

**ELEPHANT BUTTE IRRIGATION DISTRICT
BOARD OF DIRECTORS MEETING
February 11, 2009**

The monthly meeting of the Board of Directors of the Elephant Butte Irrigation District was held on Wednesday, February 11, 2009. The meeting was called to order by President James Salopek on a motion by Willie Koenig, seconded by Ramon Alvarez. Motion carried. Joe Nelson was absent.

Roll Call

EBID personnel present were James Narvaez, Hydrology Director; Gail Norvell, Controller; Ricardo Bejarano, Water Master; Valerie Beversdorf, Computer Resource and GIS Director; Leo Barrett, Maintenance Project Director; Henry Magallanez, Engineering Supervisor; Jean Hinsley, Engineer/Resource Specialist; Linda Armijo, Land Specialist; Delyce Maciel, HR-Safety Manager; and Miguel Silva, HEO II, EAC Representative.

Also present were Charles Stanford and Cristina Martinez, NMSU Library and Archives; Rasool Ahadi, Calvin Chavez, and Eric Fuchs, OSE; Dr's Zohrab Samani and Salim Bawazir, NMSU Engineering Department; Filberto Castorena and Mercy S. Roybal, NM Department of Transportation; Charles Bourger and Jack Gorman, Access Technologies; Diana Alba, Las Cruces Sun News; Martin Tessneer, The Bulletin; Steve Hernandez, Steve Hubert and Josh Smith, Hubert & Hernandez, P.A; Phil King, Hydrology Consultant; John Hernandez, Water Quality Consultant;

Jerry Franzoy motioned and Bill Gary seconded to approve the minutes of the January 14, 2009 meeting. Motion carried.

Minutes Approval

Robert Faubion motioned and Willie Koenig seconded to approve the minutes of the Water Transfer hearing, 2009-WT 1, as presented. Motion carried.

The water supply outlook was presented. The storage totals on February 1, 2009 with a comparison for last year are as follows:

Water Supply

	<u>2/01/2008</u>	<u>2/01/2009</u>
Elephant Butte	454,650	661,970
Caballo	<u>25,850</u>	<u>23,872</u>
	480,500	685,842

Items on the calendar were discussed. Dates include: a Storm Water Issues meeting with the City of Las Cruces, February 18th, The Family Farm Alliance Conference in Las Vegas, NV beginning March 5th, the NWRA Federal Water Issues Conference beginning March 30th in Washington DC; and the Rio Grande Compact Commission Meeting to be held in El Paso on March 31st.

Calendar of Events

The next meeting of the Board of Directors will be held on Wednesday, March 11, 2009.

Charles Stanford from the NMSU Rio Grande Historical Collection Archives, along with Cristina Martinez, came before the board to discuss EBID's records that are stored in the archives and future plans for archival storage. Mr. Stanford is pursuing additional funding to continue with the next phase of historical document storage. Records stored in the archives include early District documents (as far back as 1919) relating to the organization of the District.

NMSU Archives
Rio Grande
Historical
Collection

Leo Barrett, Maintenance Project Director, gave the Maintenance Department report by showing a series of pictures of jobs in progress or completion.

Maintenance Update

Henry Magallanez gave a power point presentation on the job on Sunland Park Drive on the Montoya Drain. NM DOT personnel, Filberto Castorena and Mercy Roybal, were present to thank the District for the work that they did to assist NM DOT in the completion of the work on Sunland Park Drive. NM DOT recognized Henry Magallanez, Frank Sloan and his personnel, Lupe Lara, Santiago Jaramillo and Lupe Hernandez; Ross Erwin and Chris Holguin; Leo Barrett, Willie Garcia, Anacleto Cepeda and David Andrade; and Joe Garibay, Danny Vigil, Raul Olivas, and Mario Hernandez. Mr. Castorena said that NM DOT was looking forward to many years of working together with EBID.

Montoya Drain Report

Henry asked to recognize the survey crews, Armando Jacquez, Sergio Salinas and Felipe Calderon and Gary Esslinger for coordinating with Jesus Reyes of EP#1.

Dr. Zohrab Samani and Dr. Salim Bawazir of the NMSU Civil Engineering Department gave a report on remote sensors and the regional evapo-transpiration estimation model (REEM). They explained how REEM could help the individual farmer as well as the District to manage water better. REEM will be used to account for water use. It is brand new technology for the desert southwest. Dr. Samani showed a satellite generated map which showed evapo-transpiration and water usage in the District. REEM was paid for by a BOR grant in the amount of \$265,000 for remote sensing. REEM will show what water a crop needs, and what goes to the aquifer and to evaporation. This development will help the District build a water budget that will enable them to anticipate crop demand and water orders.

REEM Discussion

Danny Duran, Engineering Land Records Tech II, presented the special use permits for the month of February, 2009.

Special Use Permits

Moritorium:

1. 09-L-004 – Dona Ana MDWCA: To construct, operate and maintain a new buried 18" waterline crossing the Las Cruces Lateral at approximate station 16+76, the Elwood Lateral at approximate station 53+81 and the Dona Ana Drain at approximate station 108+96. Assessment, \$9,500.00

Total Assessments: \$9,500.00

Non-Moritorium:

2. 09-L-001 – Qwest Comm: To construct, operate and maintain a new buried communication cable line crossing the Montoya C1 Lateral at approximate station 73+80.
3. 09-L-002 – Qwest Comm: To construct, operate and maintain a new buried communication cable line crossing the Montoya C1 Lateral WW 37A at approximate station 80+50. Assessment, \$9,500.00.
4. 09-L-005 – El Paso Electric: To operate and maintain the replacement of (3) aerial electric power line crossings on the Garfield Lateral at approximate stations 37+39, 40+73 and 43+56. Assessment \$9,500.00
5. 09-L-006 – Ty Achen: To construct, operate and maintain a new steel irrigation discharge well pipe crossing the Leasburg Canal at approximate station 403+03. Assessment, \$1,666.67. Request to waive all fees, \$1,166.67, farm use.

Total Assessments all permits: \$26,000.01

Less fees waived: \$ 1,166.67
\$24,833.34

Jerry Franzoy motioned to accept the special use permits as presented. Robert Faubion seconded the motion. Motion carried.

Henry Magallanez discussed a project at Diez Lagos, a location in the City of Sunland Park. Legal staff to develop MOU to bring the parties together. Parties include EBID, Greg Collins of Catalina Development, and City of Sunland Park. A ponding area to capture flood flows is being proposed that would be very advantageous to the District and the other entities. Jerry Franzoy motioned to go forward with a legal determination on how to develop a document to begin the process and bring the entities together. Bill Gary seconded the motion. Motion carried.

Diez Lagos

James Narvaez, Richard Bejarano and Phil King gave the Hydrology and Operations update. Richard discussed pending orders. A release will be made in Rincon on the 18th of February along with El Paso No. 1's release (100 CFS, 50 to 1A and 50 to 1B).

Hydro & Op
Reports

Richard reported that burning is completed on the Arrey and Garfield Mains. Water will start on the 10th of March or sooner in the central area if orders begin to pick up.

Phil King said that the current 2 acre/foot allotment is the amount of water available right now. The allotment may go to 3 acre/foot if we have a good runoff this year, but it is still too early to make that decision.

A schedule of proposed flat rate weekends was discussed. It will be discussed at a meeting with Operations next week and finalized at that time. If approved, there will be four flat rate weekends for each area beginning in the month of April. More weekends will be added if the allotment increases.

Charles Bourger and Jack Gorman of Access Technologies came before the Board with a proposal for putting surveillance equipment at Mesilla Dam. The company has a state contract in place. The Board will take the proposal under advisement.

Cameras at
Mesilla Dam

Jerry Franzoy motioned and Tom Simpson seconded to break for lunch. Following lunch, Tom Simpson motioned and Bill Gary seconded to return to open session. Motion carried.

Lunch Break

Valerie Beversdorf gave the IT department update.

IT Department
Update

- Qwest vs. Zianet lawsuit. Zianet may no longer be allowed to provide internet services as a result of this lawsuit. Quotes are being sought currently for these services. Upgrades are also being reviewed by the District's IT Department. The District will make a determination and move forward as soon as possible pending results of the quotes so as not to interrupt service at the District.
- Workstations and laptops are ordered to replace older equipment. The current database is in development and upgrade to new and updated language to be in place by the end of the fiscal year.

Qwest vs. Zianet

Replacement of
Old Equipment

Contracts for IT Professional Services for Network Administration and Project Management will be forthcoming at a later time in the meeting.

IT Contracts

Gail Norvell, Controller, gave the report for her department:

Controller Report
Financial Report

- The Financial Fact Sheet for the month of January, 2009, is as follows: Cash in the bank totaled \$1,110,155; assessments receivable totaled \$2,775,356; and investments totaled \$4,067,226 for a grand total of \$7,925,737. This amount reflects a decrease in assets of \$(412,782) over January, 2008. No extraordinary costs were presented. Extraordinary receipts were: Special use fees \$9,583. Also presented

was the financial statement for the month of December, 2008.

- Sale of Santo Tomas Abandoned Drain. The appraisal valued the abandoned drain at \$3,740. The District Engineer provided documentation that a portion of the drain in question had previously been abandoned by the BOR in 1978, and the drain had been covered up. The Bureau had just given part of the drain property to the constituent and he had requested to receive the balance of the abandoned drain. It was a burden to the District to continue to maintain a portion of the abandoned drain and EBID has no use for it. Bill Gary motioned to proceed with the sale for the appraised value. Jerry Franzoy seconded. Motion carried. Tom Simpson motioned that prior to any further sales, he wanted to be appraised of any District policies pertaining to the sale of District property. Robert Sloan seconded the motion. Motion carried. A Legal Research Request will be initiated and legal will review the District's policies and make recommendations.
- Professional Services Contract for John Hernandez. Gail presented Dr. Hernandez's contract for renewal. Bill Gary motioned and Jerry Franzoy seconded to renew the contract. Motion carried.
- IT Network Services contract and IT Project Management services to POD, Inc. Bill Gary motioned to approve both contracts and Robert Sloan seconded. Motion carried.

Sale of Santo
Tomas Drain

Professional
Services Contract
– Hernandez

IT Network
Services Contract

Delyce Maciel, Gail Norvell and Miguel Silva, gave an update for the Employee Advisory Committee.

EAC Update

- Representative meetings are being held in all yards to discuss new evaluation forms to develop options for benchmarks in future merit. A questionnaire will be sent out asking for employee suggestions concerning evaluation criteria.
- Linda Lee, Accounting Assistant, will replace Linda Armijo as the Co-Chair of the EAC. Linda Armijo still sits on the committee as the representative for the Engineering Department.

Gary Esslinger gave the Manager's report. Topics discussed were as follows:

Manager's Report

- Law of the Rio Grande – the conference will be held in Santa Fe beginning March 2nd. Phil King will attend and will present along with Steve Hubert and Steve Hernandez.
- The matter of the District's lobbyist, Robert Rivera, was discussed. The question was whether or not he is effective for the District, and if the Legislators are willing to work with him. Gary will contact several legislators and ask them if they will continue to work with Rivera. Willie Koenig motioned and Robert Sloan seconded to give the Manager the authority to make calls to legislators and assess Rivera's ability to be effective and act accordingly. Motion carried.
- The Rio Grande Compact Commission meeting will be held in El Paso this year. SAH will attend. Bill Gary and Phil King will also attend.
- John Hernandez discussed the Parasol Dairy matter. John and Josh Smith, EBID legal counsel, attended a hearing in February on the matter. Witnesses for the District were a bacteriologist, Mr. Geoff Smith, who testified that eColi could get in Percha Creek. The air pollution witness, Dave Duboise, also agreed that dust borne eColi could be deposited in Percha Creek. Phil King and John Hernandez were the last two witnesses. They were on record of being in favor of dairy production provided that the dairy uses good operations practices and the site of the dairy was not under risk to damage surrounding property. Dr. Hernandez discussed the following 12 points of concern to the District:

Law of the Rio
Grande
Conference

Lobbyist Contract

RGCC Meeting

Parasol Dairy
Update

1. That the Elephant Butte Irrigation District is on record as being in favor of new and diverse agricultural operations and facilities, provided that the practices followed, and the sites selected, do not pose a significant threat to crops or water quality of the District, nor an undue risk to property.
2. That EBID has been, and remains, very concerned about the location of the ParaSol Dairy, a new, major dairy facility, on Percha Creek a mile or two above Caballo Reservoir and the water resources of the Rio Grande as these waters are the supply for the District, the supply for the City of El Paso, the supply for Texas irrigation districts, and for Mexico. Because District farmers produce many crops that may be eaten without cooking, the threat of bacterial pollution could result in enormous financial losses to our farmers. This is an unacceptable risk to property.
3. That EBID does not oppose the location of the ParaSol dairy at an acceptable site within or near District boundaries. This has not changed. The District has offered, directly to a ParaSol representative, and to the leadership of the New Mexico Dairy Association, help in finding a good site within the boundaries of the District. These offers remain in effect.
4. That the fact presented at the 2007 hearing are those on which the Hearing Officer based her decisions to recommend against approval of a ground water discharge permit for ParaSol and that same facts and conditions prevail in

February 2009. Nothing has changed; the threat to the District's water quality remain the same.

5. That EBID has made consistent efforts in 2008 and 2009 to obtain ParaSol facility plans for review at least 90-days prior to a hearing. On November 20, 2008, EBID sent a letter to the Hearing Officer asking that she request the NMED Ground Water Quality Bureau to obtain and forward design and operational materials needed to review the draft discharge permit prior to the hearing. The Hearing Officer wrote on December 16, 2008 confirming the fact that additional needed design information of the dairy facility would not be made available for review until the time of the hearing. During testimony on February 5, 2009, we heard from Mr. McCatharn and his engineer, Mr. Burak, say that the design of the facility is far from complete and that much of the design remains conceptual. At the February 5, 2009 hearing, we told the Hearing Officer that we can not evaluate the risk of damage to property, nor to water quality based on "conceptual" facility design information.
6. That EBID is concerned that flood stage in Percha Creek will result in this material being eroded from the two 4-acre storm water overflow, unlined ponds and from irrigated-lands and that pollutants will be discharge into Caballo Reservoir. We are concerned that bacterial pollution in Percha Creek and Caballo result in half-an hour to five hours and that the flood flows will pass through the reservoir for downstream diversion by vegetable growing farmers causing an undue risk to property.
7. That EBID is concerned about the possibility of erosion of the east-end of thee Dairy property. At flood-stage Percha Creek is a high-velocity, migratory, arroyo that has had a history of channel shifts. The east-end of ParaSol facility, where two lined ponds are to be located and one unlined pond, could be eroded at some future date because of a southward shift of the main channel. No specific plans have been submitted by ParaSol for the armoring of the south-east corner of their land at its junction with Percha Creek. Erosion of the south-east corner of the proposed facility, where the "green water" pond and the single lined pond that is also to be used to store "green water", would result in catastrophic damage to the water supply in the Reservoir and to the farmers down stream.
8. That EBID is concerned that NMED assurances that the agency will be notified and will take action in a timely fashion are of no value when a spill occurs because of the very short travel time from the Dairy site to Caballo Reservoir.. Any NMED action will come too late to prevent damage to the District's farmers. The proximity of the Dairy to Percha Creek and to Caballo Reservoir creates an undue risk to the property of the Districts farmers.
9. That EBID is concerned because of the possibility, and the probability of a discharge of flood-waters from the dairy, and possibly some "green water", creates an undue risk to the farmers below Caballo that use the flow of the Rio Grande as their water supply. The BOR and the IBWC have both expressed great concern because of the proposed location of a dairy facility immediately above Caballo Reservoir.
10. That EBID is concerned that a direct hydrologic connection will exist between the ground water immediately below the dairy and Percha Creek and that bacterial pollutants and nutrients will be discharged into Percha Creek and that the bacterial pollution could contribute to the exceedence of the surface water quality standards in Caballo Reservoir. We are concerned as this is a point source discharge of pollutants into our water supply.
11. That EBID is concerned that ground water pollutants in the shallow zone immediately below the dairy will exceed the State's ground water standards.
12. That EBID is concerned that wind blown dust and manure from the dairy will end up in Percha Creek causing bacterial contamination of the stream and Caballo Reservoir that could contribute to the exceedence of the surface water quality standards in Caballo Reservoir.

EBID offered to help find a new location for Parasol Dairy and the offer remains open. However, since the hearing in 2007, nothing has changed in the argument from both sides. John Hernandez stated that there was one more chance to submit comments during the post hearing. John will develop a draft of necessary statement of points and design of the Dairy plan. It was also noted that the Parasol Dairy engineer may not have been licensed during the time of discovery and design of the Dairy plan. The District continues to state that the permit needs to be denied because of the problems it will cause downstream of Caballo.

Steve Hernandez updated the board on tlegal matters.

- LRR 240, Safe Harbor Agreement for Mesilla Valley Bosque State Park – waiting for review by Fish and Wildlife. This matter remains open.
- LRR 302, City of El Paso, Montoya Drain – Asked for extension to negotiate a new

discharge permit. Henry is researching giving up a portion of the drain. A survey and appraisal will need to be done. Steve Hubert asked if EP#1 had issued a permit? He stated that the District needs to be in sync with EP#1. This matter remains open.

- LRR 303, Hatch Easements for Work on Placitas Arroyo – We are waiting for Hatch to complete a survey. This matter remains open.
- LRR 308, Garfield Dam JPA – This matter remains open.

Blue Ribbon Task force update. Not much out there. Money is a problem. OSE is cutting ten percent of funding. Travel is limited. Steve said that the Water Trust Fund took a 1.5 million hit as well as .5 mil for the Strategic Water Fund.

Willie Koenig motioned and Ramon Alvarez 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:

Open/Closed
Session

- State ex. rel. D'Antonio vs. EBID (Stream Adjudication)
 - OSE Meeting
 - Threshold #3 Motion
- AWRM Amicus Appeal Brief
- EBID vs. United States BOR; (U.S. Dist. Ct NM) No. CIV 00-1309
- EBID vs. United States BOR and N.M. St. Parks (U.S. Dist. Ct. NM)
- Qwest vs. EBID, 07-CIV-163 (LRR 266)
- Intervention on Parasol Dairy NMED Permit (LRR 289)
- Lions Gate Water vs. OSE
- Implementation of Operating Agreement Settlement
- EBID vs. Qwest

Bill Gary motioned and Jerry Franzoy seconded to return to open session.

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

Adjourn

JAMES SALOPEK, President

WILLIE KOENIG, Secretary