

**MINUTES OF THE ELEPHANT BUTTE IRRIGATION DISTRICT
BOARD OF DIRECTORS SITTING AS A BOARD TO HEAR
SUSPENSION AND TRANSFER APPLICATIONS
2008-S&T-8 – August 13, 2008**

I. Call to Order and Roll Call.

The meeting was called to order by Chairman James Salopek on motion by Bill Gary, seconded by Robert Sloan. Motion carried. Jerry Franzoy and Willie Koenig were absent. Henry Magallanez, District Engineer represented the Engineering Department for the presentation along with Jean Hinsley and Linda Armijo. Steve Hernandez, Legal Counsel, was also present.

Also in attendance were Calvin Chavez and Rasool Ahadi, OSE; Fernie Ortiz, City of Las Cruces; Kyle Mobely, Phillippo Group; and Stan Ellis, NM State Parks.

II. Application and Publication.

Chairman Salopek, announced the following:

- A. The applicants are identified in Exhibit A (Volitional Transfers).
- B. The applicants seek to move the water rights from lands as identified in Exhibits A and B as "Move From" land.
- C. The applicants were required to publish notice in any newspaper published within Dona Ana County of EBID taking action to consider a resolution allowing the transfer. The publications did the following:
 1. Listed the time and place of this meeting.
 2. Listed the action to be taken by this board.
 3. Listed a description of the move to and move from lands.
 4. Listed the reason for the requested transfer.

The Applicants provided the staff with a copy of the Notice of Publication containing all of the required points in the publication. The last publication date was prior to this hearing

III. Testimony.

Mr. Salopek announced that the Board would proceed with the presentation by the Staff.

Mr. Magallanez made the Staff presentation. He identified the tracts of land to the Board and said that the Engineering Department had visited the "move to" locations and analyzed the properties on their ability to receive surface water from EBID facilities. The suitability of the soil and other engineering criteria in the "move to" locations for irrigation had been analyzed and staff recommended approval of the applications with a variance for a total transfer of 80.94 acres as shown on Exhibit A which is attached to these minutes.

Mr. Salopek announced that at this point in the hearing, the Board would take evidence and testimony from the applicants or their representatives, any person(s) present to protest the application, and finally from the EBID staff.

Mr. Kyle Mobley was present for the Phillippous Group and Stan Ellis was present for NM State Parks. There followed discussion on the transferring of surface water from Phillippous Group. It was pointed out that State Parks was not the owner of all the land in the application but had a long term lease to the Butler property. They were in the process of acquiring the land in fee title. Steve Hernandez wanted it clearly understood that the District was acting on applications from the landowners and that the water rights, once transferred, would belong to the landowner. Steve Hernandez asked that NM State Parks and the IBWC also be added to Exhibit A so there was no confusion in who all the parties were that were involved in the application. He further explained that EBID was not responsible for any underlying agreement with State Parks and Butler as to future action regarding the water rights. EBID is responsible to the landowner regarding any future requests and State Parks should have some agreement in place to preserve any rights they have with Butler or any agreement they make with use of the surface water.

Questions were asked on whether or not the total amount of water right being transferred would violate our stacking policy. Henry said that it would not. Gary Esslinger explained that there is no change of use in this application. Although the application will not irrigate a traditional crop, the water will still be applied in the same manner as it historically has, but will instead irrigate other plants that are not harvested. Henry explained that he recommended a variance from having an established crop history because as explained by Gary, this is not a traditional crop but is still agricultural use.

Robert Faubion motioned to approve the transfer with the variances. Bill Gary seconded. Motion carried.

On the application to transfer water rights to Lewis Land and Livestock Co., Henry also recommended approval. Bill Gary moved to approve the transfer and Robert Faubion seconded. Motion carried.

IV. Resolution by the Board of Directors.

Mr. Salopek announced that the chair would entertain a motion to have a resolution to approve or disapprove the applications.

Both transfers were approved in the amount of 80.94 acres as noted on Exhibit A.

Mr. Salopek asked that a Resolution be formalized as called for by Section 73-13-5 of the New

Mexico Statutes Annotated, and that the Secretary of the Board certify and file with the State Engineer a true copy of the Resolution and action of the board. (See Resolution attached.)

Mr. Salopek also announced that if there be a protestant who disagreed with the action of the Board, he/she may appeal this decision directly to the district court as provided under Section 73-13-4 of the New Mexico Statutes.

V. Adjournment.

Mr. Salopek said he would entertain a motion to adjourn the Board sitting to hear these applications. Bill Gary motioned and Robert Sloan seconded to adjourn the hearing. The motion carried unanimously.

James Salopek, Chairman

Willie Koenig, Secretary