

**Minutes of the Special Board Meeting of the
Board of Directors of the
Republican River Water Conservation District**

December 16, 2010

Yuma, Colorado

The Board of Directors of the Republican River Water Conservation District convened a special meeting, pursuant to notice required by statute and the District's By-Laws, at the Quintech Center, Yuma, Colorado.

Present were:

Board Members:

Dennis Coryell, President
Greg Larson, Vice President
Tim Pautler, Secretary
Byron Weathers, Treasurer
Eugene Bauerle
Jack Dowell
Raymond Enderson
Kim Killin
Garry Kramer
Bruce Latoski
Rod Lenz
Rod Mason
Wayne Skold

Stan Murphy, RRWCD General Manager
Dawn Webster, RRWCD Administrative Assistant
Dennis Montgomery, RRWCD General Counsel, Hill & Robbins, P.C.
Jim Slattery, RRWCD Engineer, Slattery Aqua Engineering
John Willard, RRWCD Accountant

A sign-in sheet listing the members of the public attending the meeting is attached as Exhibit 1.

STATEMENT OF QUORUM

President Dennis Coryell called the meeting to order at 1:37 p.m. and welcomed the public. Secretary Tim Pautler conducted a roll call of Board members, noting that Directors Steve Kramer, Raymond Enderson, and Kim Killin were absent, but excused. Shortly after the roll call was conducted, Raymond Enderson entered the meeting. Kim Killin joined the meeting shortly after it began. With 12 Directors present and attending the meeting, Secretary Pautler declared that a quorum of the Board was present.

President Coryell announced that the board of directors of the Arikaree Ground Water Management District (GWMD) had replaced Larry Zion with Rod Mason as the director appointed by the Arikaree GWMD, and that he had taken the oath of office before the start of this meeting.

AGENDA AND APPROVAL OF MINUTES

President Coryell said the Board needed to add discussion of insurance for the Dryden Property lease to the agenda. A motion to approve the agenda with that addition was made, seconded, and approved unanimously.

DISCUSSION

The first item for consideration was whether to proceed with the Compact Compliance Pipeline to comply with the amendment to the Colorado Water Conservation Board (CWCB) loan contract and to ensure the availability of loan funds. President Coryell said there would be an opportunity for public comment before the Board took any action but said that public comment would be limited to items on the agenda and that comments would be limited to five minutes because the Board assumed a number of people would like to speak.

To explain where the Republican River Basin is in terms of Compact compliance, President Coryell asked Jim Slattery, RRWCD engineer, to give a presentation. His presentation included an explanation of the Republican River Compact, the acres irrigated by groundwater pumping in Colorado, the historical streamflow gages used in Compact accounting, Colorado's consumptive use and Compact allocations based on a five-year running average, the amount that Colorado's consumptive use has exceeded its Compact allocations in recent years, RRWCD land retirement programs showing the wells that have been removed from irrigation, and the effects of land retirement programs in reducing Colorado's consumptive use. His presentation also showed Colorado's projected Compact compliance status under current pumping and no pumping conditions. He explained how the Compact Compliance Pipeline would assist Colorado in complying with the Compact. Finally, Mr. Slattery explained the 18-month schedule for construction of the Compact Compliance Pipeline.

Kim Killin joined the meeting at 1:56 p.m.

President Dennis Coryell then gave a presentation to explain the reason for the special meeting to consider whether to proceed with the Compact Compliance Pipeline. The following points were made during the presentation: 1) Colorado is currently out of Compact compliance; 2) the Pipeline is the only feasible solution for Compact compliance; 3) the CWCB loan funds for the Pipeline are at risk because of the State's current budget crisis; 4) continued delayed Compact compliance increases the risk of a lawsuit against Colorado by Kansas or Nebraska for failure to comply with the Compact and the Final Settlement Stipulation (FSS); 5) Kansas has filed a motion with the U.S. Supreme Court for leave to file a complaint against Nebraska and while Kansas did not claim any relief against Colorado, if the Supreme Court grants the motion, Nebraska could file a counterclaim against Colorado, which is how Colorado got brought into the last lawsuit between Kansas and Nebraska over the Compact; 6) the CWCB loan for the Pipeline is at a very favorable interest rate and this is a very favorable time for bidding

construction projects; 7) Nebraska has agreed to a delivery schedule and the credit Colorado would receive for Pipeline deliveries; 8) while Kansas has not agreed to the credit Colorado would receive for Pipeline deliveries, the Arbitrator recommended a 10% reduction as a reasonable reflection of the potential impact based on seasonal deliveries; 9) although there is a risk in proceeding with building the Pipeline before the credit for Pipeline deliveries has been determined, there is also a risk to the economy of the area if the Pipeline is not built and Colorado is sued for failure to comply with the Compact and the FSS; 10) a decision to construct the Pipeline and actual delivery of water are separate issues and the Board could wait until the resolution of issues with Kansas before seeking approval to export groundwater from the Sandhills GWMD or it could seek approval from the Sandhills GWMD conditioned on Colorado getting a minimum credit for deliveries; 11) while the Pipeline project will not bring Colorado into compliance with the South Fork sub-basin non-impairment requirement, the State Engineer has acknowledged that draining Bonny Reservoir is the only practical way for Colorado to get into compliance with the sub-basin non-impairment requirement in the South Fork sub-basin and the State has been negotiating with the United States to try to resolve the contract issues regarding Bonny Reservoir; 12) while the Board would obviously prefer to wait to make a decision about constructing the Pipeline until the credit for Pipeline deliveries has been determined and the South Fork issues have been resolved, the Board needs to consider the risk that the CWCB loan funds will be taken to solve the State's budget crisis and that the CWCB loan funds may not be available in the future when the Board needs to proceed with construction of the Pipeline.

At 3:29 p.m., the Board took a short recess prior to public comment.

At 3:42 p.m., the meeting reconvened.

PUBLIC COMMENT

At 3:43 p.m., President Coryell invited comment from the public.

Sue Jarrett, a resident of the District, apologized to the Board for her personal issues at the last Board meeting. She stated that she opposes the Pipeline until the Board knows what the credit amount is.

Bud Mekelburg, a resident of the District, expressed his sympathy to the Board for having to make a very tough decision. He thanked Byron Weathers, who is on the Colorado Corn Growers, for donating \$15,000 for removal of the trees on the South Fork. He stated that the Board needs to get things in order before voting to start the Pipeline.

Joe Newton, Chairman of CAPA, thanked the Board for being here today and said he feels the Board needs to go forward as soon as possible to start construction on the Pipeline.

Denny Salvador, a resident of the District, asked Jim Slattery, RRWCD Engineer, if the Pipeline deliveries are run through the RRCA Groundwater Model, what kind of credit would Colorado be given? He also asked if use fees would be going up if construction of the Pipeline

proceeds? Finally, he thanked the Board for the time the directors have spent dealing with these issues.

Mr. Slattery said that the States disagree on whether the credit for the Pipeline deliveries should be determined using the RRCA Groundwater Model, but if the RRCA Groundwater Model is used, the credit varies from year to year. On the average, based on the delivery schedule agreed to with Nebraska, he said the credit would be 80% to 90% of the deliveries. Director Kim Killin, Chair of the Budget Committee, said that the Board had budgeted so that no use fee increase would be needed in the future.

Greg Terrell, a director of the Arikaree GWMD, thanked the Board for what it has been doing. He said he feels we are paying for Colorado's bad decisions in the past. Mr. Terrell discussed the 1942 Compact and said he felt that the States should not be counting Bonny Reservoir's consumptive use against Colorado because it was built for flood control in Kansas. He also felt that if the State of Colorado is going to take back the remaining CWCB loan funds, the CWCB should give back 22% of the collateral so it would be available to obtain a loan from another institution. Mr. Terrell also said he feels that if the Board makes the decision to proceed with construction of the Pipeline today, it would be another bad decision and that no decision should be made until we get 100% credit for the Pipeline deliveries. Finally, he said the RRCA crediting decision needs to be done first, and then the District needs to approach the Sandhills GWMD before the Board makes a decision.

Marvin Pletcher, a director of the Central Yuma GWMD, thanked the Board and said he feels the Board should not settle for anything less than 100% credit for the Pipeline deliveries. He also said he feels Colorado will not take away the money for the CWCB loan because it will hurt the economy if they shut down the wells.

Director Kim Killin said that the Board had heard a lot about not getting less than 100% credit for the Pipeline deliveries, but said it is ultimately in the State's hands and that some things are out of the Board's hands. She said in making a decision the Board was trying to protect the producers in the basin and would take the comments into serious consideration.

There being no further comments, public comment ended.

EXECUTIVE SESSION

At 4:20 p.m., a motion was made pursuant to section 24-6-402(4), C.R.S., to enter into executive session to discuss the status of negotiations on agreements to acquire water rights for Compact compliance, determine positions and instruct negotiators, and receive legal advice on legal questions related to such agreements and the status of discussions with Kansas concerning the Compact Compliance Pipeline and the Arbitrator's decision.

At 4:51 p.m., the executive session ended.

DISCUSSION/ACTION ITEMS

Before considering a motion or taking a vote, President Coryell asked the Board members to give their thoughts to see where they stood on going forward with construction of the Compact Compliance Pipeline. Each director then expressed his or her thoughts and concerns about the decision to go forward with construction of the Pipeline and the desire to secure CWCB funding for construction of the Pipeline. Several Board members noted that under the Compact Compliance Pipeline schedule presented by Mr. Slattery earlier in the meeting, the award of the contract for construction of the Pipeline would not occur for several months and that the Board might know by then if Colorado and Kansas had agreed on the credit for the Pipeline deliveries. After the last Board member had spoken, Director Kim Killin made a motion that the Republican River Water Conservation District initiate the Compact Compliance Pipeline schedule, provided that a vote of the Board is required prior to the award of a construction contract. The motion was seconded and passed by a vote of 13 to 1.

The Board then considered the Right-of-Way Contract with the State Land Board for the Pipeline. Mr. Montgomery explained that the State Land Board had approved the Right-of-Way Contract at a meeting earlier in the year based on the same rate per foot paid by the RRWCD Water Activity Enterprise (WAE) for permanent easements for the Pipeline of the same width, but the Right-of-Way Contract that had been sent by the staff of the State Land Board and that the Board had approved, had the wrong consideration stated in the Contract. Mr. Montgomery said the Board could approve the Right-of-Way Contract for the consideration approved by the State Land Board or could ask the State Land Board to reconsider the amount of the consideration for the right-of-way, in which case there would be a delay until the matter was included on the agenda of another State Land Board meeting and considered by the State Land Board. After discussion, a motion to approve the Right-of-Way Contract with the State Land Board based on the consideration approved by the State Land Board was made, seconded, and approved unanimously.

Next, the Board discussed insuring the grain bins, the small capacity wells, and the irrigation equipment on the Dryden Property to comply with the terms of the lease with Bledsoe Cattle Company. General Manager Murphy said the Special District Association would provide the necessary insurance for \$2,700 a year. A motion to accept the proposal from the Special District Association for the insurance required for the Dryden Property lease was made, seconded, and passed unanimously.

Finally, Mr. Murphy informed the Board that PERA requires employers of contract personnel who have retired to make payments to PERA and that the RRWCD WAE will be making those payments for Tim Davis.

At 5:44 p.m., having no further business to be brought before the Board, a motion to adjourn the meeting was made, seconded, and passed unanimously.

Secretary

Date