

**ELEPHANT BUTTE IRRIGATION DISTRICT  
BOARD OF DIRECTORS MEETING  
August 12, 2009**

The monthly meeting of the Board of Directors of the Elephant Butte Irrigation District was held on Wednesday, August 12, 2009. The meeting was called to order by President James Salopek on a motion by Ramon Alvarez, seconded by Robert Faubion. Motion carried. Robert Sloan and Jerry Franzoy were absent.

Roll Call

EBID personnel present were Ricardo Bejarano, Water Master; Henry Magallanez, Engineering Supervisor; James Narvaez, Hydrology Director; Linda Armijo, Land Specialist; and Leo Barrett, Maintenance Projects Director.

Also present were Steve Hubert and Steve Hernandez, Hubert & Hernandez, P.A; Phil King, Hydrology Consultant; Rasool Ahadi and Eric Fuchs, OSE; Conrad Keyes, Paso del Norte; Joseph Diaz, Oscar Carrillo, Sammie H. Singh, Freddie Covington, Frank Mesa, Arturo Lucero, Nacho Bustamante, Luis Corpening, Andrew Jacquez, Thomas White, Arthur Johnson, Victor Diaz, Sammie Singh, Jr., Rebecca Miller and Ernie Provencio, Constituents; Bud Starnes, Julie Maitland and Hillary Brinegar, NMDA; Lorenzo Arriaga and James Powell, Bureau of Reclamation; Diana Alba, Las Cruces Sun News; and Marvin Tessneer, The Bulletin.

Willie Koenig motioned and Ramon Alvarez seconded to approve the minutes of the July 8, 2009 meeting. Motion carried.

Approval of Minutes

Joe Nelson motioned and Robert Faubion seconded to approve the minutes of the Water Transfer hearing, 2009-WT 7, as presented. Motion carried.

Ramon Alvarez motioned and Willie Koenig seconded to approve the minutes of the Special closed session board workshop held August 4<sup>th</sup>. Motion carried.

The water supply outlook was presented. The storage totals for August 1, 2009 with a comparison for last year are as follows:

Water Supply

	<u>8/01/2008</u>	<u>8/01/2009</u>
Elephant Butte	626,130	530,900
Caballo	<u>56,340</u>	<u>54,120</u>
Total Storage	682,470	698,067

Items on the calendar were discussed: A meeting with El Paso Electric on Low Head Power Production to be held on August 19<sup>th</sup>; and Multi State Salinity Coalition Conference in Indian Wells, California, held Sept 29<sup>th</sup> and 30<sup>th</sup>. The next board meeting will be held on September 9<sup>th</sup>.

Calendar of Events

Julie Maitland and Hillary Brinegar gave a presentation on the Clean Water Act – 319(h) non-point source pollution grant watershed action addressing EColi in the Rio Grande. Expecting available funding from the EPA. \$22,800 cash to EBID for sampling/monitoring. Past records of EColi levels from canals to river – 2004 study that NMED did. Storm water events and WWTP that were not functioning properly caused levels to rise. Those plants have mostly been cleaned up. Motion to support this by Robert Faubion, seconded by Ramon Alvarez. Motion carried.

Section 319(h) Grant

Caballo Soil and Water handout. Request lease. Not recommend approval. Using all of our land. Just for info.

Henry Magallanez, Engineer, presented the special use permits for the month of July, 2009.

Special Use Permits

**Non-Moratorium:**

09-L-029 – El Paso Electric; To construct, operate, and maintain the removal and re-installation of existing power line poles and power lines crossing and parallel to the Colorado Spur Drain at various stations and a new crossing on the Rodey Lateral at approximate station 213+00. Assessment, \$15,982.92

09-L-031 – Dona Ana MDWCA: To construct, operate and maintain a new aerial electric power line crossing the La Union East Lateral at approximate station 171+00. Assessment, \$3,166.67.

09-L-037 – Buford Harris; to operate and maintain a new vehicle culvert crossing on the Picacho Drain at approximate station 86+53. Assessment, \$1,766.67. Waive all fees, \$1,766.67.

09-L-039 – Phillip Archer; to operate and maintain an existing vehicle crossing on the Upper Chamberino Lateral at approximate station 158+40. Assessment, \$1,666.67. Request to waive all fees, \$1,166.67.

Total Assessments, Non-Moratorium: \$22,582.93

**Moratorium:**

09-L-036 – NM DOT - To construct, operate and maintain a new buried storm water discharge pipe into the Mesilla Drain at Calle del Norte at approximate

station 264+04. Assessment, \$3,166.67.

09-L-038 – Dona Ana County: To construct, operate and maintain a new buried storm water discharge pipe into the Colorado Spur Drain for the Town of Rodey at approximate station 10+50. Waive all Fees - \$3,166.67.

Total Assessments, Moratorium: \$6,333.34

Total assessments for all permits = \$28,916.27  
Total fees requested to be waived = \$ 6,600.01  
\$22,316.66

Willie Koenig motioned and Tom Simpson seconded to accept the permits as presented. Motion carried.

Leo Barrett, Maintenance Project Director, updated the board on the work of the Maintenance department. Leo apologized to the people in the south end of the district for the condition of the canals and the weed problem. He promised to get the matter taken care of as soon as possible. He thanked Keith Deputy for his assistance and use of his backhoe in Unit 6A. publicly acknowledged Mr. Deputy's efforts to help during this weed control crisis in Unit 6A.

Maintenance  
Dept. Report

On the matter of the rotary disk mulching attachment for the excavators that staff went to California to see demonstrated, Leo is still working with the company to see if a local demonstration could be arranged.

Richard Bejarano, Water Master, gave the Operations Department report to date as follows: Farm Deliveries, 3,602; Acres Irrigated, 71,609; AF charged to farmers, 29,940; Actual Total Diversion, 54,581; Balance, 51,509; 2 breaks and 5 runovers. Total breaks for year, 13, and total runovers, 9. 2009 Delivery efficiency was 56.60% as compared to 50.74% in 2008.

Operations  
Dept. Report

The Hydrology Department report for June is as follows: Total Order, 234,033; actual diversion, 234,322; AC/FT +/-, 289; Estimated carriage losses, 41,694; adjusted diversion, 192,628; Diversion vs. Order, 0.1%; Total Spill, 3,469; % Diversion Spilled, 1.5%; Charge to Farmers, 143,176; Delivery Efficiency, 61.1%.

Hydrology Dept.  
Report

Dr. Phil King, Hydrology Consultant, updated the Board on the District's allocation. He reported that the drought monitor had given a false promise of rain for the month of July, and the rain was too little, too late. We are attempting to stretch the water by cutting down on releases to get as much water as possible with improved delivery efficiency. At the rate we are using water, it appears that the season will end around August 30<sup>th</sup>.

Allocation  
Update  
Allocation  
Report

The question as to one more flat rate weekend was raised. Robert Faubion was against it because he felt that the District was already over allocated and shouldn't be over delivered as well. If farmers don't pick up the water, then it goes into the drain and is a waste of water during flat rate weekends. The manager stated that EBID had an obligation to distribute water to all of the 90,610 acres of land equitably. Joe Nelson made the point that most farmers have wells while most flat raters do not. Willie Koenig motioned to give one more flat rate water weekend for the entire District on the same weekend. Bill Gary seconded the motion. Motion carried.

Flat Rate  
Weekend

Constituent Sammie Singh came before the Board to question why the water was being shut off early. He stated that BOR history was always that the District received 57% and El Paso Water Improvement District got 43% of the allocation. According to Mr. Singh's calculations, the farmers were only allotted 29% this year, which is one-third of their normal allocation of water. He questioned how the Board could give water to El Paso if it had not been adjudicated? President Salopek stated to Mr. Singh that there were too many issues he was raising to properly answer them on the spot and that a special meeting would be set to hear his concerns. A meeting was tentatively set for Friday, August 21<sup>st</sup> and the group was asked to present a list of their questions by Friday, August 14<sup>th</sup> in order to prepare for the 21<sup>st</sup> meeting.

Constituent  
Concerns

In the absence of Gail Norvell, Controller, Gary Esslinger gave the financial report. The Financial Fact Sheet for the month of July, 2009, is as follows: Cash in the bank totaled \$525,663; assessments receivable totaled \$395,615; and investments totaled \$3,077,325 for a grand total of \$3,998,603. This amount reflects a decrease in assets of \$(267,949) over July, 2008. No extraordinary costs were presented. Extraordinary receipts were: Special use fees \$4,700. Also presented was the financial statement for the month of June, 2009

Controller Report  
Financial Fact  
Sheet

Gary Reported that Gail was working with Bert Cortez and the local Bureau office on the BOR budget. Gary reported that the \$5,000,000 Senator Bingaman had ear marked for the RGP he thought was to be used for EBID was really going to the BOR. The funding is appropriated to the BOR for the Rio Grande Project ongoing projects.

- NWRA Update. FERC exemption for low-head energy. FERC killed projects throughout the west. Policy commission passed a resolution to exempt low-head

irrigation district and conservation districts as well. Strong support. Senator Udall of Colorado proposed exemption from energy bill. Bingaman and New Mexico Udall to sponsor. Great interest in generating energy.

- Brazito Mutual Domestic. The Board was presented a resolution to form the Brazito Mutual Domestic Special Water Users Authority as a SWUA to be recognized by EBID. Willie Koenig motioned to accept and Joe Nelson seconded the motion. Motion carried.

- The Manager updated the board on the Clean Water Restoration Act. The Act would redefine the waters of the US. Every bar ditch, cattle pond, canal, drain, etc would be under the jurisdiction of the U.S. EBID is adamantly opposed to this and continues to advocate for balance and fairness to agricultural users. Letters have also been sent out to farmers to ask for their help in objecting to this bill. Steve Hernandez stated that the NM Farm Bureau needs to be fighting this as well. The Act would create another expense to agriculture that we don't need right now. If Act goes through, it will effect the way New Mexico makes use of its water in the future.

- Obama appointments. The Manager discussed a list of Federal Administration appointments that have been made by President Obama. Among them is Mike Connor to the position of Commissioner, Bureau of Reclamation.

- The Manager discussed a grant between New Mexico Audubon and EBID funded by a BOR grant. The Grant would define and protect project water traveling down the River. The grant would allow for the development of a Safe Harbor Agreement and would allow for protection of RGP water flowing in the river canalization Section of IBWC. Bill Gary motioned to accept the grant proposal. Robert Faubion seconded. Motion carried.

Dr. John Hernandez, EBID water quality consultant, updated the Board on the NM Surface Water Quality Bureau Triennial Review. He would be submitting testimony to the hearing officer regarding EBID concerns. Waters of the state definition will be an issue if the CWRA is passed. John will continue to monitor this matter.

A past employee of the District, Joe Martinez, came before the Board to request documents from his personnel file. He asked for several items including a copy of his personnel file. He was told to present a list to the Manager and he would get the items he requested. The manager indicated that this matter did not have to come before the board and that his personnel file was a public document that he could obtain but there could be a cost to duplicate according to procedures in requests for public records.

Steve Hernandez gave the legal update and discussed the following topics:

- LRR 236 – Trails Act MOU/JPA w/CLC – This mater is on the CLC commission meeting on the 17<sup>th</sup> of August – remains open.
- LRR 259 – Revocation of Withdrawn Land – Mesilla Valley Bosque State Park- Lee Peters is working with Gary – initial response by the BOR – remains open.
- LRR 302 – City of El Paso/Montoya Drain – remains open.
- LRR 303 – Hatch Easements – Placitas Arroyo. Meeting with Hatch Mayor and DAC Flood Commissioner will be scheduled - remains open.
- LRR 304 – Lions Gate Water vs. NM OSE – Courts ruled against Lions Gate. Waiting for written decision and then will respond– remains open.
- LRR 305 – Past and Present Private Dam Maintenance – Gary and Henry are working on agreements – remains open.
- LRR 323 - Policies, Relinquishment of Easement, Excess Real Property – remains open.
- LRR 325 – Deposition of Jim Kirby – will consult as needed – remains open.
- LRR 326-1 – Personnel Policy Book Review – Continuing Education – attorneys have submitted suggested language. To be closed.
- LRR 329 – Product of Service (Copyright Policy). Low-head power copyright – work on this has been completed and passed to Gary. To be closed
- LRR 330 – Vendor Payment Problems – Steve Hubert is working with Gail on this matter – remains open.
- LRR 333 – Enforcement of Violators Taking Water Illegally – remains open
- LRR 334 – Setting up Small Flood Control Districts – Samantha Barncastle is working on this matter – remains open.
- LRR 335 – Redistricting Voting Precincts – Attorneys completed work and gave Henry parameters under NM State Statute. To be closed.
- LRR 336 – FERC Exemption – Low-head power plants – remains open.
- LRR 337 – EPEC Contamination Study – Memo sent. EPEC is responsible for clean up.
- CIC Update – Brine well. Drill into dome to collapse it. How will this affect CID's canal system.
- Blue Ribbon Task Force Update. Bill Hume has resigned from the BRTF.

Triennial Review

Request for  
Public Records

Legal Update

LRR Report

Bill Gary Motioned and Tom Simpson seconded to break for lunch. Following lunch, Bill Gary and Joe Nelson seconded to reconvene the meeting. Motion carried.

Lunch Break

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:

Open/Closed  
Session

- A. State ex. rel. D'Antonio vs. EBID CV 96-888 (Stream Adj.)
  - 1. Threshold #3 Motion/Order by Judge Valentine
  - 2. Offer of Judgment to US BOR
  - 3. Water Resource Committee to Monitor Stream Adj. proceeding
- B. AWRM Amicus Appeal Brief
- C. Intervention on Parasol Dairy NMED Permit (LRR 289)
- D. Lions Gate Water vs. OSE

Following closed session, Bill Gary motioned and Ramon Alvarez seconded to return to open session.

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

Adjourn

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JAMES SALOPEK, President

WILLIE KOENIG, Secretary