

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 REGULAR MEETING MINUTES JANUARY 6, 2016

The San Juan Water Commission met in a Regular Meeting pursuant to due Notice, Wednesday, January 6, 2016 at 9:00 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 regular meeting of the San Juan Water Commission (SJWC) to order at 9:00 A.M.

Members Present

City of Aztec

Josh Ray - Commissioner

Robert Oxford - Alternate Commissioner

City of Bloomfield

Teresa Brevik - Alternate Commissioner

City of Farmington

Jay Burnham – Alternate Commissioner

San Juan County

Keith Johns - Commissioner

Margaret McDaniel – Alternate Commissioner

Arrived at 9:15 AM

S.J. Rural Water Users Assoc.

Jim Dunlap - Commissioner

Keith Lee - Alternate Commissioner

Members Absent

City of Bloomfield

Elwin Roark - Commissioner

City of Farmington

Cy Cooper - Commissioner

Legal Present

Doug Echols

Staff Present

Aaron Chavez

Shaun Bishop

Jacqueline Allcorn

Gordon Miller

Visitors: (7)

In the absence of Commissioner E. Roark, Alternate Commissioner T. Brevik was the voting member for the City of Bloomfield. In the absence of Commissioner C. Cooper, Alternate Commissioner J. Burnham was the voting member for the City of Farmington.

APPROVAL OF AGENDA

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

CONSIDERATION OF APPROVAL OF THE NOVEMBER 4, 2015 REGULAR MEETING MINUTES

Motion was made by J. Dunlap, and seconded by J. Burnham to approve the November 4, 2015 regular meeting minutes, and upon voice vote the motion carried unanimously (T. Brevik, J. Burnham, J. Dunlap, K. Johns, and J. Ray all voted yes).

COMMENTS FROM THE PUBLIC

There were no comments from the public.

CONSIDERATION OF RESOLUTION NO. 2016-01 ~ "ESTABLISHING PROCEDURES FOR GIVING NOTICE FOR MEETINGS OF THE SAN JUAN WATER COMMISSION"

Chairman K. Johns asked for the Commissions' consideration of approval of *Resolution 2016-01 Establishing Procedures for Giving Notice for Meetings of the San Juan Water Commission*. A. Chavez said each year in January the Commission adopts a resolution establishing procedures for giving notice for meetings. A. Chavez said that Resolution 2016-01 did not contain any changes to the current procedures for giving notice of the meetings.

Motion was made by J. Ray, and seconded by T. Brevik to approve *Resolution No. 2016-01 Establishing Procedures For Giving Notice for Meetings of the San Juan Water Commission*, and upon voice vote the motion carried unanimously (T. Brevik, J. Burnham, J. Dunlap, K. Johns, and J. Ray all voted yes).

Unless otherwise specified, regular meetings of the SJWC will be held at 7450 East Main Street in Farmington, NM beginning at 9:00 A.M. on the first Wednesday of each month. Notice of all meetings will be posted on the bulletin board in the atrium at 7450 East Main Street, Farmington, NM and on the San Juan Water Commission's website at www.sjwc.org.

REORGANIZATION

At the first meeting of the year, the Commission selects individuals to serve as Chairman and Vice-Chairman of the SJWC for one year. Currently, Keith Johns is serving as the Chairman and Cy Cooper is serving as Vice-Chairman.

Motion was made by T. Brevik, seconded by J. Dunlap to retain Keith Johns as the Chairman of the San Juan Water Commission and Cy Cooper as the Vice Chairman, and upon voice vote the motion carried unanimously (T. Brevik, J. Burnham, J. Dunlap, K. Johns, and J. Ray all voted yes).

CONSIDERATION OF DRAFT RESOLUTION NO. 2016-02 ~ "A RESOLUTION ESTABLISHING THE HOLIDAY SCHEDULE FOR 2016 FOR THE SAN JUAN WATER COMMISSION"

A. Chavez said the 2016 holiday schedule was very similar to the 2015 holiday schedule. A. Chavez said while there are 10 federally recognized holidays, the Commission employees are offered nine paid holidays, consistent with the 10-hour work day, resulting in 90 hours of holiday compensation in 2016.

Motion was made by J. Burnham, seconded by J. Ray to approve Resolution No. 2016-02 ~ "A Resolution Establishing The Holiday Schedule for 2016 for the San Juan Water Commission" and upon voice vote the motion carried unanimously (T. Brevik, J. Burnham, J. Dunlap, K. Johns, and J. Ray all voted yes).

SAN JUAN WATER COMMISSION'S CONFLICT OF INTEREST POLICY

Chairman K. Johns explained that the Conflict of Interest Policy was established on August 12, 2015 and is to be reconfirmed by signature annually, generally at the first meeting of the new year. J. Ray noted that the policy needed to be followed when a conflict of financial interest might be present. J. Ray said a Commissioner or Alternate Commissioner should present their case to the Commission with the understanding that the representative could recuse him or herself during the vote. It was also noted that if noticed that a Commissioner or Alternate may have a conflict of interest in a given matter, the Commissioner or Alternate will

be given the opportunity to present their case and defend their position. B. Oxford commented that the word "potential" is problematic due to future water purchases and or leases by the San Juan Water Commission that may potentially be in financial conflict with his (B. Oxford's) personally held water rights. San Juan County attorney D. Echols noted that the Commission would have to determine if a particular matter of discussion held a potential conflict. D. Echols said the Policy itself recognizes that not every potential conflict is an actual conflict; adding that the Conflict of Interest Policy applies only to the matters relating to the San Juan Water Commission. Copies of the Conflict of Interest Policy were made available for signature at the conclusion of the Commission meeting.

M. McDaniel entered the meeting at 9:15 AM.

CONSIDERATION OF THE CITY OF FARMINGTON'S REQUEST TO PURCHASE WATER RIGHTS

A Chavez informed the Commission that he received a letter from the City of Farmington on December 9, 2015 stating the City of Farmington's intent to purchase water from David and Peggy McWilliams. A. Chavez said there was not enough information provided in the letter for the Commission's staff to make a recommendation to the Commission. A. Chavez noted that according to the Joint Powers Agreement, all San Juan Water Commission entities are to give notice to the Commission of their intent to purchase water rights. Following a brief discussion, Motion was made by J. Ray, and seconded by J. Dunlap for the Commission to not exercise its option of first right of refusal and allow the City of Farmington to proceed with their purchase of water rights from David and Peggy McWilliams, and upon voice vote the motion carried unanimously (T. Brevik, J. Burnham, J. Dunlap, K. Johns, and J. Ray all voted yes).

TOP WATER STORAGE UPDATE

A Chavez informed the Commission that during the November 4, 2015 regular commission meeting, Commissioner Dunlap requested that the issue of Top Water Storage in Navajo Reservoir be further investigated. A. Chavez presented the Navajo Reservoir Water Bank factsheet that outlined the Colorado River Storage Act of 1956, Public Law 111-11, Section 10401 of the Colorado River Storage Project. A. Chavez continued to review the initial and anticipated terms for future water banking, and stated that the SJWC's staff will continue to work with the Bureau of Reclamation and the Interstate Stream Commission to pursue top water storage (banking) in Navajo Reservoir. J. Dunlap said water banking is an opportunity to hold excess water that is not being presently used. J. Dunlap said that water banking has been implemented all over the Southwest and in New Mexico, the Bureau of Reclamation and the State need to put in place rules and regulations so farmers, municipalities or anybody with water could bank their water if they were not using it.

ANNOUNCEMENT OF JANUARY 13, 2016 "ALLOCATION POLICY WORKSHOP"

A Chavez announced that the San Juan Water Commission will hold a Special Workshop to discuss the Allocation Policy on Wednesday, January 13, 2016 beginning at 10:00 A. M. in the San Juan Water Commission's Conference Room at 7450 E. Main St. in Farmington, NM. A. Chavez said that the Special Workshop is open to the public.

CLOSED EXECUTIVE SESSION

The Commission did not go into a Closed Executive Session

COMMENTS FROM THE COMMISSIONERS, ALTERNATES, AND STAFF

Referring to the Water Resources Update, A. Chavez said that the areas snowpack is above average, which will certainly help our overall water situation this year.

A. Chavez said the SJWC's comments on the Aquatic Invasive Species rule changes had been sent to the New Mexico Department of Game and Fish on December 9, 2015.

A. Chavez said the SJWC's staff would be providing comments to the BOR after its review of the "Draft" Environment Assessment for Recreation at Lake Nighthorse in Durango, CO.

A. Chavez announced the promotion of Gordon Miller from GIS Technician to GIS Coordinator, and added that the SJWC would be posting a job opening for the position of *Water Resource Specialist* via the newspaper and internet later in the month.

A. Chavez commented that he will serve on the Gold King Mine (GKM) Long Term Impact Citizens Advisory Committee for the next year. The GKM meetings are sponsored by the New Mexico Environment Department and will be held monthly for the next year, with participation of New Mexico and Colorado representatives.

J. Dunlap touched on CRWUA Resolution No. 2016-16---Clean Water Act (CWA), presented at the Colorado River Water Users Association conference in December 2015. Noting Paragraph 2 *“The CWA should not be expanded, construed or applied to create a national recreational, cultural, historical, ecological, habitat, aesthetic, instream flow, or land use law or program, or otherwise be used to regulate anything other than the protection of designated water body uses and the control of point and nonpoint pollutant discharges,”* and Paragraph 11 *“Where no provision of the CWA should allow a state or Indian tribe to apply its water quality standards in such a fashion as to (1) supersede, impair, or abrogate the water allocation system of another state or tribe or waters decreed thereunder, or (2) cause an unreasonable economic burden to be placed upon such other state or tribe where that state or tribe has ensured the establishment of classifications and standards for waters within its jurisdiction and such standards are being appropriately enforced.”*

J. Dunlap pointed out that the Ten Tribes Partnership had stated that they are unable to support CRWUA Resolution 2016-16; referencing the Position Statement of the Ten Tribes Partnership in Opposition to Resolution 2016-16-Clean Water Act *“The Ten Tribes Partnership appreciates the opportunity to provide these comments with respect to Resolution 2016-16 concerning the Clean Water Act. The users of Colorado River water are directly affected by the implementation of the Clean Water Act; therefore, it is appropriate for the Colorado River Water Users Association (CRWUA) to express its position concerning that Act. However, the ten Indian nations that comprise the Ten Tribes Partnership are fundamentally different than the water users that comprise the non-tribal membership of CRWUA. The tribes are not only users of Colorado River water, they are sovereign entities with regulatory authority and responsibilities, and in some cases have been determined to be eligible by the U.S. Environmental Protection Agency to be treated as a state in order to implement provisions of the Clean Water Act. Therefore, the tribes have a significant interest in protecting their regulatory authority pursuant to the Clean Water Act. The tribes take issue with Resolution 2016-16 for the following reasons: Paragraph 8 purports to oppose USEPA’s rule defining “waters of the United States” as set forth at 79 Fed. Reg. 22188 (April 21, 2014), which could potentially diminish the scope of the tribes’ regulatory authority. City of Albuquerque v. Browner, 97 F.3d 415 (10th Cir. 1996), cert denied, 522 U.S. 965 (1997) upheld the right of tribes to establish water quality standards more stringent than 20 federal standards and USEPA’s authority to require upstream National Pollution Discharge Elimination System dischargers to comply with the downstream tribal standards. The Browner decision also confirmed USEPA’s approval of tribal standards to protect cultural, historical, ecological, habitat, and aesthetic values, including ceremonial use. Instream flow protection is critical for tribes; therefore, the Ten Tribes Partnership cannot support Paragraphs 2 and 11. For these reasons, the Ten Tribes Partnership is unable to support Resolution 2016-16”.*

J. Dunlap added that he plans to bring the CRWUA resolution before the Interstate Stream Commission for further review.

ADJOURNMENT

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

There being no further business, Chairman K. Johns adjourned the meeting at 9:39 A.M.

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

Signature on File
Keith Johns, Chairman