

**MINUTES OF THE  
SPECIAL BOARD MEETING  
OF THE  
BOARD OF DIRECTORS OF THE  
MIDDLE RIO GRANDE CONSERVANCY DISTRICT  
FEBRUARY 7, 2018**

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

| <b>DIRECTORS</b> |            |        | <b>STAFF</b>        |                                 |
|------------------|------------|--------|---------------------|---------------------------------|
| John P. Kelly    | Chairman   |        | Mike Hamman         | Chief Engineer/CEO              |
| Glen Duggins     | Vice-Chair |        | Dr. DuMars          | Chief Water Counsel             |
| Joaquín Baca     | Director   |        | Tanya Scott         | Chief Water Counsel             |
| Karen Dunning    | Director   |        | Bruce Wiggins       | General Counsel                 |
| Derrick J. Lente | Director   | Absent | Jeanette Bustamante | Administrative Officer/CPO      |
| Beverly Romero   | Director   |        | Jason Casuga        | Engineer Manager                |
| Valerie Moore    | Director   |        | David Gensler       | Water Operations Manager        |
|                  |            |        | Sarah Avallone      | Assessment & Collection Officer |

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

|                                            |                                                           |
|--------------------------------------------|-----------------------------------------------------------|
| Jessica Aberly - Attorney Pueblo of Sandia | Neil Hise                                                 |
| Elaine M. Padilla - Lemitar, NM            | Brooke Wyman – Pueblo of Sandia                           |
| Sharon Wirth - Bureau of Reclamation       | Veronique Richardson, Special Counsel Pueblo of Santa Ana |
| Matt Davidson - Corrales, NM               | Cyndi Mae Wade – Farmer San Antonio, NM                   |
| Scott Paisano – Bernalillo, NM             | Dave Wade – Farmer San Antonio, NM                        |
| Dave Mielke – Attorney Pueblo of Isleta    | Mike Mechienbier - Farmer                                 |
| Scott Edeal – Valencia County              |                                                           |

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

Dr. Charles DuMars, Chief Water Counsel led the Pledge of Allegiance.

Chairman Kelly welcomed the guests, and declared a quorum.

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

Chairman Kelly called for approval of the Agenda.

Chairman Kelly asked if there any changes, Director Dunning made one typo correction and added Public Comment after 3a, and stated a motion is in order.

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

**AGENDA ITEM NO. 3 – DISCUSS AND APPROVAL OF MRGCD WATER RIGHTS TRNASFER PROTEST – Mike Hamman, CE/CEO and Dr. DuMars, Chief Water Counsel**

- a. **Ratify the Protest of the Bosque Del Sol Application Nos. OSE Hearing Nos. 17-015 & 17-016, OSE File Nos. SD-08707 into RG-6745, et al and OSE File Nos. into RG-6745 et al/ SD-08707(t); and to authorize the filing of an additional Protest based upon the failure of first application to meet Constitutional due process requirements;**

Mr. Hamman advised the Board that the presentation has two parts that will be presented for Board consideration, and preceded with a summary of discussion.

Mr. Hamman stated this applications protests consists two of individual components; first it will allow Dr. DuMars' and Mr. Hamman to file a new protest on an action that had technical difficulties by the original application that was filed previously. It will provide an opportunity for the District to fine tune the actual protest to be more specific about the concerns of the District, and the particular importance of the filing of this application. Filing of this Protest is in regards to the future impacts to the District by the removal of this water right. In addition, will allow the District to look at the specifics of the water rights themselves in concert with the State Engineer to see if those, indeed, are valid water rights. These are the two components of this application as far as protesting the specific water right from Bosque Del Sol application and transfer to the City of Rio Rancho; and

The second part will be to discuss actions in order to perform and develop a long-term policy to address how the District will handle future applications, and turned it over to Dr. DuMars' to provide the specifics.

Dr. DuMars' advised the Board that there is a protest pending of this application, and is pending the State Engineer's asserted jurisdiction over the protest. Through the discovery process they discovered that there was a mistake in the designation of the location of the wells to which the water would be leased back and a mistake in the publication.

This mistake was raised by all of the parties, the Bureau of Reclamation, Pueblos, the District and they all pointed out this mistake in the publication, which could have caused a due process problem for those who didn't get a chance to protest.

The District was concerned that if this mistake were jurisdictional, it is important to file a new protest so that it would be responding to the inaccurate publication.

Dr. DuMars' is requested Board authorization for file a new protest, supplementing the first one so that it will address that possible due process problem. So in summary Dr. DuMars' stated is for the Board to consider whether to or not file this new protest or whether to allow the one that is currently on file to go forward. He also stated that the first protest is perfectly valid, and it is ready to go, but believes it would be prudent, given the absence of due process notice in the publication to file this new one so that the District is covered on that issue in case it should come up at some time in the future.

Chairman Kelly requested that Dr. DuMars discussed the components of the protest with regards to external costs to the District.

Dr. DuMars responded that the new application protests will site the NM State Statutes and regulations from other states. He commented that other western states, acequias, individual water users, and collective users are suffering this same problem. The urban demand begins to use up the existing irrigation farming, and moving all of the rights out to urban demand will have a drastic effect on the remaining individuals who continue to want to irrigate.

An individual who owns Pre-1907, they can sell it to anybody they want, and the District cannot and should not stop them from selling it however, selling the right completely out of the District for an urban use somewhere else can have negative effects on the people who remain.

The question is what are the effects on the District itself and the remaining water users, and should those people have to come up with some kind of calculation to pay for the externality costs associated with that.

In the District's protest you can look at all of the reaches of the river, and each is different. In the middle reach between, Angostura and down through Albuquerque and through Bernalillo there is tremendous value, esthetic value and there is recreational value and all of the related values associated with having that water run through every year, and the mix of farms and non-farms and individuals with horses and livestock. All of the Bosque taken together, the effect of not having any farming in there, could have a dramatic effect.

Further down it also has an effect on the Pueblos, and the Pueblos say they realize the economy is scaled related to them too, because if you don't have the farming industry around you, your markets are limited.

In the District's case the State Engineer will evaluate these water rights, and the State Engineer will evaluate the transfer, but the Engineer can condition the transfer. In this case, it's a transfer to Rio Rancho, by requiring, Rio Rancho do some things which help participate in paying some of the costs, because, the Endangered Species Act has major impacts on agencies so that's why the Bureau of Reclamation is in there. We have the Biological Opinion, the ability to keep enough water in the river and to regulate and to shift and move water around, protect the species and keep people from being hassled by the US Fish and Wildlife Service. Rio Rancho hasn't paid, didn't participate, but they get all the benefits. If remaining costs and the conservation requirements are visited upon the remaining people, there must be some way to evaluate that.

The same is true with respect to irrigation costs, and the costs of keeping ditched up, and we have a Water Service Charge that covers that.

With this protest the District can retain an expert economist familiar with the District and hydrologist, and they will work with the District, USGS, and determine the future consequences.

The purpose to use these experts will be to look at the biological consequences, the farming consequences, the economies of scale, and hydrologic facts, and then come up with some information. This information will be used to develop a policy for dealing with these issues.

This new application will clarify and make sure that the District doesn't get caught in the fact that there may be a fatal error in the first application.

Mr. Hamman commented that the District made a huge investment in negotiating a very good biological opinion. Millions of dollars have been spent during that period of about three-and-a-half years of negotiating that opinion.

The District has also made commitments of \$750,000 dollars a year to implement the biological opinion over the next 15 years. In addition \$60-million dollars' worth of large capital projects that the District needs to consider, both at El Vado and other parts of the District going forward. None of these expenses have been borne at all by any of the entities that are benefitting from getting the water rights transferred to cover their pumping offsets essentially, that have a regional impact to the aquifer and the river itself.

The Albuquerque/Bernalillo County Water Utility Authority implement a hundred year plan to stabilize the aquifer, and in that plan they have recognized the benefits of not pursuing Pre-1907 water rights and going a further step to help the Middle Rio Grande Conservancy District to preserve agricultural activities and the beautiful ambiance of the valley itself as a result of our activities, as well as the protection that we provide with our drainage and our flood control operations with the river is a huge benefit to the Bernalillo County, our urbanizing corridor, and also to the entire District. The Albuquerque/Bernalillo Water Utility has pulled out of the marketplace for that reason.

Mr. Hamman stated this protest is more than just the costs of the water; it is also protecting the water rights, and the amount of water.

Dr. DuMars' commented that there are some peculiarities in the way in which they acquired the validity of the Pre-1907, as per the opinion of the State Engineer's local office. The significance is the ability of the State Engineer to condition the transfer on something that keeps the remaining farmers whole. So that could be disaggregated if necessary or taken out.

Director Duggins responded that to make the farmers whole, it appeared to him that this would devalue what they worked so hard for. He admittedly commented that this is a real struggle for him to devalue somebody's property. He added he is a 100% farmer and farming is his whole income, and hates to see the water moved, but supports individual property rights, and does not think anyone should take it. He also indicated as Member At-Large he also supports the Pueblos up and down the river, but hopes the Board comes to the right decision.

Director Dunning asked Dr. DuMars if the protest process and if it is a quasi-judicial process.

Dr. DuMars' explained that yes it is a quasi-judicial proceeding, you protest then they schedule a time for all parties to get together on when they want to have a trial. Each party will have expert witnesses. In this case there will be expert witnesses from the Pueblos and USGS. The District will have an economist and a hydrologist who will evaluate the effects of this protest and the policy of future protests. There will be Findings of Fact and Conclusions of Law. The State Engineer, the hearing examiner will then makes a decision. The decision will be aired with the Water Rights Division of the State Engineer's Office. If they agree and allow this to go forward, the District does not disagree, the District wants it to be conditioned on some items that the hearing examiner and the State Engineer ultimately decided are necessary to protect the remaining farmers. That will be a balance between the urban interests and the interest of the remaining people. There could be a number of conditions, like they continue to pay the water service charge; or they could help share in the costs of some of the endangered species issues. In the case of Rio Rancho, they did not pay anything for it; the District is footing the entire bill; or maybe some maintenance costs. The State Engineer will have to balance all those concerns and come up with a decision that will be in the permit that is issued.

Chairman Kelly asked does this protest challenge their right to transfer their Pre-1907 rights; and the Water Service Charge is \$40 per acre, that's a pretty easy calculation to convert that a present cost, is that one of the external costs we are trying to capture?

Dr. DuMars' responded yes exactly.

Chairman Kelly stated that's a pretty simple piece, assuming the \$40 dollars covers all the delivery costs, but the other external costs we are looking at El Vado with the \$60 million-dollar project coming up, Rio Rancho didn't put a nickel into El Vado, and they are not planning to help us with the 15 percent local match.

Dr. DuMars – They are planning on transferring the water right out, and the reason the rights are available is because the District since the construction of El Vado in the '20s have paid every single expense since that date. He agrees with Director Duggins water rights are property rights.

This protest will allow the flexibility of the State Engineer to say that they want to make sure that the net effect on the river is no change; there is not functional change.

Mr. Hamman stated they visited Rio Rancho to talk about these issues, and move us toward some kind of a solution, but have not had any meaningful dialogue since the initial meeting.

Rio Rancho is part of MRCOG as a regional player and feels we could come to some reasonable solution if there was a willingness to sit down and negotiate and discuss this issue.

In summary this protest will allow the District to develop procedures and policy that will be discussed in both our irrigation committee and water protection committee to develop a set of guidelines and

rules for reviewing particular applications in the future and also setting up a process where the District can be helpful to future water rights owners that would prefer to transfer or park their assets in the water bank that would protect those resources in the future. We have a goal to be of service to the Pre-1907 water rights holders, both to determine the validity of those rights, and give them options to deal with them in the future. Those are things that they will be asking the Board to review and to help establish solid procedures.

Chairman Kelly asked if the policy will include a fee structure the out-of-District buyer would pay a premium to the District as part of not protesting that future transfer.

Mr. Hamman responded that was correct.

Director Duggins requested clarification if this protest is protesting the amount.

Dr. DuMars responded that there is a question as to the amount and have protested that in the existing protest. The Bureau of Reclamation and the Pueblos are also protesting the amount.

However, it is perfectly appropriate if this Board decided they didn't want to get into the amount issue and issues a directive to remove from this new protest to be filed, and the language will be revised and remove that language.

Director Moore indicated she is also struggling with this, was elected in Socorro County to represent the farmers, and understands what the District is trying to do, and appreciate the forward thinking to protect the Middle Rio Grande and the farmers by establishing some sort of a policy so we have compensation when they do sell out of the District.

There are some states that just flat can't transfer, like Arizona you have to have permission. She stated she appreciates what administration is trying to do to move forward into the future to keep the District solvent. She suggest that they figure out where they are not hurting the farmer, and not protest their water rights in any way, but if it is going to hurt the farmer she is not supporting.

Mr. Hamman responded that they are not trying to hurt the farmer, in fact they are about helping the farmer, and look forward to all of the challenges, both in the farm economy, as well as possible droughts in the future and our ESA issues.

Director Moore followed up stating that she doesn't think for a minute that the Middle Rio Grande Conservancy District is against farmers. In fact they bend over backwards, While being a Director, time and time again, she has seen the District bend over backwards to try to help the farmers.

Chairman Kelly advised Director Moore that the whole Board has great concerns about the importance of this issue, short-term, intermediate range, and long-term, and in his tenure has dealt with a lot of serious issues. We have a new Biological Opinion out that is favorable to the MRGCD, thanks to a lot of work from legal counsel, the administration and our committees that worked on that including former Member Sichler.

We have a contract with BIA, and our relations with the Pueblos are much better.

We have a real- 10 year capital plan looking at infrastructure rehabilitation and equipment and some big items down the road; and we have the federal government ready to start moving on El Vado.

## **PUBLIC COMMENT**

Scott Edeal:

Mr. Edeal stated if the District is going to do something with this to reimburse the MRGCD, one of thing they should consider is how much benefitted land isn't irrigated now. There is more benefitted land not being irrigated now that there is Pre-1907.

Mr. Edeal asked for Dr. DuMars to elaborate a little on why water rights are not viable in the Bosque Del Sol application.

Dr. DuMars responded that the District is protesting because there were some issues about whether or not the evaluation by the State Engineer should actually be applied to the whole water right. They did an evaluation of this large water right, and the conclusion was that this water right was all Pre-1907s, but then the only water right they granted was for a smaller right to a well.

It was the process of granting an advisory opinion on a water right that wasn't actually transferred, and this may or may not be good precedent, that a person shouldn't be able to manipulate the process. Dr. DuMars reiterated that he is not saying he is right about any of this, but that was the concern. There are a lot of people evaluating that transaction, and the District can dis aggregate that question or not. The part that is the big policy issue is the consequence, the externality costs and whether you continue to pay them.

Mr. Edeal commented that is fine.

Mr. Mechenbier:

Mr. Mechenbier directed a question to Chairman Kelly for clarification that Rio Rancho would not share with shortages. He stated he didn't think that was correct. If you have Pre-1907 you are able to establish a well during the dry times, and you can pump that to its fullest effect. He stated he didn't disagree with much of what was said, but doesn't understand the analogy.

Chairman Kelly responded that if it is moved into a well, they are not sharing shortages with everybody in times of a drought.

Dr. DuMars explained if you transfer 12 miles up onto the west mesa that right will get 100 percent supply, and they will pump it every year, but they won't share the shortages.

Mr. Mechenbier stated he has a lot invested in Pre-1907 with pecans and at these various wells, and he totally agrees, but commented it might be the presentation.

You have the value of the water right, and then on top of that Rio Rancho needs to pay for the effects that are happening, like a tax. The tax could be 15% percent to Rio Rancho, and it might be a 2% percent tax to Los Lunas. The way it is illustrated would be more palatable and not confusing; the value of the water rights with where they are transferred to. If it is going to go to Rio Rancho, there ought to be some duty that Rio Rancho has to make us farmers' whole up and down the river.

Mr. Mechenbier disagrees with the comment that they need to evaluate what this cost gives and then apply it. That is going to take some time and stated it is pertinent to get it defined if you want everyone to buy into it.

Over time he stated he does not want the Conservancy to protest every-one on quantity, but if there is something pretty egregious, they have a duty to protest it. This might not be totally the same, but farmers down in Las Cruces and what they are going through in that lawsuit down there and the depletion of these wells are costing, and if we greatly over-exaggerate what we have in Pre-1907 rights, it is going to come back to bite us at some point in the future.

Matt Davidson:

Mr. Davidson is a Real-Estate Broker and is a small property owner in Corrales, NM. He indicated his family has property with Pre-1907 water rights. His brother-in-law recently purchased property with water rights in Belen, and he actually secured financing partially with stated value of those water rights and those water rights were part of what the bank was attaching their loan to. Stated there are great challenges for delivering water to the farmers and having water in the valley. We need to be careful with decision that are made going forward that don't have unintended consequences.

He strongly felt that the first step being a protest of a transaction is really putting the cart before the horse. To tackle the issues they should come up with long-term solutions, put together a task force, bring experts together, and get public comment, and sees what the population wants, and what is the best way to cover these challenges.

He heard Mr. Hamman and Dr. DuMars talk about a list of concerns and things that could happen not having enough water. He felt that the Conservancy doesn't have a grasp on what will happen, and it appears like they are putting the brakes on a particular transaction, and feels like it is going to have long-reaching effects on the value of land.

Farmers count on that value, either to continue to irrigate or freely sell and transfer. This has happened over a long time without restriction from this body.

Mr. Davidson also stated that this protest is changing course of a longstanding procedure of not interfering with private property owners and what they do with their property. If it is a change in policy, does it start with a protest, or really tackle the problem proactively, not defensively. He suggested that they put their heads together and figure this out.

Dr. DuMars responded to Mr. Davison stating it is important to understand with this protest does and what the process is. There will be a thorough hearing about these issues, specifically the issue of the consequences of this transfer, because this is a very large one, on the remaining member of the District.

There will be experts from the District, experts from the Pueblos and experts from the Bureau of Reclamation on hydrology and economics and on the Endangered Species Act. The issue then becomes do you utilize this process that is before us on a very major transfer at this point, and there has been an evolution to the point at which this one seems to be incredibly significant, as compared to previous ones. There will be a thorough evaluation.

This is not a defensive posture, this is a hearing in which the applicant has the opportunity to demonstrate that this transfer doesn't harm the public welfare, doesn't impair it, and it's consistent with conservation of water. A lot of knowledge will come out of this. It may be that when the experts, evaluation the economics and the hydrology, they may conclude there really isn't that much consequence. Just come up with a service charge and basically look at some of these costs, but they will get that information.

We have to have a policy, and the State Engineer will ultimately implement our policies.

Mr. Davidson stated clearly there have been many protests, many transfers over time. Landowners retain have that private right, they are banking that, they are counting on that. To change course and put the brakes on a process with the hope of figuring out what we can do to address the challenges ahead for water seem a little backwards, it sets bad precedence to make policy thorough the protest of what's happened over time. He doesn't think it requires a legal fight and protest. It seems more efficient to assign a taskforce, and put our heads together and work it out proactively, and get input from the public.

Mr. Hamman explained that Part B for the Boards consideration is exactly that process, where we do have our subcommittee process and future meetings and open public hearings and future Board meetings to hone and develop the policies and rules of the road, as Mr. Davidson suggests.

Mr. Davidson stated it's great, that needs to happen, but to snag one particular party at the beginning and kind of ensnare them in that process leaves others wondering is this really a private right. It is going to shift the value to buyers, sellers, farmers, everybody.

Dr. DuMars stated just to make it "Clear" the protest says water rights, not property rights. They can be transferred. Nobody is putting the brakes on anything or snagging up anybody. Simply suggesting in this case, it is significant enough, that here is an opportunity to protest and get these issues before the State Engineer.

Neil Hise:

Mr. Hise is a property owner in Lemitar with Pre-1907 water rights. He suggested to the Board to consider the one word "Rights". That's property right, that's water right, which are personal rights. He sees all the turmoil in the world today and there is a trust factor on what is going on with our government, and we are not seeing what is going on here.

We have a willing seller and buyer that say "I want to sell my water rights to the City of Santa Fe," for example. Are they going to move the water from Lemitar to Santa Fe? "No" they are just moving the rights.

Does that have value, absolutely he paid for them 40 years ago, that is my personal right. So these processes and procedures that you want to implement are going to stomp on my rights. This stomping on my right is going to significantly affect the value to my family. It makes him mad and he does not like it.

Dave Mielke:

As counsel to the Pueblo of Isleta, he is here on behalf of Governor Benavidez. Because of traditional activities in the Pueblo he could not be present.

Governor Benavidez wanted Mr. Mielke to express his sincere appreciation to the Board, Mr. Hamman and key staff at the District. The relationship between the District and the Pueblos is better by than it have ever been in the 20 years since he has represented the Pueblo of Isleta, and that is a real remarkable transformation.

As part of that transformation and cooperation has recently involved the joint protest of the Bosque Del Sol/Rio Rancho water rights transfer application by three of the Pueblos, the District and the Bureau of Reclamation, because of all having a common goal;" Keeping the Valley Green". They don't want to shift the burdens of maintaining flows in the river during drought periods to the farmers. That effectively happens when you have downstream to upstream transfers of water rights for offset purposes.

There is not a mechanism to administer those transfers during period of drought. It is really the water that gets transferred to that location, the use of the water get transferred to that location. So you have a new depletion that's upstream that is essentially not subject to priority administration.

We think this threatens agriculture. It increases costs to everybody. And during times of drought it is the District, Reclamation and others that have to figure out how to keep the river whole and not suffer a kind of death by a thousand cuts by various water rights transfers.

The water rights transfer caught the Pueblo's eye in particular because it was such a large amount and because we did have serious concerns about the validity of the water rights at issue.

We have to face the fact that the Office of the State Engineer is overwhelmed and understaffed, and I wouldn't bank on them being able to identify every time a water right might have a serious validity concern, particularly when there is a substantial amount of water that sought to be transferred. The

more water rights, alleged water rights that get transferred for offset purposes, the less water is going to be available in the river.

Governor Benavidez and the Counsel wanted to make sure that you all know that we really appreciate these joint cooperative efforts. We realize that it puts some Board Members in a difficult position. We heard the arguments about the importance of recognizing the private rights of the individual farmers and water rights holders, but we like to get everybody to the table. We agree that is the best way to try working this out. But, we think the only way that we are going to get everyone to the table is by raising these issues, and right now the only way we really think we have to raise them in the context of these water rights protest.

We hope the Board will continue to authorize the District's involvement, and the Pueblo of Isleta stands ready to cooperate with your CEO and your attorneys.

#### Sharon Wirth

Ms. Wirth is with the Bureau of Reclamation and talked about some commonalities that Reclamation as a co-protestant also in this particular proposed transfer.

The more water that is removed from agriculture here in the middle valley is really then the more water that is removed from surface flows. The Bureau has a great interest in keeping surface flows moving through the middle valley.

There is the San Juan-Chama project that includes a lot of supplemental water; however, that supplemental water that Reclamation is able to receive for the river during low flows is increasingly dwindling. This year is a really good example of a very bad year and how there is not going to be supplemental water likely next year for us to be able to provide any water for the river.

In addition many of the San Juan-Chama contractors are coming into their own and able to make use of that water, and as those contractors make full use of their water, that's additional water that we have relied upon to provide to the river that we aren't going to be able to do anymore.

The Bureau is not interested in stopping the sale of private property rights here. They want to bring Rio Rancho to the table. They are creating essentially a tax on our entire system because by removing water from agriculture and pumping it for their municipality without any other involvement in helping keep the river whole, the rest are left holding that bag and trying to figure out how to do that.

Shortage sharing is another issue that Rio Rancho is not involved in. What the Bureau is hoping through this process is that there would be condition placed upon those transfers, not on the person selling it, but on the person who is receiving the water. In this particular case, on Rio Rancho, conditions that are placed upon that transfer such that we can help to keep the river whole.

#### Lieutenant Governor Paisano.

The Pueblo of Sandia also shares the same concerns. Pueblos are in a very unique situation in which it is just inherent water usage by the Pueblos, and to reaffirm, and this is why we are looking for some support by the District and from the Directors, to ensure that this protest goes through.

There has been a lot of discussion in terms of what is the future use and future need. Pueblos also have that same concern. As leaders in our community we are not looking for ourselves right now, we are no longer planning for ourselves. WE plan for the future as farmers and carrying our traditions, and carrying our customs.

We are in a unique situation as, not only does economics come into plan, but is also a cultural issue for us as well. It is sustaining our culture; it is sustaining our ability to practice what we have been taught to carry on into the future and moving forward. This is that opportunity to brainstorm, and bring

everybody to the table and figure out what is the highest and best use, not only for the Pueblos, but all the irrigators.

So it is very important for the District's support and ratify the District's ability to make that application.

Veronique Richardson

Special Counsel for the Pueblo of Santa Ana, and she is here on behalf of Governor Tenorio who was busy with traditional activities.

She expressed also, in conjunction with what has already been stated. The Pueblo of Santa Ana strongly urges this body, as well as Mr. Hamman and Mr. DuMars' expertise in this area to continue with the protest for the reasons stated by her colleagues, and see that transfers are conditioned, this transfer, as well as subsequent transfers.

The Pueblo of Santa Ana has protested the last seven Rio rancho transfer applications. There are multiple transfer applications pending before the State Engineer.

Although I can't speak from personal experience, but the Six MRG Pueblos have been protesting water rights transfer for quite a long time and have not yet achieved or secured the attention about the potential impacts that cumulatively these transfers could have on the river as a whole.

As constituents of the MRGCD, as a Sovereign Nation, we do have a duty to make sure that there is water left in the river that we can continue to transfer these Pre-1907 water rights, including keeping the river whole.

This current protest the largest of the seven is an opportunity to collaborate with the District and the Bureau of Reclamation and begin to set policy for future transfers as well as policy for management of the river as a whole.

On behalf of Santa Ana Pueblo we urge the District to continue with this protest, as well as potentially any future protests.

Governor Richard Bernal, Pueblo of Sandia

Governor Bernal concurred with the comments presented by Lieutenant Governor Paisano on behalf of Sandia Pueblo.

William Turner

Ten (10) years ago the San Augustin Plains, LLC were trying to develop water in the San Augustin Plains to offset diversion that are currently going on and will go on in the futures by pumping water into the Rio Grande River, thereby offsetting diversions. Mr. Turner filed a protest on behalf of the Board at that time and the protest was very simple. If we try to move water northward, around Rio Rancho and part of the upstream of Santa Fe, it creates depletions in the river, which sorts irrigation water users downstream.

Some years ago Mr. Turner stated he filed an application to move water from Los Ojos. He went to the Brazos River and it was denied by the State Engineer. The reason for the denial was, as I just explained, Brazos is upstream. You take the water out upstream, it consumes it upstream, and it creates depletion, and it exacerbates the depletion at Los Ojos. The State Engineer denied that application.

Mr. Turner's suggestion if someone seeks to move the water upstream, the District protests that, and the District has the option to buy the water rights.

There is a memorial introduced this legislative session, for the first time seeks to determine a water rights issue based upon the economic impact of the State Land Office commission to terminate water leases in the aquifer, where that water would be used for oil and gas production and is refusing to renew leases and grant new leases. It is a policy that has been talked about for 30 years. He also is suggesting that a Memorial is a model for the decisions we face in the Middle Rio Grande.

Dave Wade – Socorro County Farmer

From the comments he has heard there may a lot of thing that don't need to be in there. This Board is here to do a good job, and you are going to do your best. He told the Board I want to tell this Board something an older man said to him. It is easy to be affirmative and sign off on something, but then a year or 50 years down the road you will look at it again and say we didn't mean to do that, but it will be too late. So like this old man said "It is easy to jump in the water, but sometimes it will be hell to get out".

We are depending on you to do your best.

That concluded the Public Comment.

Director Duggins commented that the protest as it stands right now he cannot support. He stated if it can be rewritten and only go after the economics and leave the individual water right out of this protest he will support it.

Dr. DuMars summarized the two different issues. One is the whole question of the obligation to allow the State Engineer to evaluate the application and impose conditions, which could include payment by Rio Rancho.

The separate condition is this valid water right, that is to say was the way in which it was handled, that's an effect of what you would call an attack on the water right. We could bifurcate it and take that second issue out, and that would be very easy to do.

What we are really doing here is to be clear and asking to protect the District's interest in this process that they file this new protest, and yes it could eliminate that particular section.

Chairman Kelly stated he has dealt with a lot of engineers, and heard a comment for the audience that if we think there is some questions as to the validity of the rights being transferred we have an obligation to bring that up. We need to lay the engineer string of issues out there to preserve the right to protest any particular one of them and negotiate on any particular one of them as the protest goes forward. And reiterated he is just one Director speaking.

Director Moore wanted clarification on her understanding. Leave in the aspect of contesting the certain amount of acreage or whatever, water rights that they are trying to leave that in.

Chairman Kelly responded he believe we should.

Director Moore stated that Dr. DuMars indicated that we don't have to leave that in and the other agencies will still address that issue.

Dr. DuMars stated that is the issue they will be addressing as well. They are pretty aggressive on that question. We have two positions from two different Directors.

Director Baca added as a Hydrologist, calculating water rights, going through all the paperwork is not an easy thing. Oftentimes very difficult and confusing.

He echoed what Mr. Mechenbier stated, you need to make sure that people are getting what is theirs, if selling is the appropriate thing.

So keeping that is actually a good thing. This is a large amount of water, and if they are right that's a good thing. But, if there is something in there that wasn't appropriate, then giving someone something that is not theirs is inappropriate. This is separate than making sure we are taking care of the District as a whole.

Director Dunning also concurred that if somebody is claiming a water right that really shouldn't, doesn't that take away from all the rest of the water. Why wouldn't we want to make sure that when people are transferring water rights, they are really transferring their own? That would help the farmer in the sense that if it is not really their s to transfer, then there is more water for the remaining people who have Pre-1907 rights.

Mr. Hamman, stated that appears that was the point Mr. Mechenbier made is that you don't want to overinflate the amount of Pre-1907 out there that really diminish even the District's rights.

He felt it is important to keep an eye on that and raise the red flag. The District does not need to point that out, because it is already been pointed. Out. We should submit the protest and allow the State Engineer to go through its process and having us at the table is the most important thing.

The preference would be to have the full support of the Board on this if we can get there. If it requires a modification to the application get the full support of the Board, he recommends consideration.

Chairman Kelly advised the Board there could be two motions. One of which would be to support the protest to include the external costs as well as the validity of the quantity of water rights; and the other option would be to simply focus the protest on those external costs.

Director Baca made the **MOTION TO APPROVE THE PROTEST MINUS SECTION 9 AND REMOVE ALL REFERENCES TO THE QUANTITY ASPECTS.** Director Duggins seconded the motion. **THE MOTION CARRIED.** Director Dunning Opposed.

Director Dunning further explained that her opposition is not for the entire Application Protest she only opposes the removal of Section 9 pertaining to the determination and quantity of the Water Right. She strongly feels that the State Engineer should be able to go through the process of determining the quantity of the water, because she feels it will hurt the farmers if somebody doesn't have that water right.

- b. Authorize Staff and Chief Water Counsel to perform Hydrologic and Economic research to determine long-term impacts to the District as a result of Pre-1907 water rights transfers out of the benefited area of the District in order to develop procedures for filing future protests.

In regards to procuring professional services for an economists and hydrologist, these two consultants will be contracted through LRPA and the District will be invoiced for those services through LRPA's monthly invoice.

Director Moore made the **MOTION TO APPROVE THE PROCURING OF PROFESIONAL SERVICES FOR AN ECONOMIST AND A HYDROLOGIST.** Director Romero seconded the motion. **THE MOTION CARRIED UNANIMOUSLY.**

Chairman Kelly thanked everybody for coming to this meeting, and wants to assure everybody that as the District moves forward, turning this into a policy procedure, yes it is a change from past practice but they want the input. Sometimes it takes a protest as the vehicle to move those discussions along, and we have to take advantage of that opportunity.

**AENDA ITEM NO. 9 – EXECUTIVE SESSION**

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

Chairman Kelly requested a motion to move into Executive Session at 4:55 pm.

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

Chairman Kelly requested a roll call vote:

|                  |     |                 |     |
|------------------|-----|-----------------|-----|
| Director Dunning | Yes | Chairman Kelly  | Yes |
| Director Baca    | Yes | Director Moore  | Yes |
| Director Duggins | Yes | Director Romero | Yes |

The **MOTION CARRIED**.

Chairman Kelly requested a motion to move back into the Regular Session at 5:17 p.m.

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

Chairman Kelly requested a roll call vote:

|                  |     |                 |     |
|------------------|-----|-----------------|-----|
| Director Dunning | Yes | Chairman Kelly  | Yes |
| Director Baca    | Yes | Director Moore  | Yes |
| Director Duggins | Yes | Director Romero | Yes |

The **MOTION CARRIED**.

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

Chairman Kelly stated a motion to adjourn is in order.

Director Moore made the **MOTION TO ADJOURN THE MEETING**. Director Baca seconded the motion and the **MOTION CARRIED** unanimously.

The meeting was adjourned at 5:18 p.m.

Approved to be the correct Minutes of the Special Meeting of the Board of Directors of February 7, 2018.

**Attested:**

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

\_\_\_\_\_  
John P. Kelly,  
Chairman, MRGCD Board of Directors