

April 23, 2008 WORK SESSION MEETING MINUTES

A Work Session meeting of the Lower Arkansas Valley Water Conservancy District was held on Wednesday, April 23, 2008 at 8:33 AM., at the District office located at 801 Swink Avenue, Rocky Ford, Colorado 81067.

DIRECTORS PRESENT:

John Singletary-Chairman
Pete Moore-Vice Chairman
Melissa Esquibel-Secretary
Wayne Whittaker-Treasurer
Loretta Kennedy
Lynden Gill
Leroy Mauch

DISTRICT STAFF:

Jay Winner-Executive Director
Bart Mendenhall-Attorney
Peter Nichols-Attorney

Chairman Singletary called the meeting to order at 8:33 AM and announced a quorum was present with all Directors' present.

Executive Director Winner introduced Director Esquibel.

Director Esquibel stated, I had asked as the chairperson of the legal committee, for Peter Nichols, attorney and I to sit down. There has been recently some revision to the Statutory Conflict of Interest Policy and we need to make sure that we're up to date with them for our board that would essentially I joke in saying that my job is to keep us out of jail and I think something like this is very special. Possibly we all know depending the litigation that we have currently that it makes us a target for different entities, different individuals who maybe scrutinizing our activities. We need to make sure that we have policies in effect that protect us as board members. In general from any appearance improprieties and from any actions that might get us into any trouble down the road, so to that end Peter has sat down and incorporated into the policy all the changes to this statute regarding Conflict of Interest. I think everyone has a copy of it. Essentially, it's pretty straight forward that anytime there is a conflict or even an appearance of a potential conflict. That it is a duty of board members to disclose a conflict in an issue that we are voting on. It is essential that the conflicted board members refrain from the vote. So it's not to put us in a position that would be a potential scheme or a family member, friend, acquaintance, business partner who has the potential seeking from a decision that is to be made by the board. What I would anticipate and have the board consider that all board members would have an opportunity to review the policy. Essentially what we have done

is to incorporate the statute. What we will have made available is an acknowledgment to each board members that they have received a copy of the policy and that they acknowledge that part of the policy is indicating if there is some questions or a gray area to have the board members to contact other committee member or counsel to clarify where there is not any potential conflict or inpropriety. What we would do is have each board member sign a copy of the acknowledgment that would be attached to this and if there was any question. It does acknowledge that all board members have sign. What I'm asking each board member to adopt this interim policy, as of today's date. But we will have the opportunity to review it to see if there's any revision that needs to be made. We could review that at the next board meeting. At least it gives us a policy in effect. I think as our litigation progress, as the Super Ditch things of that nature progresses. We've known for along time our District has the target for the potential stuff we have wanted to do. That we need to use caution, that we're not doing anything that would give any individual or entity an opportunity to attack us for a legal dealings or behavior essentials. So prepare (3) three page document. It's very straight forward. It actually says again if there are any contracts, easements, any sort of contractually relationship that a director or member of family, friend, business partner, anything of that nature that you intend to benefit from it. You are to disclose or refrain. It's pretty straight forward and most people who have been involved in government or board work and it's pretty standard. I think we need to have a policy in place to protect ourselves.

Attorney Nichols stated most water districts have a Conflict of Interest Policy. Maybe it would be appropriate and have Bylaws consist with it.

Attorney Mendenhall stated, you've always had Colorado Statue required similar thing. This is an acknowledgement of that. I think what you're saying. You have a group with a target on their head. You don't want to give anyone an opening. Quite frankly there are people out there that will love to try to throw a shot at anyone of you and that wouldn't be a fun thing to have happen. I think what Jay pointed out about the news today, about Colorado Springs trips and dinners and I don't think anyone here would want to have those pictures or bills on TV.

Director Esquibel stated we're created by vote of the people. We could be destroy by the same. If somebody had a valid claim against us for violated a statute we could be subject to being dissolved and that is why I think as far as long as we gone through this process we have cleaned house a little bit and this is kind of house clean tools that we need to implement as far as we're making sure that we're in compliance with the statute that we have a policy indicating that we address this issue. It needs to be unofficially recognized policy.

Attorney Mendenhall, Yes, you don't only got the issues of dissolution of the District but there is statutory provision that if at anytime, Judge Dennis Maes either at anytime on its own motion or petition from anybody could remove or dismiss board member and I don't know if that would happen that would put Judge Maes in a awkward spot and that wouldn't be a good thing to happen.

Attorney Nichols stated I think Melissa had a good suggestion to adopt this as interim policy today and then have a chance to review it for next month and before you sign an acknowledgment. You'll have a final revision and if there are any changes and that could be done on the final meeting in May. We could make all the changes at that time in the work session.

Attorney Nichols, I think the same committee of the board might want to look at the bylaws. Because this is statutory base and the bylaws aren't. This probably has more legal precedence and sits above the bylaws. The bylaws would implement this kind of thing.

Director Esquibel stated I think it makes sense to get all these policies in one place. We started with one set of bylaws, revised bylaws. And who knows what others. So that it gives us a good sense. I think it's important as we could be audited or sued for anything by anybody. I think it's really important to appear like you said. We need to be above board on all levels and I think that's why all policy is important it doesn't just apply actual conflicts but the appearance of conflict propriety that's really important as well. Things like that are disclose things that are not voted on those issues that they might have some sort of potential to gain from the example I gave you. When the City Council person or when the City Council is trying to negotiate to buy some property or the Councilman's wife is listing the property and is going publicly but that is not a conflict. Because he doesn't stand to benefit from it. This is about the most ridiculous argument I've ever heard.

Director Kennedy thanked both Director Esquibel and Attorney Peter for their good work.

Director Esquibel stated so with that essentially my request of the board is to make a motion to adopt this as an interim policy. With our confirmation with the next board meeting and in the meantime this will produce with knowledge for all directors to sign for the next time we convene. Motion to accept adoption of the interim Policy of Conflict was made by Director Esquibel, seconded by Director Kennedy, motion unanimously carried.

General Manager Winner stated it's a big house cleaning, but this is going to take time to put together and I believe with this book that Peter is talking about, we kind of have to start with zero. Go over the bylaws, go over everything. As far as I can see we have no policies in place. This will be the first policy that we have in place. The bylaws that I have that appear to be the most recent, it looks like a boiler plate. It looks like a boiler plate that someone is suppose to go through and fine tune and it never happened.

Attorney Nichols stated I think it's a good idea. Upper Water District management is a client of mine that went through this a month ago. Everybody is looking through this

stuff and saying people are being a lot more sensitive to what we need to be more careful on. Melissa's right we're doing some things that are really shaking people up. We don't want to throw a piece of rotten meat out the window and let the vultures come in after us.

Director Moore stated are we pretty wrapped up here?

Director Esquibel stated does anybody have any questions or any concerns about regarding the Policy of Conflict. We will be doing an interim policy until next board meeting, until everybody has a chance to look over it, so that we could make final adoption to our board policy regarding the conflicts.

Director Moore stated I'm really surprise that we don't have a travel policy for as long as we've been in this District. We have a \$200.00 month wage and we get reimbursed for expenses and of course the District picks up airfares that are necessary. But I was thinking a couple of weeks ago, since we're publicly supported. The first paragraph of this draft travel policy it makes it very clear. It's not made to critic any activities, any travel for education purposes or what I would say not necessarily indirect support of our mission statement. But it does put up the side boards. So that everyone is aware and everybody that needs to be can be aware that these reimbursements are not without limits. Now we all know that they aren't without limits, but we don't have a policy that says that. So that's the purpose of this. I feel that it is very reasonable. I think it would be a good place to start is at the back of this with a table of IRS per diem.

Director Esquibel stated I think this is the same stuff as the conflict policy. By not having a policy it leaves us really subject to attack. What Jay has been talking about the story that's suppose to air tonight about the league of cities that Colorado Springs and Pueblo both had high bills in meal expenses. Without a policy in effect we are really opening ourselves up some serious liability.

Chairman Singletary stated just a couple of things and I totally agree with this by the way. I'm just saying have a board approval and that way it would be public.

Director Moore stated maybe what we should think about also, is no out of State travel unless it's approved by board first. You might be sitting at home and somebody calls and you might say hey we're having this meeting in Denver tomorrow and you need to be there. That's one thing. It's very seldom you're going to get a call that we're having this meeting in Reno, NV tomorrow and we need you there. That can happen, but it's rare and I think any out of state travel is anticipated well.

General Manager Winner stated when it gets to business travel; I think it's a whole different animal. Because with business travel you could get a phone call and I would like you back in Washington DC to testify in a congressional hearing Wednesday. At which point it could be very difficult to get hold of all the board members. I think there has to be more policies following what has to happen.

Director Esquibel stated on an educational opportunity it does make sense. Because it's not something you plan over night. Director Esquibel stated I think it just makes sense. My concern is just for number one, image, number two, proper, and number three, none of us end up getting sued over dissolving the District because of one person in Aurora who figures this is a great way to take us apart. I think it's really important to have these policies in effect. Like I said I think it is a learning experience. We had done and redone so many things in the District.

Because when we started we started with nothing. We did take everything we had from Southeast District or from this District or on-line. Whatever we could find and I think we're fine tuning. As the issues arise, there are issues that have to be addressed and I think this is the best way to do it. Like Peter had indicated maybe doing a manual, but include business travel, educational travel, and conflict of interest and personnel issues policies.

Director Whittaker asked can't you just have a travel policy which would include all the business and educational?

Director Esquibel replied sure we could have a policy that breaks down business travel, educational travel. We could get that entire fine tune to have it all included.

General Manager Winner stated, "I think you need different policy types for different type of travel is what you need.

Attorney Nichols stated I have a question about Jay mentioned staff enforcing this. I think it puts the staff in an awkward position in terms in trying to enforce against the board. It seems to me that the staff administer the policy in terms of you know writing the checks or not writing the checks or making the appropriate reservation for paying for the hotel in advance or registration in advance something like that. But it seems to me that enforcing that has to lay with the board or board committee and any questions probably would be referred to some particular board committee. I don't know if it would be by the legal committee or some other committee. But I think it would be very unfair what Jay and his staff in a position to tell Leroy, well you can't do this. It sets you in a direct conflict with the board member and I think you know you certainly could administer when you get Leroy's expense account back and right the appropriate check and pay the appropriate bills but have to be in a situation where you say you can't do that it's wrong. I think you would say I'm not sure about that. You probably need to talk to Director Esquibel in the legal committee or who the appropriate committee is. Maybe you want to create a new committee for this purpose. It's a concern I have as Counsel to the District that you have something that is workable and you don't put your staff in awkward position.

Director Whittaker suggested that maybe the finance committee could meet at 8:30 a.m. before board meetings and review the bills for consistency with the policy of the board.

Director Esquibel stated we need to finish with this. We need to finish before we go into executive session.

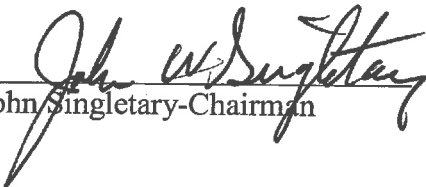
Director Moore stated I think our problem, we look at these policies and we kind of skim over them and say, oh this looks okay and then when we're in likes with this one and get ready to go on a trip and we start reading it carefully and all of a sudden we see something we don't like. I like to ask every member of the board to go through this line by line instead of just skimming it. I think about it a little bit and if you have any recommendation or suggestions to tweak, or change it, or question it some. We will do changes at the next meeting before we do a final approval.

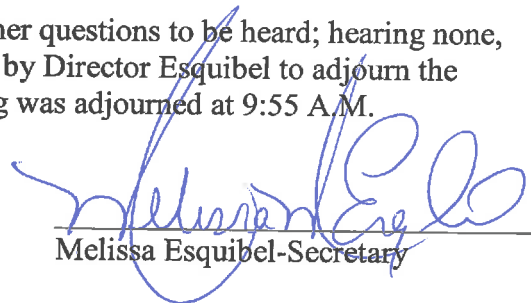
Director Moore stated I think we need to move on to Executive Session.

- Director Kennedy made the motion to enter into the Executive session for purpose of conference with an attorney for the purpose of receiving legal advice on specific legal questions §24-6-402 (4)(f)§. Determining positions relative to matters that may be subject to personnel matters. Director Moore seconded. Motion unanimously carried.

Director Esquibel made motion to convene out of executive session, seconded by Director Moore to adjourn into the work session. Motion unanimously carried.

Chairman Singletary asked if there were any other questions to be heard; hearing none, motion was made by Director Moore, seconded by Director Esquibel to adjourn the meeting. Motion unanimously carried. Meeting was adjourned at 9:55 A.M.


John Singletary-Chairman


Melissa Esquibel-Secretary