

**ELEPHANT BUTTE IRRIGATION DISTRICT
BOARD OF DIRECTORS MEETING
February 13, 2008**

The monthly meeting of the Board of Directors of the Elephant Butte Irrigation District was held on Wednesday, February 13, 2008. The meeting was called to order by President James Salopek. Motion carried. All members were present

Roll Call

EBID Staff present were Gail Norvell, Controller; James Narvaez, Hydrology Director; Leo Barrett, Project Maintenance Director; Valerie Beversdorf and Dave Nelson, CRGIS; Henry Magallanez and Jean Hinsley, Engineering; Richard Bejarano and Arturo Armenta, Operations; Calvin Chavez, OSE; Scott Boyd, EBID Constituent; Diana Alba, Las Cruces Sun News; and Marvin Tessneer, The Bulletin.

Also present were Steve Hubert and Josh Smith, Hubert & Hernandez, P.A; Phil King, Hydrology Consultant; Ron Mears, IT Consultant; and John Hernandez, Environmental Consultant.

Robert Faubion motioned and Bill Gary seconded to approve the minutes of the January 9, 2008 Board meeting as presented. Motion carried.

Minutes Approval

Ramon Alvarez motioned and Robert Faubion seconded to approve the minutes of the special meeting held January 25, 2008. Motion carried.

Robert Faubion motioned and Bill Gary seconded to approve the minutes of the suspension and transfer hearing, 2008-S&T-01. Motion carried.

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

Water Supply

	<u>2/01/2007</u>	<u>2/01/2008</u>
Elephant Butte	558,442	454,650
Caballo	45,254	25,850
	603,696	480,500

Items on the calendar were discussed. Dates include:

Calendar of Events

February 19th, Water Records to open; February 28-29, FFA Conference, Las Vegas, NV, James Salopek, Tom Simpson, Gary Esslinger and Steve Hernandez will attend. March 1, 2008, Irrigation season to begin; March 5, 2008, CLC Vision 2040 meeting; March 27th, RGCC Annual meeting in Santa Fe, all board members, Gary Esslinger, Steve Hubert and Steve Hernandez will attend.

The next meeting of the Board of Directors will be held on Wednesday, March 12, 2008.

Joe Nelson read the Oath of Office and was sworn in for a 4-year term ending December 31, 2011.

Joe Nelson Sworn In

Henry Magallanez, District Engineer, gave the Engineering Report.

Engineering Report

- The matter on the Helena drain crossing was tabled due to lack of response from DAC regarding accessibility. Henry will follow up with a letter to the NM DOT and Dona Ana County to again request accessibility from a county road and a state highway.
- Tortugas Flood Plain Easement preliminary plat for new sub division off of Stern Drive on Tortugas Arroyo. The owners of the property want to give EBID a flood easement of approximately 1 acre. Staff has recommend acceptance of the flood easement. Tom Simpson motioned and Ramon Alvarez seconded to accept the easement. Motion carried.
- Fee Schedule Policy. Legal staff has recommended an amendment to the existing Telecommunication Policy that was passed by the Board last October. Because of on-going litigation, it has been recommended to add language into amendment as requested by Qwest. The amendments were recommended by staff and legal counsel on both sides following depositions in the lawsuit. These changes will amend only to telecommunications providers' permits. Staff has recommend approval of the amendment changes as proposed. Bill Gary motioned and Jerry Franzoy seconded to amend the existing Telecommunication Policy. Motion carried.
- Special use permits - A permit to cross the Rodey Lateral has been requested by the Village of Hatch. USDA and FEMA are replacing apartments in the Village of Hatch after the 2006 flooding event. The Village of Hatch will take over the crossing permit after it is installed. The crossing is waiting for SHPO approval. Motion by Jerry Franzoy, seconded by Bill Gary. Motion carried.

Tortugas Flood Plain Easement

Fee Schedule Policy Amendment

Special Use Permits

Leo Barrett, Maintenance Project Director gave the Maintenance Report. He reported that the canals and waterways were ready for water. Maintenance is completing a few small jobs. Bank restorations will be done prior to the start of water. Gary Esslinger said that the District may have one major project left to do. The District is planning to dig a channel on the tail end of the Picacho drain into the Bosque park if approval is given from the IBWC. Henry has design plans and looking for verbal from IBWC to cross the property and get the drain in before rainy season. Jerry Franzoy

Maintenance Report

motioned and Bill Gary seconded to approve the project. Motion carried.

Phil King, Hydrology Consultant, gave an update on the water in storage and current allocation. At the present time, EBID has 151,860 AF in storage. This does not include water in the watershed. EP#1 has 232,000 AF and Mexico has 26,935 AF. The current allocation is at 1 acre/foot and the current snow pack at about 170% of normal. With additional water coming from the NM relinquished credit water, the District could raise its initial allotment. After much discussion, the District could estimate to make 2 AF this season. The runoff could produce 1 million AF in the best of conditions; however warm weather conditions could take it all away because dry winds and hot weather can cause water to sublimate before runoff. Phil advised that the District use some caution. Under ideal conditions there could be 1,000,000 AF or more in runoff. This could produce serious problems in the upper Rio Grande. The District should not send the wrong message by allocating too much water until runoff begins. The District is currently out of article 7 of the Rio Grande Compact, so we can store and release without cutting into any of the relinquished credit.

Water Supply
Outlook
Start of 2008
water season

Jerry Franzoy motioned to raise the current allotment to 18 inches. Robert Faubion seconded the motion. Willie Koenig opposed the motion because he was afraid farmers will get the wrong message and use their water unwisely if they think they'll be getting a lot of water during the season. Motion carried.

District's
Allotment

Phil King and Richard Bejarano discussed the start up date. EP#1 is starting on February 25th (diversion) and asking that EBID not get on until after the 23-25th of February. EP#1 is running a seepage test in the river and would like to be on all alone to complete the test. If EBID comes on prior to the completion of their test, the test will be void. The advantage of allowing EP#1 to come on alone is that they will be charged the whole amount of water to start up the season and will also wet up the river. If EBID comes on with them, we also get charged. Under EBID's present announcement of the start of the water season, we are scheduled for our first release on February 25th. At the present time, there are not enough orders for a release. Water Records will open officially on the 19th, but they are taking water orders currently.

2008 Opening
Date Discussion

There was discussion on farmers being charged for water ordered but then refused because of pumping. Bill Gary said that if the water does not come the week it is ordered, then the farmers will pump. Farmers are to be notified if they are not getting water that has already been ordered. It was the board's consensus that if there are not enough orders, water will not be put into the canals and that they would wait until as long as possible and use EP#1's water to wet the river. Following a long discussion, Bill Gary motioned to wait until after the 1st of March for our initial release. Joe Nelson seconded. Jerry Franzoy opposed. Motion carried.

Water Records will call farmers who have placed orders for dates prior to March 1 and tell them there will be no deliveries until after the 1st of March.

EP#1 Tours

Tom Simpson said that he hopes to be working more closely with EP#1 in the future now that we have an operating agreement in place. Phil King said that EP#1 has a lot of interest in EBID's workings and would like to have a tour. We also will have a tour of EP#1's operations. Phil said that a hydro tech exchange would be a good way to introduce both districts to the others operations. Dr. King said that EBID has a lot to show off because of its technology. Board members expressed an interest in taking both tours. This will be further investigated and set up for a later date.

Richard Bejarano, Watermaster, presented a draft small track schedule for board consideration. Robert Faubion motioned and Robert Sloan seconded to approve the schedule for the first three waterings. Motion carried. The schedule follows.

2008 Flat Rate
Watering Schedule

The flat rate metering done last year was discussed. Metering revealed that a flat rate watering averaged 6 inches. Tom Simpson asked that flat rate metering be conducted again this year.

South	Central	North
April 5-6	April 12-13	April 19-20
May 3-4	May 10-11	May 17-18
May 31-June 1	June 7-8	June 14-15

John Hernandez, Environmental Consultant, reported on a meeting of the IBWC Citizens' Forum. He said that it was a good meeting. IBWC is prepared to do levy work in the Rio Grande. They have all the money they need thanks to Federal Legislation. It was questioned where IBWC would get fill dirt. Henry Magallanez explained that there had been discussions regarding using fill dirt from EBID dam sites.

Environmental
Consultant Update

IBWC Levy Work

Parasol Dairy

Dr. Hernandez updated the Board on Parasol Dairy. He is waiting for a decision to be released from the Environmental Secretary prior to reporting to the board on any action needed. There has been a moratorium in Sierra County stating that no more confined animals operation would be allowed until rules are set. This will affect the Parasol Dairy request. Dr. Hernandez said that E.Coli will be getting more and more federal attention in the future and stated that the District would need to continue to take an active role.

Gail Norvell, Controller, discussed the proposal on the development plan for Tortugas Dam acreage. A request for interest (RFI) will be advertised. Van Bullock, a local appraiser, said that a long-term lease could average \$600,000 to \$1 million per year in annual income from the lease of the land. The property will need to be appraised and surveyed. Robert Faubion motioned and Bill Gary seconded to move forward with the process. Motion carried.

Tortugas Dam
Acreage

John Hernandez
Contract Renewal

Ms. Norvell presented a renewal for John Hernandez's contract. There are no other changes to the contract. Tom Simpson motioned and Robert Faubion seconded to approve the contract renewal. Motion carried.

Gail Norvell, Controller, presented the Financial Fact Sheet for the month of January, 2008. The fact sheet is as follows: Cash in the bank totaled \$461,264; assessments receivable totaled \$2,534,480; and investments totaled \$5,351,844 for a grand total of \$8,347,588. This amount reflects an increase in assets of \$520,462 over January, 2007. Extraordinary costs were: Legal Fees, \$49,732. Extraordinary receipts were: Special use fees \$15,234.

Financial Report

Ms. Norvell discussed the well metering program. To date there has been very little interest in obtaining low cost metering loans and it is disappointing to the District. Farmers do not seem to realize that they have to get their wells metered. The OSE will enforce the metering of wells. Of the farmers who have expressed interest, EBID will follow up with loan documents and installation will be scheduled with hydrology following the initiation of a loan. Ms. Norvell reported that the first payment on the loan to the ISC will be due in June, 2008. The District needed 100 constituents borrowing money to meet this first payment. The District will be funding the program for the 1st year. Meters are going in (100) on wells that pump into our system. Calvin Chavez of the OSE expressed an interest in sending out joint letters to get farmers to sign up for meter loans. This matter will remain on the agenda.

Well Metering
Program

Ron Mears, IT Consultant, gave a demonstration on the new data recovery program which he calls the Correction Demo Tool. Ron Mears contract for IT consulting, was amended to state that he has a patent on the product and has the right to sell the product.

Radio Telemetry
Program Demo

Introduction of Dave Nelson by Valerie Beversdorf. He is under a contract on 'for hire basis' and that she anticipates hiring him on for EBID in the future.

IT Programmer
Introduction

Gary Esslinger gave the managers update. Topics discussed were as follows:

Managers Update

- The NWRA conference will be held in Washington, DC April 14-16, 2008. Gary Esslinger, James Salopek and Steve Hernandez will attend.
- NRCS Operation and Maintenance Agreement on ownership/sponsorship of Dams. This matter has been referred to legal and will be put back on the agenda at a later date.
- RGCC Annual Meeting to be held in Santa Fe on beginning the evening of March 26th. All board members will attend.
- Mesilla Valley Bosque State Park – Letter re revocation of withdrawn land around Mesilla Dam.

Steve Hubert gave the legal update.

- Water User Meeting on Offers of Judgment re Acreage and Pre-1906 Acreage – Research done by attorneys in the BOR Denver Archives indicates that EBID may be able to claim a priority date on 30,000 acres prior to 1906. Some of the irrigation dates on part of the EBID acreage could go back as far as 1890. The attorneys are continuing to research. Once we have some historical data, we will present the evidence to the OSE. Having an earlier priority date for Project Supply will not make any difference to treating all constituents the same. Under state statute, EBID has a duty to deliver water to the farmers pro rata with the same priority. We are not allowed to give any area a priority over another in the Project.
- Dam Safety Coalition – Legal staff helped to develop by-laws for a Coalition of dam owners across the state. Concerns with flood control dams that were upgraded by the OSE and costs involved to bring them to the new standards were the reason the Coalition was formed. The Coalition will continue to be a 401c non-profit corporation that can solicit for funds and grants. There are state wide concerns about the need to rehab or build new dams. The Coalition is in the formative stage of development and EBID hopes to be a major player in this coalition.
- SB27 – Capital Outlay Request – Dam Safety Center. Phil King asked for legislation to allow NMSU graduate students to design, rehab or build new dams, using local dams to study. Also, a Bill was introduced for \$200,000 for the Capital Outlay to use that money to work on Flood control dams. Legislation had not finalized the bills as of the date of the board meeting.
- World Wildlife Fund Agreement - The agreement is still not ready to be signed and was tabled for March.

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 Meetings Act, the following topics shall be discussed in closed 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
 - Compromise and Settlement Agreement
 - Payment of Mediator Expenses
- *Qwest vs. EBID, 07-CIV-163, LRR 266
- *Crecencio Cardona vs. EBID; DO21-CV2007-119
- *Victor Sanchez vs. EBID; Notice of Tort Claim

Willie Koenig motioned and Tom Simpson 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.

Legal counsel asked the board to make a motion that the Board authorizes the EBID President and Secretary to sign the Compromise Settlement Agreement and the Operating Agreement in a form substantially similar to what was presented to the Board by the attorneys at this meeting. Robert Faubion so moved and Joe Nelson seconded. Motion carried. After the agreement is signed, it will be returned and attached to these minutes.

Bill Gary motioned to set the opening date for the 2008 irrigation season for March 3. Motion carried.

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

Legal Update
Offers of Judgment

Dam Safety Coalition

Capital Outlay Request

WWF Fund Agreement

Closed/
Open Session

Motion to Accept
Compromise
Settlement and
Operating
Agreement

2008 Opening
Date

Adjourn

JAMES SALOPEK, President

WILLIE KOENIG, Secretary

ELEPHANT BUTTE IRRIGATION DISTRICT

Amendment to Right of Use and
License Policy, as amended
on August 2, 1995

EBID Permit/License Policy
For Telecommunications
Providers Using EBID
Lands/Facilities

Adopted by Board of Directors
of Elephant Butte Irrigation District,
February 13, 2008
and Effective Immediately

The Board amends the Right of Use and License Policy, as amended on August 2, 1995, Parts V(E)(1) ("Terms of licenses are subject to change at the discretion of the EBID Board of Directors") and V(F)(1) ("All fee assessments are approved by the EBID Board of Directors, and are subject to change at their discretion"), by the enactment of the following new provision, which is to be added to the "EBID Permit/License Fee Schedule for Telecommunications Providers Using EBID Lands/Facilities" adopted by the Board on August 21, 2007:

Once a license/permit to a telecommunications provider is approved by the Board of Directors and is issued by EBID, its term (duration), conditions and fee assessments are not subject to modification at the discretion of the Board of Directors: provided, however, that the license/permit remains subject to suspension or revocation for noncompliance by the licensee.

This amendment applies only to licenses and permits issued by EBID to telecommunications providers. The provisions of the Right of Use and License Policy Parts V(E)(1) and V(F)(1), as referenced above, remain applicable to all other licensees or permittees of EBID.

Severability. If any section, subsection, sentence, clause, word or phrase of this policy is for any reason held to be unconstitutional, unenforceable, or invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The Board of Directors hereby declares that it would have adopted this policy and each part of its regardless of any part being declared unconstitutional, unenforceable or otherwise invalid.

EBID REACHES DEAL WITH TEXAS

By Diana M. Alba/Sun-News reporter, 02/16/2008

LAS CRUCES — A landmark water settlement reached Thursday between irrigation districts in El Paso and Doña Ana County promises to head off an interstate legal battle that could have lasted for years and cost New Mexicans millions of dollars.

The districts have formalized an arrangement about how to apportion water from Elephant Butte Reservoir, ending a dispute that has stretched on for 29 years. The irrigation districts, which together make up the Rio Grande Project, also agreed to drop two lawsuits they'd filed in recent years in federal court.

An issue was a contention by the El Paso County Improvement District No. 1 that unregulated groundwater pumping by New Mexico farmers was impacting river flows and ultimately cutting into their share of water from the reservoir. But there never has been a formal agreement in place about how much water each district was entitled to each year, something remedied with the new settlement.

Also under the terms, Elephant Butte Irrigation District — which manages water for Doña Ana County farmers — agreed to guarantee the delivery of all of the El Paso district's water to the state boundary.

EBID farmers will be able to continue using groundwater wells to supplement river water, as long they meet the delivery requirement to the El Paso district.

EBID Manager Gary Esslinger said reaching an agreement with the El Paso irrigators has been a major goal of his 29-year career with the district.

"I don't know if people will grasp the significance and importance of this monumental agreement and what it means for New Mexico and Texas," he said. "What other states could not accomplish and resulted in costly Supreme Court decisions, 14 farmers in the Rio Grande Project were able to agree and resolve this interstate dispute."

Esslinger referred to the governing boards of both districts, which spent the past year negotiating the settlement.

The federal government in 1979 handed over control of irrigation networks to both water districts and called on them to work out an arrangement for sharing water. But Esslinger said a contract was never reached. Recent drought years brought attention back to the dispute, he said.

Jesus Reyes, manager for the El Paso district, said he's pleased with the terms.

"We want to be good neighbors and that's the message we get from EBID — that they understand our concerns," he said.

Both districts gave credit to Pat Gordon, Rio Grande Compact Commissioner for Texas, because of his leadership in the negotiations.

Attorneys for EBID said the agreement is historic because it avoids the sort of legal battle between states that has played out in other regions of the country. One dispute, for example, pitted Texas against New Mexico over water flow in the Pecos River. A judge ruled against New Mexico, which had to pay a \$15 million settlement. New Mexico also spent millions more enforcing the terms of the agreement.

EBID attorney Stephen Hubert said similar rulings have occurred against upstream states elsewhere. He said that El Paso and Doña Ana County irrigators have negotiated their differences outside of court is unique.

"Across the West, this is a huge, huge story," he said.