

**Meeting  
Board of Directors  
Fountain Creek Watershed, Flood Control and Greenway District  
MINUTES  
October 23, 2009 - 1:00 p.m.**

Meetings are open to the public. This meeting was held at  
Commissioners Chambers  
Pueblo County Courthouse  
215 W. 10<sup>th</sup> Street, First Floor  
Pueblo, CO 81003

**1. CALL TO ORDER AND ESTABLISHMENT OF A QUORUM:**

El Paso County Commissioner Dennis Hisey called the meeting to order at 1:05 p.m.

In attendance were the following duly designated members of the Board of Directors of the District:

<u>Name</u>	<u>Appointing Authority</u>
Dennis Hisey	El Paso County
Jeff Chostner	Pueblo County
Larry Small	City of Colorado Springs
Gabriel Ortega	City of Fountain
Max Stafford	EPC Small Municipalities
Jane Rhodes	Pueblo City-County
Leroy Mauch	Lower Ark Valley Water Conserv. Dist.
Richard Skorman	Citizens Advisory Group

A quorum was noted.

**2. APPROVAL OF AGENDA:**

Upon motion duly made, seconded, and unanimously carried, the agenda for the October 23, 2009 meeting was approved.

**3. APPROVE MINUTES OF PRIOR BOARD MEETING**

Upon motion duly made, seconded, and unanimously carried, the minutes of the Board meeting of September 25, 2009 were approved.

**4. MATTERS OF PUBLIC INTEREST**

- A. Presentation by State Representative Sal Pace on legislative issues including proposed bill on mitigation of water transfers**

State Representative Sal Pace discussed his concept for a bill which would encourage voluntary agreements for mitigation of impacts in water transfer projects from one basin to another. Under the current system, the competing interests in trans-basin water diversions (usually municipalities vs. rural water conservancy districts) litigate the issue of conditions in the particular water court having jurisdiction. Mr. Pace stated that negotiated agreements containing conditions were preferable to litigation. Representative Pace explained that if agreements could not be reached, water court judges could choose to apply conditions now available only on the Western Slope in transfers by conservancy districts to Front Range municipalities. Following a discussion, it was the consensus of the Board that it would reserve judgment on the proposed water mitigation bill until it sees the drafted legislation.

**B. Presentation and recommendation by Technical Advisory Committee (“TAC”) and Colorado Water Conservation Board regarding the Fountain Creek Watershed Policy Evaluation and Workshop, including Scope of Work; discussion and direction by District Board**

CAG Secretary Rich Muzzy reported that on October 7, 2009 the TAC revised a Scope of Work for implementation of a Fountain Creek Watershed Policy Evaluation and Workshop with a recommended time frame of one (1) year. The revised Scope of Work consists of 5 tasks:

- 1) Synthesis of existing information;
- 2) Development of a policy evaluation;
- 3) Dissemination of a report for review and comment by the District TAC, District CAG and other stakeholders;
- 4) Conduct two ½ day workshops which will consist of a presentation on the policy evaluation report and breakout groups to discuss implementation of the strategies; and
- 5) Formation of Plan Implementation Groups.

Mr. Muzzy reported that this project will implement many of the recommendations contained in the Fountain Creek Watershed Strategic Plan. The estimated cost of the project is \$25,000 and funding will be provided through a grant from the Colorado Water Conservation Board (CWCB). The match requirements will be provided through work that the City of Colorado Springs is currently conducting on stormwater policies and practices. No additional funding beyond the \$25,000 provided by CWCB will be required for the project. To maximize the benefit from the research and work that is already being done and so this work can be closely coordinated with what is currently being done by the City of Colorado Springs, a sole source contract would be issued for under \$25,000 to the consultants currently under contract by the City of Colorado Springs. The timeframe for the contract and project is recommended to be one (1) year.

Mr. Muzzy stated that the District Board is recommended to be the fiscal agent of the contract because this is a regional effort and recommendations made through this effort will be of direct benefit to individual cities and counties and the entire watershed. The

Executive Director hired by the District could be responsible for coordinating the project. The TAC will provide technical assistance by working with the consultant to provide information, review sections of the report and help coordinate the workshops.

Following a discussion, the Board expressed general support for the grant. The TAC and the District's lawyers were directed to present to the Board a proposed grant contract for future review and appropriate action.

**C. Consideration, discussion, and direction regarding request by Teller-Park Conservation District to perform assessment of potential treatment needs of upper reaches of Fountain Creek in Teller County**

Darlene Jensen and Vern Vinson of the Teller-Park Conservation District and Leon Kott from the Natural Resources Conservation Service made a presentation to the Board concerning the flood control and erosion control needs of the upper reaches of the Fountain Creek in Teller County. The August 20, 2009 letter from the Teller-Park Conservation District was discussed. The Teller County presenters requested that the Fountain Creek Watershed District include projects for flood control and erosion and water quality on the upper Fountain Creek in Teller County. The consensus of the District Board was that the Fountain Creek District welcomed the input from stakeholders in Teller County and that it may be appropriate for representatives from Teller County to sit as members of the District's TAC and CAG. The presenters from Teller County were invited to contact the chairs of the District's TAC and CAG and to present a list of Teller County representatives for possible appointment to the District's TAC and CAG.

**5. REVIEW OF APPLICATIONS AND SELECTION OF FINALISTS FOR INTERIM EXECUTIVE DIRECTOR**

Dan Kogovsek presented the Board with hard copies of the applications, letters of intent, and resumes of the 23 individuals who had applied by the October 16, 2009 deadline for appointment as the interim executive director of the District. Mr. Kogovsek informed the Board that the applications of Richard Stettler and Roberta Ringstrom had been received after the deadline and stated that the Board needed to make a decision regarding acceptance of the two late-filed applications. Following a discussion, upon motion duly made and seconded, it was resolved to accept the late-filed applications of Mr. Stettler and Ms. Ringstrom, but not to accept any future applications. The motion passed 7-1 with Director Jane Rhodes voting in opposition.

Following a discussion, upon motion duly made, seconded, and unanimously carried, it was resolved that the following procedures would be implemented for the selection of an interim executive director of the District:

- a. The executive committee of the District (consisting of the District's Chair, Vice-Chair, Secretary, and Treasurer) would meet in a public session at 2:00 p.m. on Wednesday, November 11, 2009, in the Commissioners' Chambers of

the Pueblo County Courthouse, 215 West 10<sup>th</sup> Street, 1<sup>st</sup> Floor, Pueblo, Colorado 81003, to review the 25 applications which had been received and, at that meeting, select and announce the finalists for appointment as the interim director of the District;

b. The finalists would be notified of their selection and would be interviewed by the entire District Board at its meeting scheduled for 1:00 p.m. on Friday, December 4, 2009 at the City of Fountain City Hall, located at 116 South Main Street, 2<sup>nd</sup> Floor, Fountain, Colorado 80817.

**6. DISCUSSION AND DIRECTION, INCLUDING SCHEDULING FINAL ADOPTION HEARING, REGARDING DRAFT 2010 BUDGET**

Following a discussion, upon motion duly made, seconded, and unanimously carried, it was resolved that the District Board would consider adoption of its 2010 budget at the Board's next meeting, scheduled for 1:00 p.m., on Friday, December 4, 2009 at the Fountain City Hall. Legal counsel for the District were directed to give the public proper notice of the meeting by publishing a notice of the meeting in the Pueblo and El Paso County newspapers which have been designated for legal publications by the County Boards of each county.

**7. STATUS, DISCUSSION, AND DIRECTION REGARDING INTERGOVERNMENTAL AGREEMENT WITH THE LOWER ARKANSAS VALLEY WATER CONSERVANCY DISTRICT AND THE CITY OF COLORADO SPRINGS**

Dan Kogovsek informed the Board that the Lower Arkansas Valley Water Conservancy District and the City of Colorado Springs were in full compliance with the August 28, 2009 intergovernmental agreement between those bodies and the District. Mr. Kogovsek informed the Board that as a result of financial contributions from the Lower Ark District and Colorado Springs Utilities, the District's general fund and bank account contained \$100,000 for the District's operations during the 2010 fiscal year.

**8. APPROVAL/RATIFICATION OF LaFARGE/SUNDANCE LAND USE RESOLUTIONS; STATUS OF LaFARGE/SUNDANCE LAND USE APPLICATIONS IN EL PASO COUNTY REVIEW PROCESS**

Director Jane Rhodes stated that it would be appropriate for her to recuse herself from consideration of this agenda item and announced that she would abstain from voting and any discussion prior to a vote being taken. Following a discussion, upon motion duly made, seconded and carried, the District Board adopted the following Resolution by a vote of 6-0, with Directors Jane Rhodes and Dennis Hisey abstaining:

**RESOLUTION NO. 2009-01—LAND USE**

**BOARD OF DIRECTORS  
FOUNTAIN CREEK WATERSHED, FLOOD CONTROL  
AND GREENWAY DISTRICT**

A Resolution recommending that the El Paso County Board of County Commissioners deny an application by LaFarge and Sundance Investments for a Use Subject to Special Review for mineral and natural resource extraction of sand and gravel within the Fountain Creek Watershed Management Area.

**WHEREAS**, LaFarge as Applicant and Sundance Investments (“Sundance”) as Land Owner (collectively referred to herein as “LaFarge”) did request review and approval by the Fountain Creek Watershed, Flood Control and Greenway District (“District”) of a Use Subject to Special Review for mineral and natural resource extraction of sand and gravel located within the Fountain Creek Watershed Management Area; and

**WHEREAS**, public hearings on LaFarge’s application were held by the District Technical Advisory Committee (“TAC”) on August 12, 2009, and by the District Citizens’ Advisory Group (“CAG”) on August 14, 2009; and

**WHEREAS**, a public hearing on LaFarge’s application was held by the District Board of Directors (“District Board”) on August 28, 2009, at which testimony was given regarding continuance, and upon motion duly made, seconded, and approved by a majority of the Directors, the hearing was continued to September 25, 2009; and

**WHEREAS**, a public hearing on LaFarge’s application was held by the District Board on September 25, 2009; and

**WHEREAS**, based on the evidence, testimony, exhibits, presentation by LaFarge, comments of the El Paso County Development Services Department, comments of all interested parties and the public, and comments by the Directors, the District Board finds as follows:

1. That the District Board incorporates by reference and receives into evidence the documents and testimony from the District Board’s August 28, 2009, hearing, which included the following:
  - a. LaFarge agreed to proceed to hearing before the District Board using the Strategic Plan for the Fountain Creek Watershed (dated March 10, 2009, prepared by the Fountain Creek Vision Task Force), the Fountain Creek Watershed Study Watershed Management Plan (dated January 2009, prepared by the U.S. Army Corps of Engineers), and the zoning and land use regulations of El

Paso County, Colorado as the applicable land use criteria on which the District Board would review the LaFarge land use requests; and

- b. The TAC's recommendation for approval with conditions; and
  - c. The CAG's recommendation for continuance.
2. That proper posting, publication, and public notice were provided as required by law for the hearing before the District Board.
  3. That the hearing before the District Board was extensive and complete, that all pertinent facts, matters, and issues were submitted, and that all interested parties were heard at that hearing.
  4. That all exhibits were received into evidence.
  5. That LaFarge had amended its applications to provide that no gravel mining would occur within the Fountain Creek Corridor (FEMA 100-year flood plain as defined in § 32-11.5-103(9)(a), C.R.S.), and accordingly, that the District Board does not have primary land use jurisdiction over the LaFarge application, but only advisory land use authority to make recommendations to the El Paso County Board of County Commissioners pursuant to § 32-11.5-205(3)(b), C.R.S.
  6. That for the following reasons, based on the evidence presented, the proposed Use Subject to Special Review is not in the best interests of the health, safety, and welfare of the District:
    - a. The proposed Use Subject to Special Review for mineral and natural resource extraction of sand and gravel is inconsistent with, and does not conform to, the Strategic Plan for the Fountain Creek Watershed and the purposes for which the Colorado legislature created the District.
    - b. The proposed land use will not be compatible with existing and permitted land uses in the adjacent and surrounding area.
    - c. The proposed land use may create water quality impacts that will negatively affect Fountain Creek.

NOW, THEREFORE, BE IT RESOLVED for the reasons stated herein, that the District Board recommends that the El Paso County Board of County Commissioners deny LaFarge's application for a Use Subject to Special Review for mineral and natural resource extraction of sand and gravel within the Fountain Creek Watershed Management Area.

BE IT FURTHER RESOLVED that this Resolution and recommendation be forwarded to the El Paso County Planning Commission and Board of County Commissioners for their consideration.

BE IT FURTHER RESOLVED that Director Jeff Chostner, as Vice Chair, is hereby authorized to sign this Resolution and to execute any and all documents necessary to carry out the intent of the Board as described herein.

Following a discussion, upon motion duly made, seconded, and carried, the following resolution was adopted by the District Board by a vote of 6-0 with Directors Jane Rhodes and Dennis Hisey abstaining:

**RESOLUTION NO. 2009-02—LAND USE**

**BOARD OF DIRECTORS  
FOUNTAIN CREEK WATERSHED, FLOOD CONTROL  
AND GREENWAY DISTRICT**

A Resolution recommending that the El Paso County Board of County Commissioners deny an application by LaFarge and Sundance Investments for a Variance of Use to allow concrete and asphalt batch plants in the I-2 (Limited Industrial) zone of El Paso County, Colorado, within the Fountain Creek Watershed Management Area.

WHEREAS, LaFarge as Applicant and Sundance Investments (“Sundance”) as Land Owner (collectively referred to herein as “LaFarge”) did request review and approval by the Fountain Creek Watershed, Flood Control and Greenway District (“District”) of a Variance of Use to allow concrete and asphalt batch plants in the I-2 (Limited Industrial) zone established by El Paso County, Colorado, located within the Fountain Creek Watershed Management Area. Batch plants are only allowed by special use in the I-3 (Heavy Industrial) and M (Manufacturing) zones of El Paso County, Colorado, hence the request for the Variance of Use; and

WHEREAS, public hearings on LaFarge’s application were held by the District Technical Advisory Committee (“TAC”) on August 12, 2009, and by the District Citizens’ Advisory Group (“CAG”) on August 14, 2009; and

WHEREAS, a public hearing on LaFarge’s application was held by the District Board of Directors (“District Board”) on August 28, 2009, at which testimony was given regarding continuance, and upon motion duly made, seconded, and approved by a majority of the Directors, the hearing was continued to September 25, 2009; and

WHEREAS, a public hearing on LaFarge’s application was held by the District Board on September 25, 2009; and

WHEREAS, based on the evidence, testimony, exhibits, presentation by LaFarge, comments of the El Paso County Development Services Department, comments of all interested parties and the public, and comments by the Directors, the District Board finds as follows:

1. That the District Board incorporates by reference and receives into evidence the documents and testimony from the District Board's August 28, 2009, hearing, which included the following:
  - a. LaFarge agreed to proceed to hearing before the District Board using the Strategic Plan for the Fountain Creek Watershed (dated March 10, 2009, prepared by the Fountain Creek Vision Task Force), the Fountain Creek Watershed Study Watershed Management Plan (dated January 2009, prepared by the U.S. Army Corps of Engineers), and the zoning and land use regulations of El Paso County, Colorado as the applicable land use criteria on which the District Board would review the LaFarge land use requests; and
  - b. The TAC's recommendation for approval with conditions; and
  - c. The CAG's recommendation for continuance.
2. That proper posting, publication, and public notice were provided as required by law for the hearing before the District Board.
3. That the hearing before the District Board was extensive and complete, that all pertinent facts, matters, and issues were submitted, and that all interested parties were heard at that hearing.
4. That all exhibits were received into evidence.
5. That LaFarge had amended its applications to provide that no gravel mining would occur within the Fountain Creek Corridor (FEMA 100-year flood plain as defined in § 32-11.5-103(9)(a), C.R.S.), and accordingly, that the District Board does not have primary land use jurisdiction over the LaFarge application, but only advisory land use authority to make recommendations to the El Paso County Board of County Commissioners pursuant to § 32-11.5-205(3)(b), C.R.S.
6. That for the following reasons, based on the evidence presented, the proposed Variance of Use is not in the best interests of the health, safety, and welfare of the District:
  - a. The proposed Variance of Use to allow concrete and asphalt batch plants in the I-2 (Limited Industrial) zone is inconsistent with, and does not conform to, the Strategic Plan for the Fountain Creek Watershed and the purposes for which the Colorado legislature created the District.

- b. The proposed land use will not be compatible with existing and permitted land uses in the adjacent and surrounding area.
- c. The proposed land use may create water quality impacts that will negatively affect Fountain Creek.
- d. Application of the Strategic Plan for the Fountain Creek Watershed, the Fountain Creek Watershed Study Watershed Management Plan, and the zoning and land use regulations of El Paso County, Colorado, will not result in peculiar and exceptional practical difficulties or undue hardship upon LaFarge.

NOW, THEREFORE, BE IT RESOLVED for the reasons stated herein, that the District Board recommends that the El Paso County Board of County Commissioners deny LaFarge's application for a Variance of Use to allow concrete and asphalt batch plants in the I-2 (Limited Industrial) zone within the Fountain Creek Watershed Management Area.

BE IT FURTHER RESOLVED that this Resolution and recommendation be forwarded to the El Paso County Planning Commission and Board of County Commissioners for their consideration.

BE IT FURTHER RESOLVED that Director Jeff Chostner, as Vice Chair, is hereby authorized to sign this Resolution and to execute any and all documents necessary to carry out the intent of the Board as described herein.

Director Jane Rhodes resumed her participation in the meeting.

## **9. REPORT FROM TAC CHAIR**

- A. Recommendation regarding establishing procedure to formally adopt appropriate documents/criteria/regulations to review land use applications submitted to the District, including, but not limited to, the following:**
  - (1) Strategic Plan for the Fountain Creek Watershed, dated March 10, 2009, prepared by the Fountain Creek Vision Task Force;**
  - (2) Fountain Creek Watershed Study and Watershed Management Plan, dated January 2009, prepared by the U.S. Army Corps of Engineers; and**
  - (3) Appropriate zoning and land use regulations of applicable counties and/or municipalities**

**B. Status regarding establishing technical review criteria, structure, and procedures for submittals to be presented for TAC consideration**

TAC Chair Ken Sampley reported to the District Board that on September 9, 2009, the TAC initiated discussions regarding the adoption of technical criteria and the establishment of a review structure and procedure for items to be presented for TAC consideration and action.

Mr. Sampley reported that TAC members discussed how impractical it would be to develop new review criteria or combine existing regulations. It was determined that the best approach would be to utilize existing regulations. El Paso and Pueblo Counties both have land use and zoning regulations which could be used to review projects in their respective jurisdictional areas. TAC members agreed that separate regulations are not necessary for the area over which the District has land use authority.

Mr. Sampley stated that committee members recommended that the District Board adopt the:

- (a) Strategic Plan for the Fountain Creek Watershed, dated March 10, 2009,
- (b) Fountain Creek Watershed Study and Watershed Management Plan, dated January 2009, and
- (c) Appropriate zoning and land use regulations from El Paso and Pueblo Counties.

Following a discussion, upon motion duly made, seconded, and unanimously carried, it was resolved:

- A. Legal counsel for the District are instructed to begin the process for formal adoption by the District Board of the TAC's recommendations;
- B. The interim executive director of the District, after he or she is hired, study and report back to the Board on the advisability of the District adopting its own land use regulations pertaining to the Fountain Creek corridor over which the District has primary land use authority.

**10. REPORT FROM CAG CHAIR**

**Status regarding mission, review criteria, structure, and protocol for submittals**

CAG Vice-Chair Jay Winner reported to the District Board that the CAG was still in the process of establishing review criteria, structure, and procedures for submittals presented for CAG consideration and that the CAG had not yet completed that task.

**11. OTHER BUSINESS:**

Director Larry Small recommended that at its next meeting the public comment item on the agenda be moved to the beginning of the agenda in order to enhance public input.

There followed a discussion concerning the meeting before the El Paso County Board of County Commissioners scheduled for 9:00 a.m. on November 12, 2009 concerning the LaFarge / Sundance Investments application for Use Subject to Special Review of mineral extraction of sand and gravel and application for Variance of Use to allow concrete and asphalt batch plants in the I-2 (Limited Industrial) zone. More than 2 Directors of the District Board stated they may testify before the El Paso Board of County Commissioners regarding the pending applications. Accordingly, legal counsel were directed to post the November 12, 2009 meeting before the El Paso County Board as a meeting of the Board of Directors of the Fountain Creek Watershed District.

**12. PUBLIC COMMENT:**

Carol Baker of Colorado Springs Utilities informed the Board that in connection with its SDS pipeline, Colorado Springs Utilities wished to make a public presentation to the District Board regarding the impacts of the proposed pipeline and CSU's recommendations for mitigation. It was the consensus of the Board that the Board would hear the SDS pipeline presentation at the Board's January, 2010 meeting, after the TAC and CAG have had a chance to review the project and to make recommendations to the District Board.

**13. EXECUTIVE SESSION (IF REQUIRED):** None

**14. DATE, TIME, AND LOCATION OF NEXT MEETING:**

Upon motion made, duly seconded and unanimously carried, it was resolved that the next meeting of the District Board of Directors would take place at 1:00 p.m. on Friday, December 4, 2009, at the Fountain City Hall, 116 S. Main Street, 2<sup>nd</sup> Floor, Fountain, CO 80817.

**15. ADJOURN:**

The meeting adjourned at 3:10 p.m.

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Larry Small, Secretary