

August 20, 2008
Minutes-Board Meeting

The regular monthly meeting of the Lower Arkansas Valley Water Conservancy District Board of Directors was held on Wednesday, August 20, 2008 at 10:05 AM, at 801 Swink Avenue, Rocky Ford, CO 81067.

Chairman Singletary announced a quorum was present with all Directors' present.

DIRECTORS PRESENT:

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

DISTRICT STAFF PRESENT:

Jay Winner-Executive Director
Bill Hancock- Conservation Program Manager
Kim Chavez- Financial Officer
Carla Aragon-Quezada-Administrative Assistant
Bart Mendenhall-Attorney
Peter Nichols-Attorney

MOTION TO ENTER INTO WATER ACTIVITY ENTERPRISE:

Director Whittaker moved that the Board convene into the Water Activity Enterprise, seconded by Director Mauch. Motion unanimously carried.

At the conclusion of the Water Activity Enterprise meeting Director Mauch moved to reconvene the District Meeting at 10:07 A.M., seconded by Director Kennedy. Motion unanimously carried.

INTRODUCTION OF VISITORS:

Chairman Singletary welcomed each of the visitors to the meeting, asked them to introduce themselves and identify the organization which they represent.

VISITORS PRESENT:

Chris Woodka, Pueblo Chieftain; Lola Shrimpl, La Junta Tribune; Rick Kientz, Aurora Water; Alan Ward, Pueblo Board of Water Works; Ken Weber, CSU; Del Nimmo, CSU; Jim Valliant, CSU-CAES; Kelly Roesch, Pure Cycle; Tom Simpson, Aurora Water; Pat Edelmann, USGS; Roy Vaughan, USBR; Andy Moore, CWCB; John Schweizer, Jr., Farmer; Tim Gates, CSU.

APPROVAL OF MINUTES:

- ❖ *July 16, 2008 Monthly Board Meeting Minutes-* Chairman Singletary asked if the Board members had reviewed the minutes for the July 16, 2008 Board meeting and whether there were any corrections or additions. Director Esquibel moved to approve the minutes for July 16, 2008, seconded by Director Moore. Motion unanimously carried.
- ❖ *July 16, 2008 Work Session Meeting Minutes-* Chairman Singletary asked if the Board members had reviewed the minutes for the July 16, 2008 Work Session meeting and whether there were any corrections or additions. Director Esquibel moved to approve the minutes for July 16, 2008, seconded by Director Moore. Motion unanimously carried.
- ❖ *July 16, 2008 Acquisition Meeting Minutes-* Chairman Singletary asked if the Board members had reviewed the minutes for the July 16, 2008 Acquisition meeting and whether there were any corrections or additions. Director Esquibel moved to approve the minutes for July 16, 2008, seconded by Director Moore. Motion unanimously carried.

TREASURER'S REPORT:

Chairman Singletary reported that the financial report for the month of July was included in the Board's Monthly Meeting Packet. Director Whittaker reported July total revenues \$466,357.68 and total expenditures \$88,827.47 with total net \$377,530.21. Director Whittaker moved to accept the July Financial Statement, seconded by Director Mauch. Motion unanimously carried.

GM REPORT: General Manager introduced Andy Moore of CWCB.

PRESENTATIONS:

Presentation was given by Andy Moore of CWCB on Colorado's Decision Support Systems (CDSS) developed by CWCB and DWR.

Outline

- CDSS Goals
- CDSS Overview/History
- Data-Centered Approach
- CDSS Components
- Arkansas DSS

CDSS Goals:

Overall goal: Assist in making informed decisions regarding water resources planning.

- Provide comprehensive, accurate and accessible data
- Provide models to evaluate alternative water development and administration strategies
- Create functional, integrated system that can be maintained and upgraded by the State
- Promote information sharing among government agencies and water users

CDSS Overview/History

- 1992—Legislative authorization
- 1993-1998—CRDSS Development (Gunnison, Yampa, Colorado, San Juan, Dolores)
- 1998-2001—RGDSS Development (Rio Grande)
- 2001-Future—SPDSS Development (South Platte, North Platte)
- Future—Maintenance & Updates, Arkansas DSS

General Manager introduced Professor Tim Gates, CSU.

Presentation was given by Tim Gates on 2008-2009 Arkansas River Valley Studies to Support Improved Management.

Issues of Concern:

- How can salinity and waterlogging impacts on agriculture be reduced?
- How can salt, selenium, and pollutant concentrations in the river be lowered?
- Can significant water be salvaged from non-beneficial use by upflux from high ground water tables and tamarisk?
- Can reservoir releases be managed to facilitate the benefits of improved irrigation efficiency without violating the Compacts?
- What will be the impacts on river basin water availability, quality, rights, and Compact of proposed water leasing and exchange options?
- How might changes in Fountain Creek flow conditions propagate downstream?

Colorado State University Research in the Lower Arkansas River Valley

- Building a Database
- Developing Modeling Tools
- Evaluating Alternative Solutions

Data

- Groundwater Monitoring
- Surface Water Monitoring
- Soil Salinity and Soil Moisture Monitoring
- Analysis of River and Tributary Flows
- Analysis of Groundwater Return Flows
- Measurement of Precipitation
- Measurement of Canal Seepage Losses
- Measurement of Aquifer Properties
- Measurement of Land and Surface Water Levels
- Selenium, Iron, Uranium, Specific Ion Monitoring
- Measurement of Irrigation Efficiency
- Remote Sensing with Satellite Imagery

Models

- LAR GeoDSS Basin Scale Modeling
 - Can Satisfy Legal, Operational, and Environmental Constraints on the River
- GMS: Regional Scale Modeling
 - Unsteady flow and salt transport
 - Finite difference model with weekly time steps
 - Modified MODFLOW and MT3DMS
 - Upstream and Downstream Regions
- CSUID: Field-Scale Modeling
 - Can be implemented in the field

Pam/Other sealants to reduce canal seepage

Current irrigation practices and prospects for increased efficiency

Water conservations and improved quality by reduced non-beneficial consumptive use

Subsurface drainage to control waterlogging and salinity

Modeling best ways to manage river to reduce concentrations & comply with compact

Objectives 2008-2009:

Refine/Expand field studies

- Upflux to non-beneficial ET on uncultivated fields
- Canal sealing to control seepage losses
- Irrigation efficiencies and losses
- Stream and Groundwater quality (Salt, Selenium and Uranium)

Refine Expand and apply regional and basin-scale models

- Link refined regional scale flow models to salt and SE transport models
- Incorporate refined regional-scale models into basin-scale GeoDSS along with other enhancements
- Apply refine models to assess strategies to conserve water, increase productivity, improve water quality

Motion made by Director Gill to continue finance Tim Gates, CSU \$40,000.00, seconded by Director Kennedy. Motion unanimously carried.

Resolution 08-12

General Manager Winner directed Board Directors to tab (1), A letter to Senator Salazar addressing global warming to be top priority. Director Gill approved to support Resolution 08-12 the global warming, seconded by Director Moore. Motion unanimously carried.

PRESIDENT'S REPORT:

Singletary reported that the efficiently rules are a concern, but was impressed with the group they had chosen for this committee.

LEGAL REPORT:

Attorney Mendenhall reported on Monday August 11, 2008 attended a meeting of landowners at the Swink School who are concerned with conservation easements. About 50 people attended, the majority of whom seemed to be easement donors of one sort or another. They were either being audited, or who had been unable to sell their credit. J.D. Wright was the moderator, and introduced an attorney by the name of Don Ellsworth, who indicated that he was a tax attorney, and who discussed several courses of action for the attendees. The most favored of these seemed to be an action in U.S. District Court, with multiple plaintiffs.

We continue to work with various conservation easement applicants toward getting donations completed by the end of the year. There do not seem to be as many applications this year, probably as a result of all of the problems around the state.

Counsel has been preparing a draft letter to go to the Larkspur shareholders to gauge interest in the sale of their shares. The idea is to determine if there is enough interest to justify a more formal offer, which would be cumbersome and expensive.

Trout, Raley, Montano, Witwer & Freeman, PC

Water Leasing Program:

- The Board appointed Peter Nichols as General Counsel, and Tony van Westrum as Corporate Counsel. Counsel has developed a disclosure and waiver in conjunction with Bob Trout, Bart Mendenhall, Tony van Westrum, Cecil Morris, and Tom McMahon that addresses any potential conflicts of interest. Counsel, in cooperation with the above, have also drafted an Agreement, discussed immediately below, that sets out the relationship between the two organizations in a manner that should avoid any conflict of interest. Director Kennedy moved to approve the draft conflict of interest, seconded by Director Esquibel. Motion unanimously carried.
- Counsel worked with the General Counsel, Tony van Westrum and Tom McMahon to draft an Agreement which will set forth the District's and the Company's obligations and rights with regard to implementation of the water leasing program prior to the time the Company becomes self-sufficient. Tom McMahon is representing the Super Ditch Board for this purpose only, and has entered into an engagement letter with the Company and District for this purpose. The draft Agreement will be presented to both Boards for their review and comment at their next meetings. Director Mauch moved to approve the agreement, seconded by Director Moore. Motion unanimously carried.
- Counsel is setting up negotiating sessions between the Company negotiating team and potential lessees.
- Counsel retained anti-trust attorney Tom McMahon on behalf of the District to look at the anti-trust issues associated with the Super Ditch Company. This is an issue raised by a number of potential lessees and others, and on which the CWCB has required a legal opinion before they will finalize the \$320,000 grant for developing alternatives to agricultural transfers, as discussed below, and the Roundtable Grant for \$150,000,

previously approved. The opinion is complete, and concludes the Super Ditch would be a “new product” that would likely be found legal if challenged in the courts. The analysis has been provided to the CWCB in fulfillment of the grant condition. Peggy Montano presented the opinion to the CWCB Board at its July meeting, the CWCB was satisfied, and the two grants are moving forward.

- Counsel continue working with CWCB staff to finalize the grant now that the CWCB staff has released its hold on the money pending the outcome of the legal analysis of anti-trust issues discussed above.
- Counsel and staff worked with CWCB staff to revise the scope of work and meet the condition the CWCB set for Super Ditch grant. Peggy Montano made a presentation to the CWCB at its July Cortez meeting regarding anti-trust questions and revising the scope of work to bring the total cost within the amount funded by the CWCB, with the same level of matching funds. The CWCB approved the anti-trust analysis and the revised scope of work to bring the total cost within the amount funded by the CWCB, with the same level of matching funds. The CWCB approved the anti-trust analysis and the revised scope of work. Counsel is proceeding to contract with the CWCB for these funds.
- Inter-basin Compact Commission/Basin Roundtables. The Governor recently appointed Counsel to the Interbasin Compact Committee, and the Metro Denver Roundtable recently elected Counsel an at-large member. The purpose of participating in the IBCC and Roundtable is to promote the idea of agricultural water leasing in general, and the Super Ditch Company in particular, as a viable alternative to projected buy-and-dry of additional irrigated lands in the Arkansas Valley.

Regional Water IGA: The purpose of this action is to negotiate a comprehensive settlement of water-related issues that threaten the economic future of the Lower Arkansas Valley.

- Counsel and the General Manager continue to discuss outstanding issues with Aurora involving permanent water transfers and water leases and to exchange drafts of potential settlement language with Aurora. Settlement discussions are occurring in the context of the District’s lawsuit with the Bureau of Reclamation, discussed below. SECWCD has expressed an interest in resuming negotiations, to which Counsel responded positively. Counsel and staff are attempting to get Colorado Springs to finalize the draft IGA developed last year.

Conservation Easements: The purpose of this action is to support and foster the creation of conservation easements that protect water rights in the Lower Arkansas River basin in perpetuity.

- Counsel is working to update the Guide & Cookbook with changes adopted by Congress in the 2008 Farm Bill that extend certain benefits past December 31, 2007, and with changes adopted by the Colorado legislature that went into effect July 1, 2008

- Counsel is working to update the guide with changes adopted by Congress in the 2008 Farm Bill that extend certain benefits past December 31, 2007.

Water Court Litigation: The purpose of this action is to protect the water resources available to the Lower Arkansas Valley.

Counsel recommends filing a statement of opposition this month in the following case. Application of City of Fountain and Widefield Water & Sanitation District, Case No. 08CW47, for change of water rights involving the ranch they recently purchased in the wet mountain valley in Custer County. Director Mauch moved to file a statement of opposition Case No.08CW47, seconded by Director Esquibel. Motion unanimously carried.

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Bureau of Reclamation-Aurora Proposed Fry-Ark Excess Capacity Contract. The purpose of this action is to protect the water resources available to the Lower Arkansas Valley.

- The Court has scheduled a hearing for September 26, 2008 on pending motions to dismiss and intervene.

Other Matters:

Arkansas River Efficiency Rules. The purpose of this action is to support irrigators' actions and options to increase the efficient use of water without undue burden or a reduction in their water rights.

The latest draft rule incorporates virtually all of the recommendations made by the District Board, Counsel, and General Manager to the State Engineer and CWCB and is much less onerous.

COMMITTEE REPORTS:

Director Kennedy-Personnel: Jay and staff get things done in a timely manner, hard work for the love of the District.

Director Kennedy-Liaison: Nothing at this time.

Director Esquibel-Legal: Nothing at this time.

DIRECTOR'S COMMUNITY REPORT:

Director Whittaker reported rain is good. Produce coming off good.

Director Moore reported not much happening in Crowley County.

Director Esquibel reported State Fair starts this weekend.

Director Gill reported rain is good.

Director Mauch reported Prowers first time green with the rain. Ethanol Plant is on hold. Light plant almost up.

Director Kennedy reported traveling a lot, moving forward.

Chairman Singletary reported I got hit with hail, produce is good.

PUBLIC COMMENT:

Jim Valliant, CSU invited everyone to the Ark Valley Research field day Sept. 4, 2008.

Roy Vaughan, USBR gave update.

TO ENTER INTO EXECUTIVE SESSION:

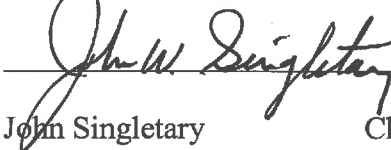
Director Esquibel moved that the Board convene into Executive Session, seconded by Director Moore. Motion unanimously carried. Chairman Singletary recessed the District meeting at 11:25 A.M. to convene into the Executive Session at 11:26 A.M.

Director Esquibel requested that the Board enter into Executive Session for the purpose of:
§24-6-402(4) (b) C.R.S., "Conferences with an attorney for the public entity for the purposes of receiving legal advice on specific legal issues."

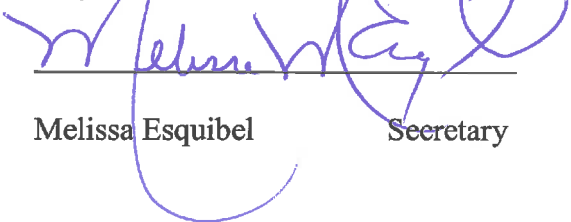
§24-6-402(4)(e) C.R.S., "Determining positions relative to matters that may be subject to negotiations; Developing strategy for negotiations; and instructing negotiators."

ADJOURNED:

Chairman Singletary asked if there were any other matters to come before the Board. Hearing none, motion was made by Director Esquibel, seconded by Director Moore to adjourn the meeting. Motion unanimously carried. Meeting was adjourned at 12:00 P.M.



John Singletary Chairman



Melissa Esquibel Secretary