

**MINUTES OF THE
TWO THOUSAND NINETY SEVENTH REGULAR MEETING
OF THE
BOARD OF DIRECTORS OF THE
MIDDLE RIO GRANDE CONSERVANCY DISTRICT
September 26, 2016**

Directors having been duly notified, Chairman Lente called the regular meeting to order at 3:02 pm at the MRGCD General Office. The following Directors and Staff were present:

DIRECTORS:

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

STAFF:

Michael A. Hamman	Chief Engineer/CEO
Charles T. DuMars	Chief Water Counsel
Lorna Wiggins	General Legal Counsel
David Fergeson	Secretary-Treasurer
Ray Gomez	Engineer Supervisor
Christine Nardi	HR Director
David Gensler	Hydrologist
Doug Strech	GIS Supervisor
Alicia Lopez	Engineer Technician
Jason Casuga	Engineer I
Yasmeen Najmi	Planner
Sloan Washburn	Belen Division Manager
Lorenzo Benavidez	Socorro Division Manager

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

Pat McCraw, South Valley Ink Elaine Hebard Jeff Willis, AMAFCA John Thompson, MRGCD Lobbyist	Gary Stansifer, Office of the State Engineer Jennifer Faler, Area Manager, USBOR Frank Chaves, Pueblo of Sandia
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AGENDA ITEM NO. 1 – PLEDGE OF ALLEGIANCE

Chairman Lente requested that Director Sichler lead the Pledge of Allegiance.

Chairman Lente welcomed the guests and declared a quorum.

AGENDA ITEM NO. 2 – APPROVAL OF THE AGENDA

Chairman Lente called for approval of the agenda. Mr. Hamman said he would like to delete agenda item 7e Notice – NM State Legislative Interim Committee on Water & Agriculture, that meeting has been cancelled for September 29-30, 2016 and has been rescheduled for October 26-28, 2016.

Director Sichler made the **MOTION TO APPROVE THE SEPTEMBER 26, 2016 AGENDA AS AMENDED**. Director Oglesby seconded the motion. The **MOTION CARRIED** unanimously.

AGENDA ITEM NO. 3 – APPROVAL OF MRGCD PAYMENT RATIFICATION & ATTORNEY INVOICES

- a. Consideration / Approval of Payment Ratification – September 26, 2016

Chairman Lente called for approval of the September 26, 2016 Payment Ratification. Director Dunning asked regarding the publishing of the ratification on the MRGCD website and the removal of names of garnishees and Mr. Fergeson replied that he does and will ensure that it happens with this ratification when it is published on the website.

Director Oglesby made the **MOTION TO APPROVE THE PAYMENT RATIFICATION OF SEPTEMBER 26, 2016 AS PRESENTED**. Director Duggins seconded the motion. The **MOTION CARRIED** unanimously.

- b. Consideration / Approval of August 2016 Invoice for Wiggins, Williams & Wiggins

Chairman Lente called for approval of the August 2016 Invoice for Wiggins, Williams & Wiggins.

Director Oglesby made the **MOTION TO APPROVE THE AUGUST 2016 INVOICE FOR WIGGINS, WILLIAMS & WIGGINS AS PRESENTED**. Director Dunning seconded the motion. The **MOTION CARRIED** unanimously.

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

- a. Consideration / Approval of Minutes for Regular Board Meeting – September 12, 2016

Chairman Lente called for approval of the minutes for the Regular Board Meeting September 12, 2016. Director Dunning had one question and Dr. DuMars answered accordingly.

Director Dunning made the **MOTION TO APPROVE THE MINUTES OF THE REGULAR BOARD MEETING SEPTEMBER 12, 2016 AS PRESENTED**. Director Oglesby seconded the motion. The **MOTION CARRIED** unanimously.

AGENDA ITEM NO. 5 – ITEMS FROM THE FLOOR (Comments are limited to three (3) minutes)

Elaine Hebard said she is at the meeting wearing two hats. She said the first topic is the ABCWUA water plan which was presented to the Board a couple of weeks ago and she went on to give a statement regarding the water plan. She requested the MRGCD evaluate the new caps and new policies. Ms. Hebard said her next topic is as a member of the Water Assembly she would like to invite the Board to a conference on Saturday, October 22, 2016 which will be called “Managing the River to Failure-Is There a Better Way?” and she went on to give details of the conference and the speakers.

AGENDA ITEM NO. 6 – REPORT(S) FROM THE DEPARTMENT OF THE INTERIOR

- a. Bureau of Reclamation – Jennifer Faler, Area Manager

The following summary report was received electronically from the Bureau of Reclamation.

1. Heron Summary

Content = 99,376 ac-ft. (09/22)
 Azotea Tunnel: 5-40 cfs
 Total SJ-C inflow year-to-date: 93,668 ac-ft.
 Currently releasing: 500 cfs
 Current MRGCD storage: 20,096 ac-ft.

2. El Vado Summary

- A. Total storage (all contractors and natural) in El Vado as of 09/22:
50,894 ac-ft.
- B. Native in El Vado
3,507 ac-ft.
- C. MRGCD SJ-C storage in El Vado
15,133 ac-ft.
- D. MRGCD EDWA:
0 ac-ft.
- E. NMISC EDWA:
1,075 ac-ft.
- F. P&P:
13,349 ac-ft.
- G. All other SJ-C contractors:
17,820 ac-ft.

Current release is 500 cfs RG Inflow is 60-100 cfs

3. Storage in Abiquiu

Content = 123,282 ac-ft. (09/22)
MRGCD SJ-C storage = 1,673 ac-ft.

Total water for minnow released to date in 2016: 12,190 ac-ft. (+783 ac-ft. from Audubon pool).

Ms. Faler reported that she would give a few water updates and then Mr. Gensler would probably have more in his presentation. She said up north the San Juan-Chama project is approaching full allocation for this year and things down south should be changing this week. She said the MRGCD will be running out of native water sometime this week and the BOR is planning on going into Prior & Paramount only operation; which is a difficult task for all. She said the Water Authority will be turning off on Friday which will help a little bit and push some of the water down. She said, unless they hear something differently from Mr. Gensler, they will go into P&P operations and they will wait and see what that does to Endangered Species operations; which is in a critical time right now. She said the numbers have been great all year and so they are on pins and needles hoping that doesn't change with the October sample. Ms. Faler said the BOR has released a little over 12,000 ac-ft. of minnow water this year and with the consultation that is about the number they will probably end up with. She said they used to be able to collect about 30,000 ac-ft. a year of minnow and this year was down to approximately 13,000 ac-ft. She said they do have some to carry over and this was a good year and representative of what the Federal government will be able to do each year.

Ms. Faler said she would like to acknowledge the MRGCD's engagement in the Isleta settlement. She said they are working on several agreements and the MRGCD has really stepped up in the last few weeks with surveys and checking documents and the Federal government has stepped up in a big way as well and helping to close this deal with Isleta Pueblo. She said the devil was in the details and it was a good day when the Pueblo accepted the conceptual settlement. Ms. Faler said she wanted to thank the MRGCD Board and staff.

Ms. Faler said the Middle Rio Grande Biological Opinion (BO) is an item later on this agenda and she said a little bit from Reclamation's perspective; she said they do have some concerns with the draft BO that's come out and they are hopeful they can engage with the Fish & Wildlife Service (Service) and work with them on things that are unsettled. She said she doesn't think any of the parties want to go back into consultation with the Service and Reclamation is hopeful they can work with them on some of their matters. Ms. Faler said they found out today that the Service is planning to stick steadfast to their thirty day only comment period and that is not going to give a lot of time to work with them. She said they will work with the Service to try and buy more time to make improvements where possible. Ms. Faler said she wants to thank MRGCD resources they have put towards this consultation as well.

b. Bureau of Indian Affairs

A representative of the Bureau of Indian Affairs was not present to give a report. Chairman Lente said if someone does arrive, they can give their report at that time.

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

b. Announced Date for MRGFCA Annual Breakfast Meeting Mike Hamman, MRGCD CEO

Mr. Hamman said the annual breakfast meeting has been set for Tuesday, December 6, 2016 from 7:00 a.m. to 9:00 a.m. at the Albuquerque Country Club; more information to come.

c. Report – BIA Quarterly Contract Review Meeting – September 19, 2016 – Mike Hamman, MRGCD CEO

Mr. Hamman said a quarterly progress contractor review with the BIA and three of the Pueblos were also represented as well as the Governor Garcia of the Pueblo of Cochiti. He said they discussed the status of projects over the last quarter and also discussed some of the work the MRGCD will be trying to do. Mr. Hamman said communications are going well from the water operations side as well as notification of MRGCD staff giving notice when going on to the various Pueblo lands for maintenance. He said for the most part, everyone seems to be pleased, however, there are still some concerns about the weeds that got out of control with the August rains and staff has scheduled crews to get rid of those weeds. Mr. Hamman said, for the most part, it was a really good water year, well managed with a few minor hiccups and staffing issues. He said a payment from the BIA has been received and the next one is due in December and as far as the contract goes, everything is going along from both sides.

a. Water Report – David Gensler, MRGCD Hydrologist

Mr. Gensler reported the last several weeks have been quiet and not much to report, however, there is a little more to discuss today. He said unfortunately it's not the best news. He said the demand for water is low, as it typically is this time of year, however, there hasn't been much rain up north and flows are continuing to fall steadily over the last month and it has been necessary to release quite a lot of storage water; more than he thought they would have to in September. Mr. Gensler said as a result, the MRGCD is almost through the Rio Grande water. He said this morning they had about 1,400 ac-ft. left and he released about 300 cfs and this will be the last of the Rio Grande water coming out storage. Mr. Gensler said he has discussed with the Board several times about the possibility of holding the San Juan-Chama water for next year; he doesn't know what that amount will be, however, he knows the MRGCD will need some water in storage to make it through the season. He said he is asking the Board for approval to end releases from storage when the water is gone and make due with whatever Mother Nature provides. He said this sounds tough and it could be, however, there are a couple of things that could moderate that. Mr. Gensler said when the MRGCD stops releasing Rio Grande water, the City of Albuquerque gets to stop doing what they do and there will be a surge from that and extra water showing up down at Isleta Dam. He said another thing that could happen is Reclamation will step up their supplemental releases of water just like they

do in Prior & Paramount times and so the MRGCD will take whatever natural flows arrive at Angostura and make the best use of it. He said conveyance losses are no longer experienced through the Albuquerque Reach of the river and so the MRGCD gets more water at Isleta that way and that is a good thing. Mr. Gensler said he feels bad that Reclamation has to release water for the fish, however, on the other hand, the MRGCD has been paying with conveyance losses throughout the summer and he doesn't think this release will go on too long. Mr. Gensler said the MRGCD has carried the river and the fish all summer long. Director Sichler said they spoke prior to the meeting and he said he thinks the MRGCD did basically the same thing last year; cut the release from storage and made it through October on what they had. He said he knows they've done it in other years and in one year they even shut off the water in September. Mr. Gensler said this is correct and for probably most of the last 5-7 years, the MRGCD has had some kind of a late season reductions with the goal of saving some water for the next year. Director Sichler said they made it ok last year through October and he tends to agree with Mr. Gensler. He said he has received a call from one farmer that is concerned about his wheat that he has planted and wants to get another watering and Director Sichler said he thinks there will be enough water to do that. Director Sichler asked Mr. Gensler if something happened and farmers really need to get a little boost of water at the end of the season, can a little water be released and Mr. Gensler responded yes, however, they need to remember that it will take a week or so to make that happen into Socorro County. He said they almost always get some kind of weather in October that gets them through and the Ditch Riders are great when they adjust to these conditions and they try to be responsive to the most pressing needs. Chairman Lente said the message needs to be sent to the Ditch Riders to convey to the farmers that this is the situation, like in years past, and also to the Pueblos for the process in place for P&P operations. Mr. Gensler said every year the word goes out and things are already arranged in such a manner that the Pueblos will be protected. Director Oglesby asked about much San Juan-Chama will be left at the end of the season and Mr. Gensler responded as of today, the MRGCD should finish up the year somewhere around 38,000 ac-ft. and he still hopes to pay 5,000 back to the City of Albuquerque. He said he hopes to begin next year with 35,000 ac-ft. in the bank and a full allocation of San Juan-Chama next year. Director Sichler said Ms. Faler said they will be going into minnow operations and he is wondering if the BOR didn't do that and the MRGCD quit releasing water, how far the river would get into the valley. Mr. Gensler said he thinks of this often; and especially this year with the Fish & Wildlife Service process and the consultation. He said today there is about 600 cfs entering the valley at Cochiti and something on the order of 450-470 of that is coming from storage and so it is easy to show that if all storage releases were stopped and the river had only natural flows, there would only be about 130 cfs coming out of Cochiti. He said this assumes that no changes in diversion practices above Cochiti into Colorado; of course. Mr. Gensler said that amount is totally consumed by Pueblo diversions and evaporation, by the river itself, before it gets to Albuquerque and, something on the order of maybe 90 plus miles of the river would be dry under those circumstances and today there are only 20 miles of river dried. He said his view is the MRGCD is actually keeping 70+ miles of river flowing that wouldn't be otherwise. Director Sichler said if it wasn't for the water the MRGCD is releasing; the take would be a lot higher and Mr. Gensler said there wouldn't be many alive downstream from Albuquerque. Director Duggins agreed with Chairman Lente and Director Sichler and encouraged Mr. Gensler to do what he could to work with the farmers if they need water this year.

Mr. Gensler said he also wanted to discuss the Water Bank. He said the flow trigger for October 1st is 430 cfs and the storage trigger is 1,000 ac-ft. He said he anticipates not using any storage in October and technically they are above the storage trigger, however, since they are reserving the water for next year is a curtailment in order and he is inclined to say yes, but wanted to bring it up with the Board and see what the consensus is. Director Sichler said the MRGCD has a policy and it doesn't think it says anywhere in the policy that the Board can make that determination. He said they actually took the curtailment issue out of the hands of the Board by making those two triggers and he thinks they need stick with the policy. Directors Duggins and Oglesby agreed. Director Oglesby said they have discussed over the winter time in the last couple of years maybe revisiting those triggers and maybe this may be the year to do that. Dr. DuMars said they may want to revisit this; however, they need to stick with policy. Mr. Gensler then provided the diversions that are happening today.

Ms. Faler said in her presentation earlier she mentioned the BOR was going into P&P ops and it doesn't necessarily mean they are releasing P&P water. She said the BOR has been working

cooperatively with the MRGCD and the Water Authority on the winter base flows on the Chama. She said Reclamation has a variety of interests and they are trying to be responsive to those requests with the managing of the releases to be more consistent.

d. Update – Status of Biological Opinion Process – Mike Hamman, MRGCD CEO

Mr. Hamman said he wanted to take this opportunity to discuss the formal process they have been engaged in now that the draft Biological Opinion is out on September 15th. He said there has been a series of meetings since then culminating in a meeting with the MRGCD Water Protection Committee of the Board. He said on the 19th, the Biological Assessment (BA) partners met at Reclamation to discuss the process and procedures for reacting and commenting on the DRAFT BO and came up with a game plan, on the 22nd the Fish & Wildlife Service (Service) sponsored a technical review to answer questions and go through questions and concerns, on the 26th, this morning, the BA partners met again to review the draft BO and plan on how to reply. There was an informal discussion this morning and a request to Reclamation to consider asking the Service for a 45 day extension that is allowable through the law and as of now, it isn't known if Reclamation will consider that request. He said the report this afternoon with the Board's Water Protection Committee will be reported later in this meeting. He said they are working primarily with the BA partner team to try to formulate some of the major concerns and will be relayed to the Board by Patrick Redmond later on this agenda.

e. Notice – NM State Legislative Interim Committee on Water & Agriculture in Socorro – September 29-30, 2016 – Mike Hamman, MRGCD CEO

Mr. Hamman said the date for this agenda item has been rescheduled to October 26-28, 2016 in Roswell and he assumes the MRGCD will still be on the agenda.

Mr. Hamman said he also wants to inform the Board that the Chama Land Alliance will be hosting a documentary film showing and roundtable discussion on October 8th called Beyond the Mirage and has to do with Colorado River issues. He said that he and a number of folks have been requested to participate in a roundtable discussion after the film showing. He said tickets for this function can be reserved on the Chama Land Alliance website.

AGENDA ITEM NO. 8 – REPORT(S) FROM THE MRGCD ATTORNEY(S) (Chief Water Counsel and/or General Counsel)

a. Update – ESA Issues / DRAFT Biological Opinion – Patrick Redmond, Law & Resource Planning Associates

Mr. Redmond reported that the Draft Biological Opinion (BO) was released by Fish & Wildlife Service (Service) to the Bureau of Reclamation a couple of weeks ago and the Biological Assessment (BA) partners are having a series of meetings to review, discuss and formulate some comments on the draft BO. He said this BO, when finalized, will be the regulatory document for ESA compliance on the Middle Rio Grande. He said the BO is issued in response to the BA which the BA partners submitted for the Service's consideration in August of 2015; this whole consultation process has lasted over four years and counting. Mr. Redmond said the BA submitted by the BA partners last year contained a very rigorous, rational and well supported analysis of the BA partners' proposed actions on the Middle Rio Grande, including an action-by-action effects analysis along with measures committed to by the BA partners to offset their adverse impacts on the species, particularly the Silvery Minnow, and additional voluntary conservation measures to move the species more in a recovery direction which included the still under-development Recovery Implementation Program. Mr. Redmond said the BA Partners were curious when they first saw the draft BO how closely it would correspond to the approach taken in the BA. He said in a lot of ways it deviates significantly from the approach taken in the BA. It does align with the 2015 BA revision in concluding that MRGCD operations by and large have beneficial effects on the species because the MRGCD remaining in normal operations for a long period of time actually increases the amount of wetted

habitat that is available to the minnow. Mr. Redmond said they were pleased to see that conclusion and there was also, in the draft BO, an acknowledgement that the current population monitoring program needs modification through adaptive management. However, the BA Partners do have outstanding questions about a number of matters. He said the first is whether the draft BO appropriately characterizes and uses a baseline or no action condition as the basis of its effects analysis; second, whether there is a correct bifurcation of the offsetting measures and conservation measures as presented in the BA which allows for, the BA Partners think, a legally appropriate characterization of the basis of particular offsetting or conservation measures as arising under either Section 7a1 or Section 7b2 ESA obligations. Mr. Redmond said, finally, there is a question whether there is an appropriate role and space provided in the BO for the adaptive management process to arrive at some defensible demographic criteria for ESA compliance. Mr. Redmond said they will be looking at this more carefully and there is a very short window for discussion and comments and they will be working pretty intensively with the BA partners: the Bureau of Reclamation and the State/ISC.

Director Dunning asked if others want to ask questions can they ask individually. Mr. Redmond said, in this case, questions and concerns will go through the consulting Federal agency; which is the BOR.

Mr. Redmond said in response to the ongoing litigation which is the WildEarth Guardians vs. the Federal agencies lawsuit. He said recently the MRGCD did file its response to WildEarth Guardian's motion to supplement the administrative record; the issues dealt with are pretty technical. He said essentially WildEarth Guardians proposed to add a lot of additional documentation to this going back a lot way and prior to the current Biological Opinion. He said his firm opposed that supplementation as did the Federal agencies.

- b. Update – Isleta Diversion Dam Easement Settlement Agreements – Dr. Charles T. DuMars, Law & Resource Planning Associates

Dr. DuMars said that because of the issues and the involvement of the United States, he will hold discussion of the agenda item until the Executive Session.

AGENDA ITEM NO. 9 – REPORTS FROM THE BOARD OF DIRECTORS

- a. Report – Pueblo Coalition Meeting – September 1, 2016 – Director Duggins

Director Duggins said he attended this Coalition meeting and really enjoys working with the Pueblos. He said he spoke with them regarding the legislatures attempt to change the date of MRGCD elections from June to November with the general election will silence farmers in the southern part of the State and the Pueblos and he went on to present his view and asked the Pueblos for their support to defeat this legislation. He said he is confident the Pueblo Coalition will stand with the MRGCD on this issue. Mr. Hamman said they also discussed water operations, maintenance and other matters.

Director Oglesby made the **MOTION TO APPROVE THIS REPORT ON THE PUEBLO COALITION MEETING OF SEPTEMBER 1, 2016 BY DIRECTOR DUGGINS**. Director Dunning seconded the motion. The **MOTION CARRIED** unanimously.

- b. Report – MRGCD Water Protection Committee Meeting – September 26, 2016 – Chairman Lente, Directors Oglesby & Sichler

Both Chairman Lente and Director Oglesby said they would defer to Mr. Redmond's comments. Director Oglesby said they did discuss their technical and scientific concerns about the BO, concerns about the validity of what is being called the environmental baseline, concerns with the goals that neither the MRGCD nor Mother Nature can attain and the disconcerting aspects of this. He said the BO as currently written may be considered arbitrary and capricious and vulnerable to a legal challenge from both the environmental side and the MRGCD. He said his impression is that a lot of the issues can be worked through and achieve a BO if they were given the time; which is why it is so important that Reclamation get the formal request to the Fish & Wildlife Service for an extension of time. He said it would be quite a "slap in the face" to those that have worked so hard on this for so long to not give an extension of time to hammer out some pretty significant differences. Director Sichler said the only thing he will add is that he doesn't totally understand all the terms of the agreement. He said the MRGCD has done a lot since the 90's when this issue first came up, to work and help protect the minnow. He said the MRGCD is just trying to expand on that and he is surprised at some of things the Service is requesting the MRGCD to do and frankly doesn't think some of them are possible to do. He said he hopes they can get an extension and try to get it worked out and ultimately get a BO that everyone can work with so they can spend time trying to help the species and not be consistently working on all this red tape. Chairman Lente said he echoes the sentiments of Directors Oglesby and Sichler and he is proud of the team the MRGCD has and to assure the farmers that the MRGCD is doing all they can to make sure their interests are protected as well. Director Dunning asked about the extension period and Mr. Redmond responded that it is an additional 45 day request.

Chairman Lente said that because this meeting was held the same day as a regular meeting, no approval will be required.

AGENDA ITEM NO. 10 – EXECUTIVE SESSION

- a. NMSA 1978 Open Meetings Act, (Section 10-15-1(H)7)
 1. Threatened or Pending Litigation
- b. NMSA 1978 Open Meetings Act, (Section 10-15-1(H)2)
 2. Limited Personnel Matters

Chairman Lente requested a motion to move into Executive Session.

Director Oglesby **MADE THE MOTION TO MOVE INTO EXECUTIVE SESSION PURSUANT TO NMSA 1978 OPEN MEETINGS ACT (SECTION 10-15-1(H)7) & (SECTION 10-15-1(H)2)**. Director Dunning seconded the motion.

Chairman Lente requested a roll call vote:

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

The **MOTION CARRIED** unanimously.

Chairman Lente adjourned the meeting at 4:10 pm.

Chairman Lente reconvened the meeting at 4:50 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 Oglesby seconded the motion.

Chairman Lente requested a roll call vote:

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

The **MOTION CARRIED** unanimously.

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

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

The meeting was adjourned at 4:52 pm.

Approved to be the correct Minutes of the Board of Directors of September 26, 2016.

Attested:

David M. Fergeson
Secretary/Treasurer

Derrick J. Lente, Chairman
MRGCD Board of Directors