

San Juan Water Commission

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MEMBERS:
City of Aztec
City of Bloomfield
City of Farmington
San Juan County
S.J. County Rural Water Users Association

Final Minutes Approved: February 3, 2016

SAN JUAN WATER COMMISSION SPECIAL WORKSHOP MINUTES JANUARY 13, 2016

The San Juan Water Commission met in a Special Workshop pursuant to due Notice, Wednesday, January 13, 2016 at 10:00 A.M. in the San Juan Water Commission's conference area in the San Juan Water Commission Office Building, 7450 East Main Street, Farmington, New Mexico.

CALL TO ORDER

Chairman K. Johns called the Special Workshop of the San Juan Water Commission (SJWC) to order at 10:00 A.M.

Members Present

City of Aztec

Josh Ray - Commissioner
Robert Oxford - Alternate Commissioner

City of Bloomfield

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Teresa Brevik - Alternate Commissioner

City of Farmington

Cy Cooper - Commissioner
Jay Burnham – Alternate Commissioner

San Juan County

Keith Johns - Commissioner
Margaret McDaniel – Alternate Commissioner
Arrived at 10:40 AM

S.J. Rural Water Users Assoc.

Jim Dunlap - Commissioner
Keith Lee - Alternate Commissioner

Members Absent

City of Bloomfield

Elwin Roark - Commissioner

Legal Present

Elizabeth Taylor
Doug Echols
Joe Sawyer

Staff Present

Aaron Chavez
Shaun Bishop
Jacqueline Allcorn
Gordon Miller

Visitors: (11)

In the absence of Commissioner E. Roark, Alternate Commissioner T. Brevik was the voting member for the City of Bloomfield.

APPROVAL OF AGENDA

Chairman K. Johns called for approval of the Amended Final Agenda. Motion was made by C. Cooper and seconded by J. Dunlap to approve the Amended Final Agenda as written, and upon voice vote the motion carried unanimously (T. Brevik, C. Cooper, J. Dunlap, K. Johns, and J. Ray all voted yes).

COMMENTS FROM THE PUBLIC

There were no comments from the public.

DISCUSSION OF THE WATER ALLOCATION POLICY

Chairman K. Johns announced that he had requested A. Chavez to prepare a Water Allocation Fact Sheet to outline the history and primary objectives for the Water Allocation Policy. A. Chavez presented a Power Point presentation outlining topics of discussions. A. Chavez started the discussion by saying that the prior Allocation Policy that was presented at the November 2015 Commission meeting was being shelved and that a new draft policy would be written based on the current discussion and recommendations. A. Chavez emphasized that the primary objective of today workshop was to discuss and work toward resolving water allocation issues. A. Chavez outlined the key items as: Permit 2883-B (OSE Permit 4498/ALP Reserve Water)-6,753.25 AFY, Permit 2883C (Non ALP Source Water)-10,000 AFY, and the Acquired/Purchased Water. Attorney E. Taylor went over the provisions in the SJWC Joint Powers Agreement concerning the sell, transfer of ownership, lease or rent of any water rights or assets of the Commission, and that approval required the vote of four members of the Commission. A. Chavez continued his presentation by illustrating the original allocation percentages, the revised allocation percentages after the ALP was downsized for the Cities of Aztec, Bloomfield, Farmington, SJ Rural Association, and for the reserve water (2883-B). Included in the charts A. Chavez presented were the allocations for the Reserve water 2883-B (Permit No. 4498) and Non-ALP Source Water (Permit No. 2883-C). A. Chavez concluded his presentation by saying that there may be a need for additional workshops and based on the workshop discussions, that the allocation or non-allocation of water rights may be placed on a future agenda for consideration.

Chairman K. Johns opened the floor for discussion by asking, "what would be the reason now to allocate? Why are we concerned that we should allocate this water?" Chairman K. Johns said, "it's held and it's not going anywhere". J. Burnham remarked that the City of Farmington felt that [all] the water was first allocated in 1986, when the Joint Powers Agreement was entered into. E. Taylor clarified that the reserve amount (2883-B) is the focus of today's discussion and that a separate issue is the 2883-C water. A. Chavez reiterated that today's discussion would focus primarily on the Non-Allocated Reserve (2883-B) water. C. Cooper added that it is important to resolve the issue of the Commission holding the water or allocating the water, because not resolving this issue may hinder future water development.

E. Taylor explained that the San Juan Water Commission made a decision in 1992 (during the application for diversion permits), to have the SJWC hold title to the water rights. The idea of allocation was for the entity to use the water for a period of time, or forever if required, with the title still being held by the San Juan Water Commission. The United States deeded the 2883-B and 2883-C permits to the San Juan Water Commission who presently holds title to the water rights by deed, which were previously held by the federal government. Chairman K. Johns added that the reserve water (2883-B) was intended to be held by the San Juan Water Commission for future use by member entities based on need.

C. Cooper questioned that if an entity was allocated reserve water (2883-B), what is to prohibit one entity from supplying needed water to another entity. B. Oxford requested clarification of the San Juan Water Commission holding water in its name. E. Taylor clarified the position of the State Engineer by noting the 4818 Settlement which gave the Commission sole ownership of the reserve water in permit 4498, adding that the water held by the San Juan Water Commission could be allocated throughout San Juan County and that water held in an individual entity's name could be used elsewhere but the process was cumbersome. Questions arose on the subject of title being transferred to the entities. E. Taylor explained the benefits of the San Juan Water Commission holding title to the water rights – that the water could be used anywhere in San Juan County as needed. K. Lee noted that the water was paid for by the taxpayers in San Juan County and the reserve water should remain titled under the San Juan Water Commission so it can be used in the future based on need. San Juan County CEO Kim Carpenter asked for clarification on possible exposure [financial and/or forfeiture] if the SJWC relinquished title to individual SJWC entity members - there is the possibility that the State Engineer

might look at an individual entity if it was suspected of holding more water than it could use (forfeiture). E. Taylor said if the San Juan Water Commission has some ownership (jointly-held ownership), it creates opportunity for the SJWC to show all of San Juan County's need for the water and creates protection for the whole. Concerning legal fees associated with defending the title to water rights, the costs would be the responsibility of the entity that held title. E. Taylor explained that there are two parts to a water right, there is ownership/title to the water right, and there is the permit. The title to the water right is held by the San Juan Water Commission pursuant to the 1992 resolution that said the SJWC would hold title in trust for its members. A. Chavez said that the Water Commission is currently developing a forty year plan to address county-wide need. J. Burnham commented that if the Non-ALP Source water (2883-C) rights were to be allocated the same as the 2883-B rights, the allocated amount would be based on the same percentages as in the original JPA. A. Chavez emphasized that the Non-ALP Source Water (2883-C) is non-ALP, non-stored water, and it holds junior rights status.

M. McDaniel entered the meeting at 10:40 a.m.

K. Lee and J. Burnham prompted a discussion of population growth and census tabulations within San Juan County. A. Chavez referred to the Allocation Policy fact sheet that outlined the growth for each entity using the 1990, 2000, and 2010 census block data. A. Chavez said each block was reviewed using GIS so if a block was within the member entities boundary, it was applied to that entity. Discussion continued on the subjects of population growth and water supply, original percentage of allocated water verses rural growth, the need by consumers for water verses the original percentage of water allocated, the difference of city consumption and rural consumption. J. Burnham noted that in regard to need, no one will know what their full water rights are until the final decree is entered in San Juan Basin Adjudication.

D. Echols entered the meeting at 10:50 a.m.

David Sypher for the City of Farmington touched on the subject of personal choices and responsibility of the individual water entity. K. Lee commented that the Commission worked as a whole to acquire the ALP water and said the entities must stay as a group so that the water remains where it's at (under the Commission) for the simple fact that the water needs to be protect for all of the County's citizens. J. Dunlap added that the preparation of a 40-year plan is in the works to protect the future water supply within San Juan County. J. Dunlap asked E. Taylor to touch on the subject of how the SJWC legally protected the San Juan Water Commission's portion of the Animas La Plata Project water. E. Taylor explained that over the last three years, there have been litigation matters that had to be vigorously addressed and that the San Juan Water Commission had paid the SJWC's consultants a considerable amount of money to protect the water interests of [all] the entity members of the San Juan Water Commission. J. Dunlap said there is a critical need for the San Juan Water Commission because it pays the costs to protect our water. If not for the SJWC, all costs associated with protecting the water would otherwise be the responsibility of the individual entity if they were not members of the San Juan Water Commission. J. Ray agreed that there was a need for the San Juan Water Commission, and noted the necessity for further discussion on ways member entities might hold their water rights, while maintaining membership in the San Juan Water Commission. A. Chavez said, with regard to the jointly held permits, that the San Juan Water Commission has never told an entity how to use their permitted water, and that an entity has the permitted right to use their water as they choose. It was suggested that the 2883-B and the 2883-C could be allocated to the entities in the same percentage amounts as those in the original JPA and that the allocation could include an allocation for reserve water to be held by the Commission and that the allocation of the reserve water held by the Commission would be based on need in the future.

Following a discussion on the impacts of title and permit rights, population, development and water use demand, and the San Juan Basin Adjudication, K. Johns requested the entities submit proposals to the Executive Director, no later than March 1, 2016. As the proposals are received, A. Chavez will forward the proposals to the SWJC Commissioners and Alternates for their review. A. Chavez said another workshop to further discuss water allocation would be scheduled after the proposals have been received.

CLOSED EXECUTIVE SESSION

Motion was made by C. Cooper and seconded by J. Ray to go into a Closed Executive Session pursuant to Sections 10-15-1(H) (7), and (8) NMSA 1978, under the attorney-client privilege to discuss matters pertaining to threatened or pending litigation in which the public body is or may become a participant and the

Acquisition or disposal of water rights, and upon voice vote the motion carried unanimously (T. Brevik, C. Cooper, J. Dunlap, K. Johns, and J. Ray all voted yes).

Chairman K. Johns closed the meeting at 11:30 A.M.

Motion was made by C. Cooper, seconded by J. Ray to reopen the meeting and upon voice vote the motion carried unanimously (T. Brevik, C. Cooper, J. Dunlap, K. Johns, and J. Ray all voted yes).

Chairman K. Johns reopened the meeting at 11:50 A.M.

Chairman Johns stated that no discussion, other than that [discussion] pertaining to threatened or pending litigation in which the public body is or may be a participant and the acquisition or disposal of water rights took place during the Closed Executive Session.

COMMENTS FROM THE COMMISSIONERS, ALTERNATES, AND STAFF

T. Brevik thanked A. Chavez for the Allocation Workshop, and noted that the Workshop helped the City of Bloomfield have a better understanding of the issues and that the information would be shared with Bloomfield's City Council.

ADJOURNMENT

Chairman K. Johns called for a motion to adjourn. Motion was made by J. Dunlap, seconded by J. Ray to adjourn and upon voice vote the motion was carried unanimously (T. Brevik, C. Cooper, J. Dunlap, K. Johns, and J. Ray all voted yes).

There being no further business, Chairman K. Johns adjourned the meeting at 11:51 A.M.

**APPROVED THIS 3RD DAY OF FEBRUARY, 2016
SAN JUAN WATER COMMISSION:**

Signature on File
Keith Johns, Chairman