

MINUTES

PUEBLO AREA COUNCIL OF GOVERNMENTS

DECEMBER 6, 2012

A meeting of the Pueblo Area Council of Governments was held on Thursday, December 6, 2012, in the Pueblo Regional Building Department's Conference Room at 830 North Main Street. The meeting was called to order by Mr. Steve Nawrocki, Chairman, at 12:16 p.m.

Chairman Nawrocki recognized Ms. Joan Armstrong as the permanent Director of the Pueblo County Planning Department and the PACOG Manager.

ROLL CALL

Those members present were:

Jeff Chostner
Michael Colucci
Michael Connolly
John Cordova
Sandy Daff

Nick Gradisar
Chris Kaufman
Roger Lowe
Steve Nawrocki
Lewis Quigley

Those members absent were:

Leroy Garcia
Ted Lopez
Eva Montoya

Ami Nawrocki
Chris Nicoll
Anthony Nuñez

Also present were:

Joan Armstrong
Scott Hobson
Rob Leverington
Jim Munch

Gilbert Ortiz
Louella Salazar
Greg Styduhar

CONSENT ITEMS:

Ms. Joan Armstrong, PACOG Manager, reported there were seven items listed on the agenda under the Consent Items. She summarized the seven Consent Items for PACOG.

Chairman Nawrocki asked if there were any other additions or amendments to the Consent Items or if any of the members or audience would like any of the items removed from the Consent agenda.

It was moved by John Cordova, seconded by Chris Kaufman, and passed unanimously to approve the seven Consent Items listed below:

- Minutes of September 27, 2012 meeting;
- Treasurer's Report (Receive and file September and October 2012 Financial Reports);
- A Resolution Amending the Pueblo Area Council of Governments (PACOG) FY 2012-2017 Transportation Improvement Program (TIP) to Allocate \$114,000 from FY 2012

Administration Transportation Enhancement Funds, and Directing the Urban Transportation Planning Division to Execute Said Amendment;

- A Resolution Approving the 2013 Delegation Agreement Between the Pueblo Area Council of Governments (PACOG) and the City of Pueblo for Transportation Planning and Improvement Services, Authorizing the Chair of the Council to Execute Same, and Authorizing and Directing the Urban Transportation Planning Division to Administer the Agreement in Compliance with All Applicable Federal, State, and Local Laws and Regulations;
- A Resolution Appointing a Member to the Environmental Policy Advisory Committee (Betty Alt);
- A Resolution Retaining the Services of McPherson, Breyfogle, Daveline and Goodrich, PC to Perform Bookkeeping Services for the Pueblo Area Council of Governments for FY 2013; and
- A Resolution Retaining the Services of Garren, Ross & DeNardo, Inc. to Prepare the Pueblo Area Council of Governments' 2012 Audit.

REGULAR ITEMS:

PACOG BUDGET HEARING

The Pueblo Area Council of Governments held a public hearing regarding its proposed 2013 budget. The budget proposal is set forth in the resolutions listed below. A notice of the public hearing and the availability of the proposed budget were published in the Pueblo Chieftain on November 11, 2012.

A RESOLUTION APPROVING A BUDGET FOR THE PUEBLO AREA COUNCIL OF GOVERNMENTS (PACOG) FOR CALENDAR YEAR 2013

Mr. Nick Gradisar, PACOG Treasurer, reported the PACOG Budget Committee met with staff on November 15, 2012 to discuss the 2013 PACOG Budget. The revenues for the administrative portion of the budget are based upon the dues which are paid by the respective members of PACOG. He stated there was discussion on adjusting the dues, but nothing was done at this time, noting the dues for 2013 remain the same as always. Also included in the PACOG 2013 budget is the Urban Transportation Planning Division funds. He stated some of this money is carried over as was done last year. The total 2013 PACOG budget is \$942,635.

Chairman Nawrocki closed the hearing. There were no comments, questions, or opposition to the budget.

It was moved by Nick Gradisar, seconded by Jeff Chostner, and passed unanimously to approve "A Resolution Approving a Budget for the Pueblo Area Council of Governments (PACOG) for Calendar Year 2013".

A RESOLUTION DIRECTING THE PUEBLO COUNTY PLANNING AND DEVELOPMENT DEPARTMENT TO IMPLEMENT THE FY 2013 WORK PROGRAM AND APPROPRIATING FUNDS FOR SAID WORK PROGRAM

It was moved by Nick Gradisar, seconded by Jeff Chostner, and passed unanimously to approve "A Resolution Directing the Pueblo County Planning and Development Department to Implement the FY 2013 Work Program and Appropriating Funds for Said Work Program".

A RESOLUTION APPROVING THE PUEBLO AREA COUNCIL OF GOVERNMENTS'
(PACOG) FY 2013 MEMBERSHIP CONTRIBUTION SCHEDULE FOR ADMINISTRATION
AND INSURANCE ACTIVITIES

It was moved by Nick Gradisar, seconded by Jeff Chostner, and passed unanimously to approve "A Resolution Approving the Pueblo Area Council of Governments' (PACOG) FY 2013 Membership Contribution Schedule for Administration and Insurance Activities".

CHAIRPERSON'S REPORT:

(A) Certificates of Appreciation to Outgoing PACOG Members

Chairman Nawrocki presented certificates of appreciation to Messrs. Jeff Chostner, John Cordova, Leroy Garcia, and Anthony Nuñez, outgoing PACOG members. Messrs. John Cordova and Jeff Chostner thanked PACOG for the plaques, noting it has been a pleasure working with PACOG. Chairman Nawrocki stated Messrs. Anthony Nuñez and Leroy Garcia are absent and will make sure their plaques will be given to them.

(B) Lunch Appreciation

Chairman Nawrocki thanked the Pueblo West Metropolitan District for providing lunch for today's meeting.

(C) Selection of PACOG Nominating Committee for Officers

Chairman Nawrocki asked for volunteers to serve on the 2013 PACOG Nominating Committee for Officers. The following persons volunteered to serve on the Committee: John Cordova, Sandy Daff, and Roger Lowe. Chairman Nawrocki stated Ms. Salazar would arrange the meeting.

MANAGER'S REPORT

(A) 2013 PACOG Meeting Date Schedule

Ms. Joan Armstrong, PACOG Manager, referred PACOG to a memorandum in their packets providing the 2013 PACOG meeting dates. She stated staff will make every attempt to have these meetings every other month.

PUBLIC HEARING ON PACOG 2012 WATER QUALITY MANAGEMENT PLAN

The Pueblo Area Council of Governments held a public hearing regarding the adoption of the Pueblo Area Council of Governments' (PACOG) 2012 Water Quality Management Plan on June 28, 2012. This item is a continuation of the public hearing first held on June 28, 2012. Proper public notice was originally published in the Pueblo Chieftain on May 26, 2012.

A RESOLUTION APPROVING THE PUEBLO AREA COUNCIL OF GOVERNMENTS'
(PACOG) 2012 WATER QUALITY MANAGEMENT PLAN

Mr. Greg Styduhar, PACOG Attorney, asked that the original public notice and affidavit of publication be incorporated into the record. He stated this is a continuation of the June 28, 2012 public hearing. PACOG has been in the process of developing this Section 208 Water Quality Management Plan for over a year. Staff has attempted to develop this Plan in various ways which included informal talks as well as formal talks by way of mediation. The accompanying resolution with this item gives a sufficient background, but more importantly it allows for the adoption of the Plan as it currently stands. He noted staff previously distributed the Plan to PACOG via e-mail and U.S. mail. On November 19, 2012, the Environmental Policy Advisory Committee (EPAC) met and considered the Plan as drafted, and recommends approval by PACOG. The Colorado City Metropolitan District Board of Directors met and considered the Plan as drafted and recommends approval. The Pueblo West Metropolitan District Board of Directors met and recommends approval with one caveat. If PACOG adopts this Plan, Pueblo West is requesting that the accompanying resolution not be sent to the Water Quality Control Commission (WQCC). He stated staff is fine with this caveat; however, if the WQCC asks for proof of adoption by PACOG, then staff would have to supply some type of record, which would include minutes as well as the resolution.

Mr. Ray Petros, Attorney, Petros and White, special counsel to Pueblo County and, on this matter, special counsel to PACOG, stated Pueblo West requested to become a management agency, and that prompted concerns by members of PACOG as to whether that designation would somehow strengthen or increase its authority to propose and get approved its plan to pumpback effluent into or near Pueblo Reservoir in order to capture its reuse credits. This caused a lot of controversy. PACOG staff thought the approach would be to place a fairly straightforward, simple policy statement in the 208 Plan that would say: (1) that Pueblo Reservoir is an important recreational and direct drinking water supply resource, (2) that it deserves the highest degree of protection because of the hundreds of thousands of people dependent upon it for water and recreation, and (3) municipal discharges to it in its immediate proximity should be avoided. Staff thought that it was going to be a fairly straightforward exercise, but it turned out it was not. PACOG suggested staff go into mediation with the Water Quality Control Division (WQCD) and representatives of Pueblo West, including Mr. Jack Johnston. The policy statement that came out, which is on Page 14 of the 208 Plan isn't artful and it certainly isn't short, but it encompasses the three statements. In essence, in the mediation the WQCD representatives wanted to ensure that their authority to set water quality standards was not interfered with or usurped by this policy statement. Pueblo West wanted to preserve their option of at least applying for a pumpback sometime in the future should there be compelling reasons for that. The language that staff arrived at helped satisfy those concerns.

Mr. Petros stated two important assurances have been given: (1) the WQCD representatives said and assured us that the management agency status did not confer additional or stronger authority to Pueblo West in the event that Pueblo West reapplied or pursued their pumpback option, and (2) Pueblo West representatives, both before and after the mediation, assure us that the Wildhorse return pipeline project is still being pursued by Pueblo West, noting this is the alternative to the pumpback into the Pueblo Reservoir for Pueblo West to recapture their effluent and it is proposed to be built in 2013. The issue of a pumpback won't arise in the near future. He felt the statement preserves the voice of PACOG in the event Pueblo West or any other entities were to attempt to apply for a direct discharge of

municipal effluent into Pueblo Reservoir. He felt this accomplishes the preservation of PACOG's voice in that regard.

Mr. Chostner asked regarding the caveat to Pueblo West. He questioned why would we not want to publish or distribute any resolution? If PACOG passes this resolution, why would we be reluctant to share it? Mr. Styduhar replied in historical context, the last time we were before the WQCC the Plan was accompanied by the resolution. That resolution in February 2012 had specific conditions that were not incorporated into the Plan. This is the reason why the resolution specifically went along with the Plan because there were conditions attached to it. The current resolution is a recitation of the history of what PACOG has gone through to develop the update to the Plan. It doesn't have any substantive conditions or requirements within the resolution. The only thing it does is adopt the Plan. The only reason why PACOG would not include the resolution with its submission to the WQCC would be to appease a member's request, but certainly the WQCC could ask for the resolution. Mr. Chostner asked if the current resolution includes that caveat or would it be that the resolution is passed in and of itself. Mr. Styduhar responded it does not include the caveat. It is just like every other resolution that PACOG passes; it does not have that condition that the resolution not accompany the Plan. It is just the resolution adopting the Plan. Mr. Chostner stated he didn't want PACOG to give the impression that we were somehow reluctant to publish it, noting it weakens our stand behind the resolution that we pass something but we don't want to be so public about it. He felt if PACOG is going to pass the resolution that it should be passed like any other resolution and stand behind it. Mr. Styduhar felt the language within the resolution, as it stands, is what PACOG would be doing. He stated he apologized for not knowing what the WQCC is going to ask for. It is quite possible they will ask to see the resolution and the minutes, which demonstrate that PACOG has adopted this Plan. If that is the case, staff is going to have to provide this to the WQCC.

Mr. Jack Johnston, District Manager, Pueblo West Metropolitan District, stated the District Board felt, based on some of the references made already in previous Water Quality Management Plans (WQMPs) and, specifically the one that was submitted to the WQCC in February, there was an initiative by PACOG to have the resolution adopted as part of the WQMP which Pueblo West had an objection to because it did include certain conditions or otherwise that were not agreeable. The District Board wanted to ensure that the WQMP as mediated and agreed upon to this stage prior to PACOG approval would stand alone as the WQMP. There is no objection to any documents or procedural differentiations with PACOG if they want to have public record because that would be normal. The District Board and Pueblo West staff felt that the WQMP should stand alone and not include a resolution. The resolution shows that it was passed, but not to be in the pages of the Plan. The Plan should be the Plan. Pueblo West is in no way trying to intervene in regard to the normal procedures of PACOG.

Mr. Johnston stated Pueblo West, as a whole, has been very appreciative of PACOG staff, noting this has been lengthier and a more arduous process than any of us would have ever thought over a year ago when this was started. It is clearly an important subject to all communities. Pueblo Reservoir is possibly of greater importance to Pueblo West than all communities within this area that benefit from its existence. Pueblo West has no less concern for its quality or what happens to it and is more than happy to work with all of its community partners to maintain the highest quality standards that are possible because it is their primary drinking source as well.

Mr. Johnston stated the pumpback project, although still being referenced, Pueblo West has made significant efforts to try to remove that type of language from discussions because the pumpback is no longer relevant as a project or a concept. The fact that it is part of the WQMP somewhat convolutes the subject to make it seem like it's about wastewater discharges. He stated Mr. Petros mentioned it is about Pueblo West getting its return flow credits, so this is really a water conveyance project not a wastewater project. It happens to be associated, but the water coming out the effluent is about getting through Pueblo West's water court decree or water to the Arkansas River or the point closest to where their decree designates that, which is not actually at the banks of the Arkansas but closer to the Whitlock Treatment Facility. He stated about 70% of the water they discharge they don't get that point to get credit. This would allow them to get credit for their decree and expand their water portfolio they are entitled to, which is 500-700 acre feet of water, which could be 1,000 to 1,500 home equivalents, noting this is not an insignificant amount of water that Pueblo West discharges every day and does not get credit for. There has been reference to Pueblo West's Wildhorse Pipeline Project. Pueblo West has been pursuing this project for some time. They have spent a lot of money so far in design and engineering. They have gone through and identified all of the affected properties that would require both permanent and temporary easements over that pipeline. There are private, City, and County properties all along the pipeline. They are in the process of trying to acquire those easements. Their current barrier is in terms of coordination, noting about half of those easements are on City-owned land. They have been making all attempts to work with the City to progress that because that is Pueblo West's biggest barrier towards actually getting to the construction phase. Pueblo West is committed to the Wildhorse Project and it is their desire to start that construction. They are ready to start the construction based on their design. They have not acquired all the easements necessary to date, noting this is an unknown timeline when dealing with a large group or individual landowners. To further that concept is the pumpback. Pumpback refers to a simple pumping system of going up and over a hill and down. It is not in any of the strategic plans that currently exist with Pueblo West water utilities—both the water treatment and wastewater. They have just recently completed a 10-year strategic plan, which has over \$100 million of defined capital projects. None of those projects have any relation to any potential discharging into Pueblo Reservoir.

Mr. Johnston felt that the language satisfies both sides. He felt they both walked away as you do in a good compromise not fully content with the final product, but felt that it demonstrates the good faith compromises that have been made. Pueblo West is focused on Wildhorse and many other projects in its current strategy that have no impact at all on Pueblo Reservoir.

Ms. Daff questioned the language on the current resolution. The language states "...effluent should be avoided unless reasonably justifiable..." She stated she was concerned that the language is not as strong as PACOG would like it to be. Mr. Johnston replied that particular sentence is much more verbose than what we had proposed or otherwise, noting a lot of time was spent on that one sentence. The mediation process took 7½-8 hours and a lot of it focused on this. Pueblo West's stance is they wanted to not include "should be avoided" but appreciated that this was the instruction that was given to the mediator by PACOG and found a way to incorporate it where we both felt comfortable. The wording "should be avoided" prohibited a lot of synonyms and antonyms that you can try to put in there otherwise. That language still allows the ultimate decision maker, which is the Water Quality Control Division's recommendation to the WQCC, flexibility to take all potential elements or decision parameters into account before that, knowing that clearly the community through

PACOG has said we would like it to be avoided, but there are some hurdles and/or justifications necessary for the decision to be made.

Mr. Gradisar asked staff if PACOG adopts this resolution and the Plan if it ties their hands in the future if, for instance, this pumpback comes into play again for whatever reason. He questioned if PACOG could still oppose it even though we adopted this WQMP. Mr. Styduhar replied that is correct. This highlights the last statement from Mr. Johnston. This policy statement is a guidance tool for PACOG as well as the WQCD. Ultimately, the WQCD is empowered to make that decision, but what this policy statement does is it gives PACOG a voice. For instance, if there is a proposed site application and PACOG members see it as a contrary to this policy statement, they can file the objection. Of course, it will come down to an interpretation of what that language means. Staff feels that it does provide sufficient safeguards.

Mr. Chostner felt this is all a matter of trust. He stated PACOG has gone through the mediation process. We've talked about this time and time again and yet there are qualifications every time we get to this business. We get some assurances that there is no pumpback and yet we are asked not to make our resolution too public. If you look at the language that Ms. Daff pointed out, it still seems to provide for an exception for a pumpback if there are justifiable circumstances. He felt the perception is that there is some distrust as to what the ultimate motives of Pueblo West is and trying to preserve their options for a pumpback in the future. He felt a pumpback is antithetical to the best interests of Pueblo County and to even Pueblo West. He stated he wasn't sure where to go with this. He felt PACOG sent a pretty clear message as to what we wanted to have happen and "the Board" itself felt uncomfortable with it and sent us into mediation. Now we come out with this compromise language which still keeps alive the possibility of a pumpback system. The assurances from Mr. Johnston aside, he is still not convinced that that's not something that PACOG will have to confront some years down the road. He stated he would like Mr. Petros' comments as to whether he feels this is language that PACOG can live with. Mr. Petros responded he shared his strong worries about effluent pumpback into the Reservoir based on experiences we have had in other parts of the State where that was done. He stated Mr. Alan Hamel, the former Director of the Pueblo Board of Water Works, at the June 2012 PACOG meeting, clearly laid out the problem. Once a reservoir turns and is polluted by nitrates and phosphates or whatever, it almost can't be remedied. You need to be careful about introducing that form of pollution. This said, the policy statement does leave open the future possibility of either Pueblo West or some other entity of pumping their effluent return flows in. Staff had tried to originally to just have an absolute statement that said "no discharges". The WQCD said that usurps their authority. Staff was facing the probability that if this went up to the WQCD again, their staff would recommend against it and they would send it back again for us to work it out. Given that and given the sentiment expressed in here that it "should be avoided" is about the best we can do unless we are ready to confront the WQCC on this issue. The State statutes say when the WQCC is considering a discharge permit or a change in location of discharge, that it needs to consider the recommendation of the 208 Plan and whether it is consistent. The criteria have to be consistent with the 208 Plan. Given that, it seems odd that the WQCC would be so sensitive about a recommendation by the planning agency that was charged to give its recommendations. Mr. Chostner stated he is concerned that they were basically forced into this compromise language and then some years down the road when a pumpback system is proposed again, they come back again to the very language that they encouraged us to adopt, and say that we find reasonable exceptions or justification for this pumpback system. Mr. Petros answered he could not argue that. He stated there has to be some compelling

evidence that it is reasonably justified. PACOG still retains its planning agency role to comment and make a recommendation on the proposed project. Pueblo County, through its 1041 process, still has the ability to regulate and control either water projects or wastewater projects, however, that would be characterized in this instance. That would be an opportunity to consider the environmental impacts apart from the authority of the WQCC. In the water court, there is also a forum that in order to substitute water for other water or exchange it, you have to prove that the water is suitable for that purpose. There are other forums that would be available to members if this issue ever came up. It would be a very difficult task to do this given all those regulations. In 2009 and 2010, there were issues when everybody reached the settlement agreement to try to get the Wildhorse Pipeline Project in lieu of the proposed pumpback. He stated he couldn't guarantee that PACOG wouldn't be faced with a proposal in the future. At least, we have a statement now in an updated Plan that says it should be avoided unless there is justification.

Mr. Kaufman questioned the statement "...reaching the Pueblo Reservoir should be avoided unless reasonably justifiable based upon geographic, economic, environmental or other considerations..." He wondered who and how does this get policed. He asked if this is required after the fact or is permission needed prior to effluent potentially being pumped back into the Reservoir. He asked how it works. He stated it seems like it is a unilateral decision the way it is written, and Pueblo West could come up with an economic or environmental reason after the fact. Mr. Petros replied it isn't unilateral. If the pumpback proposal involved a different location of discharge and is changed from Wildhorse Creek over to a direct tributary of Pueblo Reservoir, Pueblo West still would need to get approval of the WQCC. The current application is still pending, but has been suspended pending the construction of the Wildhorse Pipeline. This type of site application would have to be applied for and approved by the WQCC, which in turn would require them to consider consistency with the 208 Plan and also the recommendations and objections of the 208 planning agency (PACOG). The public, Pueblo Board of Water Works, and others can participate in those hearings before the WQCC. Implicit in his mind is the term "to be avoided" was a possible exception, as opposed to an outright prohibition. Staff was instructed to go forward with a statement that said that the discharges would be avoided. He agreed that it would be a shame if something like that were proposed in the future. He stated hopefully this would guard against that type of proposal because it is a risk to the resource that just isn't worth taking.

Mr. Quigley stated he did not become a member of PACOG until May 2012. He stated trust is a two-way proposition. You have to trust Pueblo West and we have to trust you. He stated he is only one vote on PACOG. The process would solve the majority of problems that anyone has. Ultimately, what you are saying is that this is an issue, and the process itself would clarify or solve any disputes based on someone objecting. He stated we went through the mediation process and the process of hearing both sides and came back with a recommendation. Mr. Chostner stated the reason he brought the issue regarding trust was because he has heard Pueblo West say they are not going to do the pumpback system, but yet they don't want to have a resolution going forward that acknowledges that by an 11-1 vote that this panel was against the pumpback system and then we have language that would seem to preserve that option. PACOG knows there is still a suit that Pueblo West has against the County that would preserve that option for a pumpback system. So you have representatives from Pueblo West saying we don't want to do it and yet there are all these legal actions taking place that seems to preserve Pueblo West's right to do it. He stated this causes a trust problem with him. He stated the best thing would be to instruct Pueblo West's attorney to dismiss the case against Pueblo County to kill the pumpback system. He

stated then he would believe the assurances by Pueblo West's public officials. Mr. Quigley asked if this was public information. Mr. Chostner replied as far as he knows it is. Mr. Quigley stated from Mr. Chostner's perspective that is public information available to anybody that wants to see it. Mr. Chostner replied yes. Mr. Quigley stated so the conversation is null and void because you can't permit that anyway. Mr. Chostner asked why there is reluctance to attach it to the 208 Plan. Mr. Quigley replied because you are smart enough to understand what he is saying and your understanding was technically correct so why would you bring it up. Mr. Chostner replied because there is a suit going on out there that wants to preserve that right and he has a problem with that because of believing that there is no pumpback system. He stated the reason he is interested in this is because he thinks it is such an environmentally important thing to preserve the quality of drinking water throughout the Arkansas River Valley. Mr. Quigley stated you don't think we don't think that too. Mr. Chostner replied he thinks they think that but there are folks out there that weigh that against other interests as well. The political, the environmental, and the economic are just one of the considerations.

Mr. Lowe stated it seemed to him that to keep from usurping the power of the WQCC, we had to put the language "should be avoided". He stated when you put the words "should" and "avoided" in the same sentence, you more than likely have to put a "but". What they added to it addressed that "but". If we came out and said "will be prohibited" that would be great, but the WQCC wouldn't go for that because we would be usurping their powers. If something like the pumpback comes in and not just from Pueblo West but from anybody from anywhere in the State, they have it covered as well as they can for PACOG. Otherwise, PACOG would be going a little bit over and above its authority.

Mr. Colucci asked if the thinking on the part of the WQCC that if we put "prohibited" in that we are attempting to take their power, which they ultimately have. He stated even if we put the word "prohibited" in we in effect have no way of stopping anyone from applying for a permit because it is up to the WQCC not PACOG. Mr. Petros replied yes. Staff had trouble with why the language we had before that there "should be no discharges" would cause such concern. The feedback we got, primarily from their staff level, was that the WQCC sets standards for lakes, rivers, discharges. By having an absolute prohibition against the discharge is a statement that may be the WQCC can't do its job. It is kind of the same argument that is now going on with the Oil and Gas Commission as to how far their regulations preempt local municipalities from regulating fracking. It was very clear we would not get a WQCC staff recommendation if we had an absolute prohibition. Whether or not that was appropriate in a 208 Plan is highly debatable and could have been asserted if PACOG wanted to take that route. The difference between the oil and gas situation and this situation is that the County does have the 1041 powers. The statute itself says the WQCC has to give consideration as to consistency with the 208 Plan and the recommendations of the planning agency.

Ms. Daff questioned if the word "should" could be replaced with the word "will" be avoided. She understood staff went through a mediation process and this language was put in there, but she felt that the word "will" is a more proactive word full of more promise. Mr. Kaufman felt it shows more accountability. Mr. Johnston replied his understanding, as well as what was adopted here with instruction to the PACOG mediator, was specifically written "should be avoided". We made all attempts to insure that was preserved because Pueblo West has never had any issue or wanted to create any barrier for PACOG or any of its individual members in any way to be able to not oppose actions by itself or amongst its members for whatever those initiatives were that were under the purview of the WQCD or WQCC.

Pueblo West will not do anything and has taken no action to try to diminish that. We think the language as it stands is accountable on both sides. There is accountability through the planning agency status that PACOG has as well as any individual members' right to submit an application. Any of the interpretation of this will be at the sitting WQCD staff or the WQCC level. In terms of "will", Pueblo West is comfortable with the language as it is right now and felt it is strong enough. We would prefer to not have "should" but we have gone through a fair, good faith process to come up with something that we're probably both not completely content or comfortable with but are willing to go forward knowing that it is not on the horizon and it's not in our strategic plan to do that for at least a decade or more. Pueblo West has a focus right now on to achieve the same goal as the former pumpback, noting he stressed the word "former". He stated what was achieved with the former pumpback will be achieved with the Wildhorse Project. Ms. Daff stated that she was glad he was comfortable with the word "should", noting she is comfortable with "will".

Mr. Johnston stated in relation to the settlement agreement, with all due respect and credit to those who negotiated, it sounded good in principle when it was adopted, but in practice and reality since then it has not been the most useful for both sides. Based on that, he has pitched informally proposals to accelerate two major points: (1) to cancel the discharge permit as well as retract the lawsuit that currently exists, and (2) Pueblo West would like to not have is the Wildhorse associated with the SDS project because what you are seeing in practicality is when you have those projects going on simultaneously with different timelines that you have a project over here (Wildhorse) that is running into at least current delays, barriers, or snags on an individual entity that was not a party to the settlement, but yet you have another project over here that's held up by it unnecessarily for a water conveyance. That, in practicality, worked out to not be the way I think it was originally intended or theorized. Pueblo West is open to that discussion to achieve that sooner if trust or distrust is going to be based on the fact that you still have a suspended but not cancelled discharge application at the Division level and you still have a pending lawsuit. This discussion has already taken place amongst individual entities and we are willing to consider that.

Mr. Gradisar stated he is going to support the resolution and the Plan not because he thinks the language is terrific, but because we have spent a lot of time on this. He stated he is going to take Pueblo West at their word right now that they are not going to do that, but he didn't think anyone at the PACOG members' table would agree with them or would not spend all their resources to fight Pueblo West if they should decide to do that. He stated technology changes over the years. He stated one hundred years from now and things have changed and there is different technology and know more about the Reservoir and how things work in it, that is one thing. He wondered if it is worth fighting about now or should we wait until we have to fight about it.

Chairman Nawrocki closed the hearing.

It was moved by Roger Lowe and seconded by Michael Connolly to approve "A Resolution Approving the Pueblo Area Council of Governments' (PACOG) 2012 Water Quality Management Plan".

Discussion ensued. Chairman Nawrocki asked if Messrs. Styduhar and Petros if they would change their recommendations based upon PACOG's discussion. Mr. Styduhar replied no. He stated the recommendation has not changed. As Mr. Johnston highlighted, when you go through a mediation the ideal situation is both parties leave happy, but that never happens. It is a compromise. This is what mediation does. In 2009-2010, when the pumpback was

first proposed, the Plan didn't have this language in it. Nonetheless, PACOG objected to the permit. They did that based upon the language that wasn't there, but the fact that their existing permit did not indicate that they would be discharging into Pueblo Reservoir. PACOG used that as the basis for their argument. In some ways it was successful in front of the WQCC. PACOG had a voice at that time. Now the Plan includes language that discharges "should be avoided". This is a lot stronger and gives us a stronger basis to object if there is an application for a permit. He stated given all of the elements and variables—the WQCC wanting to get it passed and having a Plan in place—he felt this is the best route for PACOG. Mr. Petros stated he is satisfied with the language. He felt it gives PACOG a stronger position should it come up again in terms of saying it is inconsistent now with some specific language in the Plan. In his opinion, the Plan would also have to be amended to allow a different discharge location, so that gives PACOG the power that it had before. We shouldn't regard this as being a final word on it. There are ongoing hearings on Pueblo Reservoir and the State is trying to develop watershed standards, in particular, standards for direct drinking water reservoirs. PACOG and the other members need to be very active in that process to get the highest standards set for Pueblo Reservoir. He stated he is satisfied with the language and would recommend it.

Mr. Connolly asked if the current language in the Plan gives you more authority or credence into making an objection to discharge permit requests all up the Arkansas River towards Leadville. He stated you have a Plan specifically for our lake and you said discharge should not take place. He questioned if we would be in a better position to file a grievance or make a complaint for a discharge request. Mr. Petros responded may be. He stated it is more directed to immediate discharges into the Reservoir. He thought the higher water quality standards with Pueblo Reservoir (i.e., the direct drinking water standards) would give much clearer direction in that regard. He stated most of the discharges upstream are cold water discharges, which are higher and more stringent discharge standards than what the pumpback was proposing, which was to discharge into a warm water tributary and only meet warm water standards. He stated he did not think it gives PACOG much more, as it is, a stance against far upstream dischargers, but other work could do that.

After discussion, the motion was approved by a 9 to 1 vote, with Mr. Jeff Chostner opposing the motion.

MPO STAFF REPORT

Mr. Scott Hobson reported there is one administrative notification to the 2012-2017 Transportation Improvement Program (TIP). This is a \$1 million project for bridge repairs on U.S. 50 at the Chemical Depot access road as well as State Highway 231 (i.e., Baxter Road). This is to repair the girders on the Pueblo Chemical Depot Access Road and rehabilitate the deck on Structure K-19-A (State Highway 231 over the Arkansas River). This is only an administrative notification, which will be added to the TIP. All resolutions that are approved by PACOG for any TIP amendments or administrative notifications are included into the modified TIP which is placed on the PACOG website.

Mr. Chostner asked if this is all State money. Mr. Hobson replied it is \$800,000 of Federal bridge funds and \$200,000 of State bridge maintenance funds. Mr. Chostner stated the reason he asked was because the County put that collective group of impact fees together when approaching the Federal government and he didn't want this to be used as a deduction against what we can claim from the Federal government under either Homeland

Security or Department of Army. Mr. Hobson stated he understood, noting he didn't have an answer to it at the present time, but would check into it.

TRANSPORTATION COMMISSIONER'S REPORT

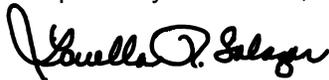
Mr. Tom Wrona, Colorado Department of Transportation (CDOT) Region 2 Director, reported the Transportation Commission and CDOT staff are developing a program referred to as Accelerated Program Delivery. They are looking at a way of improved cash management that, without any additional funding sources, would be able to provide additional construction projects over a five-year period on the order of about a 50% increase. They are going to expenditure-based type funds management rather than budget based. The way they currently do business is they fund a project in its entirety and then they pay out the monthly progress payments to their contractors. There is money sitting in an account. They are looking at improved ways to more real time spend those dollars and take advantage of projects that are in some outer years of their plans and moving some of the work forward. They have not yet developed the whole plan or program that spells out which projects will be advanced and what portions or areas of the State or what types of projects, but this is on the horizon.

Mr. Gilbert Ortiz, Sr., CDOT Transportation Commissioner, added they are trying to accelerate the construction jobs. The Commission is thinking that if they do the Accelerated Program Delivery they will put more construction jobs out there. This could at least be done for five years and then they will have to do something after that.

ADJOURNMENT

There being no further business before PACOG, the meeting was adjourned at 1:30 p.m.

Respectfully submitted,



Louella R. Salazar
PACOG Recording Secretary

LRS

JOINT CITY COUNCIL AND BOARD OF COUNTY COMMISSIONERS' MEETING

Following the regular PACOG meeting, there was a joint meeting held between the Pueblo City Council and Board of County Commissioners to appoint members to the Pueblo Regional Building Department Sign Board of Appeals. Messrs. Richard Bassi (General Knowledge) and Jeff Bailey (Engineer) were appointed. Both entities agreed to ratify the appointments at one of their future meetings.