

**ELEPHANT BUTTE IRRIGATION DISTRICT
BOARD OF DIRECTORS MEETING
October 18, 2007**

The monthly meeting of the Board of Directors of the Elephant Butte Irrigation District was held on Thursday, October 18, 2007. The meeting was called to order by President James Salopek on a motion by Willie Koenig, seconded by Bill Gary. Motion carried. All members were present.

EBID Staff present were Gail Norvell, Controller; Richard Bejarano, Water Master; EAC Co-Chair Linda Armijo, Accts. Payable; James Narvaez, Hydrology Director; and Jean Hinsley, Eng./Resource Specialist and Danny Duran, Eng. Land Tech II. Also present were Steve Hernandez and Steve Hubert, Hubert & Hernandez, P.A and John Hernandez, Water Quality Consultant; Rose Fontana, Dudley Williams, Jodi Denning, Carolyn Horner, Steve Wilmeth, Frank Dubois, People for the Preservation of Western Heritage; Erik Ness, NM Farm and Livestock Bureau; Delores Conner, Mayor Pro Tem, Kent Evans and Jose Fietze, Councilmen, City of Las Cruces; Tom and Carol Cooper, Ranchers; Dara Parker, Senator Bingaman's office, Las Cruces; Klaus Wittern, PCS; Les Williamson, Trustee, Mesilla; EreK Fuchs and J.R. Hennessey, NM OSE; Bill Connor, EPEC; Nathan Small; and Marvin Tessneer, The Bulletin.

Robert Faubion motioned and Willie Koenig seconded to approve the minutes of the September 12, 2007 Board meeting as presented. Motion carried.

Willie Koenig motioned and Robert Faubion seconded to approve the minutes of the water transfer hearing held September 12, 2007. Motion carried.

Jerry Franzoy motioned and Joe Nelson seconded to approve the minutes of the closed session Board meeting on budget held October 5, 2007 as presented. Motion carried.

Willie Koenig motioned and Robert Faubion seconded to approve a correction to the minutes of May 9, 2007. The correction was in the section titled "Excess of ROW, Fresquez and Plancarte". The minutes were amended to include a motion by Robert Sloan, seconded by Bill Gary to proceed with Fresquez and deny Plancarte. Motion carried. This motion was inadvertently left out of the May 9, 2007 minutes.

The water supply outlook was presented. The storage totals on October 1, 2007 with a comparison for last year are as follows:

	<u>10/01/2006</u>	<u>10/01/2007</u>
Elephant Butte	352,020	357,600
Caballo	<u>44,370</u>	<u>16,160</u>
	396,390	373,760

Items on the calendar were discussed. Dates include: the start of the 2007/08 maintenance season on October 22nd; a meeting with the OSE in Albuquerque on October 22nd; an impact on climate change meeting in Albuquerque on October 24th; LRGWUO Water and Natural Resources Committee Meeting in Santa Fe, October 29-30th; State Water Plan Ad Hoc Committee meeting in Albuquerque, November 9th; NWRA Conference in Albuquerque, November 7-9th; Oral arguments, 10th circuit court, Denver, Colorado, November 13-15th; Thanksgiving holiday, November 22-23; Qwest Depositions, November 19-20; LRGWUO water and natural resources committee meeting, Santa Fe, November 26th; Water Advisory Committee Meeting, Santa Fe, November 29-30th; and the NM Water Conference in Santa Fe, November 29-30th.

The next meeting of the Board of Directors will be held on November 28, 2007.

Frank DuBoise and Eric Ness gave a presentation for People for the Preservation of Western Heritage. The group gave a video presentation outlining their community expectations and their proposal to protect approximately 302,000 acres from all forms of development by creating two special preservation areas and three rangeland preservation areas. They concluded their presentation by asking for the District's endorsement of their proposal. Mr. Esslinger informed the board that the wilderness

Roll Call

Minutes Approval

Water Supply

Calendar of Events

Change of Meeting Date

Wilderness Act Designation in Dona Ana County

proponent group represented by Jeff Steinborn and Nathan Small had previously come before the Board with their proposed response to the concerns that EBID raised regarding future flood control projects and access to sites already in place and asked the Board for approval. At that time, the Board was hesitant to agree, oppose or support until they could see the proposed amended language written in the legislation on the Wilderness Act. Mr. Esslinger informed the group that EBID wants to investigate early warning sites for flood events and this cannot happen if the Wilderness act bill passes in areas where the watersheds below Caballo conflict with the designated sites in the Act.

Flood and climate control is a big issue and capturing of flood waters is important to the District for future supply and reuse. The District would like to develop ways to capture and put flood water to beneficial use, rather than letting it run into the river, flushing it down stream.

Steve Hernandez, attorney for the District, said that the District is concerned about growth and protecting agriculture. Watersheds below Caballo come to the river and storms happen fast and are sometimes very intense. The District should be able to build flood control dams in the watersheds that presently do not have structures. If this had been done, it could have spared a lot of grief to the people living in the Village of Hatch. EBID should have a seat on the DAC Flood Control Task Force to help make these decisions for the future. Hernandez said that everyone makes a big deal when problems happen, but when nothing catastrophic is happening, no one cares and no money comes forth to do preventative maintenance or even think about flooding. The Board did not act on the proposal and took it under advisement.

Danny Duran and Jean Hinsley presented the special use permits.

1. 07-L-056 – Kit Carson Farms; To operate and maintain (2) existing vehicle crossings, on the Rincon Drain at approximate station 167+93 and the Rincon Lateral at approximate station 1671+56. Assessment, \$2,729.11. Request to waive all fees, \$2,729.11 existing crossings - farm use.
2. 07-L-060 – Jacobo Chavez; To construct, operate and maintain a new vehicle crossing on the Picacho Lateral at approximate station 254+10. Assessment, \$1,024.56. Request to waive admin fees.
3. 07-L-063 – Q-West Communications; To construct, operate and maintain a new buried 6-way multiduct cable line paralleling the Las Cruces Lateral at approximate stations 223+74 to 248+74 for approximately 2500 feet including 2-12" closures. Assessment, \$13,166.82.
4. 07-L-064 – Q-West Communications; To construct, operate and maintain a new buried 2-4" conduits paralleling the Las Cruces Lateral at approximate stations 223+74 to 248+74 for approximately 2,500 feet.. Assessment, \$13,166.82.
5. 07-L-065 – Q-West Communications; To construct, operate and maintain (2) new 12" telephone closures on a portion of the Las Cruces Lateral at approximate station 223+74. THIS PERMIT HAS BEEN VOIDED AND IS INCLUDED IN PERMIT 07-L-063.
6. 07-L-066 – Q-West Communications; To construct, operate and maintain a new buried 2-4" telephone cable line crossing the Houghton Lateral at approximate station 58+53. Assessment, \$2,916.67.
7. 07-L-067 – Q-West Communications; To construct, operate and maintain (2) new 4" buried telephone cable line crossings on the Park Drain and Carver Road at approximate station 285+50. Assessment, \$3,416.67.
8. 07-L-068 – Q-West Communications; To construct, operate and maintain (2) new 4" buried telephone cable line crossings on the Corralitos Lateral and Carver Road at approximate station 16+50. Assessment, \$2,916.67.
9. 07-L-069 – Q-West Communications; To construct, operate and maintain (2) new 4" buried telephone cable line crossing on the Mesilla Lateral at approximate

Special Use
Permits

station 397+85. Assessment, \$3,166.67

10. 07-L-070 – Q-West Communications; To construct, operate and maintain a new buried copper telephone cable and conduit in a 10" pipe crossing the Picacho Lateral at approximate station 13+71. Assessment, \$3,166.67.
11. 07-L-082 – Claudia Valles (ETAL); To operate and maintain an existing vehicle crossing on the Apache Lateral at approximate station 60+35. Assessment, \$952.98. Request to waive all fees. Existing crossing, \$952.98.
12. 07-L-048 – Rio Grande Natural Gas; To construct, operate and maintain a new 2" poly gas line extension of an existing gas line paralleling the Fort Fillmore Spillway for approximately 850 Feet. Assessment, \$15,645.77. Under blanket agreement, \$15,645.77.

Total Assessments, All permits - \$62,269.41

Total Fees requested to be waived - \$19,327.86
\$42,941.55

Bill Gary motioned and Robert Faubion seconded to approve the permits as presented. Motion carried.

Gary Esslinger discussed the proposal and referenced the letter from the First Evangelical Free Church to allow for a flowage easement though their property as well as participate with the construction component of excavating for the bridge structure at an additional cost.

Robert Faubion motioned and Bill Gary seconded to continue working with The First Evangelical Free Church. Motion carried.

Ricardo Bejarano gave the operations report for the month of September, 2007 as follows: Farm Deliveries, 2,573; Acres Irrigated, 48,567; AC/FT Charged to Farmers, 19,140; Actual Total Diversion, 37,874; Allotment Balance, 42,302; Breaks, 0; Run over, 0; 2007 Diversion Efficiency 51% as compared to 2006 at 45%. Mr. Bejarano discussed a break in September that was the result of vandalism. This incident took place on the Los Nogales Estates area in Mesilla Park. The turn out was found opened at 05:30 a.m. By the time it was found, there was a substantial amount of water wasted. There was water in the yards of several houses, as well in the street on Mimosa Drive. Water was pumped out and away from houses into an empty lot and pumping continued for approximately 6 hours. One house sustained water damage, but no claim for damages has been filed to date.

Mr. Bejarano gave an update on the ending of the 2007 water season.

James Narvaez gave the Hydrology report for the month of September, 2007. The report is as follows: Orders totaled 276137; Actual Diversion was 267759; using - 2,843 AC/FT; Estimated Carriage Losses were 48039; Adjusted Diversion 219720; Diversion vs. Order was -1.0%; Total Spill was 7928, % of Diversion Spilled was 3.0%, Charged to Farmers, 143956; and Delivery efficiency, 65.5%.

John Hernandez, EBID Water Quality Consultant, updated the board on a proposal to build a dairy (Para Sol Dairy) in the vicinity of Caballo Lake. The proximity to Caballo lake poses a threat to farmers due to the Ecoli bacteria that will be carried in irrigation water if the dairy holding ponds should breach. Tom Simpson said that this should be monitored closely and that we should send Dr. Cadena to the public meeting on October 24 to hear the Dairy's proposal. The Board took no action until more evidence and factual information was available.

Linda Armijo, Payroll Clerk and Employee representative on the Employee Advisory Committee (EAC), gave the EAC report. Ms. Armijo informed the Board that the next meeting of the EAC Representatives would be October 22nd. Gail Norvell will update the EAC on budget requests. Ms. Armijo reported that the EAC had a full agenda with 10 topics to be discussed. Following the meeting on the 22nd, the EAC will go to each yard for meetings with all EBID personnel.

Operations
Report

Hydrology
Report

Para Sol Dairy
Discussion

EAC Report

Gail Norvell, Controller, presented the Financial Fact Sheet for the month of September, 2007. The fact sheet is as follows: Cash in the bank totaled \$115,818; assessments receivable totaled \$264,163; and investments totaled \$3,514,949 for a grand total of \$3,894,930. This amount reflects an increase in assets of \$1,141,393 over September, 2006. Extraordinary costs were: Legal Fees, \$30,133. Extraordinary receipts were: Special use fees \$3,420. Conserved water sold year to date was \$597,011 as compared to \$74,126 in 2006.

Financial Report

Also presented were the financial statements for the months of August and September, 2007.

Ms. Norvell presented an amendment to the FY 2006-27 budget. Tom Simpson motioned and Willie Koenig seconded to approve the budget as amended. Motion carried. Board Resolution 2007-03 is attached to these minutes.

FY 2006-07 Budget Amendment

Ms. Norvell presented the 2007-08 budget for approval. The budget had previously been discussed at a special closed session workshop of the Board held October 5th. Robert Faubion motioned and Bill Gary seconded to approve the budget as presented. Motion carried.

FY 2007-08 Budget Approval

The 2007-08 budget includes assessments of \$75/per WRA for farm rates for all allotted water and comparable assessments for flat rate accounts. The assessment is to include allotted water rather than separate conserved water later in the irrigation season.

A motion to break for lunch was made by Robert Sloan, seconded by Robert Faubion. Motion carried. Following lunch, a motion to reconvene was made by Jerry Franzoy, seconded by Bill Gary. Motion carried.

Lunch Break

Following the lunch break, Ms. Norvell presented the Water Conservation Reloan loan agreement for Board review and approval. Motion to approve the new agreement was made by Robert Faubion, seconded by Robert Sloan. Motion carried.

Water Conservation Reloan Fund Renewal

On the matter of the sale of property on the Del Rio Drain, the second appraisal came in at \$23,000 for 2.17 acres of easement. The previous appraisal was \$16,000. The property is a portion of an abandoned drain off Westwind Drive. Ms. Norvell asked if the Board was ready to sell the property for the \$23,000 price. Mr. Esslinger said that this was a chance to get rid of a nuisance piece of property filled with Salt Cedar and dips that fill with water and breed mosquitoes. The board felt that more investigation should be done to see if other adjoining property owners would be interested in buying a portion of the property. Tom Simpson motioned and Bill Gary seconded to table the matter. It was recommended to staff to send the District's engineering department to survey and decide if the lot adjoins other properties and to determine if the other properties would have legal access and to further review the appraisal for proper value for sale. No action was taken by the Board.

Del Rio Drain Land Sale

Ms. Norvell presented Robert Rivera's contract for Lobbyist services for renewal for the year beginning November 1, 2007. Motion to renew the contract by Robert Sloan, seconded by Robert Faubion. Motion carried.

Lobbyist Contract Renewal

Gary Esslinger gave the Manager's update for the month of October, 2007. Topics discussed include:

Manager's Update

- Mr. Esslinger informed the board that the district had just received another \$1mill from the Governor's OSE project funding agreement. This grant fund would be administered by the Office of the State Engineer and the funds could be used for telemetry, monitoring and metering. Motion to approve by Jerry Franzoy, seconded by Robert Faubion seconded. Motion carried.
- The well meter program is going well. All wells have been inspected. Constituents still must comply with the metering order. The Reloan program will help them with the installation and they can apply for funding. If EBID determines that the meter discharges into EBID facilities benefit the District, there will be no charge to the constituents.

- WRRRI Conference is November 29th and 30th. Gary Esslinger and Steve Hernandez will attend.
- Esslinger reported on the Managing for Excellence Conference he had attended in Portland, Oregon. The big push is to 'right size' the BOR only in the technical service center in Denver. The District will have to continue to be vigilant in its attempt to right size the RGP.
- Finally, Esslinger reported on the Western Governors Association conference attended this month. The primary topic of the conference was related to climate change and the concern for reusable supply coming from the monsoon season rather than snow melt runoff.

Steve Hubert and Steve Hernandez gave a brief legal update.

Legal Update

- Hernandez reported on the Interim Water Commission meeting that was held in Ruidoso. He reported that the Interim Water Commission is the biggest committee in the legislature with 32 members. The beginning of the meeting was focused on the Ruidoso sewage treatment plant. The rest of the meeting concerned ongoing adjudications. Steve testified about how EBID had been allowed by Judge Valentine to be an expert witness in each case involving an EBID member. He also explained how EBID had worked with the Utton Center on providing assistance to other water right holders. Judge Valentine, the Special Master from the Pecos and the Court administrator for adjudications testified on how the adjudication statutes might be changed in the legislature this year to speed up the adjudications. The two big changes would be removing the OSE as a defendant and making him an expert witness and putting the burden on water right holders to register their water rights. The members of the committee were clearly looking at how to adjudicate the water rights in the middle Rio Grande.
- Steve Hubert reported the following:
- There is a meeting scheduled with the OSE regarding the status of the hydrology model, the D3 curve and our Offer of Judgment in the Stream Adjudication.
- In the Texas Federal District Court case, the United States circulated a motion for settlement which was rejected. A status conference to continue the litigation will be held on November 30 in El Paso. Someone from the board needs to attend with the attorneys.

Jerry Franzoy motioned and Bill Gary 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

- *State ex rel. D'Antonio vs. EBID (Stream Adjudication)
- *AWRM – LRG Basin Specific Regulations Dispute
 - Appeal from Judge Reynolds' Decision
- *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) No. CIV 90-95
- *EP#1 vs. EBID and BOR (U.S. Dist.Ct.Texas) No. CIV EP 07CA0027
 - Operating Agreement Negotiations
 - D3 Curve Implementation
 - Negotiations meeting in Albuquerque, 10/22/2007
- *Qwest vs. EBID, 07-CIV-163, LRR 266
- *Crecencio Cardona vs. EBID; DO21-CV2007-119
- *Victor Sanchez vs. EBID; Notice of Tort Claim
- *Treasurer-Manager's Evaluation

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.

Following closed session, Bill Gary motioned and Jerry Franzoy seconded to approve the Treasurer-Manager's salary as presented. Motion carried.

There being no further business, Jerry Franzoy motioned and Bobby Sloan seconded to adjourn the meeting. Motion carried.

Treasurer-Manager
Evaluation

Adjourn

JAMES SALOPEK, President

BOBBY SLOAN, Secretary