

September 28, 2011

DRAFT  
INCLUSION  
PROCEDURE MANUAL

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SOUTHEASTERN COLORADO WATER  
CONSERVANCY DISTRICT



# Southeastern Colorado Water Conservancy District

## Inclusion Procedure Manual

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## **DEFINITIONS**

**Applicant**, as determined by the U. S. Bureau of Reclamation, is used to identify the entity or individual landowner that directly or indirectly will receive the benefit of Federal Project water, individual landowner/agent, and is making the request for an inclusion and/or annexation (Appendix E).

**Board** is the Board of Directors of the Southeastern Colorado Water Conservancy District.

**District Boundaries:** The boundaries of those lands included in the District by the original Findings and Decree of the Court entered April 28, 1958 in Case No. 40487 (Pueblo County District Court); and by subsequent Judgments, Decrees or Orders of the Court concerning the inclusion of specified lands in the District; and with the consent of the contracting officer of the United States as provided in such Decrees and in the District's Contract with the United States.

**City** refers to cities and towns within Southeastern Colorado Water Conservancy District.

**District** refers to Southeastern Colorado Water Conservancy District.

**Municipal** refers to Cities or Towns only, (not Metropolitan Districts, Special Districts or Developments)

**Notice** refers to notice of proposed annexation and/or hearing on annexation.

**Petition** refers to petition for inclusion.

**Petitioner** is a landowner or group of landowners petitioning for inclusion.

**Reclamation** means the U.S. Bureau of Reclamation.

**Secretary** is the Secretary of the U.S. Department of Interior, or authorized representative thereof.

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## **PURPOSE**

The Inclusion Procedures Manual sets out procedures for the processing and handling of inclusions into the Southeastern Colorado Water Conservancy District (District), including municipal annexations. It is expected improved communications with the staffs of the cities and towns (Cities) will ensure that future annexations by Cities will be handled properly and in a timely manner by District staff and legal counsel to minimize the time between the annexations by the Cities and judicial approval of the annexations into the District.

The Inclusion team will meet *once a month or as necessary* to review the status of inclusions.

## **PROCEDURES FOR INCLUSION BY MUNICIPAL ANNEXATION**

State statutes (C.R.S. § 31-12-101, Municipal Annexation Act of 1965) require Cities to submit annexation documentation to special districts. C.R.S. § 37-45-136(3.6) requires municipalities to promptly transmit certified copies of annexation ordinances and provides for consent of the municipality and District terms and conditions not inconsistent with previous municipal inclusion orders.

1. Upon Receipt of Notice of Public Hearing and/or Notice of Proposed Annexation
  - a. Upon receipt of notification from the City, the documents will be date stamped and a copy submitted to the Engineering Department.
  - b. The Engineering Department is responsible for logging the information into a spreadsheet to track annexation status.
  - c. The initial documents from the City usually consist of the *Hearing on Annexation and/or Notice of Proposed Annexation*.
  - d. Using the GIS mapping software the Engineering Department will identify annexed land to compare with current District Boundaries this will indicate whether or not the annexation is within the District Boundaries.
2. If the Annexation is within the District Boundaries
  - a. The information will be logged onto the excel spreadsheet upon receipt.

- b. A letter acknowledging receipt of the notice will be sent to the annexing City (Appendix A).

The District will not need to maintain a copy of the annexation if it is already within the District Boundaries, as long as the information has been logged into the excel spreadsheet and a response has been sent to the City. Additional documentation received from the Cities may consist of: Resolutions; Ordinances; Annexation information sheets; maps; and correspondence from the developer. These documents will be attached to the initial letter that was received regarding the annexation. No further legal or Court action is necessary for an annexation of lands already *within* the District.

3. If the annexation is located Outside of District Boundaries

Upon the determination that all or a portion of an annexation to the City is outside of the District Boundaries, the following procedures must be followed to begin communications between the District, City, Applicant, and Bureau of Reclamation:

- a. If the annexation is outside Southeastern's District Boundaries, a letter (Appendix B) will be sent to both the City and the Applicant informing them the following actions are required for inclusion into the District.<sup>1</sup>
  - 1) The letter will be sent to both the City staff person specified in the above notice and to the Applicant.
  - 2) The letter will inform the City that it and/or the Applicant is responsible for all costs related to Reclamation review of inclusion, and terms and conditions may be imposed by the District consistent with prior inclusion orders.
  - 3) The letter should contain, in the subject header, the annexation's more commonly known as title and/or resolution number, in order to properly track the land and future correspondence.

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<sup>1</sup> The District and the City will need to determine if the annexation occurred prior to August 4, 1999, because after that date, upon consent by the Board of Directors of the District, the annexed lands shall be deemed to have been included within the District, subject to terms and conditions as determined by the Board of Directors of the District that shall not be inconsistent with the terms and conditions of previous applicable inclusion orders relating to that municipality, C.R.S. § 37-45-136(3.6) (amended 1999).

- 4) The letter will outline Reclamation procedures, and include samples of the minimum pertinent documents required for the Bureau of Reclamation's inclusion approval process, including:
    - National Environmental Policy Act (NEPA) Questionnaire for Fryingpan Arkansas Project Land Inclusion Proposals (Appendix C), which the Applicant or City will need to complete and provide to Reclamation (additional documentation may be required by Reclamation), and
    - December 5, 2005 letter from the Bureau of Reclamation concerning the definition of "Applicant" (Appendix E).
  - 5) The following must be copied on the letter to the City and applicant (attachments do not need to be enclosed):
    - Executive Director, SECWCD
    - Bureau of Reclamation – Loveland office
    - Bureau of Reclamation – Pueblo office
    - SECWCD Attorney
    - SECWCD Inclusion File
- b. Upon receipt of the NEPA Questionnaire, Reclamation will review the questionnaire, request any additional information and conduct a preliminary environmental review which may also include consultation with other resource agencies including but not limited to: U.S. Army Corps of Engineers; Fish & Wildlife Services; and the State Historical Preservation Officer to determine potential resource impacts. Reclamation will provide the applicant with site specific resource survey requirements if necessary and after Reclamation review of the necessary information obtained from the applicant. Reclamation will notify of appropriate level of NEPA documentation of either a Categorical Exclusion Checklist (CE); Environmental Assessment (EA); or Environmental Impact Statement (EIS).

- c. SECWCD, City, and Reclamation will communicate regarding status on the NEPA questionnaire. Forty-five (45) calendar days after the questionnaire is sent to the City and Applicant; the District will communicate with the Bureau of Reclamation (Appendix J) on the status of the letter to the City and/or Applicant. This step is vital to open the annexation dialog with the Bureau of Reclamation, Applicant, and City to ascertain if Reclamation will likely consent to the annexation becoming an inclusion.
- d. Upon completion of environmental review by Reclamation, add agenda item for the next available Board meeting for approval of the inclusion through action (appendix K) by the Board of Directors of the District, subject to final Secretary Assent and any other terms and conditions as determined by the Board of Directors.
- e. Secretarial assent by Reclamation is necessary before the District can change the District Boundaries. If plans to develop the land are put on hold, the Board of Directors can do one of the following:
  - 1) Approve inclusion contingent upon receipt of Secretarial assent for inclusion within the District from Reclamation;
  - 2) Decline inclusion, based on factual findings that are not arbitrary, capricious or irrational, regardless of what Reclamation might determine.
- f. Staff will notify Reclamation of Board action approving inclusion and requesting Secretarial assent to inclusion, refer to Appendix K.
- g. Upon receiving a negative environmental review, or if Reclamation assent is denied or delayed, District staff will send a letter to the City (and/or its municipal water supplier) requesting confirmation Project water has not been delivered to the annexed area for which Reclamation has not assented to inclusion and the City (and/or its municipal water supplier) has adequate other non-Project water supplies to service the area annex by the City).

- h. Upon Secretarial assent and Board approval by Resolution, District legal counsel will file a petition with District Court to confirm and complete the inclusion process.
- i. After the Court Order is entered, District staff will assure the County Assessor is assessing the District's mill levy on the annexed property. In addition the District will update the current District Boundaries via GIS mapping.

### **OTHER REQUESTS FOR INCLUSION OF PROPERTY INTO THE DISTRICT**

There are two other methods besides Municipal Annexation for including lands into the District. The first method is **Inclusion by Landowners' Petition**; the second method is **Inclusion by Election**. Following are the processes for each type of inclusion.

#### **BASIC INCLUSION BY LANDOWNER PETITION**

##### **1. Petition Process**

In the petition process, the petitioner will submit a request for inclusion into the District per State statute (C.R.S. §37-45-136). See included example of Petition (Appendix G).

- a. Upon receipt of Petitions for inclusion of land into the District from individual landowners. District staff will review the request for thoroughness and completeness, using the *Land Inclusion Log Sheet* (Appendix I).
- b. If Petition is incomplete, a letter to petitioner will be sent specifying the deficiencies in the Petition, otherwise continue to item c.
- c. District staff will determine the administration fee and a bond may be required to assure payment of any costs incurred during the inclusion process.
- d. District staff will calculate the back tax charge per the historical tax formula (see Appendix H) and estimate the publication cost.
- e. A letter will be sent to the Petitioner(s) (Appendix L):
  - 1) Acknowledging receipt of petition and outlining procedures, including advance payment of fees.

- 2) Informing Petitioner(s) that they will be responsible for all costs, including administration process, costs associated with publication, and NEPA review.
  - 3) Detailing any further requirements that may be necessary.
  - 4) Informing Petitioner(s) that under the District's Repayment Contract with the United States (through the Department of the Interior), no changes can be made in the District Boundaries through inclusions of land except upon the Secretary's written permission and that Petitioner(s) will bear responsibility for obtaining this permission.
  - 5) Providing Reclamation NEPA compliance questionnaire for District inclusion petitions, for completion by Petitioner(s) (Appendix C).
- f. Upon receipt of set Administrative fee and Tax Inclusion fee, prepare for hearing on the petition, C.R.S. § 37-45-136(3).
- 1) Choose hearing date and provide published notice as follows:  
"The Secretary of the Southeastern Board shall cause notice of filing of such petition to be given and published in the county in which the lands are situated, which notice shall state the filing of such petition, names of petitioners, descriptions of lands mentioned, and the request of said petitioner(s), giving notice to all persons of interest or interested to appear at the office of the District Board at *the time named* in said notice and show cause in writing why the petition should not be granted."
- g. At the scheduled time and place mentioned in the notice the Board shall proceed to hear the petition and all objections thereto, presented in writing by any person showing cause why said petition should not be granted. The failure of any person interested to show cause shall be deemed an assent on his part to the inclusion of such lands in the District as requested in the petition.

- h. The Board will then be presented with the petition. Potential Board actions on petitions for inclusion in the District include:
- Approve contingent upon receipt of Department of Interior Secretarial assent for inclusion within the District from Reclamation; or
  - Decline petition, based on factual findings that are not arbitrary, capricious or irrational, regardless of what Reclamation might determine.
- i. If petition is approved by the Board, staff will forward a letter to Reclamation (Appendix K, cover letter to USBOR after resolution) along with a copy of the Board's action, the completed NEPA questionnaire, legal description and map, requesting formal Secretarial assent to the inclusion within the District pursuant to the Repayment Contract as applicable.
- j. Contingent upon Secretarial assent from Reclamation for District inclusion, transmit the appropriate documents including Hearing Notice, Board Order, Affidavit of Publication, and Secretary of Interior assent to District legal counsel for subsequent court action regarding District inclusion, as applicable. If the Board deferred action pending Secretarial assent, then the petition must be reconsidered by the Board for approval following Secretarial action.
- If Secretarial assent is denied for inclusion of lands into the District, notify the Board and landowner of the denial. Any Tax Inclusion fee then will be refunded, but not any administrative fee.
- k. Legal counsel for the District files appropriate documents with District Court in Pueblo.
- l. Upon approval of the District inclusion by the Court, the recorded Court Order is filed with the Assessor's office in the county where the lands are located, and recorded in each County in which the District is located. The District will verify with County Clerk and Recorder of the filing and retain

a certified copy on file. Also, a copy is transmitted to the property owner, Reclamation, and water providing entity.

NOTE: Applicants should begin the inclusion process prior to any proposed land use change or proposed ground disturbance. All inclusion parcels are subject to the National Historical Preservation Act, 36 CFR 800, and NEPA. Any change in land use or disturbance after beginning the inclusion process and before Reclamation's Assent may cause the parcel to be permanently ineligible to receive Project water.

### **BASIC INCLUSION BY ELECTION**

#### **1. Election Process**

Lands may be added to the District via an election following a petition as outlined in State statute (CRS § 37-45-136 (3.5)).

- a. The election process requires a petition to the District Court whereby not less than twenty-five percent (25%) of the owners of agriculture lands of the area embraced by the proposed lands to be included and by not less than ten percent (10%) of the electors of said area embraced by the proposed lands to be included sign petitions.
- b. Before this Petition is filed, the Board must give its approval to the inclusion and recite the terms and conditions upon which said area may be included. The Board may also require that the petitioners post a sufficient bond to cover the costs of the election. If no bond is required, the District must pay the cost of the election.

Examples of Required Terms and Conditions and/or Terms and Conditions to consider (not an exclusive list):

- (1) Assent to the inclusion, without cost to the District, from the United States Secretary of the Interior (**mandatory** per Southeastern District decree).
- (2) District Board may require a bond to assure payment of costs incurred during the inclusion process, including a bond for the costs of the election.

- (3) Tax Inclusion Fee - District staff will calculate a back tax charge per the historic tax formula (to make the lands similar situated to other lands in the District), to allow District Board to know what the amount might be, as it determines terms and conditions.
  - (4) The inclusion of lands into the Southeastern Colorado Water Conservancy District (District) makes those lands eligible to use Fryingpan Arkansas Project facilities as an in-District entity. The inclusion may also make these lands eligible to receive water from the Fryingpan Arkansas Project, but does not detract from any other entity's previously established allocation rights. Any use of Fryingpan-Arkansas Project Water on the included lands is **subject to** the decrees for the Fry-Ark Project, and to all lawful rules, regulations, principles, policies, and contractual obligations of the District.
  - (5) The annexed lands will be subject to ad valorem taxes levied by the District as any other similarly situated lands in the Southeastern Colorado Water Conservancy District at the time of this inclusion.
  - (6) Any inclusion will not change the composition of the Board of Directors of Southeastern, or the allocation of Fryingpan-Arkansas Project water pursuant to Southeastern's Allocation Principles previously approved by the Court.
  - (7) Other Terms and Conditions approved by and at the discretion of the Board of Directors of the District.
- c. To initiate this petition/election process, Proponent(s) representing the proposed inclusion area shall make a request to the District's Executive Director. The Proponent(s) may be a special district that supplies water to the proposed inclusion area. Staff will inform Proponent(s) that under the District's Repayment Contract with the United States (through the Department of Interior), no changes can be made in the District Boundaries through inclusions of land except upon the Secretary's written

permission and that Proponent(s) will bear responsibility for obtaining this permission.

- d. Staff will determine that all lands to be included are within the Arkansas River Drainage (Water Division 2).
- e. Staff will provide Reclamation NEPA compliance questionnaire for District inclusion petitions, for completion by Proponent(s) (Appendix C).
- f. Staff will forward a letter to Reclamation (Appendix K) along with a copy of the Board's action, the completed NEPA questionnaire, legal description and map, requesting formal Secretarial assent to the inclusion within the District pursuant to the Repayment Contract as applicable.
- g. Provisional Reclamation consent, subject to the election result, will be required before Southeastern seeks Court approval for an election.
- h. A court hearing date will then be set to determine the validity of the petition and the signatures. If the petition and signatures are found to be true then the court shall set a date for the election.
- i. The election may be held separately or concurrently with any other election authorized by law at which such qualified electors of the proposed inclusion area are entitled to vote, including a general election or special district election. Under the Water Conservancy Act, "electors" include non-resident landowners.
- j. The resolution to be included on the ballot must meet certain requirements as laid out in CRS § 37-45-139-141. This resolution shall be published once a week for two consecutive weeks at least ten (10) days prior to the election. After the vote, the canvassing body of the election shall promptly certify and transmit to the Board or court, as applicable, a statement of the result of the vote. If a majority of votes cast are in favor of inclusion, the court, on the motion of the Board of Directors shall declare the area included in the District.
- k. Staff will forward election results to Reclamation for final Secretarial assent.

- l. However, if any territory within a municipality and a majority of the votes cast by the voters residing within that incorporated area are against inclusion in the District, the governing body of said municipality may, within thirty (30) days after certification of the election results, petition the court for exclusion from the District of such incorporated area, and the court shall exclude such territory from the District.
- m. The lands voting to join the District shall be included in the District subject to terms and conditions as approved by the Board.
- n. District legal counsel will monitor and file any needed paperwork with the District Court to confirm and complete the petition inclusion process.
- o. The lands are included in the District and are now subject to the same taxation as other lands within the District.

#### **PROCESSING OF OTHER CITY AND COUNTY NOTIFICATIONS**

Various cities and/or counties do notify the District of plat plans, site development plans, zoning and/or rezoning and metropolitan districts among others. Upon receipt of these notifications the District will log the information and review it to verify if the area is in or out of the District. If the area is already in the District Boundaries no response from the District is necessary.

#### **TERMS AND CONDITIONS FOR INCLUSION INTO THE DISTRICT BOUNDARIES**

C.R.S. §37-45-136 (3.6) addresses annexations by municipalities within a water conservancy district, and provides that “Whenever a municipality has annexed land into its boundaries and that municipality at the time of annexation previously had lands within its boundaries included within the district, upon consent of the governing body of the municipality, and *upon consent by the board of directors of the district*, the annexed lands shall be deemed to have been included within the district, subject to terms and conditions as determined by the board of directors of the district that shall not be inconsistent with the terms and conditions of previous applicable inclusion orders relating to that municipality. The municipality shall promptly transmit to the district a certified copy of the municipality’s annexation ordinance. Upon receipt of the municipality’s annexation ordinance, the board of directors of the district

shall promptly act to grant or deny consent to the inclusion of the newly annexed lands into the district.” Refer to appendix K.

NOTE: Applicants should begin the inclusion process prior to any proposed land use change or proposed ground disturbance. All inclusion parcels are subject to the National Historical Preservation Act, 36 CFR 800, and NEPA. Any change in land use or disturbance after beginning the inclusion process and before Reclamation’s Assent may cause the parcel to be permanently ineligible to receive Project water.

### **BOUNDARY MAP CORRELATION WITH COUNTIES**

The District will coordinate with the County assessor on providing maps of the District Boundaries (CRS § 39-1-110).

### **CITY AND COUNTY CONTACTS**

#### **Bent County**

**County Assessor:** Guy Wagner, (719) 456-2010 [guy@bentcounty.net](mailto:guy@bentcounty.net)

**Assessor GIS contact:** Bent County Assessor out of the Courthouse (719) 456-2010

**City of Las Animas:** Ken Wagner, Director of Public Works, (719) 456-2571, [lapwl@bentcounty.net](mailto:lapwl@bentcounty.net);

**City of Las Animas GIS contact:** Bent County Assessor out of the Courthouse (719) 456-2010

#### **Chaffee County**

**County Assessor:** Brenda Mosby, (719) 539-4016

**Assessor GIS contact:** Dean Russell, [drussell@chaffeecounty.org](mailto:drussell@chaffeecounty.org)

**Chaffee County Planner:** Kim Antonucci, (719) 530-5565 [KAntonucci@chaffeecounty.org](mailto:KAntonucci@chaffeecounty.org)

**Salida City Planner:** Michael Yerman, (719) 530-2626 [myerman@cityofsalida.com](mailto:myerman@cityofsalida.com)

**Buena Vista Town Planner:** Shannon Haydin, (719) 395-8643 extension 15, [bvplanning@buenavistaco.gov](mailto:bvplanning@buenavistaco.gov)

**Poncha Springs Planner:** Dee Miller, (719) 539-6882

#### **Crowley County**

**County Assessor:** Doug England, [assessor@crowleycounty.net](mailto:assessor@crowleycounty.net)

**Assessor GIS contact:** Crowley County Administrative Office (719) 267-5555

**Olney Springs contact:** City Council (719) 267-5567

**Ordway contact:** Pete Moore, (719) 245-5115

**Sugar City contact:** Jennifer Baker, City Clerk (719) 267-3729

### **El Paso County**

**County Assessor:** Mark Lowderman, (719) 520-6600

**El Paso County GIS Analyst:** Stephen Fischer, (719) 520-6629 [StephenFischer@elpasoco.com](mailto:StephenFischer@elpasoco.com)

**City of Fountain Planner:** Kristy Martinez, (719) 322-2015

**Colorado Springs Clerk:** Sharon Seranno, (719) 385-5901 [www. Springsgov.com](http://www.Springsgov.com)

**Colorado Springs GIS/IT contact:** Phil Friesen, (719) 385-5362 [Friesen@springsgov.com](mailto:Friesen@springsgov.com)

**Manitou Springs Planning Dept:** (719) 685-4398 [msclm@ci.manitou-springs.co.us](mailto:msclm@ci.manitou-springs.co.us)

### **Fremont County**

**County Assessor:** Stacey Seifert, (719) 276-7310      **GIS contact:** Dave Kimmet (719) 276-7310

**Cañon City Planner:** MaryAnn Nimo (719) 276-5294

**City of Florence:** Don Moore [dmoore@florencecolorado.org](mailto:dmoore@florencecolorado.org)

**Penrose District Manager:** Ron Gasser (719) 372-3289

### **Kiowa County**

**County Assessor:** Penny Baker (719) 438-5521      **Assessor GIS contact:** no computerized mapping

**Eads:** Bill Barlow (719) 688-3995

### **Otero County**

**County Assessor:** Ken R. Hood (719) 383-3010      **GIS contact:** Steve Lange (719) 383-3010

**Fowler:** Ronnie Rein [janwillow@centurytel.net](mailto:janwillow@centurytel.net)

**Manzanola:** City Council (719) 462-5544

**Rocky Ford City Manager:** Daniel Hyatt (719) 254-7414

**Swink:** Town of Swink (719) 384-715

**La Junta City Administration:** (719) 384-5991

**Cheraw:** Rae Ann Lynn (719) 853-6013

### **Prowers County**

**County Assessor:** Andrew B. “Andy” Wyatt (719) 336-8000 [awyatt@prowerscounty.net](mailto:awyatt@prowerscounty.net)

**Assessor GIS contact:** Janet Marriott (719) 336-8006, [prowersgis@prowerscounty.net](mailto:prowersgis@prowerscounty.net)

**City of Lamar:** Doug Montgomery [doug.montgomery@ci.lamar.co.us](mailto:doug.montgomery@ci.lamar.co.us)

**Wiley Town Superintendent:** Robert King (719) 829-4974

### **Pueblo County**

**County Assessor:** Frank Beltran (719) 583-6590

**Assessor GIS contact:** Chris Markuson (719) 583-6240 [gis@co.pueblo.co.us](mailto:gis@co.pueblo.co.us)

**City of Pueblo Planning & Development:** Jeff Bailey (719) 553-2259 [jbailey@pueblo.us](mailto:jbailey@pueblo.us)

**Pueblo West Metro District:** (719) 547-5000

**APPENDIX A**

District Letterhead

Date

Addressed and/or emailed to the attention of the **respondent named in the Hearing of Annexation**

Subject: “use the more commonly known as title and/or assessor’s parcel number”

Dear :

Thank you for notifying the Southeastern Colorado Water Conservancy District (District) on the above petition to review and comment on the above annexation.

I have reviewed the application and the property is located entirely within the District Boundaries and the District has no further concerns with the application. Thanks again for your consideration.

Sincerely,

Engineering Support Specialist

cc: Senior Planner, City of \_\_\_\_\_  
Bureau of Reclamation – Pueblo  
Bureau of Reclamation – Loveland  
SECWCD – Executive Director and Engineer  
District File

**APPENDIX B**

District Letterhead

Date

*Address letter to attention of person specified in the Notice that submitted the Hearing of Annexation and applicant*

By: e-mail to if applicable (original by USPS)

**Subject: use the more commonly known as title, and/or Resolution No.**

Dear \_\_\_\_\_:

Thank you for sending the Southeastern Colorado Water Conservancy District (District) (*or we receive*) the notice of the hearing regarding the below annexation:

<b>Reference</b>	<b>Annexation More Commonly Known As</b>	<b>Legal description of property</b>
Resolution No. 12, 2007	The Carroll Cañon Annexation	Northwest ¼ Section 17 Township 19 South, Range 70 West 6 <sup>th</sup> PM

The District has determined that all or a portion of the area requesting annexation is located **outside** of the District Boundaries.

According to the District’s formation decrees, and repayment contract for the Fryingpan Arkansas Project with the U.S. Bureau of Reclamation (Reclamation), Reclamation consent is needed for changes of lands to be included in the District.

A requirement of inclusion into the District is assent from Reclamation; this assent is subject to Reclamation’s review for National Environmental Policy Act (NEPA) compliance. In order to begin Reclamation’s process for inclusion into the District, **the applicant** will need to complete the following attached questionnaire titled, *National Environmental Policy Act (NEPA) Questionnaire for Fryingpan Arkansas Project Land Inclusion Proposals*. To help you and the applicant understand the procedures, also attached are the *Environmental Compliance Requirements for Evaluating Proposed Land Inclusions into the Southeastern Colorado Water Conservancy District* and a copy of a December 5, 2005 letter from the Bureau of Reclamation defining “applicant.” During the process the Bureau of Reclamation may require further information.

**NOTE: The City or the Applicant is responsible for all costs related to Reclamation’s review of inclusion.**

Please recognize that this annexation is ***NOT*** eligible to receive benefits from the Fryingpan Arkansas Project until the Bureau of Reclamation has completed the NEPA process and assented to the inclusion of this annexation into the District. The inclusion of this annexation also is subject to terms and conditions that may be imposed by the District Board of Directors, not inconsistent with previous inclusion orders involving the same municipality, as provided in C.R.S. § 37-45-136(3.6).

NOTE: Applicants should begin the inclusion process prior to any proposed land use change or proposed ground disturbance. All inclusion parcels are subject to the National Historical Preservation Act, 36 CFR 800, and NEPA. Any change in land use or disturbance after beginning the inclusion process and before Reclamation's Assent may cause the parcel to be permanently ineligible to receive Project water.

If you have any questions, please contact me at (719) 948-0083 or by e-mail bob@secwcd.com.

Sincerely,

(Name)

Director of Engineering and Resource Management

Attachments:

- National Environmental Policy Act Questionnaire for Fryingpan Arkansas Project Land Inclusion Proposals.
- Environmental Compliance Requirements for Evaluating Proposed Land Inclusions into the Southeastern Colorado Water Conservancy District.
- December 5, 2005 Letter from the Bureau of Reclamation concerning the definition of "Applicant"

cc: City Planning Department (BWWP if Pueblo County)  
James W. Broderick, Executive Director SECWCD  
Bureau of Reclamation - Loveland  
Bureau of Reclamation - Pueblo  
Legal Counsel  
District File

## APPENDIX C

### NATIONAL ENVIRONMENTAL POLICY ACT QUESTIONNAIRE FOR FRYINGPAN ARKANSAS PROJECT LAND INCLUSION PROPOSALS

Mail the completed questionnaire to: **U.S. Bureau of Reclamation, Eastern Colorado Area Office**, Attn: Brian Little, EC-1340, 11056 West County Road 18-E, Loveland, CO 80537-9711; Phone Number: (970) 962-4360, and Patrick McCusker, EC-1340, 11056 West County Road 18-E, Loveland, CO 80537-9711; Phone Number: (970) 962-4342. Also send a copy of this questionnaire to **Southeastern Colorado Water Conservancy District**, 31717 United Avenue, Pueblo, CO 81001.

- 1. Applicant's name, address, & phone number (include name and address of Inclusion property if different from that of the applicant):**
- 2. Describe where the inclusion property/tract is located (include legal description: Township, Range, Section, & 1/41/4):**
- 3. Provide a description of the existing land use (i.e., farming, grazing, etc.) and the proposed use of the water for lands to be included in the SECWCD boundary and explain why the action is needed (i.e., existing or proposed residence, subdivision, commercial/industrial, etc.):**
- 4. Provide the acreage of the Inclusion property and attach a location map of the tract (survey plat, 7.5 minute series topographic map, etc.):**
- 5. Describe any water source alternatives to the proposed inclusion action (i.e., ground water):**
- 6. Describe the extent of land disturbance associated with the inclusion action (i.e., approximate acreage of disturbance, pipeline length, etc.). Also, show areas of proposed disturbance on maps (i.e., proposed pipelines, structures, infrastructure, etc.) and include any proposed open space areas:**

- 7. Describe any lands being removed from agriculture (i.e., dry land farming/irrigation, livestock grazing, etc.), as a result of the Inclusion action:**
  
- 8. Explain if an existing water supply on the tract would be replaced or augmented:**
  
- 9. List any known concerns, controversy, or permit requirements that the Bureau of Reclamation should be aware of as a result of any new water delivery system or potential land use changes. Include reference to the applicable local land-use planning/zoning master plan and the responsible entity (i.e., water surveyor, municipality, etc.):**
  
- 10. List names, addresses, and telephone numbers of any persons, agencies, or other entities that were already contacted or consulted regarding the action (i.e., landowners, and Federal, State, or local regulatory agencies):**
  
- 11. Describe any anticipated water quality or quantity impacts within the area to be served (i.e., sewage disposal, construction impacts, etc.):**
  
- 12. Provide any known alternative water delivery system routes, plans, etc., which may have already been considered. Explain whether the water delivery would require a Federal permit or right-of-way. If so, provide names of other Federal agency personnel involved:**
  
- 13. Provide information regarding any known presence of cultural resource sites, threatened or endangered species, potential wetlands, etc. Include any known Concerns of the administering agency (i.e., State Historic Preservation Office, U.S. Fish & Wildlife Service, U.S. Army Corps of Engineers, etc.)**

**APPENDIX D**

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IN REPLY  
REFER TO:

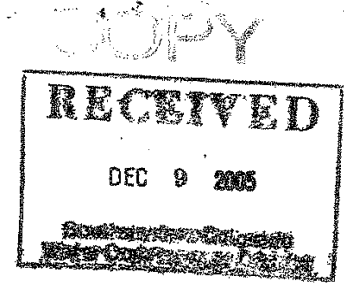
EC-1340  
LND-11.00

APPENDIX E  
United States Department of the Interior

BUREAU OF RECLAMATION  
Eastern Colorado Area Office  
11056 West County RD 18E  
Loveland, Colorado 80537-9711



FILE  
CC Bob



DEC 5 2005

Mr. Robert W. Hamilton  
Director of Engineering & Resource Management  
Southeastern Colorado Water Conservancy District  
31717 United Avenue  
Pueblo CO 81001

Subject: Request for Definition of "Applicant" for the Purpose of completing NEPA Questionnaires  
- Fryingpan-Arkansas Project

Dear Mr. Hamilton:

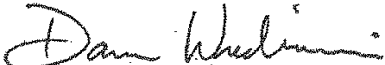
We have received your letter of October 28, 2005, requesting the definition of "Applicant", as it relates to providing supplemental information for the inclusion process for lands within the Southeastern Colorado Water Conservancy District (SECWCD) boundaries.

The purpose of request for information is to assure that the Bureau of Reclamation can accurately determine whether Secretarial Approval for an inclusion is appropriate. Unless approval is granted, Fry-Ark Project water will not be delivered for municipal or agricultural uses even though the lands have been annexed by a municipality or included within the SECWCD boundaries.

We believe the term "Applicant" should be used to identify the entity or individual landowner that directly or indirectly will receive the benefit of Federal project water and is making the request for the inclusion. If the questionnaire is included as a part of the petition for inclusion, the entity filing the petition would complete the questionnaire.

If a developer is the entity that is planning to construct homes or businesses and have Project water supplied to these homes or businesses, the developer should be the applicant. If a municipality is annexing lands into the city limits, the landowner who will receive Project water, should be the applicant.

If you have any additional concerns or questions, please contact Brian Little at 970-962-4360.

Sincerely,  
  
Dawn Wiedmeier  
Acting Area Manager



APPENDIX G

**PETITION FOR INCLUSION OF LANDS INTO THE  
SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT**

**TO THE BOARD OF DIRECTORS OF THE SOUTHEASTERN COLORADO WATER  
CONSERVANCY DISTRICT**

1. All the owner(s) of lands situated in the County of \_\_\_\_\_, State of Colorado, hereby petition and pray that the lands hereinafter described be included in said Southeastern Colorado Water Conservancy District (District).
2. The description of the lands owned by the Petitioner(s) is as follow:

<u>PETITIONER</u>	<u>DESCRIPTION</u>	<u>SEC.TWP.RGE.</u>	<u>ACRES</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

TOTAL ACRES INCLUDED \_\_\_\_\_  
CURRENT ASSESSED VALUATIONS OF  
LANDS AND IMPROVEMENTS TO BE INCLUDED \$ \_\_\_\_\_

3. A plat of the above-described property is attached hereto as Appendix C.
4. All of the owner(s) of the above-described property hereby agree(s) to pay to the District an amount which is equal to the ad valorem taxes which would have been paid to the District by the owners of the above-described lands if said lands had been within the boundaries of the District at the time of its creation (inclusion fee). This amount will be calculated in accordance with the policy of the District, a copy of which is attached as Appendix B.
5. All the owner(s) of the above-described property agree to reimburse the District all reasonable administrative and legal costs incurred by the District in reviewing the petition.
6. All the owner(s) of the above-described property and their heirs, successors, and assigns, hereby agree(s) to be bound by the Water Conservancy Act C.R.S. 37-45-101 *et seq.*, as amended or changed from time to time.



**Appendix A of APPENDIX G**

**Purpose**

The purpose of this covenant is to subject Petitioner’s property, described in the petition for inclusion and court order for inclusion, to the same mill levies and special assessments as are levied or will be levied on similarly situated property in the Southeastern Colorado Water Conservancy District (District) at the time of inclusion of Petitioner’s lands.

**Waiver**

Petitioner hereby waives any right which may exist to require an election pursuant to Article X, 20 of the Colorado Constitution before the District impose the mill levies and special assessments specified below. Petitioner(s) also waive any right which may exist to a refund pursuant to Article X, 20 of the Colorado Constitution.

**Mill Levies and Special Assessments**

Upon inclusion into the District, and as an express condition thereof, Petitioner covenants to pay the following any mill levy or special assessment levied annually by the District and imposed on similarly situated property within the District.

**Covenant to Run with the Land**

This covenant will run with and burden the property described in the petition for inclusion and court order for inclusion and binds all future owners of the property.

**ALL OWNERS OF THE ABOVE-DESCRIBED  
PROPERTY MUST SIGN THIS APPENDIX A**

**DATE**

**SIGNATURE**

**ADDRESS**

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STATE OF COLORADO  
COUNTY OF \_\_\_\_\_

) SS  
)

(SEAL)

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_ Notary Public: \_\_\_\_\_

**APPENDIX H to the Inclusion Procedure Manual  
(Appendix B to the Petition for Inclusion)**

**SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT  
RESOLUTION NO. 2008-XXD  
FRYINGPAN ARKANSAS PROJECT INCLUSION FEE**

WHEREAS, the inclusion of lands into the Southeastern Colorado Water Conservancy District (District) makes those lands eligible to receive water from the Fryingpan Arkansas Project facilities, subject to the decrees for the Fryingpan Arkansas Project, and to all lawful rules, regulation, policies, and contractual obligations of the District; and

WHEREAS, those lands and allottees of water originally included within the District commencing in 1958 have contributed to the cost of construction, repayment, operation, maintenance, replacement and administration of the Fryingpan Arkansas Project; and

WHEREAS, a fee is necessary to place newly included lands and their eligibility for water from the Fryingpan Arkansas Project facilities on the same basis as those lands originally included within the District.

NOW, THEREFORE, LET IT BE RESOLVED:

In addition to the reimbursement for any fees and costs incurred by the District as a result of this petition, a fee shall be charged in connection with the inclusion of lands into the District. This inclusion fee shall be calculated as follows:

The sum of the historical (1958 to current year) ad valorem tax revenues received by the District divided by the current assessed valuation of the District times the current assessed valuation of the property and improvements to be included.

The ratio determined by this formula will be computed by the District based on the most recent calendar-year valuation and will be made available upon request. It will be the responsibility of the Petitioner to furnish the current assessed valuation of the property and improvements involved at the time the petition for the inclusion is submitted to the District.

As an alternative, the District Fryingpan Arkansas facilities inclusion fee may be calculated as follows:

A fee equal to the total amount which would have been collected by the District under its annual historic mill levy had the lands been included in the District from 1958 to the date of the petition for inclusion, plus interest to be calculated at the rate of three percent compounded annually. The petition to the District for inclusion, if this alternative is selected by the Petitioner(s), shall be accompanied, or supplemented by a certified list of annual assessed valuations from 1958 to the date of the petition for inclusion.

Satisfactory arrangements for payment of fees must be made with the District before the inclusion will be approved by the Board of Directors.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
President, SECWCD

\_\_\_\_\_  
Secretary, SECWCD

**APPENDIX I**  
**Southeastern Colorado Water Conservancy District**  
**Land Inclusion Log Sheet**

**Petitioner** \_\_\_\_\_

**Area to be Included:** \_\_\_\_\_

<b>ACTION ITEM</b>	<b>DATE INITIATED</b>	<b>DATE COMPLETED</b>
1. Petition received		
Legal description is adequate		
Total acres included is shown		
Assessed valuation is shown		
Plat map is attached		
Address is shown		
All signatures properly notarized		
2. Calculate administrative fee		
3. Calculate back tax charge		
4. Letter to petitioner		
See procedures for all items to be included in the letter.		
5. Prepare for hearing		
Set hearing date		
Provide published notice		
6. Hearing on petition		

	DATE	DATE
ACTION ITEM	INITIATED	COMPLETED
7. Approve or deny petition		
If denied send notification to petitioner		
8. Forward letter to Reclamation		
9. Receive assent or denial from Reclamation		
if denied notify petitioner		
if approved transmit appropriate documents to legal counsel for subsequent court action		
10. Prepare Board order for use in court filing and forward to legal counsel		
11. Legal counsel files appropriate documents with District court		
12. Receive approval from District Court		
13. File Court order with Assessor's office		
send copies of Court order to property owner, Reclamation, and any domestic water provider or authority.		

APPENDIX J

District Letterhead

Date

*Inclusion Contact*

US Bureau of Reclamation  
11056 W County Road 18E  
Loveland CO 80537-9711

**Subject: NEPA Questionnaire status regarding annexation (more commonly known as)**

Dear Sir/Madam:

On \_\_\_\_\_ a letter was submitted to \_\_\_\_\_  
from Southeastern Colorado Water Conservancy District (District) notifying the City or  
Applicant that all or a portion of the proposed annexation is outside of the District Boundaries.  
According to the District's formation decree and repayment contract with the Bureau of  
Reclamation we are required to determine if an annexation extends beyond our District  
Boundaries and follow Reclamations environmental compliance requirements for evaluating  
proposed land inclusions into the District. The above annexation is considered to be outside our  
District Boundaries.

Please notify us within a week on the status of the NEPA process and in which direction this  
annexation and inclusion should proceed. Thank you for your consideration in this matter.

Sincerely,

*SECWCD Signature authority*

CC: City/Applicant  
Bureau of Reclamation – Pueblo Field office  
James Broderick, SECWCD  
District Files

APPENDIX K

**SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT  
RESOLUTION NO. 20\_\_ - \_\_\_\_\_  
INCLUSION OF MUNICIPAL ANNEXATION**

WHEREAS C.R.S. §37-45-136(3.6) addresses annexations by municipalities within a water conservancy district, and provides that “...upon consent of the governing body of the municipality, and upon consent by the board of directors of the district, the annexed lands shall be deemed to have been included within the district, subject to terms and conditions as determined by the board of directors of the district that shall not be inconsistent with the terms and conditions of previous applicable inclusion orders relating to that municipality”; and

WHEREAS the December 18, 1979 Judgment and Decree for the Southeastern Colorado Water Conservancy District (in Case No. 40487, Pueblo County District Court) provides that: “All areas hereafter annexed to said cities and towns with the consent of the contracting officer of The United States of America constitute municipalities and are a part of said District and may participate in the municipal water allocation provided by the District”; and.

WHEREAS, the inclusion of lands into the Southeastern Colorado Water Conservancy District (District) makes those lands eligible to receive water from the Fryingpan Arkansas Project facilities, subject to the decrees for the Fry-Ark Project, and to all lawful rules, regulations, principles, policies, and contractual obligations of the District; and

WHEREAS, the [Municipality] has consented to the inclusion of these lands in the Southeastern Colorado Water Conservancy District.

**WHEREFORE, IT IS HEREBY RESOLVED:**

That the lands annexed into [Municipality] by Ordinance No. \_\_\_\_\_, (attached hereto as Exhibit \_\_\_\_ ) are included within the Southeastern Colorado Water Conservancy District, subject to the consent of the contracting officer of The United States of America, and subject to the following terms and conditions:

1. Approval of this inclusion into the Southeastern Colorado Water Conservancy District (“District”) will not increase the amount of Fryingpan-Arkansas Project water available to [Municipality]. Any Fryingpan-Arkansas Project water used on these included lands

will need to come from the water allocated to [**Municipality**] 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 Southeastern Colorado Water Conservancy 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 Southeastern Colorado Water Conservancy 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 costs charged by the United States in connection with the contractual officer's assent to this inclusion, and
5. Administrative fee

APPENDIX K  
COVER LETTER TO USBOR

District Letterhead

Date

*Inclusion Contact*

US Bureau of Reclamation  
11056 W County Road 18E  
Loveland CO 80537-9711

**Re: SECWCD Resolution No. 20\_\_-\_\_\_\_\_Inclusion of Municipal Annexation,  
Ordinance No.**

Dear \_\_\_\_\_:

Enclosed is a copy of the Southeastern Colorado Water Conservancy District Board action approving the inclusion of municipal annexation for the area commonly known as, \_\_\_\_\_ . We are requesting the Bureau of Reclamation authorize Secretarial assent to this inclusion. If Reclamation cannot assent then provide us with an explanation so that we may relay this information to our Board of Directors and take the appropriate measures to recognize that this annexation is NOT eligible to receive benefits from the Fryngpan-Arkansas Project.

Thank you for your consideration in this matter.

Sincerely,

*SECWCD Signature authority*

CC: City/Applicant  
Bureau of Reclamation – Pueblo Field office  
James Broderick, SECWCD  
Burns, Figa & Will P.C.  
District Files

APPENDIX L

Date

(addressed to Petitioner)

Re: name of Petitioner and Project (or title of land to be included, example Dilley Inclusion)

Dear Petitioner:

Southeastern Colorado Water Conservancy District (Southeastern) has received the petition of *<annexation name>* for inclusion into the District. With this letter, we are providing an outline that will now be followed in order for Southeastern to review and process this inclusion petition.

Based on Southeastern's policy regarding inclusions of non-municipal lands, Southeastern will charge an administrative fee in order to cover the cost to process an inclusion petition.

In addition, it is Southeastern's policy that any lands included into the District will pay a fee equivalent to the current value of taxes that would have been paid to Southeastern, had the property been in the District since its original formation. This inclusion fee will then put newly included lands on a similar tax basis with those lands that have been paying taxes to Southeastern since it was formed in 1958.

Southeastern has a formula to calculate the inclusion fee. Based upon that formula, the *<petitioner's name>* property must pay Southeastern an amount *not to exceed* \$\_\_\_\_\_. This inclusion fee will be held by Southeastern pending final resolution of your petition. In the event your petition is eventually denied, this inclusion fee will be refunded. The administrative fee, however, will not be refunded if this petition is eventually denied and/or withdrawn.

Southeastern administers the Fryingpan-Arkansas (Fry-Ark) Project. The Fry-Ark Project is a federally authorized reclamation project. Under Southeastern's Repayment Contract with the United States (through the Department of the Interior) and applicable federal reclamation law, no changes can be made to Southeastern District Boundaries through inclusions of land - except upon the Secretary of Interior's written permission. As Petitioner, *<petitioner's name>* will bear the responsibility and costs for obtaining this federal permission. Any action Southeastern takes on the *<petitioner's name>* is subject to Department of the Interior approval.

We have forwarded the *<petitioner's name>* petition to the Bureau of Reclamation, but Reclamation will not begin to review the petition until its National Environmental Policy Act (NEPA) questionnaire is completed (attached) and forward to the Bureau of Reclamation, Eastern Colorado Area Office, see top of questionnaire.

**NOTE: The Petitioner(s) is responsible for all costs related to Reclamation's review of inclusion.**

NOTE: Applicants should begin the inclusion process prior to any proposed land use change or proposed ground disturbance. All inclusion parcels are subject to the National Historical Preservation Act, 36 CFR 800, and NEPA. Any change in land use or disturbance after beginning the inclusion process and before Reclamation's Assent may cause the parcel to be permanently ineligible to receive Project water.

In order to continue processing the <petitioner's name> petition, we will need to collect from you the administrative fee, and the inclusion fee. Upon receipt of these fees, Southeastern will proceed with the statutory authorized procedure for such an inclusion petition. Southeastern will set a date for the public hearing of the <petitioner's name> petition request, which we will set only after consultation with you and/or other representatives of <petitioner's name>, in order to choose a date that works for both <petitioner's name> and Southeastern. Once the hearing date is set, we will arrange to publish the petition in the <local newspaper> as required by state statute. <petitioner's name> will be responsible for the cost of this newspaper publication. Per state statute, objectors must present comments in writing. We will attempt to provide those comments to you prior to the inclusion hearing. We also plan to let the objectors who do submit written comments to provide a brief oral summary of the comments. We will allow you a period of time to present the petition and respond to any objections.

Southeastern will then hold the public hearing and deliberate on the petition request itself at this hearing (or at a continued hearing date in the future). In the event that Southeastern does approve the petition, it will be subject to any and all approvals and requirements as set forth by the Department of the Interior through its Bureau of Reclamation, and will be subject to terms and conditions consistent with Southeastern policies. As mentioned earlier, to initiate federal review of the petition, you must complete the NEPA questionnaire and send it to Mr. Little in the Bureau of Reclamation's Loveland office.

If you have any questions, please contact Bob Hamilton at our office.

Sincerely yours,

James W. Broderick  
Executive Director, SECWCD

Enclosure: National Environmental Policy Act Questionnaire

cc: Bureau of Reclamation Pueblo Field office  
District legal counsel  
District Files