

**March 17, 2010**  
**Minutes-Board Meeting**

The regular monthly meeting of the Lower Arkansas Valley Water Conservancy District Board of Directors was held on Wednesday, March 17, 2010 commencing at 10:05 A.M., at 801 Swink Avenue, Rocky Ford, CO 81067.

Chairman Moore announced a quorum was present with all Directors present.

**DIRECTORS PRESENT:**

Pete Moore-Chairman  
Lynden Gill-Vice Chairman  
Melissa Esquibel-Secretary  
Wayne Whittaker -Treasurer  
Leroy Mauch  
Anthony Nunez  
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

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

Director Mauch moved that the Board recess the regular Board Meeting and open the Water Activity Enterprise meeting, seconded by Director Esquibel. Motion unanimously carried.

At the conclusion of the Water Activity Enterprise meeting Director Nunez moved to adjourn the Water Activity Enterprise meeting and reconvene the District Meeting at 10:06 A.M., seconded by Director Esquibel. Motion unanimously carried.

**INTRODUCTION OF VISITORS:**

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

**VISITORS PRESENT:**

Tom Simpson, Aurora; Gerry Knapp, Aurora; Mark Pifher, Aurora; Alan Ward, PBWW; Sam Fosdick, AGUA; Jim Sandoval, Otero County Commissioner; Jim Valliant, CSU; Richard White, White & Company; Pat Hancock, White & Company; Keenen Cohen, Asset Preservation, Inc; Dwight Gardner, Senator Bennet's Office; Gloria Gutierrez, Senator Udall's Office; Keith Goodwin, Otero County Commissioner; Curt Miller, LLP; John Merson, John Martin Reservoir State Park; Henry Schnabel, Prowers County Commissioner; Kent Weber, Pueblo; Del Nimmo, CSU; Rick Kienitz, Aurora; Loretta Kennedy, Congressman Salazar's Office; Jeff Miner,

JACOBS; Bill Hancock, LAVWCD; Brenda Fillmore, LAVWCD; Bill Long, SECWCD; John Schweizer, Super Ditch; Fred Heckman, FLCC; Burt Heckman, Super Ditch; Chris Woodka, Pueblo Chieftain; Pat Edelmann, USGS; Kelley Roesch, Pure Cycle.

**APPROVAL OF MINUTES:**

- ❖ *February 17, 2010 Monthly Board Meeting Minutes*- Chairman Moore asked if the Board members had reviewed the minutes for the February 17, 2010 Board meeting and whether there were any corrections or additions. Director Brown moved to approve the minutes for February 17, 2010, seconded by Director Esquibel. Motion unanimously carried.
  
- ❖ *February 17, 2010, Work Session Meeting Minutes and February 23, 2010, Retreat Minutes*- Chairman Moore asked if the Board members had reviewed the minutes for the February 17 and February 23, 2010 Work Session meeting and retreat meeting whether there were any corrections or additions. Director Esquibel amended the motion to approve the minutes for February 17 and February 23, 2010, seconded by Director Brown. Motion unanimously carried.

**TREASURER'S REPORT:**

Chairman Moore reported that the financial report for the month of February was included in the Board's Monthly Meeting Packet. Treasurer Whittaker reported February total revenues \$557,581.97 and total expenditures \$151,729.35 with total net \$405,852.62. Director Whittaker moved to accept the February Financial Statement, seconded by Director Nunez. Motion unanimously carried.

**GM REPORT:**

General Manager Winner introduced Bill Long, President of Southeastern Colorado Water Conservancy District.

**PRESENTATION:**

Mr. Long provided an update on the Arkansas Valley Conduit. He thanked the Lower Arkansas Valley Water Conservancy District for its support and especially for financial support. He stated if not having your funding, Arkansas Valley Conduit would not be where it is today. He stated it will not be necessary for us to come back to LAVWCD for financial assistance. But, I won't make any promises.

Mr. Long stated at our last Southeast meeting the District allocated both water and storage space to all of the entities east of Pueblo. A section of the project SECWCD felt that was extremely important so that each entity who does in fact become Conduit participants. They will know exactly what they have in a way of a water allocation and storage space. We take 37,400 ac/ft of storage space east of Pueblo as an allocation a percentage of that to each community. There are 42 communities in water utilities. He said he has attended recent meetings with the Rural Water Authority.

Bill Hancock, Conservation Program Manager, of Lower Arkansas Valley Water Conservancy District provided the board with a brief update on the Rural Water Authority. He stated he sent out a letter to different water providers throughout the Lower Arkansas valley with a questionnaire to be returned. On the questionnaire he asked each water provider if they wanted to participant in the Water Authority. The interest has been more for the water authority and few who don't want to participant.

General Manager Winner stated the water companies are under pressure to comply with new federal and state water regulations, but many of them are privately owned and cannot apply for grants. Mr. Winner stated maybe this will give them some incentive to join this Water Authority.

General Manager Winner stated Attorney Nichols will give a briefed update. Mr. Nichols stated we invited Mark Pifher and Gerry Knapp from Aurora Water to give an update. Tomorrow is the (1) one year anniversary of the settlement agreement with Aurora. A feature in the agreement was a request (2) two year stay with the litigation against Aurora and Bureau of Reclamation (BOR) pursues the legislative solution in Congress. With LAVWCD and Aurora's first annual year coming up, we will have to go to court on our progress within a couple of months. We thought it would be appropriate time to review the progress in terms of implementation in the settlement agreement. As you remember the settlement agreement structure which certain things were effective immediately upon the court stay. With the others it would not take a place until LAVCWD got congress to pass legislation authorizing the Aurora contract. It seems appropriate to discuss those things that are effective now. The court issued in May, 2009, the things that the District and Aurora agreed to do, the implement beginning with the grounding with the stay and during the stay. To give you a report on where were we are. Lower Ark is part of the settlement, to settle and withdraw four water court cases in which Aurora was an applicant and LAVWCD has completed that action in that commitment under the settlement agreement. Aurora for its part under the stay to support the development of a water leasing program including the Super Ditch Company and offered to assist the Lower District getting the leasing program going including the financial support of \$125,000.00 per year. So we've invited Mark Pifher and Gerry Knapp to give us a report on what they've done trying to implement from Aurora's point of view. Is that fair enough gentlemen?

Mark Pifher replied that's fair enough.

**General Manager introduced Mark Pifher, Director of Aurora Water.**

Mr. Pifher provided a background on Aurora's water supply situation. He stated in very round numbers about a 1/4 of our water supply comes from the Arkansas River Basin, 1/4 from Colorado River Basin and 1/2 from South Platte Basin which is a native basin for the City of Aurora. He stated it's a very significant water rights portfolio that we have here in the Arkansas Basin and we need to obviously develop it and protect it. We (Aurora) have to work corporately with the people in the basin, on this concept of the leasing fallowing or interruptible supply of arrangement. This is not the only basin that is looking at that concept and where it may actually come to fruition. The South Platte River Basin also received a roundtable grant to look at the possibility of such arrangements with the ditch companies. And in that instance the city of

Aurora, who is joining with the Corn Growers Association, Duck Unlimited, Colorado State University, and others to develop a sort of business plan to see how it works. We would have multiple beneficiaries; it's just not a community municipality, but also the environment if you will. The concept being that you actually pass on this floor moving through areas you create for duck habitat. So it's truly a win, win situation if we could bring that all together. So we are very interested in making this concept work.

But, also keep in mind; this is lying a little bit in all affected by the terrible down turn of the economy. The municipal areas: Aurora, Denver, South Metro, Douglas County are not immune from what has happen. The timing and the way couldn't have been better for us, but in a way it couldn't have been worse. Aurora is in the mist of building Prairie Water Project which allows Aurora to use reusable return flow that reintroduces into the Platte River and then brings it back to the city, after it's gone through Denver Metro Reclamation treatment process. Aurora has nearly completed the Prairie Waters Project, a \$660 million well field, pipeline and treatment plant that will allow it to fully reuse water. The project will cost \$90 million less than projected.

Mr. Pifher explained there are three agreement provisions that are in effect today. We know that we have to fulfill and that's what we're working on. Peter Nichols mentions the \$125,000/year. Which Jay Winner, LAVWCD and Gerry Knapp, Aurora Water are working on how to distribute it.

Second one is a technical assistance in establishing a leasing following program. Gerry will provide a power point on explaining the leasing following program. He's going to walk you through it. Aurora basically learned from the Rocky Ford Highline transaction leasing following arrangement, where Southeast Colorado was recovering from a drought in 2002.

Third provision, Mr. Pifher stated I will talk about a little in general terms because maybe it's more appropriate in executive session. But, a paragraph in the agreement that talks about entry into a contract to meet Aurora's leasing needs in the Arkansas River Basin upon what terms and with LAVWCD. There are sort of two clauses in the provision. The fact that the Lower District would agree to support the agreements we (Aurora) had in place with the Rocky Ford Highline. Under which we can have a leasing following type of arrangement in the future with Rocky Ford Highline. We don't have that today. We had one in the past. We do have today a general agreement with the company, but we don't have a substance agreement with the shareholders. That is what you really need to make it work, right. But then that clause went into say that we (Aurora) agree to meet Arkansas Basin lease needs from an operational Super Ditch Company that could provide a like amount of water on a similarly reliable basin at fair market value. So the provision would be the amount of water. Reliable basins we could get when we need it basically. Subject to always not is some constraining to the IGA we execute in 2003. I guess the multiple parties that limit our abilities to move water out of the basin even on a temporary basis.

General Manager Winner asked if there were any questions for Mr. Pifher.

Burt Heckman, Director of the Super Ditch Company stated just an overview again. I here there's talk that there are conflicting information about your intent on who you're going to lease

with. Whether it's the Rocky Ford Highline or the Super Ditch Company or both, or are you playing both, or are you playing them against each other. What's the concept? Is it loose out there?

Mr. Pifher replied, frankly that was the way the agreement was put together, because Aurora had a long standing relationship with the Rocky Ford Highline at the time of the settlement was entered into. Aurora had a contract in place, a signed contract with the Rocky Ford Highline board, not the shareholders. Aurora wanted to further explore future opportunities that involve the leasing program from Rocky Ford Highline board. So we (Aurora) weren't about to abandon them in that relationship. But, at this point and time we don't even have a price on the table with Rocky Ford Highline. We do have two prices now on the table, if it would be with the Super Ditch and Aurora. So hopefully they could keep the negotiations on the table.

John Schweizer, Chairman of the Super Ditch asked Mr. Pifher, I understand that you made a comment; you do not have any involvement with the Rocky Ford Highline as far as a lease is concern, right now.

Mr. Pifher replied, No, not right now.

Chairman Schweizer, stated I've got a question. If in fact the Super Ditch is leasing water and what we think is appropriate on the price, why would any shareholder in the Rocky Ford Highline want to get less than that? I really don't think we have any real problem with the price. I knew Rocky ford Highline wanted it. I was involved with the lease you had with the Rocky Ford Highline before. If I had two choices \$350.00 or \$500.00, why would I even consider leasing for \$250.00?

Mr. Pifher replied you're right.

Chris Woodka, Pueblo Chieftain, asked Mr. Pifher my question was essentially the same as Burt Heckman. In your agreement with SE District you have certain years you can lease water. What happens when you get to that year? It will just be driven by. This is kind of readiness to serve agreement that you would have with the Super Ditch Company.

Mr. Pifher replied right, we can't take water every year because of the IGA contract. If we execute a long term contract it would say what type of up front, what payments on a readiness to serve basis. It would say what the price would be actually taking water in your three out of ten or two out ten, whatever it turns out to be. Those provisions would be spelled out. Like I said we're looking at a long term arrangement not a year to year.

**General Manager Introduced Gerry Knapp, Aurora Water.**

Mr. Knapp gave a power point presentation on Development procedures and components of a leasing program.

Mr. Knapp stated due to record low water levels in 2003 (Drought) in the Lower Arkansas Valley, Aurora Water looked to leasing short term ag water rights under the Rocky Ford Highline Canal in 2004 and 2005. The general approach is to get two agreements for implementing a lease; the ditch company agreement and individual shareholders.

Ditch company agreement; one (1) approval to move water is needed, two (2) protection for non-leasing shareholders, three (3) additional structures for water management may be needed, four (4) additional compensation or support might be required for additional accounting requirements.

Individual Shareholders; one (1) lease price and related financial terms, two (2) 124 individual contracts, three (3) 8,200 acres, four (4) 37% of total ditch, it took 18 months to receive approval, five (5) had limitations on shares to lease, six (6) explanation of dry up requirements, and seven (7) land management requirements during the lease.

Legal considerations; one (1) ditch company by-laws requirements and changes necessary, two (2) changing water rights to include leasing terms and conditions, three (3) temporary authorization to allow for leasing, four (4) consideration of winter water constraints.

Engineering activities; one (1) ditch water supply evaluation, two (2) consumptive use analysis, three (3) cropping history and patterns, four (4) identification of irrigated acreage available for lease, five (5) determination of return flow obligation.

Operational activities; one (1) lands removed from irrigation the shareholder must "dry up," designation of dry up acreage, water rights likely will need to be diverted into the ditch pursuant to original decree provisions, dry up consistency with historical cropping patterns, alfalfa field limitations on use within dry lands, lands must be protected from irrigation, two (2) land management during lease period, three (3) monitoring of dry up, four (4) diversion criteria; augmentation station, water rights likely will need to be diverted into the ditch pursuant to original decree provisions, divert a percent of daily flow within the ditch, divert the daily yield of shares leased that are receiving water that day, five (5) return flow obligation management, surface return flow obligation amounts must be diverted according to requirement provisions, delayed return flow obligation amounts likely will need handled in much the same way as the CU (consumptive use) amounts, six (6) ditch operations, deliveries to non-leasing shareholders, management of "carriage water", seven (7) exchange/storage, native or river exchange, contract exchange, eight (8) storage facilities.

**General Manager introduced Keenen Cohen, Division Manager of Asset Preservation Inc.,** Mr. Cohen gave a power point presentation on 1031 Tax deferred exchanges of water rights in Colorado. A copy of which is attached to the minutes as **Exhibit A**.

#### **BOARD ACTION:**

Director Esquibel made motion to move that we (LAVWCD Directors) authorize our staff and counsel to review and subsequently enter into MOU regarding the management of grants and

project activities on Fountain Creek. Secondly in that motion to include the acceptance of the grant from CWCB \$148,000.00 for non consumptive needs assessment in the Arkansas Basin. To accept a grant from Natural Resource Conservative Service (NRCS) for \$485,000.00 contract assigned to Fountain Creek pre person to the third board action as outlined by General Manager Winner, seconded by Director Mauch. Motion unanimously carried.

**LEGISLATIVE REPORT:** None

**DIRECTORS' DISCUSSION:** None

**COMMITTEE REPORTS:**

Personnel: None.

Acquisition: None.

**LEGAL REPORT:**

**Melissa Esquibel:** None

**Attorney Bart Mendenhall:** Attorney Mendenhall's legal report, a copy of which is attached to the minutes as Exhibit B.

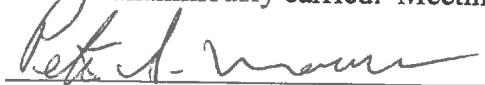
**Trout, Raley, Montano, Witwer & Freeman, PC**

**Attorney Peter Nichols:** Attorney Nichols legal report, a copy of which is attached to the minutes as Exhibit C.

Attorney Nichols stated I've changed the format summary on the first page. No filing of state opposition this month. Counsel filed them last month in Aurora. Counsel would like to bring to the boards attention. Article X, section 20, The Taxpayer's Bill of Rights, Article XI, Section 3 is repealed and re-enacted to read, as stated in the original constitution and Title 39, article 25 of the Colorado Revised Statutes. This package comes primarily out of the Douglas Group of people of El Paso County primarily. Counsel will come back next board meeting with all three as package for a resolution.

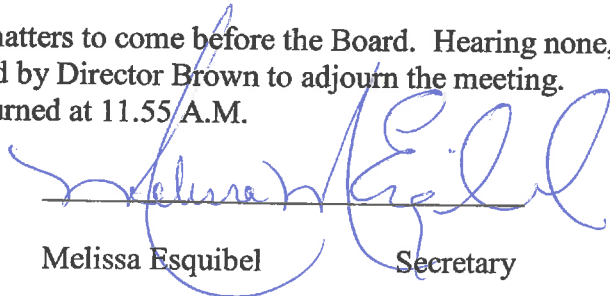
**ADJOURNED:**

Chairman Moore asked if there were any other matters to come before the Board. Hearing none, motion was made by Director Esquibel, seconded by Director Brown to adjourn the meeting. Motion unanimously carried. Meeting was adjourned at 11.55 A.M.



Pete Moore

Chairman



Melissa Esquibel

Secretary