

**OFFICIAL MINUTES AND ACTIONS TAKEN
ARCH HURLEY CONSERVANCY DISTRICT'S
BOARD OF DIRECTORS**

Tuesday, August 11, 2009

Directors Present: Larry Perkins; President, Tom Bruhn; Vice President, U.V. Henson; Secretary/Treasurer, Pablo Lopez, Director; John Gilbertson, Director

**Directors/Staff
Absent:**

Staff Present: Franklin McCasland, District Manager; Donna Lafferty, Office Manager; Mark Preciado, Water Master.

Guests Present: Jimmy Speed, Robert Evans, David Foote, Paul Estrada, Drake Swenson, Ray Bates, Phillip Box, Thomas Evans, Donnie Bidegain, Tommy Evans, Judy Smith of FSA Office, Daniel Garcia, Jess Weaks, Tom Dominguez, and Catherine Bugg of KTNM Radio.

MEETING CALLED TO ORDER-

Finding a quorum present and finding this regularly scheduled meeting of the Arch Hurley Conservancy District's Board of Directors duly advertised, as required by statute, President Perkins called this meeting to order at 9:00 a.m. in the district office.

PLEDGE OF ALLEGIANCE AND INVOCATION

The Pledge of Allegiance was lead by President Perkins. The Invocation was given by Phillip Box.

APPROVAL OF MINUTES – REGULARLY SCHEDULED MEETING JULY 14, 2009-

Director Lopez made the motion to approve the draft minutes of the Arch Hurley Conservancy District's July 14, 2009 meeting. The motion was seconded by Director Henson. Motion carried 5 – 0.

Directors Voted:

Perkins – “YES”
Bruhn – “YES”

Gilbertson – “YES”

Lopez – “YES”
Henson – “YES”

VISITORS COMMENTS-

David Foote stated that he was on the Alfalfa Board for 2 years, but is not on that board at this time.

Phillip Box stated that he had attended the Ag Science Center Field Day last Thursday. The keynote speaker was Tim Farmer and his topic was “Water Rights 101”. It was very informative and educational. The power point presentation will be e-mailed to me and I will share it with anyone who wants to see it. Two items caught my attention. 1. Tim met with his boss to address the issue of hiring more help. It is a start and we need to keep our presence in front of all the parties that can help. 2. Under Water Rights Protection one of the points was “Farm Gate Deliver” equals consumptive use plus losses. I e-mailed Tim Farmer the following question and he promised to respond to them.

Tell us about a “closed basin” for surface water

1. What would it take to get the AHCD watershed declared?
2. What would be the pluses?
3. What would be the negatives?
4. How would we begin the process if we should want to ask for the basin to be closed?

How can the farmer of AHCD assist your office in getting the needed staff in place to process and administer your statutory duties?

Is AHCD water rights considered Sr. or Jr.?

Are there any unappropriated water rights in the Canadian water shed?

It is my understanding that there are no more new water rights

available above Conchas, why does AHCD have to protest any new requests? It appears that both AHCD and the OSE are spending unnecessary dollars.

Explain the “Farm Delivery Requirement” (consumptive use plus losses)

Is the OSE aware of illegal diversion and use above Conchas, but are under manned to enforce the statues?

How does the OSE determine what the priority call for the water is?

Is the OSE computerized?

What plan of action would you recommend for AHCD?

The Ag Science Center Meeting in Clovis on the 18th will have Jeff Bingaman as the keynote speaker. That will be a good opportunity for a group of us to go speak with him.

Phillip Box also stated that he has been asked by 2 people about asking the fishermen and boaters of Conchas to be included in the investigation of what is happening with the water not flowing into Conchas.

Tommy Evans stated a lot of farmers have talked among themselves and I would like to see the Board come together more for the District especially for the illegal diversion of water. Give Mr. McCasland a little more leeway, latitude to make himself known to legislators until we can get water back in the lake. I have a lot of confidence in Manager McCasland and he is a politician. Give his some direction and let him push this. Mr. Farmer admitted that there are illegal diversions, but he can’t do anything about it. If the

Board is hesitant about too much leeway they can take turns accompanying Manager McCasland when he has meetings concerning these issues.

Donnie Bidegain stated that he agrees with Tommy Evans and we need to be unified in this. It is for the common, greater good for the entire District, it benefits everybody. We depend on that water, need that water, and need to fight for that water. We have taken a back seat for so long, I feel a lot of stuff has been going on in our backyard, but we never knew it and now it has been brought to our attention. I feel we are about 8 years behind our game. We are in a reactive stance and need to take action and make it known that we know what has been going on. We need to set aside our differences and put forward a united front. We are all after the same goal.

Daniel Garcia stated that he had received ½ inches of rain. Mr. Garcia also asked about getting the BOR to forgive our debt.

Ray Bates stated that have to be united on this situation. I would like to see Franklin make himself a nuisance with these people. If the Board wants more control over this, the Board can take turns going with him to supervise him. He needs to make some noise at the state or at any level he can. I think we need to get behind him 100%.

Catherine Bugg wanted to wish Larry Perkins Happy Birthday. I am speaking as a farmer and that the people who elected you are telling you what to do. These people are telling you exactly what to do whether you think it is right or not. We need to give Franklin the lead rope and let him go wrangler some of those people. Congressman Ben Ray Lujan will be at the Quay County Fair on Saturday, the 15th. I will try to inform the public by way of the radio if I get a more definite time.

Drake Swenson stated that we need more federal involvement on this. 1.8 million dollars is going into the Conchas Dam headworks and maybe we can get someone's attention. Why are we doing that if we aren't getting any water? Let's get federal advice as well as the state.

Judy Smith stated that as far as FSA is considered there have been some questions about disaster programs. It has been stated that there is a program in the works, the time is maybe Sept or Oct. It will not function like the old disaster programs. The FSA Office hasn't received any regulations or software. County Committee is tomorrow and I want to remind everyone it is an open meeting. We will be addressing NRCS and talking about drought. I know that some parts of the county have received good moisture, but in the project there have been a lot of places that have been a miss. It was asked if the entire project can be considered disaster. Disaster is computed by an average over a large area for instance the entire county. Quay County is a large county. Areas within the county can get good moisture and then it is figured into the average and then the entire county no longer qualifies.

MANAGER'S REPORT

Today the Conchas Lake elevation is at 4163.67 feet. Conchas Lake received 6,783 acre feet of inflow for the month of July. Last year at this time the elevation of Conchas Lake was 4163.4 feet.

This month Arch Hurley has filed 16 liens against Class A property owners for past due assessments. The liens were for a total of 85.75 acres and \$10,132.41. These were filed at the Quay County Court House in the County Clerk's Office.

On Saturday July 25th, I met with Skip Vernon in Conchas to try to resolve the pending lawsuits. It was agreed that he would work toward a resolution regarding the pending issues. I have met with BOR regarding this issue and they have also agreed to assist in the closure of this issue.

We have mailed out or hand delivered the letters to our three congressional officials' field staff personnel. I have explained our concerns to them as well. They were very receptive to our issues and committed to keeping Arch Hurley informed.

On August 6th, I attended a half day training at the BOR in Albuquerque. It focused on the BOR financial management policies, process, legislative requirements and a general overview for reclamation customers. This was all done in an effort to improve communication between Reclamation and stakeholders. The literature from the training is included in the board's packet. When that meeting was over, I met with the BOR Area Director John Polling and his staff. I gave them copies of the letters that were sent out to our congressional officials as well as our State officials and expressed Arch Hurley's concerns of both the BOR grant funding changes and diversions that are taking place above Conchas Lake in our water shed.

We are finishing the cleaning on the Conchas Canal below the Y. That was a 12 mile project. Year-to-date we have covered approximately 25 miles with the excavators. We will move back to the Y and start cleaning the Main Canal.

Director UV Henson asked about showing the information to the Congressmen about so much income on a regular run of 18" and then compare to the income now- show them how bad it is without water. Manager McCasland explained that crop census was included in all of the correspondences. The loss from this drought has impacted the community between 20 to 30 million dollars. This was stressed to the congressional staff. It isn't just the farmers, it is the entire community- the city itself, the residents here. Farming is a huge impact to our local economy. It also affects the surrounding communities such as Logan and San Jon.

Director John Gilbertson asked about Manager McCasland speaking with Skip Vernon on the 25th, the day after the mediation hearing. President Perkins stated that it was the 25th of July – not the 25th of June.

DONNIE BIDEGAIN, RECOMMENDATIONS FOR LEGAL COUNSEL

Donnie Bidegain stated that a group of farmers have met several times in the last month. Illegal diversions above Conchas Lake were discussed. Mr. Bidegain stated that the group come to the conclusion to seek some legal action. We want to pursue water rights with a water rights attorney. Mr. Bidegain presented a list of 3 water attorneys that come highly recommended. Each of the three attorneys is currently fighting the biggest water issues in the state. Mr. Bidegain recommended having a local attorney for civil, general issues. Mr. Bidegain and the group strongly recommends the attorneys that are on the list. Manager McCasland stated that he has met each of these attorneys and their firms when he was dealing with the Interstate Streams Commission on Ute Lake water issues. Manager McCasland was directed to inquire about their rates and the possibility of representing Arch Hurley. A water attorney would not be hired unless an issue arose and inquiry about willingness to represent us. A copy of the list is attached and is a part of these minutes.

Thomas Evans made a comment during the visitor's comments that pertained to this on the agenda. He stated that he thinks we need to get a good water rights attorney to get going on this. I really think you need to give Franklin the go to get one, it's going to cost some money, but I don't think we'll get anything done without one.

Director Bruhn made a motion for Manager McCasland to contact the 3 attorneys on the list and inquire about their availability to represent us and their rate. Director Henson seconded the motion. Motion carried 5-0.

Directors Voted:

Perkins – “YES”

Bruhn – “YES”

Gilbertson – “YES”

Lopez – “YES”

Henson – “YES”

WATER ALLOCATION REVIEW OF CONCHAS LAKE

Director Bruhn made the motion that no water be allocated at this time. The motion was seconded by Director Lopez. Motion carried 5-0.

Directors Voted:

Perkins – “YES”

Bruhn – “YES”

Gilbertson – “YES”

Lopez – “YES”

Henson – “YES”

JOHN GILBERTSON, ILLEGAL WATER DIVERSION-BIG MESA

John Gilbertson presented a letter dated September 29, 2008 from the Domenici Law Firm addressed to the President of the Board. Big Mesa purchased a farm west of town containing 60.237 acres of irrigable land within the Arch Hurley Conservancy District. The letter stated that Big Mesa would not be using the allocated water on this land within the Arch Hurley Conservancy District's but instead be drawing this amount of water directly from the Conchas Reservoir. President Perkins stated that this is absolutely illegal and this has already been addressed with a letter back to the Domenici Law Firm. They were informed that this isn't the proper procedure. Big Mesa has 3 contracts with Arch Hurley. They are currently under their allotted usage of 34.2 acre feet. Manager McCasland was directed to locate the letter that was written in response and it will be in next month's board packet.

RESOLUTION 2009-007

Director Bruhn made the motion to approve Resolution 2009-007 which pertains to ordering an election and filing forms at the Clerk's Office. The motion was seconded by Director Gilbertson. Motion carried 5-0. Resolution 2009-007 is attached and a part of these minutes.

Directors Voted:

Perkins – “YES”
Bruhn – “YES”

Gilbertson – “YES”

Lopez – “YES”
Henson – “YES”

APPOINT ASSISTANT SECRETARIES FOR ELECTION

Director Lopez made the motion to appoint the Arch Hurley Office Staff as assistant secretaries for the election. The motion was seconded by Director Bruhn. Motion carried 5-0.

Directors Voted:

Perkins – “YES”
Bruhn – “YES”

Gilbertson – “YES”

Lopez – “YES”
Henson – “YES”

LETTERS AND DISCUSSION WITH US CONGRESSION STAFF

Within the Board packet are copies of the letters that were sent to area Congressmen Lujan, Bingaman, and Udall. Follow-up letters will be sent in the future. Manager McCasland stated that he has spoken on the phone with Lynn Ditto of Jeff Bingaman's office and Sara Cobb of Tom Udall's office. Manager McCasland would like to send a follow up letter to the Governor and State Engineer's Office and cc the Congressmen. This is an issue we will continue to pursue. Manager McCasland has had a couple of phone calls from the Albuquerque area expressing interest in getting water in Conchas Lake. Everyone is asked to write their representatives and state their opinion about this issue.

TOM BRUHN, TERMINATION OF ATTORNEY

Director Bruhn stated that this has been a very interesting meeting listening to everybody and I do believe we all are headed in the same direction. A mediation hearing was held on June 24, 2009 and 3 of the Board members were unable to attend. At the last board meeting a motion was made and passed (4-1) to terminate Attorney Peter Shoenfeld. Director Bruhn wanted it stated in these minutes that he feels that in his opinion the attorney was falsely let go and he would not have voted the way he did if he had known all the facts.

President Perkins stated that his biggest concern is that since 2007 we have spent \$125,000.00 with our attorney. That is constituent's money. The attorney informed us directly that we looking at minimum of \$90,000.00 to go to court. \$25,000.00 a day and he assumes it would last 3 days, but might last 4 days plus the cost of approximately 20 depositions at \$1000 each. So we are looking at another \$90,000.00 in addition to the \$125,000.00. Since 2007, we are looking at paying \$250,000.00 of constituent's money. I considered this whole thing an open and shut case because Mr. Vernon had no leg to stand on. His counter claim should have been turned over to our liability insurance company and they could have handled that. We would not have had to pay \$200 an hour to an attorney to do that. The chemicals were our only concern, had nothing to do with water, but we kept letting water drag into it. Let's move on.

PRESIDENT'S COMMENTS

I am still getting good comments from a lot of my neighbors since the excavators are now in my district. These quiet, calm neighbors who don't usually attend meetings have visited me at my house and stated what is going on with the canals is really positive. I would like to commend Franklin, Mark, Craig and crews. I had a phone call from a constituent who has attended meetings in the past and he stated that he will not attend meetings to see the Board fighting over small issues that aren't constructive for the District and constituents. Until the Board can be united, he will not attend. He will return to the meetings when the Board is no longer divided, get their act together, and get to the issues at hand. I would like for the Board to think about that.

I want to encourage the Board to remember that we are suppose to take care of the land and water, however our constituents elected us and that's who we are responsible to. We need to make sure that their concerns and theirs issue are the ones that we focus on at hand. We do have privilege to some information that they don't on some issue that we do need to take care of. I feel that a board member has the right if they are upset about something to bring it up to the whole board and let them know. It's sad that a board member feels that there has been misconduct with the board because I will assure you that there has not been. I went to the mediation hearing and I was extremely disappointed and I have told you guys over and over in public meetings that I am finished- we need to get rid of this Skip Vernon thing. The manager has informed us every board meeting that Arch Hurley is spending 3 thousand to 4 thousand dollars per month and nothing has happened. I think the Board made a good decision. We need to get this Skip Vernon over and what he is doing isn't going to affect us. We don't want to protest a diversion that is going to put more water in the lake.

DIRECTORS COMMENTS –

Director Henson mentioned that no action was taken on the agenda item of Donnie Bidegain. A motion was made and it is listed under that agenda item. Director Henson also stated he had received 3 or 4 phone calls stating that Arch Hurley had hired Attorney Dean Border. Manager McCasland stated it is false and just a rumor. Local attorney Don Schutte has been used to drop the law suit against Skip Vernon and with issues with the State Engineer.

Director Bruhn commented on the Skip Vernon issue. I will protest a diversion when he can use that water and we can't even get water. We will see if Mr. Vernon can find the water rights to transfer and if he can't he will be here with his hand out.

Director Lopez stated that if any farmer wants to discuss anything with him they are welcome anytime. We may agree or disagree, but I will listen to them.

Director Gilbertson stated you might want to ask the 3 lawyers if they have any conflict of interest. A lot has been said and I feel the message is the same as what we all say we want. I really find it offensive when we talk about this. The trick to a lawyer is that he will do what he is told to do.

CONSIDERATION OF BILLS-

Director Henson made a motion to pay the submitted bills. The motion was seconded by Director Gilbertson. Motion carried 5-0.

Directors Voted:

Perkins – “YES”
Bruhn – “YES”

Gilbertson – “YES”

Lopez – “YES”
Henson – “YES”

ADJOURNMENT OF REGULAR MEETING-

With no further business to discuss, the meeting was adjourned at 11:05 a.m. with unanimous vote.

ARCH HURLEY CONSERVANCY DISTRICT

President Larry Perkins

ATTEST:

Secretary/Treasurer U.V. Henson

