

MINUTES
(Revised October 20, 2000)
NEW MEXICO/TEXAS WATER COMMISSION and
the REGIONAL SUSTAINABLE WATER PROJECT
STEERING COMMITTEE (SC)
LAS CRUCES CITY COUNCIL CHAMBERS
SEPTEMBER 7, 2000
9:00 A.M.

Welcome

Tom Bahr chaired the meeting and welcomed everyone. A copy of the sign-in sheet and a list of the handouts provided at the meeting are attached as **Exhibit “A”**. Those members attending from the Commission Steering Committee were as follows:

Ed Archuleta – EPWU	Tom Bahr – NMSU
Buck Monday – City of Las Cruces	Karl Wood – NMSU
Art Coykendall – Bureau of Reclamation	Steve Hernandez - EBID
Brian Hansen – U.S. Fish and Wildlife	Tony Tarquin – UTEP
John Sproul – Audobon Society	Doug Echlin - IBWC

**I. Review and Approval of Minutes from MAC/SC Meeting on July 14, 2000
(MAC/SC)**

Tom Bahr asked if there were any comments or revisions for the July 14th minutes. No one had comments. The minutes were approved without changes.

II. Discussion of Impact of the Ysleta Del Sur Pueblo Lawsuit on the Regional Sustainable Water Project (SWP/MAC/SC)

Doug Echlin gave a summary of the Ysleta del Sur Pueblo Tribe (Tribe) lawsuit. He mentioned that he had been dismissed as a defendant in the lawsuit and that he and others had met with the Tribe’s attorneys on August 31. A copy of the Lawsuit and subsequent Dismissal Settlement are attached as **Exhibits “B-1” and “B-2”**. Representing the Tribe were Robert Truhill, Russell Leachmann, and Ron Jackson. In addition to himself, also present were Bill Wilcox of IBWC, Michael Spurlock of EPWU, Bert Cortez of Reclamation, and Maggie Jara of the U.S. Dept. of Justice. There was agreement on some issues at this meeting: (1) Consultation will proceed with another meeting scheduled for September 22, 2000. (2) At this meeting, the Tribe will provide information on details of their religious ceremonies. Also, at this meeting CH2MHill and GeoMarine will provide a presentation on the SWP’s Purpose and Need, its scope, and to explain why the SWP will not impact the Tribe. (3) Another meeting will take place on October 10, 2000, where both sides will have an opportunity to discuss proposed options. The Final Environmental Impact Statement (FEIS) will document the results from these meetings. (4) The Tribe agreed to allow the FEIS to be issued on November 27th.

After Mr. Echlin's update, Mr. Archuleta explained that the Tribe's lawsuit involved two separate issues. One is their complaint that they were not consulted during the Draft Environmental Impact Statement (DEIS) process, and the second is a complaint that their religious ceremonies had been impacted by the SWP. Mr. Echlin agreed with Mr. Archuleta's assessment and added that in his view NEPA does not require formal consultation, but instead only requires an assessment and determination of possible impacts to the Tribe, in addition to consideration of any comments received from the Tribe. He believes these requirements were satisfied in the DEIS process. One of the goals during the upcoming meetings is basically to get them to agree on this concept. Mr. Archuleta asked when the Record of Decision (ROD) would be issued. Doug Echlin responded that he expected the ROD would follow soon after the November 27 FEIS release date, probably by the end of December 2000.

Doug Echlin stated that he read in the lawsuit that the SWP adds permanency to the low-flow condition in the river, which has existed before, and added that he does not envision any flows occurring downstream of the Riverside heading after implementation of the SWP. Mr. Echlin advised that the EIS is not being held up and that work will still continue on the FIES, as well as on the exchange of information with the Tribe. The Tribe may still file an amended complaint after the FEIS, but it is unclear what that amended complaint will contain. Hopefully, the Tribe will be satisfied with the consultation process and the amended complaint will simply document the consultation and settlement process.

Mr. Archuleta asked if the Tribe would attempt to include Reclamation in the consultation meetings, given that Reclamation oversees spills that flow out of El Paso County. Mr. Echlin responded that they probably would. However, he added that the Tribe did not want to hold up the SWP. Mr. Monday asked if he knew of this type of delay in previous EIS's he had handled. Tom Haislip answered that every EIS has some type of delay, but that he has not experienced any delays exactly like this one. Tom stated that in his opinion, the SWP-DEIS is a convenient target, and that he believes there is a specific agenda behind the Tribe's complaint. Tom added that it would be advantageous for the MAC/SC to identify this apparent agenda.

III & IV. Project Schedule and Planned Activities/Status of Final EIS (CH2M-Hill)

Tom Haislip presented a slide showing the SWP Schedule and pointed out some key dates. A copy of the Schedule is attached as **Exhibit "C"**. As a result of the Tribe's lawsuit, the release of the FEIS was delayed 3 months and is now set for distribution on November 27th, with the release of the ROD set for December 27th. Except for this delay, the Project is on track. Responses have been completed on all comments to the DEIS. Also, required revisions to the DEIS have been completed and distributed for review by IBWC and EPWU. About 500 individual comments were received, which was a little more than expected. However, there were no big surprises concerning the content of the comments. A lot of the responses involved an explanation of where the information related to the comment could be located in the DEIS.

Still remaining to be completed is the incorporation of the Drain Blending Mitigation Strategy for the Upper Valley Water Treatment Plant, which should cancel out the projected increases in TDS. Also, the responses to the Fish and Wildlife Coordination Act Report still need to be determined, and any approved mitigations included in the FEIS. The outcome of the consultation process with the Tribe also need to be incorporated into the FIES, as well as the responses and recommended mitigation measures resulting from the review of the Biological Opinion yet to be submitted to the IBWC by U.S. Fish and Wildlife. Tom expects that responses to the Biological Opinion will be completed within 30 days, since the DEIS concluded that there would be no significant impact in this area. Finally, the final Project Alternative needs to be selected.

V. Discussion and Action on the Watershed Planning Council (MAC/SC)

Tom Bahr asked who would be handling the agenda item on the Watershed Council (Council). Mike Fahy, EPWU Strategic Development Manager gave a brief update on the last meeting of the Council and the resulting revisions to the “Statement of Purpose” (attached as **Exhibit “D-1”**) and corresponding Commission Resolution (attached as **Exhibit “D-2”**), which will officially recognize the formation of the Council and endorse its “Statement of Purpose”. Mike stated that Bobby Creel and Karl Wood had reviewed the latest draft and had no objections to it.

Tom Bahr then went over each section of the “Statement of Purpose” and asked for comments on each. The first comment by Mr. Monday concerned Section I, Purpose. He mentioned that the way the first sentence is written, the “Rio Grande ecosystem” is listed as one of the watershed stakeholders. Tom said he believes this is grammatically incorrect. Kevin Bixby stated that he still favored leaving this sentence “as is”, although he acknowledged it used incorrect grammar.

Before this issue was resolved, Deborah Reyes of the TWDB brought out the issue concerning Objective Number Two . Ms. Reyes stated that the way it was written, this objective seemed to present the Council as a policy making body, and she was concerned about how the Council would fit in with the Far West Texas Regional Water Planning Group (RWPG), since the Council’s policy objective seemed to overlap with those of the RWPG. This would create the possibility for conflict, and the PSB, as a member of both groups, could potentially be caught in the middle. Ari Michelsen (Texas A&M Ag Research Center) responded that the Council would only provide recommendations, and would be a policy making body in itself. This concept was reiterated by Mr. Monday. Mr. Archuleta added that the Council would have a tri-state planning and coordination role with a different set of stakeholders and area of responsibility than the RWPG. He also emphasized that the Council would only give recommendations on policy, and would eventually expand its role beyond its involvement with the Commission. He added that the Council’s coordination activities with respect to the SWP would be at the MAC/SC level and not at the Commission level.

A couple of initial suggested revisions/additions to Section III (B) were not endorsed by the MAC. After further discussion, Ms. Reyes suggested that wording of Objective Number Two be revised by changing the phrase “develop and effectuate” to

“recommend”. Tom Bahr also suggested that the first sentence of Section I be revised to read: “The purpose of the Watershed Council (Council) will be to investigate, develop, and recommend options for watershed management and explore how water-related resources can best be balanced to benefit the Rio Grande ecosystem and the interests of all watershed stakeholders.” These two changes were eventually agreed on by the MAC/SC.

Tom Bahr also proposed some revisions to the Resolution. These suggested changes involved changing the reference in the WHEREAS statements from “the Council” to “these Parties”, since technically the Council would not exist until the Resolution was adopted. However, someone else pointed out that the term “Council” was already defined in the heading section of the Resolution. At the recommendation of Mr. Archuleta, the MAC decided to have the Resolution grammar reviewed and corrected by EBID’s legal staff. Subsequently, Mr. Archuleta made a motion to accept the Resolution subject to the amendments previously agreed on by MAC. This motion was seconded and accepted.

VI. Discussion and Action on EPCWID’S Request for Withdrawal from the NM-TX Water Commission (MAC/SC)

Mr. Archuleta mentioned Al Blair’s e-mail requesting the withdrawal of the El Paso County Water Improvement District No.1 (District) from the Commission and removal of the District from the Commission letterhead, and added that he had requested and received a formal letter from Edd Fifer to this effect. A copy of these letters are attached as **Exhibit “E-1”** and **Exhibit “E-2”**. Mr. Archuleta stated that he had attempted to convince the District over the last few months not to withdraw, given the important role that the District plays in the SWP, but had been unsuccessful.

A discussion followed concerning whether the District had ever been an official member of the Commission and the actions required to withdraw the District from the Commission. This discussion resulted in the general agreement by the MAC that the District was not a party to the original settlement agreement, and may therefore not be required to remain as a member of the Commission. Therefore, a motion to withdraw the District from the Commission would not be required. However, the MAC also agreed that the District’s request should be formally acknowledged and accepted by the Commission. Tom Bahr suggested that the District should still be kept on the Commission’s mailing list and be kept informed of Commission’s activities. A discussion followed on how the original Commission and MAC members were selected and the rationale behind it. Tom Haislip stated that he needed a directive from the Commission to remove all references to District membership in the Commission from the DEIS. In response, a motion was made by Tom Bahr to acknowledge and honor the District’s written request. The motion was seconded and passed by the Commission.

Tom Haislip introduced the August 8th letter from Debra Little of the IBWC, addressed to Mr. Archuleta (attached as **Exhibit “F-1”**), and the corresponding Resolution entitled “A Resolution by the New Mexico – Texas Water Commission Regarding the Water Quantity and Quality Effects on Mexico by the El Paso-Las Cruces Regional Sustainable

Water Project” (attached as **Exhibit “F-2”**), which he prepared for the Commission in response to this letter. Tom stated that Mexico wanted formal assurance from the Commission that they will not be impacted by the SWP. Mr. Archuleta stated that he was somewhat confused by the letter from the IBWC, considering that the IBWC was itself a member of the Commission and the lead Federal Agency for the SWP, and asked Mr. Echlin why the Commission was being asked to respond. He added that in his opinion it was the IBWC’s responsibility to respond to Mexico’s concerns, and therefore could not endorse the resolution introduced by Mr. Haislip. Tom Bahr added that the Commission is not a legal entity, and agreed with Mr. Archuleta that the IBWC should respond. Mr. Echlin stated that the IBWC is required to “wear two hats”, and that their proper role under such circumstances is not always well defined. After further discussion, in lieu of passing a resolution the Commission decided to draft a letter of response to the IBWC. This letter will be reviewed at the next MAC/SC meeting and will most likely be signed by all the Commission Co-Chairmen, incorporating the elements Mr. Haislip’s Resolution.

VII. Other Business

Mr. Archuleta mentioned the recent award of a \$2.7 million EPA grant for the SWP (see public release statement attached as **Exhibit “G”**) and gave an update on the status of EPWU’s lobbying efforts for securing additional SWP funding. He urged the other Commission members to contact their congressional representatives for this purpose. Mr. Archuleta also mentioned the upcoming Water Summit initiated by Congressman Sylvestre Reyes and added that although the agenda for the Summit is a little broad (it includes drainage improvement issues, etc.), it will be a worthwhile event to attend. Finally, Mr. Archuleta advised the group about the State of the Water event scheduled for November 1st, which will feature Mr. Buster Brown, the Chairman of the Senate Natural Resources Conservation Committee and sponsor of Senate Bill 1, as the keynote speaker.

Mr. Monday reminded everyone about the New Mexico Water Conservation Conference to be held on September 14 at the Las Cruces Hilton. Karl Wood announced that this year’s annual Water Conference hosted by NMWRI will be in Albuquerque from December 4 to December 6, 2000.

Mr. Gomez of the New Mexico Spaceport Project asked Mr. Archuleta for the Congressional Bill Number that includes the funding for the SWP. Mr. Archuleta answered that he can get that information to him and further explained where funding for the SWP originates (VA/HUD Program set aside budget item). He also named the senators and representatives which should be contacted, and offered to have Hector Gonzales, EPWU Strategic Business Manager, prepare a form letter and e-mail it to anyone interested in assisting with the lobbying effort.

VIII. Schedule Next Meeting/Location

The next meeting was scheduled for 9:00 am Friday, October 13, at the EBID Offices in Las Cruces.

