I. ROUTINE ITEMS

A. Roll Call – Amy Williams

B. Call to Order – Vice President Patterson

Vice President Glenn Patterson called the meeting to order at 1:00 pm. Board members attending were Vice President Patterson, Secretary John Zweck, Treasurer Harold Nelson, Directors Bill Haselbush, Doug Lyle, Michael Rademacher and Ronald Sutherland. Director Robert Brand and President Dennis Yanchunas were absent from the meeting.

The following staff members were present: Executive Director Sean Cronin, Legal Counsel Scott Holwick, Engineer Mark McLean, and Administrative Assistant Amy Williams. Please see the end of the minutes for additional guests in attendance.

C. Amendments or Additions to the Agenda – Vice President Patterson

Vice President Patterson asked for any amendments or additions to the agenda. There were no amendments or additions to the agenda.

D. SVLHWCD 40 Year Anniversary Presentation - Mr. Chandler Peter: “404 Permitting (who, what, where & how)"

Vice President Patterson asked Mr. Cronin to introduce the speaker for this month in celebration of the Districts 40 year anniversary. Noting that he felt it would be beneficial for the board of Directors to become familiar with of the Federal 404 permitting process as it relates to the proposed Coffintop reservoir project, Mr. Cronin introduced Mr. Chandler Peter. Mr. Peter started working in the Colorado water field in 2003 with the Denver Moffat Collection project and is now the NEPA EIS/404bl Coordinator with the Corps of Engineers.

Section 404 of the Clean Water Act requires the Corps of Engineers to regulate the dredge and fill material into waters of the U.S. Mr. Peter noted the Corps of Engineers defines waters of the U.S. as all creeks, streams, wetlands, and ditches. All of these may be subject to a need for a permit, with the exception of some agricultural and maintenance activities, which could be exempt. Mr. Peter normally handles the larger permits, and noted the South Platte Basin has approximately 600 actions a year. In the early 2000’s, the Corps of Engineers saw a substantial increase in the big reservoir projects that required EIS level permitting including the Moffat Collection System Project, the Northern Integrated Supply Project, and the Halligan–Seaman Reservoir Expansion.

The EIS permit process is a level of detailed analysis required by National Environmental Policy Act. In the early 2000’s it was noted the process would generally take 3-4 years and cost 2-3 million, just to complete the EIS permit process for water supply reservoirs. The Corps of Engineers responsibility is to follow the rules and regulations set forth and cannot be a proponent...
or opponent for a specific project. Mr. Peter presented a time line for typical projects within the Colorado area, and using EIS project Moffat as an example, showed a start date of June 2003, with the anticipated DEIS ("Draft Environmental Impact Statement") issued date being January 2005. The actual DEIS issue date was October 2009. The initial estimate for cost was 3+ million and so far to date it has cost over 5 million. A "Draft Environmental Impact Statement" is a document enabling the public to research and analyze the project. A process called “scoping” helps decide how much time and effort should be put into these documents, with a middle of the road course generally chosen by the Corps to ensure money is spent properly. Even with the precautions, costs today have nearly doubled compared to original costs.

Mr. Peter noted the biggest question to the Corps is why the continued delay and expense? Mr. Peter stated the procedural limitations are statutorily and litigation driven, the more complex the project, the more in depth the investigation must be. As coordinator, Mr. Peter must make thousands of decisions that could be potentially challenged in court. There is a shortage of manpower within the Corps as well, with one person handling 6 EIS’s at any given time. In addition, Colorado has a very sophisticated water rights system, within Colorado Water law there is extensive amounts of information associated with water sources and development strategies, resulting in very complex analysis for those doing the researching. Currently there are over 200 reservoir sites on the front range of Colorado to be examined as possibly being able to meet the needs of a project, and the needs for the water must be analyzed in depth, whether it’s for agricultural, recreational, or municipal use.

Mr. Peter noted that coordination for a project is required for consistency. Applicants may have differences in reliability criteria, measures of use and demand, projected growth and hydrologic models, while agencies and academia might have differences regarding which methods to employ to assess resource factors and effects. With advances in knowledge and science, it makes for more detailed assessment methods when addressing the NEPA and 404 regulations. Because there are different methods of measuring water and different ideas about hydrology methods, the State may see it one way, an applicant may see it another and the Corps might see it a third way. Mr. Peter noted that the Court may also challenge processes if they feel the wrong method was used. These factors can slow the process with consultants having to spend much more time on the projects. Other factors might include looking at the reservoir and the downstream impacts on fish, bugs, and the concentration of certain nutrients with some cases the investigation can go all the way to the Nebraska state line.

The Corps must work with different Applicants who may attempt to control the entire permit process. Even if an Applicant does not agree with the permit process used, it is the Corps job to ensure the Applicants “preferred option” is the one that is the Least Environmentally Damaging Practicable Alternative since it is the only one the Corps can permit. They must make sure that all analysis is done and any issues that require additional data have been validated. Changes can sometimes be made in the middle of or late in the process, partners or participants might drop out or join in, or an entity might find that the original project analyzed might not be the one that is needed. The Corps has found that mitigation is essential to a project, and as part of mitigation some agencies might require that projects be observed for decades, with consultants being required to stay on the project for years. With long term monitoring, it may be that future releases could be made for something other than what was originally specified. Mitigation costs are not normally reflected in the permitting costs analyzed in the EIS and are likely to be substantial. Long-term monitoring and potential modification to operations and the downstream impact on resources years after project is constructed are possible.
Apparent simple issues can actually have difficult sub-issues associated with them that require additional data collection and analysis to resolve. And of course, products and position from various sources may not be readily available and can interfere with critical path items. Differences in view of ongoing and future actions happen within a basin, with opponents knowing the procedural aspects of permitting and purposefully slowing the process. Some even view delay as a victory. The Corps expects to be litigated by groups opposing different projects, and with this expectation comes higher costs and more time spent on any given project. There is no guarantee a project will be permitted, and if a permit is issued there is not guarantee it will be for the Applicants preferred options.

Mr. Peter then turned the presentation to the process he believes would be necessary for Coffintop based on information provided to him by Mr. Cronin. The proposed size of Coffintop would most likely require an EIS permit, with the proposed storage being bigger than Halligan, Gross and Reuter-Hess or Seaman. Mr. Peter noted to the Board of Directors that the least difficult part of the process is to actually choose the dam site, with the rest of the process becoming more difficult as it continues. The process will look at both the onsite effects, inundation of the stream, wetland and habitat effect and the indirect effects, the hydrology, stream impact and depletion, fisheries, geomorphology, recreation and aesthetics. The District would face the same issues that other reservoirs have or are currently being challenged by.

While Coffintop has previously been identified as a multipurpose project, Mr. Peter suggested that the District pick one purpose to focus on such as water supply, power generation, or recreational use. In choosing one purpose, the District can still add other beneficial uses at a later date, however the permit process will move much faster by focusing on one purpose. Some of the assessment factors again would be direct and indirect effects and cumulative effects for each factor, land use and ownership, socioeconomics and potentially twenty (20) other items to be researched.

Mr. Peter recommended that when the District is ready to start the process of developing Coffintop, a pre application conference with the Corps should be the very first item that should be done. By asking the Corps to evaluate sites for a project, it might be possible to avoid Corps of Engineer jurisdiction by locating the project on a non jurisdictional site or tunneling or boring pipelines crossing streams and wetlands. Unique diversion designs can be implemented in order to avoid the need for 404 permitting.

Mr. Peter then took several questions from the audience, and was thanked for his presentation by Vice President Patterson and all present.

II. CONSENT AGENDA

A. Approval of Minutes
B. NRCS Snotel Request
C. City of Longmont Proclamation

Vice President Patterson then asked the Board for removal of any consent agenda items that needed discussion. There were neither any comments nor items removed from the consent agenda.
and a motion to approve the consent agenda was made by Secretary Zweck, seconded by Director Rademacher and passed unanimously.

III. ACTION ITEMS

A. Financial Report – Assistant Treasurer Amy Williams

Vice President Patterson requested the presentation of the Financial Report for the months of May and June, 2011. Ms. Williams presented the Board with three reports that provided the final numbers for the two months.

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An additional memo provided in the Board packet reviewed by Ms. Williams, detailed some of the more significant revenue and expense items for the months of May and June. A motion to approve the financial report was made by Director Rademacher and seconded by Director Haselbush. The motion passed unanimously.

B. 2010 Financial Audit Approval – Mr. Dan Schommer

Mr. Cronin presented Mr. Dan Schommer, CPA, of Anton Collins and Mitchell LLP, to the Board of Directors. Mr. Schommer presented the Board with the 2010 Audit, as well as the SAS115 and SAS114 letters required to accompany the presented Audit. Mr. Schommer briefly reviewed the Audit, and noted there were no disagreements or difficulties with management on financial accounting, reporting or auditing.

Mr. Schommer made some recommendations to the District for the 2011 year based on his observation of procedure in the office. The recommendations included assembling a closing list for the end of month/year closing, updating and maintaining a current vendor list with addresses and phone numbers, and adoption of a capitalization policy by the Board of Directors. A motion to approve the Audit was made by Secretary Zweck and seconded by Director Rademacher. The motion passed unanimously. Vice President Patterson thanked Mr. Schommer for his report.

Mr. Cronin then addressed the Board regarding the need to do an annual Audit. Mr. Cronin referenced the District bylaw statement, “Board shall cause to be made an annual audit”, and noted the history of the District’s submission of an Audit to the State requested exemption some years, and other years submitting a full Audit. After a discussion regarding the Audit process, Mr. Cronin recommended to the Board that he felt the District should have an annual Audit produced, and the general consensus of the Board was the same. No motion was needed.

C. Augmentation Program Fees – Sean Cronin

Mr. Cronin referred the Board to the memo included in the packet regarding the Administrative Participation Fee. There are five members in the Augmentation Plan who are administered differently in that they have specific agreements with the District provided water rights in exchange for replacement water. It was decided the Administrative Participation Fee should be $100.00 for four of the members, and the fifth member should be treated as it has historically by staff, with a
D. Augmentation Program Minimum Lease Requirement – Sean Cronin

Mr. Cronin directed the Board to the memo regarding the Minimum Lease requirement for the Districts Lake No. 4/Augmentation water lease. Historically the District has leased a portion of its surplus water in Lake No. 4 on the open market for augmentation with no minimum amount required. Releasing small amounts of water is challenging and difficult to measure. Mr. Cronin recommended the Board adopt a policy that requires a minimum lease of one (1) acre foot or greater per month, making the administration and measurement of the water easier. A motion requiring a minimum lease of one (1) acre foot per month for water lease was made by Director Rademacher and seconded by Treasurer Nelson. The motion passed unanimously.

IV. DISCUSSION ITEMS & REPORTS

A. Water Commissioners Report – Ms. Shera Sumerford; CO DWR

Vice President Patterson asked for the Water Commissioners report. Ms. Sumerford reported that the call on the Main stem remains free river. Ms. Sumerford also noted it remains free river on the St. Vrain River and the reservoirs in the basin are currently 91.1% full.

B. Legal and Engineering Report – Mr. Scott Holwick & Mr. Mark McLean

Mr. McLean shared provisional data on the current flows with 1,000 CFS in Longmont and 1,700 CFS in Platteville. Mr. McLean has been working on some revised accounting for the St. Vrain and Left Hand Water Conservancy District Augmentation Program. Mr. McLean also noted that the Golden-Nelson engineer has provided revised engineering which Mr. McLean has reviewed and does expect there will be additional information forthcoming regarding the Golden-Nelson case. Mr. McLean traveled to Lake No. 4 with Mr. Cronin and was able to spend time checking structures and capacity at the lake. Vice President Patterson thanked Mr. McLean for his report.

1. Resume Review

There was one application published in the April resume and no applications published in the May resume that involved water rights in the St. Vrain basin.

a) Application of Left Hand Water District Case No. 11CW59

Mr. Holwick stated that the applicant seeks a finding of reasonable diligence for the: (1) Behrmann Reservoir Exchange (40 cfs); (2) Lower Storage to Behrmann Exchange (40 cfs); and (3) Behrmann Reservoir Upstream Exchange (25 cfs), each of which has an appropriation date of December 12, 1989 for municipal, domestic, irrigation and industrial purposes. The Behrmann Reservoir Exchange will operate by the applicant, delivering C-BT water to downstream termini (the Left Hand Valley Inlet head gate, the Star Ditch head gate, the Hinman Ditch head gate, the Holland Ditch head gate, and/or Left Hand Creek) in exchange for water diverted at the upstream termini (the Table Mountain Ditch to be delivered to Behrmann Reservoir). The Lower Storage to Behrmann Exchange will operate by the applicant, releasing water stored in Joder, Spurgeon and/or Left Hand Valley Reservoirs to the same downstream termini in exchange for water diverted at the same upstream termini. The Behrmann Reservoir Upstream Exchange will operate by the applicant releasing water stored in Behrmann Reservoir to downstream termini (the Holland Ditch head gate and/or the Left Hand Creek) in exchange for water diverted at the upstream termini (the Haldi
Ditch head gate, the Lake Ditch head gate, Lake Isabelle Reservoir, Left Hand Park Reservoir and/or Gold Lake Reservoir. All of the claimed exchanges were originally decreed in Case No. 89CW238 and have had subsequent diligence decrees entered in Case Nos. 97CW292 and 04CW151.

Mr. Holwick noted that his firm represents Left Hand Water District. Pursuant to the St. Vrain and Left Hand Water Conservancy District policy, Mr. Holwick should have discussed the application with the Board of Directors prior to the application being filed, but due to an internal miscommunication, he was not aware that the application was being filed. The deadline by which to file a statement of opposition was prior to the District’s July Board meeting, so Mr. Holwick discussed whether the District should file a statement of opposition with both the Executive Director and the President. It was recommended by the Executive Director that in accordance with the District’s policy of not filing statements of opposition to diligence applications, it was unnecessary in this case to file.

2. Application of Left Hand Water District

Pursuant to St. Vrain and Left Hand Water Conservancy District policy, Mr. Holwick is required to disclose that its firm intends to file an application on behalf of the Left Hand Water District in August for a finding of reasonable diligence to the Behrmann Reservoir conditional water storage right (originally decreed in Case No. 89CW239 for 1,400 AF with an appropriation date of July 28, 1989). Historically the District has not filed statements of opposition to either the original application or the two subsequent diligence applications. Mr. Holwick cannot offer any recommendations as his law firm represents the applicant in the proposed application, however if the District believes that it will oppose the proposed application, the District would need to hire a conflict attorney. Mr. Cronin recommended the District not oppose the proposed application, and the Board chose to take no action.

3. Court Rulings

Mr. Holwick noted that the FRICO-Barr Lake change case was adjudicated at the end of May. The Supreme Court issued a 78 page ruling that upheld most all of the earlier rulings made by the trial court. This went against the amicus brief that asked the court to reverse the way to change a storage right. Mr. Holwick expressed that he was not surprised by the logic, nor that the Supreme Court upheld the decision.

4. Coffintop Reservoir Diligence Application Case No. 11CW26

Mr. Holwick stated that the water referee contacted him to change a typo in the proposed decree for the District’s diligence application and anticipates that it will be entered as a final decree before the August Board meeting.

5. Lake No. 4

Mr. Holwick stated that on or before April 30, 2012, the District and County must file an application seeking a finding of reasonable diligence and/or seeking the confirmation that they have perfected the junior conditional water right (as opposed to the original conditional water right acquired from Mobile Premix) which is specifically decreed for use within the District’s Augmentation Plan.
Mr. Holwick noted there is a Supreme Court ruling that might be interpreted several different ways, but the most significant being when an entity has multiple rights on a single structure, it may be necessary to perfect senior rights before the junior rights. This is important to the District because the junior right is what the District actually uses to operate its Augmentation Plan. Mr. Holwick has discussed the District’s diligence activities with Mr. Cronin and Mr. McLean and the District will continue to file the diligence application as is.

As a side note, Mr. Holwick mentioned a District Court ruling in which a Water Conservancy District filed a diligence application in District 6, and the application was challenged on the grounds that it didn’t take appropriate action to authorize the filing of the diligence application. The challenge was noted that there were five (5) of the nine (9) District Director’s terms that were invalid, with four that had expired and one had resigned. The court dismissed the diligence application and stated the rights have been abandoned, because the appropriate steps were not taken. Mr. Holwick noted that this could possibly be overturned at a later date but this is illustrative of why careful diligence is of utmost importance to St. Vrain and Left Hand Water Conservancy District.

6. Application of Varra et al., Case No. 03CW306

Varra seeks to change the water rights associated with four shares of Rural Ditch Company and approval of a plan for augmentation of certain gravel pits. This case has been set for a five-day trial to commence on March 18, 2013. Mr. Holwick noted that he has filed the District’s Rule 26(a)(1) initial disclosures in this case as of June 10, 2011.

7. Application of L.G. Everist, Case No. 05CW335

Mr. Holwick stated that L.G. Everist seeks a conditional storage water right for the Lohmann-French water storage reservoir of 2,000 AF located between Rural Ditch and St. Vrain Creek east of I-25. L.G. Everist identified the Last Chance Ditch as one of four potential diversion locations to be used to fill the reservoirs. An initial status conference call was held on June 2, 2011 at which time the Referee asked any that oppose this, to provide comments on the Applicant’s draft proposed decree and request further information, including engineering required no later than by August 15, 2011. Mr. Holwick recommended that the District authorize Deere & Ault to review the proposed draft decree and determine what, if any, additional information may be required for proper evaluation of the application. Mr. Holwick noted that Deere & Ault represents two others opposing this case and have recently developed boilerplate comments re: appropriate accounting provisions for similar conditional water storage rights applications and should be able to conduct a cost efficient review of this application. The Board of Directors had no opposition to authorizing Mr. McLean to look at this on behalf of the District.

8. Application of Public Service Co., Case No. 06CW117

Public Service Company seeks to amend a plan for augmentation to replace out-of-priority depletions associated with four wells near the St. Vrain Power station. Several of the replacement sources identified are located within the District, including Lagerman Reservoir. A five-day trial has been set to commence on April 2, 2012. Mr. Holwick intends to discuss with Mr. Cronin and Mr. McLean whether the continued opposition of this application is worthwhile for the District, and will report to the Board regarding this at a future Board of Directors meeting.
9. Application of State Parks, Case No. 10CW106

Pursuant to the Board's direction at the May Board meeting, Mr. Holwick entered into a stipulation with the State.

C. St. Vrain Users Meeting Feedback – Sean Cronin

Vice President Patterson asked Mr. Cronin to speak about the proposed St. Vrain Users Meeting. Mr. Cronin referenced the draft agenda enclosed in the Board packets and asked for feedback about the proposed meeting agenda. The Board felt the agenda was acceptable, and Mr. Cronin noted a target date for the St. Vrain Users Meeting of November 10, 2011.

D. Executive Directors Report – Sean Cronin

Vice President Patterson then asked Mr. Cronin for his Executive Directors report. Mr. Cronin briefly touched on several subjects covered in the Executive Directors Report enclosed in the packet.

E. Items from the Board President or Public – Vice President Patterson

Vice President Patterson then asked for any items from the Board or Public. While there were no comments from the Board or Public, Mr. Cronin asked those present to note the “Did you know” portion of the agenda, regarding the Central Office concept. After a discussion with the prior office manager and research done by Ms. Williams it was discovered that while thought to be a good idea, there was not a tremendous amount of interest in this concept basin wide, and the concept was abandoned within a couple of years. Staff will continue to provide historical information about the District in this portion of the agenda each month.

V. EXECUTIVE SESSION

A. None

VI. ADJOURNMENT

With no further business to come before the St. Vrain and Left Hand Water Conservancy District Board of Directors, the motion to adjourn was made by Director Haselbush and seconded by Secretary Zweck. The meeting was adjourned at 3:20 p.m.
Respectfully Submitted,

Amy Williams, Assistant Secretary

Dennis Yanchunas, President

Additional Attendees:
Wes Lowrie – City of Longmont
Rob Alexander – Boulder County
Jill Baty – Highland Ditch
Shera Sumerford – CO DWR