

**ELEPHANT BUTTE IRRIGATION DISTRICT
BOARD OF DIRECTORS MEETING
October 8, 2008**

The monthly meeting of the Board of Directors of the Elephant Butte Irrigation District was held on Wednesday, October 8, 2008. The meeting was called to order by President James Salopek on a motion by Ramon Alvarez, seconded by Willie Koenig. Motion carried. Robert Sloan was absent.

EBID Staff present were Gail Norvell, Controller; Henry Magallanez, Engineer; James Narvaez, Hydrology Director; Valerie Beversdorf, Computer Resources Director; Richard Bejarano, Water Master; Leo Barrett, Maintenance Project Director.

Also present were Steve Hernandez, Steve Hubert and Lee Peters, Hubert & Hernandez, P.A.; Phil King, Hydrology Consultant; John Hernandez, Water Quality Consultant; Calvin Chavez, Office of the State Engineer; Sammy Singh Jr., EBID Constituents; and Bud Starnes, NMDA.

Ramon Alvarez motioned and Willie Koenig seconded to approve the minutes of the September 10, 2008 Board meeting as presented. Motion carried.

Robert Faubion motioned and Bill Gary seconded to approve the minutes of the Water Transfer Hearing 2008-S&T-9 held September 10, 2008 as presented. Motion carried.

Willie Koenig motioned and Ramon Alvarez seconded to approve the minutes of the Special Board meeting held September 24, 2008 as presented. Motion carried. The purpose of the meeting was reclassification of suspended lands and adoption of the FY 2008-09 budget.

Robert Faubion motioned and Tom Simpson seconded to approve the minutes for the special board workshop on flat rate scheduling held August 22nd. Motion carried.

The water supply outlook was presented. The storage totals on September 1, 2008 with a comparison for last year are as follows:

	<u>10/01/2007</u>	<u>10/01/2008</u>
Elephant Butte	357,600	576,180
Caballo	<u>16,160</u>	<u>25,620</u>
	373,760	601,800

Items on the calendar were discussed. Dates include: a memorial service for International Boundary and Water Commissioner Carlos Marin October 10th; the WRRI Annual NM Water Conference in Albuquerque, October 21-22nd; a meeting with the State Engineer on October 29th; the EBID General meeting on November 10th; a hearing with Qwest on November 17th; and the NWRA Conference in San Diego, California November 18 through 21.

The next meeting of the Board of Directors will be held on Wednesday, November 12th, 2008. The office will be closed November 11th for Veterans Day and November 27-28th for the Thanksgiving holiday.

Henry Magallanez, Engineer, gave the Engineering Department report:

Henry presented the Special Use Permits for the month October, 2008 as follows:

Under Moratorium

- 08-L-050—City of El Paso; To construct, operate and maintain an existing storm water discharge into the Montoya drain from the state line to the Rio Grande, approximate stations 0+00 to 76+50.
- 08-L-051 – City of Las Cruces; to construct, operate and maintain a new buried 8" sewer line connecting to an existing line for approximately 1,650 LF. For Agave Casitas Subdivision parallel and crossing a portion of the Tortugas arroyo.

Roll Call

Minutes
Approval

Water
Supply

Calendar of
Events

Engineer Report

Special Use
Permits

- 08-L-053 – NM DOT; to construct, operate and maintain the replacement of an existing bridge crossing the Placitas arroyo.

Non – Moratorium

- 08-L-049 – Stahmann Farms; to operate and maintain a new vehicle culvert crossing on the Alamo drain at approximate station 0+00. Assessment, \$1,766.67. Request to waive all fees, \$1,766.67.
- 08-L-054 – Stahmann Farms; to replace, operate, and maintain an existing vehicle culvert crossing on the Del Rio drain at approximate station 765+10. Assessment, \$1,766.67. Request to waive all fees, \$1,766.67.

Total Assessments For All Permits \$3,533.34
Total Fees Requested To Be Waived 3,533.34
\$0.00

Henry recommended approval of the two permits for Stahmann Farms with fees waived because of agricultural use. Robert Faubion so moved and Bill Gary seconded. Motion carried.

On permit number 08-L-050, City of El Paso, discharge permit into Montoya drain, this was a 50 year special use permit to use the Montoya and Nemexas drains, under the 6A/6B contract for storm water discharge. It was felt that there were not enough facts available to reissue a temporary use permit and further research was necessary. Henry suggested that the District pursue a joint permit with EP#1 because of the 6A/6B JPA. EP#1 is interested in a discussion to see if it would be feasible to work on a joint permit. Both districts may consider another option to sell the drain to the Public Service Board of El Paso. This would be a sale of approximately 20 acres of land. However, there may be Clean Water Act implications with the sale. It was decided to appoint a committee to study the issue further and include EP#1. A letter will be sent to EP#1 to start the process. Bill Gary motioned to table the matter. Willie Koenig seconded. Motion carried. It was also decided to include Dr. Hernandez in the discussions regarding the option of selling the drain to Texas because of the CWA implications and environmental issues.

The matter of the Thielman property exchange (Thielman v. EBID, CV-2008-1553, LRR 294) will be discussed in closed session due to the fact more litigation may be forthcoming

Mr. Magallanez presented two resolutions for Water Trust Board (WTB) grant applications to be approved by the Board. The Resolutions numbered 2008-07 and 2008-08 are for WTB grants. The District is cooperating with the South Valley Mutual Domestic Board to develop a surface water treatment plant. Robert Faubion motioned and Bill Gary seconded to approve the motion to move forward with the grant applications. Motion carried.

Water Trust
Grant
Agreements

Leo Barrett, Maintenance Project Director, gave the Maintenance Department update. Leo reported that instead of seeking one brand new excavator, the District is looking into the purchase of two good used excavators to help during the monsoon season. He reported that farms next to arroyos are in danger. The issue of dikes breaking from the volume of rain water coming hard and fast into the numerous arroyos and then flowing into the irrigation district is becoming more of a wide spread problem. The new excavators will be used to clean up major flood control issues since the County is not addressing the problem adequately. The flood events last month do not qualify for disaster and therefore do not meet the criteria for FEMA funds. Legislative changes need to occur as well as more public awareness.

Maintenance
Update

Leo discussed weed control. He reported that the department will aggressively spray before frost this year, and then start again in January, 2009. Tom Simpson asked if spraying or mowing worked better. Spraying is cheaper than using the tractors and works better if you can catch the weeds in the right stage of growth. The department will experiment with a stronger mix in areas where the mowers can't get in. Leo reported that

some Ditchriders are being trained to mow when water is not running.

Ricardo Bejarano, Water Master, gave the operations report for the month of September, 2008 as follows: Farm Deliveries, 2,093; Acres Irrigated, 44,080; AF Charged to Farmers, 16,969; Actual Total Diversion, 34,572 AF; Allotment Balance, 51,673 AF; Breaks, 2; Run over, 0; 2008 Diversion Efficiency 49% as compared to 2007 at 51%. Total breaks for the 2008 irrigation season to date were 22, and 0 runovers.

Operations
Report

The issue regarding the lack of BOR data was a concern regarding the allocation balance. Using 1000-1500 ac/ft per day will determine the fact that EBID will be out of water by October 17th. No final charges from the BOR since May 2008 has caused uncertainty. Demand should be down, but farmers want the last surface water irrigation. Robert Faubion stated that as long as the two districts were agreeing on what was left, that was more important than concurring with the BOR who has not provided the reports necessary to determine allocation balances. EBID staff reports that BOR has not submitted final report from 2007. EBID is expecting a credit from last year for over charges to the District. The BOR has not upheld the Managing for Excellence (M4E) obligation to the Operating Agreement. John Poland's letter is off base and does not address the issue. Poland misconstrued the intent of his letter, and it does not address the issue of accountability. Gary and Steve Hubert will draft a letter to address all the inadequate responses to the District's concerns.

Late BOR
Reports

James Narvaez discussed an amendment to the Spill Water Policy – OP112 that was approved at the September 2008 meeting. Clarification language to disallow spill water to be delivered to a field for which a pending order had been cancelled for the sole purpose of receiving spill water. Motion by Bill Gary and seconded by Willie Koenig to accept the amendment to the policy. Motion carried.

Spill Water
Policy
Amendment

James Narvaez, Hydrology Director, gave the Hydrology Department report for September, 2008 is as follows: Orders totaled 295,847 AF; Actual Diversion was 296,276 AF; Using 430 AF; Estimated Carriage Losses were 53,054 AF; Adjusted Diversion 243,223 AF; Diversion vs. Order was -0.1%; Total Spill was 7,931 AF; % of Diversion Spilled was 2.7%, Charged to Farmers, 169,142 AF; and Delivery efficiency, 69.5%.

Hydrology
Report

The end of the 2008 irrigation season was discussed. It was decided that the last date to order water would be October 10th at 4:30 p.m. and the district could not guarantee water after the 17th of October. The BOR had not supplied adequate data to determine final allocation balances to each district.

End of Season
Shut Down

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

The Financial Fact Sheet for the month of September, 2008 is as follows: Cash in the bank totaled \$177,052; assessments receivable totaled \$264,608; and investments totaled \$2,106,950 for a grand total of \$2,548,609. This amount reflects a decrease in assets of \$(1,346,320) over September, 2007. No extraordinary costs were presented. Extraordinary receipts were: Special use fees \$4,050. Also presented was the financial statement for August, 2008.

Controller Report
Financial Report

Gail reported that work was still ongoing on the Tortugas RFI in order to proceed. She will set up meetings with the Executive Committee to discuss joint tenure and long-term lease alternatives.

Tortugas RFI

Gail reported that an RFP for two good used excavators has been issued with a response date of October 31. She said that the insurance company has still not submitted the remainder of proceeds for the vandalized excavator as of this date. The District would be interested in keeping the burned excavator as salvage if the value can be agreed upon between EBID and the insurance company.

Excavator
Vandalism

Gail reported that the Well Meter Program was completed in September. She is completing the final transactions on repayment to ISC on the loan. A Board resolution has previously been approved regarding the well meter loan with ISC.

Well Meter Fund

Gail discussed an amendment to the Professional IT Consultant services contract for Ron Mears. The amendment changes the response time required in handling EBID issues and

Ron Mears
Amended

reduces the time period required in the termination clause. Robert Faubion motioned to approve the amended contract. Jerry Franzoy seconded the motion. Motion carried.

Contract

Gail reported that the EAC would meet to complete the General Meeting arrangements. The General Meeting will be held on October 10th at Beverly Hills Hall off Griggs Street. Lowell Catlett will be the guest speaker at lunch. Ingenious Catering will supply the food.

EAC Update

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

Manager's Report

A meeting will take place with the State Engineer October 29th in Albuquerque. The topic of the meeting is the Offer of Judgment and doubt raised by ISC about the Operating Agreement. Robert Faubion, James Salopek, Jerry Franzoy, Willie Koenig will attend as well as attorneys Steve Hubert and Steve Hernandez, Gary Esslinger and Phil King.

Gary presented a BOR grant proposal with the World Wildlife Fund and Riada Engineering for evaluation of channel maintenance on flood control, irrigation efficiency and drain function. Ramon Alvarez motioned and Robert Faubion seconded to approve the Consultant Agreement. Motion carried. This grant will analyze and evaluate the need for river maintenance.

Dr. John Hernandez updated the Board on the Triennial review.

Triennial Review

Steve Hernandez did the legal update. The following topics were discussed:

- LRR 274 – The Mutual Assistance Agreement between EBID and Dona Ana County was presented for approval. The agreement is a first step to begin entering into a full JPA of working with the DAC in the case of emergency. Bill Gary motioned and Willie Koenig seconded to approve the agreement as presented. Motion carried. The attorneys are finished with this LRR although it now needs to be reviewed and signed by Dona Ana County."Gary Esslinger will meet with the Dona Ana County Manager to finalize the JPA.
- LRR 293 – Storm Water Pollution Prevention Plan (SWPPP) was discussed. Gary Esslinger had attended this short course and came away with a concern as to whether or not the construction that we do on our facilities may be in violation of NPDES as it relates to this EPA requirement. This matter was officially closed by the Attorneys. It will still need work on the District's end.
- LRR 310 –Evaluation of Channel Maintenance on Drain Function, Flood Control and Irrigation Efficiency Grant was discussed. This is another grant agreement with the World Wildlife Fund and the BOR. The contract was reviewed by the attorneys and amended by Phil and Gary and was approved at this meeting. This matter was officially closed by the Attorneys. It will still need work on the District's end.
- LRR 311 – This was another grant proposal with the WWF and BOR where they are looking for an expert to pursue a strategy on flooding certain overbank sites for environmental purposes. The Districts are working to identify sites. WWF would buy water from the districts to simulate flow 3,500 CFS every 3 years on top of our delivery obligation. A meeting will be set up with EBID, EP#1, WWF, IBWC, BOR, RGCC and ISC to discuss issues involved. This matter will be updated at the November 12th board meeting.
- LRR 309 – Sierra County Agreement. This is another JPA along the same lines as LRR 274 with DAC, except this one involves work with Sierra County. Joe Nelson motioned and Ramon Alvarez seconded to approve the agreement as presented. Motion carried. Gary Esslinger will meet with Sierra County Manager to finalize the JPA. The attorneys are finished with this LRR, although it may still need work on the District's end.

Tom Simpson motioned and Bill Gary seconded to break for lunch. Motion carried. Following the lunch break, Jerry Franzoy motioned and Bill Gary seconded to reconvene the meeting. Motion carried.

Lunch Break

Bill Gary motioned and Willie Koenig 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

Open/Closed
Session

Meetings Act, the following topics shall be discussed in closed session:

State ex. rel. D'Antonio vs. EBID (Stream Adjudication)
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)
Thielman v. EBID, CV-2008-1553, (LRR 294)
Intervention on Parasol Dairy NMED Permit (LRR 289)

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.

Following closed session, it was decided that the executive committee would meet to discuss EBID vs. United States BOR and N.M. St. Parks (U.S. Dist. Ct. NM) and consider where to go with this case. The question was whether or not EBID should seek United States Supreme Court review of the 10th Circuit court decision. The deadline to file is 12/15/2008. Robert Faubion motioned and Bill Gary seconded to meet in Executive Committee to discuss this matter further. Motion carried.

The Executive committee will also meet regarding Qwest vs. EBID, 07-CIV-163, (LRR 266) to plan strategy of the settlement conference to be held on 11/17/2008. If settlement is not reached, trial will probably be set in the spring of 2009. Robert Faubion motioned and Jerry Franzoy seconded to meet in Executive Committee to discuss this matter further. Motion carried.

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

EBID vs. US BOR
and N.M. St.
Parks (U.S. Dist.
Ct. NM)

Qwest vs. EBID,
07-CIV-163, (LRR
266)

Adjourn

JAMES SALOPEK, President

WILLIE KOENIG, Secretary