

January 16, 2008
Minutes-Board Meeting

The regular monthly meeting of the Lower Arkansas Valley Water Conservancy District Board of Directors was held on Wednesday, January 16, 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
Lynden Gill
Leroy Mauch

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

At the conclusion of the Water Activity Enterprise meeting Director Gill moved to reconvene the District Meeting at 10:09 A.M., seconded by Director Esquibel. 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:

Bob Reed, Jr., Wiley farmer; Orville Tomky, Olney Springs farmer; Dean Reed, Lamar farmer; Bob Thelin, La Junta, retired; Nelda Thelin, La Junta, retired; Vin Mizer, Fowler farmer; Dwight Proctor, La Junta farmer; Kathleen Medina, Crowley County Commissioner; Jay Frost, Pueblo farmer; Kent Reyher, Las Animas farmer; Kelly Roesch, Pure Cycle; Ken Schweizer, Rocky Ford farmer; David Findly, Las Animas farmer; Sherry Allen, Cheraw farmer/journalist; Mitch Mauch, Lamar farmer; Ron Vernoeff, Holly farmer; Leon Golden, La Junta farmer; Dale Muth, La Junta farmer; Don Mameda, Rocky Ford farmer; Paul Casper, Rocky Ford farmer; Dan

Henrichs, Highline; Tom Simpson, Aurora Water; Rick Kienitz, Aurora Water; Glenn Hirakata, Rocky Ford farmer; Richard Reed, Lamar farmer; Wes Herman, Rocky Ford farmer; Gerald DeLong, Rocky Ford farmer; Wesley Eck, La Junta; Manning Torrez, Fort Lyon Canal; Brenda Fillmore, AGUA; Bob Barnhart, Holbrook Mutual; Tom Rusler, Avondale farmer; George Frantz, Rocky Ford farmer; Gail Zimmerman, Rocky Ford; Abdel Berrada, AVRC; Gary Caldwell, Rocky Ford farmer; Bud O'Hara, Pueblo farmer; Lyle Japhet, Pueblo West; Burt Heckman, McClave farmer; Alfred Muth, La Junta farmer; Dorothy Muth, La Junta farmer; Ruth Muth Grenard, La Junta farmer; Josh Weimer, Wiley farmer; Andy Flint, Lamar farmer; Clag Lubber, Lamar farmer; Lawrence Flint, Lamar farmer; Sammy Hull, Fowler farmer; Virgil Cochran, SE Land and Environment; Gene Millbrand, Lamar County Commissioner; Ryan Hemphill, Hasty farmer; Hans Hansen, Cheraw farmer; Donny Hansen, Cheraw farmer; Larry Hansen, Cheraw farmer; Joe Marble, Lamar; Doug Lubber, Lamar; Harry Gist, Lamar; Frank Milenski, Rocky Ford farmer; Bret Stowers, Manzanola farmer; Bob Wilger, Bristol; David Emick, Lamar farmer; Raymond Mauch, Lamar farmer; Leroy Brase, Lamar; Dwight Gardner, Senator Salazar; G Scranton, Scranton Farm, Lamar; Kathleen, Scranton Farms, Lamar; Matt Heimerich, Crowley County Commissioner; Monty Coen, Lamar farmer; Rob Reifschneider, Lamar farmer; Dale Mauch, Lamar farmer; Fred Heckman, McClave farmer; Tom Buxton, Lamar farmer; Charles Dunham, Lamar farmer; Curtis Tempel, Wiley farmer; Matthew Proctor, Rocky Ford farmer; Jim Villiant, CSU; Don McBee, Lamar farmer; Tabitha Fleming, La Junta Tribune Democrat; Chuck Hanagan, CSU; Joel Lundquist, Rocky Ford farmer; Chris Woodka, Pueblo Chieftain; Ken Weber, CSU.

OFFICIAL DISTRICT BUSINESS:

Oath of Office:

Notary Kim Chavez swore in the re-elected Director Esquibel and notarized the Oath of Office Statement.

Legal Postings:

Pursuant to C.R.S. 32-1-903(1), the Board must designate and post the time and place for all Board meetings for 2008. Executive Director Winner suggested that the Regular Board meeting dates stay the same third Wednesday of the month except on April Board meeting change to the fourth Wednesday and December Board meeting change to the second Wednesday. Chairman Singletary asked if that is acceptable. Director Moore made a motion to except the changes, seconded by Director Mauch. Motion unanimously carried. Posting of the Board meetings will be in three different areas, Otero County Courthouse, Rocky Ford City Hall and 801 Swink Avenue. Director Whittaker made a motion to post the meetings at the Otero County Courthouse, Rocky City Hall, and 801 Swink Avenue, seconded by Director Gill. Motion unanimously carried.

Elections:

Executive Director Winner announced a re-organization meeting of the Board is needed to elect Board Officers. Executive Director Winner heard nominations for Chairman of the Board. Director Kennedy stated, Mr. Chairman I would like to nominate all of the present Executive Board members; John Singletary, Chairman, Pete Moore, Vice-Chairman, Melissa Esquibel,

Secretary, and Wayne Whittaker, Treasurer, seconded by Director Esquibel. Motion unanimously carried.

APPROVAL OF MINUTES:

- ❖ *December 12, 2007 Monthly Board Meeting Minutes*- Chairman Singletary asked if the Board members had reviewed the minutes for the December 12, 2007 Board meeting and whether there were any corrections or additions. Director Esquibel moved to approve the minutes for December 12, 2007, seconded by Director Gill. Motion unanimously carried.

TREASURER'S REPORT:

Chairman Singletary reported that the financial report for the month of December was included in the Board's Monthly Meeting Packet. Director Whittaker reported December total revenues \$54,099.68 and total expenditures \$43,569.19 with total net \$10,530.49. Director Whittaker moved to accept the December Financial Statement, seconded by Director Esquibel. Motion unanimously carried.

Chairman Singletary stated, "We are going out of order. We will turn it over to Mr. McBee a farmer from Lamar.

Mr. McBee stated, "We come here to see exactly what you can do for us." "What kind of Engineer study does it take?" "What we are coming to you for is how can you help us?"

Chairman Singletary stated, "I will be meeting with the State Engineer tomorrow. What we need to ascertain now is, what is a fair direction? We have to make sure our neighbors aren't hurt and we could easily do that."

The efficiency rules are being proposed by Water Division 2 Engineer Steve Witte as a way to head off future complaints from Kansas about increased use of water by farmers through physical improvements, which is prohibited under the Arkansas River Compact. The rules would apply to sprinkler systems, drip irrigation, concrete ditch lining and other improvements made since 1999, when Kansas and Colorado last agreed on the amount of water used for crop irrigation.

Our Board is very committed in making sure the farmers in the Lower Valley aren't abused on this change.

The Lower Arkansas Valley Water Conservancy District has sponsored several irrigation workshops throughout the year.

Director Mauch, asked if anyone has seen the rules?

Chairman Singletary stated, I've seen some rules and they have draft on it.

Director Whittaker stated, "We should fight the rules all the way through." Not come up with any portion of that rule effect on the farm in the Arkansas Valley. In fact a number of years ago the State Engineer stopped all the drilling of wells above John Martin, but you could have as many wells below John Martin as you wanted. They came up with an account system but they didn't take into account that Colorado would have to make up for the evaporation in the off-set account and they didn't take in any consideration when Kansas might order water to be deliver to the State Line. So you have wells along the river that if you have a reasonable flow down the river they take a very small percentage of the river. But if you have dry condition they take a payer percentage.

Farmer from the audience asked if there is going to be some kind of dialogue at the Farm/Ranch Symposium on February 7, 2008 and if so would you suggest that we attend.

Chuck Hanagan, CSU, Steve Witte will be speaking after lunch. The speakers will be Steve Witte, Tim Gates, NCRS and Mike Bartolo of CSU Research Center they have a time set aside for questions and answers.

Chairman Singletary stated, What I was told was that the State Engineer and Division Engineer offices are going to travel up and down the valley to expose what's happening along the way. They're going to start in January if they can, if not certainly in February. We need to get all the information before irrigation season. I don't know what the Farm/Ranch Symposium workshop is going to bring other than it wouldn't hurt to be there. In the mean time we are going to try to do what we can, and get back to you.

Executive Director Winner stated, "I think we have an opportunity here, because one of Colorado-Kansas negotiators is in the room with us. So, Mr. Heimerich can you explain to us. You sit right there with Kansas.

Commissioner Matt Heimerich stated, Kansas has informally mentioned these sprinklers irrigation on the lower valley as a sufficient concern. Now we haven't received a formal letter like they sent Nebraska. Kansas is concerned about the sprinkler system that is taking place in the lower valley. It's been mentioned. Obviously the compact, whether we like it or not the document we signed in 1948 and it was ratified in United State Congress. I don't think Steve is doing this as in a vicious way. I've been at negotiation with Steve for the last 3 years. He doesn't let Kansas or the State push him around.

Director Moore stated, "If Kansas is going to casually mention this it would seem to me that the first thing would be to let Kansas particulate its concerns with some specify. What is your concern? That gives Colorado absolutely no direction! So naturally our State Engineer is concerned. Generally we're going to respond to that general statement. We are going to respond in a way that we think would be appropriate. I think first thing we got to get Kansas concerns more concretely stated. So our state officials have a direction to go. I would say that no matter what happens here or what the outcomes. I would be in saying there is no one on this board that would not agree. This board would certainly take this position going to oppose any economical burden on the farm community. Farm community is a big contributor to the state's economy and that much I feel confident saying right now."

Commissioner Matt Heimerich said whether we like it or not, as water right holders we have to realize that Compact is here. I appreciate the board's willingness and what you talked about trying to get to some kind of place with the Engineer. I think we could easily do some model engineer for each ditch. All of our ditches, we got to know where some consumptive uses are. We have the models. I believe their could be templates develop with the help of outside consultant or the State of Colorado so that when we're approached by other water right users that we have proof that we aren't causing any injury. I think we can get there. I think we all want to be more effective. Some of us will be able to put in drip, some in sprinklers; others will have to continue irrigating. I'm not going to put in sprinkler's it's not going to work for me.

Jim Villiant, CSU asked Commissioner Heimerich in the compact, can we revisit and change what was 60 years ago. We didn't know that we would have a population explosion. Can it be revisited Matt?

Commissioner Heimerich replied, "It's never come up on any discussion that we've had."

Chairman Singletary stated, "We're all in this together. This is not the Fort Lyon Canal or Bessemer Ditch vs Kansas. If we can get to the moon, we can certainly come up with an engineering process that satisfies Kansas."

Dale Mauch, farmer stated "How is the burden of proof on us? I don't think Steve Witte can prove there's been a reduction of return flows." There have been no added acres. If anything, there's been a reduction of acres.

Mauch said the proposed irrigation rules run counter to state law and ditch company by-laws that require farmers to put water to beneficial use, and they ignore the fact that sprinklers cannot be used during the colder months of the irrigation season.

Fred Heckman, farmer stated yields have improved two and threefold already through genetic engineering and questioned whether any correlation between efficiency and water use could be drawn. He said Steve Witte is not standing on any scientific platform of consumptive use. Engineering is a financial burden that as farmers we should not have to stand.

Alan Frantz, farmer asked the Lower Ark board. Who is looking out for the interests of farmers in the valley? "Do we as farmers need to unite to protect ourselves? "I don't think the state is looking out for us. We need to unite as one."

Director Mauch replied "That's why we're here!"

Director Kennedy stated, "What you're paying your taxes for is what you're asking for and that's the work this board is obligated to do and that's why we need to hear from you." We definitely go toe to toe with every other entity that wants to shut down production, take water or has alterative motive. So that's what you have and what you're paying taxes for. You're already paying for a water lawyer and you're paying for the best engineer we could hire.

Director Esquibel, stated In the last meeting I thought we should send a letter to the Sate Engineer and we had some discussion on whether or not we should wait to see how this was going to frame. But my concern is we have to be proactive rather than reactive. What happens is that they gave us a time frame to react and to have public comment and things of that nature. I think what we should send a letter to the State Engineer and document what kind of turn out we had today. What the concerns are and have Peter Nichols, attorney frame some of our legal and practical questions about the rules, including finding out why the state is initiating them. "We have to be proactive rather than reactive." I know it's a big step that you are speaking with him tomorrow but in the same time we need to document in a form and give a copy to everybody. Once an agency takes action you have to erase it and decisions are being made and conclusions probably have been reached without the ability to truly have comment and input that's meaningful.

Dwight Proctor, farmer stated, "What about doing a petition on people against it. There are a lot of people who will sign it."

Executive Director Winner stated, "On the sign in sheet there is a place where you could put your E-mail address, so that we could get back to you. We will be writing a summary letter. Right here is good beginning; we are glad that all you showed up. What I heard out of this is that you feel confident that the Lower Arkansas Valley Water Conservancy District is behind you 100 % and we will do everything within our power to make sure everything is done to the best of our knowledge to help the Lower Valley."

Board unanimously decides to authorize attorney Nichols and Executive Director Winner to compile a petition letter regarding efficiency rules.

GM REPORT:

Executive Director Winner presented to the Board Directors an invitation to the Governor's Forum on February 28, 2008. Board members you can pre-register with Carla before you leave today.

Executive Director Winner brought to the Board's attention that one appraisal had been suspended. He would let attorney Nichols discuss this matter.

On Conservation Easement, it hasn't hit rock bottom. We did go over some of the changes this year that we wanted to give to Legislation.

Executive Director Winner directed Board members to Tab one (1), Colorado Coalition of Land Trusts; the proposal's three elements are as follows: (1) increased training and accountability for conservation easement appraisers; (2) enhanced accountability of conservation easement holders; and (3) strengthen the oversight and enforcement of the state tax credit program.

Executive Director Winner directed Board members to Tab five (5), Arkansas, Metro, and South Platte Joint Roundtable Meeting November 13, 2007.

PRESENTATIONS: None

PRESIDENT'S REPORT:

Chairman Singletary stated we received an invitation to (CWPDA) Colorado Water Protective Development Association to give an update on the District's accomplishments and current projects.

Attorney Peter Nichols will be doing an update on the law suit. In the Pueblo Chieftain today I saw where Bureau asked the judge to dismiss our suit.

Attorney Peter Nichols stated that Ark Native, LLC had petitioned to intervene in the law suit last Thursday and the judge ruled yesterday denying their motion in failure to comply in a local rule of the court. I would imagine they will refile that correctly.

Director Mauch asked if it was a deadline.

Director Esquibel stated probably a procedural rule.

Attorney Peter Nichols stated that's right a procedural rule. It had to do with consultation with counsel.

Attorney Peter Nichols stated they contacted me before Christmas saying they were interested in intervening and then they made a formal request around the first of the year. I told them we don't have a board meeting until January 16, 2008. There is no way I could consent to you intervening

LEGAL REPORT:

Attorney Mendenhall stated that much of the last month had been taken up with closing Conservation Easements. We closed at least seven. We were unable to close one because of the inability of the Farm Service Agency to provide a subordination agreement in a timely manner. That donor is still trying to get his subordination, but will be forced to close in 2008.

On January, Jay, Bill, Peter and Bart, together with Tony Van Westrum and MaryLou Smith, met at Peter's office to go over the corporate documents for the Super Ditch and plan for tomorrow's meeting with the Steering Committee. At that meeting, we will go over the documents, and ask the members to review the documents with their respective boards and ask for permission to act as the incorporators for the Company.

Peter Nichols, attorney, stated on the Land Fallowing-Water Leasing Program a meeting is scheduled for January 17, 2008 to begin this process, which will involve Steering Committee members consulting with their ditch companies and seeking approval to be the incorporators of the company. Tony van Westrum, Esq., the corporate attorney retained to help develop the Super Ditch Company, has finished drafting with the assistance of Counsel suggested articles of incorporation and bylaws for a Colorado for-profit corporation (which could be transformed into

a co-op later). Following review by District staff, consultants, and counsel, the drafts were sent to the farmers of review in advance of the meeting. Denis Clanahan, Esq., the tax attorney retained to help form the Super Ditch Company, has quickly reviewed the drafts and opined that they avoid double taxation of lease revenues; a more in depth report is expected soon. Counsel recommends that the District have an experienced anti-trust attorney review the documents prior to incorporation, as well. Director Esquibel moved that the board authorize Attorney Nichols find an Anti-trust attorney for the Super Ditch, seconded by Director Moore. Motion unanimously carried.

Peter Nichols, attorney stated, that Arkansas Native, LLC moved to intervene in the case January 10, 2008, without the consent of the parties and despite a request by Counsel to defer their motion until after Lower Ark's January 16 Board meeting. Counsel recommends that the Board not object to their motion to intervene. Director Whittaker moved to give authority to Peter Nichols, attorney to authorize their motion, seconded by Director Moore. Motion unanimously carried.

Peter Nichols, attorney presented a Conservation Easements Policy and Procedures booklet to board members. There were some corrections that were suggested to be made.

Conservation Easement- the staff involved with the conservation easement program of the District is recommending the Board consider increasing the stewardship and application fees charged by the District for easements donated by landowners outside the boundaries of the Lower Arkansas Valley Water Conservancy District. The staff recommends the following fee schedule: Application fee: In District \$350.00 Outside of District \$ 1,250.00. Stewardship fee: In District with water \$5,000.00 and in District without water \$5,000.00. Outside District with water \$7,500.00 and Outside District without water \$10,000.00. The staff also recommends the Board consider fees for donors who donate a contiguous parcel of land in subsequent years. That fee is recommended to be \$500.00 Stewardship fee and \$350.00 application fee, for in District donations and one half of the initial fees for out of District donations. Director Whittaker moved to have increase of conservation easements fees, seconded by Director Moore. Motion unanimously carried.

Executive Director Winner received a letter from Bratton Hill, LLC and shared with board members. Refund Purchase of Larkspur Ditch Water by Mr. Tom Smith.

COMMITTEE REPORTS:

Personnel: Nothing at this time.

Liaison: Nothing at this time.

Legal: Nothing at this time.

DIRECTOR'S COMMUNITY REPORT:

Director Esquibel stated, "Not much snow, windy and PBR is in town.

Director Whittaker stated, "Farmers felt they sold their crops too early. Some got caught on conservation easements; they received a letter to say it was worthless. Rules are a big concern.

Director Moore reported it was quiet in Crowley County. We hired a new Administrator for the town.

Director Gill reported in Bent County, "Las Animas got approved for two grants one for \$300,000.00 and other one for \$200,000.00 next step are to the Colorado Water Conservancy Board."

Director Mauch reported not much snow in the county. Ethanol Plant is a go.

Director Kennedy stated, "Awfully cold and windy. We continue to work on the Fountain project, with Executive Director Winner's help we will get that straighten out."

Chairman Singletary reported at the State Ag meeting there are problems. River is running strong.

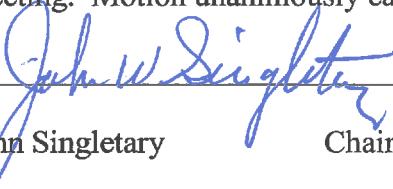
PUBLIC COMMENT:

Chairman Singletary asked if there were any comments.

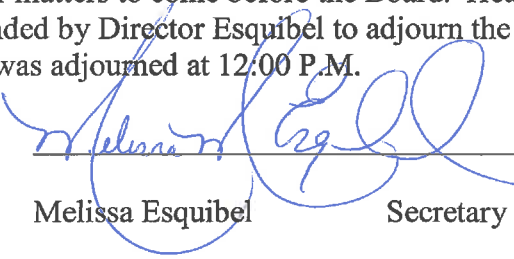
Jim Valliant CSU, stated, "I just want to thank Jay Winner and Board Directors on getting funding for the Lysimeter. It looks good, we appreciate it.

ADJOURNED:

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



John Singletary Chairman



Melissa Esquibel Secretary