

January 21, 2009
Minutes-Board Meeting

The regular monthly meeting of the Lower Arkansas Valley Water Conservancy District Board of Directors was held on Wednesday, January 21, 2009 at 10:13 AM, at 801 Swink Avenue, Rocky Ford, CO 81067.

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

DIRECTORS PRESENT:

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

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 Esquibel. Motion unanimously carried.

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

OFFICIAL DISTRICT BUSINESS:

Oath of Office:

Notary Kim Chavez swore in the re-elected Director's Pete Moore and Leroy Mauch and newly elected Anthony Nunez 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 2009. General Manager Winner suggested that the Regular Board meeting dates stay the same third Wednesday of the month except on December Board meeting change to the second Wednesday. Chairman Singletary asked if that is acceptable. Director Gill made a motion to accept the changes, seconded by Director Esquibel. 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 Mauch. Motion unanimously carried.

Elections:

General Manager 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 Esquibel stated, Mr. Chairman I would like to nominate, Director Pete Moore as Chairman, seconded by Director Singletary; Director Esquibel stated, I would like to nominate Lynden Gill as Vice-Chairman, seconded by Director Mauch; Director Whittaker stated, I would like to nominate, Director Esquibel as Secretary, seconded by Director Gill; and Director Esquibel stated, I would like to nominate, Director Whittaker as Treasurer, seconded by Director Gill. Vote was unanimous for election of each officer.

LAVWCD Board Directors for 2009: Chairman, Pete Moore; Vice-Chairman, Lynden Gill; Secretary, Melissa Esquibel; Treasurer, Wayne Whittaker; John Singletary, Leroy Mauch and Anthony Nunez.

APPROVAL OF MINUTES:

- ❖ *December 10, 2008 Monthly Board Meeting Minutes-* Chairman Moore asked if the Board members had reviewed the minutes for the December 10, 2008 Board meeting and whether there were any corrections or additions. Director Whittaker moved to approve the minutes for December 10, 2008, seconded by Director Mauch. Motion unanimously carried.

- ❖ *December 10, 2008 Work Session Meeting Minutes-* Chairman Moore asked if the Board members had reviewed the minutes for the December 10, 2008 Work Session meeting and whether there were any corrections or additions. Director Esquibel moved to approve the minutes for December 10, 2008, seconded by Director Whittaker. Motion unanimously carried.

TREASURER'S REPORT:

Chairman Moore 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 \$32,372.69 and total expenditures \$184,670.29 with total net <\$152,297.60>. Director Whittaker moved to accept the December Financial Statement, 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:

Loretta Kennedy, Congressman Salazar's Office; Alan Ward, Pueblo Board of Water Works; Don McBee, Farmer, Fort Lyon; Burt Heckman, Super Ditch Director & Farmer, McClave; Dwight Gardner, Senator Salazar's Office; Pat Edelmann, USGS; Roy Vaughan, BOR; Ken Weber, Pueblo Co; Fred Heckman, FLCC; G.W. Werdel, Larkspur; Henry Schnabel, Bristol County Commissioner; Robin Reed, Rocky Ford; Gary Reed, Rocky Ford; Dan Hyatt, City of Rocky Ford; Mac Holder, Mayor of Rocky Ford; Mike Bartolo, CSU-Research; Shane Pritchard, Engineer; Chris Woodka, Pueblo Chieftain; Rick Kientz, Aurora Water; Jim Valliant, CSU-CAES; Kelly Roesch, Pure Cycle; John Schweizer, Super Ditch; Perry Cabot, CSU; Lola Shrimplin, La Junta Tribune Democrat.

GM REPORT:

General Manager Winner directed Board Directors to Tab (1) one of the board packets. The Bessemer Irrigating Ditch Company; General Manager Winner asked Board Directors if Conservation Program Manager Bill Hancock could attend the annual meeting of the Bessemer Ditch Company to vote for the Lower Arkansas Valley Water Conservancy District's shares. There was no objection to Bill attending as the District's representative.

PRESENTATIONS: General Manager Winner introduced Mike Bartolo, shareholder of Bessemer Ditch.

Mike Bartolo said, "I'm coming to you today as an ordinary citizen and shareholder on the Bessemer Ditch." This time it's personal. He told the Lower Arkansas Valley Water Conservancy District board that there has been a lot of misinformation out there. A lack of information and a lack of ethnics involved. You deny them the ability on making good sound decisions. His concerns were to encourage others in Pueblo County to look for other answers besides selling the water off. He is a fourth generation and owns about 12 shares on Bessemer Ditch. He wants to form a Bessemer Alternative Coalition which he mentions to the board. I can't give a lot of detail right now but once we get it together we will come back to the board. This will make sure shareholders receive fair compensation and are aware of other options like the Super Ditch Company that was formed in May 2008. To bring together the people of Pueblo County to protect water interests.

Bartolo said, I read in the newspaper that the Bessemer Ditch was not interested in participating in the Super Ditch, so I thought that decision was made for me and I did know, correct me if I'm wrong as an individual I could participate in the Super Ditch as a shareholder in the Bessemer Ditch.

Attorney Mendenhall response, "You could have shown up on the actual corporation of the Super Ditch. You could have been part of that, but there ways to deal with that."

Bartolo replied I think there were a lot of people that didn't know that option was available to them. I'm a good example of this. There are a lot of rumors that say what you can or can't do

and I think there are some good options out there and that's what the whole principle of this board stands for.

General Manager Winner introduced Pat Edelmann, United States Geological Survey (USGS). He gave a power point on Arkansas River Basin

U.S.G.S. Activities

- Streamflow
- Ground Water
 - Levels
 - Water Budgets
 - Sustainability & Susceptibility
- Water Quality
 - Continuous monitors
 - Periodic monitoring
 - Intergraded Geospatial Database
 - Analysis & Assessment
 - Aquatic Biology
 - Habitat, Macro-Invertebrates, fish runoff
- Sediment transport Geomorphology
 - Monitoring
 - Modeling

Integrated Geospatial Water-quality database

- Digital/electronic water-quality data from various sources made comparable with similar field and laboratory methods
- Data screened prior to inclusion in database, questionable data quarantined
- Location information QA'd, corrected where possible
- Convenience and Effectiveness of sharing all available data (all data, 1 website)

Fountain Creek Geomorphology Study

The study is directed toward testing a technique to:

- Determine suspended sediment loads
- Determine sediment source areas at specific locations in the Fountain Creek watershed

Provide a method for predicting:

- Suspended-sediment transport
- Sediment source areas
- In channel erosion, bar evolution
- Channel and habitat changes in the basin for various discharges

Motion made by Director Whittaker to grant \$35,000.00 in support USGS Study, seconded by Director Mauch. Motion unanimously carried.

General Manager Winner introduced Mac Holder Mayor of Rocky Ford.

Mayor Holder came to the board to say thank you to Financial Officer Kim Chavez. Ms Chavez did a GOCO grant in which the City of Rocky Ford and Lower Arkansas Valley Water Conservancy District were involved. The grant award was for \$139,000.00 which will go towards improving the bathroom area and concession stand at Babcock Park in Rocky Ford.

General Winner stated, I'll have to congratulate Ms. Chavez this was a big effort to get this grant. Also GOCO gave an extension to Lake Minnequa for one more year.

Director Wayne Whittaker honored John Rose who was as a concerned citizen helped form the Lower Ark District. Rose died in December 2008. Director Whittaker presented a plaque to Gary and Robin Reed family members of John Rose. Whittaker stated, "John had a vision that this valley could prosper."

Board agreed to drop its contract for lobbyist, instead opting to work for its legislative positions through Colorado Water Congress or by staff members.

Resolution 09-01

The Lower Arkansas Valley Water Conservancy District shall have need for legal services during the 2009 and it is in the interest of the District to contract with Mendenhall & Malouff, R.L.L.P., as general counsel, and with Trout, Witwer & Freeman, P.C., Raley, Montano, & Freeman, P.C., as special counsel. Motion was made by Director Whittaker, seconded by Director Mauch, to authorize the General Manager Winner to sign contracts and adopt Resolution 09-01, motion unanimously carried.

General Manager Winner asked attorney Nichols to give an update on Consumptive Use Rules. There are some administration issues with the rules that need to be resolve. They want everything resolved in 90 days after they adopt the rules. We met with a few irrigators before the work session of December board meeting and that meeting was productive. The Farmers then addressed the board regarding their position that they hope the district would take in terms of supporting their efforts to come up with some rules.

Attorney Nichols stated that Burt Heckman and Donny McBee of Fort Lyon Canal attended a meeting in Denver on January 20, 2009. McBee came before the board and ask if the Lower Ark could help conduct a study on farm sprinklers.

Fred Heckman, farmer from Fort Lyon Canal stated there are a lot of irrigators who distrust the State Engineers office. It's an issue that they feel that surface irrigation is more efficient ground water irrigation. I'm trying to figure out how to negotiate to get these people on agriculture side.

Attorney Nichols stated right now the way the rules are written the rules they basically say the farmers are obligated to deal with the changes of the result of sprinklers and they don't recognize that these ponds leak. The purpose of the pond study is to figure out what the leakage rates are

and get some good creditable data to go back to the State with and say look you have to offset and pull this out of the calculation.

Resolution 09-02

The State of Colorado, acting through the State Engineer's Office, is in the process of drafting consumptive use rules affecting irrigation efficiency improvements made by agricultural producers in the Lower Arkansas Valley and whereas, the purpose of these rules is to maintain compliance with the Arkansas River Compact between the states of Kansas and Colorado, and whereas, the state of Colorado should promote the most effective and efficient use of the waters of the Arkansas River pursuant to the doctrine of the maximum utilization, and whereas, it is in the interest of the Lower Arkansas Valley Water Conservancy District to promote the most effective and efficient use of the waters of the Arkansas River, and whereas, individual farmers are at a distinct financial disadvantage when dealing with the State of Colorado to ensure that the rules are no more restrictive than necessary; now, therefore, it is resolved as follows: (1) The Lower Arkansas Valley Water Conservancy District hereby declares its intent and desire to work with and on behalf of the agricultural producers of the Lower Arkansas Valley and to assist in developing workable consumptive use rules and to develop solutions that address past and support future irrigation efficiency improvements for the good of the Lower Arkansas Valley. (2) The Board of Directors of the District hereby direct staff and counsel of the District to provide such support to agricultural producers as is necessary to carry out the intent of the District. Motion was made by Director Gill, seconded by Director Singletary, to adopt Resolution 09-02, motion unanimously carried.

Motion was made by Director Whittaker to give Attorney Nichols recommendation in hiring an independent engineering firm to look over the State, seconded by Director Mauch, motion unanimously carried.

PRESIDENT'S REPORT: None

LEGAL REPORT:

Attorney Mendenhall reported on December 15th, he attended the Fort Lyon Shareholders annual meeting. He gave a report on the progress of the Super Ditch and also there was opportunity to discuss it with individual shareholders.

Attorney Mendenhall and Conservation Program Manager Bill Hancock closed two separate conservation easements, Carlson and Marchand.

Attorney Mendenhall attended a Super Ditch Company board meeting.

Attorney Mendenhall has continued to work on various projects, including the right of first refusal and lease with CSU, and the purchase of related property.

Trout, Raley, Montano, Witwer & Freeman, PC

Water Leasing Program:

- The Company negotiating team (John Schweizer, Fred Heckman and Peter Nichols) has begun negotiating with potential lessees. The team reported to the Company Board on September 22, 2008. The team has held follow up negotiating sessions with two potential lessees approximately monthly. The Super Ditch Board met on October 21st and November 24th and December 20th to review its negotiating position and the negotiations. The team has scheduled a meeting with the entity that made the formal offer to discuss it on December 18th. The team is working to schedule a follow up meeting with another potential lessee right after the first of the year.

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 held a meeting with Colorado Springs October 23, 2008 to discuss finalizing the draft IGA developed last year. Counsel for both parties is working to revise and update the draft IGA to reflect the discussions.

II. LEGAL REPRESENTATION

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

- Counsel does not recommend filing any statements of opposition this month.
- Counsel met with Tri-State principals and attorneys in early January, and reached conceptual agreement on settlement. The Counsel for both parties has reached an agreement on specific settlement language involving the protections and maintenance of revegetated land. Counsel recommends the Board approve the proposed settlement, contingent on the agreement of Prowers County Board of County Commissioners to enforce the revegetation covenants.

B. 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 United States and Aurora filed their answers, denying all surviving claims in November. *The United States filed the administrative record with the court December 23, 2008.* The parties must file a court a schedule for briefing, supplementation of the record, and discovery, if any, *by January 27, 2009...* Aurora is expected to seek discovery with regard to the District's and

Arkansas Native's standing claims. The parties have agreed to recommend that cross motions for summary judgment be filed within 90 days, responses 30 days thereafter, and replies 30 day subsequently. This will provide time for Bob Trout to review the administrative record before drafting Lower Ark's motion for summary judgment.

C. Other Matters:

Lake Minnequa. The purpose of this action is to assist the City of Pueblo in redeveloping Lake Minnequa as a community amenity.

- Counsel recently reviewed and commented on proposed changes to the draft deed of conservation easement suggested by Tom Florczak, the City's outside counsel.

D. 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 directly with the irrigators to further refine the rules, and to develop a program to implement the rules with minimal impact on any irrigators and existing and future irrigation improvements. The LAVWCD has been asked to develop one or more "Compact Compliance Plans" to replace out of priority depletions to the River, and to provide compliance assistance to the irrigators. Irrigators could opt to join the Compact Compliance Plans, or develop their own site-specific plan with the assistance of the LAVWCD for this purpose. Counsel recommends that the Board approve hiring Leonard Rice Consulting Engineers to assist in this effort because irrigators have identified numerous engineering issues that will affect the amount of water the state concludes they "owe".

COMMITTEE REPORTS:

Personnel: None.

Liaison: None.

Legal: None.

DIRECTOR'S COMMUNITY REPORT:

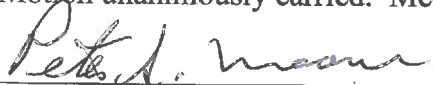
Director Moore stated, "I would like to take this opportunity to welcome Anthony Nunez to our board. We look forward to working with you."

Director Nunez replied, "Likewise, I'm glad to be here. There's a lot to learn. I have my assistant who will ride with me. I like to thank Loretta Kennedy for her help."

PUBLIC COMMENT: None

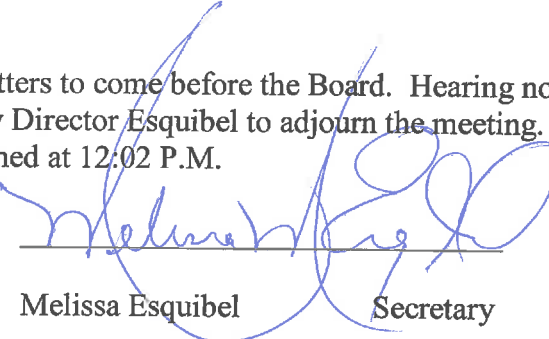
ADJOURNED:

Chairman Moore asked if there were any other matters to come before the Board. Hearing none, motion was made by Director Mauch, seconded by Director Esquibel to adjourn the meeting. Motion unanimously carried. Meeting was adjourned at 12:02 P.M.



Pete Moore

Chairman



Melissa Esquibel

Secretary