

**ELEPHANT BUTTE IRRIGATION DISTRICT  
BOARD OF DIRECTORS MEETING  
February 14, 2007**

The monthly meeting of the Board of Directors of the Elephant Butte Irrigation District was held on Wednesday, February 14, 2007. The meeting was called to order by President James Salopek on a motion by Bill Gary, seconded by Joe Nelson. Motion carried. Ramon Alvarez was absent.

EBID Staff present were Henry Magallanez, Engineer; Gail Norvell, Controller; Richard Bejarano, Water Master; and EAC Co-Chair Tom Hansen, Human Resources Director.

Also present were Steve Hernandez and Lee Peters, Hubert & Hernandez, P.A; Dr. Phil King, Water Quantity Consultant; Dr. Fernando Cadena, Water Quality Consultant; Les Owen, NMDA; Susan Kruegar, Town of Mesilla; Diana Alba, Las Cruces Sun News; Marvin Tessner, the Bulletin; and EBID Constituents Richard Llanez, Sally Williams, Bill Perry, Greg Byres and Nelson Clayshulte.

Tom Simpson motioned and Willie Koenig seconded to approve the minutes of the January 10, 2007 Board meeting as presented. Motion carried.

The Open Meetings Act Resolution 2007-01 was presented. Motion to adopt the Open Meetings Act Resolution 2007-01 was made by Bill Gary and seconded by Jerry Franzoy. Motion carried. Resolution 2007-01 is attached to these minutes.

The water supply outlook was presented. The storage totals on February 1, 2006 with a comparison for last year are as follows:

|                | <u>2/01/2006</u> | <u>2/01/2007</u> |
|----------------|------------------|------------------|
| Elephant Butte | 193,240          | 514,059          |
| Caballo        | <u>23,390</u>    | <u>43,137</u>    |
|                | 216,630          | 557,166          |

As of the date of the meeting, the initial allocation represented 40% of a full irrigation season supply for the entire Rio Grande Project. Mr. Esslinger said that he anticipated a release of 650,000 AF which is comparable to a two AF allotment.

Items on the calendar were discussed. Dates include:

RGCC Conference, Alamosa, Colorado. A motion to send Phil King and Tom Maddock to his meeting was made by Jerry Franzoy seconded by Robert Faubion. Motion carried.

The next meeting of the Board of Directors will be held on March 14, 2007.

Henry Magallanez, presented the special use permits.

Under Moratorium:

- 07-L-005 – CLC Joint Utilities; to construct, operate and maintain a new buried 8 inch sewer line and an 8 inch waterline crossing the Las Cruces Lateral at approximate station 116+50. Assessment, \$5,883.16
- 07-L-009 – CLC Joint Utilities; To construct, operate and maintain a new buried 6 inch sewer force main crossing the Mesilla Lateral at approximate stations 391+25 and 406+80, the Laguna Lateral at approximate station 148+50 and paralleling the park drain for approximately 1,700 feet from station 342+00 to 325+00. Assessment, \$41,719.31.

Total Assessment: \$47,602.47

Non Moratorium:

- 07-L-006 – El Paso Electric; to construct, operate and maintain 2 new underground power lines on the Leasburg Main at approximate stations 166+57 and 149+48 and an aerial power line paralleling 100 feet from station 146+60 to

Roll Call

Minutes  
Approval

Open Meetings  
Act Resolution

Water  
Supply

Calendar

Special Use  
Permits

147+60. Assessment, \$12,995.40.

Total assessments all permits: \$60,597.87

Mr. Magallanez recommended approval of all permits as presented. Robert Faubion motioned and Joe Nelson seconded to approve the permits as presented. Motion carried.

Henry Magallanez discussed a request for a stacking variance for Mr. Klein. Mr. Magallanez recommended approval. The board discussed the fact that the variance would have the result of giving flat raters who see the water moving through the ditch the temptation to take water illegally. Mr. Magallanez will give this matter more thought and study and bring it back at a future meeting as to where the variance will be most appropriate and where it should not be recommended. The matter was tabled.

Stacking  
Variance - Klein

Henry Magallanez reported on the progress of the 2006-07 maintenance season. The Myers Check on the Eastside canal above Vado is being rebuilt in conjunction with the DAC Road Department who is paying for materials with the District supplying the labor. Henry reported that this project is the last major construction we will do before the start of the water season.

Maintenance  
Update

Mr. Magallanez reported that all construction should be finished by March 1. He said that the crews have laid 18 miles of pipe and that all construction is on task and under budget.

Mr. Magallanez also reported that the Operations building was complete and ready for occupancy. Crews will do some modifications to the Hydrology department prior to the start of the irrigation season.

The request by Dona Ana Mutual to share in a surface water treatment plant was discussed. Mr. Magallanez asked for direction to initiate the process to develop a plan that would allow EBID to independently develop a small 500,000 MGD surface water treatment facility on EBID property. Robert Faubion so moved and Bill Gary seconded the motion that EBID would move forward independently and NOT partner with any other entity. Motion carried.

The beginning of the 2007 irrigation season was discussed. El Paso #1 plans to start release from Caballo and start delivery on March 7<sup>th</sup>. The Board discussed the opening date for EBID. Mr. Esslinger said that EBID is planning on starting March 15<sup>th</sup>. Robert Sloan suggested the 12<sup>th</sup> for delivery giving the maintenance department time to complete all work by March 10<sup>th</sup>. It was suggested to start taking orders around February 26 to test the need to open before March 10<sup>th</sup>. The Board agreed tentatively to make a release from Caballo on March 9<sup>th</sup> based on the supply and pending weather conditions. Following discussion, the following was decided:

Water Allocation  
for 2007

Dispatch will open Tuesday, February 20<sup>th</sup> to begin taking water orders

Opening Dates for  
2007 Irrigation  
Season

The first release will be Friday, March 9<sup>th</sup>. Start diverting water on Monday, the 11<sup>th</sup> of March. Motion to accept these dates by Tom Simpson and Bill Gray seconded. Motion carried.

It was decided that the initial allocation would be announced at 18 inches with the probability of an increase after April when the snow pack runoff came into the lakes. Jerry Franzoy so moved and Robert Faubion seconded. Motion carried.

The small tract schedule was discussed. It was decided to start the weekend of April 7<sup>th</sup> with three irrigations scheduled for the season to start. The matter will be revisited in May for possible additional weekends. Robert Sloan motioned and Bill Gary seconded the motion. Motion carried.

Small Tract  
Schedule

Mr. Magallanez discussed a proposal of 1.4 acres of the Mesilla Drain to be excessed for a subdivision in Town of Mesilla. An appraisal by the developer was done for \$15,000 an acre, or \$23,500 total for the 1.4 acres. Staff recommends to excess and sell the 1.4 acres with the following conditions: (1) Retain easement for flow of water,

(2) develop a maintenance agreement with the developer, and (3) make the subdivision responsible for liability of any activity. It was stated that the drain would not be covered up, but rather to keep the historic structure intact and reserving the northern portion of drain. The Board of Directors stated that the sale of this tract of land must comply with DFA and SHIPO requirements. Mr. Nelson Clayshulte, the developer, had no problem with any of the stipulations and agreed to leave the drain like it is at this time. Ms. Sally Williams, a protestant, said she'd rather see the land in pecan trees than as a subdivision, but that she'd agree to the subdivision if the trees could not be planted. It was pointed out that a covenant of the previous owner was to NOT plant pecan trees on this property. Willie Koenig motioned to approve the sale of this tract and Joe Nelson seconded. Motion carried. Sale is subject to DFA and SHIPO approval with stipulations as presented.

Henry Magallanez discussed a proposal by Greg Byres on the Del Rio Drain. The appraised value of EBID land was \$16,500 (\$7,600 per acre). Staff recommend the disposal of land subject to DFA and SHIPO. The board asked that Henry contact Van Bullock, appraiser, for a second appraisal. Tom Simpson asked that Staff proceed with process of appraisal and sale. Robert Faubion motioned that the staff should proceed with the process of appraisal and sale of the land. Jerry Franzoy seconded. Motion carried.

Gail Norvell, Controller, presented the Financial Fact Sheet for the month of January, 2007. The fact sheet is as follows: Cash in the bank totaled \$733,046; assessments receivable totaled \$2,289,858; and investments totaled \$4,804,222 for a grand total of \$7,827,126. This amount reflects an increase in assets of \$424,694 over January, 2006. Extraordinary costs were: Legal Fees, \$48,571. Extraordinary receipts were: Special use fees \$10,421; and BOR 2025 Grant Reimbursement, \$166,426. Also discussed were the financial statements for the months of November and December, 2006

Ms. Norvell presented a renewal of the professional services contract for Ron Mears, Information Technology Consultant. Robert Faubion motioned and Joe Nelson seconded to renew the contract for one year. Motion carried.

Ms. Norvell presented copies of the BOR's estimated O&M costs for FY 2007 for EBID and EP#1. She recommended that legal staff assist in the development of a protest letter if found necessary.

Ms. Norvell updated the Board on FEMA. FEMA has reviewed the Category B & D reports submitted, disallowed some of the expenses incurred by EBID and submitted them to OEM. Ms. Norvell found discrepancies in FEMA's reports and some of the expenses disallowed. She has the opportunity to appeal to OEM for any corrections of the costs submitted or disallowed. Additionally, EBID can submit a letter to Domenici regarding the FEMA processes, personnel and procedures. Tom Simpson recommended that we not fight the changes, but that we do alert Domenici of our frustration of working with FEMA officials.

Gail Norvell reported that according to NM State Statute 73-9-8 NMSA, Board members are required to have a \$3,000 bond. The board suggested that Ms. Norvell will look into this matter of obtaining bonding for board members.

Gary Esslinger gave an update for the month of February, 2007. Topics discussed include:

- US/Mexico Transboundary Assessment Act introduced by Senator Bingaman passed. The Act covers the border from Tiajuana, Mexico to Brownsville, TX. The Act can help EBID with continued metering and monitoring within the Mesilla aquifer. The Act still needs an appropriation to fund the project.

Gary Esslinger reported on 2007 legislative activity:

- HB 580 –OSE can issue compliance orders without judicial involvement. SE will have enforcement on these matters.

Financial Report

IT Consultant  
Contract Renewal

BOR Estimated  
Budget

FEMA Update

Board Member  
Bonding

Managers Update

Legislative Update

- HB 455 – Trail Development and Liability Act. Develop outdoor recreational plan. Give irrigation districts liability protection within state parks.
- License plate bill – amended to include conservancy districts, irrigation districts, etc.
- Domestic well bills – prohibits impairment to senior water rights. Grant up to ½ AF. Once adjudicated water rights, OSE cannot change adjudicated right.
- SB 461 – defining conservation by farmer. Makes clear farmer can market conserved water.
- HB 987 – expands OSE jurisdiction over dams to include operation.
- HB 998 – adds Secretary of Health to Water Trust Board.
- HB 579 – disallow the OSE to appoint a water master. Charge Dona Ana County for water that they actually used and water that they could have used.

The Board asked the staff to keep watch over this legislation activity.

The Third Biennial Rio Grande Day to be held March 10<sup>th</sup> in Santa Fe was discussed. Tom Simpson suggested that we show off what we are doing as water users in this part of the state. Steve Hernandez stated that the Blue Ribbon Task Force was also having a “Technical Day” in March. Tom Simpson motioned to participate in both activities and Willie Koenig seconded the motion. Motion carried. Robert Faubion stated that Steve Hernandez’s service on BRTF has helped to get the word out on what EBID is doing in technical innovation in the southern part of the state of New Mexico.

Third Biennial  
Rio Grande Day

Gary Esslinger reported on the survey by NWRA membership and a request for federal funding needs on District facilities for technical analysis and cost estimate to support building a new bridge over Mesilla Dam. IBWC would probably support such a request. The Board asked staff to develop such a request.

Tom Hansen, HR Manager, gave the Employee Advisory Committee report. Mr. Hanson discussed the issues that had come up in meetings with employees held by the EAC. Items that will come before the Board during the year will be the addition of another holiday, increase in accrual on annual and sick leave.

Employee  
Advisory  
Committee  
Update

Mr. Hansen discussed the employees request to be able to purchase items prior to them going to auction. This cannot be done due to procurement laws. When the district disposes items, they must go to public auction. They can see what is going up for bid, but cannot bid prior to the public auction.

The Town of Mesilla and Dona Ana County have sent 3<sup>rd</sup> party concerns about SHIPO considerations. The staff with legal will begin the process to renegotiate the SHIPO contract and redo the MOU with SHIPO. Robert Faubion motioned to begin the process. The motion was seconded by Robert Sloan. Motion carried.

SHIPO Request

Gary Esslinger reported on the BOR Request for EBID to sign off on the easement with the City of Elephant Butte, RGP, Sierra County. Steve Hubert recommended we not sign off. EP#1 will not sign off. According to Mr. Hubert, the BOR should be sharing information on this. The Board asked the Engineering Department to review this matter along with the legal staff. Willie Koenig motioned to postpone signing the easement. The motion was seconded by Joe Nelson. Motion carried.

Easement, City  
of Elephant  
Butte, RGP,  
Sierra County

Gary Esslinger reported on the latest Water Quality Report that changes the State Stream Standards. Steve Hernandez stated that Julie Maitland needs to be contacted and that we send John Hernandez to these public meetings.

Water Quality  
Update

Bill Gary motioned and Jerry Franzoy seconded that the board break for lunch. Motion carried. Following lunch, Willie Koenig motioned and Jerry Franzoy seconded that the meeting be reconvened. Motion carried.

Lunch Break

Robert Faubion motioned and Jerry Franzoy seconded to go into closed session to discuss legal matters. Motion carried. Pursuant to Section 10-15-1-h, NMSA of the New Mexico Open Meetings Act, the following topics shall be discussed in closed session:

Closed/  
Open Session

- Threat of Texas/NM Supreme Court Action on Rio Grande
- State ex rel. D'Antonio vs EBID (Stream Adjudication)
- Metering Order dispute
- AWRM –LRG Basin Specific Regulations Dispute
- EBID vs. United States BOR (U.S.Dist.Ct.NM) No. CIV 00-1369 Operating Agreement/D-3 Curve 1920 Act Dispute
- EBID vs. US BOR and NM State Parks (U.S.Dist.Ct.NM) No. CIV 90-95
- EP#1 vs. EBID and BOR (U.S.Dist.Ct.Texas) No. CIV EP07CA0027

Bill Gary motioned and Joe Nelson seconded to return to open session. Motion carried by roll call vote with all members present agreeing to the motion to return to open session. During closed session the above-noted topics were discussed.

The Manager's evaluation was discussed as a follow-up to previous discussions on his merit performance.

Manager's  
Evaluation

There being no further business, Bill Gary motioned and Willie Koenig seconded to adjourn the meeting. Motion carried.

Adjourn