settlement negotiations with AVDA and Catlin Canal Company in that case.

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Pilot Program and Proposed New Basis for Allocation

In 2014, the Fort Lyon Canal Company requested to purchase and use Project Return Flows to replace depletions in Rule 14 plans and to maintain return flows in Rule 10 plans. Following that request, the District implemented a pilot program to evaluate the use of Project Return Flows in those plans and how such use would impact allocations and the agricultural rights of first refusal outlined in the Return Flow Policy. As a result of that pilot program, District staff proposes to modify the basis on which the District allocates return flows to eligible entities. Through the pilot program, District staff determined that the most equitable means of allocating Project Return Flows is to allocate the water to agricultural entities on a “farm unit” basis, rather than on the basis of each entity’s first use of Project Water. District staff defines a “farm unit” as “a field or group of fields under the same ditch that have common wells and a landowner or land user.”

Revisions to Return Flow Policy

Under District staff’s proposed modification to the basis for return flow allocations, agricultural entities will remain entitled to purchase Project Return Flows in the initial allocation, but this right will no longer be tied to the return flows generated by each entity’s first use of its allocated Project Water. Instead, the District’s initial allocation of Project Return Flows to each agricultural entity will be based upon the stated needs and beneficial uses for such water on eligible irrigated acres on individual farm units within that entity. See Paragraph 8, Revised Return Flow Policy. This paragraph clarifies that District staff will continue to determine an applicant’s eligible irrigated acres in consultation with Reclamation, and includes a new provision defining a “farm unit,” as discussed above.

As a result of the District’s settlement stipulations with AVDA and Catlin in Case No. 01CW151, modifications to the Return Flow Policy may not (without their consent) alter AVDA’s and Catlin’s rights to purchase exchanged return flows under the Agricultural Right to Exchanged Project Return Flows and the WWSP Right of First Refusal. Thus, District staff proposes no changes to the existing Agricultural Right to Exchanged Project Return Flows or the WWSP Right of First Refusal. These rights of first refusal in exchanged return flows now appear in Paragraph 9 of the Revised Return Flow Policy.

As a result of the Pilot Program, District staff proposes to add a new provision to the Return Flow Policy, specifying that agricultural Project Return Flows may be used for agricultural irrigation, including the replacement of depletions from wells used for agricultural irrigation (i.e., in Rule 14 plans) and for the replacement of net return flows diminished by surface irrigation improvements (i.e., in Rule 10 plans). See Paragraph 10, Revised Return Flow Policy. Paragraph 11, which addresses the District’s decreed rights to exchange return flows, includes a new sentence to address the Division Engineer’s Office’s administration of replacement plans that involve administrative exchanges below Pueblo Reservoir.

Reorganization of the Policy

Many of the remaining revisions to the Return Flow Policy reorganize the Policy into new sections for municipal and agricultural allocations, and for general terms and conditions that are broadly applicable to the allocation and use of Project Return Flows. The Policy also now includes a separate, introductory section for the terms specific to the application process. The attached redline shows in green the provisions that were moved from one section to another.

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The Board was provided with copies of the PowerPoint, Revised draft – *Policy Concerning Sale of Return Flows from Fryingpan-Arkansas Water* (redline as well as Clean version).

AMERICAN RESCUE PLAN ACT (ARPA) FUNDS

Mr. Lee Miller started out by saying that the Board will be presented with several agreements going forward as funds to move the AVC are processed. Mr. Miller gave the Board an update on the Three-party agreement with Bureau of Reclamation, Pueblo Water (BWWP) and the District.

Mrs. Leann Noga proceeded to present the American Rescue Plan (ARPA) Funds program. The American Rescue Plan Act of 2021 (ARPA), which President Biden signed on March 11, 2021, includes federal funding to support several specific eligibilities including water infrastructure. The federal government allocated these funds to counties, cities, and towns all over America. The ARPA funds have a specific timeline for use, funds must be obligated by December 31, 2024, and expended in full by December 31, 2026. The use of ARPA funds does not require a matching fund source, are not a loan and are treated like federal grant funds.

In June 2021, a team made up of Jim Broderick, Bill Long, Kevin Karney, Chris Woodka, Leann Noga and Jason Meyer from GMS consulting, met with each Pueblo County Commissioner to provide an update of the AVC Project and to request \$1.2 million in ARPA funds for the design and construction of the AVC Project delivery lines within Pueblo County.

The team continued meeting with Crowley, Otero, Bent, and Prowers Counties as well as the 39 AVC participants regarding the same update and in some cases an ARPA funds request for design of spur and delivery only.

In September 2021, the team presented the AVC Project and funds request to the Pueblo County Commissioners during an official work session. The Commissioners unanimously agreed to support the AVC Project and commit the requested ARPA funds of \$1.2 million for both design and construction of the Avondale and Boone delivery lines of the AVC Project.

Over the past nine months the Enterprise has received ARPA funding commitments as listed below:

- Pueblo County Commissioners \$1.2 million (Design and Construction)
- Ordway, Town of \$12,000 (Design only)
- Bent County Commissioners \$178,000 (Design only)
- Las Animas, City of \$193,000 (Design only)
- Prowers County Commissioners \$250,000 (Design only)

Enterprise staff continues to work with Otero and Crowley counties and anticipates an additional ARPA fund commitment in the future.

District staff have worked with Pueblo County to develop a scope of work, spending timeline, and contract for the use of the ARPA funds for the design and construction of the Avondale and Boone water delivery lines.

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Due to the nature of the Federal ARPA funds, the Enterprise will not encounter TABOR issues. The Enterprise will embark on regulations aligned in the agreement such as Davis Bacon provisions and single audit accommodations. The District is aware that detailed tracking of these grant funds is needed, and has planned resources in the 2022 Adopted Budget to accommodate these requirements. ARPA was then presented as an action item to the Board.

ACTION ITEMS:

PUEBLO COUNTY AMERICAN RESCUE PLAN ACT FUNDING SUBRECIPIENT AGREEMENT

Mrs. Noga presented an action item recommending that the Board of Directors approve the Pueblo County American Rescue Plan Act (ARPA) Subrecipient Agreement for the Arkansas Valley Conduit (AVC).

Mr. Hamel moved, seconded by Mr. Goodwin that the Board of Director approve the execution of the American Rescue Plan Act Funding Subrecipient Agreement for Pueblo County for Arkansas Valley Conduit, which will fund the design and construction of the Avondale and Boone delivery lines. Motion unanimously carried.

The Board was provided with ARPA Subrecipient Agreement, Exhibit B scope of Services (AVC Pueblo County Design and Construction Plan).

INFORMATION ITEMS:

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

- AVC Update
- JWBHP Update
- Excess Capacity Master Contract Update

Mr. Long let the Board know that there were several conference items in the back of the District packet, if anyone wants to attend to contact the District Office. Hearing no other matters to be brought before the Enterprise Board, Mr. Long adjourned the meeting at 1:26 p.m.

Respectfully submitted,

Patty Rivas
Administrative Support Associate

Secretary

SECWAE
February 17, 2022
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