

**Fountain Creek Watershed, Flood Control and Greenway District
BOARD OF DIRECTORS MEETING MINUTES**

August 22, 2014

The meeting was held at:

City of Pueblo City Hall, City Council Chambers, 3rd Floor, 1 City Hall Place, Pueblo, CO
81003

1. CALL TO ORDER AND ESTABLISHMENT OF A QUORUM

Chair Montoya called the meeting to order at 1:10 pm. In attendance were the following duly designated members of the Board of Directors of the District:

Name:

Terry Hart	Pueblo County
Dennis Hisey	El Paso County
Richard Skorman	CAG Liaison
Val Snider	City of Colorado Springs
Jane Rhodes	Fountain Creek Land Owner
Eva Montoya	City of Pueblo
Melissa Esquibel	Lower Arkansas
Greg Lauer	City of Fountain

Excused:

Michael Maddox	EPC Small Municipalities
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A quorum was noted. Also present was Larry Small, Executive Director and Cole Emmons, Attorney.

2. APPROVAL OF AGENDA

Upon motion duly made, seconded, and unanimously carried, the agenda was approved.

3. APPROVAL OF THE MINUTES OF JULY 25, 2014 BOARD MEETING

Upon motion duly made, seconded, and unanimously carried, the minutes were approved.

**4. PRESENTATION - FOUNTAIN CREEK BANK RESTORATION AT FROST RANCH
GRANT FINAL REPORT**

Graham Thompson, Matrix Design Group, presented the Fountain Creek Bank Restoration at Frost Ranch Final Report. The report was prepared as part of the CWCB Grant and submitted to CWCB in June 2014 and presented to the Arkansas Basin Roundtable in August 2015. He stated that the Frost Ranch location was selected because of size, accessibility, budget and schedule considerations. He stated that this site was representative of erosion and sedimentation issues throughout the Fountain Creek corridor and would serve as a good demonstration site. The restoration area was originally estimated to be 400 feet of creek bank but after the September 2013 storms additional erosion had occurred so the final bank restoration was 485 feet. Engineering solutions considered three techniques - Toewood, Riprap and Koriwrap. The

Koriwrap was chosen because of lack of availability of trees for toewood, lack of accessibility of the project for riprap, and ease of installation of Koriwrap. The project was a design/build project and construction of the project took three weeks, beginning in late April and completing in mid may. The total project cost was \$189,000. Mr. Thompson showed photos of the project before, during and after construction. He showed photos of the project after two large storms in July and August that demonstrated how the project had survived the storm flows. A question from the audience asked why gabian baskets were not considered. Mr. Thompson replied that gabian baskets were not a permanent solution since they had the tendency to come apart over time and were not natural to the environment. He stated that one of our objectives was to use a technique that a landowner could use. Toewood and rock would be very expensive for a landowner. Director Frost stated that this was a very good project and was the first District restoration project.

5. BOARD MEMBER COMMENTS

Director Montoya stated that she held her monthly meeting in Pueblo on August 21, 2014 with local emergency response entities to focus on emergencies that might be encountered by the East Side neighborhood, including Fountain Creek flooding. She stated that the meetings will continue monthly for the rest of the year.

Director Hisey stated that the Stormwater Task Force was moving ahead with the campaign for the El Paso County Regional Stormwater Authority. He stated that the Colorado Springs City Council and the El Paso County Commissioners each have one more vote scheduled to move the question forward to the November 2014 ballot.

Director Snider stated that the Colorado Springs City Council had reviewed the El Paso County Regional Stormwater Authority Intergovernmental Agreement and a final vote was scheduled for August 26, 2014. He stated that this was culminating a two year effort of the region working together to deal with a very important issue affecting all the communities.

Director Esquibel stated that the Lower Ark Board received the District's letter stating that work was being completed to resolve the issues raised by the Lower Ark concerning the Master Plan fund and appreciated the response. She stated that she would like to see a focus on projects to implement the Fountain Creek Corridor Restoration Master plan.

Director Lauer stated that the City of Fountain passed a resolution in support of the El Paso County Regional Stormwater Authority and will act on the Intergovernmental Agreement at an upcoming meeting.

Director Hart expressed appreciation for all the work that had been done on the El Paso County Regional Stormwater Authority and stated that its implementation would be very important to Pueblo County.

6. PUBLIC COMMENT - None

7. REGULAR REPORTS

7. A TECHNICAL ADVISORY COMMITTEE REPORT

John Chavez reported that the TAC met August 6, 2014 at the Fountain City Hall. He reported that the TAC followed up on membership and alternate members and concluded that the TAC does not have a need for alternates at this time. He reported that the TAC approved the recommendation that Mark Shea be appointed to the TAC as the Colorado Springs Utilities representative replacing Carol Baker. He reported that a DCM review subcommittee met and was in the process of developing a recommendation to the Board for adoption of criteria from the DCM for District land use criteria.

The next TAC meeting is scheduled for September 3, 2014 at 1:00 PM at Fountain City Hall.

7. B CITIZENS ADVISORY GROUP REPORT

Irene Kornelly reported that the CAG met August 8, 2014 at the Fountain City Hall. She reported that the CAG received a briefing from Colorado Springs Utilities on the 50 year water plan. Ms. Kornelly reported that the District was sharing a booth with the Pueblo City/County Health Department at the State Fair. The booth has a table for the District's boards and materials. She stated that the Outreach Subcommittee had purchased refrigerator magnets with the District logo and tips on how to keep waterways clean. She presented a magnet to each Board member.

Ms. Kornelly reported that the Outreach Subcommittee was continuing work on Creek Week and had a number of contributions from sponsors such as Lowes, the City of Pueblo, Pikes Peak Greenway Fund and the Pikes Peak Community Foundation.

The next CAG meeting will be September 12, 2014 at 9:30 am at the Fountain City Hall.

The next Outreach Subcommittee meeting will be September 15, 2014 at 10:00 am at Fountain City Hall.

7. C FINANCIAL REPORT

Larry Small presented the Fountain Creek District Balance Sheet as of July 31, 2014. The District had total assets of \$186,962.77 and no liabilities. Profit and Loss Budget vs. Actual report for the period January 1, 2014 through July 31, 2014 indicated total revenues were \$204,435.61 and total expenses were \$209,916.53 for a net negative income of \$5,480.92 resulting in a District total equity of \$186,962.77. The General Fund cash on hand as of July 31, 2014 was \$144,587 and the Restricted Fund cash on hand was \$79,305. The total cash on hand was \$223,892.

7. D LEGAL REPORT - None

7. E EXECUTIVE DIRECTOR'S REPORT

Larry Small presented a paper dealing with the issue of Stormwater Control and Water Rights prepared by Mark Phifer of Colorado Springs Utilities.. The paper discussed the issues faced by the Urban Drainage and Flood Control District and the City of Aspen and their respective communications with the State Engineers Office. Mr. Small stated that these are the same issues

the District will have to deal with for its future side detention facilities. Mr. Small stated that he had received the signed MOA back from the City of Colorado Springs and had invoiced the City for the \$100,000 matching funds for the Upper Fountain Creek/Cheyenne Creek Storm Restoration Master Plan grant. He stated that he visited a private property owner at Eden, Colorado who the Governor's office had referred to the District on July 31, 2014. He observed issues associated with the property owner's diversion becoming disconnected from Fountain Creek. He stated he attended a meeting in Manitou Springs on August 11, 2014 with State and local officials to discuss the upcoming Community Development Block Grant - Disaster Relief funding that would be available to El Paso County in November 2014. The District is eligible to apply for Watershed Restoration grants under that funding. He reported that he attended the Arkansas basin Roundtable meetin on August 13, 2014 to present the Fountain Creek Bank Restoration at Frost ranch Final Report and thank the Roundtable for their support..

7. F IGA COMMITTEE REPORT

Terry Hart reported that the IGA Committee met August 1, 2014 to resolve the use of Master Plan funds. In attendance was Mark Shea representing Colorado Springs Utilities, Jay Winner representing the Lower Ark and Terry Hart and Eva Montoya representing the District. He reported that the committee considered eight uses of IGA funds and unanimously agreed to the following:

- 1) The expenditure of \$251,955.31 paid to THK for preparation of the Fountain Creek Corridor Master Plan was appropriate.
- 2) The expenditure of \$16,000 paid as a grant to the City of Colorado Springs to match a GOCO Grant for the Front Range Trail design through Clear Spring Ranch was appropriate.
- 3) The expenditure of \$10,000 paid as a grant to the City of Pueblo for design of the Palo Verde Trail extension to Fountain Creek was appropriate.
- 4) The expenditure of \$25,000 paid to THK for preparation of the Regional GOCO Grant application that resulted in the award of a GOCO Grant was appropriate.
- 5) The expenditure of \$25,000 paid to Matrix Design Group for the writing of grant applications was appropriate.
- 6) The expenditure of \$45,300 paid as matching funds for the WSRA Grant for the Fountain Creek Bank Restoration at Frost Ranch was appropriate.
- 7) The pledge of \$25,000 matching funds (not yet expended) for the El Paso County GOCO Grant for the acquisition of the Wedgewood Farm was appropriate.
- 8) The expenditure of \$3,000 for the USGS Joint Funding Agreement for Post-Burn Water Quality Evaluation at the Pinion gauge was appropriate.

He reported that the IGA Steering Committee also discussed funds in the account that were not subject to the IGA, specifically \$50,000 from the City of Aurora. The District's legal position had always been that these funds were not subject to spending limitations of the IGA and that these funds must be used for District projects as determined by the District. In keeping with that position, the District had appropriated and obligated (not yet expended) \$25,000 of those funds as matching funds for the Upper Fountain Creek/Cheyenne Creek Flood Restoration Master Plan grant awarded to the District by CWCB in December 2013. He stated that Mr. Winner expressed

that it had been the intention of the Lower Ark, when it directed Aurora to pay \$50,000 to the District, that that \$50,000 would be used for projects in the Plan. In the spirit of cooperation between the District and the Lower Ark, the District and the City representatives agreed to honor the verbal intentions of the Lower Ark with respect to the Aurora \$50,000 and it was unanimously agreed to recommend to the District Board that the District use other District funds to match the Upper Fountain Creek/Cheyenne Creek Flood Restoration Master Plan grant. Mr. Hart stated that he had consulted with the Executive Director to ascertain that other funds were available for this use and had been assured that there were, subject to Board approval.

Mr. Hart asked if the Board would discuss these recommendations from the IGA Steering Committee and if acceptable then have a vote on these recommendations. Director Hisey began the discussion by asking if the District could fund the Upper Fountain Creek/Cheyenne Creek grant match from the General Fund. Executive Director Small stated that the District had enough funds in the General Fund to complete 2014 and fully fund 2015 District operations. He stated that the use of \$25,000 to fund the grant match would leave a 2015 budget shortfall of approximately \$8,000 dollars but believed that there would be future sources of revenue in 2015 to cover the shortfall. Director Esquibel stated that she agreed with the recommended solutions. She stated that the Lower Ark did not want to see anything apocalyptic happen but just had concerns. Director Hart suggested that if the Board agreed to these recommendations he would be happy to attend the next lower Ark Board meeting to discuss the Board's decision. Director Frost asked clarification of what the intent was concerning these funds. Director Hart explained that the intent was that the IGA funds were to be used for projects in the Fountain Creek Corridor and the Lower Ark intended for the Aurora funds to be used in the same way. Hearing no other comments, Chair Montoya then asked for a motion on this item.

Upon motion duly made, seconded, and unanimously carried, the Board approved the recommendations of the IGA Steering Committee concerning the use of IGA Funds and approved the funding of the Upper Fountain Creek/Cheyenne Creek Storm Restoration Master Plan grant matching funds of \$25,000 to come from the General Fund.

Mark Shea, the Colorado Springs representative on the IGA Steering Committee, asked if a letter should be prepared and sent to the Lower Ark memorializing the resolution of this issue. Mr. Small responded that that would be the subject of agenda item 10. B. Mr. Small also stated that with the resolution of this issue there would be \$51,286.85 of unobligated funds remaining in the Master Plan fund for future IGA Steering Committee recommended projects.

8. 0 OLD BUSINESS (BOARD ACTION MAY BE REQUIRED) - None

9. NEW BUSINESS (Board Action Required)

9. A APPROVAL TO SUBMIT A PROPOSAL TO EL PASO COUNTY FOR RESTORATION OF TWO FOUNTAIN CREEK TRAILS

Larry Small stated that he had received a request from El Paso County to present a proposal for the restoration of the Maxwell Trail and the Hanson Trail to repair damage to the trails resulting from the September 2013 storms. The work must be completed by March 14, 2015 to meet the

deadline for use of FEMA funds. To meet the proposed schedule work must begin by September 15, 2014. The contract is a construction contract with three elements - Construction Engineering, Construction and Construction Management. Matrix Design Group, currently under a Technical Service Contract to the District, will perform Construction Engineering. Aztec General Contractors will perform Construction. The District will perform Construction management. A Sole Source Justification has been prepared justifying the use of Aztec. The total price of the proposal is \$1,108,174. Construction Engineering is \$115,959. Construction is \$942,265. Construction Management is \$49,950. The proposal stipulates that this will be a Design/Build project and authority to proceed must be received by September 15, 2014. Mr. Small asked that since the Authority to Proceed will come prior to the next Board meeting, that the Board give the Executive Board the authority to review and accept the Authority to Proceed if it is received as well as review and approve contract documents between the District and its subcontractors so that work can begin September 18, 2014, all subject to ratification by the Board at the next meeting. Mr. Small stated that if this item is approved then he will submit the proposal to El Paso County today, August 22, 2014. Cole Emmons stated that he wanted to advise the Board that while the El Paso County Parks Department staff supported awarding this work to the District there was concerns voiced by the El Paso County Procurement Department and the Finance Department which might have a negative impact on the award to the District. He stated that he would be advocating for the District and another El Paso County attorney would be representing El Paso County in County discussions concerning this proposal.

Upon motion duly made, seconded, and unanimously carried, approval was given to the Executive Director to submit the proposal as presented and the Executive Board was authorized to consider any actions necessary related to the proposal between submission and the next Board meeting as requested by the Executive Director, any such actions to be considered by the Board at the next Board meeting.

9. B. ADOPTION OF DISTRICT PROCUREMENT CODE

Larry Small stated that the Statute creating the District at 32-11.5-701 (2) C.R.S. states that the District shall be subject to the provisions of Article 91 of Title 24, C.R.S., regarding construction contracting. In accordance with Section 24-101-105(2), C.R.S., the District may adopt all or any part of the "Procurement Code", Article 101 to 112 of Title 24, C.R.S. Mr. Small stated that the Procurement Code before the Board for consideration is an adoption of parts of Article 101 to 112 of Title 24, C.R.S. pertinent to the District. The paragraph numbering of Article 101 to 112 has been preserved and those paragraphs not pertinent in their entirety are designated "Not Applicable". The other paragraphs are incorporated as stated in C.R.S if no tailoring was required, or modified to be tailored to the District as required. Mr. Small stated that Cole Emmons had reviewed the proposed Procurement Code and found it acceptable for the District's needs and consistent with C.R.S. The Procurement Code will become effective immediately on adoption by the Board.

Upon motion duly made, seconded, and unanimously carried, the District Procurement Code was adopted as presented to become effective August 22, 2014.

9. C APPOINTMENT OF MARK SHEA TO REPLACE CAROL BAKER AS THE COLORADO SPRINGS UTILITIES TAC REPRESENTATIVE

Upon motion duly made, seconded, and unanimously carried, Mark Shea was appointed to replace Carol Baker as the Colorado Springs Utilities TAC Representative.

9. D APPROVAL TO CONDUCT FOUNTAIN CREEK FLOOD CONTROL WATER RIGHTS PROTECTION TASK

Larry Small stated that the Water Rights Protection Task was part of the District’s grant application to the Arkansas Basin Roundtable made in July for Evaluation of Flood Control Alternatives for the Fountain Creek Corridor, which was not approved. He stated this task had a lot of discussion at the Roundtable meeting and the Roundtable suggested that this task be done because the conversation between water right holders and the those interested in flood control was an important discussion. Funding of \$26,500 will be provided by a coalition of SDS partners, Colorado Springs Utilities will provide in-kind funding of \$24,000 for technical and legal support and the District will contribute \$4,500 in-kind to manage the Task. The total project budget, including in-kind, will be \$55,000. The District will use the \$26,500 cash to contract for services to facilitate the discussions and prepare the final report. Mr. Small stated that the primary objective of the Task will be to hold discussions with water right holders on the Arkansas River and Fountain Creek to determine issues and concerns about the impact of flood control on water rights and see if there is a way to mitigate the concerns. Another possible outcome is that we discover a fatal flaw that would prevent any resolution of this conflict. Director Rhodes wanted clarification that Fountain Creek water rights would be included as well as Arkansas River water rights. Mr. Small confirmed that this would be the case. Director Esquibel asked what would be considered multiuse facilities. It was responded that wildlife habitat, recreation and water storage are uses to be considered in addition to flood control. Director Frost asked who could attended the meetings. Mr. Small stated that the meetings are open to the public so any interested party could attend. Director Esquibel stated that we need to be careful in dealing with water right holders in the Lower Arkansas because they have a distrust of outside agencies talking about water and water rights. If we are to be successful we must bridge that distrust by involving respected agencies. Chair Montoya and Director Hart concurred with this.

Upon motion duly made, seconded, and unanimously carried, approval was given to conduct the Water Rights Protection Task as presented.

10. OTHER BUSINESS

10. A APPROVAL OF INVOICES

Presented for Payment 8/22/2014

General Fund					
Vendor	Date	Num	Amount	-	For
Larry Small	08/10/14	124	\$2,500.00		Grant Project Management

Lois Illick				
	07/28/14	72814	\$193.97	CAG Outreach Magnets
TOTAL - General Fund			\$2,693.97	

Upon motion duly made, seconded, and unanimously carried, the invoices were approved for payment as presented.

10. B. LETTER FROM BERG HILL GREENLEAF & RUSCITTI LLP RE: INTERGOVERNMENTAL AGREEMENT OF AUGUST 28, 2009

The Board reviewed the subject letter in view of discussions held under item 7. F and the resolutions to the issues adopted under that item. It was determined that the Executive Director and the Attorney should prepare a legal response to the content of the subject letter incorporating the decisions made under item 7. F and send that response to the originating attorney and all the recipients of the subject letter, those recipients being all members of the Lower Ark Board, all members of the District Board, Great Outdoors Colorado, the Colorado Water Conservation Board, the United States Geological Survey, and the three Pueblo County Commissioners. It was recommended that the letter be sent prior to the next meeting of the Lower Ark Board since Director Hart stated that he would attend that meeting to discuss the letter of response.

Upon motion duly made, seconded, and unanimously carried, the Board directed the Executive Director and the Attorney to prepare and send a letter responding to the letter from Berg Hill Greenleaf & Ruscitti LLP to Peter D. Nichols and to all other recipients of the letter from Berg Hill Greenleaf & Ruscitti LLP, conveying the resolution to the use of IGA funds as recommended by the IGA Steering Committee and approved by the Board under Agenda Item 7. F in time for the next Lower Ark Board meeting, scheduled for September 17, 2014.

11. EXECUTIVE SESSION (IF REQUIRED) - None

12. CONFIRM NEXT MEETING TIME AND LOCATION

The next Board meeting will be held September 26, 2014 at 1:00 pm at the City of Fountain City Hall, City Council Chambers, 116 S. Main Street, 2nd Floor, Fountain, CO 80817.

13. ADJOURN

Upon motion duly made, seconded, and unanimously carried, the meeting was adjourned.