

**ELEPHANT BUTTE IRRIGATION DISTRICT  
BOARD OF DIRECTORS MEETING  
June 13, 2007**

The monthly meeting of the Board of Directors of the Elephant Butte Irrigation District was held on Wednesday, June 13, 2007. The meeting was called to order by President James Salopek on a motion by Tom Simpson, seconded by Ramon Alvarez. Motion carried. All members were present.

EBID Staff present were Henry Magallanez, Engineer and Jean Hinsley, Engineering Resource Specialist; Gail Norvell, Controller; Richard Bejarano, Water Master and Arturo Armenta, Ray Barela and Sam Gonzalez, Assistant Water Masters; EAC Co-Chairs Tom Hansen, HR and Linda Armijo, AP Clerk; James Narvaez, Hydrology Director; and Leo Barrett, Maintenance Project Director.

Also present were Steve Hernandez and Steve Hubert, Hubert & Hernandez, P.A; Dr. Phil King, Water Quantity Consultant; Bud Starnes, NM Dept of Ag.; Adrienne Widmer and Fernando Ortiz, City of Las Cruces; Francisco Rubio, Constituent; Eric Fuchs, Office of the State Engineer; and Marvin Tessneer, The Bulletin.

Bill Gary motioned and Tom Simpson seconded to approve the minutes of the May 9, 2007 Board meeting as presented. Motion carried.

Bill Gary motioned and Willie Koenig seconded to approve the minutes of the Suspension and Transfer Hearing, 2007-S&T-05 held May 9, 2007. Motion carried.

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

	<u>6/01/2006</u>	<u>6/01/2007</u>
Elephant Butte	305,060	601,320
Caballo	53,120	68,050
	358,180	669,370

Items on the calendar were discussed. Dates include: City of Las Cruces Water Symposiums to be held on June 13, 20 and 27; LRGWUO Tech Committee Meeting, June 21; Surface Water Treatment Plant Tour in Bloomfield, NM on July 9<sup>th</sup>; the Second Stake Holders Meeting on July 13<sup>th</sup>; LRGWUO Tech Committee Meeting on July 19<sup>th</sup> and the NWRA conference in Monterey, California July 25-27<sup>th</sup>.

The next meeting of the Board of Directors will be held on July 11, 2007.

Leo Barrett, Maintenance Project Director gave the maintenance report for the 2006-07 maintenance season. Mr. Barrett reported on FEMA work in progress, removal of sediment from Mc Lead, Reed Thurman, and South Picacho Dams, and items of surplus equipment going to auction, i.e. heavy equipment, computers and office equipment. Ms. Armijo, EAC advisor, asked that the employees be notified of the equipment going to auction. There was interest from employees to bid on items at the auction. Mr. Barrett and Ms. Norvell discussed equipment to be sold at public auction. The District will sell obsolete, worn-out, and unusable equipment and certifies that the computer equipment has been sanitized and erasure of hard drives is complete. Bill Gary motioned and Willie Koenig seconded that we sell the assets at public auction. Motion carried.

Mr. Barrett discussed spraying of weeds. Tom Simpson suggested that the first spray needs to come sooner in the year and Mr. Barrett agreed. Mr. Nelson said that he could see where the weeds were sprayed in the fall of last year in the southern area of the District. Mr. Barrett said that the District is looking into purchasing mowers and sprayers that would attach to the excavators to even address the vegetation problem in the drains.

Henry Magallanez, presented the special use permits.

Under Moratorium:

07-L-033 – Dona Ana County; To construct, operate and maintain a new vehicle

Roll Call

Minutes Approval

Water Supply

Calendar

Maintenance Report

Disposition of Obsolete, Worn-out and Unusable Equipment at Auction

Weed Control

Special Use Permits

crossing on the Colorado Spur Drain at approximate station 2+10. Assessment, \$3,320.73. Waive all fees, \$3,320.73.

Total Assessments under Moratorium: \$3,320.73, waived.

Non Moratorium:

07-L-036 – Victor Diaz/Dilaso Inc.; To construct, operate and maintain a new vehicle bridge crossing on the West Drain at approximate station 686+60, and harvest gates at (4) locations on the West Drain at various stations. Assessment, \$6,155.32. Request to waive Admin fees, \$3,333.33.

07-L-037 – Salvador Nunez; To construct, operate and maintain the installation of (4) new harvest gates for crop protection (2) on the Nemexas Drain at approximate stations 646+20 and 633+50 and (2) on the La Union East Lateral at approximate stations 135+10 and 140+60. Assessment, \$4,059.34. Request to waive admin fees, \$2,666.67.

07-L-040 – Michael Ramirez: To operate and maintain an existing vehicle culvert crossing on the Park Drain at approximate station 268+00. Assessment, \$1,766.14. Request to waive all fees – existing crossing farm use. \$1,766.14.

07-L-041 – El Paso Electric: To construct, operate and maintain a new aerial electric power line crossing the Picacho Drain at approximate station 161+10 and parallel from approximate stations 165+80 to 161+10 for approximately 470 feet. Assessment, \$15,172.23.

07-L-042 – Robert Sloan: To construct, operate and maintain the installation of (2) new harvest gates on the East Bank of the West Drain for crop protection at approximate stations 715+.0 and 698+50. Assessment, \$2212.91. Request to waive all fees, \$2212.91.

07-L-043 – NMSU: To construct, operate and maintain a new aerial fiber optic cable line crossing the Houghton Lateral at approximate station 61+06 and piggyback existing El Paso Electric power line. Assessment, \$2,562.43.

07-L-044 – NMSU: To construct, operate and maintain a new aerial fiber optic cable line crossing the Las cruces Lateral at approximate station 496+42 and paralleling from approximate station 492+77 to 496+42 and piggybacking existing El Paso Electric Power line. Assessment, \$10,527.77.

Total assessments all permits: \$42,456.29

Total Fees waived, \$9,979.05

Total Assessments paid, \$32,477.24

Mr. Magallanez recommended approval of all permits. Willie Koenig motioned and Robert Faubion seconded to approve the permits as presented. Motion carried. Robert Sloan abstained from vote.

The matter of Gray Fox Subdivision and Special Water User Association leases was discussed. This matter had been tabled in May so that the Board could get a better understanding of the process. Mr. Magallanez passed out copies of the SWUA policy for board information and education and presented a power point on the transfer process. After the presentation, Tom Simpson motioned and Robert Faubion seconded to approve the lease from Grey Fox Subdivision to the City of Las Cruces. Motion carried.

Special Water  
User  
Association  
Lease – Gray  
Fox Subdivision

Mr. Magallanez discussed a trip to Costa Rica with NMSU to present a paper entitled '*Estimating Riparian and Agricultural ET Through Remote Sensing In New Mexico*', he had published along with Dr. Samani from NMSU. The question was whether the Board would agree to pay Mr. Magallanez's per diem while out of the country. NMSU would pick up his travel expenses. Jerry Franzoy so moved seconded by Bill Gary. Motion Carried.

Engineer's Trip  
to Costa Rica

The matter of the trip to Bloomfield, New Mexico to tour a modular surface water treatment plant was discussed. Gary Esslinger, Henry Magallanez, and Fernando

Modular Surface  
Water Plant

Cadena will go on this tour which is scheduled for July 9<sup>th</sup>.

Stahmann Farms requested by letter to transfer District ROW that is within the Santo Tomas Farms back to Stahmann Farms. The request to release the ROW and easement to Stahmann has been a topic raised in the past. Engineering requested to proceed with gathering information and determine SHPO and DFA requirements before responding to the request. The request to turn laterals back to the farmers has been done before, i.e. Weeks and Raymond laterals. The problem is that it is difficult to get District equipment in to do maintenance when ROWs are surrounded by orchards and other encroachments. Stahmann would take over maintenance and the District could set up the heading of the Santo Tomas with telemetry so that they could also distribute the water without EBID ditchriders. Stahmann's would be responsible to move the water and insure delivery to downstream users. The benefit to the District would be not to have to clean drains or maintain the canals and would turn over operations to Stahmann's.

Robert Faubion motioned and Jerry Franzoy seconded to proceed with the process to investigate the release of ROW to Stahmann. Motion carried. Henry will come back before the Board as more information becomes available.

Ricardo Bejarano gave the operations report for the month of May, 2007 as follows: Farm Deliveries, 1,718; Acres Irrigated, 30,423; AC/FT Charged to Farmers, 11,703; Actual Total Diversion, 11,530; Allotment Balance, 100,816; Breaks, 2%; Run over, 0; 2007 Diversion Efficiency 36% as compared to 2006 at 41%.

James Narvaez gave the Hydrology report for the month of May, 2007. The report is as follows: Orders totaled 99,301; Actual Diversion was 98,585; Using 716 AC/FT; Estimated Carriage Losses were 17701; Adjusted Diversion 80,885; Diversion vs. Order was 0.7%; Total Spill was 4,003, % of Diversion Spilled was 4.1%, Charged to Farmers, 49,106; and Delivery efficiency, 49.8%.

The Board discussed the low efficiency rating in the river below Caballo and the District's operations units. This was due to rain events in May and the lack of farmer orders. The Board discussed a proposal to divert spill water to pecan orchards, alfalfa or row croppers who could take the water instead of spilling out a wasteway if orders were cancelled. Purchase of this water for \$10 per ac/ft would not come off of a farmer's allotment if they would take it at anytime it was available and for as long as it lasted. The idea is to find a home for the ordered water before letting the water go out the spillway would improve the efficiency and send less water into Texas. Ditchriders should spill at the end of lateral if they have to instead of spillways at the headings of the lateral to keep water in the District's canals as long as possible. Water records and the tax department will work out the process to implement the sale of spill water. It was felt that if a farmer is out of his allotment and pumping, he'd take the water any time he could get it.

It was also discussed that a farmer could call his ditchrider to tell him that he can take the water or visa versa. Tom Simpson asked what would happen during rain events and whether that water would be available to farmers. Mr. Esslinger replied that it would be, but that flood water is full of silt and can present problems; however, many farmers will take that water. The Board agreed to try this proposal to see if river efficiencies would improve.

Tom Simpson motioned and Ramon Alvarez seconded that we utilize the concept of utilizing spill water by finding a home with an existing farmer at \$10 per ac/ft and the farmer not be charged against allotment. Motion carried.

The matter of setting a cut-off date for the sale of allotment water was discussed. The board agreed not to set a cut-off date at this point in time because of the short water year.

Robert Faubion suggested that we try to track the weather on the website to monitor storms. Weather Bug is a system that tracks Doppler radar. Ron Mears is trying to get NOAH to allow us to use its radar software so the District can determine the

Tour

Stahmann –  
Request To  
Lease Land To  
Santo Tomas  
Farms

Operations  
Report

Hydrology  
Report

Efficiency Rating  
Discussion

Spill Water  
Concept

Cut-Off date for Sale  
Of Allotment Water

Weather Tracking

intensity of a storm based on Doppler radar. It's important that the District get a 'heads up' to evacuate water from the irrigation canals in case of flood events. Staff will continue to research the best way to receive this type weather information.

Tom Hansen, HR Director and Linda Armijo, Accounts Payable Clerk gave the Employee Advisory Committee (EAC) report. The minutes from the June 7<sup>th</sup> 2007 meeting were presented for board information. New EAC representatives are now in place and outgoing reps were presented with certificates for their service on the EAC.

EAC Report

The budget request process was explained to the new EAC members, and the list of items to be considered by the EAC for the budget request was discussed. From the list of six items, the committee voted and three were selected for the 2007-2008-budget request and three were tabled. Items that will go to the Controller and the Budget Committee for consideration are as follows:

1. A 3% increase in hourly wages for all EBID employees across the board, to be implemented the first full pay period of the new fiscal year. The COL increase will be in addition to the merit Increase to be given to each employee based on his/her evaluation.
2. A \$250 Christmas bonus for all EBID employees across the board.
3. An increase in the current PERA match of 7% to 9.15%, the Municipal Plan 2.

Items that the EAC representative voted to table are as follows:

1. Increase in annual and sick leave accrual for all EBID employees.
2. One additional paid holiday for all EBID employees
3. Increase in the cap on sick leave with possible 50% sell back at retirement only.

At this point the Board went into closed session to discuss the operating agreement and allocation per EBID vs. United States BOR (US Dist. Ct. NM) No. CIV-00-1309, Operating Agreement/D3 Curve Pursuant to Section 10-15-1-h, NMSA of the New Mexico Open Meetings Act. Joe Nelson moved and Robert Faubion seconded. Motion carried.

Open/Closed Session

Bill Gary motioned and Robert Sloan 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 topic was discussed.

Jerry Franzoy motioned and Robert Sloan seconded to increase the current allotment by an additional 6 inches, for a total of 24 inches. Motion carried.

Allotment Increase

Discussion on adding additional flat rate weekends during the rest of the irrigation season was held. On a split decision, it was decided to add one more flat rate weekend for the month of July until it could be determined if there could be additional flat rate deliveries made later in the season. Motion carried with 5 members voting yes and 4 members voting no.

Additional Flat Rate Weekend

A motion to break for lunch was made by Robert Faubion, seconded by Willie Koenig. Motion carried. Following lunch, a motion to reconvene was made by Bill Gary, seconded by Joe Nelson. Motion carried.

Lunch Break

Gail Norvell, Controller, presented the Financial Fact Sheet for the month of May, 2007. The fact sheet is as follows: Cash in the bank totaled \$120,484; assessments receivable totaled \$370,010; and investments totaled \$5,043,903 for a grand total of \$5,534,397. This amount reflects an increase in assets of \$671,282 over May, 2006. Extraordinary costs were: Legal Fees, \$31,170. Extraordinary receipts were: Special use fees \$7,722.

Financial Report

Also presented was the financial statement for the month of April, 2007.

Ms. Norvell discussed the following matters:

Bonding Board members is estimated to cost \$100 per year per board member. This will be done for the current year for board member terms to expire 12/31/07 to be renewed for Board member terms of election. BOD members were asked to fill out

Board Member Bonds

Meter Loan Program

the bond application to be submitted.

Meter Loan Program – Meter order and installation estimates have been submitted in the amount of \$571,000 to the ISC. Loan funds will be 75% of that amount due to the 25% down payment from constituents at project implementation. A new appropriation for meter reloan funds may be available for 2008. Applications for meters are being taken.

Water Conservation Reloan Program – Ms. Norvell reported that all Water Conservation Loans are paid off to the ISC by EBID effective 6/30/2007. Loan payments from constituents are receivable to EBID until paid in full. She said that the District has requested water conservation funding for the FY 07-08 in the amount of \$500,000 which is the total amount that the ISC has in the fund.

FY 2005-06 Audit – The FY 2005-06 audit was presented for approval at the May meeting. Tom Simpson asked that the board wait until the June meeting to approve the final audit report in order to give board members time to study the audit report. Bill Gary motioned and Robert Sloan seconded to approve the final audit report presented at the May Board meeting. Motion carried.

Robert Rivera's Lobbyist Contract – The Board was informed that Mr. Rivera's contract was for a set amount for annual period, pro rata from January to October 31. A renewal contract will be brought for a new FY beginning Nov. 1

asked that it be clarified with Mr. Rivera that he keep his services within the set amount per year which ends with the end of the District's fiscal year, October 31 rather than January 1<sup>st</sup> which is the end of the first year of his contract. Carlsbad is paying \$400 per month toward his contract.

Professional Service Contracts – Dr. Phil King's two contracts (engineering and expert witness) were renewed for the period 7/1/07 to 6/30/08. the contract has an option for renewal for two more years.

Dr. Fernando Cadena's contract was renewed for the period 7/1/07 to 6/30/08.

Dr. Tom Maddock's contract was renewed for the period 7/1/07 to 6/30/08.

Legal Services - Contract for H&H, P.A. will renew in August and will be brought before the Board in July.

The Board acted on renewing King (2 contracts) and Cadena and Maddock – Motion to approve these 4 contracts by Bill Gary, seconded by Robert Sloan, motion carried.

- ISC requested copies of 'as-built' construction diagrams for primary river diversion structures within EBID boundaries. ISC's letter was non-responsive and the district will wait for further correspondence from ISC to determine if this should be allowed.
- AWRM State Wide Decision by the court was damaging to the OSE in the opinion of the legal staff. The ruling stated: (1) Prohibits the OSE from determining the priorities of water rights as part of his priority administration process, except to the extent that they are already determined by courts through judicial decrees or by the OSE through issuance of a license to appropriate water. (2) Process of appealing an OSE priority administration decision violates the constitutional guarantee of due process of law. (3) Priority administration process could not be used as a forum for the OSE to determine priorities among competing water right users.

The OSE may have to adopt a new appeals process. The OSE's new rules would get appeals heard faster. However, farm by farm inspection and issuance of licenses have never happened in the LRG. Judge Valentine has ordered everybody to be joined in the LRG so this should help in the process. The District is still waiting on the OSE to determine irrigated acreage in EBID.

Gary Esslinger gave an update for the month of June, 2007. Topics discussed

Water Conservation  
Reloan Program

FY 2005-06 Audit  
Approval

Lobbyist Contract

Professional  
Services Contract  
Renewals

Legal Update

Manager's Update

include:

- Managing for Excellence in Denver rained out and Gary Esslinger and Steve Hernandez were unable to attend. Steve Hernandez gave an update that the BOR was struggling with their policy on 'Right Sizing'.
- Ground Water Modeling Development Association – Gary Esslinger attended conference in Colorado regarding pumping curtailment in the West. Kansas, Wyoming, Nebraska, Utah, Idaho and Colorado and east side of NM were having difficulties because of the mining of aquifers and the impact of drought. In Colorado, they cut off farmers who had already planted seed and many farmers went under. This had never been done before in central Colorado.
- Annual dues for the NWRA Irrigation and Conservation Caucus assessment in the amount of \$960.40 are due. Willie Koenig motioned and Bill Gary seconded to pay the assessment. Motion carried.
- FFA update – Oberstar's amendment to the Clean Water Act was discussed. This amendment could create regulations and curtailment of how the District cleans its drains and canals. Dr. Hernandez is helping out tremendously with his expertise on water regulation issues. NWRA is using the District as a test case in how this amendment would affect the District if the amendment passed. Steve Hernandez is working on a white paper with other NWRA representatives to refute the Amendment and show what damages could occur. The white paper is going out to all congressional delegates.
- WRRRI Annual Conference in Santa Fe - November 29-30. Motion to allow Gary Esslinger to register early because he was on the advisory committee was made by Bill Gary, seconded by Willie Koenig. Motion carried.

Willie Koenig 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:

- Threat of Texas/NM Supreme Court Action on Rio Grande
- State ex rel. D'Antonio vs EBID (Stream Adjudication)
- AWRM –LRG Basin Specific Regulations Dispute
  1. Meeting with NMSU Board of Regents
- EBID vs. United States BOR (U.S.Dist.Ct.NM) No. CIV 00-1309
  1. Operating Agreement/D-3 Curve
  2. 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 EP 07CA0027
- Qwest vs. EBID, 07-CIV-163, LRR 266

Bill Gary motioned and Willie Koenig 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.

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

Managing for Excellence

GMDA Conference Report

NWRA Irrigation Caucus Dues

FFA Update

WRRRI Conference

Closed/  
Open Session

Adjourn