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**SOUTHEASTERN COLORADO WATER  
CONSERVANCY DISTRICT**

**MINUTES**

**April 18, 2019**

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, April 18, 2019 at 9:36 a.m. at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

**DIRECTORS PRESENT:**

|                              |                                  |               |
|------------------------------|----------------------------------|---------------|
| Bill Long                    | Curtis Mitchel                   | Carl McClure  |
| Tom Goodwin                  | Alan Hamel                       | Seth Clayton  |
| Mark Pifher                  | Kevin Karney                     | Andy Colosimo |
| Patrick Garcia               | Howard "Bub" Miller              |               |
| Dallas May (arrived at 9:40) | Gibson Hazard (arrived at 10:30) |               |

**DIRECTOR(S) ABSENT AND EXCUSED:**

Greg Felt and Ann Nichols

**DISTRICT OFFICIALS PRESENT:**

Executive Director James Broderick; General Counsel Lee Miller; Administrative Manager Toni Gonzales; Principal Engineer Kevin Meador; Water Resources Engineer Garrett Markus; Senior Policy and Issues Manager Chris Woodka; and Finance Manager Leann Noga.

**VISITORS PRESENT:**

Doug Fitzgerald, U.S. Congressman Scott Tipton's office; Roy Vaughan, U.S. Bureau of Reclamation; Judy Leonard and Kim Swearingen, Pueblo West Metropolitan District; Phil Reynolds, Colorado Division of Water Resources; Krystal Brown, U.S. Geological Survey; Jack Goble, Lower Arkansas Valley Water Conservancy District; Bob Hamilton, citizen; Brett Gracely, Matrix Design Group; Jenny Bishop, Colorado Springs Utilities; Terry Scanga, Upper Arkansas Water Conservancy District; Mitch Downs and Hillary Carlson, Osborne, Parsons & Rasacker, LLP; Kevin Niles, Arkansas Groundwater Users Association; Jerry Peña, GEI Consultants; Greg Hazard, citizen; and Kathryn Carrithers, citizen.

**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 March 21, 2019 Board meeting were posted to the Board website for review, and asked if there were any corrections or additions. Hearing none, Mr. Howard “Bub” Miller moved, seconded by Mr. Pifher, to approve the minutes. Motion unanimously carried.

**FINANCE COMMITTEE REPORT:**

Mr. Karney reported the financial statements for March 2019 were posted to the Board website for review. Mr. Karney moved, seconded by Mr. Garcia, for acceptance of the March 2019 financial statements and payment of the April 2019 bills. Motion unanimously carried.

**CONSENT ITEMS:**

None

**PRESENTATIONS:**

**2018 ANNUAL AUDIT**

President Long convened the Enterprise Board meeting to order at 9:37 a.m. to be held in conjunction with the District Board meeting to present the 2018 Annual Audit presentation.

President Long introduced Mitchell Downs and Hillary Carlson, from Osborne, Parsons & Rosacker, LLP, who represent the firm that conducted the 2018 audit. Mr. Downs read the Independent Auditor’s Report.

**ACTION ITEMS:**

**APPROVAL OF 2018 ANNUAL AUDIT**

Leann Noga gave a special thank you to Stephanie Shipley, for the great work she did in the audit process.

Mr. Clayton moved seconded by Mr. Hamel, the audit of the 2018 financial statement of the District and Enterprise be approved as presented. Motion unanimously carried.

**APPROVAL OF 2018 FINANCIAL STATEMENTS**

Mr. Goodwin moved, seconded by Mr. Clayton, the 2018 financial statements of the District and Enterprise be approved as audited. Motion unanimously carried.

President Long thanked Leann Noga and the finance team for a job well done.

**INCLUSION OF LAND ANNEXED BY COLORADO SPRINGS**

Garrett Markus presented a PowerPoint reviewing the following:

- SECWCD-Nine County District Boundaries
- Church for All Nations Annexation No. 1
- Church for All Nations No. 1 El Paso 53.233 Acres

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The inclusion of land annexed by Colorado Springs for Church for all Nations was reactivated, it was never fully withdrawn but on an extended hold.

The Resolution for Inclusion is:

| <b>RESOLUTION NO.</b> | <b>More Commonly Known As</b>           | <b>Legal</b>            | <b>Acres</b> | <b>County</b> |
|-----------------------|---|-------------------------|--------------|---------------|
| 2019-48D INCL-AX      | Church for All Nations Annexation No. 1 | Sec7 Twn13SR65W SW4 SW4 | 53.233       | El Paso       |

The Board was provided the Resolution No. 2019-48D INCL-AX with Application for Assent and map.

Curtis Mitchell reported the Resource and Engineering Planning Committee recommended at their Committee meeting held on April 4, 2019 that this be brought to the Board for approval.

Mr. Goodwin moved, seconded by Mr. Clayton, the Board approve, by Resolution, the inclusion of the Church for All Nations Annexation No. 1 annexed by Colorado Springs subject to the following terms and conditions:

1. Approval of these inclusions into the Southeastern Colorado Water Conservancy District will not increase the amount of Fryingpan-Arkansas Project water available to the city. Any Fryingpan-Arkansas Project water used on these included lands will need to come from the water allocated to the city through Fryingpan-Arkansas Project water allocations made pursuant to the District's Allocation Principles and Policies; and
2. Any use of Fryingpan-Arkansas Project water on the included lands is subject to the decrees for the Fryingpan-Arkansas Project, and to all lawful rules, regulations, principles, policies, and contractual obligations of the District; and
3. The annexed lands will be subject to ad valorem taxes levied by the District as any other similarly situated lands in the District at the time of this inclusion; and
4. Prior to the District filing a petition for District Court approval of this inclusion, the Municipality, and/or owner(s) of the annexed lands shall have paid all the costs charged by the United States in connection with the contracting officer's assent to this inclusion.

Motion unanimously carried.

**APPROVAL OF STIPULATION WITH UNITED STATES IN THE DISTRICT'S DIVISION 5 DILIGENCE CASE (CASE NO. 18CW3063)**

Lee Miller reported on April 19, 2018, through Resolution 2018-02D, the Board authorized legal counsel to file an Application for Diligence with the Water Court by May 31, 2018 to maintain all of the District's remaining conditional water rights decreed in Water Division 5, and to include in the Application a claim to make absolute portions of two conditional rights. This action followed the Board's discussion with legal counsel in a confidential executive session on April 19, 2018. Legal

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counsel provided a confidential executive session update to the Colorado River and Water Supply Committee on this case in January 2019.

The District holds decreed Fryingpan-Arkansas Project (Project) water rights on Colorado's Western Slope. Although most of these water rights have been diverted and placed to beneficial use and have been decreed absolute, some remain conditional (Conditional Rights). Conditional Rights are associated with both existing and unbuilt structures. Most of the Conditional Rights are located on the Fryingpan River and its tributaries, and one is on a tributary to Hunter Creek (all tributary to the Roaring Fork River). The Conditional Rights are part of the Project's West Slope Collection System, which diverts water from these streams through the Boustead Tunnel across the Continental Divide for storage on the East Slope and use within the District. The District last obtained a diligence decree for the Conditional Rights in 2012 in Case No. 09CW40, which required the next diligence application for the Conditional Rights to be filed by May 31, 2018.

Special Water Counsel filed an Application for Diligence with the Water Court on May 24, 2018, consistent with the Board's Resolution No. 2018-02D, to maintain all of the District's remaining Conditional Rights in Division 5, and included in the Application a claim to make absolute an additional one (1) cfs from the No Name Creek diversion and an additional five (5) cfs from the Fryingpan River and Marten Creek diversion (the "Application"). The Project diverted these amounts in 2010 and provided the diversion records with the Application. The Application is assigned Case No. 18CW3063. In filing the application, the Board determined to continue investigating how to increase Project yield through existing facilities, while obtaining a finding of reasonable diligence to hold the conditional water rights for another six years.

The District's objectives in this case are: (1) obtain a decree finding reasonable diligence on all of the District's remaining conditional Division 5 water rights; (2) obtain a decree making absolute the additional amounts claimed from the No Name Creek diversion and from the Fryingpan River and Marten Creek diversion; and (3) negotiate a settlement that does not materially limit the District's conditional rights and diversions authorized by its decrees and the Operating Principles.

Statements of Opposition were due July 31, 2018. Only one party filed a Statement of Opposition: The United States for the USDA Forest Service (USFS). General and Special Water Counsel and Wilson Water Group met with the USFS to discuss the planned application in April 2018. The USFS also opposed the District's last previous diligence application in Case No. 09CW40, along with two other parties (City of Aspen and Trout Unlimited) who did not file Statements of Opposition in the 2018 case. The District and USFS entered into a stipulation in 2011, settling the USFS opposition that raised similar issues in Case No. 09CW40. This 2011 stipulation did not permanently resolve these issues, but consented to a diligence decree and preserved the parties' positions for later cases. The 2011 stipulation required the District to study its Conditional Rights and alternatives for realizing the Project's authorized yield, and to decide by May 2018 whether to request continuation of the Conditional Rights as decreed, changes in any of the conditionally decreed diversion points, or abandonment of any of the decreed conditional rights.

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General and Special Counsel have negotiated terms of a stipulation with the USFS in Case No. 18CW3063, in coordination with the District's staff and engineering consultants. Special Counsel provided the U.S. with a proposed decree, and exchanged proposals for a stipulation similar to the 2011 stipulation between the District and the U.S. As in the previous case, the USFS is concerned only with six of the Conditional Rights that would require structures located wholly or partly inside the Holy Cross Wilderness Area. In its comments in this case, the USFS sought to clarify and limit the circumstances in which the District could file another diligence application to continue the Conditional Rights for structures located within the Holy Cross Wilderness. The District responded to these comments with revisions intended to address the reasons why the District and Reclamation may need further time, past the next 6-year diligence period, to improve the existing diversion facilities and evaluate whether the improvements will allow the Project to realize its authorized yield through existing facilities. The USFS accepts these revisions.

The negotiated stipulation provides for the USFS's consent to a decree finding diligence on all District' conditional rights. The stipulation then outlines the dispute over decreed facilities in the wilderness area, including the assertions made by both the USFS and Southeastern, and states that the underlying dispute regarding use of wilderness lands is not resolved by this stipulation. The stipulation then provides that Southeastern will take legal action on its conditional rights to preserve those rights for development at the feasible locations during the next six-year diligence period.

To provide for the District's further investigation and development of its conditional rights, the District and the USFS negotiated the following stipulation term:

Southeastern stipulates that, prior to the time of its next diligence filing on these conditional water rights (six years after entry of a decree for diligence in this case), it will decide how it will further proceed with development of its conditional water rights. Southeastern agrees that at or before the time of its next diligence application, it will take legal action on its conditional rights to preserve those rights for development at feasible locations, to the extent its investigation determines such development is necessary to achieve the Project's authorized yield. Such legal actions may include (1) applying for changes to some or all of the Conditional Rights to diversion points located outside of the Wilderness Area; (2) abandoning any of the Conditional Rights that are not necessary to achieve the Project's authorized yield, and are not moved to a diversion point outside of the Wilderness area; and (3) applying to continue its conditional water rights through further diligence proceedings, to the extent the preservation of those rights remains necessary to achieve the Project's authorized yield, and considering whether increases to Project yield can be tested for a sufficient time period to assure the Project will achieve its authorized yield, or whether adequate testing is delayed due to continuing drought conditions, delay or inability of the Bureau of Reclamation to timely complete Project improvements within available funds, federal operational constraints, or for other reasons outside Southeastern's reasonable control.

Because the USFS agrees to sign a stipulation that includes this term, General and Special Water Counsel are requesting authorization to agree to a stipulation with this term. The stipulation also

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contains a provision that nothing in the stipulation or ruling will waive or diminish any right of the United States to oppose any further diligence application regarding the District's Division 5 conditional water rights. The District and the USFS negotiated similar language in the Districts last previous diligence case, Case No. 09CW40.

In agreeing to this stipulation, the USFS will stipulate to the revised proposed decree dated March 1, 2019. General and Special Water Counsel and District staff believe that the March 1, 2019 proposed decree satisfies the District's objectives, along with the negotiated stipulation terms.

Mr. Hamel moved, seconded by Mr. Howard "Bub" Miller, to authorize Special Water Counsel to execute the negotiated stipulation with the United States in the District's Diligence Case No. 18CW3063, consenting to entry of a decree that is no less restrictive on the District than the proposed decree dated March 1, 2019. Motion unanimously carried.

**COLORADO SPRINGS URBAN RENEWAL AUTHORITY TAX INCREMENT FINANCING**  
Lee Miller reported on January 17, 2019, the Board approved annexation of lands on the Air Force Academy property into the District, a portion of which is the subject urban renewal area.

The Colorado Springs Urban Renewal Authority (CSURA) is pursuing an urban renewal plan for a parcel of land located west of I-25 on Northgate Boulevard, within the Air Force Academy property. The project is designated as the True North Commons Urban Renewal Area, which consists of about 39 acres of the 183.4 acres that the Board recently approved for annexation into the District. Although the land is owned by the United States Air Force, it will be developed by a private entity, Blue & Silver Development Partners, LLC, pursuant to a long-term lease. The planned development includes a new Air Force visitor center and complementary commercial, hotel, office, retail and restaurant uses.

CSURA seeks to apply the incremental additional tax payments associated with the increased property value resulting from redevelopment as a funding source for bonds and other financing that will support the redevelopment project. Because the property within the urban renewal area, upon completion of annexation, will be subject to the District's property tax, CSURA seeks an agreement confirming the District's consent to allocation of its entire additional tax increment on the property to CSURA in support of the plans.

Pursuant to the Colorado Urban Renewal Act, CSURA may issue bonds to pay for public improvements associated with the redevelopment of blighted property. Payment of the bonds may be funded by the increased property tax payments generated by the added property value resulting from redevelopment of the property. In order to use those increased payments, CSURA must seek agreements with the various taxing authorities authorizing allocation of the increased tax payments to the project. If agreement cannot be reached with any taxing authority, all of the parties have to go to mediation to determine the appropriate allocation of incremental property tax payments.

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The most significant term of the proposed Agreements is the waiver of the right to receive incremental increased property tax payments on the property for twenty-five years, and the pledge of those payments to CSURA for payment of the bonds. Because the property only recently was approved for annexation into Colorado Springs and for inclusion into the Southeastern District, the base tax revenue will be \$0, and Southeastern will receive no tax revenues on the property for twenty-five years. If the bonds are paid off early, the Agreement terminates and the subsequent incremental payments will be paid to the taxing entities. The Board was provided a copy of the Property Tax Increment Revenue Agreement (True North Commons Plan)

Mr. Clayton moved, seconded by Mr. Garcia, to authorize the executive director to execute Property Tax Increment Revenue Agreements with the Colorado Springs Urban Renewal Authority to provide tax increment financing for the True North Commons Urban Renewal Plan. Motion unanimously carried.

**HYDROELECTRIC POWER FACILITY AT PUEBLO DAM**

President Long acknowledged appreciation to key staff members and organizations in the construction project of the hydroelectric power facility at Pueblo Dam.

President Long said this action item is in appreciation of the leadership of James W. Broderick and to name the newly constructed hydroelectric power facility at Pueblo Dam the *James W. Broderick Hydroelectric Power Facility at Pueblo Dam*. Mr. Broderick has provided hard work, dedication, and integrity as the executive director of the District and as a well-respected western water leader. He approaches projects, programs, and complex challenges with strategic planning and forward thinking as explained in Resolution No. 2019-02D. President Long read the resolution.

Mr. Hamel moved, seconded by Mr. May, the Board of Directors approve Resolution No. 2019-02D naming the hydroelectric facility the *James W. Broderick Hydroelectric Power Facility at Pueblo Dam*. Motion unanimously carried.

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

Roy Vaughan presented a PowerPoint presentation reviewing the following:

- As of April 15, 2019 there were 242,584 acre-feet stored in Pueblo Reservoir; 127,221 acre-feet of Project water; 34,313 acre-feet of Excess Capacity water; 45,811 acre-feet of Winter water
- There is currently 118,152 acre-feet of Project space in Pueblo Reservoir and 80,400 acre-feet of space in Turquoise and Twin Lakes Reservoirs
- Project Reservoirs: Turquoise 75%; Twin Lakes 90%; Pueblo 114%
- Total M&I Project water in the System
- Colorado SNOTEL Snow Water Equivalent (SWE) Update Map with Site Data Current as of Apr 12, 2019
- Colorado River Basin Time Series Snowpack Summary-Apr. 17, 2019
- Arkansas River Basin Time Series Snowpack Summary-Apr. 17, 2019
- Forecast: February 1 70,600 af; March 1 67,900 af; April 1 91,500 af

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- One Month Outlook Precipitation Probability
- Three Month Outlook Precipitation Probability
- U.S. Drought Monitor WEST – February 19, 2019 and April 16, 2019
- U.S. Drought Monitor Colorado – February 19, 2019 and April 16, 2019

Mr. Vaughan reported the collection system is open and site setup is proceeding as scheduled. Mt. Elbert Conduit is currently running at 350 cfs. Reclamation is currently releasing 250 cfs. of Project water from Twin Lakes Reservoir, and plans on moving an additional 12,000 acre-feet from the upper reservoirs to Pueblo. Movement of water will be adjusted according to the forecast and customer needs. Mr. Vaughan read portions of two news articles regarding the above average snowpack in the upper basin.

Discussion was had on the issue of being prepared for the abundance of water that may be coming and how notice to the constituents will be handled.

#### DIVISION ENGINEER'S REPORT

Phil Reynolds presented a PowerPoint reviewing the following:

- Past Four Year Comparison of Main Gages Along the Arkansas River
  - Arkansas at Portland Gage
  - Fountain at Pinon Gage
  - Arkansas at Avondale Gage
  - Arkansas at Las Animas Gage
  - Stateline Gage

#### U.S. GEOLOGICAL SURVEY REPORT

Krystal Brown presented a PowerPoint titled, *USGS Update: Evaluation of Selected Water-Quality Issues*, reviewing the following:

- Nitrogen
- Nitrate + Nitrite
- Fountain Creek at Pueblo Nitrate + Nitrite
- Pueblo Reservoir 1990-Current Nitrate + Nitrite
- Seasonal Nitrate Variation

#### STATE LEGISLATION UPDATE

Lee Miller reported there are 15 days left in the legislative session. While there continues to be a limited number of bills that have implications for the District and the water user community, a few of the bills that may have greater implications for the District include:

- **HB19-1218:** This bill would grant additional authority to the Colorado Water Conservation Board (CWCB) to use loaned water for in-stream purposes if the loaned water is to be used for preserving the natural environment of a stream reach that is subject to a decreed in-stream flow water right held by the CWCB. The bill as introduced would allow the CWCB to use the loaned



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water to improve the natural environment to a reasonable degree in accordance with a decreed in-stream flow right; and, most notably, preserve or improve the natural environment to a reasonable degree *for a stream reach for which the CWCB does not hold a decreed in-stream right*. During the Energy and Environment Committee's consideration of the bill (this bill surprisingly did not go to the Rural Affairs and Agriculture Committee, despite that Committee's Chair's sponsorship of the bill), the bill was amended to remove the authority to use loaned water for stream reaches for which the CWCB does not hold a decreed in-stream flow right.

Additionally, the bill as introduced would increase the number of years for the loan from the current 3 years in 10 to 5 years in 10 and would allow the loan to be renewed for 2 additional 10-year periods. During the Committee consideration, this authority was modified to assure that the 5 in 10 years would not allow for use more than 3 consecutive years, including the renewal periods.

Discussion with Terry Scanga revealed that HB19-1218 was postponed indefinitely during a hearing in the Senate Agriculture and Natural Resources Committee on April 17, 2019.

- **HB19-1271:** This is another bill to address instream flow water rights. The CWCB may acquire water for instream flow purposes through its own decreed water right or through a lease from another water right owner. This bill makes it clear that the instream flow may be augmented by water subject to an augmentation decree granted by the Water Court. The bill clarifies that the Colorado Water Conservation Board may augment stream flows to preserve or improve the natural environment to a reasonable degree by use of an acquired water right that has been previously quantified and changed to include augmentation use, without a further change of the water right being required. The CWCB would maintain control over the instream flow. This bill has also been postponed indefinitely.
- **HB19-1279:** This bill prohibits the use of class B firefighting foam that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS foam) for training purposes and creates a civil penalty for doing so. PFAS chemicals do not break down in the environment and are toxic to people and wildlife at very low levels, causing a variety of serious health effects. These substances are not regulated at the federal or state level. Their use as Class B firefighting foam at Petersen Air Force Base has contaminated groundwater supplies for the communities of Fountain, Widefield, and Security. The House Energy and Environment Committee are scheduled to hold a hearing on this bill on April 11, 2019.
- **SB19-212:** Governor Hickenlooper had requested \$30 million for implementation of the State Water Plan covering a three-year period. Due to a reduced economic forecast, the JBC provided \$10 million funding from the General Fund for the current year. The money is divided into a grant program to be administered by CWCB of \$8.3 million and \$1.7 million to the department for use by the board for stakeholder outreach and technical analysis to develop a water resources demand management program. This bill has passed both Houses and is awaiting action by the Governor.

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- **SB19-220:** In 2018, the federal government enacted the "Agricultural Improvement Act of 2018" (2018 Farm Bill), which removed hemp from schedule I of the federal "Controlled Substances Act". The 2018 Farm Bill requires the United States Department of Agriculture (USDA) to develop a plan for the regulation of hemp and authorizes each state to seek approval from the USDA to have primary regulatory authority over hemp production within the state by preparing and submitting a state plan of regulation to the secretary of the USDA. This bill updates the laws governing Colorado's industrial hemp regulatory program to align with the federal act and to put the Colorado Department of Agriculture in a position to prepare and submit a state plan to the USDA. This bill has been moved by the Senate Agriculture and Natural Resources Committee and was further considered by the Senate Appropriations Committee on April 12, 2019.

**COLORADO RIVER ISSUES STATUS**

Lee Miller reported on March 19, 2019, Representatives of all 7 Colorado River Basin States sent a letter to the Commissioner approving the Drought Contingency Plans (DCP) documents, although the Imperial Irrigation District (IID) in California did not approve their implementation actions under the Lower Basin DCP. On March 27 and 28, 2019, both the U.S. House and Senate subcommittees with jurisdiction over the Colorado River DCP held oversight hearings, which Lee Miller attended. Within a few days, the DCP implementation legislation was introduced in both the U.S. House and Senate. Both Houses considered the legislation under consent rules, and the DCP implementation legislation passed on April 8, 2019, and was signed by the President on April 15, 2019.

With the federal legislation in place (assuming that the President does not veto the legislation), both the State of Colorado and the Upper Colorado River Commission will turn to the steps necessary to implement the Demand Management Program (DMP). The Colorado Water Conservation Board (CWCB) approved the "2019 Work Plan for Intrastate Demand Management Feasibility Investigations," at the March 21, 2019 CWCB meeting. On April 8, 2019, the CWCB requested that individuals that possess subject matter expertise, and are interested in serving as a member of one of the subject matter work groups described in the work plan provide information to the CWCB by April 19, 2019. Lee Miller has asked to be considered by CWCB to be a member of the Law and Policy work group. The Front Range Water Council has proposed a slate of participants for the various work groups, including asking that Lee Miller be included as a member of the Law and Policy work group. The Board was proved a copy of H.R. 2030 and the April 8, 2019 CWCB Forming Workgroups for Demand Management Feasibility Investigations letter.

Mr. Hamel shared that James Eckland complimented Lee Miller on a job well done on the Colorado River issues.

**PRESENTATIONS-CONTINUED****GIBSON HAZARD RECOGNITION**

President Long asked Mr. Hazard to join him at the podium. President Long said Mr. Hazard had served on the Board 31 years and has served with 47 of the 72 Board members of the District. President Long

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read the Excellence in Service Award and presented Mr. Hazard a framed copy of the award along with a gift.

Mr. Hazard thanked the Board and said he has enjoyed serving on the Board. All present at the meeting gave Mr. Hazard a standing ovation.

**INFORMATIONAL ITEMS:**

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

- Water Court Resume

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 11:43 a.m.

Respectfully submitted,

Toni Gonzales  
Administrative Manager

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Assistant Secretary

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