

**MINUTES OF THE
SPECIAL MEETING
OF THE
BOARD OF DIRECTORS OF THE
MIDDLE RIO GRANDE CONSERVANCY DISTRICT
MAY 14, 2018**

Directors having been duly notified, Chairman Kelly called the regular meeting to order at 3:00 pm at the MRGCD General Office. The following Directors and Staff were present:

DIRECTORS

John P. Kelly	Chairman
Glen Duggins	Vice-Chair
Joaquín Baca	Director
Karen Dunning	Director
Derrick J. Lente	Director
Beverly Romero	Director
Valerie Moore	Director

STAFF

Mike Hamman	Chief Engineer/CEO
Dr. DuMars	Chief Water Counsel
Bruce Wiggins	General Counsel
David M. Fergeson	Secretary-Treasurer
Jeanette Bustamante	Administrative Officer/CPO
David Gensler	Water Operations Manager
Becky Burnham	Budget Analyst
Alicia Lopez	Engineer 1
Adrienne Martinez	Engineer 1
Yasmeen Najmi	Planner/RRA
Christine Nardi	Human Resource Director
Jason Casuga	Engineer Supervisor
Joe Brem	Albuquerque Division Manager
Rick Altenberg	GIS/Mapping Technician

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

Elizabeth Omgstad, Farm Credit of NM	Scott Edeal
Gary Stansifer, OSE	C.R. Vigil Jr.
Santiago Maestas, SURAA	Rip Anderson
Michael T. Sandoval, Pueblo of San Felipe	Marcia Fernandez
Elaine Hebard	Nettie Jones, Socorro
Teresa Chavez	Neal Hurley, Farm Credit of NM
Mathew Chavez, Farmer	Paul Carnnica, Farm Credit of NM
Sharey Sullivan, Farm Credit of NM	Tessa Davidson, Davidson Law Firm, LLC
Larissa Gordon, Farm Credit of NM	

AGENDA ITEM NO. 1 – PLEDGE OF ALLEGIANCE

Director Baca led the Pledge of Allegiance.

Chairman Kelly welcomed the guests and declared a quorum.

AGENDA ITEM NO. 2 – APPROVAL OF THE AGENDA

No changes were offered by staff or Board.

Director Moore made the **MOTION TO APPROVE THE AGENDA**. Director Dunning seconded the motion. The **MOTION CARRIED**.

AGENDA ITEM NO. 3 – ANNUAL PERFORMANCE REVIEW OF CHIEF EXECUTIVE OFFICER - MRGCD BOARD OF DIRECTORS

a. CE/CEO and Board of Directors Priorities for 2018/2019

Chairman Kelly commented that this has been discussed in closed session regarding Mr. Hamman's performance and particulars that the Board has, and asked him to list his priorities.

CEO/Board of Directors Priorities for 2018/19

May 14, 2018

Broad Program Goals

1) Preparing MRGCD Water Conveyance System for Efficient Operations and Drought Resiliency

- a) Plan and construct system features to improve delivery efficiencies – annual work plan with projects for this winter already performed – some in the summer/fall
- b) Evaluate and replace turnouts to achieve 1 hour per acre or better irrigation District efficiency requirements for farms – annually and system wide
- c) Work with federal, state, tribal and landowners to leverage funding to perform both system and on-farm efficiency improvements – on-going with current WaterSMART grants, NRCS EQUIP program, State Water Trust Board and Revolving Fund applications, and meeting with individual land owners to evaluate farm conditions
- d) Using ISOs that are trained in farm evaluation to meet with land owners with problem farms and discussing options – training and pilot project this year with Reclamation WaterSMART grant, on-going
- e) Implementing real-time noticing of land owners, mapping department and ISOs regarding land and assessment status for access to water – process underway
- f) Stay on schedule to complete Socorro Hub project with WaterSMART funding support

Preparing MRGCD Water Conveyance System for efficient operations and drought resiliency

Good 2 years significant supply at El Vado

Director Moore asked who paid for the turnouts. Mr. Hamman responded that it is dependent on the situation. Sometimes the MRGCD does it at its expense, sometimes it is the farmer's expense, and sometimes a combination of the two. To replace a turnout, the low end is approximately \$1,500. Discussion ensued between Mr. Hamman and Director Duggins about pricing and the rationale on how the upsizing is split in costs between the farmer and the District. The type of irrigation system used by farmers is up to them; however, MRGCD will enforce the one-acre-per hour rule. If farmers are not following that rule, MRGCD will offer suggestions on how to correct the problem. If the problem persists, MRGCD has the authority to curtail the use of water under the Water Distribution Policy.

2) Water Operations Improvement Planning and Implementation

- a) Continue the transition of Division managed water ops to Water Operations Division management allowing for more standardized service, water efficiencies and operations District-wide – ongoing that includes 1) d) above.
- b) Oversight and participation on strategically planning system-wide operations to maximize water availability to the District irrigators including the water bank customers. This requires critical analyses and coordination with multiple agencies and evolves as water supply conditions change. Annual negotiations are required with the MRG Pueblo Coalition and BIA to manage P&P storage allocations under the 1981 Agreement at El Vado that meets District and MRG Pueblo objectives for this and upcoming years. The CEO directly performs these discussions with support from Water Operations Manager.

c) Develop strategies and operational changes to meet or exceed District commitments to 2016 BO for spring spawn and recruitment in mid-May to mid-June then utilize system operations to provide summer survival flows through October annually. Each year presents multiple variables to be balanced with first meeting irrigator needs while preserving in-river flows with assistance from Reclamation and NMISC.

d) Complete WaterSMART grants for Drought Contingency planning that includes a system-wide optimization study in order to utilize that information to continue system efficiency improvements with future federal grants and District matching \$\$\$. The District participation in both this grant and Upper Rio Grande Basin Study will extend through 2018 and into 2019 and are moving along on schedule.

e) Develop a Rio Chama reservoir storage optimization plan through negotiations with the ABCWUA, Rio Chama Acequia Association, Acequias Nortenas, NMISC, Reclamation, Corps of Engineers and the State Engineer if native storage in Abiquiu becomes a priority. – 2018 project

Mr. Hamman stated the District is going through a process of standardizing the way we manage our organization, and are working toward a broader application of standardized approaches. We are working on strategic planning system operations that allow maximizing water availability. This is very important as we assist farmers in their ability to meet crop demand and to assist the farmer in becoming more efficient. Also the CEO is very involved with the Middle Rio Grande Pueblo Coalition and BIA to manage the Prior and Paramount water storage under the 1981 agreement in order to optimize the way that storage can be utilized. The District made several commitments under the BO for the fish to continue to spawn each year. Also is working on the drought contingency plan, and the Upper Rio Grande Basin study to refine our work in maximizing water management opportunities. Working with various entities to develop a plan between the two upstream reservoirs at El Vado and Abiquiu to help various entities stay within their water right process.

3) Protecting the District's and its Constituents' Water Rights

a) Continue to monitor and potentially protest water right transfers out of the benefitted area that are of concern to the District - ongoing

b) Working with legal and consulting team, develop the basis for a defensible water rights protest process and policy in order to both protect the District's remaining irrigators and related benefits while allowing for private property rights to be exercised with proper permit conditions – summer 2018

c) Work collaboratively with local governments, federal agencies, acequias and the Pueblos to develop a regional water management plan that allows orderly movement of water and water rights to development while preserving the agricultural and cultural values and economies of the middle Rio Grande – basin planning as stated above

d) Provide a PBU (proof of beneficial use) application to the State Engineer that defines the upper limit of the District's water rights and depletions within the benefitted area – summer 2018

e) Utilizing a Reclamation grant to NFWF, enter MOA to set up water banking procedures to allow pre-1907s and allowing to provide water leasing options within the District water bank for farm-to-farm and farm-to-river transactions – first phase of program development in 2018

Dr. DuMars further explained the concept of the Rio Grande Compact, on how the system has changed to the point it is now versus the way the system looked prior to the signing of the Compact.

Mr. Hamman stated that they are trying to recognize all functions, all the different variables of water rights, and not trying to influence in a negative way private property rights that can prove a valid beneficial right on their land. The system has changed since the signing of the Compact, but we will continue to meet our commitment. Will also provide a service to the community at large and also to help us meet

some of our obligations and to create more opportunities to utilize our water bank to allow for in times of drought and for people to park and protect their pre-1907 water rights for leasing purposes.

Director Duggins asked if someone parks their pre-1907 water in the water bank the farmer or the river have first choice to it. Mr. Hamman responded it would be based on the willing lessee and willing lessor. The District would simply be a broker and make the opportunity available. Hr. Hamman reminded everyone that pre-1907 is not water; it's water rights. It only works with wet water behind it.

4) Carry out the District's Commitments to the 2016 Biological Opinion in Partnership with Reclamation and NMISC (15-yr Non-Jeopardy Opinion)

- a) Improved water operations to meet spawning and summer survival of silvery minnow to assure compliance at 1.0/0.30 CPUE population metric or better (2. c. above)
- b) Construct fish passage at District diversion dams – rock weir downstream of San Acacia Dam and related studies – summer 2018; planning studies for Isleta Dam - 2018, 2019
- c) Improve outfall structures and related habitat for summer survival – 2 sites 2018
- d) Perform fish monitoring studies in order to inform the Collaborative Program via the science coordinator and adaptive management committee regarding drain outfall habitat potential for increasing summer survival – studies being scoped for the 2018 work plan
- e) Stay in close coordination with the leadership at the US Fish and Wildlife Service and our BO partners in order to assure annual compliance and resolve issues of concern – ongoing

Mr. Hamman stated it is important to carry out our commitments under the 2016 Biological opinion in partnership with our other Biological Opinion partners. We were able to negotiate and achieve a 15-year non-jeopardy opinion. It's really important that people understand that we work very hard to convince the service to let the water managers manage the water and to help the biologists within the service and other agencies guide us on what constitutes the need of the species. We are now in the process of implementing a new Biological Opinion.

This year, we have new criteria of spawning and recruitment period at least once or twice in a three to four-year period. We also must comply with a one-catch-per-unit area. We have committed to do some fish passage work in partnership with our other two agencies. We are working at San Acacia Dam this summer, and we are also working on several planning efforts and studies at Isleta to be achieved within a ten-year period. The first one is we have to finish something at the San Acacia in the first five years, and then within a ten-year period we have to finish some kind of a fish bypass project at Isleta.

We also are going to improve all structures, summer survival is crucial to having a viable fish population when they measure in October. If we can't maintain a good fish population to the point that they measure in October, then we run the risk of dropping below those metrics. The other thing that's crucial is that we have a viable population that is available for the spawn and recruitment flow in the spring. We are hoping for a lot of early storm events in October, November, and December to indicate that we're going to have a good runoff next year. We also agreed to keep working with our partners for fish and bird monitoring studies.

Chairman Kelly asked that they jump right into Item 6 because the Board will not disagree on the Item 5, the title transfer.

5) Title Transfer to District Works and Associated Lands

- a) Continue working with DOI, Reclamation and the congressional delegation to seek title transfer to all facilities and lands that do not reside on Pueblo lands and does not include El Vado Dam – focus on introducing legislation in 2018

- b) Develop agreement with Reclamation of the title transfer process that will be required by legislation to complete – 2018
- c) Work on land records to assure proper documentation for lands proposed for transfer - 2018

6) **Constituent Services**

- a) Continue efforts with MRG Pueblos and BIA to honor contract obligations as well as improving relationships for working together on a number of issues important to Pueblos and the District – year 4 contract renewals to be negotiated this fall
- b) Work with irrigators and land owners to help improve water efficiencies on-farm and hopefully show how that will improve production. Developing plan to receive low interest loan from the State Revolving Fund to set up a small loan program for farmers to get assistance to leverage federal grants to make needed improvements. 2018/19 project
- c) Continue implementing continuous improvement initiative for customer services such as irrigation scheduling, assessments and mapping, as well as land based problem solving for improving quality of life and improving public safety.
- d) Updated the website this year and will continue to expand and improve its effectiveness in communicating the District's messages and other important information to its constituents and the general public.
- e) Refine policies and processes to help constituents deal with failing bridges and crossings, fallen trees, rights of way issues, public safety (gates) and issuance of licenses.
- f) Work proactively with all federal, state, tribal, county, municipal and other entities to determine how to best serve our respective constituents through collaboration - ongoing

We are here to serve our constituents. Our main mission is to maintain the system for drainage, flood protection, and irrigation delivery. We will strive for continuous improvement in our customer service relations and irrigation scheduling and assessments and being able to improve the ability for people to engage with us at the basic levels. We would like to refine our policies and procedures to help folks deal with things like bridges, crossings, trees, and public safety. Another high priority is to work with all of our government and municipal, state, tribal government entities to understand how to best serve our constituents, because all of us are having trouble with our annual budgets and various programs.

7) **Improving Employee Services and Morale/Performance**

- a) Implement the performance planning process that will give each employee clear and concise knowledge of expectations, training needs and performance standards to meet -2018/19
- b) Create an employee intranet site to help the District HR Department better serve employees' needs -2018/19
- c) Train the managers and supervisors to become better at managing staff through improving project planning, implementing performance planning, and progressive disciplinary approaches to help sub-par performers improve and if that fails, have the proper methods to move them on – ongoing with heavy emphasis during performance planning roll out
- d) Fund safety initiatives and personal protective clothing, boots and safety gear
- e) Fund and implement training for improved customer service, ditch bank protocols, safety practices and just-in-time professional development – 2019 budget
- f) Recruit, train and retain high quality staff – on-going

Mr. Hamman stated we are only as good as our staff on the ground; we have a whole variety of staff that does a lot of work out there. We must ensure they have the safety gear and good quality equipment. They also need to understand what our expectations are of all employees to give a high-quality job for our constituents. We must closely develop our performance standards and training needs and create policy. We value every employee's feedback to understand where they sit relative to their performance.

We're also creating various ways of communicating better with our employees through our internet site and also helping them manage their personal affairs, benefits plans, etc., that are difficult at times for them to access since they work around the clock. Our managers and supervisors are well-versed in project planning and performance management and all the things that are important to run an organization. We need to work on educating those folks to make sure that what we are trying to implement is really working for all of our employees and our supervisors.

Safety is a big deal. We have been very fortunate in recent years that we have not had any serious injuries or fatalities as a result of unsafe acts in the District. We must ensure that we are as safe as possible by providing good personal protective clothing, such as boots and other safety gear, to prevent accidents out there. We must provide training for improved customer service and instruct in ditch bank protocol to be more effective communicators.

8) Internal Resources Management

- a) As CEO, I must assure the Board and our constituents that the District is managing the operations and affairs of the District in a fair and fiscally sound manner for the benefit of all the diverse interests of the District and our respective mission.
- a) The District has fully implemented vehicle GPS monitoring and will utilize the system to generate reports on productivity, fuel usage, generate work orders, fleet management and performance management – 2018
- b) The Finance Department will review current acquisition processes to assure compliance with required procedures with an eye toward minimizing bureaucratic oversight and streamlining procedures such as the use of the MUNIS system to perform electronic requisitions - 2018
- c) Continue refining budgeting process to be increasingly accurate based on productivity data and advanced project planning – ongoing
- d) Improve project planning and work order process through system automation and staff training to improve project level performance, reduce material costs, and fiscal tracking – 2018
MUNIS/GPS/Work order integration procedures
- e) District has advanced engineering and construction standards in 2017 and will continue with more capacity in the Engineering Division to ramp up that process in 2018/19
- f) Complete transaction with NMFA to receive loan for purchase of fleet vehicles and heavy equipment – 2018
- g) Continue to refine 5-year capital improvement plan and finalize recommendations to the Board for addressing out-year funding strategies to meet capital improvement objectives
- h) Will develop performance plans for and evaluate my direct reports that will include revisions to position descriptions to more accurately reflect their job functions - 2018

Succession planning is another high priority.

Regarding internal resources, Mr. Hamman reported that we have good checks and balances throughout the organization. We have several processes set up to monitor productivity of the fleet. The finance department is developing a streamlined acquisition process. Insofar as the budget, we're fully

transparent, open and honest with the budget process, and we're making sure that what we're requesting on an annual basis is really what we intend to do.

Chairman Kelly took the time to thank Mr. Ferguson, Mr. Hamman, and all the staff for helping pinch pennies to make the budget turn a corner the last couple of years.

Director Duggins wanted to thank Mr. Ferguson for all he's done. He also wanted to thank the constituents also.

9) Legislative Agenda

- a) Work with Secretary of State on implementation issues with HB98, Local Election Law during the summer of 2018
- b) Develop white paper and draft legislation for addressing capping claims of inverse condemnation against the District and similar agencies in order to be able to be insured – position the District to work with others to get before the appropriate interim committees in preparation for the 2019 60-day session.
- c) Work with District area legislators to address matters of mutual interest for serving our constituents - ongoing

We also have a legislative agenda in Santa Fe because they continue to want to tinker with our election rules. We did have a commitment from the Secretary of State's Office looking at the issues that we know are going to be problematic in this legislation. The Count Clerks and the Secretary of State's Office are going to be pretty involved in this year's election process. We did get a strong commitment from her and her office to work with us and to schedule a workshop to discuss the communication issues with more county clerks and the assessor at that time.

Even though we've got a lot of issues that are associated with inverse condemnation, it is going to be an uphill battle. But we will still provide some information in terms of how the District is being impacted by these things and what can we do to get others to take a look at capping the liability on that at some point.

We are also going to bring our District legislatures in, hopefully, on June 25th to have a discussion with them about the importance of working together on numerous issues.

10) Other Major Projects

- a) Corrales Siphon – continue to analyze the condition of the siphon through the 2018 operating year with non-invasive measures and plan for mid to long-term resolution.
- b) El Vado Dam – will continue to serve on the DSAT to assist Reclamation with decision making on final solutions for construction including resolution of state roadway across the dam.
- c) Southern Valencia northern Socorro County Storm water Control Project – On task to get drainage management plan completed by July 1 and have rallied local governments to participate – will have project implementation and funding plan completed by fall, 2018
- c) Bernardo Siphon – this may become a proposed project as operating solutions at San Acacia Dam evolve

Director Duggins questioned Mr. Hamman about the Bernardo Siphon if it is part of the ESA deal. Mr. Hamman responded it's not specifically identified as in the BO. It is something that the District would be hard-pressed to do anything in terms of operations at the San Acacia Dam. In a normal-operating year, the gates are open maybe 70% of the time. If there's a need to have the gates open more than that, we have to have an alternative water supply, and that's where the Bernardo Siphon comes in. If we are in the status quo, where we are going to operate the dam whenever we need it to divert needed water,

maybe we do not need the siphon. And if we decide as a Board that we want to secure the water supply a little better down there, we can move forward independently. However, if it has got an ESA benefit, we want to share with partners on it to allow us to have more flexibility at San Acacia.

Chairman Kelly asked in regard to El Vado, we are moving into the environmental permitting on what is going to be the critical path. We have had discussions that the Bureau has not really reached out to the local community up there. He is concerned that they are moving different design aspects forward without a parallel environmental permitting track. They are going to need some help moving a \$60-million project out to bid, and he thinks it will be Mr. Hamman.

The state roadway across the dam continues to be a sore spot with Chairman Kelly because he doesn't think there is any coordination at high levels with the highway department about getting that plugged into their federal funding stream to pay for it. This is a big project, and it's our only water storage reservoir. We are we're going to have to help move that one through the process. He does not want that turning into another levee that costs twice as much as it should because the federal government bid it through a less than low qualified bidder process.

AGENDA ITEM NO. 4 – REPORTS FROM THE MRGCD ATTORNEY(S) - CHIEF WATER COUNSEL AND GENERAL COUNSEL

a. Primer on Water Rights within the MRGCD Regarding Priorities and Ownership - Mr. DuMars, Chief Water Counsel

Chuck DuMars decided that it would be helpful to review the federal-state relationships and the history as to how we have water rights.

The answer starts with the Desert Lands Act of 1877. At that time, west of the 100th Meridian, everybody said there is this massive public area, the Great American Desert. There was a lot of pressure in the Congress of the United States at that time to say, "You know, there's a lot of water out there. Even though it's a desert, it runs down these rivers, the Colorado, the Rio Grande. We think that ought to be a federal resource. We think it should belong to the federal government because it's mostly on the public domain. We think it ought to be a federal resource."

As it turns out, that did not carry sway with the Congress of that time. In the Desert Lands Act of 1877, they declared that the waters on the public domain, not already owned by the federal government, which is a small number, shall be governed by state or territorial law. That is a huge and significant concession because it meant that the states themselves and the territories could determine what should be the law. The next thing that happened is that it became clear in order to harness the rivers that have erratic flow, like the Colorado or the Rio Grande Rivers, which sometimes are fishable, sometimes swimmable, and sometimes drivable, they had to come up with legislation to figure out how to fund the project to do that.

The Reclamation Act of 1902 was passed, and it was designed to fund projects on the Colorado, primarily the dam at Lake Mead, the Bota Canyon Project, multiple projects, but the act itself said something really important to everybody in this room, that section 8 says, "State law shall govern the rules for the allocation of water in the respective states, and beneficial use shall be the basis, the measure, and the limit of the right to use water." Interestingly enough, that's the identical language of the New Mexico Constitution, "Beneficial use is the basis, the measure, and the limit of the right to use water."

Briefly stated, it means that if you are using it beneficially, you can get a property right to it. The measure means you cannot get more than you need. You can't get the ownership of water that you are wasting, because it's measured by your actual effective use of it. The limit is that if you cease using it, you will lose the right to it because it is too precious a resource to remain fallow or be the subject of speculation. That's how we came to have the private water rights that we do in New Mexico.

It was not long before the Territorial Supreme Court began to interpret the Desert Lands Doctrine, Arid Lands Doctrine, which was before our Constitution in 1912, but they began to interpret it and find property

rights and water. Things evolved, however, and it became clear that for these federal projects, projects of major size, there needed to be some kind of elected political subdivision to help manage the resource in the basins, because virtually all of them were in farming areas where there needs to be some body that could help organize and put these projects together and, if nothing else, bid on projects with the federal government to get infrastructure built.

So, the product of that effort were the irrigation districts and conservancy districts, like this one, and which typically had elected boards, or, if they're appointed, they were reflective of the people in the community. The irrigation districts, and the conservancy districts were formed, but they were not designed to take away the private water rights of the individuals within those districts. Rather, they managed the rights insofar as there could be water reclaimed or conserved, then that would allow the conservancy irrigation district to become the owner of those rights, but they were not designed to take away the rights.

For example, just to show you how strong the property interest in water is, our law firm was recently retained to provide assistance to the case involving the Klamath Irrigation Project, where, in that instance, 18 years ago, the ESA cut off the water for species, because that was based upon the science they understood. Those farmers said, "Look, we're not claiming you shouldn't have done it, but we believe we are entitled to compensation for the deprivation of our property."

The Marzula Law Firm brought the case in the court of federal claims, and they were successful at different points. The Oregon Supreme Court issued an opinion says by certification, "Yes, those are property rights." Very recently, they lost the takings claim that remained for a class action before the district court. We are now helping a significant part of the effort for writing the brief for that particular case, to support the property rights of those individuals and argue that they are entitled to compensation. The District is also writing an Amicus Brief in support of the principle that they have property rights in their water, in that irrigation district, and you cannot just take them arbitrarily without due process of law.

The irrigation districts and the conservancy districts were organized as a function of a movement that was developed all across the country. The idea was how can we help preserve and support the farming efforts of all these individuals with private property rights? The conservancy district is modeled on others from the mid-west, which is there should be a Board which allocates water. In New Mexico, they did it in a kind of unique way. In New Mexico, it was pretty clear that the Conservancy Acts mission is to keep farming viable and alive within the boundaries from Cochiti to the Bosque Del Apache, to keep it alive as long as possible. There were a number of reasons why that could be possible.

One was you had the Pueblos, who antedate all of this and who had substantial Pueblo Indian water rights and they were supportive of the idea of participating in an organization that would continue to keep farming as long as it could. In addition, there were others. There was the founder of the conservancy district and the Board. There was just a huge movement to keep it alive. But in order to do that, they said, "Look. We need to give the board the authority to allocate water, whether it's pre-1907, private rights, or whether its conservancy district rights," that were granted when they conserved the water for the future, manage them all equally, and allocate shortages equally.

The Rio Grande Compact negotiations over the compact between Texas, Colorado, and New Mexico: The one thing New Mexico wanted more than anything else was that they wanted enough water between Cochiti and Elephant Butte to let the project be developed, the full 123,000 acres. If you do the numbers, you will find that it was anticipated that that project would be that amount available under this reading of the various gauges would be sufficient for that.

The interesting part about it was that, you know, the question is how much was preserved under the Compact for growth of the cities? None, there was not a number for that. It was all built on the evolution, on the protection of irrigation district use, because at that time the cities were small. Nobody realized there would be this huge demand coming up. Our State Engineer at the time, Steve Reynolds, said, "You can't simply just drill wells and drain the river. You have to offset the effects on the river and keep a balance so that we can meet our Rio Grande Compact commitment." You get a water right. You drill a well. You have to go find a way to offset it. Where are they going to go to find the offsets? They are going to go to the Middle Rio Grande Conservancy District or other rights that are out there.

If these are private property rights, and I think implicit within the question, well then how can they be regulated in such a way that modifies the nature of the private property rights? Why can't a person just say, "I want to sell it to this person"?

Well, two things happened to expand the criteria for transfer of right rights. One of them was a case called In Re the Matter of Howard Sleeper, a little case in the District Court in Rio Arriba County. Nobody ever heard of it before, but the Judge, whose name is now in the courthouse up there, in Santa Fe, said, "Look. I've evaluated this water rights transfer, and the net effect of taking this amount of water out of that acequia is going to destroy its capacity to distribute the water among the users." He said, "Yes, they've told us that the ski area will generate jobs for these people," but he said, "in my view, it is a poor trade, indeed, to trade the elective value of the acequia as a cultural entity for some jobs at a ski area." And he turned down the transfer. He was reversed because there was not a public interest in the statue at the time.

At the same time, shortly thereafter, the State of Texas, the City of El Paso, came in, and they said, "We are going to drill wells and take 300,000-acre feet out of the Mesilla Bolson Aquifer, and we are going to send it over to Texas." So, they said, "Look your statute does not protect public welfare. We don't have to look at anything. You cannot measure the effect on anybody else." So, New Mexico amended its statute to include in addition to impairment, meaning are you going to hurt somebody, to add two more criteria? One is it consistent with the conservation of water (and that is something that should have been in there anyway)? But another one was, is it contrary to the public welfare?

Even though, in New Mexico, since that amendment, the property right belongs to the person, and they can use it in place as long as they want, the state engineer has the obligation to evaluate any transfer of the right or change in place and purpose of use. They have the obligation to evaluate whether it's consistent with the public welfare.

You have property rights in the District that belongs to the individuals.

So, I guess, the Rio Grande Compact preserved the quantity of water that the District currently used. We talked about what a PBU, proof of beneficial use, what we think it should be that it ought to cover the entire amount. The District has never, because of the way in which we balance the use of water, both surface and ground water, and conjunctively manages it, since the 1980s we have been in full compliance with the Compact, not a drop short. When we fall behind, we catch back up, and have done a very good job.

There's the District rights that belong to the District as a function of the conservation effort that happened when they built the four diversion dams and extended it, basically brought water right back then, before the District. It was down to about 40,000 acres. It went up to about 85,000. Now, we are at about 60, depending on the year. That created a tremendous amount of water. The pre-1907s remain those which were not water logged and were not destroyed as a function of things that were happening upstream.

Right now, the question is how many pre-1907s are there? Mr. DuMars stated he asks Doug Strech that question frequently. He says nobody knows, but assuming the common wisdom there are probably 20,000 to 25,000 acres of these pre-1907s or not, there is a tremendous demand that's really going up all the time. It leveled off for a while, but 20,000 to 25,000. Assuming it is there, and then as the offset process continues, they need to come up with about 23,000 or 24,000-acre feet. As growth occurs up on the mesas and other places, they are going to be looking to it.

So, the question then becomes what is the best thing to do? That's over Mr. DuMars' pay grade, and he just describes what the law is and what allows the Board to do. It is a complicated question. If you sort of take the map and you look at what are the rights that are the best pre-1907s? They are the ones that have been irrigated continuously. So, if you are going to go in and buy those up, and there's absolutely nothing with the free market choice to do that. If you're an entrepreneur and you're trying to pick out the very best ones, and you can just black each one of those out in a checkerboard over time in the southern part of the District. That's what's going to happen.

So, the issue becomes what does one do about that? Does it just happen? One could argue, if you get rid of these rights, then you know, you can build houses on there. You can have condos. You can cover them over, and the ad valorem taxes will come pouring in," except that then there won't be a Middle Rio Grande Conservancy District, and the mission of the District will not be completely fulfilled. Conversely, why on earth should a person who's spent their lives farming and developing a right that they have the right to, that it is their property, why should they be deprived of the opportunity to sell it, if it's their remaining asset? The answer is they should not be deprived. The question is how do you develop some kind of an institution-to-institution relationship to provide the soft landing that Mike described over time?

Director Baca asked for clarity on the State Constitution declaring water owners, owned by the public, the wet water versus the proper user right that people own?

Mr. DuMars discussed a famous case, *Thraikill v. Third Judicial District*, and another one, *Kaiser v. W.S. Ranch*. The Kaiser case is more interesting because they have York Canyon Mine. It's just outside of Raton, on the Conejo River. The people from Kaiser needed to have infiltration galleries in the rivers. So, they drove their trucks at night and came in and drilled wells, started doing wells, right across W.S. Ranch. The question was on what possible basis could they do that? The answer is that in the area of water rights, the Supreme Court has allowed private eminent domain, and the *Thraikill* case says, "Water is too precious to waste. We have nationalized it not like air and water, but as a good, which must be kept in beneficial use.

So, the answer is it belongs to the public, but the right to use it, the public in the abstract, is not the owner. The actual owner is the person who puts it to beneficial use. So, it's inconsistent. That's always the dilemma. How far does the public ownership go? In New Mexico it stops (as far as Mr. DuMars is concerned) at the right of the person to divert it and put it to beneficial use as has happened in New Mexico. So, it remains a property right. But that's the principle.

So, what does this public ownership mean? It means you can't waste it. It means that if you go to transfer it, you are going to have to go through the state engineer's office and demonstrate the criteria. But it is still your right, so long as you use it. But if you waste it, it goes down. If you abandon it, it goes away. But if you continue to use it, it continues to be your property right.

Director Duggins asked how many acres have been taken. Mr. DuMars responded that this was purely conjecture on his part, but if you look at the total amount that was conserved, you look at the original plan, you look at the two permits, one 1690, which is the El Vado, and the other one is 0620, and look at the appendix to that, that's where I get that number. Mike Hamman reported the records that we have, and it has been shared with us from the state engineer's office, it's somewhere around 17,500 acres have already been separated or transferred out. There was maybe another 20,000 to 22,000 acres. That part is more speculative, and that's something that we're interested in determining.

Mr. DuMars reported that Albuquerque has luckily decided they do not want to utilize the rights of the Middle Rio Grande Conservancy District to support their efforts. That's the difficulty Albuquerque runs into, is they adopt a program to conserve water, for recharge, to take the San Juan-Chama water and use it conjunctively with native water, but then that means that it's an open field for Rio Rancho, which is entitled to us whatever best efforts it wants to try to grow. But it's growing. One has to decide what to do, whether you decide what to do, how you decide, that's up to the Board.

The total amount in use by the Conservancy was around 80,000 acres at the peak time of the development. It's now declined because of urbanization in the area. The Pueblos have their rights, and so, you are looking at 60. Mr. DuMars thinks we should attempt looking at all issues. He thinks we have a claim, and we should pursue a claim for the full 123 because of the evolution and change of uses.

Director Duggins questioned who is the Conservancy? Is that the members' rights? Is that this office? A previous board member had told Director Duggins that there was policy passed years ago that eventually (100 years out or something) the Conservancy right would be for sale. After these are used, if population keeps coming, what will they do? Will they not turn to the Conservancy, right? And who is going to get that check, the people of the Conservancy or this governing body? Chuck DuMars responded that it

would be up to this Board. There is no policy, because it's too far out into the future. But there will be a time when those rights are becoming very attractive to the cities and everyone else. At that time, there will have to be a decision. There are many who think that farming is outdated, there are no young farmers, and why are even doing this? You see that, particularly in California and other places, where they say, "What is that about? Why are these guys even doing that work?" So, those people would be all for having the District sell its right to the municipalities. They may run people in the elections or they may have entities or they may try and change the statute and say, "Look, let's just provide it. Whatever is needed by the municipalities, they get it." That is going to be the huge policy Board decision you probably will not have to face.

Director Baca asked minus the statutes being changed, and given that we're charged with taking care of the District as a whole, managing it for our purposes, would it not be against our oath, so to speak, to sell off the District water to an entity outside of our boundaries?

Mr. DuMars responded that he believes it would be directly contrary to the current oath that the Board takes, which is his reading of the Conservancy Code, the purpose of which is to preserve irrigation as long as possible. At the time, the Pueblos were a big player in the process, and they were able to get Congress to the United States to protect and preserve their rights. They are; of course, concerned that they do not want to see the District disappear because of the fact that all the ditches are jointly shared, and El Vado's storage is all part of it.

Director Moore asked how many acres of pre-1907 are still left that has not been sold off. Mr. DuMars responded that he does not for sure. Doug has worked on this issue. He explained why it cannot be a viable number. When Mr. DuMars was legal counsel earlier, he had often made the proposal and suggestion that we ought to help people that are pre-1907, that that ought to be a function. That's what Mike suggested that if they put them in the water bank, maybe we could make that work. He always felt it was a very important thing to do, because the state engineer evaluates the validity of pre-1907s, whereas he used to say, "The more you can squeeze out, the more you can get to evaporate off the top of Elephant Butte and be essentially wasted." But now, he thinks that with current events the way they are, he thinks that the idea of helping pre-1907s, getting them to water bank so that people can bank them for a year and then get paid by somebody else along the way, will prevent that number from being diminished, because it's a function of the state engineer's determination. Was it a valid pre-1907? You've been through that process. Sometimes they can be very conservative. Sometimes they can be liberal but almost never liberal. He thinks there is a realization that it's important to be realistic, given the fact that we have always met the Compact and given the fact that below Elephant Butte, it has been a problem. We certainly need to work on that.

Director Moore stated that she knew that people that have the declared pre-1907, but there was also probably a lot out there that people have not looked into that probably could be declared pre-1907. So, that's another group of people, right? Mr. DuMars agreed. Director Moore further questioned that they could not find out until they try to do something with them and try to get their rights established. Mr. DuMars believes that is the case. The arguments are getting more sophisticated. Just because your land is water logged does not mean you lost it.

b. Discussion and Update of "Draft" Policy for Small Water Right Transfers - Dr. DuMars, Chief Water Counsel

- 1) External Costs**
- 2) Water Service Charge**

Chuck DuMars started off by saying that he could not discuss any pending cases. Currently, in litigation the City of Rio Rancho has filed a Motion to Dismiss our protest, and the Pueblos and the Bureau of Reclamation and the District has responded. The basis for the Motion is that at the time they granted the ground water application, years ago, the state engineer considered the effects on every other surface right that might be retired. Therefore, none of them have standing to protest because it was all considered at the time they drilled the well.

Our response that is that does not sound as if it were handled with due process. So, we responded to that. Rio Rancho has not replied, but if the Court grants that Motion, it is going to be moot. The Board needs to figure out how to deal with this policy.

The complaint often is, "Well, why did you have to protest?" Of course, that is a question for the Pueblos, for the Bureau, and others. Mr. DuMars believes that now is the time to move forward and try to figure out what to do and particularly to help the little guys figure out how to do that.

Mr. Hamman added that there are several activities going on. We have a short-term issue to address, and that is all of these transfers that have got kind of snarled up into one of our original protests. The larger issue is we need to figure out a short-term step to take. We also want to talk with our regional partners, Rio Rancho included, reach out and develop a long-term strategy to deal, kind of the soft landing for all of this work to mutually benefit the agencies and the entities involved as the development occurs over time. There might even be some permit issues that would allow the state engineer some latitude to work through some of this as part of it.

But we really do not know until we can engage, and our effort is to reach out both informally and formally at some point to Rio Rancho and their representatives to work through a discussion where we learn more about what their concerns and they learn more about what our concerns are, engage in the planning process where we can help each other on some of the challenges that we face as we look forward to the future. I'm convinced that engaging in that type of process may negate the need for us to concern ourselves with individual property rights transfer processes going forward. We were a little bit alarmed and concerned about a particular action that came across our desk and decided that we wanted to both engage with our regional partners, similar to what we're doing with Albuquerque/Bernalillo Water Utility Authority, how we can manage our system, particularly in really tight years like this, to allow for the optimum use of the available water supply for meeting our irrigation demands, as well as some of our ESA concerns.

The entities that have resurfaced and have the ability to return water to the river and keep locations and things like that, as well as possible habitat in the future sites. Rio Rancho has some opportunities there. In the long run we can come up with a strategy that meets the needs of the region and protects our abilities to keep as much land in production as possible.

The other side of it, which is a concern to us, is what happens to the actual property that gets severed? We want to develop a strategy with the individual property owner, perhaps even the transferee to draw up a plan to inform us about what's going to happen to those parcels. We would like it to be in production or available for production as long as possible.

So, those are issues that concern us. We don't want to create problems for our adjacent land owners. We want to have a plan that would help develop how to best manage that going into the future.

The other thing that would be of keen interest to us is to encourage those that hold large blocks of pre-1907 water, that they are not using right now or the rights they're not using, to consider parking that in a strategic water bank so that it can be used to help us with some of our ESA concerns. He believes that he will see a day where locally-produced, high-quality agricultural products are going to be in very high demand. Mr. Hamman wants to make sure that our agricultural economy survives into the future and land is available in order for that economy to provide the needs of our growing urban areas. He thinks this is happening already.

Mr. Hamman thinks it would be somewhat irresponsible, as the CEO (the Board has given him the directive to look out for the best interests of the District), to not make the ultimate effort to try to get our regional partners together to plan and to develop strategies that meet the needs of the District as a whole, as well as what's good for individual property owners that we serve as well.

He reemphasized that we are not trying to restrict the movement or transfer of water rights, and we are not challenging permits. What we want is a viable option to pull together on some of the bigger

challenges that we face, that we didn't face 20 years ago, with ESA and then large blocks of water that are going outside of the District due to severance of water rights.

We are also looking for what is to come for the good of the entire region, and that's a public welfare issue that the state engineer will be interested in advancing as part of how do we survive? How do we continue to meet our Compact obligations on a recurring basis? That is important to everybody. The more people that we have working on it together in a cooperative manger, the better off we all will be.

Chairman Kelly specifically asked about external costs and water service charges. Mr. Hamman responded that those are being evaluated.

Chuck DuMars added that we retained experts to look at the externality costs. Technically, when somebody puts in a company, they will say, "We've got a multiplier effect," because if we put this in, we will have all these other effects which aren't all positive. Well, the environmental economics, there is exactly the reverse of that is true, that when there is change, it modifies it. It dries up a piece a land or modifies access to water. In other words, it's part of an ecosystem, for lack of a better word. There is externality costs associated with that, and externality costs that we've retained people to look at.

Another really interesting one that you can look at is where you have the City of Albuquerque that has control over diversions from the surface height. It can cut water lose to get it to Isleta Dam. But when you have a really dry year, a marginal effect, 4,500 CFS drawn in on the river is constant during the summertime, and it has a huge effect. And that's something that is also happening to Rio Rancho. It is all collective of those, and we hope to evaluate it from a hydrologic standpoint and from an economic standpoint and see what they come up with. It's assuming the Motion to Dismiss is granted.

Director Duggins asked if we are still in the protests. He thought that at an earlier Board Meeting the Board had decided to get out of the protest. Mr. DuMars reported that we are still in the protest but not the quantity. Director Duggins asked for clarity on the portion of the meeting when Mr. DuMars was talking about all the benefitted use, he was saying that that was a decision of the state engineer, the landowner, etc. Mr. DuMars responded as set by legislature the state engineer will decide the public welfare question. Mr. Hamman added that we are highly motivated to move in a direction that would negate the need perhaps of final decision on this.

Director Duggins further stated that it is bothersome to have people, who have never been in farming, passing policies that are going to directly affect farmers.

Director Moore then asked about the allocation that we get from the Rio Grande Compact. Does it include a certain number of irrigated acres? Is that part of how we get our particular part of the water allocated?

Mr. DuMars responded the Rio Grande Compact Commission does not allocate water to irrigation or any other use. At the time of the Rio Grande Compact 26 and then 1938, it was contemplated that the uses of the water would be 123,000 acres of irrigation. It was not based upon an anticipated Facebook or Albuquerque or anything else. It was geared toward getting that amount of water passed us, but it is not up to the Rio Grande Commission how we use the water. That's how they came up with the number that we should receive every year, based in a variable flow year. Some years it's larger or smaller, depending on the amounts.

They are not deciding how much we get, but when they did the Rio Grande Compact, and it's Mr. DuMars' position and the position of Raymond Hill, who wrote the definitive article, that that was what New Mexico wanted. They wanted the full amount for irrigation between Cochiti and Elephant Butte. If that is the rationale, why shouldn't we get a PBU that reflects that? Why should we not be able to get that amount? Because our use has changed, but the beautiful Bosque and the recreational value are still using that water and we're not in a deficit. We should not be forced to cut back under any condition.

Director Moore further questioned if the water transfers would affect the quantity of water we get. Mr. DuMars responded no, that you cannot transfer water out of this basin above Elephant Water. You cannot

transfer it above the gauge. That has nothing to do with it. Mike Hamman added that the Compact was negotiated as a status quo Compact among three states of what was actually being depleted in each of the states at the time that they conducted their study, which started early in the 19th century and carried forward. We had the oldest river gauge.

So, what could hurt us is an increase in depletions. That is why the state engineer closed the basin to further ground water development in 1956 so that depletions would not continue to grow, thereby limiting the state's abilities to meet the Compact, the Rio Grande Compact obligations. So, the depletions between Cochiti Dam and Elephant Butte are set based on schedules of the Otowi gauge. Once we pass 400,000-acre feet, we have to deliver essentially 100% of what flows by Otowi gauge after that point down to Elephant Butte. In some cases, the more water that flows at Otowi makes it much more difficult for New Mexico to meet its Compact obligations.

With that said, it is based on the status quo of what was going on at that time. What Chuck is saying is they had planned for full build out of the Middle Rio Grande Conservancy District, plus the river depletions that were going on that they measured at that point. Those two combined helped them develop the schedule of what the delivery requirements down to Elephant Butte. And this was all done to protect those districts below Elephant Butte and the United States Treaty requirements to New Mexico.

Director Baca stated that, given that our primary mission is irrigation and given that we are charged with protecting the District as a whole and now the mission has changed slightly because of the urbanization of this area, A) How much of our budget is based on the rate payers of the urban areas; and B) how much of a say should they have in all of this, given that they're now funding a good portion of this?

Mr. Hamman reported that everybody pays it, farmers and non-farmers alike, and it varies by county. The highest property values in Bernalillo County. So, 8 percent of the 80 percent is Bernalillo County. There are still irrigators in Bernalillo County, and they also pay water service charges.

Chairman Kelly summarized that we have protested some transfers. We have directed Mr. Hamman to work with Mr. DuMars to establish a policy that would recognize the external costs to the District, both economic and both hydrologic, meaning there's an impact to our budget when we don't get the water service charge, and there's an impact to the river when that water is moved upstream and doesn't pass through the system because it's in a well.

We hired an economist and a hydrologist, who are looking at those external costs. We have had some back and forth discussions here with the Board, where there was Board action on one of the protests to not protest the quantity being proposed but to continue to look at those external cost impacts to the District.

We are at a special meeting where we do not have a draft policy drafted for people to look at. We need public input on this from farmers, from our constituents, whether they're Pueblo or non-Pueblo members, irrigators or non-irrigators. We need to work that input into the policy that Chuck and Mike are working on.

Chairman Kelly then opened up the floor.

AGENDA ITEM NO. 5 – PUBLIC COMMENT / ITEMS FROM THE FLOOR

Tricia Lopez

Hi, everyone. My name is Tricia Lopez. I grew up in Belen, near the Bosque. And our family wants to show our support for keeping our water in the valley. Only three of us could be here today, but we're speaking on behalf of Greg, Carmelita, Michael, Brenda, Ria, Mia, Allison, and their families, who also live in Albuquerque and throughout the valley. We still have many loved ones in Belen.

We don't often get to make these meetings. So, we just wanted reassurance from you, basically, our elected officials that you'll manage and represent the District and its mission, not individuals. When you represent the District and the mission, we feel happy. And when you represent individuals, landowners, we're not so happy because we see it.

So, on behalf of our family and neighbors, we just want to ask you to please keep the Rio Grande green. Thank you.

Elaine Hebard

Ms. Hebard stated she lives in downtown Albuquerque. Why should we care about whether or not small or large transfers of water rights from within the MRGCD? Well, on the one hand, as we've talked about, they are personal property rights. So, why should we interfere? Because water does belong to us all. And we need it to survive. So, it's not an even balance.

When a water right is transferred from the point where it is used, a variety of impacts start cascading. To begin with, land has a water right to irrigate. So, if it uses the water bank water, it may be double dipping in essence if there's not enough water bank water under that PBU. It may be used to build houses, and if there are individual wells that go in, then you're also double dipping. There's a limit on how much water can be actually transferred and substituted in that water bank, especially in a water short year.

A transfer of water from its current place of use becomes a loss to the neighbors because when that quality of water is no longer in that ditch, it can't serve the rest of the irrigators as well. It represents a loss to the community when it's taken out of production, ranging from loss of taxes to the loss of revenue from local customers to a loss of culture. It's a loss to the region in terms of a loss of greenbelt, view shed, critter habitat, food security, and so on. When flood irrigation ceases, we don't have the recharge to the shallow aquifer. We don't have those trees that I, in the middle valley of Albuquerque, get to benefit from because I don't have a ditch around us.

Transferring water upstream may have a series of environmental ramifications and adverse impacts. When water is transferred out of the benefitted area, that area which has had water supplied between Cochiti and Elephant Butte, then it's not coming back. That water is being transferred to offset impacts for urban usage. Such consideration should be included when you're doing a water right transfer. Use of a full accounting approach is one way that you could do that. This approach would identify and capture as many known and discernible costs and benefits as accurately as possible, including elements that have been historically been outside the mandate. For example, lost environmental benefits of services resulting from the deletion or degradation of water resources, loss of recreation or cultural value.

[Ms. Hebert reached her three-minute time limit.]

Tony Williams

Good afternoon, Mr. Chairman, Members of the Board. My name is Tony Williams. I'm a lawyer practicing law in Los Lunas. I've been practicing law in Los Lunas for 38 or 39 years. I've represented farmers and land owners and people who are not land owners.

I came here for items 4a and b. I was most interested to hear the overall goals of the District that are being promoted by Mr. Hamman. For example, the commitment to submit a proof of beneficial use has been a statutory obligation of the Conservancy District that has been kicked down the road for 88 years. And so, what is being proposed here is really profound, and there are people here who are in favor of more liberal water rights transfers and people here who are opposed to any water rights transfers. I think you all know that because of the private property nature of what we have and competing uses for water that there must be some movement of water in New Mexico, and our economy and law demand it.

What I am concerned about is that that very important public policy of how we deal with this and how we deal with the District budget when farms dry up. You certainly don't want to leave the last farmer on the ditch bearing the full cost of maintenance. These are all important questions. What I'm objecting to is using the court system to do that. That's something that ought to be out here in daylight where the economists are hired by the Board, not by counsel, not in the context of litigation, which takes on its own life and is inaccessible to the public. It gets discussed in the committee meetings, in executive session. Litigation develops a life of its own, driven by the particular interests. Rio Rancho may have a completely different interest than Los Lunas than Belen than Socorro. If the public policy gets set in litigation that's

not open to the public, that is a problem. I would urge that this debate be taken out of the court system and into the public.

Regarding the small water rights holders, I'm not going to talk about the two that I have in the pipeline, one of which has been protested, the other one which I expect to be protested. I'm going to talk about my 92-year-old widow who was talked out of transferring her water rights because I did not believe that she and I could deal with the complexity of litigation. So, it just didn't happen. She's going to leave that one to her heirs to enjoy whatever fruits may be of that.

I think that this policy has an effect on people that you will never see because people have been planning their estates, they've done their banking, and they've been doing their whole life planning based upon an existing system where provable water rights were transferrable for cash. There seems to be a commitment not to totally disrupt that, to fix a system that needs a lot of massaging and adjusting and so forth. But shouldn't it be done here in public? Shouldn't it be done at the legislature, rather than through the court system.

That's my comment. Thank you.

Tessa Davidson

Good afternoon, Directors. I'm Tessa Davidson and counsel for Bosque Del Sol, involved in the transfer request with Bernalillo. And today, I'm appearing before you wearing a lot of different hats. I own two farms in the District. I'm a rate payer. My brother owns a farm. My mother owns a farm. My stepmother owns a farm. And my sister owns a farm. I've been working with the District for over 25 years. I used to work with Chuck at his firm.

One of the reasons why I think my clients and myself were so shocked at the District's protest is I have 25 years of experience, knowing that the District had a policy not to do this, not to pit farmer against farmer, not to get involved in the transfer process. Let the state engineer deal with that.

I have to echo 100% of Mr. Williams' sentiments. This issue is a public policy issue. You have constituents here that disagree on what the District's position should be. I think that that's one of the problems with the protest and the way it came about. I think there are unintended consequences. There are four representatives from Farm Credit. I help farmers protect their water rights so they can get farm loans. As part of that farm loan process, those water rights are appraised. It's collateral. Banks own collateral interest in these water rights. The Bosque Del Sol application involves a very leveraged farm with leveraged water rights. Banks loan money to that farm based on those appraisals.

So, it's not just the small farmer's mortgage that is going to be foreclosed on. It's large operations that are trying to do the best they can to run their farms. And I think there are unintended consequences that I would ask that you all look at, develop a policy, and then apply the policy. But doing this in the court system, I agree with Mr. Williams, is not the right way.

Thank you.

Scott Edeal

Mr. Edeal stated to the Board that he believes that Mr. Hamman and Mr. DuMars are leading you astray on this thing. I've been here since groundbreaking, since the first meeting. They're saying that this water is being transferred off, and the land is going to the weeds and everything else. Have them tell you how much land is, how much pre-1907 have been forfeited because people have built houses in the South Valley, in Rio Rancho, Corrales. They don't farm anymore. The water is gone.

That's a bigger catastrophe than what they're talking about now, but they won't mention that. They'll only mention what they want on their agenda only. The elm trees grow on the people that have just regular conservancy land and don't farm it anymore. They want us, after we transfer this, to be a better person than the one that has the conservancy rights. I live this. I've been doing this water rights thing since I

was actually going to build a dairy on the mesa. Then, my financial thing fell through. I sold the water rights, and I said, "This is a pretty good deal." And I cruised the valley from Bernardo to Bosque Farms. There are not a whole lot of water rights left. They're trying to make you believe there's this huge chunk of something that you're going to save, and it's a property right for the people. And I just believe you guys are way, way out of whack on this.

Santiago Maestas

Santiago Maestas, lives in the South Valley, he irrigates off the Pajarito Acequia Madre and the Robey Lateral, which are operated by the District and the Don Gavino Andrade community acequia, which we operate ourselves off of the District's lateral.

Water rights are important to us. We're pre-1907 in Pajarito. We've been irrigating since 1746, and we have pre-1907 water rights that we've declared and that we've actively tried to get our neighbors to also declare. In doing so, that gives us standing in water right transfer protests, because any water that's diverted off of the Pajarito Acequia has ultimately an effect on our properties as well on the carriage that comes to us.

I believe it was in 1993 that the New Mexico Acequia Association and the legislature amended the water laws to allow for local acequias to control the transfer of water rights from tehri acequias, and the suit that Mr. DuMars pointed to up is in Hernandez, a little village up north off of the Chama River. As he pointed out, the acequia members and pre-1907 water right owners and the acequia association itself were successful in denying a water right transfer from tehri acequia. It was upheld by the New Mexico Supreme Court and is the law of the land.

We've attempted, here within the South Valley, to keep our lands irrigated and not being all developed and built over with new houses, also by filing protests. But, unfortunately, it is a legal system. I can file a protest *pro bono* myself for a nominal fee of \$10 and get a hearing before the state engineer. However, in order to prepare for that hearing, I have to provide all the legal documentation required. And in order to do so, I need legal assistance in order to prepare evidence in order to answer the discovery from the other party, because the other party that's transferring water always has an attorney to represent them. So, they can work the system, but I, as an individual landowner, and not being a lawyer, basically, don't have those skills in order to defend my water right and my acequia from being transferred.

So, I'm in favor of this policy. You know, where the District has the resources, the economist, the lawyers, the engineers to support us when we want to also protest these water right transfers. So, I'm all for this policy, and I believe the New Mexico Acequia Association would be in favor of this policy. The South Valley Regional Association of Acequias will be in favor of this policy. And the Commissioners of the Pajarito Acequia are in favor of this policy.

On last thing, it's a drought year, all the engineering, policy, etc., is helpful, but it doesn't bring us rain. So, I'd like to give the Board a prayer card to San Ysidro. His wife, Santa Maria de la Cabeza is brought out in Spain and Madrid. Her statue and her relic are paraded in the streets during the time of drought, with everyone praying for rain. So, here's a prayer, an ancient prayer, a Spanish prayer, to San Ysidro that the Penitentes use, as well as the English version, praying for rain. We hope that you all pray for rain, because that's what we really need.

Mike Mechenbier

I'm buying more rights, transferring them, but it's for a different reason. I'm putting back into agriculture where I have an insurance policy on the pecan trees and so forth.

I'm really torn on this argument, and I have friends on both sides of it. I was born and raised in the South Valley of Albuquerque. We didn't have a Rio Rancho. We didn't have a Huning Ranch back then or all the urban sprawl was right down the valley. There's no farm land left to speak of in the South Valley. I'd hate to see the same, if there wasn't some way to keep the residents on the mesa and keep them out of the farmland. We're just shooting ourselves in the foot.

We want to preserve, or, if there is a transfer, we want to keep all of the invasives out of there because of the way they tax that system.

The other thing, when he was a kid back in the '50s, the river didn't look anything like it does today. We didn't have continuous flow of water. People today think that that Rio Grande ought to look like Missouri because it's green all the way up and down. Ninety percent of what you see is invasives in that river bottom. The river uses more water today than what we do in agriculture. If you want to do something big, start cleaning up that river up, and there would be enough water, not only for agriculture but other purposes. You can't use that river for anything, you can't walk through it, and it's so overgrown and unusable. If we really want to tackle one of the big problems, why don't we start with the river?

I asked Dave Gensler a minute ago, "What do you think the river uses, the riparian area" 200,000-acre feet of water. We don't come close to that with agriculture. And we're not going to have enough for our agriculture today. We don't have enough for our cities. We don't have enough. I believe that lawsuit down there in Las Cruces will be trickling up here. People are going to be looking for water over time.

So, I'm torn, I see what's happened in the South Valley, and I saw what happened to our river over the past 50 years.

Director Lente

Thank you, Mr. Chairman, I've been quiet this entire meeting, just listening to the comments from my fellow board members and from members of the public. I want to first make it clear that when folks think about the policies that were set forth to date and to the future, those are policies that aren't driven by our executive or our legal counsel, but those are ones that are borne, obviously, through their expertise but are supported or not supported by this Board. Those are the representatives that you put here to represent all of you. So, please, when you think of people, and you say that they're misleading us, you know, it's us. We look at ourselves in the mirror every evening when we go home and know that the decisions that we make are on behalf of the people that we represent.

But when we talk about these types of issues, I think of it different, simply because of where I come from and how I was raised. I come from the Pueblo, and I was born at Sandia, farmed with my dad at Isleta, still today farm in Sandia, and I will do that for the rest of my life. I think about these water transfers and the potential impact it will have on our valley. I've heard it once, and I've heard it several times thereafter, that if we don't do something in the best interests of this valley to help support and protect the mission of the MRGCD, which is irrigation, which is supporting the farmer, that the only people that will be farming in this valley are going to be the first people that were here in the first place, and that is going to be the Pueblos.

I see it. I see it. I mean, it's evident that if we don't do something right with the right policies that as much as we'd like to think that our farms are going to be protected if you're in Socorro or if you're in Belen or you're in Albuquerque or further up, we run the risk of those farms being impacted by water transfers out of this valley. While I know that my water right or the Pueblo water right is a federally protected right, that we are not out of the clear because there will be some effect that these transfers will have on the farm practices there at the Pueblos.

Nonetheless, I would hate to see the day that we see farms drying up or people moving out because houses grow faster than alfalfa or houses grow faster than chile. We see it today. We see it today in the Hatch Valley, where folks are pumping so much water that they're running out. They're looking upstream to us and how are we going to protect ourselves from the folks down there? So, as this Board, we need to, as the professional staff, truly find a way. I think we think we're in the right direction. Obviously, we want to make sure that we represent the people in our districts the best way that we can, and we take into full consideration their concerns and their questions and their comments because at the end of the day we're here for all of you. And if we can't do that, if we're here for the banker, I can tell you right now, I'm not here for the banker. I'm here for the people. The people are who I'll stand up for every single day of my life. At the end of the day, I want to make it clear that as silly as it sounds, I'd hate to have just the

Pueblos farming in this valley because I think that I've made so many friends up and down this valley, regardless if they're Angelo, Hispanic, African-American, whoever they are, we're all brothers and sisters that farm and have the same interest, and we have the same love. And so, with that, Mr. Chairman, I appreciate the opportunity to comment.

Director Duggins

Mr. Chairman, I had to buy my land, and there's no way around it. Without those fellas there, I wouldn't be a farmer. I've told you very well, all of you know how I started farming with the handshake of a banker. And, yeah, I'm still shaking it 35 years later, but one of these days I'm going to get loose. But guarantee you, if you're a farmer, you need a banker or you better have a helluva load of money somewhere. I love my friend from the Pueblo, Lente, but there are a lot of us who wouldn't have anything without a banker. And thank God for them. I'm glad to call them my friends, and they're good people. And I wish there was more of them.

Director Moore

I just wanted to say that I'm like Mr. Mechenbier on this. I'm really torn on this issue, because the way I see it is you hurt the farmer now or you hurt the farmer down the road. The farmer somewhere down the road is going to be hurt if we keep transferring it off.

My husband, before he passed away and I sold our water rights on a farm that we had, and that enabled us to get out of debt, to pay our feedlot off, pay our farm off. I know the benefit of selling your water rights. You never really make any money unless you have an oil well in your backyard, like they do in Oklahoma. Unfortunately, in New Mexico, we don't have that. The only time that people in agriculture and farming or ranching generally make any really good, big money is when they sell, whether it's their land, their water, etc.

It's a very hard issue, but I see that it's something that we have to address. I think one way or the other; the farmers are going to be hurt.

Director Dunning

I'm not going to comment about this policy. I'm going to comment about something else. Today, we had an unusual meeting in that it's the first time I've seen that we have two future leaders come to the meeting. We had two children. They were wonderfully well-behaved, but I am proud that people can bring their children to an MRGCD meeting, because public comment is really important. I don't want anybody to ever think that they can't come and be heard because they don't have a babysitter or daycare. I just want to thank all of you for coming. I also wanted to thank the two children for being so well-behaved. I'm glad they're here.

Director Romero

I just wanted to say one thing. When this agenda was drafted, I wish it would have been added that these taxpayers were only going to have three minutes. It was my understanding that they were going to have more time to talk to us. I asked for a meeting to talk about this topic. We started an hour-and-a-half late on public comment to begin with. It's already going to be 6:00 now. They were only given three minutes, and they didn't even know that that was going to be a three-minute limit. They all probably had a little bit more to say, and I personally want to hear it. I hope next time when you're asked to add this type of item to the agenda that if they're going to be given three minutes, put it on the agenda.

If we're going to talk about this, let's not limit them, because they took time out of their day to come and talk to us. This is a big crowd. Normally, we don't have this many people here, and they all came to talk to us. And they weren't even given the opportunity.

Chairman Kelly saw Director Romero's point and explained that typically the three-minute time limit is noted on the agenda (this agenda did not contain the time limit). He just assumed there would be a time

limit. Chairman Kelly then offered that anybody could return to the podium if they felt they had not completed their public comment.

Matthew Chavez

Mr. Chavez is on the FSA Board in Los Lunas, and that board serves four counties. They are elected to serve the people. We as Board member have to hear what the people out there are telling us. If we're not making the time to hear what the people are saying, then we don't know what's really going on. If we don't know what's going on, we're not able to make a qualified decision. We're just assuming. With us, we aren't going to get the answer that the people we're representing want. At our meetings, we want people to come in. We want to hear what they have to say.

If Scott wanted to stay up here 10 or 15 minutes, he should be able to because he has a dairy. He works. Those guys are doing something all the time. For him to come up here and for you to limit him to three minutes, that's a joke, at the end of the day. You should make the time for all the people that take the time to come up here. If the Board needs to do a two-hour block, do a two-hour block, because that's what we're here for.

In regards to how much water is being used by the river itself and if the water is being wasted, can we start a program where people can clear river? The MRGCD is on a budget, so maybe allow the public to go in there and clear cut the Russian olive or the salt cedar and leave the cottonwood or the dead cottonwood.

Regarding the draft policy, I would need to do a little more homework on it to give my opinion.

Director Moore commented that she felt that public comment should not have been limited to 3 minutes, water rights issue is very important to the public and they should be heard and limited.

Neal Hurley

Mr. Hurley is a real estate appraiser with Farm Credit of New Mexico, and came here today to get some clarity. He asked the Board if the District has an identified policy for how you're going to move forward regarding transfers of pre-1907 water rights.

Chairman Kelly responded that we do not have a draft policy. We have some outline of a policy, where we would capture our external costs, both monetary and hydrologic-wise with regard to the impacts of that transfer. At this point, we're looking into those two issues. We're taking public comment on it. I would hope that we have two of the board committees look at draft policy, our irrigation committee and our water protection committee. Then, have a draft policy out for public review and comment, a written document to look at.

Tessa Davidson

Director Romero, thank you so much I did feel very rushed and didn't have enough time to put my point across.

I am wearing many hats in this situation. And I have been a board member on Corrales Farmland Preservation. I've worked with the New Mexico Land Conservancy. I was on their board. I helped Price's Dairies prove up their water rights to justify an appraisal for the federal government and the Land Conservancy to purchase that property to keep it in irrigation. I'm certainly motivated to keep the valley green, but part of the problem is just kind of the chicken/egg issue. I definitely want to work with the Conservancy. I always have been on some transparent process to come up with policies that are going to help the District achieve its goals. The problem I've been in is I got snagged in what I perceived as a rush protest, where there aren't any clear policies. I'm not quite even sure what the District wants to do. I think this meeting today even emphasizes that for me.

I'm very sympathetic to the Board's situation and to what we've heard from some of the constituents. As a farmer in the District, we brought in an old lateral. I don't know if you remember, but when Director Oglesby was here, we asked the Director for a right-of-way to bring in an old lateral to put in a farm where the farm had been abandoned. So, there are lots of heartstrings attached on a personal level to seeing the valley green. But at the same time, I feel like farmers and all District constituents need some notice. Appraisers need notice. We need some idea of what the new rule is because people get loans based on certain values on their water rights. Then, the rules changed. It's caused a lot of uncertainty. As a water rights attorney who helps farmers prove up water rights, who works with Farm Credit, who works with all sorts of interests in the valley, the District's actions recently have really caused a halt in the market. Nobody knows what they own. Nobody knows what it's going to be worth. Nobody knows what they can do with it.

That was really the purpose of me showing up to day, was to try and give you that more broad perspective. And thank you so much for opening up the floor again and giving me that opportunity. Thank you.

Elaine Hebard

The point that I was trying to make was there are all these externalities and issues. So, have a model, like a full cost accounting model, where you actually run these through. So, it's not arbitrary and you can then say, "Okay. These are the costs. These are the benefits." That's what it means to actually transfer or not transfer water, especially when it's transferred out of the District boundaries.

Scott Edeal

The three-minute thing really was very frustrating today. They got 35 or 40 minutes a piece to sell you guys a product, and then we the people that are against the water rights had a time limit of three minutes. It's like not a good deal. That's all I want to say.

THE BOARD THEN TOOK A FIVE-MINUTE RECESS

AGENDA ITEM NO. 6 – EXECUTIVE SESSION

Chairman Kelly requested a motion to move into Executive Session at 6:05 pm.

Director Lente made the **MOTION TO MOVE INTO EXECUTIVE SESSION PURSUANT TO NMSA 1978 OPEN MEETINGS ACT (SECTION 10-15-1(H)7)**. Director Duggins seconded the motion. The **MOTION CARRIED**.

Chairman Kelly requested a roll call vote:

Director Dunning	Yes	Chairman Kelly	Yes
Director Baca	Yes	Director Lente	Yes
Director Duggins	Yes	Director Moore	Yes
		Director Romero	Yes

The **MOTION CARRIED**.

Chairman Kelly requested a motion to move back into the Regular Session at 6:50 p.m.

Director Dunning **MADE THE MOTION TO MOVE BACK INTO REGULAR SESSION**. Director Baca seconded the motion.

Chairman Kelly requested a roll call vote:

Director Dunning	Yes	Chairman Kelly	Yes
Director Baca	Yes	Director Moore	Yes

The **MOTION CARRIED.**

Chairman Kelly said for the record that only discussion was had and no action was taken.

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

The meeting was adjourned at 6:57 p.m.

Approved to be the correct Minutes of the Board of Directors of May 14, 2018.

ATTESTED:

David M. Fergeson
Secretary/Treasurer

John P. Kelly, Chairman
MRGCD Board of Directors