

**Minutes of the 7<sup>th</sup> Special Meeting of the  
Republican River Water Conservation District**

**February 22, 2005**

**Yuma, Colorado**

Present were:

Board Members:

Eugene Bauerle  
Grant Bledsoe  
Dennis Coryell, President  
Jack Dowell  
Raymond Enderson  
Kim Killin  
Garry Kramer  
Steve Kramer  
Bruce Latoski  
Stan Laybourn  
Tim Pautler  
Rick Seedorf  
Jerry Sonnenberg

Stan Murphy, General Manager  
David Robbins, General Counsel, Hill & Robbins, P.C.  
Dennis Montgomery, General Counsel, Hill & Robbins, P.C.  
Ken Knox, Deputy State Engineer  
Scott Richrath, State Engineer's Office

A sign in sheet listing the members of the public attending the meeting is attached as Exhibit 1.

**MINUTES**

President Coryell convened the meeting, pursuant to notice required by statute, at the Church of the Nazarene, Yuma, Colorado, at approximately 10:15 a.m. The record reflects that 13 of the District's directors were in attendance and that a quorum was present.

President Coryell introduced guests including James E. Slattery and Randy L. Hendrix of Helton & Williamsen, P.C.

The Board approved the Agenda with the addition of a presentation by Rex Buck regarding surface water issues.

The President observed that drafts of the minutes of the January 11, 2005 special meeting and the January 13, 2005 quarterly meeting of the Board of Directors and the minutes of executive sessions held on October 12, 2004, and December 1, 2004, had been delivered to the Board members for their review. A motion to approve the minutes was made, seconded, and approved unanimously.

The General Manager provided a report on total revenues collected and received by the Enterprise through February 11, 2005. The General Manager asked if the Board wanted copies of the monthly financial statements. After discussion, President Coryell directed that monthly financial statements be sent by e-mail to all Board members, with a hard copy to the Executive Committee. A copy of the un-audited balance sheet as of January 31, 2005, and a schedule of expenditures during January 2005 were provided to the Board. The General Manager said that future reports will have a breakdown for each category.

The General Manager then discussed bills to be paid and asked if the Board wanted to approve all bills. Legal counsel recommended that the Executive Committee review the bills and present a report to the Board of expenditures at each quarterly Board meeting. Legal counsel said that to the extent bills are submitted in the normal course of business and within budgeted amounts, it should be the responsibility of the Executive Committee and the General Manager to review and pay them and that a report to the full Board should be made at each quarterly meeting.

The General Manager reported that approximately \$1.5 million U.S.D.A. funding under the Environmental Quality Incentives Program (EQIP) could be met by the Enterprise. He said that there were a lot of unknowns about the EQIP contracts and that a number should be known by May 2005.

The General Manager reported that the manager of Y.W. Electric Association had requested to know when the loan from the Association would be repaid. The Board then discussed the schedule for the next quarterly Board meeting. A motion to postpone a decision on repayment of the utility loans until the regular quarterly Board meeting in April was made, seconded, and approved unanimously.

The General Manager reported that he had received about 45 contacts from the public during the last month, primarily questions about assessed acres. The General Manager said that a user wanted to know if there was any basis to appeal the location of a well or the zones shown on the Compact Compliance Buffer Zone Maps. The Board then discussed the maps and the intent of showing the zones and the wells located within the zones. Ken Knox said that anomalies will occur because the maps were based on the permitted location of the wells; he thought the physical location of the well should control provided the owner could have obtained a permit at the actual location. The General Manager said that he needed some direction as to whether the maps were conclusive. After discussion, a motion to use the map as a guideline and to use the actual location as the criteria for EQIP, provided legal counsel approves, was made. With the approval of the director who made the motion, a substitute motion to use the map as a guideline and to use the actual location as the criteria

for EQIP and to grant the General Manager the authority to make the determination of the actual location was made, seconded, and was approved unanimously.

The General Manager then continued his report on the assessment of use fees on municipal and commercial wells. He recommended that diversions for municipal and commercial use be based on the number of acre-feet allowed on the well permit unless the municipality or the owner of the commercial well provided information of actual usage. The General Manager provided lists of municipal wells and commercial or industrial wells and said that he has drafted a reporting form.

The General Manager also said that the Board needed to consider a permanent location for the District office because an administrative assistant will need to be hired in the near future and moving the office would be a problem in hiring an administrative assistant. After considerable discussion of possible locations for the District office, a motion to have the office stay in the Yuma area was made and seconded. After discussion, a motion to table the motion was made, seconded, and approved unanimously.

Scott Richrath then reported that he had forwarded the request for information from Bondi & Co. to Premier Accounting and the General Manager. The information requested by Bondi & Co. is to prepare the request for an exemption from the 2004 audit requirement. The General Manager reported that the resolutions to affiliate with the Public Employees' Retirement Association (PERA) and to approve the Intergovernmental Agreement for the Colorado Special Districts Property and Liability Pool had been submitted to PERA and the SDA and that payments had been made.

Director Eugene Bauerle reported that he and Director Jack Dowell had visited automobile dealers to obtain offers for the purchase of a vehicle and distributed information on three vehicles. Director Bauerle discussed the offers and said that he and Director Dowell recommended that the Board approve the purchase of the new 2004 Chevy Trailblazer, which came with a full warranty. A motion to purchase the 2004 Chevy Trailblazer was made, seconded, and passed unanimously. President Coryell directed the General Manager and Directors Bauerle and Dowell to take care of the purchase and obtain insurance for the vehicle from the Special District Association.

Ken Knox reported that the Ground Water Commission will consider the adoption of rules and regulations to address users who have not paid their use fees and wells that have not been used for a period of time. A motion to support the Ground Water Commission's entering into rulemaking to have enforcement authority to assess a fine and curtail pumping until use fees are paid was made, seconded, and approved unanimously.

At 12:02 p.m., President Coryell introduced James E. Slattery and Randy L. Hendrix of Helton & Williamsen, P.C. Mr. Slattery described the firm of Helton & Williamsen, P.C., his and Mr. Hendrix's responsibility in the litigation brought by the State of Kansas alleging violations of the Republican River Compact, and the firm's qualifications. The General Manager asked how Helton & Williamsen, P.C., billed for its work. Mr. Slattery said that the firm usually bills on an hourly basis for time and for bills travel expenses, but did not bill for travel time when the total time exceeded eight hours per day. In the alternative, he said that the firm could enter into a contract for a specified amount to address a specific issue, but he did not recommend this for most consulting work because the District or the Enterprise

would normally retain an engineering firm on matters that would require the exercise of engineering judgment, in which case the District or the Enterprise would not want the firm to complete a task if, as the work progressed, it became apparent that different or additional work would be necessary to accomplish the District or the Enterprise's goal. Mr. Slattery said that Helton & Williamsen, P.C. could subcontract with Dr. Willem Schroeder if it was necessary to run the groundwater model used to determine Compact compliance in the Republican River Basin to answer the Board's questions. At the conclusion of the presentation, President Coryell said that the recommendation of the Engineering Committee was to hire Helton & Williamsen, P.C. Legal counsel David Robbins said that he had experience with Helton & Williamsen, P.C., and had no reservations in recommending the firm. A motion to hire Helton & Williamsen, P.C., as the engineering consultant to the District and the Enterprise was made, seconded, and approved unanimously. A copy of the billing rates of Helton & Williamsen, P.C. is attached hereto as Exhibit 2.

Secretary Pautler then reported that he and General Manager Murphy had reviewed the memorandum of understanding (MOU) between the Republican River Watershed Association and the District to help facilitate EQIP funding and had made some changes. Secretary Pautler said that the Enterprise was not promising any money, but that the reason for the MOU was that the NRCS would be more comfortable working with the Association rather than directly with the Enterprise. Legal counsel said that he had no objection to the MOU, provided 1) there was no obligation to expend funds without Board approval, and 2) the MOU applies to EQIP, not the Conservation Reserve Enhancement Program (CREP). Secretary Pautler said this MOU would be specific to NRCS funding for EQIP. Bud

Meckelburg, President of the Republican River Watershed Association, said that it was acceptable that the District is not financially obligated and explained that funding for EQIP comes through the Association to set priorities. He said that EQIP should be funded around the second week of March, 2005, and the Association may need the Board's help to go to Congress to get funding.

At 12:28 p.m., President Coryell recessed the meeting for lunch. The meeting reconvened at 1:10 p.m.

The Board then considered the second issue that the Ground Water Commission will consider in rulemaking regarding wells that have not been used for some period of time. Mr. Knox explained some of the options that might be considered and said that he was simply looking for guidance from the Board. The Board discussed wells that had not been used and legal counsel explained the law governing abandonment, but the Board did not take any action.

Scott Richrath then provided an update on CREP and described the latest proposal, which was provided to Board members. He said the proposal requires 20 percent local funding, with 80 percent federal funding, to retire 30,000 acres with a 15-year program. The proposal includes a tiered incentive schedule for wells up to four miles from the North Fork or the South Fork of the Republican River or the Arikaree River with greater incentives for wells closer to the rivers. Mr. Richrath said that some CREP contracts require retirement of the water right at the end of the contract, which could be a requirement to avoid going back to square one for Compact compliance. Mr. Richrath described tables in the draft proposal

and offered to work with the Board committee if this is a proposal the Board wants to pursue. He also asked if the Board wants to require permanent retirement of the water right at the end of the contract. The Board then discussed whether the program would be viable for well owners outside the four-mile zones. Tim Davis of the Colorado Division of Wildlife suggested letting producers decide if they wanted the right permanently retired and said that producers need as many options as possible. After discussion of what the U.S.D.A will require to demonstrate a commitment of local funding, legal counsel said the U.S.D.A. did not say that a resolution was necessary, but needed a statement of firm local support for funding; otherwise, the U.S.D.A. did not want to take the proposal to Washington, D.C. President Coryell said the Board had projected that the CREP proposal would require 20 percent local funding. Secretary Pautler said CREP funding was built into the Enterprise's budget, but the Board would need to fine-tune and craft a limitation on the Enterprise's commitment. Mr. Richrath said he would like a resolution before the public meeting and to get feedback from the U.S.D.A. After discussion of whether the proposal was attractive enough to enroll a sufficient number of acres, a motion to adopt a resolution to commit to provide up to 20% cost-sharing for CREP, to the extent permitted by law, was made, seconded, and approved unanimously. Counsel was directed to draft a resolution.

Scott Richrath then said that the next issue was to gain consensus from the Board on the incentive structure for CREP, with a goal of trying to implement the program in December 2006. President Coryell called for a special meeting to be held on March 3, 2005, beginning at 9:00 a.m. at the Church of the Nazarene, Yuma, Colorado, to consider the incentive structure for CREP.

Mr. Richrath said the Conservation Innovative Grant (CIG) application is also due soon. President Coryell directed that the CIG application also be added to the agenda for the March 3, 2005 meeting.

At 2:55 p.m., Rex Buck of the Pioneer Irrigation District in Colorado made a presentation on surface water rights and irrigated acreage on the North Fork of the Republican River and explained the operation of the Pioneer Ditch in Colorado and Kansas, the history of efforts by the Pioneer Irrigation District to protect its water rights, the reason he thought there is a wall between surface users and well owners, and the fear of surface owners that the Board would buy out surface water rights and shepherd the water to the Stateline. He said he was here because of the Farm Bureau proposal to construct a pipeline to deliver water to the North Fork of the Republican River just above the Stateline. Mr. Buck said he did not like the proposal and that it did not satisfy what the Board needs, but it had brought us all together. He said that surface owners want to be part of the solution, but thought that storage was not an option under the Compact. He said that storage may be an option and that surface owners are willing to keep options open and are willing to talk about interruptible supply contracts, but he felt it would be a mess unless the contracts were with all of the landowners in the District. President Coryell thanked Mr. Buck for his presentation and said the Board would like Mr. Buck to be at future Board meetings.

At 3:36 p.m., the Board opened the meeting to public comment.

Len Adamson of the Pioneer Ditch of Nebraska asked if the Board wanted to shepherd water to the Stateline. He said that he had a 100-year old water right that is valuable to him

and has been depleted over the years. He acknowledged that the Board may be charged with Compact compliance, but said that he hadn't heard anything that made him want to talk to the Board and that he wanted his water right to be as good as well owners.

At approximately 3:50 p.m., the public comment ended.

Legal counsel explained a proposed resolution to amend paragraph 5 of Resolution No. 04-01 to exempt diversions of ground water within the District by wells not exceeding fifty gallons per minute permitted by the State Engineer under the provisions of section 37-90-105, C.R.S. Legal counsel said the intent of paragraph 5 of Resolution No. 04-01 exempting diversions of ground water for domestic use up to 50 acre-feet was unclear and that the proposed resolution had been drafted at the suggestion of General Manager Murphy to track the exemption for small capacity wells in section 37-90-105 of the Ground Water Management Act. A motion to approve a resolution to amend paragraph 5 of the Annual Use Fee Resolution was made, seconded, and approved unanimously. A copy of the resolution is attached hereto as Exhibit 3.

Legal counsel then said that a copy of the By Laws, as revised at the January 11, 2005 meeting, had been provided to the Board and explained a proposed resolution to authorize the President, Vice President, and Secretary to sign warrants, checks or other instruments disbursing funds in an amount equal to or less than \$1,000 to be consistent with the provisions of Article V of the By Laws, as amended, and to correct an oversight in Resolution No. 04-03 adopted by the Board on December 1, 2004, which did not authorize any officer to sign checks in an amount equal to \$1,000. A motion to approve the resolution

to authorize the President, Vice President, or Secretary to sign warrants, checks, or other instruments disbursing funds of the District or the Enterprise in an amount equal to or less than \$1,000 was made, seconded, and approved unanimously. A copy of the resolution is attached hereto as Exhibit 4.

At approximately 4:03 p.m., the Board took up the motion to keep the District office in the Yuma area that had been tabled. After discussion, a vote on the motion was called for. The motion was defeated by a vote of 4 in favor and 7 opposed. A motion to move the permanent District office to Wray was then made and seconded. The motion was approved by a vote of 8 in favor and 3 opposed. President Coryell directed Directors Bruce Latoski and Grant Bledsoe to begin looking for an office for the District in Wray.

Director Jerry Sonnenberg said that he had not been present at the January 11, 2005 meeting at which attendance at Colorado Water Congress (CWC) meetings had been discussed and said that he needed some direction on whether he should attend CWC meetings. Legal counsel said Director Sonnenberg had been appointed to the CWC HB 1177 subcommittee and that he believed he should attend those meetings and meetings of the CWC State Affairs Committee at which HB 1177 is discussed. The Board directed that Director Sonnenberg attend meetings of the CWC State Affairs Committee that have a bearing on the District as the District's official representative. Legal counsel reported on water bills that have been introduced in this session of the Legislature.

Legal counsel then explained that the Board at its January 13, 2005 quarterly meeting had directed the General Manager to determine if there were pre-Compact wells and to put

that issue on the agenda for the next Board meeting, that legal counsel had advised the Board that it should consider whether to impose a use fee on the diversion of water for lands that are assessed as irrigated lands but are included in CRP or EQIP, and had directed the General Manager to develop a procedure to refund use fees that were billed for lands that were assessed as irrigated, but were not irrigated. Counsel explained a proposed resolution that had been drafted with the assistance of General Manager Murphy 1) to amend paragraph 1 of Resolution No. 04-01 (the annual use fee resolution) to exempt pre-Compact ground water rights provided the right is established by a final permit issued by the Colorado Ground Water Commission or a decree entered by the District Court for Water Diversion No. 1; 2) to authorize the General Manager to establish a procedure to consider petitions for abatement or refund of assessments for annual use fees and to approve the abatement or refund of such fees if he determines that the fee should not have been assessed; and 3) to authorize the General Manager to approve petitions for abatement or refund of assessments on lands that were not irrigated but were assessed as irrigated by the county assessor. Director Garry Kramer said that he disqualified himself from voting on the proposed resolution because he had an interest in a well that would be exempted under the resolution. Legal counsel said that Director Kramer only needed to disclose his interest and did not need to disqualify himself from voting. A motion to approve the resolution was made, seconded, and approved unanimously. A copy of the resolution is attached hereto as Exhibit 5.

Director Grant Bledsoe recommended designating a time on the agenda of future Board meetings for surface water right owners as a good way to keep lines of communication open between the Board and surface water right owners.

Legal counsel recommended that the General Manager keep a record of all abatements or refunds made under the resolution adopted by the Board and make a report at the Board's quarterly meetings of abatements and refunds. General Manager Murphy suggested that he do the report monthly. President Coryell instructed the General Manager to prepare a ledger of persons receiving abatements or refunds and make a report to the Board monthly on abatements or refunds.

At 4:50 p.m., the Board voted unanimously to adjourn.

---

Secretary

Date