

**July 16, 2008**  
**Minutes-Board Meeting**

The regular monthly meeting of the Lower Arkansas Valley Water Conservancy District Board of Directors was held on Wednesday, July 16, 2008 at 10:02 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  
Carla Aragon-Quezada-Administrative Assistant  
Bart Mendenhall-Attorney  
Peter Nichols-Attorney

**DISTRICT STAFF EXCUSED:**

Kim Chavez – Financial Officer

**MOTION TO ENTER INTO WATER ACTIVITY ENTERPRISE:**

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

At the conclusion of the Water Activity Enterprise meeting Director Mauch moved to reconvene the District Meeting at 10:05 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; Karen Dietrich, Ordway; Lola Shrimpl, La Junta Tribune; Rick Kientz, Aurora Water; Alan Ward, Pueblo Board of Water Works; Fred Heckman, Lamar Farmer; Ken Weber, CSU; Del Nimmo, CSU; Jim Valliant, CSU-CAES; Brenda Fillmore, AGUA; Dan Henrichs, Highline Canal; Kelly Roesch, Pure Cycle; Bob Sakaguchi, Stantec Consulting; Doris Morgan, Senator Allard's Office; Scott Hobson, City of Pueblo.

**APPROVAL OF MINUTES:**

- ❖ *June 18, 2008 Monthly Board Meeting Minutes-* Chairman Singletary asked if the Board members had reviewed the minutes for the June 18, 2008 Board meeting and whether there were any corrections or additions. Director Whittaker moved to approve the minutes for July 18, 2008, seconded by Director Esquibel. Motion unanimously carried.
  
- ❖ *June 18, 2008 Work Session Meeting Minutes-* Chairman Singletary asked if the Board members had reviewed the minutes for the June 18, 2008 Work Session meeting and whether there were any corrections or additions. Director Mauch moved to approve the minutes for June 18, 2008, seconded by Director Whittaker. Motion unanimously carried.
  
- ❖ *June 18, 2008 Acquisition Meeting Minutes-* Chairman Singletary asked if the Board members had reviewed the minutes for the June 18, 2008 Acquisition meeting and whether there were any corrections or additions. Director Kennedy moved to approve the minutes for June 18, 2008, seconded by Director Moore. Motion unanimously carried.

**TREASURER'S REPORT:**

Chairman Singletary reported that the financial report for the month of June was included in the Board's Monthly Meeting Packet. Director Whittaker reported June total revenues \$125,632.85 and total expenditures \$266,843.39 with total net <\$141,210.54>. Director Whittaker moved to accept the June Financial Statement, seconded by Director Moore. Motion unanimously carried.

**GM REPORT:**

General Manager Winner directed the board members to an executive summary of an Army Engineer Corp overview. He stated that on page seven (7), which addressed a dam on Fountain Creek a recommendation: a dam or series of dams is not expected to meet Corps flood control benefit cost ratio criteria.

General Manager Winner stated that he had been nominated to be on the Conservation Easement Oversight Commission. We are going to be looking at increase oversight enforcement on tax credit program by real estate, part of insurance and other state agencies. Also the Department of Revenue will be involved. Increase in accountability in conservation easements. Conservation easement holders will need to have certain certification and create one (1) year holding period. It will be kind of mirroring with the IRS on conservation easements. We will be looking at PUD's (Planning Unit Development); how long should a PUD be in place before they are put into a conservation easement. We are very happy to have a regulatory agency on conservation easements in the State of Colorado

**PRESENTATIONS:**

General Manager introduced Scott Hobson with City of Pueblo (Update on Minnequa).

Hobson stated that the City of Pueblo signed the purchase on June 27, 2008. This is a big step for the City. The City purchased 243 acres around the Lake to make a future development as a park and storm water retention area.

Hobson stated it's been a long process and if we didn't have the commitment from the LAVWCD we couldn't have gotten to where we are now.

Pueblo will pay \$1.5 million for the land under two purchase agreements. One will be for the land around the lake and the other for the feeder ditch from the steel mill's other reservoirs south of Pueblo.

The city will spend another \$3.5 million to develop the park itself. Contributions to the portion include \$725,000 from city storm water funds, \$526,000 from other city funds and \$600,000 from the Lower Arkansas Valley Water Conservancy District, as well as GOCO. Also involved are a \$650,000 State Energy Impact Grant, \$118,600 in Federal Housing and Urban Development funds, \$100,000 from Fishing is Fun and in-kind contributions from the Division of Wildlife and Audubon Society.

The first phase of the project, expected to take about three years, which will include fishing areas, wetlands, settling ponds, park areas, trails, a basketball court and access from Lake Avenue and Pueblo Boulevard by an extension of Lakeshore Drive. More will be added in the long term like more trails, expanded park areas, ball fields, and skating areas. Hobson stated the final master plan would be a 50 year building plan.

Hobson stated if everything goes like it should the Lower Arkansas Valley Conservancy District should end up with a conservation easement on the land, which would protect it from being sold or developed other than a park.

Hobson stated by next spring he will come back to LAVWCD and give an update on Minnequa Lake.

**PRESIDENT'S REPORT:**

Singletary stated, "I had an opportunity to talk to the Chairman of the Southeast Colorado Water Conservancy District (SECWCD) about the Conduit. We appreciate what a good job SECWCD has done."

On the Efficiency Ag Rules there are thirty-two (32) members on board and I feel on this committee they have selected people that have a good head on their shoulder. Our next meeting will be on July 30<sup>th</sup>, 2008 in La Junta. Hopefully by having more meetings the farmer's will get what they need.

General Manager Winner stated one of my goals for the farmers is to sit back and listen. I feel the next couple of meetings we'll have a lot more information and we'll have to see what the State Engineer wants to rule out.

**LEGAL REPORT:**

Attorney Mendenhall stated that counsel participated in the conservation easement workshop sponsored by the District on June 26, 2008. Turnout was great. This seems to show continued interest in conservation easements in spite of the problems the concept has been having recently.

Bill and I continue to work with several possible donors to obtain the documentation necessary to complete their easements.

Counsel has been involved in working on the Super Ditch documents, also the District Bylaws and related documents.

Counsel has been reviewing and revising the First Right of Refusal with Colorado State University.

Attorney Mendenhall stated that each director received the final By-laws. Motion was made by Director Esquibel, seconded by Director Moore, to adopt By-laws for Lower Arkansas Valley Water Conservancy District. Motion unanimously carried.

**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 continues working with Bob Trout, Bart Mendenhall, Tony van Westrum, and Cecil Morris about how best to avoid potential conflicts of interest. However, once the two organizations enter into a Memorandum of Understanding, as discussed immediately below, that potential largely disappears.
- Counsel is working with the General Counsel 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 will represent 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.
- 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. 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.

- Counsel will continue to work with CWCB staff to finalize the grant.
- Counsel and staff are working with CWCB staff to revise the scope of work and meet the condition the CWCB set for grant. Counsel anticipates making 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.
- Inter-basin Compact Commission/Basin Roundtables. Counsel was recently elected as an at-large member of the Metro Denver Roundtable. The purpose of participating in the 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.

**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 arrange a meeting with 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 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 is working with other opposers and Gregg Ten Eyck of Leonard Rice to understand issues, and develop a common position for negotiating a settlement with Tri-

State. Counsel is working to settle as soon as possible to limit legal expenses and minimize the cost of preparing for the trial, scheduled for January 2009.

**Other Matters:**

**Lake County Inclusion:** The purpose of this action is to assist Lake County in an election for inclusion into the LAVWCD.

- Counsel has been working with the General Manager and the Lake County Commissioners on an election for the inclusion of Lake County into the LAVWCD. The Commissioners proposed an additional term and condition for inclusion that relates to supporting the customer base of the Parkview Water District. Counsel researched the Parkview Ditch in order to understand the obligation that such a term would impose on the LAVWCD, and to possibly propose alternate language that would be protective of the LAVWCD. Lake County has, however, again postponed the election a year, apparently due to conflicting time demands.

**Drought Grant:** The purpose of this action is to prevent the curtailment of pumping to meet Colorado's water delivery obligations to Kansas under the Arkansas River Compact.

- Counsel is drafting a Drought Grant to obtain reimbursement for the LAVWCD's lease of water for delivery to Kansas to meet Compact obligations, as requested by the Division Engineer.

**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.

- Counsel is working informally with the State Engineer, Division Engineer, CWCB, and their inside and outside counsel on workable rules to address issues concerning irrigation efficiency, cropping, and the related return flows upon which the state depends to meet its delivery obligations to Kansas under the Arkansas River Compact. Counsel is also advising the General Manager who is on the State Engineer's formal task force working on this issue.

**COMMITTEE REPORTS:**

Director Kennedy-Personnel: Nothing at this time.

Director Kennedy-Liaison: Nothing at this time.

Director Esquibel-Legal: Nothing at this time.

**DIRECTOR'S COMMUNITY REPORT:**

Director Whittaker reported Wheat harvest is complete.

Director Moore reported it's hot and quiet in Crowley County. July 23-27<sup>th</sup> is Crowley County days.

Director Esquibel reported Pueblo's new judge is on board. Also the State fair is around the corner.

Director Gill reported that Bent County is hot and dry. It looks like the efficiency rule advisory committee is starting off on the right foot.

Director Mauch reported Prowers is hot and dry. We received a little bit of rain. Also, Lamar unofficially opened a new bank.

Chairman Singletary reported like to see more irrigation water. The produce is starting to ripen up.

**PUBLIC COMMENT:**

Doris Morgan with Senator Allard's office gave board update on activities happening in the Senate Legislation.

**MOTION TO ENTER INTO EXECUTIVE SESSION:**

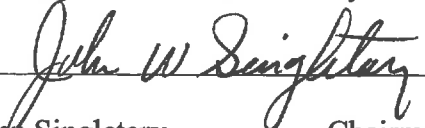
Director Esquibel moved that the Board convene into Executive Session, seconded by Director Moore. Motion unanimously carried. Chairman Singletary recessed the District meeting at 10:50 A.M. to convene the Executive Session at 10:51 A.M.

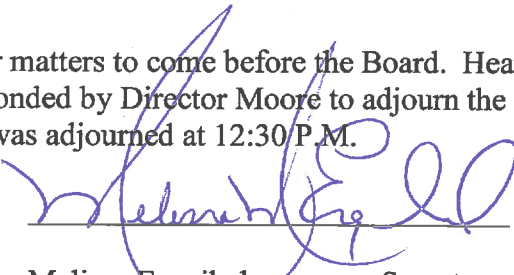
Director Esquibel requested that the Board enter into Executive Session for the purpose of:  
§24-6-402(4) (b) C.R.S., "Conferences with an attorney for the public entity for the purposes of receiving legal advice on specific legal issues."

§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 12:30 P.M.

  
\_\_\_\_\_  
John Singletary Chairman

  
\_\_\_\_\_  
Melissa Esquibel Secretary