

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

January 16, 2020

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District (District) was held on Thursday, January 16, 2020 at 9:37 a.m. at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

DIRECTORS PRESENT:

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

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; Senior Policy and Issues Manager Chris Woodka; Finance Manager Leann Noga; Administrative Support Associate Patty Rivas; and Federal Lobbyist Christine Arbogast.

VISITORS PRESENT:

Andy Klakulak, and Krystal Brown, U.S Geological Survey; Curt Thompson, AECOM; Judy Leonard, Pueblo West Metropolitan District; George Hanzas, Catlin Canal; Doug Fitzgerald, Representative Scott Tipton's office; Brandon Bernard, Fountain Valley Authority; Alan Ward, Pueblo Water ; Cathy Garcia, Senator Cory Gardner's Office; Jenny Bishop, Colorado Springs Utilities; Kevin Niles, Arkansas Groundwater Users' Association (AGUA); Jerry Peña , Kennedy Jenks; Will Landin and Britta Strother , Stantec; and Bob Hamilton, 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 December 5, 2019 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. Karney, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Nichols reported the financial statements for November 2019 and DRAFT December 2019 were posted to the Board website for review. Ms. Nichols moved, seconded by Mr. Clayton, for acceptance of the November 2019 and DRAFT December 2019 financial statements and payment of the January 2020 bills. Motion unanimously carried.

CONSENT ITEMS:

None

ACTION ITEMS:

FINANCE STRATEGY AND SUSTAINABILITY STUDY FINAL REPORT

Mrs. Noga reported on the Final Report dated January 2, 2020 which the Board was provided a copy for viewing online.

The Executive Committee and the Board of Directors as a whole, spent much of 2019 focused on the Financial Study. During the Finance Study the following major subjects were discussed:

- 10-year Finance Plan
- 20-year Capital Improvement and Project Plan
- Reserves
- Cost of Service
- Rate Design
- Policies

The Draft Financial Strategy and Sustainability Study was presented to the Board of Directors in October 2019. All members of the Board recognized that the District needs additional revenue to meet the requirements identified in the cost of service analysis. In November 2019, the Board implemented a portion of the study recommendations. The Board voted to increase Project water from \$7 to \$13.14 per acre-foot and Return Flow rates from \$6 to \$12 per acre-foot. The Board determined that discussion was needed regarding the following subjects, before the full rate recommendation of the study could be implemented.

The Board will continue the following discussions during the first quarter of 2020:

- 1) Carry-over Storage charges;
- 2) Winter water charges;
- 3) Return Flow charges;
- 4) Split or uniform rates for M&I and Agriculture.

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Since the Board of Directors reviewed the Draft Finance Report in October, *section 6 Preferred Water Rate Design* has been completed. This section summarized that action taken by the Board of Directors regarding Water Rate adjustments for 2020. In addition, the information used in all workshops and the newly adopted policies have been added to the Appendices.

Suggested motion that the Board of Directors accept the Final Financial Strategy and Sustainability Study dated January 2, 2020. Mr. Hamel moved, seconded by Mr. Garcia the Board approve The Final Report. Motion unanimously carried.

JACOBS PROFESSIONAL SERVICE AGREEMENT AMENDMENT: ANALYSIS OF SURCHARGE RATES

Mrs. Noga reported staff has worked with Jacobs to create a scope of work for the analysis of surcharges rates. There are a number topics the Board plans to discuss in the first quarter of 2020, but the discussion of surcharge rates will occur during and at the completion of this analysis.

The scope of the Jacobs Service Agreement Amendment 1 includes:

The 2019 Study COS isolated revenue and expenses pertaining only to the Project water rate – and excluded surcharges. Jacobs will research the original policy and methodology used to allocate costs among customers as the basis for existing surcharges. This analysis includes surcharges on water sales, Return Flows, Winter water, excess capacity, and municipal carryover Project water. Regardless of the availability of formal-documentation, Jacobs together with SECWCD will gain a more thorough understanding (and will document) the services and functions associated with surcharges in order to properly allocate costs and adjust rates. Potential double-charging or common cost recovery objectives between rates and surcharges will be identified.

Jacobs will prepare a financial analysis of the impact of the elimination or modification of surcharges and upon water sales and storage rates for 2021 and beyond. The revenue generating capacity of the SECWCD's various charges (Project water, storage charges, and other charges) will be quantified and compared for the Executive Committee and/or Board's consideration. Surcharges generate approximately \$600,000 in annual revenue for the SECWCD. Financial plan scenarios that forecast potential revenues against revenue requirements with and without surcharges will also be prepared for the Executive Committee and/or Board's consideration. In the event that surcharges may need to be reduced or eliminated, compensatory modifications to other rates and charges will be quantified and proposed for the Executive Committee and/or Board's consideration.

Jacobs has developed and delivered a financial planning model that represents then-current data and information. Building from the 2019 financial plan and model, Jacobs will utilize the updated data and policy direction to refine the existing financial model. This updated model will serve as a revised (assuming 2019 existing conditions) model for this Amendment No. 1. It will not incorporate other financial planning policy decisions, such as the inclusion of "Year 11" capital improvement planning projects, changes to cost transfer assumptions, or changes in budget priorities and amounts. The Board was provided a copy of Jacobs Professional service agreement Amendment 1.

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Suggested Motion that the Board of Directors approve the Jacobs Professional Services Agreement Amendment 1 to complete an analysis of surcharge rates. Mr. Clayton moved, seconded by Mr. Hamel, the Board approve The Jacobs Professional Service Agreement Amendment. Motion unanimously carried.

OPEN MEETING RESOLUTION NO. 2020-01D

Mr. Lee Miller reported a Resolution Relating to the Compliance by the Southeastern Colorado Water Conservancy District with the Colorado Open Meeting Law is required under Colorado Revised Statute §37- 45-101 *et seq.* This resolution defines where the public notice of each meeting will be posted at least 24 hours prior to a meeting. After the approval of the resolution, notice will be sent to the County Clerk and Recorder of each of the nine counties within the District boundaries. The Board was provided a copy of the Resolution No. 2020-01D and memorandum to the County Clerk and Recorder.

Suggested motion to adopt Resolution No. 2020-01D, A Resolution Relating to the Compliance by the Southeastern Colorado Water Conservancy District with the Colorado Open Meeting Law. Mr. Pifher moved, seconded by Mr. May, the Board approve Resolution 2020-01D. Motion unanimously carried.

STATEMENT OF OPPOSITION IN APPLICATION OF BASALT WATER CONSERVANCY DISTRICT CASE NO. 19CW3143 (Div. 5)

Mr. Lee Miller reported the Basalt Water Conservancy District (BWCD) filed an application for (1) an appropriative right of exchange from Ruedi Reservoir up the Fryingpan River and Ivanhoe Creek to Ivanhoe Reservoir, and (2) an area-wide plan for augmentation for diversions up to 3.0 cfs total in the upper Fryingpan River basin upstream of Ruedi Reservoir. Such an application by BWCD was contemplated by the 2018 settlement agreement between Aurora and several West Slope parties in the Busk-Ivanhoe change case (Case No. 09CW142, Water Division 2). The District consented to the Aurora-Busk Ivanhoe change decree resulting from that settlement, but its consent did not limit the District's ability to oppose or participate in BWCD's current application.

The District's decreed water rights in the Fryingpan River drainage are subject to minimum stream flow requirements measured at the Thomasville Gage, as well as required bypass flows at several Fry-Ark diversion structures, including the diversion on Ivanhoe Creek. The operation of BWCD's exchange may deplete the flow of the river at the Thomasville Gage and the water available for Project diversion and stream flow bypass at the Ivanhoe Creek diversion structure, thus causing injury to the District's water rights. In addition, diversions by the structures augmented under BWCD's augmentation plan may deplete Thomasville Gage flows and thereby impact Project diversions. Moreover, depletions within the upper Fryingpan River basin would reduce inflows into Ruedi Reservoir and, if not properly augmented, would impact Ruedi Reservoir's ability to fill and ultimately affect the Fryingpan-Arkansas Project's ability to divert under the Boustead Enlargement decree.

Staff and counsel recommend filing a Statement of Opposition to obtain more information about BWCD's proposed exchange and augmentation plan and to ensure that appropriate terms and conditions are included in the decree to prevent injury to the Fryingpan-Arkansas Project's water rights.

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Suggested motion that the District Board authorize Special Water Counsel to file a Statement of Opposition to the Application of Basalt Water Conservancy District in Case No. 19CW3143. Mr. McClure moved, seconded by Mr. Pifher, the Board approve Statement of Opposition in Application of Basalt Water Conservancy District Case No. 19CW3143. Motion unanimously carried.

APPROVAL OF STIPULATION IN THE APPLICATION OF LOWER ARKANSAS WATER MANAGEMENT ASSOCIATION, CASE NO. 18CW3072

Mr. Lee Miller reported Case No. 18CW3072 is LAWMA's application to add four wells to its augmentation plan decreed in Case No. 02CW181. The Application further seeks to add greenhouse irrigation as an allowable use of water diverted pursuant to the augmentation plan and to confirm the consumptive use percentage for greenhouse irrigation.

The District's objectives in this case are to ensure that: (1) the proposed decree includes the terms and conditions required by the Amended and Restated Agreement between LAWMA and Southeastern dated September 6, 2017 ("2017 Agreement"), which assure protection of and compliance with the terms and conditions imposed in the Case No. 02CW181 decree; (2) Project water, Project water Return Flows, and Project Facilities are used only for authorized purposes; (3) all depletions to the Arkansas River are replaced in an appropriate time, place, and manner; and (4) the Court retains jurisdiction for an appropriate time frame.

The proposed decree includes language consistent with the 2017 Agreement (§§ 10, 18, 20, and 37). These terms confirm that this decree does not change any provisions of the 02CW181 Decree, other than the inclusion of the additional structures into the augmentation plan and the addition of greenhouse irrigation as an allowable use of water (§ 37); that LAWMA shall account for and replace the out-of-priority stream depletions caused by pumping the additional augmented structures with fully consumable water, in accordance with the 02CW181 Decree (§10); that the additional structures will be incorporated into the 02CW181 accounting and projection (§ 18); and that the terms and conditions of this decree and the 02CW181 Decree are adequate to ensure that no injury to vested water rights and no violation of the Arkansas River Compact will result from the operation of the augmentation plan (§20). The proposed decree also states that hemp and other crops will be irrigated pursuant to the augmentation plan, but that the augmentation plan will not support the irrigation of marijuana unless the cultivation of marijuana becomes legal under federal law (§ 10.1). This language operates as a complete prohibition on the use of the augmentation plan to replace depletions caused by marijuana cultivation, and thus ensures that no Project water or Project facilities will be used to support the irrigation of marijuana, for as long as such use remains illegal under federal law. The proposed decree also includes appropriate terms, consistent with the 02CW181 Decree, that provide for the Court's retained jurisdiction over LAWMA's augmentation plan and the operation of the additional structures in the plan (§§ 38, 39, and 40).

There was discussion as to what substances were included in the language. Mr. Lee Miller replied that this particular issue pertained to green houses that were growing Marijuana. The District does not separate itself from the policies set down by the Bureau of Reclamation.

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Mr Broderick said the Allocation Committee will discuss the matter further of how to allocate between acreage as compared to green houses.

Suggested motion to authorize Special Water Counsel to execute a stipulation in the LAWMA's Case No. 18CW3072, consenting to entry of a decree in the case that is no less restrictive on LAWMA and no less protective of the District than the proposed decree dated July 19, 2019. Mr. Goodwin moved, seconded by Mr. Garcia, the Board approve Approval of Stipulation of Lower Arkansas Water Management Association, Case No. 18CW3072. Motion carried with Mr. May abstaining.

PRESENTATIONS:

FINANCIAL DISCUSSION PART 1: WATER RATE ELEMENTS

Mr. Woodka reported water rates and surcharges are the primary revenue source for the Water Activity Enterprise. Water rates recommended under the Financial Strategy and Sustainability Study (Financial Study) would generate a projected \$508,000 in additional revenues for FY 2020. Water rates approved by the Board on November 21, 2019, would generate \$303,000 in additional revenue, a difference of about \$205,000.

Stakeholders received a letter outlining the Board's actions following the November 2019 meeting. The letter was accompanied by tables showing the 2019 water storage and sales rates, the rates proposed in "Option 1 Aggressive" in the Financial Study, and the rates approved by the Board for 2020. The Board was provided three attachments: (1) Summary and facts for Uniform vs. Split Rates, Return Flows, Winter water, and Municipal Project Carryover Storage. (2) Water rate elements PowerPoint. (3) November 25, 2019 letter to stakeholders.

The Board agreed that it may choose to alter rates, but will not increase them above the level found in Option 1 Aggressive. The Board also agreed to finish discussion on the financial issues during the first quarter of 2020, in order to have firm rates in place prior to water sales in May 2020.

The rate issues are:

- Uniform vs. Split Rates
- Return Flows
- Winter Water
- Municipal Project Carryover Storage

Staff has broken down each of the four rate issues into fact sheets. The Board was provided a copy of the Water Rights Element PowerPoint, which outlined the recommendations of the Financial Study; provide additional information that came out in the 2019 Financial Study workshops or discussion; detail specific Board action on each item; review the history of each item; discuss the potential budget impact of each item as it relates to the revenue requirement; and options the Board might choose. Mr. Woodka presented a PowerPoint reviewing the following:

- Summary: Rate Revenue difference
- Uniform of split rates
- Return flow rates

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- Winter water storage rates
- Municipal carryover storage rates

Two other issues will need to be discussed in future Board meetings: Surcharges are being addressed in an amendment to the Jacobs contract that outlines a separate timetable for Board discussion. Further Board discussion also will be needed to resolve the question of how to fund reserves, and at what levels. Mr. Woodka continued the PowerPoint presentation reviewing the following:

- Meeting the revenue requirement
- Surcharges
- Reserve funds
- Return flow rates
- Winter water rates
- Municipal Project water carryover charges

The Board was provided a copy of the November 25, 2019 letter to the stakeholders.

President Long said the 2020 Budget will be reviewed to look at reserves and the reserve categories, and to understand what the expenditures are for. President Long said he is trying to decide what committee will be the lead on this issue, the Finance Committee, the Executive Committee, or the Full Board. President Long opened up the discussion to the Board members to express which would be the best fit for working with the staff and Jacobs. After the discussion it was determined that the Finance Committee will be the lead committee for the Jacobs study and report to the full Board/ All committee meetings are open to all Board members and visitors.

The Board will work on the budget, and the Finance Committee will work on the Jacobs study.

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

Roy Vaughan provided a written report reviewing the following:

- As of January 12, 2020, there were 234,067 acre-feet stored in Pueblo Reservoir; 140,798 acre-feet of Project water; 39,001 acre-feet of Excess Capacity water; 42,119 acre-feet of Winter water
- There is currently 104,575 acre-feet of Project space in Pueblo Reservoir and 30,761 acre-feet of space in Turquoise and Twin Lakes Reservoirs
- Charts illustrating storage amounts in Turquoise, Pueblo, and Twin Lakes
- Total M&I Project water in the System
- Project Reservoirs: Turquoise 109%, Twin Lakes 103%, Pueblo 123% as of January 12, 2020
- Total M&I Project water in the System
- Arkansas River Basin Time Series Snowpack Summary, January 14, 2020
- Colorado River Basin Time Series Snowpack Summary, January 14, 2020
- Snow Water Equivalent Fremont, Independence, Ivanhoe, Nast

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DIVISION ENGINEER'S REPORT

Mr. Tyner provided a written report reviewing the following:

During the 2019 calendar year, the Arkansas Basin water supply can be characterized as an above average, wet year (see attached comparison analysis for all years from 1950 through 2019 on the next pages). The indexed water supply placed 2019 a little above the water supply in 2007 and just below the water supply in 2008. It is notable that only five years out of nineteen in the first two decades of the 21st century resulted in an above average water supply in the lower Arkansas Basin (2017 and 2015 were considered very wet years). It is also notable though that three of the last five years were above average and 2020 appears to have prospects for being an above average year as well.

Charts followed titled:

- Year Ranking, Very Dry to Very Wet from Composite Index Flows
- Year-Type by Composite Index Flow Data

With storage holding such great importance in the Arkansas Basin, the Pueblo Winter Water Storage Program continues to have relatively strong yields. Although the 2018-2019 storage season was below the twenty year average, the 2019-2020 storage season shows promise of being better, but likely still a little below average.

A Chart followed titled:

- Winter Water Storage by Year

Potential spills from Pueblo Reservoir each spring have become chronic over the past five years as depicted in the graph on the last page of this report. During the winter storage season, prior to April 15, storage can invade the flood control space above the top of conservation storage, but must be evacuated by April 15. Multiple entities have been in a scramble in each of the past five years to avoid losing water stored in excess capacity accounts that are high in the spill order for the reservoir.

A Chart followed titled:

- Pueblo Reservoir Content

U.S. GEOLOGICAL SURVEY REPORT

Krystal Brown provided a written report reviewing the following:

- Water-Quality Issues of Concern, Salinity
- Relation between Specific Conductance and Total Dissolved Solids
- Relation between Specific Conductance and Discharge
- Specific Conductance Concentrations 2019 Daily Value Median

<https://www.epa.gov/sites/production/files/2018-03/documents/dwtable2018.pdf>

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STATE LEGISLATION UPDATE

Mr. Lee Miller provided a written report stating the second regular session of the 72nd General Assembly convened on January 8, 2020. The session will run not later than May 6, 2020. A copy of the deadline schedule for the 2020 session is attached.

During the session the District participates in the Colorado Water Congress State Affairs Committee, which meets most Mondays during the session. Lee Miller was recently selected to be one of the vice chairs for the committee.

Several water bills have already been filed for consideration for this session.

- a. [HB20-1037](#) Concerning the Colorado Water Conservation Board's authority to augment stream flows with acquired water rights that have been previously decreed for augmentation use (Arndt and Coram)
- b. [HB20-1042](#) Concerning a modification of the notice requirements for manufacturers of perfluoroalkyl and polyfluoroalkyl substances (Valdez and McKean/Moreno/Tate)
- c. [HB20-1069](#) Concerning the inspection of water wells (Saine/Titone and Sonnenberg/Coram)
- d. [HB20-1072](#) Concerning a requirement that the University of Colorado study potential uses of emerging technologies to more effectively manage Colorado's water supply, and, in connection therewith, making an appropriation, conditioned on the receipt of matching funds from gifts, grants, and donations (Arnt/Saine and Sonnenberg/Bridges)
- e. [SB20-008](#) Concerning the enhancement of penalties for criminal violations of water quality laws (Winter and Jackson/Hooton)
- f. [SB20-024](#) Concerning the inclusion of public input in the development of a State Water Resources Demand Management Program (Coram/Donovan/Bridges/Sonnenberg and Arndt/Catlin/Saine/Titone)
- g. [SB20-048](#) Concerning a study to consider the strengthening of the prohibition of speculative appropriations of water (Donovan/Coram/Bridges and Roberts/Catlin/Arndt/Titone)

As we learn more about these bills we will update the Board on these and other bills that may be filed. The Board was provided the deadline schedule for the 2020 General Assembly.

As some of you may know, Representative Kimmi Lewis passed away recently. Richard Holtorf has been selected by a vacancy committee and was sworn in on January 7, 2020. Representative Holtorf is a rancher from Washington County.

COLORADO RIVER ISSUES STATUS

Mr. Lee Miller provided a written report stating U.S. Secretary of the Interior David Bernhardt addressed the Colorado River Water Users Association's annual conference on December 13, 2019, where he

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announced that the Department of the Interior will immediately begin work on a new report that will analyze the effectiveness of current Colorado River operational rules (2007 Interim Guidelines) to ensure continued reliable water and power resources across the Southwest—a year ahead of when the current rules require the report.

The Upper Colorado River Commission (UCRC) held its regular meeting on December 11, 2019, in Las Vegas. UCRC Legal Committee will meet on January 14, 2020, in Salt Lake City, to discuss matters related to the assessment (review) of the 2007 Interim Guidelines, including confidentiality issues. Lee Miller is a member of the Legal Committee and will attend the meeting.

The Colorado Water Conservation Board (CWCB) has been proceeding with Demand Management workgroups meetings since August. Summaries of the workgroups meetings can be found at: <http://cwcb.state.co.us/water-management/Pages/DemandManagement.aspx>

INFORMATIONAL ITEMS:

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

- Water Court Resume
- Director Appointment
- 2020 Annual Meeting Calendar
- 2020 Board Meeting Schedule
- Special Water Counsel Legal Report
- Colorado Rural Water Association Conference
- Family Farm Alliance Conference
- DARCA Conference
- 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 10:45 a.m.

Respectfully submitted,

Patty Rivas
Administrative Support Associate

Secretary

