

**MINUTES OF THE  
THREE THOUSAND TWENTYFIRST REGULAR MEETING  
OF THE  
BOARD OF DIRECTORS OF THE  
MIDDLE RIO GRANDE CONSERVANCY DISTRICT  
JANUARY 22, 2018**

Directors having been duly notified, Vice-Chair Duggins called the regular meeting to order at 3:10 pm at the MRGCD General Office. The following Directors and Staff were present:

<b>DIRECTORS</b>			<b>STAFF</b>	
John P. Kelly	Chairman	Absent	Mike Hamman	Chief Engineer/CEO
Glen Duggins	Vice-Chair		Dr. DuMars	Chief Water Counsel
Joaquín Baca	Director		Lorna Wiggins	General Counsel
Karen Dunning	Director		Bruce Wiggins	General Counsel
Derrick J. Lente	Director	Absent	Jeanette Bustamante	Administrative Officer/CPO
Beverly Romero	Director		Jason Casuga	Engineer Manager
Valerie Moore	Director		David Gensler	Water Operations Manager
			Adrienne Martinez	Engineer I
			Sloan Washburn	Belen Division Manager
			Lorenzo Benavidez	Socorro Division Manager
			Joe Brem	Albuquerque Division Manager
			Christine Nardi	Human Resource Director
			Becky Burnham	Budget Analyst
			Yasmeen Namji	Planner
			Mike Lopez	Construction Technician

The following names of individuals were interested viewers and/or participants:

Jeff Willis, AMAFCA	Orlando Lucero, Coronado S&W Conservation District
Gary Stansifer, OSE	Michael T. Sandoval, Pueblo of San Felipe
Santiago Maestas, South Valley Acequias	John Thompson, MRGCD Lobbyist
Carmel R. Vigil Jr., South Valley Acequias	

**AGENDA ITEM NO. 1 – PLEDGE OF ALLEGIANCE**

Vice-Chair Duggins and Mr. Carmel Vigil to lead the Pledge of Allegiance.

Vice-Chair Duggins welcomed the guests, and declared a quorum.

**AGENDA ITEM NO. 2 – APPROVAL OF THE AGENDA**

Vice-Chair Duggins called for approval of the Agenda.

Director Dunning made the **MOTION TO APPROVE THE AGENDA AS AMENDED**. Director Baca seconded the motion. The **MOTION CARRIED**.

**AGENDA ITEM NO. 3 – REPORT FROM MRGCD SECRETARY TREASURER - David M. Ferguson**

Vice-Chair updated the Board that Mr. Ferguson was ill and went home. Mr. Hamman reported that a Finance Committee meeting has been scheduled for Wednesday January 31, 2018 at 4:00 p.m. This meeting will also coincide with another meeting that will be discussed later by Mr. Hamman.

Mr. Hamman advised the Board that the Finance Committee meeting is to go over the quarterly financials and review the 10-year capital improvement program.

**AGENDA ITEM NO. 4 – APPROVAL OF THE MRGCD MEETING MINUTES**

- a. Consideration / Approval of Minutes for Regular Board Meeting – January 8, 2018

Director Dunning had a minor word correction.

Director Romero made the **MOTION TO APPROVE THE MINUTES OF THE REGULAR BOARD MEETING JANUARY 8, 2018 AS AMENDED**. Director Moore seconded the motion. The **MOTION CARRIED**

**AGENDA ITEM NO. 5 – ITEMS FROM THE FLOOR**

Mr. Santiago Maestas, President of the South Valley Regional Association of Acequias and member of NM Acequia Association.

Mr. Maestas invited the Board to Acequia Day at the Legislature on January 25, 2018. He stated they will gather at 9:00 a.m. at Garret's Desert Inn on Old Santa Fe Trail and will march to the Round House with shovels in hand, and at 12:00 p.m. the Acequia Day Rally will begin at the Round House Rotunda.

Mr. Carmel Vigil

Mr. Vigil stated he is here with Mr. Maestas pushing the effort with acequias to try to put together a strategic plan for the South Valley Regional Association Acequias, and work closely with the District with this effort. Working closely with the New Mexico Acequia Association the hopes is to encourage more farming and ranching in the South Valley.

Vice-Chair commented that acequias keep people together and it is valuable. Mr. Vigil agreed.

Mr. Hamman advised the Board that the District is a recipient of some capital funding generated through request from the South Valley Legislators two years ago, and are finishing up on those small projects. Support was also requested from the South Valley Legislators and the Acequia Association to work together to request capital funding for the strategic plan that Mr. Vigil commented on, as well as working together with State and Federal agencies that provide grants for improvement and water use efficiency in the South Valley. This plan will be used to help justify funding requests and the District will continue to work with Mr. Maestas and Mr. Vigil on this.

Director Dunning commented that there is a Bill that is being introduced this legislative session for planning grants for water infrastructure, and wasn't sure if the Acequia Association could apply on their own, and asked if the District could apply for this funding on behalf of the Acequia Association?

Mr. Hamman responded that there is a bill focused on that, and there is also the Water Trust Board and some other avenues that are available, as well as federal opportunities, like Water Smart that the District could collaborate with the Acequia Association on.

Dr. DuMars also commented that three or four years ago there was a grant with MRGCOG to look at planning in the South Valley. The Acequias have become political subdivisions through the legislative mandate; it is going to give the opportunity to start integrating those efforts for supporting local food efforts. It will also have a great deal to do with the potential transfer of water rights of the Acequias since they have their own statute that does not allow water rights to be transferred without their approval.

Vice-Chair applauded all the work that is being done, and thanked Mr. Maestas and Mr. Vigil.

**AGENDA ITEM NO. 6 – DISCUSSION AND APPROVAL OF RESOLUTION M-01-22-18-151  
PLEDGING FUNDING FOR A LOCATION STUDY FOR THE EXCONDIDA BRIDGE OVER THE  
NOGAL ARROYO FOR FY2019 AND FY2020 = Director Duggins and Mike Hamman, CE/CEO**

Mr. Hamman advised the board that the Resolution being presented is complete with all the changes that were discussed at the January 8<sup>th</sup> Board meeting, and reworded to make it more clear on what the intent is.

Director Dunning commented that this resolution is now being called a location study and not an Environmental Study, and asked if it is because there will be more engineering; and also asked why it is being stretched over two years. Her main concern is that the District will help pay for the study and then after the study is complete the find out that it is really going to cost ten times more than anticipated and won't go forward.

Mr. Hamman responded this is the verbiage that NM Department of Transportation is using to identify all the NEPA and the planning, it will put this in a positive position for funding competition. In regards to funding over two years; it takes time to do this, and also do not want to put too much burden on the local governments on the funding side, and will match what the State is bringing to the table for the two-year study. What is also important is to demonstrate that there is consolidated local government support; they indicated that this ranks higher on their funding list when they look at traffic safety and a number of other factors.

Vice Chair Duggins stated that this is very well supported by all the partners and the project is estimated at \$4.5 million dollars and the District will be pledging \$100,000 and will spread out over two fiscal year cycles beginning with FY2019.

Director Moore made the **MOTION TO APPROVE RESOLUTION M-01-22-18-151 PLEDGING FUNDING FOR LOCATION STUDY FOR THE ESCONDIDA BRIDGE OVER THE NOGAL AND ARROYO FOR FY2019 AND FY2020.** Director Romero seconded the motion. The **MOTION CARRIED.**

**AGENDA ITEM NO. 7 – REPORT(S) FROM THE CHIEF ENGINEER - (Mike Hamman, MRGCD CE/CEO)**

**a. Water Report – David Gensler, Water Operations Manager**

Mr. Gensler indicated it snowed in the mountains over the weekend. Cumbers Tressel SNOTEL is at 44 percent, which is the highest number we have seen all year. Most of the Snotels in the basin have a little bit of water now. It is still early in the winter, and a lot can change.

After meeting with the Corp of Engineers and Reclamation the conditions are pretty sobering. Estimated peak flows to the valley during the runoff; given the conditions we may see Cochiti releasing 1,000 cfs for a few days this spring, compared to last year where we had 6,000 cfs for a number of days.

It does look like we will get through most of the summer, maybe into September as we use our stored water, depending how much it is decided to use or not use. Mr. Gensler and Mr. Hamman and other Water Ops people have been talking about how to manage the water this spring and make this work for everyone's benefit. Mr. Gensler expressed that the District needs to maximize any potential for storage in El Vado through March, April and May, and just try to stretch it through. There will be water for the farmers this spring and summer but there is not going to be a drop to spare. It will be pretty lean management this spring and summer.

Director Dunning asked if the Irrigation Committee has schedule a meeting to discuss Heron Lake and add Heron to the triggers.

Mr. Gensler responded that last year a change was made to Water Bank Rules, but not sure at what point to meet and make the decision to add the storage in Heron to the water bank trigger. His suggestion was to wait until the April 1 forecast.

Mr. Gensler responded to a question on how long could there be snow up north. Mr. Gensler stated he has seen good snowstorms as late as early June. He is hopeful that he won't see the end of the snow until at least April and May.

Director Moore stated that what would concern farmers is the water supply situation and Mr. Gensler's water report would help inform them. She requested if she could have a copy of the water report that is presented at the Board meeting.

Mr. Gensler indicated he will get the information with weekly water outlook updates on the website, especially given the dry conditions,

**b. Update on 2018 Legislative 30-day Session – John Thompson, MRGCD Lobbyist**

Mr. Thompson advised the Board that the session is expectedly going slow. All the House bills are being sent to the House Rules Committee, where he predicted a vast majority of them will probably die there.

The Election Act Bill as of that afternoon had not been ruled germane, so it is still sitting in the House Rules Committee. He was advised that there may some changes made, but did not believe that those changes involve the Conservancy District.

He felt things will start picking up and the session and stated that some legislation should be filed today or the next day, being that all the formalities are out of the way.

Director Dunning stated that Senator O'Neill on a Saturday radio program commented that they might be some capital outlay available this year because of the improved economic picture.

Mr. Thompson responded that there will be some capital outlay bill, but unknown what amount will be available, but it will definitely be apportioned very quickly.

Director Dunning inquired if the District will be getting capital outlay money for gates for the South Valley?

Mr. Hamman stated that Mr. Vigil has been working with the Commissioner from Bernalillo County and they have funding for nine (9) gates for the South Valley from the County's Capital Outlay Program. These gates will provide walk-through openings.

Mr. Vigil advised the Board that he has received a lot of compliments on these walk-through gates, but advised the Board there are still issues with all-terrain vehicles on ditch banks. With the County and Commission Quezada, they are working with the Conservancy and trying to meet the requests of the community and get things managed.

Mr. Hamman will be getting together with Representatives. Ruiloba, and Romero at some point to look at other capital outlay options.

The Vice-Chair thanked Mr. Thomspom.

**c. Update on the El Vado Corrective Action Study (CAS) – Mike Hamman, CE/CEO**

Mr. Hamman stated he will periodically be providing updates on El Vado and the Denver Corrective Action Study Team. The Corrective Action Team is top notch in the various aspects of this project.

Mr. Hamman continued with a power point presentation, quite a few of the slides are technical in nature and he commented that he has discussed them in detail at a previous Board meeting. He stated they are at a decision-making point focusing on what the engineers and scientists have been looking at over the past several years. They made the decision about the spillway itself. It is going to be replaced with concrete, but will be essentially almost the same configuration as the existing spillway. It will tie in on the downstream side where there is already a concrete flip bucket, where water is flipped out into the river.

There is leakage on the left bottom side, it's on the left-hand side of the dam where all this rock-out cracking. It leaks significantly when the water is up at the high elevation that is apparent at the gauges downstream at the bottom of the dam.

Mr. Hamman, discuss the steel plates and the ripple effect that went through from the movement of the geologic structure when a slide occurred. You can also see the vertical joints that are expansion joints that contract due to water loading and heat expansion. They also backfilled behind the steel plate with gravel fill, and some of that has migrated away and not supporting the steel plating as it did in the past. The slides also produced plate buckling. They have been able to keep the leakage under control through the joints by fixing them periodically.

Mr. Hamman discussed all the different failure modes, there are two full paths, on down, around through the dam, and then also periodic seepage through some of the cracking that occurs from time to time due to the expansion and contraction.

He advised the Board that several alternatives have been talked about. They are going to do appraisal level studies of six different options, the designers have indicated that membrane cover on the steel plate would add 50-100 years of life to the facing, this design has seen good performance on high mountain dams on plates where there is a lot of ice load and other problems, and say this thick membrane that they lay right on top of the steel facing is a good method, and would work well for El Vado's situation.

They looked at rehabilitating the steel lining, but that could be cost prohibitive. The other option is to put a cap over the failing joints or to replace those joints to allow them to continue to expand and contract without failure in the future.

What they will be going through is a detailed cost analysis to determine what's the best solution in terms of risk reduction and the most cost effective method. They also have some significant construction issues and may be doing a field trial construction of two or three different membrane providers, to come and actually roll out and test a sheet and attach it to the dam's face and see how it works, and determine whether or not they need move forward with that. So there are many options that they will be evaluating and considering as viable solution.

What has been determined is that the damages are pretty extensive, and they are estimating it could take as long as two operational seasons. So we are going to figure out where they will be storing MRGCD water and how to make it work. The District will be working with the Corp of Engineers and the Bureau of Reclamation to keep our San Juan-Cham water up at Heron as long as possible and release it from there and also get a temporary storage option down at Abiquiu Dam while all this work is going on so that the District can still capture the native Rio Grande water there at Abiquiu and operate out of Abiquiu Dam instead of El Vado.

It is a very extensive project and a lot of logistics and construction problems.

Director Moore asked when these repairs will begin at El Vado.

Mr. Hamman responded maybe as early as 2020 if the studies are completed. They may possibly have two or three different contracts. One for the spillway, one for the liner and the abutment work, they will have to have specialty contractors.

Director Dunning asked how they will do the field test. Mr. Hamman stated there are three of four vendors they have talked to that want to demonstrate their constructability to show how well it adheres. The field test will add a little extra cost to the overall project.

**d. Announcement of Public Meeting on January 31<sup>st</sup> to Discuss El Vado CAS – Mike Hamman, CE/CEO**

Mr. Hamman advised the Board that on January 31, 2017 the Bureau of Reclamation is holding a series of meetings at the Nature Center. They have schedule a time slot from 10:00 top noon to meet with the District, and he encouraged any Board Members to attend that meeting. They will be meeting with the Bureau staff from Denver and Provo offices, along with the Albuquerque office to talk about El Vado issues and get into more detail and how to move forward.

They may also discuss entering into an agreement with them. It would initially be a repayment contract that would have language that would allow the District to buy out of it at some point. This will be analyzed as part of the MRGCD Capital Improvement Program. It has been estimated that this project could be in the neighborhood of \$60 million dollars total price and the District's portion of this would be approximately \$9 M which is the required 15% match.

They will also have several stakeholders groups, mostly agency people and some from the rafting community that will be interested in this project.

Dr. DuMars commented that there are multiple beneficiaries for this El Vado Dam and of this work that is going to be done. It includes US Fish and Wildlife Service, Pueblos, City of Albuquerque, Environmental groups, the Audubon and many others. Therefore, it would be useful to start trying to introduce this at the early-on stages. Also the NM State Legislature and we could start looking at the feasibility of a study to contribute in that, these concepts might relevant.

Mr. Hamman stated the District developed a white paper on the topic about all the benefits of El Vado ever since it was originally constructed for the single purpose of supplemental irrigation storage. That was to get irrigation water to the middle valley with the secondary purpose of some flood benefits on the Rio Chama as well. It has grown leaps and bounds to multiple beneficiaries because of the actions associated with the wild and scenic reach of the river, downstream of El Vado and above Abiquiu. There are a lot recreational and environmental benefits that the District has gladly supported over the years and the way we operate the facility and work with the federal agencies in routing water around, letting people park their San Juan-Chama water in El Vado, so it can have rafting releases and fisheries flows. The District does all that currently for free.

The District spends \$300,000 plus a year for annual maintenance. We do get a little back from the power operations there at El Vado through a check that we get from Los Alamos County, but there are other options there to get more from the power revenues.

**e. Scheduling of Off-Site Board of Directors meetings for 2018 – Mike Hamman, CE/CEO**

Mr. Hamman advised the Board that the offsite meetings have been done a couple ways; i.e. we have scheduled the second meeting of the month in February, March and April out of Bernalillo County and held a formal Board meeting at the other counties, and also discussed the water situation, Division projects and winter work; and the second way was we just held Informational Meetings, at the other Counties and the respective Division Managers would provide presentations on what work is being done in their area, such as the winter work and other projects, discussed water issues and other water related topics, but it was strictly informational.

Mr. Hamman recommended having a regular-scheduled Board meeting in the other respective counties, conducting limited business of the Board, and having an emphasis on information.

This recommendation was well received by the Board, and there was discussion on the time of the meetings. The Board directed Mr. Hamman to schedule these offsite meetings as discussed, and finalize the venue and times with the Directors for that county. Mr. Hamman advised the Board that a detailed agenda will be prepared listing the specific topics that will be discussed.

**f. Set date of MRGCD Board Governance Training – Lorna Wiggins, General Counsel**

Ms. Wiggins schedule the Governance training for the Board Directors for March 12, 2018 at 1:30 p.m. at the District office. This training will provide in detail the fiduciary duties, and will go through the governance handbook.

**g. 2018 Notices to Water Bank Customers to be Mailed January 29, 2018 – Mike Hamman, CE/CEO**

Mr. Hamman advised the Board that annually a letter is sent to the Water Bank customers. This letter is an opportunity to communicate and alert our Water Bank customers that the water supply conditions are different than last year, and there may be a possibility of curtailment.

He also discussed the Water Bank five-year contract, and expressed that if there are no changes to their land, their water use on the different properties they will not have to renew the contract annually, and only those that have changes will be required to come in and renew and modify their Water Bank contract annually. This will cut down on paperwork and a lot the communication issues that have come up. Mr. Hamman stated if the Board if they any comments to forward them via email, so that these letters can be finalized and sent out on Friday, January 29, 2018.

January 29, 2018



Re: 2018 Middle Rio Grande Conservancy District Water Bank

Dear Applicant:

The Middle Rio Grande Conservancy District (MRGCD) Board of Directors initiated the Water Bank in order to allow owners that have “severed” their pre-1907 water rights from the land to continue irrigating under “surplus” water supply conditions. It is very important to the MRGCD that as many irrigable acres remain in agricultural production so we are pleased to work with constituents to identify lands that can benefit from this policy.

MRGCD is very pleased to inform you that there was a successful Water Bank season during 2017 as the middle valley received an ample water supply that allowed for a full season of operation of the Water Bank without a single curtailment. In preparation for 2018 we are again offering an opportunity to utilize the MRGCD Water Bank. Water supply conditions will have a surplus supply for some period, however snowpack conditions are not as good as last year thus far. With that said, it is likely that there may still be periods of time in 2018 when water may not be available for all irrigators and deliveries to properties with Water Bank leases may be curtailed. Water will not be delivered to the property for which the Water Bank application was made while a curtailment is in effect. If the applicant has options within the lands under cultivation to a portion of the land as a alternate curtailment location, then farming may continue on the preferred location. Water Bank users may resume irrigation after curtailment is lifted and as scheduled with your Irrigation System Operator (ISO).

Enclosed please find a Water Bank application/renewal form for 2018. If you would like to lease water or continue to lease water from the MRGCD Water Bank for irrigation, this form must be completed and returned to MRGCD and payment made before water will be delivered to your property. A Water Bank Lease Agreement must also be notarized and signed before **ANY** irrigation takes place. Your ISO will have a list of properties that have a “green light” to irrigate or a “red light” to not irrigate if the contract is not signed or fees and assessments have not been paid.

The rates for the calendar year 2018 are as follows: The Water Bank Lease Fee will be \$50.00 per/acre and the Water Service Charge will be 40.00 per/acre. An Administrative fee of \$100.00 per application is required. This fee is valid for up to a maximum of five (5) consecutive years as long as the lease is renewed annually and is

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not changed. Any applicant making changes to a Lease Agreement upon renewal within the 5-year period will incur an additional \$100.00 Administrative fee. Starting this year, if the applicant is entering into a new five-year contract, lessees will no longer be required to renew the contract annually but must certify that no changes are being made on the annual application. If changes are made either to the lands under the Water Bank or the alternate curtailment location, than a new contract will need to be signed before the property will be eligible for water.

Water Bank applicants must have paid all required fees in full prior to receiving water from the Water Bank and must not be delinquent on any fees or assessments owed to MRGCD.

Finally, to obtain a lease, Water Bank Applicants must be in compliance with all provisions of the MRGCD Revised Rule No. 23 (Water Bank).

Please review MRGCD Revised Rule No. 23 regarding curtailment of deliveries to Water Bank leases. If an alternate curtailment location is requested and approved by MRGCD, it may not be changed during the irrigation season. It is the responsibility of the applicant to provide all appropriate documentation associated with the lease application, including any required maps, to MRGCD at the time of application.

We look forward to working with you during a successful 2018.

Mike A. Hamman, CEO

Enclosure: water bank lease application  
water bank information-mrgcd.com

**h. MRGCD Rio Chama Retreat on June 14-16, 2018, Mike Hamman, CE/CEO**

Mr. Hamman updated the Board that he has been in contact with a Rafting Company, and after consulting with Board members regarding their schedules this trip has been locked in for the weekend just before Father's Day. The trip will start on Thursday and will be off the river around noon on Saturday to get home on Saturday to prepare for their Sunday events with their fathers.

If some would like to take another tour of El Vado that can be arranged for that Thursday before launching on the rafting tour. Mr. Hamman advised the Board to notify him as soon as possible if there is interest in another El Vado tour and we'll coordinate.

**i. Upcoming Conferences – Mike Hamman, CE/CEO**

Mr. Hamman requested if there are any Board members wanting to attend the Family Farm Alliance, February 23 & 24 in Reno and the Colorado River Conference March 1<sup>st</sup> and 2<sup>nd</sup> to contact Ms. Bustamante and make your travel arrangements. He also discussed the NWRA Conference in Washington, DC and meeting with the Congressional Delegation during that week of the NWRA Conference.

Directors Moore and Baca indicated they were interested in traveling to Washington, DC

Dr. DuMars stated NWRA this year in Washington is particularly an important year, because you have a new Secretary, a new Commissioner of Reclamation, and other underlying people that are new. It is a great opportunity to schedule meetings with these new appointees and update them on the Middle Rio Grande Conservancy District, and inform them of all the positive things that the District is doing on conservation, as well as meet with the Delegation.

**j. MRGCD Website Update Review – Mike Hamman, CE/CEO**

One of the projects we have been working on is to upgrade the webpage and make it more user friendly. The existing webpage is very difficult to get around and find what you need. So we are in the process of upgrading the website so it will be easier to get information on the Water Bank, the ISO contact information, water readings, and more.

I would like to thank Rick Altenberg and the staff at Real Time Sites working with Mr. Altenberg to get this project completed and go live by February 1, 2018.

People will be able to find out what work and projects are going on in their area; and will also be able access forms like turnout requests, licenses, and employment applications easier.

Some things that we are thinking for the future is possibly on-line bill payments. The goal is to provide our taxpayers and the public important helpful information on our website, and also be able to access pertinent documents, policies and forms that could help expedite some of the process.

The HR Department is looking of having the employees manage their personnel affairs better via the intranet. There are a lot of possibilities with upgrading our website.

We are looking at developing a Board Member page that would have a biography on each Director.

Director Dunning asked if they will be able to leave messages, and will there be someone responsible to answer and respond back to that person.

Mr. Hamman said that currently we do not get very many messages, but when they have come in Mr. Josh Hind in our IT Department receives them and he directs them to the proper department or individual, and they are responded to right away.

Director Moore suggested that we discuss the upgraded website at the external Board Meeting at the individual counties.

There was additional discussion regarding ways of drawing more people to view and use our website.

**AGENDA ITEM 8 – REPORT(S) FROM THE MRGCD ATTORNER(S) – Chief Water Counsel and General Counsel**

Dr. DuMars reported on three items:

1. Wild Earth Guardians:

The Wild Earth Guardians filed a lawsuit against the Bureau of Reclamation, saying the Bureau should affirmatively take control of the District's water rights and take control of the operations of the District because the Bureau had discretion to operate the District under existing contracts. They also indicated that in their view that what was going on was violating the critical habitat.

The also took the position that there was a violation of the existing biological opinion because another group put together a hydrogeology group that realized that in a particular circumstance that in order to keep extrication of the minnow, they would have to take action immediately, and they did. The relocated minnows and did some that saved the minnow from extrication, and they said it was a biological violation.

So the Conservancy intervened as a Defendant, saying you really aren't suing them you are suing the District. We intervened as a Defendant along with the United States, and challenged everything that they had considered to be illegal. Judge Brack and the federal court dismissed all of their claims against the Bureau of Reclamation that indirectly ran against the District.

Because the issues were moot, and because we had the 2016 BO, that case going on, but they also sued the US Army Corp of Engineers, and they said because during this process the Corp said in the we have created a minnow pulse.

So the Wild Earth Guardians have now filed a brief in which they say the US Corp of Engineers had complete discretion to do whatever they wanted to, and they have the ability to move water down the river at Cochiti. There are no limits on what they can do.

Wild Earth Guardians are over the top in terms of the discretion they say the federal agencies have. We just won the case saying they don't have discretion to take water. Dr. DuMars has been working closely with the U.S. Attorney Office about this case.

There is a response brief due coming up very soon to the Wild Earth Guardians suit, and we are in the same position and have the same views as the United States. There is no need to write a huge brief and litigate, we will simply concur with the Feds, and we will write a couple of pages that will say that the Corp or anybody else does not have the discretion to private water rights in the Middle Rio Grande.

## 2. Case at Klamath Falls, Oregon

Approximately 10 years ago the US Fish and Wildlife Service came in, and they basically took all the water from the farmers. Took it under the theory that they needed it for the salmon and other species and said "we need to retain it up in the reservoir in Klamath Reservoir, in the state of Oregon".

A class action suit was filed in court of Federal Claims by the people who lived there. That case has been going back and forth, and they have certified questions to the Oregon Supreme Court.

They recently lost that case in the Court of Federal Claims, and that was a decision, but the Court ruled and there were a couple of really bad things about it.

a. One is they ruled that the existence of a contract that allows them to retain the feds to retain water for any cause of for any reason or, even if has a drought clause, they said they can always use the Endangered Species Act to take water under these contracts from farmers.

This is a horrific case. , and it was a class action case that has been so long ago. Many farmers lost their farms, but the case is still alive.

So a whole association of irrigation districts in California and elsewhere and their position on this is that they can't let it stand. And one of the odd rulings was that the Court said they would take their water away from them, and they needed X flows for the species. But the report also stated, "we are not sure they had the authority to do that."

200 miles downstream, there is an Indian reservation that has the water right. The Bureau of Reclamation has the authority to determine the size of the water right for that reservation. It is incredible coincidence that the water right for the fish down there is identical to what needed to be released for the species 200 miles upstream in the state of Oregon.

Dr. DuMars asked the Board whether the District should file an Amicus brief. Tule Irrigation District and Coalition have hired Law and Resource Planning Association (LRPA) to take the case on appeal and Dr. DuMars has filed an Amicus Brief on their behalf.

Dr. DuMars is recommending that the District do an Amicus Brief and General Counsel, Lorna Wiggins would sign it. It would simply say "The District agrees with the arguments that are being made LRPA, Dr. Charles DuMars.

They soliciting support to try to get this case ultimately to the US Supreme Court because this is not a good holding, it is a very negative decision. The Brief is due at the end of February, but can request an extension. LRPA will be making all the arguments. This will be in the D.C. Circuit Court of Appeals

Director Baca asked was it the native water right, the reason they were withholding it was because their fishery was being impacted by the farms, and the Natives had the water right priority.

Dr. DuMars responded yes, the difference is that in the case of the Klamath, they are in the water rights adjudications. That is not a problem there because they get quantifies.

The Hoopa and the other tribes clear down in Klamath, just before it goes into the Pacific Ocean they haven't had an-adjudication, and they chose not to get an adjudicated water rights. So the implication is that the Bureau is its trust responsibility and quantifies the amount of water they get, and the quantity they would receive is the amount that would be determined by the Bureau. It is the procedural posture, not the principle, and everybody is worried.

Director Baca asked what exactly is the Districting getting for the Amicus Brief.

Dr. DuMars stated it is very important in the Western United States that when there is a stream and there is the current Amendment, there is a way to adjudicate water rights that you should go through the adjudication first. The Bureau does not have the discretion to determine the size, or to quantify a water right internally.

Mr. Hamman stated if the ruling stands it will have long term implications. Other Irrigation Districts including Elephant Butte Irrigation District will likely sign on, not filing their own Brief, but signing on as supporting the Brief. Also the Family Farm Alliance is also gathering support.

There was additional discussion on the filing of the Brief and the impacts.

### 3. Water Right Protest Publication Error:

A significant mistake in the publication for the water right that was protested by the Middle Rio Grande Conservancy District, Rio Rancho and the Bosque Del Sol, LLC. The mistake in the publication was actually located at five out of five townships away from where it was supposed to be. This was raised with the State Engineer by a motion. The State Engineer was contacted by the other side and they said they would change it and will republish, but they didn't give a

copy of their request to republish, and they submitted a proposed order, and the Order called it a "Typographical error".

It is not a typographical error "it is a violation of procedural due process", and it may take the original application void, which means that's why they are republishing it.

The people who just came off the wall who absolutely were outraged by the attempt to try to call it a typographical error were Sandia and Isleta Pueblos because they're committed to this issue, requiring that there be a commitment, and they agree to the private water rights of the pueblos and the rights of the individuals of their private property, but they felt like there ought to be conditions.

So they got together and circulated a motion, which the District signed onto and everybody signed onto, that requests that this hearing officer modify his Order and take out the language "typographical error" and just say it's a "Fundamental Error", because it is critical, and it is an attempt to sneak this by.

The reason this is important is that we have to research the question whether we need to re-file a new one. If the first one is void, then we would have to re-file a new one, and this would give us the opportunity to look at the issues and question the policy issues and get everybody a chance to review it. If the District would say "no" and doesn't re-file we are at risk, because the first one may be void.

The Pueblos and their lawyers were outraged about it, and then the Bureau got involved and we signed onto it. The deadline to file is February 9, 2018. It is real risky to not file something.

#### **AGENDA ITEM 9 - REPORT(S) FROM THE MRGCD BOARD OF DIRECTORS**

- a. Report on Personnel Committee, January 11, 2018 – Directors Dunning, Romero & Moore

Director Dunning indicated that the Committee had a conference call on January 11, 2018 and the mainly discussed the upcoming evaluation of the CEO. Ms. Christine Nardi, HR Director has an evaluation instrument that was provided to her by a consultant and she provided the committee with this evaluation document.

The form will be provided to the Board and the Chairman Kelly would like to have the evaluation on the 12<sup>th</sup>.

Director Baca asked if there is a summary of accomplishments.

Director Dunning stated that Mr. Hamman in the past has provided a self-evaluation and that he could do that and also provide all the progress that has been made and list the goals and have it completed by February 5<sup>th</sup> or 6<sup>th</sup>.

Director Dunning made the **MOTION TO APPROVE THE REPORT FOR PERSONNEL COMMITTEE MEETING, JANUARY 11, 2018** Director Moore seconded the motion. The **MOTION CARRIED.**

#### **AGENDA ITEM NO. 12 – EXECUTIVE SESSION**

- a. NMSA 1978 Open Meetings Act Section 10-15-1-(H)2  
1. Threatened or Pending Litigation

Ms. Lorna Wiggins, General Counsel advised the Board that there are no items to be discussed in Executive Session.

With no further comments, questions or concerns, Director Romero made the **MOTION TO ADJOURN THE MEETING.** Director Moore seconded the motion and the **MOTION CARRIED** unanimously.

The meeting was adjourned at 5:30 p.m.

Approved to be the correct Minutes of the Board of Directors of January 22, 2018.

**Attested:**

\_\_\_\_\_  
David M. Fergeson  
Secretary/Treasurer

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John P. Kelly,  
Chairman, MRGCD Board of Directors