

**ELEPHANT BUTTE IRRIGATION DISTRICT
BOARD OF DIRECTORS MEETING
August 8, 2007**

The monthly meeting of the Board of Directors of the Elephant Butte Irrigation District was held on Wednesday, August 8, 2007. The meeting was called to order by President James Salopek on a motion by Tom Simpson, seconded by Ramon Alvarez. Motion carried. Willie Koenig was absent.

EBID Staff present were Henry Magallanez, Engineering Supervisor; Gail Norvell, Controller; Richard Bejarano, Water Master; EAC Co-Chairs Tom Hansen, HR and Linda Armijo, AP Clerk; James Narvaez, Hydrology Director; Leo Barrett, Maintenance Project Director; and Valerie Beversdorf, Computer Resources and GIS Director.

Also present were Steve Hernandez and Lee Peters, Hubert & Hernandez, P.A; Dr. Phil King, EBID Water Quantity Consultant; Les Owen, NM Dept of Ag.; Dr. John Hernandez, EBID Water Quality Consultant; Barbara Crockett, CH²MHill; Fernando Ortiz, City of Las Cruces; Rasool Ahadi, Office of the State Engineer; Fernando Cadena, EBID Water Quality Consultant; and Marvin Tessneer, The Bulletin.

Robert Faubion motioned and Ramon Alvarez seconded to approve the minutes of the July 11, 2007 Board meeting as presented. Motion carried.

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

| | <u>8/01/2006</u> | <u>8/01/2007</u> |
|----------------|------------------|------------------|
| Elephant Butte | 466,800 | 461,320 |
| Caballo | <u>34,790</u> | <u>59,330</u> |
| | 501,590 | 520,650 |

Items on the calendar were discussed. Dates include: IBWC Texas Clean Rivers Program Advisory Committee meeting at the IBWC office on the 9th of August; State Water Plan Ad Hoc-Committee Meeting, August 10th; LRGWUO Tech Committee meeting, August 16th; a water symposium August 30-31st; and a risk management meeting with EBID staff and middle managers, September 6-7th.

The next meeting of the Board of Directors will be held on September 12, 2007.

Leo Barrett, Maintenance Projects Director, gave the maintenance department update. Mr. Barrett informed the board that the new 6" pump was on display outside for the Board to see.

Mr. Barrett reported that EBID equipment sent to auction had earned the District \$103,000.

He also reported that the Hatch weed control crew was working with the central crew in an attempt to get control over the weeds in the central area. Equisetum, an invasive weed, continues to be a problem and Mr. Barrett will contact NMSU's Agriculture Extension department to see if they have any idea how to control it.

Also discussed was the fact that three separate flood control projects have been completed in conjunction with the Dona Ana Flood Commission. The District gained \$38,000 revenue on these projects.

Henry Magallanez, presented the special use permits.

Under Moratorium:

07-L-052 – CLC – Roadrunner Transit; To construct, operate and maintain a new bus shelter on a portion of the left bank of the Las Cruces Lateral at approximate station 127+80. Assessment, \$819.13.

Total Assessments under Moratorium: \$819.13.

Non Moratorium:

Roll Call

Minutes
Approval

Water
Supply

Calendar

Maintenance
Report

Special Use
Permits

07-L-054 – Rio Grande Natural Gas; To construct, operate and maintain a new buried 2" gas line crossing the Mesilla Lateral at approximate station 53+50. Assessment, \$2,941.58. Request blanket agreement, \$2,941.58.

07-L-051 – El Paso Electric Co.; To construct, operate and maintain a new aerial electric power line crossing the Arrey Main Canal for a new irrigation well at approximate station 95+70. Assessment \$6,164.37. Request to waive all fees, \$6,164.37, farm use.

Total Assessments all permits, \$9,925.08
Total Fees Requested to be waived, 9,105.95
\$ 819.13

Robert Faubion motioned and Ramon Alvarez seconded to approve the permits as presented. Motion carried.

Mr. Magallanez discussed a request for variance by the City of Las Cruces to lease 1.04 surface water right acreage outside of city limits. Mr. Magallanez said that Engineering would have no objection to doing this. Jerry Franzoy motioned and Robert Faubion seconded to approve the variance. Motion carried.

CLC Variance Request

Mr. Magallanez discussed a request by New Mexico State Parks department to extend the District's permit on the Mesilla Valley Bosque State Park. The District, through Lee Peters, is carrying on internal negotiations with NM State Parks and Mr. Magallanez did not see any problem with extending their permit.

Mesilla Valley Bosque State Park Permit

An in-parcel transfer requested by Robert Faubion was discussed. Mr. Magallanez said there were no objections to the transfer and recommended approval. Joe Nelson motioned and Ramon Alvarez seconded. Motion carried. Mr. Faubion abstained from vote.

In-Parcel Transfer - Faubion

Gary Esslinger; Henry Magallanez, and Fernando Cadena toured a surface water treatment plant in Bloomfield, New Mexico in conjunction with members of the Mesquite Mutual Domestic. Cadena and Magallanez discussed the plant they toured and the idea of constructing one on EBID owned land in the Leasburg area. There are still many basic questions to be answered and the board asked EBID consultants to continue collecting information on the construction of a SWTP. Phil King and John Hernandez will also participate in EBID's background work regarding the development of surface water treatment.

SW Treatment Plant Discussion

Four areas of ongoing research by the group are:

- Regulatory aspects – permitting, PRC, sludge disposal, etc.
- Rate impacts of surface water use for mutual and domestic users;
- Optimal relationship between EBID and domestic providers
- Appropriate technology and operation of SWTP

The Board gave staff the go ahead to continue looking into a surface water alternative with no commitment at this time. Staff and consultants will continue looking into the matter and see where we are going as long as it stands to benefit Agricultural water users.

Desert Sands Mutual Domestic requested approval for the formation of Desert Sands Mutual Domestic Water Users' Association. Mr. Magallanez reported that Desert Sands Mutual Domestic was in compliance and he saw no objection to approval. Robert Faubion so moved and Tom Simpson seconded. Motion carried.

DSMDWUA Formation Approval

Ricardo Bejarano gave the operations report for the month of July, 2007 as follows: Farm Deliveries, 2,728; Acres Irrigated, 52,122; AC/FT Charged to Farmers, 22,194; Actual Total Diversion, 42,245; Allotment Balance, 80,326; Breaks, 1; Run over, 0; 2007 Diversion Efficiency 53% as compared to 2006 at 41%. Mr. Bejarano discussed a break in August that was the result of vandalism. This matter will be further discussed at the September meeting.

Operations Report

James Narvaez gave the Hydrology report for the month of July, 2007. The report is as follows: Orders totaled 185,393; Actual Diversion was 183,051; Using -2,342 AC/FT; Estimated Carriage Losses were 32,817; Adjusted Diversion 150,234; Diversion vs. Order was -1.3%; Total Spill was 5,399, % of Diversion Spilled was 2.9%, Charged to Farmers, 92,535; and Delivery efficiency, 50.6%.

Hydrology
Report

James Narvaez quickly demonstrated the new weather data program that has been installed on the District's website that shows real time weather data. It was reported that his area of the website will be expanded further.

Mr. Narvaez reported on a meeting with Congresswoman Wilson. She was given a tour on the Corralitos Lateral where Narvaez demonstrated the District's website and real time activity. Mr. Narvaez informed the Congresswoman that the District has 250 sites and results in a considerable water savings to the District. Narvaez felt that it was a good demonstration and that the Congresswoman was impressed about what she saw.

Phil King reported that he could finally give the Board some good news about D3. The diversion ratio has gone up and was 96% for release as of the end of June. Currently the allocation is as follows: 56,000 AF to Mexico, 374,000 AF to EP#1 and 292,000 AF to EBID. This is an additional 27,703 AF which has been added to our allocation

Water Allocation
Discussion

Phil said he could not recommend increasing the allocation to 3 AC/FT, and reminded the Board that they were previously over-allocated. At 2 AC/FT, we can survive until the end of the season which should be the 1st or second week of October (tentatively).

Phil King suggested that the District do an irrigation audit which would insure a more reliable flow of information, i.e. ordering concept – how to order and what constitutes an order.

Tom Simpson asked Phil what constituted an order. He said that he orders and tells water records when he wants the water delivered. He again said that close coordination between the office, farmer and ditch riders was essential.

The question of adding small tract watering(s) was discussed. Constituent Charles Varela was in attendance to plead the case of the flat raters asking for more water. A motion to allow one more flat rate watering was made by Bobby Sloan and seconded by Ramon Alvarez. Robert Faubion, Jerry Franzoy, Joe Nelson and Tom Simpson opposed the motion. Motion failed.

Flat Rate Water
Discussion

Henry Magallanez will talk to Mr. Varela regarding options that he can do either as an individual or in conjunction with a community ditch association to get additional water, i.e. stacking or combining multiple users.

Tom Hansen, HR Manager and Linda Armijo, Accounts Payable Clerk gave the Employee Advisory Committee (EAC) report. Mr. Hanson informed the Board that there was no new news and no meetings scheduled until September with the EAC Representatives.

EAC Report

Gail Norvell, Controller, presented the Financial Fact Sheet for the month of July, 2007. The fact sheet is as follows: Cash in the bank totaled \$654,073; assessments receivable totaled \$301,876; and investments totaled \$3,981,594 for a grand total of \$4,937,543. This amount reflects an increase in assets of \$572,905 over June, 2006. Extraordinary costs were: Legal Fees, \$27,606.49. Extraordinary receipts were: Special use fees \$14,110; and FEMA reimbursement, \$492,253. Conserved water sold year to date was \$300,124 as compared to \$54,408 in 2006.

Financial Report

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

Ms. Norvell updated the Board on letters sent out on use or lease of water left in accounts. She reported that the letters generated a lot of activity. Ms. Norvell informed the Board that farmers should call tax to arrange to lease or buy water. The District will prepare a news bulletin to announce the beginning of the irrigation season

'Use or Lose' Water
Update

and include procedures for constituents' information.

Ms. Norvell notified the Board that the Bank of the West requested Board action to approve EBID to transmit funds via ACH (Automated Clearing House) transactions. The bank requested a letter and a copy of Board Minutes approving the transactions. A motion to allow ACH transactions by Robert Faubion, seconded by Robert Sloan. Motion carried.

ACH Transactions

Steve Hernandez gave the Legal Update. He discussed the following:

Legal Update

Data Sharing with Office of the State Engineer – The District is working with OSE for a smoother transition on our land and water records. At the water seminar, Gary spoke to Frank Reckard of the OSE. Reckard says that he thought all the problems have been worked out and nothing more needs to be done. According to Valerie, the OSE is still asking for a VPN link to verify acreage for the Stream Adjudication. OSE is asking for 21 connections which Valerie feels is too much of a load for our system to handle. She would like it to be restricted to 10 users. Steve Hubert is working on the legal aspects of this and Phil, Valerie and Henry will meet and talk to or send a letter to Reckard regarding the remaining issues.

OSE Data Sharing

The issue of the Tortugas Dam Lease was tabled to a future meeting.

Regarding the Easement to the City of Elephant Butte, the District is opposed to a permanent easement and wants to keep on top of the issue with the BOR (Connie Rupp). Steve Hernandez is to send a letter asking what sort of permit the BOR will or has issued.

City of Elephant Butte Contract/Grant Easement

A lawsuit has been filed by Crecencio Cardona regarding the flooding of his field during the Hatch flood event in August of 2006. Mr. Cardona filed a claim for damages following the flooding. His request was denied by the Board after thorough investigation by the District on the basis of the flooding was the result of water from a wild arroyo rather than caused by EBID negligence. The Board was informed that Mr. Cardona has now filed a lawsuit against the District and the matter has been turned over to our insurance carrier.

Cardona Lawsuit

A motion to break for lunch was made by Tom Simpson, seconded by Robert Faubion. Motion carried. Following lunch, a motion to reconvene was made by Bill Gary, seconded by Robert Faubion. Motion carried.

Lunch Break

Gary Esslinger gave an update for the month of August, 2007. Topics discussed include:

Manager's Update

A proposed dairy upstream of Caballo Dam and adjacent to Percha Creek drainage was discussed. A memorandum from Bert Cortez of the Bureau of Reclamation alerted Gary of an issue where a person was planning to locate a dairy within one mile of the Caballo Reservoir boundary adjacent to the Percha Creek drainage. Reclamation is concerned about the proximity to Caballo Reservoir and runoff potential and will investigate the effect this construction may have on the RGP water supplies. John Hernandez will also look into this matter with NMED. He felt that a good flood event in the creek would put dairy waste into the creek.

Proposed dairy upstream of Caballo Dam

Mr. Esslinger discussed the Western Water Law Conference to be held in Las Vegas September 17-18 and asked that the board send himself and James Salopek to the conference. Jerry Franzoy so moved, seconded by Robert Faubion. Motion carried.

Western Water Law Conference

Gary Esslinger and Steve Hernandez updated the Board on the New Mexico Water Law Conference they had just attended. Steve Hernandez reported that the OSE misfiled the AWRM appeal to the court of appeals. Judge Reynolds may throw out the appeal by the OSE. The OSE may have lost their ability to appeal. Gary reported that the second day was devoted to the Oberstar bill that impacts to Ag and irrigation.

NM Water Law Conference Update

John Hernandez added that the Oberstar/Feingold bill was generated in response to two supreme court decisions that dealt with dredge and fill permit issues. Some of the people impacted by Corp of Engineers permit decisions took their case to the Supreme Court and won. Under Feingold/Oberstar all wetlands will be subject to

Oberstar/Feingold Clean Water Act Bill

federal permitting; not just those based on navigable rivers and adjacent wetlands. If Feingold/Oberstar passes, all of the waters of the U.S. will be subject to Federal jurisdiction. New Mexico already has this universal coverage – all waters in the State of NM - any tributary --- the smallest flood flow is covered.

Robert Faubion motioned and Tom Simpson 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:

Closed/
Open 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
- Crecencio Cardona vs. EBID, DO21-CV2007-119

Jerry Franzoy motioned and Bill Gary 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, Tom Simpson motioned and Robert Sloan seconded to adjourn the meeting. Motion carried.

Adjourn