

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

March 16, 2017

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, March 16, 2017 at 9:46 a.m. at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

DIRECTORS PRESENT:

Bill Long	Ann Nichols	Gary Bostrom
Vera Ortegon	Kevin Karney	Gibson Hazard
Carl McClure	Tom Goodwin	David Simpson
Howard "Bub" Miller	Jay Moore	Pat Edelmann
Curtis Mitchell	Dallas May	Mark Pifher
Alan Hamel-Advisory Board Member		

DIRECTOR(S) ABSENT AND EXCUSED:

None

DISTRICT OFFICIALS PRESENT:

Executive Director James Broderick; General Counsel Lee Miller; Administrative Manager Toni Gonzales; Principal Engineer Kevin Meador; Water Resources Engineer Garrett Markus; Issues Management Program Coordinator Chris Woodka; Finance Coordinator/IT Leann Noga; and Federal Lobbyists Ray Kogovsek and Christine Arbogast.

VISITORS PRESENT:

Doug Fitzgerald, U.S. Congressman Scott Tipton's office; Terry Dawson and Shane Hayden, U.S. Bureau of Reclamation; Jerry Peña, GEI Consultants; Brett Gracely, Colorado Springs Utilities; Bill Banks, U.S. Geological Survey; and Steve Witte, Colorado Division of Water Resources.

INTRODUCTION OF VISITORS:

President Long welcomed the visitors to the meeting, and asked them to introduce themselves and identify the organization they represented.

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APPROVAL OF MINUTES:

President Long said the minutes of the February 16, 2017 Board meeting were posted to the Board website for review, and if there were any corrections or additions. Hearing none, Mrs. Ortegon moved, seconded by Mr. Bostrom, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Nichols reported the financial statements for February 2017 were not posted for the Board to review, so they will be on the April agenda for acceptance. Treasurer Nichols moved, seconded by Mr. Karney, for payment of the March 2017 bills. Motion unanimously carried.

CONSENT ITEMS:

None

PRESENTATIONS:

Strategic Plan, Business Plan, and Annual Budget

Mr. Broderick gave a review of features of the Fryingpan-Arkansas Project (Project) and time span of completion of each, reviewing the payback for the Project.

Mr. Broderick then presented a PowerPoint reviewing the following:

- Strategic Plan
 - Strategic Initiatives
 - Action Plans
- Business Plan
- Annual Budget
 - Future Strategies
- Communication Plan

ACTION ITEMS:

Annual Aging Factor (AAF) Policy

Chairman of the Human Resources (HR) Committee, Gary Bostrom reported the HR Committee met on February 16, 2017 and were provided an explanation of all the current benefits employees are offered and the District's and employee's contribution for each.

The Committee reviewed the recommendation of Susan Owens of Owens Group, who performs the Salary Survey every three years. It is recommended that to maintain competitive ranges, the District monitor average base salary structure adjustments within Colorado and the water resources industry, and make those adjustments to the ranges annually.

Ms. Nichols recommended that the salary ranges be updated in 2017 and 2018 to show the aging ranges, and have staff create a policy that annually updates the salary ranges to include the aging ranges. The Committee concurred with this recommendation.

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Mr. Bostrom moved, seconded by Dr. Moore, to approve the policy that annually updates the salary ranges to include the aging ranges. Motion unanimously carried.

Executive Director's Evaluation

The Human Resources Committee evaluates the executive director's performance. President Long reviews the evaluations submitted by the Human Resources Committee members, and recommends an amount to be awarded, if any, to the Human Resources Committee for recommendation to the Board. The HR Committee met on February 16, 2017 and discussed Mr. Broderick's annual performance review.

During Executive Session, Mr. Broderick's performance was evaluated by the Committee. It is recommended that based on Mr. Broderick's excellent performance for the following:

- Arkansas Valley Conduit Project
- Hydroelectric Project
- Excess Capacity Contract
- Budget Document/Planning for the Future
- Leadership/Jim Represents the District Exceptionally Well

That a four percent (4%) increase be retroactive to January 2017.

Mr. Bostrom moved, seconded by Mr. Goodwin, to approve a four percent (4%) increase to be retroactive to January 2017 for the executive director. Motion unanimously carried.

Catlin Augmentation Association (Case No. 12CW94) Approval of Stipulation

Lee Miller reported on February 16, 2017, general and special water counsel provided the Board with an Information Report that final negotiations were taking place in Case No. 12CW94. These negotiations have concluded, and general counsel and special water counsel believe that the proposed decree satisfies the District's objectives in this case, as explained below.

Catlin Augmentation Association (CAA) is an organization formed by shareholders in the Catlin Canal Company (Catlin) who seek to augment wells, mostly for irrigation use, on lands historically served by the Catlin Canal. Case No. 12CW94 is CAA's application to change approximately 41 percent the outstanding Catlin shares, including pro-rata rights in Catlin's Winter water, for augmentation uses and storage in Pueblo Reservoir. CAA will divert the changed shares from the Arkansas River at the Catlin Canal headgate, and deliver them through augmentation headgates located on the Catlin Canal. CAA will take the changed Winter water from Pueblo Reservoir at the Catlin headgate at the same time as other deliveries of Winter Water to Catlin, and then deliver it to the augmentation headgates on the Catlin Canal. Augmentation uses would include replacements of out-of-priority depletions in separate, judicially-approved augmentation plans; administratively-approved replacement plans under the Rules and Regulations governing wells in Water Division 2; and administratively-approved substitute water supply plans that replace depletions in the Arkansas River basin between Pueblo Reservoir and John

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Martin Reservoir. No Fryingpan-Arkansas Project water (Project water) or Project Return Flows will be used, and the proposed decree does not adjudicate any exchanges. The case is set for an eight-day trial beginning May 2, 2017. There are over 20 objectors in the case, none of whom have settled to date.

The District's objectives are to: (1) evaluate CAA's proposed decree and engineering for impacts to the District's interests; (2) ensure that the proposed decree contains appropriate terms and conditions for use of Pueblo Reservoir and Winter water; (3) include in the proposed decree any terms or conditions necessary to protect the District's water rights; and (4) ensure that quantification of consumptive use and return flows will not adversely affect the District's interests, including (a) delivery of Project water and Winter water, (b) operation of the District's exchanges; and (c) river call patterns.

District staff, its engineers, and special water counsel evaluated potential impacts to the District's interests and water rights, including the Winter Water Storage Program (WWSP), Pueblo Reservoir, and Project water operations. The District submitted an expert report prepared by its engineers in December 2016 and met with CAA in January 2017. CAA then provided rebuttal engineering and a revised proposed decree. District staff, its engineers, and special water counsel are satisfied with the extent to which CAA's current proposed decree and engineering address the District's concerns and satisfy its objectives. CAA's plan will not adversely affect the WWSP and Pueblo Reservoir because deliveries of Winter water will be made to the Catlin headgate at the same time as deliveries of Catlin's other Winter water, CAA will use the appropriate storage accounts in Pueblo Reservoir, and it will operate consistently with the District's policies and contracts, the WWSP Decree in Case No. 84CW179, and Catlin's rules and regulations. ¶¶ 13.3 – 13.5, 13.14.1 – 13.14.12. CAA will replace its historical irrigation return flows and will notify the District of its planned replacement operations every year, preventing injury to the District's rights. ¶¶ 13.9 – 13.11, 13.29. CAA's changes do not involve Project water, so Project water operations are not impacted. ¶ 9.0. The proposed decree does not adjudicate any exchanges.

The proposed decree ensures that CAA will appropriately use Pueblo Reservoir and Winter water because CAA included the terms and conditions requested by the District. These terms and conditions ensure that CAA operates consistently with the District's contracts and policies and the WWSP Decree in Case No. 84CW179. ¶¶ 13.14.1 – 13.14.12. In particular, delivery and storage of Winter water will be consistent with WWSP operations, the District's repayment contract for Pueblo Reservoir, and Catlin regulations. ¶¶ 13.14.2 – 13.14.6, 13.18.

CAA's quantification of consumptive use and return flows will not adversely affect the District's interests. The District's deliveries of Winter water, exchanges, and river call patterns are protected because deliveries of Winter water will be made to the Catlin headgate from Pueblo Reservoir at the same time as deliveries of Catlin's other Winter Water and CAA will pay canal losses and transit losses. ¶¶ 13.5 – 13.7, 13.14.2 – 13.14.6, 13.24. District staff, its engineers, and special water counsel believe that the volumetric limits on changed uses proposed by CAA's engineers will help ensure compliance with the Arkansas River Compact. ¶ 13.20. Revegetation of lands removed from irrigation will be subject to Otero County's 1041 Regulations. ¶ 13.12.

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Mr. Pifher moved, seconded by Mr. Edlmann, to authorize special water counsel to enter a stipulation with Catlin Augmentation Association consenting to entry of a decree in Case No. 12CW94 that is no less protective of the District's rights and interests than the proposed decree dated February 24, 2017. Motion passed, with Mr. Karney abstaining.

MONTHLY/QUARTERLY REPORTS:**U.S. BUREAU OF RECLAMATION REPORT**

Terry Dawson announced Valda Terauds is retiring, and her last day is March 23. Her duties will be split up to staff in Loveland. Mrs. Dawson introduced Shane Hayden, who is new to Reclamation's Pueblo Office.

Terry Dawson presented a PowerPoint presentation reviewing the following:

- As of March 13, 2017 there were 257,309 acre-feet stored in Pueblo Reservoir; 156,276 acre-feet of Project water; 39,905 acre-feet of Excess Capacity water; 59,539 acre-feet of Winter water.
- There is currently 89,097 acre-feet of Project space in Pueblo Reservoir and 65,399 acre-feet of space in Turquoise and Twin Lakes Reservoirs.
- Project Reservoirs: Turquoise 58%; Twin Lakes 103%; Pueblo 127%
- Total M&I Project Water in the System
- Arkansas River Basin Time Series Snowpack Summary March 15, 2017
- Upper Colorado River Basin Time Series Snowpack Summary March 15, 2017
- Fryingpan Weighted by VIPER Results

The March 14, 2017 forecast of Project water is 84,400 acre-feet.

DIVISION ENGINEER'S REPORT

Steve Witte reported on the following:

- River and Reservoir Report
 - Reference Arkansas River Daily Report. River Call is:
 - 3/1/1887 Fort Lyon
 - 5/31/1949 Compact Call (State line to John Martin)
<http://www.dwr.state.co.us/div2/aras/arascal.asp>
 - Current River/Res. Operations
 - The System Grand Total as of February 28, 2017 for Winter Water Storage was 119,857 acre-feet (af) which is approximately 14 percent below last year (139,454 af)
(1) Final report for the year should be coming out later today, but estimated System Grand Total is 130,900 af
 - John Martin Storage resumed November 1, and will continue to store until at least April 1. Conservation storage as of March 16, 2017 is 23,884 af and an additional 10,602 af of "Other" (Pueblo Winter Water Storage Program) water, 7,455 af in the Permanent Pool. This with carryover water in various accounts creates a total reservoir storage of 129,716 af.

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- Compact Issues
 - ARCA Special Engineering Committee continues to meet
 - Topics
 - (1) Additional source of water for John Martin Permanent Pool
 - (2) Remaining concerns related to the LAWMA decree 02CW181
 - A special meeting of ARCA is expected to be announced to act on this matter.

- Administrative Activities
 - Currently in the process of reviewing Rule 14 Pumping plans for 2017-2018.
 - Recently completed a review of the Ground Water Use Rules and submitted recommendations to the State Engineer.
 - March 1, 2017 Pre-Irrigation Season meeting with Water District 14, 17, and 67 Superintendents – Invite further discussion of Agreement “B”
 - Amity/Fort Lyon Settlement Agreement
 - ARKDSS report will be deferred until next meeting
 - HB16-1228 Agricultural Water Protection Water Right draft Criteria & Guidelines and draft Rules
 - Quantification of HCU and return flow requirements via change case, half may be leased anywhere for any use and half must remain in agriculture irrigation
 - Public hearings
 - (1) Tuesday, April 4, 2017, Otero Jr. College- Student Center, La Junta, CO @ 3pm – 6pm
 - (2) Thursday April 6, 2017, Upper Arkansas Water Conservancy District’s Board room., Salida, CO @ 3pm – 6pm

- Personnel matters
 - State Engineer Announcement closes March 31.
 - James Eklund has reportedly announced to staff his intentions to resign his position with the CWCB in order to accept a position with a law firm.
 - Division 2
 - Dan Tucker
 - Bethany Arnold
 - Water District 10 Deputy water commissioner
 - Water District 12 Deputy water commissioner
 - Water District 17/67 Groundwater commissioner

U.S. GEOLOGICAL SURVEY REPORT

Bill Banks presented a PowerPoint presentation titled, *Arkansas River Basin Evaluation of Selected Water-Quality Issues*, reviewing the following:

- Synthesized Available Data
- Identified and Prioritized Water-Quality Issues
- Where are the Source Areas?
- Which Stream Reaches Have the Greatest Impact on Water Quality?

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- What are the Processes in these Reaches that Affect the Constituents of Interest?
- What are the Effects of Human Activity (Land-Use Changes, Conveyance Methods) on Water Quality?
- The Niobrara Formation as a Challenge to Water Quality on the Arkansas River
- Cretaceous Rocks Exposed Along the Arkansas River
- Why is the Niobrara More Problematic than the Pierre (or other) Shales?
- Arkansas River Monitoring
- Proposed New Work-Pueblo to John Martin Reservoir
- Processes Affecting Water Quality on the Arkansas River
- Niobrara Effects on Surface-Water Chemistry
- Irrigation Season-Surface Water Inflow
- Non-Irrigation Season-Surface Water Inflows
- Tracing Processes with Chemistry
- Evaluate the Fate and Transport of Heavy Metals
- Determine Sources (of Contaminants) Identify Processes, and Evaluate Impact
- Develop Analytical Tools to Address Water-Quality Issues and Fill in Existing Data Gaps

STATE LEGISLATION UPDATE

Lee Miller reported the General Assembly completed more than half of the no more than 120 consecutive calendar days allowed for the 2017 session. The last day upon which the General Assembly may adjourn sine die is May 10, 2017. The District participates in the Colorado Water Congress State Affairs Committee, which generally meets on Monday mornings in Denver before the Legislature begins its work for the week. Summaries of the weekly State Affairs Committee meetings are posted on the Board Legislation page. The CWC State Affairs 2017 Bill Status Sheet is attached to this report.

Just following the Board's February meeting, Representative KC Becker introduced HB17-1190, the long-awaited legislation to address the Colorado Supreme Court's (the Court) decision in *St. Jude's Company v. Roaring Fork Club, LLC*, decided in 2015. In the case of *St. Jude's*, the Court held that direct diversions of water from a river to a private flow-through ditch for proposed uses as aesthetic, recreational, and piscatorial amenities to a private golf course development, private fishing habitat, and private fly-fishing stream do not qualify as beneficial uses of water under Colorado water law. This bill limits the interpretation of "beneficial use" as applied by the Court in the *St. Jude's* case to cases with similar factual situations arising after July 15, 2016. The bill states that the interpretation in the case does not apply to previously decreed absolute and conditional water rights and does not impact the appropriation of instream water by the CWCB nor for RICDs pursuant to statute.

This bill reflects the narrowest approach considered by advocates of addressing the *St. Jude's* case. The State Affairs Committee voted to support this legislation. The House Agriculture Committee passed an amended version of the bill March 13, 2017.

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As mentioned at the last Board meeting, another bill receiving attention is SB17-117, introduced by newly promoted Senator Don Coram, with support from newly appointed Representative Marc Catlin (former CWC President) and recently elected Representative Donald Valdez. SB17-117 recognizes industrial hemp as part of Colorado's agricultural production to which an irrigation water right may be applied. The ability to irrigate all crops is covered in a State Engineer's policy. Concerns have been raised regarding the impact on other crops if this one crop is singled out for specific mention in statute. The bill is intended to create a shield for hemp growers to use federal Reclamation water and facilities as long as they comply with state law; however, this "safety net" does not appropriately address the federal Controlled Substances Act of 1970 issue. Hemp, just like marijuana, is a Schedule I controlled substance under federal law. The State Affairs Committee has voted to oppose this bill, but formed a subcommittee to work with the legislators to attempt to craft a suitable response to the problem identified. Representative Valdez and Bruce Whitehead, executive director of the Southwestern Water Conservation District, serve as co-chairs for the subcommittee that has been meeting on Mondays at 7 a.m., prior to State Affairs Committee meeting. The subcommittee met on March 13, 2017. Lee Miller has been actively participating in this subcommittee. Lee Miller testified in opposition to the bill in the Senate Agriculture Committee on March 15, 2017, where the senators passed an amended version of the bill.

INFORMATIONAL ITEMS:

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

- Water Court Resume
- NWRA Federal Water Issues Conference
- Arkansas River Basin Water Forum

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 11:58 a.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary

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