

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

June 28, 2013

The meeting was held at City of Fountain City Hall, 116 S. Main Street, 2nd Floor
Fountain, CO 80817

1. CALL TO ORDER AND ESTABLISHMENT OF A QUORUM

Chair Ortega called the meeting to order at 1:08 pm. In attendance were the following duly designated members of the Board of Directors of the District:

Name:

Terry Hart	Pueblo County
Val Snider	City of Colorado Springs
Dennis Hisey	El Paso County
Jane Rhodes	Fountain Creek Land Owner
Gabe Ortega	City of Fountain

Excused:

Melissa Esquibel	Lower Arkansas
Richard Skorman	CAG Liaison
Eva Montoya	City of Pueblo
Michael Maddox	EPC Small Municipalities

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 APRIL 26, 2013 BOARD MEETING

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

4. PRESENTATION – FOUNTAIN CREEK WATERSHED GREENWAY FUND

Gary Barber presented an overview of the Fountain Creek Watershed Greenway Fund. The Greenway Fund was created to be the non-profit partner to supplement the Fountain Creek Watershed, Flood Control and Greenway District. It has as its mission the objectives to create understanding of the watershed, connect aligning entities and people to water corridors and protect the water corridor environment through advocacy. The Greenway Fund has initiated its first project to support completion of the Historic Greenway Loop in Colorado Springs established by General William Jackson Palmer. The Greenway Fund has established a Youth Stewardship Program emphasizing “Learn it”, “Work it” and “Share it” and “Sustain it” for our

waterways, bringing youth and adults together with waterways. The Greenway Fund has a number of recreational activities planned for 2013 to bring people to the waterways.

Director Rhodes asked if there are plans to bring Greenway Fund projects to Pueblo County. Gary Barber replied that the initial projects in Colorado Springs will get the Greenway Fund established and as it grows it will expand its service territory.

5. BOARD MEMBER COMMENTS

Director Hisey stated that he has been very busy with the Black Forest Fire and appreciates the support El Paso County received from Colorado Springs, Fountain and Pueblo.

Director Hart stated that the Board retreat was very successful and good presentations and discussions were focused on making the District financially viable. He stated that Pueblo County is sympathetic to El Paso County for the fires it has experienced.

Chair Ortega stated that he too felt the Board retreat was successful, a lot was accomplished and he looked forward to going forward with implementation of the suggestions that came out of the retreat.

6. PUBLIC COMMENTS - None

7. REGULAR REPORTS

7. A TECHNICAL ADVISORY COMMITTEE REPORT

John Chavez reported that the TAC met June 5, 2013 at the Fountain City Hall. He stated the TAC received an update on the Flood Control Study from USGS. He reported that the TAC received an SDS update from representatives of Colorado Springs Utilities. He reported that he was elected by the TAC to replace Richard Mulledy as Chair. He reported that the TAC developed recommendations to the Board concerning District funding and those recommendations were presented at the Board off-site meeting.

The next TAC meeting is scheduled for July 3, 2013 at 1:00 PM at Fountain City Hall.

7. B CITIZENS ADVISORY GROUP REPORT

Irene Kornelly reported that the CAG met June 7, 2013 at Fountain City Hall. She stated that the CAG continued discussions concerning District funding and developed recommendations to the Board. She stated that those recommendations were presented at the Board off-site meeting. She stated the CAG Outreach Subcommittee will meet after July 4, 2013 to develop a program to become more visible to the public in support of the District's objectives and will present program objectives and funding requirements to support those objectives at a future Board meeting. She stated that the CAG had requested that USGS present an update on the Flood Control Study at the July CAG meeting. She reported that Jordan Vana had replaced Dieter Erdmann as the Land Trust representative on the CAG and his name would be presented to the Board for confirmation.

at the July Board meeting. She reported that Mary Barber had agreed to take over the District web site administration from Jeff Besse if the District would provide a computer and hard drive she could use for that task.

The next CAG meeting will be July 12, 2013 at 9:30 am at the Fountain City Hall.

7. C FINANCIAL REPORT

Larry Small presented the Fountain Creek District Balance Sheet as of May 31, 2013. The District has total assets of \$203,438.69 and total liabilities of \$5,507.50. Profit and Loss Budget vs. Actual report for the period January through May 2013 indicated total revenues were \$213.52 and total expenses were \$59,496.60 for a net negative income of \$59,283.08 resulting in a District total equity of \$197,931.19. The General Fund cash on hand as of May 31, 2013 was \$44,990 and the Restricted Fund cash on hand was \$155,949. The total cash on hand was \$200,939.

7. D LEGAL REPORT - None

7. E EXECUTIVE DIRECTOR'S REPORT

Mr. Small presented a letter to the Board from the Office of the State Auditor stating that the District's application for exemption from audit for the year ended December 31, 2012 has been accepted. Mr. Small presented a letter to the District from the United States Army Corp of Engineers stating that the Flood Control Project in Pueblo, Colorado had been submitted for funding as requested by the District and could be funded by July 2013. The letter also stated that the Bank Restoration Project submitted by the District could not be funded as requested because those funds were restricted for projects that would protect historic sites or public infrastructure. The letter stated the USACOE would work with the District to see if other sources of funds might be available for that project. Mr. Small presented a letter from Colorado Parks and Wildlife stating that New Zealand mudsnails have been confirmed in Fountain Creek in El Paso County.

Mr. Small presented an e-mail received from Cole Emmons concerning the District and the El Paso County 1041 Regulations. Those regulations would remove utility land use approval in the Fountain Creek Corridor as defined by the District establishing legislation from District approval to El Paso County Approval. Mr. Small pointed out that the District authority was granted by the Legislature and signed into law by the Governor on April 30, 2009 and the El Paso County 1041 Regulations were not established until June 6, 2013, so the question to be resolved is how could El Paso County supersede a State law in effect before their regulations were adopted. Director Hart stated that he believed there should be discussion between the District and El Paso County to resolve this issue. Director Hisey agreed.

Mr. Small reported that he attended the Regional Stormwater Task Force Phase 2 meetings on May 6 and May 22, 2013. He reported that he met with representatives of the U.S. Army Corp of Engineers on May 23, 2013 to tour Fountain Creek projects and visit the sites at the Frost Ranch and Pueblo proposed to be funded by the Corp for erosion and flood control. Mr. Small reported

that he attended the Waldo Canyon WARSSS Report briefing on May, 2, 2013. Mr. Small reported that he attended a meeting with the CSU Pueblo and local government and community groups to discuss the possibility of establishing a Southern Colorado Center for Water at CSU-Pueblo. Mr. Small reported that he met with representatives from Weston-Berg, an engineering firm hired by DoD to assess joint coordination of sustainability activities at DoD facilities in the Colorado Springs area. Mr. Small reported that he had preliminary discussions with representatives from Downtown Colorado Springs and Colorado Springs City staff to consider a local assessment of relocating the confluence of Fountain Creek and Monument Creek for the Cimarron Street and I-25 interchange.

8.0 OLD BUSINESS (BOARD ACTION MAY BE REQUIRED)

8.A MIL LEVY DISCUSSION – RECAP OFFSITE MEETING

Larry Small presented a recap of the Board Offsite Meeting held June 13, 2013 at 9:30 am at the Penrose House in Colorado Springs. He stated that the meeting focused on the District mill levy, what the potential values were, what would be potential dates for the election and what would be potential sources of funds to continue the Districts mission should an election not be held. The TAC and CAG gave presentations on their recommendations to the Board. The conclusions reached was that the election should be delayed until after 2017 and until the District could show a record of accomplishment and that sources of funding for the District should be sought until the SDS funds become available. Two sources of funding were identified; contributions from the nine Member Governments and SDS 1041 Permit Indexed payments. The Attorney and the Executive Director were instructed to prepare Board Resolutions for these two sources of funding and put them on the June 26, 2013 meeting agenda.

El Paso County 1041 Permit Requirements were also discussed based on an e-mail from Cole Emmons and it was decided to further discuss this at the June 26, 2013 board Meeting.

8.B SDS PROGRESS UPDATE

Allison Moser from Colorado Springs Utilities presented an update on the SDS Project. She stated that the Pueblo Dam connection was complete and that 38 of the 50 miles of pipeline had been completed, She stated that the Pueblo Dam pipeline was under contract and work would begin this fall. She stated that the Water Treatment Plant was under construction and that contracts for all three pump stations had been awarded. She stated that the Jurisdictional Wetlands Mitigation installed at Clear Springs ranch was doing quite well at the end of its first year and good growth had been experienced. She stated more willows were being planted at the site. She stated that the Williams Creek Pump Station power line was under construction and was consistent with the Land Use approval granted by the District, but that the pole structures on the west side of Fountain Creek had been placed further from the creek bank than proposed to give both the bank and the structure more stability. She stated that the Fountain Creek realignment at Clear Springs Ranch had completed 90% design and a contract was being awarded and construction would start Fall of 2013. She stated that CSU would bring a Land Use Application to the Board in August for this project. She stated that the raw water pipeline crossing Fountain Creek was under a design/build contract and the pipeline would go beneath I-

25, the railroad and Fountain Creek by tunneling. She anticipated bring a land Use Application to the Board in September for this segment unless the El Paso County 1041 Regulations superseded the Districts Land use Authority for utility projects. She stated that the SDS Project was ahead of schedule and under budget at this time.

9. NEW BUSINESS (BOARD ACTION REQUIRED)

Cole Emmons stated that the Board had the option to discuss each of the resolutions separately or discuss them all at this time and take public comment. The Board decided to discuss them at this time. Chair Ortega asked for public comments at this time.

Jay Winner, General Manager of the Lower Arkansas Water Conservancy District, stated that he thought that the Lower Ark was a part of Resolution 2013-02 but sees it is not. He stated his objection would have been based on the question “has the District exhausted all means of funding itself before asking for contributions” and he contends it has not. He cited examples in the past where he felt the District could have received revenue to sustain itself including project management fees and did not take advantage of the opportunities.

Jay Winner stated that he believed loans to the District would be legal so long as they were entered into with payments subject to annual appropriation. He stated he was currently doing a number of like loans with other governmental bodies.

Cole Emmons responded that the establishing legislation for the District specifically stated that loans were to comply with the provisions of TABOR and must be put to a vote of the eligible electors of the District and must be approved by a majority vote of the electors before being entered into. Director Hart stated he was aware of the requirements of TABOR and the establishing District legislation but could not equate it to what other governmental bodies might be doing since he did not know the specifics surrounding the other government bodies.

Mark Pifher, Colorado Springs Utilities, stated that CSU did not know that Resolution 2013-03 was being brought forward and had concerns that CSU would have to budget the funds being requested by the resolution and that the resolution would change the agreements that had been reached to date with the Pueblo County staff relative to the calculation of the Indexed Value. He was also concerned that using the 1041 Permit revenue for District administration would be questionable since the 1041 Permit states the revenues are to be used for projects. He requested that the resolution be delayed for one month to allow discussions to take place between CSU and Pueblo County staff and legal staff to explore the concept presented in the resolution because he was concerned about having to reopen the 1041 Permit. He also recommended that the resolution be amended to change where it states Indexed funds would be paid in 2014 to make it read 2017, since that is the date first payment was currently scheduled.

Director Hisey stated that Resolution 2013-03 only asked that discussions begin between CSU and Pueblo County to consider the concept presented in the resolution and was consistent with what Mr. Pifher was asking.

Director Hart stated that he was aware of the ongoing discussions between Pueblo County and CSU concerning the Indexed Value and nothing had been brought to the Commissioners by Staff but believed that Resolution 2013-03 was not inconsistent with the current process.

Director Hart stated that these resolutions came as a result of lengthy discussions at the District offsite meeting about alternatives to fund the District until the SDS 1041 Permit funds were received in 2017. He stated that the Attorney and Executive Director were instructed to bring these resolutions forward at this meeting.

Director Rhodes stated that the requests must be budgeted by the agencies they were being sought from and would they be available in 2014. Chair Ortega respond that the purpose of these resolutions was to encourage the discussions so the agencies had time to include the funds in their 2014 budgets.

9. A RESOLUTION REQUESTING FINANCIAL SUPPORT FROM MEMBER GOVERNMENTS

Larry Small presented Resolution 2013-02 requesting financial support in the form of donated contributions from the nine member governments of the District (identified as “Represented Governments” in the District establishing statute) for Fiscal year 2014. The resolution stated amounts of donated contributions from each member government and asked that the member governments include in their 2014 budgets the amounts requested.

Upon motion duly made, seconded, and unanimously carried, Resolution 2013-02 was approved as presented.

9. B RESOLUTION REQUESTING ALLOCATION OF SDS 1041 PERMIT INDEXED REVENUE

Larry Small presented Resolution 2013-03 requesting that Colorado Springs Utilities and Pueblo County enter into discussions concerning providing Indexed Revenue funds to the District beginning January 15, 2014 and continuing annually on January 15 of each year until the first payment of SDS 1041 permit funds is made to the District.

Director Hisey moved to approve the resolution with an amendment of the eighth Whereas paragraph, changing the clause “Whereas, Colorado Springs Utilities (“CSU”) is scheduled to begin making such payments of indexed revenue in January 2014...” to read “...in January 2017...”.

Upon motion duly made, seconded, and unanimously carried, Resolution 2013-04 was amended as stated and approved as amended.

9. C RESOLUTION REQUESTING SEAT ON ARKANSAS BASIN ROUNDTABLE BOARD

Larry Small presented Resolution 2013-04 requesting non-voting membership for the District on the Board of the Arkansas Basin Roundtable. Jay Winner, a member of the Arkansas Basin Roundtable Board, stated that the District should seek voting membership. Cole Emmons inquired if voting membership was available since it appeared that all voting positions were filled. Jay Winner responded that voting membership was available.

Upon motion duly made, seconded, and unanimously carried, Resolution 2013-04 was amended to request voting membership and approved as amended.

9. D APPROVAL TO PURCHASE A LAPTOP FOR WEB SITE ADMINISTRATION

Larry Small presented a quote from Computer Systems Resources for \$591.94 for a laptop computer and external hard drive. He stated that the General fund budget had budgeted \$450 for miscellaneous expenses and that overall the General Fund budget was under-running its budget for the year so funds were available for the purchase.

Upon motion duly made, seconded, and unanimously carried, the purchase of a laptop computer and external hard drive for use by the web site administrator was approved as presented.

9. E APPROVAL OF CWCB GRANT CONTRACT FOR FROST RANCH BANK RESTORATION

Larry Small presented Contract C150521 received from the State of Colorado for a Grant Agreement between the Colorado Water Conservation Board and the District. The contract is in the amount of \$105,000 to be used in 2013 and 2014 (if required) for the Fountain Creek Bank Restoration at the Frost Ranch. The contract included a Statement of Work for the project and a Budget and Timeline Table showing the budget and source of funds for each of the twelve (12) Tasks in the Statement of Work. The Project budget indicated that the Contract would fund \$105,000, the District would fund \$45,300, the CSU In-kind value would be \$31,300 and the Frost Livestock Company In-Kind value would be \$7,500 for a total Project budget of \$189,100.

Mr. Small pointed out, in response to earlier comments by Jay Winner concerning Project Management Fees, that Statement of Work Task 7 - Construction Management, Project Management, Direct Expenses, was budget for \$10,900 CWCB funds and \$4,795 District funds, and the District would earn part of the \$10,900 CWCB budgeted funds, based on actual work performed by the District.

Mr. Small stated that four signed copies are required to be returned for State of Colorado signature and when a fully executed contract is received back from the State then and only then could work begin on the Project.

Upon motion duly made, seconded, and unanimously carried, Contract C150521 was approved by the Board as presented and authorized to be signed by the Chair and returned to the State of Colorado for signature.

9. F ELECTION OF DISTRICT SECRETARY TO REPLACE BRANDY WILLIAMS

Dennis Hisey nominated Val Snider to be the Board Secretary for the remainder of Fiscal Year 2013 replacing Brandy Williams.

Upon motion duly made, seconded, and unanimously carried, nominations were closed and Val Snider was elected Board Secretary for the remainder of Fiscal Year 2013 replacing Brandy Williams.

10. OTHER BUSINESS

10. A APPROVAL OF INVOICES

The following invoices were presented for approval to pay.

General Fund				
Vendor	Date	Num	Amount	For
Larry Small				
	06/20/13	75	\$2,500.00	Executive Director
Computer Resources	06/24/13	745549	\$591.94	Computer & Hard Drive
TOTAL - General Fund			\$3,091.94	

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

11. EXECUTIVE SESSION

In Accordance with the Colorado Open Records act CRS 24-6-402(4)(B)(D) and (E), the Board of Directors of the Fountain Creek Watershed, Flood Control and Greenway District, in Open Session, is to determine whether it will hold a Closed Executive Session. The issue to be discussed involves a matter for negotiation concerning a District contract.

The Chair of the Board shall ask for a motion to enter into a Closed Executive Session and if the motion is made, seconded and duly passed by a majority vote of the Board Members present the Chair will convene the Closed Executive Session. If consent of the Closed Executive Session is not given, the item may be discussed in Open Session or withdrawn from consideration.

Upon motion duly made, seconded, and unanimously carried, the request for a Closed Executive Session was approved.

The Closed Executive Session concluded. The Board returned to Open Session

Upon motion duly made, seconded, and unanimously carried, the Board continued Open Session business.

The Chair stated that the Board took no actions in Closed Executive Session.

12. CONFIRM NEXT MEETING TIME AND LOCATION

The next Board meeting will be held July 26, 2013 at 1:00 pm at the City of Fountain City Hall, 116 S. Main Street, 2nd Floor, Fountain, CO 80817

13. ADJOURN

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