

**MINUTES OF THE  
TWO THOUSAND EIGHTY FIFTH REGULAR MEETING  
OF THE  
BOARD OF DIRECTORS OF THE  
MIDDLE RIO GRANDE CONSERVANCY DISTRICT  
March 28, 2016**

Directors having been duly notified, Chairman Lente called the regular meeting to order at 3:00 pm at the Valencia County Administrative Offices-Commission Chambers, Los Lunas, New Mexico. The following Directors and Staff were present:

**DIRECTORS:**

Derrick J. Lente	Chair	
Adrian Oglesby	Vice-Chair	Absent
Glen Duggins	Director	
Karen Dunning	Director	
John P. Kelly	Director	
Chris Sichler	Director	
Beverly Romero	Director	

**STAFF:**

Michael A. Hamman	Chief Engineer/CEO
Dr. Charles T. DuMars	Chief Water Counsel
Bruce Wiggins	General Legal Counsel
Jeanette Bustamante	Administrative Officer
Eric Zamora	Asst. Chief Engineer for Ops.
Tom Thorpe	Public Information Officer
Sloan Washburn	Belen Division Manager
Lorenzo Benavidez	Socorro Division Manager

The following individual(s) were interested viewers and/or participants:

MRGCD Belen Division Employees Carol Benavidez Omar Garcia Alan Cordova Jonathan Martin CT Sanchez Stephen Smietanski John W. Crane Daniel Clouser Mike Wallace Loretta Scott Felix Salas Thomas Abeyta Steve Garcia Tom Anaya Ernesto Zamora	Mike Wallace, MWA Peggy Carbajal, Valencia County Clerk Teresa Chavez Kendra Kaneshiro, Valencia County Treasurer Diana Coplen, Valencia County Chief Deputy Treasurer Paula Sichler, Snake Ranch, LLC Anthony Carrion Jonathan Mastin Michelle Milam, Valencia County Assessor Paul Gabriel Luna, Chief Deputy Assessor JoAnn Van Der Geest
--	--

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

Chairman Lente introduced the father of Director Romero, Ray Dominguez, and requested that he lead the Pledge of Allegiance.

**AGENDA ITEM NO. 2 – WELCOME STATEMENTS BY MRGCD BOARD CHAIRMAN DERRICK J. LENTE & VALENCIA COUNTY DIRECTOR BEVERLY ROMERO**

Chairman Lente said he would like to thank Director Romero and Valencia County for allowing the Board to use the Commission Chambers and for their hospitality. He said this was the second of the meetings the Board was taking on the road; the first was in Socorro County in February and the next meeting will be at the end of April in Sandoval County. He said he, the Board and MRGCD staff felt it was important to take their

show on the road, to hear from the folks in that county, to let them know what projects the MRGCD is working on and what is important to the MRGCD at this point in time. He said they also wanted to give the folks, that aren't able to make to the meetings at the MRGCD offices, an opportunity to hear the Board's message and to be able to speak to the Board members.

### **AGENDA ITEM NO. 3 – INTRODUCTION OF INVITED GUESTS – MRGCD Chairman Derrick J. Lente**

Chairman Lente said he would like to acknowledge folks in the audience from the Valencia County Diana Coplan, Chief Deputy Treasurer, Kendra Kaneshiro, Bookkeeper-County Treasurer's Office, Peggy Carbajal, Valencia County Clerk and Clerk Dolores Aurora Chavez, Michelle Milam, Valencia County Assessor and Paul Gabriel Luna, Chief Deputy Assessor.

### **AGENDA ITEM NO. 4 – APPROVAL OF THE AGENDA**

Chairman Lente called for approval of the agenda.

Director Romero made the **MOTION TO APPROVE THE AGENDA AS PRESENTED**. Director Dunning seconded the motion. The **MOTION CARRIED** unanimously.

### **AGENDA ITEM NO. 5 – APPROVAL BILLS & PAYROLL RATIFICATION & ATTORNEY INVOICES**

- a. Consideration/Approval of Payment Ratification – March 28, 2016

Chairman Lente called for approval of the Bills and Payroll Ratification for March 28, 2016.

Director Romero **MADE THE MOTION TO APPROVE THE BILLS AND PAYROLL RATIFICATION FOR MARCH 28, 2016 AS PRESENTED**. Director Dunning seconded the motion. The **MOTION CARRIED** unanimously.

- b. Approval of February 2016 Invoice for Law & Resource Planning Associates

Chairman Lente called for approval of the February 2016 Invoice for Law & Resource Planning Associates. Director Kelly asked how long would Henry Coors and his claim to steal MRGCD water continue? Dr. DuMars said he is happy that this claim is over, however, they are struggling with the question of what to do with the people that Mr. Coors persuaded to his development where he had no water. He said that he and Mr. Hamman are working on a settlement and they are close to reaching an agreement. Mr. Hamman gave additional information on the short term agreement negotiations and going through Albuquerque Bernalillo Water Utility Authority and the NM Public Regulation Commission.

Director Kelly made the **MOTION TO APPROVE THE FEBRUARY 2016 INVOICE FOR LAW & RESOURCE PLANNING ASSOCIATES AS PRESENTED**. Director Romero seconded the motion. The **MOTION CARRIED** unanimously.

### **AGENDA ITEM NO. 6 – APPROVAL OF THE MINUTES**

- a. Consideration/Approval of Minutes for Regular Board Meeting – March 14, 2016

Chairman Lente called for approval of the minutes for the Regular Board Meeting March 14, 2016.

Director Romero made the **MOTION TO APPROVE THE MINUTES OF THE REGULAR BOARD MEETING MARCH 14, 2016 AS PRESENTED.** Director Dunning seconded the motion. The **MOTION CARRIED** unanimously.

**AGENDA ITEM NO. 7 – INTRODUCTION OF MRGCD VALENCIA DIVISION FIELD STAFF – Mike Hamman MRGCD CEO & Sloan Washburn, Belen Division Manager**

Mr. Hamman introduced MRGCD Albuquerque staff attending the meeting and requested Mr. Sloan Washburn, Belen Division Manager to introduce his Belen Division staff in attendance. Mr. Washburn said it was not possible to have his entire staff at the meeting, introduced his staff and said he would like to thank them for the job they do and for attending the meeting. He said Belen Division Ditch Riders were not in attendance; they were out in the field taking care of constituents. Mr. Hamman said those staff in the audience are the ones that do the real work day in and day out keeping the valley green, keeping constituents scheduled with water and keeping the horrendous weed problem under control. He said he would like to thank them for keeping the Belen Division running.

**AGENDA ITEM NO. 8 – PRESENTATION OF WINTER PROJECTS, CURRENT AND FUTURE PROJECTS WITHIN THE BELEN DIVISION – Sloan Washburn, Belen Division Manager**

Mr. Washburn presented slides of projects that his staff had completed during the past several months that included a drain that was completely rehabbed during the past winter, repair done on the Pueblo off of the Big Chical, a weir in the San Juan area replacing a drop check and the various stages of construction, checks that were re-built on the Grant #1 in Socorro County, a guardrail fence along Hwy 346 and the river to help protect the Bosque from fires and illegal dumping that was built in conjunction with the NMDOT. He showed a flume on the Las Nutrias Lateral built a couple of years ago that they added a piece to, a Langmann Gate structure, the first long crested weir built in the San Juan area, another heading on Grant #1 in the San Juan area which has a check structure built on to it with a Langmann gate to control the water level on the Grant #1 and then further down stream on the San Juan Main Canal. Mr. Washburn then showed a photo of another heading with a Langmann gate and a flume built in it closer to Belen with a headgate for insurance policies, a box culvert with a Langmann on the Harlan Heading, the heading of the Los Lunas Ditch which is inside the Pueblo and has a box culvert with a Langmann control and the ditch has been lined for efficiency. He said these are some of the projects the Belen Division has been working on and completed during the last year to make their water deliveries more efficient. Director Dunning asked about the guardrail along Hwy 346 and who is responsible for replacing that guardrail; is it the MRGCD or the NMDOT. Mr. Washburn said the NMDOT provided the guardrail and there is some material left from the project and the NMDOT was happy to provide that material because it was to their benefit as well. Director Sichler said he thinks the maintenance on the ditches have improved a lot during the past seven years he has been a member of the Board. He said one thing he has noticed that has deteriorated over time has been some the drainage ditches and he knows the crews are working on them, but what does the Belen Division have planned on some of the drainage ditches. Mr. Washburn said this past year he wanted to focus the winter works on the rehab and deferred maintenance of structures and building of concrete structures that wasn't possible during irrigation season. He said hopefully with some of the machines they can hopefully get budgeted for and maybe some extra personnel, he can assure the drains get attention as well. Director Kelly asked about the wire mesh on the slope paving and Mr. Washburn answered accordingly.

**AGENDA ITEM NO. 9 – ITEMS FROM THE FLOOR (Comments are limited to three (3) minutes)**

JoAnn Van Der Geest said she has property in both Valencia and Socorro counties. She said she would like to comment that the Ditch Riders these days are primo and are good about letting the irrigators know what is going on, if there's a problem and when she can get water. She said she has been irrigating in Valencia County for over thirty years and for some reason there seems to be a problem with getting water immediately. She said she used to be able to get water as soon as the water was turned on and now it's more like three weeks down the road before she can get water on her fields. Ms. Van Der Geest said she grows grass because she raises cattle and she would like to ask if there any way they can get water earlier

on the west side of the river in Los Chavez off the Gabaldon Lateral. Ms. Van Der Geest said on her property in Socorro County for the last few years they have been very good about not having farmers over watering and water running down the railroad easement and flooding the properties. She said that Director Sichler owns property above her and she has seen that he has done quite a bit by building a pond so he doesn't over water. She said this last Wednesday she was planning on fertilizing their alfalfa field before watering and the irrigators directly ahead of her way over watered and the back half of her field was flooded and she is asking Socorro County if they can speak to that farmer and ask for them to monitor their water. Director Sichler said that Lorenzo Benavidez, Belen Division Manager is in the audience and she can direct that message to him. He said on a personal note, he can use some of his equipment to go in help with some dirt work on the drains to help them work better. Ms. Van Der Geest said she didn't think it was the drains, it is some irrigators that over water. Director Sichler said she should speak with Mr. Benavidez and he could help direct her message to that particular irrigator. Chairman Lente requested that Mr. Hamman follow-up with Ms. Van Der Geest's question with regards to irrigating on the west side.

Director Kelly said he would like to pass along a comment. He said he works with an irrigator down here that is in the engineering business and he wanted to pass along to Mr. Washburn about his Ditch Rider James Montoya and to please let Mr. Montoya that he is doing a heck of a job and he wants to make sure he gets recognized.

### **REPORT(S) FROM THE DEPARTMENT OF THE INTERIOR**

There are no Reports from the Department of the Interior. The following summary report was received electronically from the Bureau of Reclamation.

#### 1. Heron Summary

Content = 75,022 ac-ft. (03/24)  
 Azotea Tunnel: 100-150 cfs  
 Total SJ-C inflow year-to-date: 9,311 ac-ft.  
 Currently releasing: 100 cfs  
 Current MRGCD storage: 1,521 ac-ft.

#### 2. El Vado Summary

- A. Total storage (all contractors and natural) in El Vado as of 03/24:  
45,556 ac-ft.
- B. Native in El Vado  
30,184 ac-ft.
- C. MRGCD SJ-C storage in El Vado  
13,585 ac-ft.
- D. NMISC EDWA:  
1,201 ac-ft.
- E. All other SJ-C contractors:  
586 ac-ft.

Current release is 75 cfs      RG Inflow is 200-250 cfs

#### 3. Storage in Abiquiu

Content = 133,257 ac-ft. (03/24)  
 MRGCD SJ-C storage = 1,895 ac-ft.

Total supplemental water released to date for minnow in 2016: 0 ac-ft.

Snowpack Data  
As of 03/25/16 (%of median)

Rio Chama Basin	72%
Upper Rio Grande Basin	81%
Sangre de Cristo Basin	86%
Jemez Basin	52%
San Juan River Basin	81%

March Streamflow Forecast

Rio Grande @ Del Norte CO	520,000 ac-ft. (101%)
El Vado Reservoir Inflow (Mar-Jul)	200,000 ac-ft. (89%)
Rio Grande @ Otowi	620,000 ac-ft. (86%)
Jemez R. Below Dam	27,000 ac-ft. (79%)
Rio Grande @ San Marcial	410,000 ac-ft. (80%)

**AGENDA ITEM NO. 10 – REPORT(S) FROM THE CHIEF ENGINEER (Michael A. Hamman, MRGCD CEO/CE)**

- a. Bid Abstract(s) – Jeanette Bustamante, MRGCD Administrative Officer  
1. ¾ Ton Truck – Socorro Division

Ms. Bustamante gave details for the bid abstract.

The Socorro Division was appropriated budget for a 3/4 ton service truck, and after thorough review, staff is recommending award to Reliable Chevrolet for a 2016 Chevrolet 2500HD 4x4 with a utility bed, per NM State Pricing Agreement #50-000-14-00034.

VENDOR	2016 3/4 TON 4X4 TRUCK		UNIT COST	GRAND TOTAL
	MAKE	MODEL		
Reliable Chevrolet	Chevrolet	2500HD	\$38,441.00	\$38,441.00

Grand Total: 2016 Chevy 2500HD 4x4 w/utility bed - \$38,441.00.  
Socorro Division FY2016 BUDGET \$40,000.00.

Director Kelly made the **MOTION TO APPROVE STAFF RECOMMENDATION FOR THE 2016 ¾ TON 4X4 TRUCK FOR THE SOCORRO DIVISION TO RELIABLE CHEVROLET IN THE AMOUNT OF \$38,441.00.** Director Romero seconded the motion. The **MOTION CARRIED** unanimously.

- b. Consideration/Approval of Request for Proposal (RFP) – Jeanette Bustamante, MRGCD Administrative Officer

Ms. Bustamante said the Board was provided with draft proposals for General Counsel and Chief Water Counsel. She said the contracts actually terminate in May, however, staff is trying to get all contracts aligned with the fiscal year and these RFP's will get the inception date of July 1<sup>st</sup>. Ms. Bustamante said staff will extend the current contracts for an additional month and a half. She asked if there are revisions to the RFP's, she would like those as soon as possible. Director Kelly said within the procurement, the RFP's request a special Board meeting for May 5<sup>th</sup> and he has a long standing commitment on May 5<sup>th</sup> and 6<sup>th</sup> and is hoping that date can be changed to the following

Monday or Tuesday. Director Sichler asked for clarification on the special meeting and Director Kelly directed the Board to that page in the RFP. Director Sichler said he would like to wait to see how many applicants there are and this meeting may not be needed. Ms. Bustamante suggested they plan this meeting, if needed, prior to the Board meeting of May 9<sup>th</sup> and the Board concurred. Director Kelly said on both proposals he would like to see the Scope of Work revised to focus on the order of priorities and would like Mr. Hamman to take the lead on coordinating to ensure the more important things are up front in Section 5 and the Board concurred.

Chairman Lente called for approval. Director Sichler made the **MOTION FOR APPROVAL TO MOVE FORWARD ON THE REQUEST FOR PROPOSAL (RFP) ON THE CHIEF WATER COUNSEL SUBJECT TO REVIEW OF SECTION FIVE ON THE LIST OF PRIORITIES.** Director Kelly seconded the motion. The **MOTION CARRIED** unanimously.

Director Kelly made the **MOTION FOR APPROVAL TO MOVE FORWARD ON THE REQUEST FOR PROPOSAL (RFP) ON GENERAL COUNSEL SUBJECT TO REVIEW OF SECTION FIVE ON THE LIST OF PRIORITIES.** Director Romero seconded the motion. The **MOTION CARRIED** unanimously.

Director Dunning asked for the status on where the Board was with how many meetings they would have a month; this may have impact on the cost of this RFP. Director Kelly said he brought this up when the Board was approving the Open Meetings Act resolution and members of the audience thought the Board was bringing up something that wasn't on the agenda and the Board agreed to address it as a specific agenda item somewhere down the road; it wasn't agreed as to whether it would be six months or six weeks. Mr. Hamman said his recollection was the Board would wait until the on-road meetings were completed and then address it as a specific agenda item.

c. Water Report – Mike Hamman, MRGCD CEO/CE

Mr. Hamman reported said the forecast has been continually declining. He said the March 1<sup>st</sup> forecast indicated there was 90% for the El Vado/ San Juan Chama Project area up north and it has declined down to just below 80% at this point in time. He said there is a storm system coming in on Tuesday and Wednesday that looks promising and hopefully it will turn things around and break up the high pressure system that has been camping out and pushing storms to the north. Mr. Hamman said the weather service continues to show long term spring effects through the early summer of El Nino continuing to provide cooler and wetter than normal conditions in New Mexico and southern Colorado. He said the MRGCD does expect to store plenty of water at El Vado and continues to negotiate an agreement through the Emergency Drought Water Agreement with the NM Interstate Stream Commission (NMISC) that will essentially be a back stop in the event the MRGCD doesn't feel enough has been stored. He said the MRGCD is out of Article VII now, and should the MRGCD drift back into Article VII before storing a sufficient amount of water to get through the late season and possibly carryover 30,000-40,000 ac-ft. into next year, the MRGCD will store water vis a vie the relinquishments credits in order to achieve the target storage goal of somewhere around 65-80,000 ac-ft. He said this will also be done in concert with the normal process of storing water for the Prior & Paramount needs for the six Middle Rio Grande Pueblos. He said the MRGCD could be close to somewhere around 100,000 ac-ft. in storage. He said the predicted runoff is still over 180,000 ac-ft. and so the chances of taking a good chunk of that is still there and as a backstop the MRGCD will complete the agreement with the NMISC to store an appropriate amount of water as necessary.

Mr. Hamman said as far as the early season start-up, there has been consistently anywhere from 900-1,100 cfs flowing out of Cochiti Dam and field staff have gone through the process of flushing many of the canals and laterals; the larger ones in particular are all done. He said there are still some smaller ditches in the larger divisions i.e. the Albuquerque Divisions which have a lot of smaller ditches, that in some cases need to finish repair work, and in the Belen Division, everything has been run with the exception of one, the Moya Ditch, that had a bad Langmann gate problem that was just repaired and will run later today. He said during the high winds in the last couple of weeks there were lots of heavy tumble weeds rolling in and he thinks that was a consequence of last season's weed growth. He said the west side system got hit pretty heavily and MRGCD crews have been

working round the clock working on removing weeds and getting things back to normal after the heavy winds. Mr. Hamman said he thinks everything is in pretty good shape. He said there are some issues with constricted crossings that will be addressed in the long term planning effort.

Director Duggins asked if the four day work week has affected the charging of the system. Mr. Hamman said it is a variable process and each individual division has their own set of circumstances and he has been assured by all the Division Managers that there are appropriate crews available; just like on the weekends. He said with the four day work week more work is being done on the days staff is working in terms of start-up and some of the crews are working past the ten hour days to ensure that they aren't getting behind. He said this is a process staff goes through every year and he does have commitments from the Division Managers to keep the appropriate on-call crews to react to problems in the field. He said there is a perception in certain parts of the MRGCD that there is a delay from prior years. Mr. Hamman said in the Belen Division, as an example, in prior years the east side was started first and this year the decision was made to begin the west side first because there was construction work going on and projects to finish up on the east side. He said this changed the perception and there was perhaps only a week delay in that historic pattern. Mr. Hamman said the same thing up north; usually the Bernalillo Acequia is the last to run because the pumping system has to be up and running after the main canal is flushed. He said there are a lot of moving pieces to the process and sometimes it is changed due to construction needs and other issues, but for the most part there is a firm commitment from the Division Managers to keep the right crews available to react to any issues that might happen during that those three days off. Director Duggins said he would like to stress that when water comes on March 1<sup>st</sup> to get it in the ditches and get it available to the farmers as quickly as possible.

Director Sichler said he agrees with Director Duggins and there are always things that need to be irrigated early and soon as the MRGCD can get the water going in the ditches, they should do so. He said that Mr. Hamman told them everything in the Belen Division is up and running and irrigators can schedule and there is enough water and Mr. Hamman said there is about 350 cfs running through the Belen Division on the east side. He said there are some minor ditches that may still have issues and haven't been run and he will defer to Mr. Washburn or Mr. Clouser to discuss the specifics, however, he knows there is enough water in the system to get everyone scheduled and staff has been scheduling for the last couple of weeks. Director Sichler said with respect to storage that they should be able to tell people that there will be a full year this year and is that correct. Mr. Hamman said he can't speak to the one window later in the season, but with the kind of water the MRGCD has this year, he thinks everything will be fine. He said there have been years when 80,000 has been needed to get through and if it just shuts off and there is a dry, hot summer there will be a lot of water out of storage. He said with cooler conditions here and there and the monsoons, his goal is to have all the San Juan Chama water available at the end of the year which is right around the 40,000 mark they are planning on. He said even if the MRGCD uses the 40,000 to get through, there is still a cushion there to pull some San Juan Chama water out later in the season. Director Sichler said he has had questions on garden crops and those irrigators are concerned if they will be able to get the water and Mr. Hamman responded that it is the job of the MRGCD to try to get the water to those with various cropping patterns and encourage those cropping patterns that produce the most and highest value within the MRGCD farming community. He said there may be challenges depending on the distribution of the various types of cropping patterns that are out there and MRGCD staff is working hard to get water to these lands. He said he would encourage the folks that ask these questions to make sure their Ditch Rider fully understands what is planted, what the irrigator wants to do and how they want it done. He said scheduling is the most important thing for irrigators and good communication with their Ditch Riders.

Chairman Lente said he has the same sentiments as Directors Sichler and Duggins with regards to the water. He said farmers on the main artery in the Town of Bernalillo, Sandia Pueblo to Sandia Acequia and Bernalillo Acequia that is bone dry. He said other folks have been irrigating for three weeks and when it is warm enough, he would hope the MRGCD would do all that can be done to get water flowing in the ditches. He said in regards to the four tens schedule and with the high winds during the week and then the division is off on Friday and no work on the ditches and there are people that want to water. He said he hopes there is some flexibility for staff to take advantage of

those days when there is no wind and to get the ditches running. Mr. Hamman said the game plan was to get those ditches turned on and then the winds hit and it was opted to hold off for a bit. He said the Mr. Brem, Albuquerque Division Manager has committed to keep a crew on standby to ensure support for the Ditch Riders and issues that come up.

Director Kelly asked if the four tens schedule should be re-considered for the month of March and perhaps they consider nine nines and alternate Friday's off with different components of the division forces. He said he is not asking for a yes or no; just a consideration and Mr. Hamman said staff will do a post mortem after start-up and if adjustments are required, then they definitely will make them. He said service is the number one priority of the MRGCD.

Director Romero said she has received calls as well that nothing is getting done on Fridays and they are concerned because they were not able to water their new crops.

d. Report – General Focus & Priorities of the MRGCD – Mike Hamman, MRGCD CEO/CE

Mr. Hamman said one of the top priorities of the MRGCD is to essentially serve the community and the primary mission is service to the irrigation community and there are secondary components to the MRGCD's mission. He said staff is analyzing various methods of improving performance, service levels and to infuse an attitude and customer service approach from the top all the way through the organization to serve the needs of the community. Mr. Hamman said it is a complicated process, there is 1,200 miles of facilities, deferred maintenance, failing CMP culverts and multiple priorities of improving the community; the irrigation community in particular. He said Division Managers and others that have knowledge of the system, assist in identifying all of the deferred maintenance issues, problem areas, bottlenecks in the system that prohibit moving water efficiently and they are beginning to prioritize those issues, place them on a work plan and tackle the issues both during the season as well as in the off season. Mr. Hamman said the ISO Supervisors are working closely with the Division Managers and the individual ISO's need to report problem areas up the chain of command and work crews assigned to those locations and improve facilities going forward. Mr. Hamman said this is the top priority and around that is an organizational structure and a development of the various support functions to increase productivity and to eliminate inefficient bureaucracy. He said there are several projects within the organization that staff are working towards to make that happen. He said the MRGCD has very challenging ESA issues that have yet to be resolved and no certainty where that will go until a new Biological Opinion can be negotiated for the long term, there are other challenges such as the law suits with the WildEarth Guardians and there is the need to carefully structure resources to make the most of annual revenue streams. Mr. Hamman said staff is putting together a proper capital improvement plan and leverage multiple resources that are out there including Bureau of Reclamation grants, Water Trust Board funds and other types of grants that can be utilized to do more work on the ground. He said this is a brief overview of some of the priorities that staff is working on that the Board has directed him to do for the MRGCD as a whole. Mr. Hamman said there are a lot of projects and one of those are the levee problems in which there is a huge backlog in maintenance the MRGCD has responsibility for. He said the Corps of Engineers is doing a couple of large projects that the MRGCD still needs to fund from the study side of things and there is the hope of saving resources if there is alternative levee maintenance and construction proposals that can be shared with the Corps and others that fund these projects to minimize the need for large local government cost share.

Director Kelly asked Mr. Hamman if he would update the folks from Valencia County as to where the Corps is with the renewed feasibility study for the Mountain View/Belen Levee Reach. Mr. Hamman said the feasibility study is in its third year and the MRGCD will be budgeting another \$200-250,000 this year as a local cost share associated with this feasibility analysis. He said the hydrology work has been completed and they are now looking into the extent of the length of the levee and design components in order to come up with feasibility costs. He said he thinks there are another two years to go before the final approval in Washington, DC to actually accept the feasibility analysis and then it will be presented to Congress for funding in the total package of the Corps' annual budget request. Director Kelly said what is important in that planning and preliminary design effort is that it sets the stage for the MRGCD and folks in Valencia County to approach the NM Congressional



delegation to look at Federal appropriations to begin the final design and construction of levees needed in the area. He said the Socorro Levee Unit was 27 years in the process, but the benefit of that is the Federal government pays 85% of the construction cost and the MRGCD has been able to get grants from the Water Trust Board, commitments from the town of Socorro, the NMISC to leverage other money to make up that 15%. He said he has heard numbers from the Corps that there are \$400,000,000 worth of levee projects needed in the middle Rio Grande. Director Kelly said the MRGCD is working closely with the Corps on these levee projects and solutions.

e. Consideration/Approval of Cancellation of MRGCD Board Meeting – April 11, 2016

After discussion, there was concurrence by the Board that the April 11, 2016 MRGCD Board of Directors meeting would not be cancelled. Director Kelly asked if there was a policy as to who steps in his role when Mr. Hamman is traveling and Mr. Hamman said there is no formal policy and he has designated Mr. Zamora as the next in command. Director Kelly said this is a policy the MRGCD should have on the chain of command and General Counsel should be directed to formulate this policy.

**AGENDA ITEM NO. 11 – REPORT(S) FROM THE ATTORNEY (Chief Water Counsel and/or General Counsel)**

a. Discussion of WildEarth Guardian Suit for Writ of Mandamus – Dr. Charles T. DuMars, MRGCD Water Counsel

Dr. DuMars said he has a memo for the Board that he will discuss with the Board in Executive Session that has good background on this issue. He said he wants to make a couple of things clear from the start. Dr. DuMars said this litigation, Petition for Writ of Mandamus, will have no effect; whatsoever with on-going irrigation or operations of the MRGCD during this current season or possibly never. He said it is a law suit that needs to be addressed and the details, his opinion and recommendation, will be discussed at length in Executive Session. Dr. DuMars said what is particularly grating is in 2003, after lengthy litigation with the Forest Guardians now the WildEarth Guardians (WEG), the Congress of the United States passed a “Rider” to legislation indicting that the Congress wanted to have all concerned people to get together and that they wanted to see an outcome based upon collaboration among the environmental groups, among the Fish & Wildlife Service, the MRGCD and the Pueblos and they wanted the parties to come up with a reasonable solution as a result of that collaboration. He said for ten years and after expenditure of millions of dollars this collaboration moved forward so there is a good working relationship among the participating parties on environmental issues such as the Silvery Minnow, the Flycatcher and others. He said the one entity that did not come to the table in all of those ten years was the environmental group; they just sat back. He said once the collaborative group got together on an agreement as to how to resolve the problem, the environmental group filed suit in Federal Court and argued, among other things, that the United States controls the operations of the MRGCD and it was an abuse of discretion for the Federal parties to not regulate water by the MRGCD and to not make water available to the species. He said the Federal Court ruled in favor of the MRGCD and dismissed that claim and he said this is crazy and the Bureau has conceded they don’t see waste here and the MRGCD is doing a good job and the case was dismissed because the claim was premature. Dr. DuMars said there has always been this fiction that the WEG is not making a direct attack on the water rights of the MRGCD. He said there has never been a frontal attack on the water rights of the MRGCD by WEG. He said this frivolous case recently filed is a frontal attack on the water rights of the MRGCD. He said the argument is the MRGCD has no water rights, because technically if you appropriate water, put water into use over a period of time, you should file something that is called a Proof of Beneficial Use (PBU). He said WEG has stated since there has been no PBU filed by the MRGCD, the irrigators use no water, but the individuals that have been irrigating since before 1840. Dr. DuMars said, however, WEG argues there hasn’t been beneficial use without the filing of the form, so there is now surplus water available for the WEG to appropriate and make available for environmental purposes. Dr. DuMars said all you have to do is drive through the MRGCD and see that every drop of water every year is put to beneficial use. He said there are two different

applications that are granted by the NM State Engineer and the MRGCD is in a peculiar situation as to which form should be used. He said that one is Permit 1690 and that is a storage right, you build a dam, you fill it up and you file a proof of Completion of Works and that is the use and the use is storage for use downstream and so a PBU was filed with the Completion of Works and the filling of the reservoir. He said the second permit is 0620 and this is the permit that allowed the construction of the four new diversion dams which replaced the very inefficient points of diversion within the river itself. He said WEG argues there has been no PBU so no perfected water right even though the water is actually being beneficially used from these new points of diversion and, therefore, the use is fatally flawed and the MRGCD water rights are to be void. He said the answer to that is fairly straight forward. He said when the application was prepared to move the points of diversion to Angostura, Cochiti, Isleta and San Acacia, there was no such PBU requirement and the permit doesn't require a PBU and it doesn't require subsequent beneficial use because the MRGCD has its own separate statute and the MRGCD takes the water and puts it to beneficial use by individuals, the MRGCD isn't a user of water, it's a distributor and the statute itself says the act of construction of the works is a beneficial use and it also says that the rights of the MRGCD can never be abandoned. He said the PBU requirement makes no sense if applied to the MRGCD. Dr. DuMars said as far as he is concerned and his opinion is this case is yet another example of getting a headline, filing a press release, filing a case and this case was filed in the wrong court against the wrong parties, it's a suit against the State Engineer Tom Blaine and telling Mr. Blaine to force the MRGCD to file a PBU and if not done immediately, then void all of the MRGCD's water rights because they haven't been beneficially used; it makes no sense. He said the real parties of interest in the Mandamus case are the MRGCD and the United States because the United States is a contractor with the MRGCD and it operates El Vado. He said the reason the MRGCD and the United States are not named as parties is because the United States is immune from suit in state court and the MRGCD has numerous defenses to the case. Dr. DuMars said the really frustrating part is the failure to collaborate and discuss and just hauling off and filing a case that on its face, in his view, is bound to fail, but more importantly it's an attempt to get headlines. He said the Rio Grande has been appropriated since prior to the last two centuries and there is no new water. He said by squeezing out of the MRGCD, if that's the theory, creates no new water for the WEG; it goes to the next person in line in the priority system. He said this is something the MRGCD does want to defend. Dr. DuMars said it will have no effect on the individual irrigator, but it is frustrating to do so much work on the ESA only to have a frontal attack on your water rights in order to try to squeeze water out of the MRGCD out of priority for environmental group.

Director Kelly said he know that Dr. DuMars met with the Board's Water Protection Committee on this and he's sure this will be the subject of the Executive Session. He said as he reads through the law suit there are some blatant claims and the list of so called facts cited to support the claim looks like each and every one needs to be corrected. Dr. DuMars said in a Mandamus case you file a petition and the petition lets the judge decide whether to issue an alternative writ and then the other side files an answer and then there is a trial. He said here they didn't file a petition, they filed an alternative Writ of Mandamus unsigned, attached a draft petition to it with no paragraph numbers and they didn't follow any of the rules on Mandamus. He said if you put something in a pleading and then do a big press release, then you have all the benefit. He said the difficulty they have is that none of the facts in the draft petition are true.

b. Presentation on Pre-1907 Water Rights – Dr. Charles T. DuMars, MRGCD Water Counsel

Dr. DuMars said there is so much misinformation out there about water rights in the middle Rio Grande and Director Romero asked him specifically to make this presentation saying people would appreciate knowing about the kinds of water rights within the MRGCD and specifically pre-1907 water rights. Dr. DuMars gave a PowerPoint presentation and explained what is a water right, what kinds of water rights exist within the MRGCD, did the formation of the MRGCD alter the individual water rights that existed at that time based upon beneficial use prior to 1907, if a person is currently irrigating land from an irrigation ditch within the MRGCD benefited area, what rights would supply the water on that land, what difference does it make if the land is pre-1907 irrigated land or land irrigated under MRGCD Permit Nos. 0620 or 1690, why isn't all of the land within the MRGCD considered pre-1907 water rights land, what is a declaration of pre-1907 water rights and how does it

protect pre-1907 water rights, are there risks associated with filing the pre-1907 water rights declaration form, what are some reasons why the State Engineer may conclude that one does not have a valid pre-1907 water right, does it follow that non-use in 1917 and up until the the MRGCD was formed means the land was not irrigated prior to 1907, what should one do if they think they have pre-1907 water rights, is there any other way that one could prove up their pre-1907 water rights other than by selling, and have any events occurred recently that could affect acceptance by the State Engineer of pre-1907 water rights.

Dr. DuMars said that he had two handouts for the public. He said one of the handouts is a list of all of the items that could help prove up pre-1907 water rights and the other is a very significant case and he went on to give details of the case and the findings and conclusions. Dr. DuMars gave brief background on the 1917 survey and irrigating in those years between 1917 and 1925 when the MRGCD was formed.

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

- a. NMSA 1978 Open Meetings Act, (Section 10-15-1(H)7)
  - 1. Threatened or Pending Litigation

Chairman Lente requested a motion to move into Executive Session.

Director Romero **MADE THE MOTION TO MOVE INTO EXECUTIVE SESSION PURSUANT TO NMSA 1978 OPEN MEETINGS ACT (SECTION 10-15-1(H)7)** . Director Dunning seconded the motion.

Chairman Lente requested a roll call vote:

Director Duggins	Yes	Director Dunning	Yes
Director Oglesby	Absent	Chairman Lente	Yes
Director Kelly	Yes	Director Sichler	Yes
Director Romero	Yes		

The **MOTION CARRIED** unanimously.

Chairman Lente adjourned the meeting at 4:45 pm.

Chairman Lente reconvened the meeting at 5:05 pm.

Chairman Lente requested a motion to move back into the regular Board meeting. Director Dunning made the **MOTION TO MOVE BACK INTO REGULAR SESSION**. Director Duggins seconded the motion.

Chairman Lente requested a roll call vote:

Director Duggins	Yes	Director Dunning	Yes
Director Oglesby	Absent	Chairman Lente	Yes
Director Kelly	Yes	Director Sichler	Yes
Director Romero	Yes		

The **MOTION CARRIED** unanimously.

Chairman Lente said discussion was had and the Board decided on a measure. Director Kelly made the **MOTION TO AUTHORIZE THE MRGCD CHIEF ENGINEER AND CHIEF WATER COUNSEL TO APPLY TO INTERVENE IN THE ALTERNATIVE WRIT OF MANDAMUS IN THE CASE OF WILDEARTH GUARDIANS VS. TOM BLAINE IN HIS CAPACITY AS NEW MEXICO STATE ENGINEER**. Director Romero seconded the motion. The **MOTION CARRIED** unanimously.

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

The meeting was adjourned at 5:10 pm.

Approved to be the correct Minutes of the Board of Directors of March 28, 2016.

**Attested:**

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

\_\_\_\_\_  
Derrick J. Lente, Chairman  
MRGCD Board of Directors