

RECORD OF PROCEEDING

**SOUTHEASTERN COLORADO WATER
CONSERVANCY DISTRICT**

MINUTES

October 20, 2011

A regular meeting of the Board of Directors of the Southeastern Colorado Water Conservancy District was held on Thursday, October 20, 2011 at 9:38 a.m., at the District office, 31717 United Avenue, Pueblo, Colorado.

President Long announced a quorum was present.

ACTION ITEM:

SWEARING IN OF APPOINTED BOARD MEMBER

Mr. Leonhardt said he had received a Court Order appointing Thomas S. Goodwin to serve on the District Board for the remainder of Lissa Pinello's term. He asked that Mr. Goodwin stand and repeat the oath. After reading the oath, Mr. Goodwin was asked to sign the oath, for filing with the court. President Long welcomed Mr. Goodwin to the Board and congratulated him on his appointment.

The District meeting was recessed at 9:40 a.m., and reconvened at 10:10 a.m.

DIRECTORS PRESENT:

Bill Long	Ann Nichols	Harold Miskel
Gary Bostrom	Kevin Karney	Greg Johnson
Carl McClure	Vera Ortegón	Reed Dils
Gibson Hazard	David Simpson	Shawn Yoxey
Tom Goodwin		

DIRECTORS ABSENT AND EXCUSED:

Howard "Bub" Miller, Scott Reed, and Alan Hamel-Advisory Board Member

DISTRICT OFFICIALS PRESENT:

Executive Director James Broderick; Administrative Manager Toni Gonzales; Finance Coordinator Tina White; Director of Engineering and Resource Management Bob Hamilton; Conservation Outreach Coordinator Jean Van Pelt; Legal Counsel Steve Leonhardt and Lee Miller; and Federal Lobbyist Ray Kogovsek.

VISITORS PRESENT:

Roy Vaughan, U.S. Bureau of Reclamation; Chris Woodka, The Pueblo Chieftain; Bob Hartzman, City of Canon City; Curtis Mitchell, City of Fountain; Dwight L. Gardner, U.S. Senator Bennet's office; Doris Morgan, U.S. Congressman Gardner's office; Steve Witte, Colorado Division of Water

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Resources-Division 2; Jay Winner, Lower Arkansas Valley Water Conservancy District; David Mau, U.S. Geological Survey; Shirley Klipfel, Pueblo; Terry Book, Board of Water Works of Pueblo; Eric Norwood, Wilson & Co; Sean Chambers, Cherokee Metro District; Curt Thompson, Merrick & Company; Mark Carmel, Triview Metro District; Kevin Meador, Black & Veatch; Jerry Peña and Jeffrey Hlad, MWH; Bill Hower, Beulah Water District; Tony Keenan, Arkansas River Outfitters Association; and Ken Weber.

INTRODUCTION OF VISITORS:

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

APPROVAL OF MINUTES:

President Long asked if the members of the Board had received their copy of the minutes of the September 15, 2011 Board meeting, and if there were any corrections or additions. Hearing none, Mr. Johnson moved, seconded by Mr. Bostrom, to approve the minutes. Motion unanimously carried.

FINANCE COMMITTEE REPORT:

Treasurer Ann Nichols reported the financial statement for September was posted to the Board website for review. Treasurer Nichols moved, seconded by Mr. Karney, for acceptance of the September financial statement and payment of the October 2011 bills. Motion unanimously carried.

CONSENT ITEMS:

None

PRESENTATIONS:

INCLUSION MANUAL

Mr. Hamilton presented a PowerPoint presentation titled, *Inclusion Procedure Manual "The Manual,"* reviewing the following:

- The Manual has been in development for the last two years
- The Manual is a tool that guides potential inclusion applicants and staff through the inclusion process
- Three types of inclusions

Mr. Hamilton reported the Resource and Engineering Planning Committee reviewed the Draft Inclusion Manual (Manual) and requested that staff notify all of the agencies within the District having a potential of being involved in the inclusion process and solicited comments from them. Notice was also published in the Pueblo Chieftain and the Colorado Springs Gazette. The Committee received comments from the City of Pueblo and Reclamation. The comments were addressed in the Draft Manual. One of the comments from Reclamation in Loveland was of some concern as it implied that the District had authority to halt land development. Staff contacted Reclamation and developed language that is satisfactory to both the District and Reclamation.

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Mr. Hamilton said the Draft Inclusion Procedure Manual is posted on the District website for review, and asked that any comments or concerns be directed to him. The Draft Manual will be an action item on the November agenda.

Mr. Broderick also emphasized review of the Draft Inclusion Procedure Manual by Board members, and asked that each member of the Board notify the appropriate entities in the counties they represent of the procedures.

HYDROPOWER UPDATE

Mr. Broderick updated the Board on the hydropower issue. He said staff has moved forward with the process, per Board direction. The District was approved for the Colorado Water Resources and Power Development Authority grant in the amount of \$15,000 for the development of the hydropower at Pueblo Dam. Mr. Broderick said Reclamation extended the deadline for applications to October 21, 2011. The District's application has been submitted. The Southeastern District is the lead agency for filing the application. Board of Water Works of Pueblo and Colorado Springs Utilities are partners at this time in the process.

Mr. Broderick has had conversations with Colorado Water Conservation Board regarding possible funding options for the hydropower project. If the District is awarded the hydropower project, Mr. Broderick will look for other partners and funding partnerships.

MONTHLY REPORTS:

U.S. BUREAU OF RECLAMATION REPORT

Roy Vaughan presented a PowerPoint presentation reviewing the following:

- As of October 13, there were 165,384 acre-feet stored in Pueblo Reservoir; 111,898 acre-feet of Project water; 44,311 acre-feet of Excess Capacity water; 9,188 acre-feet of Winter water.
- There is currently 145,051 acre-feet of Project space in Pueblo Reservoir and 6,221 acre-feet of space in Turquoise and Twin Lakes Reservoirs.
- Project Reservoirs: Turquoise 109%; Twin Lakes 107%; Pueblo 118%.
- Winter Operations
- Water Operations from Pueblo Dam
- Trans-Mountain Diversions
- Arkansas River Flows
- Collection System Schedule
- Safety of Dams Program
- Safety of Dams Program Recommendations
- Current Status of Finding

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DIVISION ENGINEER'S REPORT

Mr. Witte reviewed the Arkansas River Daily Report for October 19. The River Call is 12/3/1884 (Catlin), and 11/4/1886 (Lamar II). He also reviewed the Monthly Reservoir Report for October 20, 2011. Mr. Witte said the Compact Storage will begin in John Martin Reservoir on November 1, 2011 and the Pueblo Winter Water Storage Program will begin November 15, 2011.

The Winter Water Storage Program Board of Trustees will meet on October 21, 2011 in La Junta at Otero Junior College in the Student Center beginning at 10:30 am.

Mr. Witte reported Orders were issued to six individuals as owners or users of ten surface water irrigation improvements believed to be subject to the Surface Water Improvement Rules who failed to obtain approval for their improvements. One of these orders has since been rescinded and one was extended to allow additional time to produce evidence of exemption. He has received reports from the Lower Arkansas Valley Water Conservancy District (LAVWCD) that nearly all the rest have submitted applications to be included in the LAVWCD's Rule 10 plan.

A Special meeting of the Arkansas River Compact Administration (ARCA) was held September 27, 2011 for purpose of amending the bylaws. As a result of the amended bylaws, the ARCA will meet on December 7 and 8, 2011 in Lamar, Colorado. This will fall on the first Wednesday and Thursday, rather than on the traditional second Tuesday of December.

U.S. GEOLOGICAL SURVEY REPORT

David Mau presented a video showing the Fountain Creek flood event of September 15, 2011.

ACTION ITEMS:

SET PUBLIC HEARING FOR 2012 PROPOSED BUDGET

Treasurer Ann Nichols reported the Board of Directors conducts a public hearing each year prior to adopting the annual budget in compliance with state law. Ms. Nichols moved, seconded by Mrs. Yoxey, the Board set November 10, 2011 at 11:00 a.m. at the Southeastern Colorado Water Conservancy District office for the public hearing for the 2012 Proposed Budget. Motion unanimously carried.

Mrs. Ortegón left the meeting at 11:15 am.

WATER COURT RÉSUMÉ

Bob Hamilton reported at the August 18, 2011 Board meeting, the Board authorized legal counsel to obtain a two month extension (until October 31, 2011) to negotiate a stipulation with the Town of Poncha Springs in Case No. 11CW44. Legal counsel negotiated the stipulation with Poncha Springs' counsel. It provides for consent to a Ruling and Decree that is protective of the District's rights and interests including the Fryingpan-Arkansas Project, and provides that all terms and conditions in the original Decree for Case No. 01CW148 remain in full force and effect.

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Mr. Dils moved, seconded by Mr. Johnson, the Board authorize legal counsel to execute the stipulation with the Town of Poncha Springs in Water Division 2, Case No. 11CW44. Motion unanimously carried.

SOUTHEASTERN'S WEST SLOPE DILIGENCE APPLICATION (Case No. 09CW40, Water Div. 5)
STIPULATION WITH CITY OF ASPEN

Mr. Leonhardt reported on Southeastern's West Slope Diligence Application Case No. 09CW40, Water Division 5, seeking a finding of diligence in order to maintain the conditional water rights decreed in 1958 for the Fry-Ark Project collection system. Statements of opposition were filed in June 2009 by the United States Forest Service (U.S.), Trout Unlimited (TU), and the City of Aspen.

Legal counsel executed settlement stipulations approved by the District Board with the U.S. Forest Service and Trout Unlimited. Aspen's objections in this case have focused on the existing Project diversion structures in the Hunter Creek drainage, including No Name Creek (where a portion of Southeastern's water right remains conditional). On September 26, 2011, Aspen City Council approved settlement with Southeastern, consenting to the same proposed decree stipulated to by the U.S. and TU, subject to including a "no precedent clause" in the stipulation. The Board members were provided a copy of the stipulation legal counsel recently proposed to Aspen.

Mr. Leonhardt recommended authorizing legal counsel to enter into a stipulation with the City of Aspen for settlement in Southeastern's diligence case based on the April proposed decree, and with a no precedent clause that protects Southeastern's decreed rights against future attacks, or if such a stipulation is not agreed to, to consent to Aspen's withdrawal of its statement of opposition. Mr. Dils moved, seconded by Mr. Bostrom, to approve Mr. Leonhardt's recommendation. Motion unanimously carried.

PONCHA SPRINGS-CHANGE OF FRIEND RANCH WATER RIGHTS (Case No. 07CW111, Water Div. 2)

Mr. Leonhardt reported the Town of Poncha Springs (Poncha Springs) filed Case No. 07CW111. Poncha Springs acquired several irrigation rights associated with the Friend Ranch, and seeks in this case to quantify and change the historical irrigation use of these rights for municipal uses, including golf course irrigation and augmentation. Poncha Springs requests that any excess consumptive use water from these changed rights be stored, including storage in Pueblo Reservoir, for later use. Poncha Springs' counsel has provided a revised draft decree that addressed Southeastern's concerns.

Mr. Leonhardt recommended the Board approve settlement with Poncha Springs in this case, and authorize legal counsel to execute the stipulation by which Southeastern would consent to the current proposed decree, and would obtain Poncha Springs' confirmation that the recent Memorandum of Agreement and Reclamation contracts will govern its use of Pueblo Reservoir. Mr. Dils moved, seconded by Mrs. Yoxey, to approve Mr. Leonhardt's recommendation. Motion unanimously carried.

ROCKY FORD DITCH CONTINUED FARMERS GROUP (Case No. 07CW116, Water Div. 2)

Mr. Leonhardt reported the Rocky Ford Ditch Continued Farmer's Group (RFDCFG) and the City of Aurora (Aurora) applied for approval of a Plan for Augmentation. Nine farming operations that had

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sold their Rocky Ford Ditch water rights to Aurora then joined with Aurora, seeking the Court's approval to re-irrigate approximately 900 acres of land that were to be dried up in Aurora's second Rocky Ford Ditch change case (99CW169). The plan allows re-irrigation with tributary wells, supported by a plan for augmentation. Aurora's Rocky Ford Ditch change decree has provisions governing how these lands can be re-irrigated, and this is the second case providing for re-irrigation of lands covered by that decree.

The Applicants' counsel recently provided a revised draft decree that addresses Southeastern's concerns in the case, and is consistent with relevant portions of the decree in Case No. 99CW169.

Mr. Leonhardt recommended the Board's approval of settlement with RFDCFG and Aurora, consenting to the current proposed decree, and recommend the Board authorize legal counsel to execute a standard stipulation, agreeing to entry of the proposed decree, to resolve Southeastern's participation in this case. Mrs. Yoxey moved, seconded by Mr. Johnson, to approve Mr. Leonhardt's recommendation. Motion unanimously carried.

INFORMATIONAL ITEMS:

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

- Water Court Résumé
- Legal Quarterly Report
- Upcoming Meetings and Conferences

EXECUTIVE SESSION

Steve Leonhardt said a request has been made for the Board of Directors to enter Executive Session for the purpose of:

- C.R.S. §24-6-402(4)(b): (Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions)
- C.R.S. §24-6-402(4)(e): (Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators)

To discuss the following matter:

Conference with legal counsel to discuss legal issues, strategy for litigation and direction for settlement negotiations related to Busk-Ivanhoe, Inc.'s Case No. 09CW142.

The presence of the following persons is requested at this Executive Session:

- Non-Excused Board Members
- Executive Director
- Legal Counsel for the District
- Director of Engineering and Resource Management

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The minutes were electronically recorded as required by the Colorado Open Meetings Act.

Mr. McClure moved, seconded by Mr. Simpson, to convene into Executive Session. Motion unanimously carried. President Long recessed the meeting at 11:34 a.m. to convene the Executive Session. The Executive Session was adjourned at 12:20 p.m.

REPORT FROM EXECUTIVE SESSION AND ACTION ITEM:

President Long reconvened the District meeting at 12:20 p.m. Mr. Leonhardt reported legal counsel discussed legal issues, strategy for litigation and direction for settlement negotiations related to Busk-Ivanhoe Inc.'s Case No. 09CW142. Mr. Leonhardt recommended the Board authorize legal counsel to enter into a stipulation with Busk-Ivanhoe, based on the September 30 proposed stipulation, but only if that stipulation is revised to allow Southeastern to participate to protect its water rights and Fry-Ark operations in the event Busk-Ivanhoe's allowed diversions are reduced, either through negotiations or by order of the water court.

Mr. Goodwin moved, seconded by Mr. McClure, to approve Mr. Leonhardt's recommendation. Motion unanimously carried.

OTHER BUSINESS MATTERS:

President Long asked if there were any other matters to come before the meeting, and hearing none, adjourned the meeting at 12:21 p.m.

Respectfully submitted,

Toni Gonzales
Administrative Manager

Secretary