

MINUTES
MEETING OF THE NEW MEXICO\TEXAS WATER COMMISSION
MANAGEMENT ADVISORY COMMITTEE (MAC) AND
THE REGIONAL SUSTAINABLE WATER PROJECT
STEERING COMMITTEE (SC)
EL PASO WATER UTILITIES -PSB 4TH FLOOR BOARDROOM
1154 HAWKINS, EL PASO, TEXAS
JULY 26, 2001
10:00 A.M.

Welcome

Mr. Ed Archuleta chaired the meeting and welcomed all the attendees. He reminded attendees to sign in on the form provided at the entrance table. A copy of the sign-in sheet is attached as **Exhibit "A"**. Those members attending from the Commission's Steering Committee were as follows:

Ed Archuleta – EPWU
John Sproul – Audubon Society
Len Stokes – City of Las Cruces
Dr. Karl Wood – NMWRI
Gary Esslinger - EBID

Tom Bahr – NMSU
Doug Echlin – IBWC
Dr. Ari Michelsen – Texas A&M
Anthony Tarquin – UTEP

I. Review and Approval of Minutes from MAC\SC Meeting on June 7, 2001 (MAC\SC)

Mr. Archuleta asked if anyone had any comments or corrections to the MAC\SC Meeting minutes dated June 7, 2001. Doug Echlin mentioned one minor grammatical correction which he had noted on a copy of minutes and handed over to Ed Fierro. Mr. Tom Bahr also noted that he had found some typographical errors and advised that he would give Mr. Fierro a copy of the minutes with corrections noted. The minutes were subsequently approved as corrected

II. Organizational Update of the Paso del Norte Watershed Council

Jim Stefanov showed an overhead slide listing the current Paso del Norte Watershed Council (Council) members and the members of the Council's Executive Committee. He stated that he is only the temporary Chairman of the Executive Committee and that a new Chairman will be elected in October. Mr. Stefanov stated that the big issue right now is obtaining funding for administrative support. He mentioned that Ed Fierro had provided him with information concerning grant funds available through the EPA Source Water Protection Grant Program, but stated that the deadline for this applications to the funding program had passed.

Mr. Stefanov stated that the Council had sent in a proposal dated July 20 for a Watershed Assistance Grant administered through the River Network program, which is funded by the EPA and has a \$30,000 grant limit. He mentioned the Water Resources Development Act (WRDA) Section 729 and 206 grant programs, and the EPA Section 319 program.

He said the U.S. Army Corps of Engineers (COE) administers the WRDA Section 729 funds, which are earmarked for watershed-type studies. The COE has scheduled a round table discussion on September 5 and 6 at the Camino Real Hotel in El Paso to receive input on the appropriate use of these funds. Only \$300,000 will be available for the 2001-2002 Fiscal Year and this money is limited to New Mexico projects though in subsequent years, Texas will also be eligible for this grant money and there could be a substantial increase in program funding. The amount available under this program could be significant by the 2003-04 fiscal year. The EPA 319 program is administered through the U.S. Bureau of Reclamation and the money is earmarked for projects aimed at the restoration of aquatic ecosystems.

Mr. Stefanov continued by saying that one of the potential future activities of the Council is to evaluate the enhancements proposed under the IBWC's Canalization EIS and to rank them by feasibility. However, he added that no funding had yet been established for this activity. He advised that the next Council meeting will be held on July 31 at 1:30 pm at the IBWC offices. He has copies of the agenda available for anyone who requests it.

Ed Fifer asked how the activities of the Council tie-in to those of the Paso Del Norte Water Task Force. Mr. Stefanov answered that there is no formal link and explained that the Council's main focus is to evaluate watershed enhancement projects. Whereas, the Task Force's main purpose is to monitor and coordinate the long range water resource plans of various regional entities. Mr. Archuleta asked for a copy of the funding proposal, and also asked how much funding the Council was applying for. Mr. Stefanov answered that they had applied for about \$30,000 to hire a coordinator to work on a half-time bases for one year, working out of the Southwest Environmental Center (SWEC) office. This amount would cover the coordinator's salary and benefits, office rent and supplies, also other costs. The SWEC is designated as the fiscal agent by the Executive Committee and the Council is the applicant. Dr. Ari Michelsen asked if the Council had considered other entities to use as their fiscal agents and how often the Council met. Sue Watts replied that they had considered other entities, but that the SWEC offered the lowest overhead charge. Ms. Watts added that CERM had agreed to allow the Council's Coordinator to work out of one of their offices, and the Council meets every 6 to 8 weeks on average. Mr. Archuleta asked Ms. Watts if the Council had come up with the scope of duties for the Council. Sue replied that they had, but that work still needed to be done on drafting a short term business plan and long term strategy, which would likely be one of the first duties for the Coordinator, as well as to develop a funding strategy for the Council.

III. Report on Progress of New Mexico Technical/Feasibility Projects Using EPA Funding (LRGWUO)

Mr. Len Stokes, consultant for Las Cruces, stated that most of the EPA funding apportioned to New Mexico has been used for studies researching the rate impacts that transitioning to surface water will have on small rural communities. Other portions of the money are being used to purchase and install piezometers in existing wells, and to assist in gauging the effects of groundwater pumping on the aquifers. This year, most of the money is being used on modeling activities which compare surface water vs.

groundwater municipal supply options and the return flows effects from each. Last year, some of the money was used to fund Aquifer Storage and Recovery (ARS) studies. Mr. Esslinger added that this year's studies are just getting started. There are a total of seven individual tasks with their own individual scopes of work. Four of the tasks should have "draft" Executive Summaries ready by October. Mr. Archuleta asked if the City of Las Cruces was the lead agency for these studies. Mr. Esslinger responded that the City was only acting as the fiscal agent and that the studies are being done under contract to other entities, such as Molzin Corbin, Parsons, as well as WRRI, CDM, and others. Mr. Archuleta suggested that it may be useful for Mr. Stokes to give another summary report during a future meeting. Mr. Esslinger agreed.

IV. Summary of EBID's Perspective on the General Stream Adjudication Process (EBID)

Steve Hernandez, attorney for EBID, gave an in-depth talk on the status of the stream adjudication process. The following are the main points of his discussion:

The main reason EBID is now behind the adjudication is to resolve the uncertainty involved concerning ownership of surface water and groundwater, and to also address concerns about the effects of groundwater pumping on surface water.

Mr. Hernandez gave a short history of the lawsuit. Once the New Mexico legislature authorized the adjudication process, it basically became an engineering process. Most of the adjudication involves EBID farmlands and water use.

GIS software was used to assist in compiling a hydrographic survey to map and evaluate irrigated areas and well locations. Once this task was completed, the decision was made to divide up the valley into two separate areas, one north of US 70 and one south of US 70.

The adjudication process involves 6 "threshold" elements related to a water right – land ownership, land acreage, water use history, well and diversion locations, priority dates, and water quantities. The offer packages currently being mailed to landowners cover the first five elements with an explanation of each. The last element, quantity, is not included in these offers. Offers regarding the quantity of water will be pending the completion of groundwater and surface water modeling projects which will determine the total quantity of ground and surface water available for allocation.

The next step after the offers are mailed is to encourage participation in a formal mediation process whose purpose is to keep disputes from reaching the courts and slowing down the process.

Currently, the biggest hurdle is ownership – many ownership records are out of date due to unrecorded, informal transfers of land. The EBID has helped out greatly with questions concerning points of diversion and also regarding other elements.

EBID's main interest is acreage, which has been a major area of conflict. EBID has 90,600 acres of Rio Grande Project water rights land on its assessment rolls, which at one time was all under irrigation. Over time, urbanization has changed the use of some of this land. EBID uses a "suspension and transfer" process, whereby urbanized acreage is taken off the assessment rolls (i.e. suspended) and these water rights are essentially moved to other locations. However, EBID maintains a waiting list of other potentially

irrigable, non-water rights land parcels to which the water rights from the suspended lands can be transferred.

The State Engineer Office (SEO) position is that they should be the ones to decide which lands are irrigable and which transfers are legitimate, instead of making use of the EBID's prior policies and assessment roles. The SEO only has recent historical records for irrigated acreage. Therefore, any farm acreage not currently being irrigated, such as for homestead, roads, and ditches is often not credited by the SEO as irrigated lands.

Although the SEO's position on acreage determinations is unfortunate, it has, on the other hand, "pushed EBID into the 21st Century," by forcing it to start digitizing maps and utilizing GIS to more accurately account for the irrigated acreage to which it supplies water.

Right now, the hydrographic survey is concentrating on small tract (<2.0 acre) parcels, which total about 7,500. GIS is being used to measure the acreage of these parcels, and it will take a lot of time to complete this task.

The mediation process is being kept informal in an attempt to keep disputes out of the courts. However, the process is taking longer than originally thought, and the number of offers sent out by the SEO has been decreasing.

Two public information meetings have been held to answer questions regarding the offer packets. Many of the landowners have a "you can't touch my water rights" attitude, and refuse to acknowledge that their water rights can be taken away if they don't respond to the offers.

One of the main issues of contention right now has to do with the legal authority of the SEO vs. that of the EBID. EBID's policy is that water rights cannot be forfeited for non-use, and that these rights can be transferred to other lands, while the SEO asserts that EBID water rights are not exempt from forfeiture due to non-use, and they want to have a say in all water transfer and brokering activities. EBID believes that the SEO shouldn't be involved in water brokering and has filed a motion to settle these issues up-front. These are some of what Mr. Hernandez referred to as "threshold questions," that need to be resolved in order to expedite the process and to insure a solid legal basis for the settlement offers. However, both Texas and the SEO have opposed this motion.

Mr. Archuleta stated that it was unfortunate that the SEO had declined to send a representative to attend the MAC/SC meeting to do a similar presentation and give their side of the story. He asked Mr. Hernandez what percentage of the landowner had been sent offers. Mr. Hernandez estimated that about 25% of the landowners north of Las Cruces had been sent offers, but added that very few had actually accepted offers due mainly to disagreements concerning the irrigated acreage of their farms. He stated that these disputes would continue as long as some of the "threshold questions" mentioned previously remained unresolved, and that failure to resolve these questions up-front may undermine the future validity of any settlement agreements completed prior to a decision on these threshold questions. Mr. Archuleta asked if the SEO would continue to send out offers despite these unresolved issues. Mr. Hernandez replied that yes, the offers would continue, if only because the SEO needed to demonstrate to the legislature that progress is being made in the adjudication process. Mr. Archuleta then asked Mr. Hernandez his opinion about when mailing of all the offers would be completed. Mr. Hernandez couldn't provide an estimate, but stated that the offer process would continue, even with

limited acceptance of the offers, if for no other reason than to get people enjoined in the adjudication.

Mr. Archuleta asked how the SEO planned to deal with farmers that use groundwater only, with some possibly having no record of water use. Mr. Hernandez replied that such a farmer would pretty much be on his own, but added that there were very few such farmers outside EBID boundaries. He added that in his opinion the SEO will not make offers involving quantities of water until the threshold issues are resolved. Mr. Archuleta asked if EBID has decided on setting a priority date for cutting off water users once all the quantities of water available have been allocated. Mr. Esslinger answered that no priority dates had yet been set. He added that the SEO is still trying to determine the levels of groundwater pumping which will affect surface water users. All these uncertainties also impede water marketing activities, because nobody knows what they are actually buying. That is why the adjudication process is needed.

John Burkstaller asked how long it would take to send out all the offers. Mr. Esslinger replied that this was difficult to estimate, but in his opinion it may take two to three years for the Las Cruces area alone. So far, three years of work had resulted in about 25% of the offers being mailed out. In the interim, settlement discussions on the threshold issues should progress. He believes that the court wants to answer the hard questions first. Mr. Hernandez added that another unresolved issue involves the question of whether the USBR has the approval authority for EBID water right transfers, and the overall role the USBR should have in the whole adjudication process.

Mr. Archuleta asked about the number of offers that had been mailed to date and the total number of offers that need to be mailed. Mr. Esslinger replied that the last batch of offers numbered 13,000, but that he had no idea of the number of offers mailed to date or of the overall total number of offers that will be mailed. He continued by saying that EBID has one full time person on staff assigned exclusively to talk to farmers and assist them with questions or informational requests in connection with offers received.

V. Methodologies Effective in New Mexico Portion of Rio Grande Project for Transferring Water from Agricultural to M&I Uses (EBID/City of Las Cruces)

Gary Esslinger, Steve Hernandez, and Len Stokes explained the current status and future plans for implementation of programs and methodologies that would enable the transfer of surface water rights to municipal use in Las Cruces:

The process consist of many facets which need to be dealt with individually. Successful implementation will ultimately come down to a process similar to what El Paso and EPCWID#1 are currently using, which basically entails staff from each entity working with each other and with the landowners.

EBID will bill landowners regardless of any leasing agreements with the City of Las Cruces (City). The policies developed will have to take into account the needs of both EBID and the City. Both entities are currently looking into issues involving leasing stipulations, policing of water use, ditch maintenance, etc.

Recent legislation allowed EBID to consolidate all city leases into one account and to bill the city through the Municipal Water User's Association (Association). Las Cruces will be responsible for policing water use of leased accounts and maintenance of ditch sections associated with those leases. Flat rate users still remain very problematic in terms of monitoring their water use.

No conversion of water to M&I use will take place until the surface water treatment plant is on-line. Until then, the water leased by the City is being kept in an agricultural use "pool" for purchase by farmers from the City. No change in use is triggered until the City makes a call on the surface water and diverts the water for treatment at its treatment plant. The leasing program is completely voluntary.

About five years ago, the City started looking at the City's and EBID's water supply needs. The first step was an internal process to do water supply and demand projections. Currently, most of the groundwater pumping for the City is from the Mesilla Bolson, with some pumping from the Jornada del Muerto aquifer (Jornada Aquifer). The Jornada Aquifer is a mined aquifer with limited recharge. It contains a lot of water, but much of it is difficult to extract economically. Therefore, this aquifer will likely serve mainly as the City's drought supply.

The City envisions that initial surface water use will be on a small scale, because it's more expensive and requires different methodologies to develop. However, the City feels that surface water will eventually supply about one half of its total demand. The necessary surface water rights will be acquired using either long term leases or by purchases of water rights lands.

The City plans to partner with EBID to start the process of removing obstacles which currently exist in local and state statutes that limit the acquisition of the necessary surface water rights.

As a first step, they (City/EBID partnership) had a statute amended that limited the term of a water rights lease to 10 years, and had it increased to allow up to 40 year leases. Secondly, the Municipal Water Users Association was created to streamline accounting procedures involving water transfers to the City. Thirdly, they are trying to amend the State statute that requires them to file for "Change in Purpose of Use" with the SEO when the City starts diverting surface water, because they believe that EBID should be exempt from such a requirement. In summary, the City and EBID are trying to remove the obstacles to M&I transfers of surface water before the City will actually need the water.

The City does not intend to purchase or fallow farmlands. They intend to acquire surface water rights made available by the retirement of farmland resulting from the normal process of urbanization. There are now about 1,500 acres of urbanized farmlands which the City expects to tap as its first source of water. The intent is to focus on water transfers from water rights lands within the City limits first, and subsequently stay within the City's service area (5 miles from City limits) for additional water rights. By following this course of action, problems associated with ditch maintenance will be minimized, and the City will be able to prevent groundwater pumping within its new service areas. Also, the City is looking into charging a water rights acquisition fee to developers.

Current estimates show that 2,500 acres of water rights will need to be acquired by the City in the next 5-10 years. Actual acreage needed will be dictated by growth.

The City plans to offer lump sum water rights lease compensation levels according to the size of the land tracts – small, medium, or large. The larger tracts will be offered higher lease payments because of the higher value placed on the larger amounts of water

associated with these tracts. The City is allowed to negotiate individual lease compensation offers within a specified price range.

Surface water which the City currently has rights to is held in a pool by EBID. Water from this pool is brokered on an annual basis by EBID to their farmers and the City is reimbursed for this water by EBID when it is sold. However, the City still has to pay the fees charged by EBID and USBR.

Current City regulations allow the City to require transfers of water rights to the City from developers of new subdivisions equal to the projected demand for the new subdivision, and to pay market value for the excess projected demand not covered by the water right transfer.

The adjudication process will eventually determine the total water rights acreage within the EBID's boundaries. Farmers will be able to choose to fallow their land and lease water rights to the City. The City has agreed to keep the EBID system whole, intact, and unaffected during the M&I transfer process. EBID will evaluate the hydrologic impact of the transfers prior to actually delivering the water.

The City is still looking into the transaction costs associated with its leasing program. Also, it is planning to offer 40-year leases with one-time lump sum lease payments based on the present value of the water transferred over the lease term.

VI. Review of Draft Clarifying “Statement of Purpose” for Future Course and Focus of the New Mexico/Texas Water Commission (EPWU/MAC/SC)

This agenda item was initially postponed until the end of the two presentations below. Due to time constraints, and at Mr. Archuleta's suggestion, this item was tabled and will be carried over to the agenda for the next meeting.

VII. Summary of the Final Report of the Paso Del Norte Water Task Force (Environmental Defense Fund)

Mr. Carlos Rincon gave a presentation related to the Paso Del Norte Water Task Force (Task Force), (copy of slide presentation attached as **Exhibit “B”**). The major topics included the creation of the Task Force in 1999, its mission, goals, and accomplishments to date. Mr. Rincon also discussed four basic project activities (one of which is currently under way), which the Task Force has chosen to undertake. Lastly, Mr. Rincon reviewed the findings from the recent Water Planning Dialogue Sessions sponsored by the Task Force and some of the key issues that surfaced from a recent Task Force Water Workshop. Accomplishments to date include review of all regional water resource plans, conducting dialogue sessions, ranking the issues, and publishing a final report.

After the presentation, Mr. Archuleta asked if the Task Force had secured funding for future operations. Mr. Rincon replied that they had secured such funding for administrative support costs only, but that large project activities would need to have funding identified and secured separately, and added that he wasn't sure how successful the procurement of funding for the planned project activities would be.

VIII. Description of the City of Albuquerque's Plans for Surface Water Plant Construction and Use of Rio Grande Surface Water (CH2M Hill)

Mike Bitner of CH2M Hill gave a slide presentation on the subject topic (hard copy attached as **Exhibit "C"**). The presentation provided the background for the City of Albuquerque's (City) surface water strategy, described the features and current status of the surface water implementation strategy, and described how the elements of the surface water project will work. A key feature of the surface water diversion is that it proposes the use of an adjustable height (inflatable) diversion dam which will not be visible during low flow periods when no water is diverted. The City currently has about 47,000 AFY (after losses) of San Juan-Chama (SJC) water available for diversion. Their plan is to divert approximately 94,000 AFY for treatment and distribution – 47,000 AFY of their SJC water and 47,000 AFY of native river water. The City would consumptively use 47,000 AFY of this water, and return 47,000 AFY of treated effluent to the river. Under this proposal, the net river depletions from the City would remain at current permit levels.

After the presentation, Mr. Archuleta asked if there was any opposition to Albuquerque's use of surface water. Mr. Bitner replied that he was not aware of any opposition so far, and explained that it may be because of the implementation of a public outreach program to inform the public and to solicit public participation. Mr. Archuleta then asked about Albuquerque's current per capita water consumption. Mr. Bitner answered that the City's current consumption had just dipped below 200 gpcd, down from a peak of 250 gpcd some years back, and that the City was more than half way to their goal of 175 gpcd. John Sproul asked about the advantages of using an adjustable height dam. Mr. Bitner replied that the use of such a dam will make modifications to the existing Angostura Diversion Dam, located 5 miles northwest of Bernalillo, unnecessary and that the adjustable dam could be built at a more suitable river site closer to the proposed water treatment plant, which is about 19 miles downstream. This type of dam is also the easiest to build and can be used for sediment control as well. Another question was asked concerning the potential for punctures in the dam. Mr. Bitner answered that the dam is made from Kevlar and that a similar dam built in Arizona had reported no problems with punctures. Mike Landis commented that the number one single consumptive use of water in the Middle Rio Grande region is riparian vegetation. Estimates show that the total consumptive use in the Middle Rio Grande Conservation District is 400,000 AFY, including losses due to Bosque vegetation. He added that the USBR is evaluating some pilot projects to control riparian vegetation, but that there have been no large scale attempts to eradicate such vegetation.

IX. Other Business: Schedule Presentation of EBID's SCADA System to Monitor Rio Grande Project Water Quality and Quantity (EBID)

Due to time constraints and at Mr. Archuleta's suggestion, this item was tabled and will be carried over to the agenda for the next meeting.

X. Schedule Next Meeting/Location

The next meeting was set for 10:00a m Thursday, September 13, at an NMSU campus location to be determined later.