

June 20, 2012
Minutes-Board Meeting

The regular monthly meeting of the Lower Arkansas Valley Water Conservancy District Board of Directors was held on Wednesday, June 20, 2012 commencing at 10:42 A.M, at 801 Swink Avenue, Rocky Ford, CO 81067.

Vice-Chairman Gill announced that a quorum could not take place due to not enough Directors present. No actions can be taken.

DIRECTORS PRESENT:

Lynden Gill-Vice Chairman
Leroy Mauch
Reeves Brown

DISTRICT STAFF PRESENT:

Jay Winner-General Manager
Bill Hancock-Conservation Program Manager
Carla Aragon-Quezada-Office Manager
Brenda Fillmore-Finance/Water
Bart Mendenhall-Attorney
Peter Nichols-Attorney

DIRECTORS ABSENT:

Pete Moore-Chairman
Melissa Esquibel-Secretary
Wayne Whittaker –Treasurer
Anthony Nunez

Vice-Chairman Gill stated that Director Pete Moore stepped down from Chairman and has moved out of state, which leaves a vacated for the Crowley County seat on the board. Mr. Moore was a charter member of the Lower Arkansas Valley Water Conservancy District. He became chairman of LAVWCD in January 2009.

INTRODUCTION OF VISITORS:

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

VISITORS PRESENT:

Alan Ward, PBWW; Kelly Roesch, Pure Cycle; Jim Baldwin, Commissioner for Otero County; Brian Lauritsen, Lamar Ag consultant; Gerry Knudsen, Agritech; Jim Valliant, CSUAES; Doris Morgan, Congressman Gardner's office; Bill Hancock, LAVWCD; Ann Lopkoff, CWPDA; Ken

Weber, Pueblo; Dan Henrichs, Highline Canal; Dave Mau, USGS; Don McBee, Lamar; Del Nimmo, CSU-Pueblo; Scott Herrmann, CSU-Pueblo; Jim Carsella, CSU-Pueblo; Dave Mau, USGS; Henry Schnabel, Commissioner for Prowers County; Chris Woodka, Pueblo Chieftain; Dale Mauch, Lamar; John Schweizer, Super Ditch; Bette McFarren, La Junta Tribune; Dwight Gardner, US Senator Michael Bennet's office and Alta McBee, Lamar.

GM REPORT:

General Manager Winner stated that Roy Vaughan of the BOR will not do a presentation today but will be added to next month's agenda for July.

PRESENTATION:

General Manager Winner introduced Dr. Scott Herrmann and Jim Carsella of CSU-Pueblo.

Dr. Herrmann thanked the LAVWC for their support. He stated that Phase I of the study has been completed and they are working on Phase II. He stated that Phase II contains two (2) areas Fountain Creek and Arkansas River.

Dr. Herrmann introduced Jim Carsella who presented to the board of directors a Power Point presentation on the College of Science and Mathematics, indicators of water quality, living organisms, water, and sediment in Fountain Creek and the Arkansas River which is attached to the minutes as **Exhibit A**.

General Manager Winner introduced Gerry Knudsen, of Agritech Consulting. Mr. Knudsen will be handling the pond study along with Brian Lauritsen, of Valley Ag Consulting. The pond study will be a 2 year study.

General Manager Winner introduced Dave Mau of the USGS. Mr. Mau presented to the board of directors a Power point presentation on a Summary of water conditions in the Arkansas River Basin which is attached to the minutes as **Exhibit B**.

COMMITTEE REPORTS:

Personnel: None.

Acquisition: None.

BOARD ACTION: None

LEGAL REPORT:

Attorney Bart Mendenhall: Attorney Mendenhall stated that a copy of his legal report is attached to the minutes as Exhibit C.

Trout, Raley, Montano, Witwer & Freeman, PC

Attorney Peter Nichols: A copy of Attorney Nichols' legal report is attached to the minutes as Exhibit D.

PUBLIC COMMENT:

Commissioner Henry Schnabel of Prowers County announced that there will be a Granada Revegetation Workshop at the Granada Community Center, Granada, Colorado on June 21, 2012 from 8:00 a.m. – 5:00 p.m. There will be a \$10.00 registration fee. Also, he gave an update on Tamarisk.

Dan Henrichs stated I (Dan Henrichs) have a question to be answered. You (LAVWCD) have spent a lot of money on this part of the state on studies on pond seepage, and the irrigation improvement rules. When State Engineer, Dick Wolfe implemented the rules, we were told that he had to do this because of the Arkansas River compact. And later because of the lawsuit between Wyoming v. Montana. Since that Supreme Court decision was unanimous in favor of the diverting state, I don't understand why we have to replace return flows from irrigation improvements. It was based on return flow. I can't remember what state.

Attorney Nichols replied that the irrigators from Wyoming were increasing irrigation and got sued by Montana.

Mr. Henrichs replied, we were told that because the Attorney for Kansas was the same one that Wyoming had been represented by and that we needed to be on top of this measure. Shouldn't we start to look at State Engineer Dick Wolfe? Shouldn't we look at diversions and that is what the Supreme Court ruled in favor of those irrigators based off of diversions and not in return flows, instead of spending millions of dollars more on fighting the improvements that the way we're going? This organization should take the lead on questioning on whether or not to challenge the issue and take it to the Supreme Court.

Attorney Nichols responded, that's a good question. The Supreme Court decision in Wyoming v. Montana actually wasn't unanimous. The decision was written by Justice Thomas and was based entirely on a novel interpretation of Wyoming State Law. Justice Thomas in reality made up Wyoming State Law. And Wyoming law is different than Colorado Law in this regard. That decision doesn't have any precedential effect on Colorado or this issue. It would be nice if it did, but it doesn't. When it was issued, we immediately took a look at it to see if there was anything we could use from that decision of the United States Supreme Court to overturn the irrigation improvement rules in Colorado. In promulgated the rules under the Arkansas River Compact, unfortunately there's nothing there because the decision is based on Wyoming State Law. Wyoming has a different approach than Colorado has. At the most basic level, Wyoming looks at diversions and Colorado looks at depletions.

Mr. Henrichs replied all of the decrees are diversion based.

Attorney Nichols stated all Colorado decrees are diversion based but when the decree is read the diversion is limited to the actual beneficial use. They really mean the depletion.

General Manager stated what we can do is have a Water Law 101 after the meeting.

Ken Weber of Pueblo stated he has a research project that he is submitting to the Arkansas Basin Roundtable and that he would like the support of the LAVWCD. I'm not seeking money from this organization but your money might be counterproductive because of this research coming from a 3rd party source and it doesn't take any position on the Super Ditch Company. He explained all phases of the study.

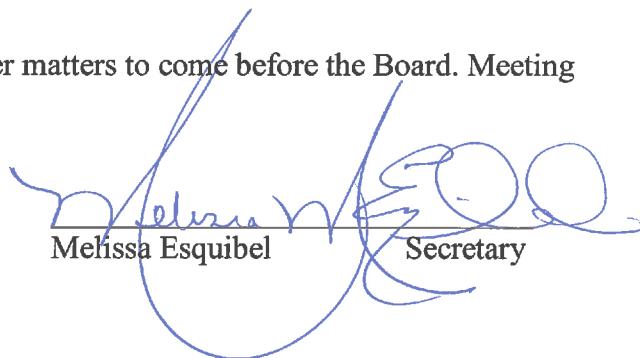
Vice-Chairman Gill replied that LAVWCD appreciated the information.

ADJOURNED:

Vice-Chairman Gill asked if there were any other matters to come before the Board. Meeting was adjourned at 11:52 A.M.



Lynden Gill Vice- Chairman



Melissa Esquibel Secretary