

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

**Tuesday, March 9, 2010**

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

**Directors/Staff  
Absent:**

**Staff Present:** Franklin McCasland, District Manager; Donna Lafferty, Office Manager; Craig Hoffman, Maintenance Supervisor

**Guests Present:** Thomas Evans, Robert Evans, Catherine Bugg, Judy Smith, Jimmy Speed, Drake Swenson, Phillip Box, Pete Tatschl, Harry Heckendorn, Tom Dominguez, Jack Gilmore, and Daniel Garcia.

**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 9:04 a.m. in the District Office.

**PLEDGE OF ALLEGIANCE AND INVOCATION**

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

**APPROVAL OF MINUTES – REGULARLY SCHEDULED MEETING  
FEBRUARY 9, 2010-**

Director Gilbertson made the motion to approve the draft minutes of the Arch Hurley Conservancy District's February 9, 2010 meeting. The motion was seconded by Director Bruhn. Motion carried 5 – 0.

Directors Voted:

Perkins – “YES”  
Bruhn – “YES”

Gilbertson – “YES”

Lopez – “YES”  
Henson – “YES”

## MANAGER'S REPORT

Today the Conchas Lake elevation is at 4163.23 feet. Conchas Lake received 1916 acre feet of inflow for the month of February. Last year at this time the elevation of Conchas lake was 4162.06 feet.

The February 1, 2010 NRCS State Basin Outlook Reports stream flow forecasts for the Canadian River Basin range from 89% of average to 114% of average. Year to date high elevation precipitation in the Canadian basin is above average at 113%, but is down from last year's 120% of average. Snowpack in the basin is 110% of average, down somewhat from last years 148%.

On February 16, I e-mailed Skip Vernon the settlement agreement. I received an e-mail back in response to the agreement saying this won't work. There was no explanation as to his concern. I have left a message for him to call me. I have also spoken with Nancy Purdy from the BOR and she has had no contact with Skip either. Nancy did inform me that Mike Hamman was named the Albuquerque area director for the BOR and should start on March 24. I ask to meet with Mike soon after he gets settled in to his new position and possibly attend one of the board monthly meetings.

On February 19, I spoke with Anthony Vigil from the BOR. He informed me that the confined space training classes were full and none of the Arch Hurley's employee would be able to attend. He would contact us if there was a change. The crews are cleaning out the trash and debris from these siphons that are scheduled for inspection. There still is not a date set for the BOR inspection.

In the board packet is this letter from Chuck DuMars office.

A number of factors are likely contributing to the low levels of water in the Canadian River. As you know only too well, drought has been an ongoing issue, 2009 was the driest year in New Mexico since 2003. The New Mexico Office of the State Engineer ("OSE") reported that between October, 2008 and April, 2009, stream flow conditions in the Canadian River in Colfax County were only 56% of the historical average. At the same time, however, stream flow conditions for the same period in the headwater tributaries of the Canadian in San Miguel County ranged from between 92% and 129% of the historical average. We are not hydrologists and certainly you are much more aware of the hydrologic facts relating to water shortage. However, a number of variables would include the degree to which storm events upstream of Conchas Dam contribute to lake levels. How much base flow there has been historically and how flood flows have contributed to that base flow so as to move snow-melt water down to the reservoirs as opposed to solely flood flows. Finally, if there are areas where there are unexplained losses due to groundwater pumping or other climate changes that information is certainly knowable, and perhaps you have that data. If so, we would very much like to see it. Separate from all the possible climate and hydrologic explanations, you have identified illegal upstream diversions on the Canadian and its tributaries as one possible factor

contributing to the water shortage. Your focus was on the Mora River above Watrous. As promised at the January Board meeting, our office has obtained aerial photographs of the lakes on the Salman Ranch/Buena Vista Ranch property from 1948 through the present, copies of which you should have received.

You will notice that the size of the lakes seems to be fairly consistent over the years after 1945. Consistent with this, the abstract presented by Tim Farmer at the last Board meeting identifies a report submitted by H.E. Beisman, Civil Engineer, in 1939 that calculates the surface area of the storage works (consisting of La Cueva Lake, Red Lake and Horse Lake) as approximately 500 acres. Current satellite imagery of the three lakes shows that the acreage covered by the lakes has not changed perceptibly since then. The priority of Arch Hurley contained in the License is 1938. We would want to compare the priority dates of permits from those lakes with those of the District, although at first glance it appears that the latest priority date is 1933. The permits are complex but we can sort all of this out. However, even if Arch Hurley has a junior priority date, the storage rights in the lakes were not intended to interfere with downstream use of water for beneficial use.

Indeed, the real question may not be whether the size of the lakes has increased, but whether the timing and amounts of the diversions from the Mora into the lakes are consistent with the permits and the various agreements entered into over the years between the owners and downstream water users. Certainly there is evidence that at times the entire flow of the Mora has been diverted into the lakes with little or no return flow to the riverbed. In summary, we are working through the documentation to try and determine the status of each of the water rights. In addition, we are trying to determine whether the irrigated acreage has increased over time. If the evidence supports illegal diversions by Salman Ranch/Buena Vista Ranch, Arch Hurley can file a lawsuit against them to compel the illegal diversions to stop.

Although it is unlikely that the entire stream system will be adjudicated for many years, the rights of these water users can still be determined by the court.

There are obvious weaknesses inherent in taking action against upstream water users. As you know, Arch Hurley has a comparatively junior priority date. However, a senior priority date does not allow one to take more water than exists under a permit. . Some of Buena Vista's priority dates are as early as the 1830's. In order to enjoin illegal action, a court would need to be convinced this would actually benefit Arch Hurley. Because the illegal diversions are occurring so far away from Arch Hurley, it may be more difficult to establish the amount to which they are contributing to the shortage in Conchas Lake. We should be able to report back to you more fully on these issues in the near future and provide recommendations.

We recently had a good conversation with Tim Farmer at the State Engineer's Office to follow up on his presentation to the Board. Tim said that he understands the need for the State Engineer to become more aggressive in monitoring these water rights and reaffirmed that his office will be doing field checks on the property in the near future. He promised to keep us in the loop with regard to any actions taken by the State Engineer's office.

Within the next couple of weeks we will finish compiling the information on the diversions by Salman Ranch/Buena Vista Ranch. We recommend that the Board approach the local Bureau of Reclamation office with this information and request

funding from the Bureau as the trustee for Arch Hurley to defend any possible claims against these upstream diverters.

As noted above, it would also be useful to look at the flood flow analysis data from the Bureau to get a broader picture of what's going on. In addition, it would be interesting to examine the water levels in Eagle Nest and see how they correlate with the amount of water reaching Arch Hurley. The Board may want to consider hiring a hydrologist to correlate the cumulative effect on Arch Hurley from snow pack, Eagle Nest, and the diversions on the Mora. Our office has a good relationship with Tom Turney, the former State Engineer, and we would be happy to introduce you to him if the Board wishes. On a last point, can you tell me about the quality of the groundwater in the area? There must be a lot of return flow into the ground when irrigation takes place. Is the cost of pumping groundwater prohibitive? If one were allowed to pump the groundwater that had been deposited into the aquifer from previous surface irrigation events, would this have any value?

We enjoyed meeting the members of the Board in person and look forward to helping the District work through some of the challenges facing it. Signed by Catherine Robinson

On March 1<sup>st</sup> Sara Cobb of Senator Udall's office called and informed me that she has been in contact with Tim Farmer in Cimarron. Mr. Farmer gave her the same information that he gave to us at the January board meeting.

We are changing our plans up a little on the instillation of culverts under Madrid Bridge. We are going to install a 10 foot culvert in the middle of the canal and the two 7 foot culverts on each side. The two 7 foot culverts would carry the designed flow under normal conditions. The concern is during a large storm event the safety relief device for flood water release is downstream of the bridge and the majority of the canal upstream of the bridge is constructed above ground. With the three culverts installed they will carry 1300cfs.

Some of the questions or comments about the manager's report were about the letter from Chuck DuMars inquiring about pumping groundwater. It would be cost prohibitive to pump and Arch Hurley's license is for surface water. A hydrologist was hired for the Largo Canyon. A hydrologist will tell where the water is going from the snow melt. Roberta Ball will be at the next meeting to give snow pack report. Will ask Roberta to give snow pack report and correlate the snow pack above Eagle Nest Lake and storage capacity of lake and then subtract that figure is what is available. Tom stated that we will have to have a hydrologist. Franklin will talk with Chuck DuMars about coming to the next meeting, also the possibility to have Tom Turney and new BOR area manager to attend April meeting to discuss options. The State Engineer should already have a study of that area, will probably need to have a hydrologist of our own. The Board feels that nothing has changed (the distance) over the years, we have been through droughts before and yet Conchas Lake hasn't had enough in-flow for farming.

## VISITORS COMMENTS

Phillip Box stated that the board has discussed some interesting issues. Mr. DuMars' letter states that we need involvement from the BOR, they need to be in this fight with us. The question is that something has changed that we aren't getting in-flow even with the marginal rains since we haven't had the flood rain, we have been through drought before-nothing this severe. There are a lot of challenges facing the Board.

Craig Hoffman stated that we need to have a minimal stream flow set, so they aren't diverting 100%. They need to let some water by to wet the river bed even though it might not reach Conchas Lake.

Thomas Evans stated that until you find all the water rights and have control you are not going to have any luck doing anything. These lakes are allowed so much water and once that is reached, shut it off and get some water to Conchas Lake.

Judy Smith of the FSA Office stated that maybe the mileage is different because of all the diversions. FSA will be inserting information addressing the SURE Program in the Arch Hurley annual assessment envelope. She also reminded everyone about the deadline of 3/15/2010 to purchase hay grazer and heifer for the hay program. Washington, D.C. is prompting FSA to get the information to constituents about the Sure Program and other FSA Programs thru Outreach.

Daniel Garcia uses a Canal Road to reach his house, it is the only access to his house. When snow or rain is received the road, which is  $\frac{1}{2}$  to  $\frac{3}{4}$  mile to his house, is very difficult to use. The Board will research this matter, maybe this is a County issue instead of an Arch Hurley issue. Maybe a new road needs to be built.

Pete Tatschl stated that pertaining to Mr. DuMars' letter and the use of a hydrologist to look at the snow melt and that yield, you can check with Roberta Ball and historically 25,000 af. reaches the lake. Hiring a hydrologist to look at snow melt and whether it will get into a stream there are too many variables- not too sure that this is a very good expenditure of money. Mr. Tatschl stated that Eagles Nest Lake is a privately owned and Raton takes a great deal of water from that lake. Who owns the water?

Drake Swenson stated that we need to engage the BOR. The BOR owns the license and we need to get those guys going and use their money.

Tom Dominguez stated that a hydrologist will say what you want them to say depending on who is paying.

### **WATER ALLOCATION**

Director Bruhn made the motion to not allocate any water at this time. The motion was seconded by Director Gilbertson. Motion carried 5 – 0.

Directors Voted:

Perkins – “YES”

Bruhn – “YES”

Gilbertson – “YES”

Lopez – “YES”

Henson – “YES”

### **2010 EQUIPMENT PRICES**

Director Bruhn made the motion to approve the 2010 Equipment Prices. The motion was seconded by Director Lopez. Motion carried 5 – 0. A copy of that list is attached and a part of these minutes.

Directors Voted:

Perkins – “YES”

Bruhn – “YES”

Gilbertson – “YES”

Lopez – “YES”

Henson – “YES”

### **APPROVAL OF RESOLUTION 2010-003**

Director Henson made the motion to approve Resolution 2010-003 which pertains to applying for federal assistance to fund Integrated Weed Management Programs for the Control of Invasive and Noxious Plants. The motion was seconded by Director Bruhn. Motion carried 4-1.

Directors Voted:

Perkins – “YES”

Bruhn – “YES”

Gilbertson – “NO”

Lopez – “YES”

Henson – “YES”

### **SET 2011 WATER ASSESSMENTS, WATER DELIVERY RATE AND BUDGET DISCUSSION**

Director Lopez made the motion to set 2011 assessment at \$10.00 and Water Delivery Rate at \$10.00. The motion was seconded by Director Bruhn. Motion carried 5-0. It was also discussed to move money from Fund 3 to Fund 2. The DFA would be notified and their procedures would be followed in this transfer.

Directors Voted:

Perkins – “YES”

Lopez – “YES”

Bruhn – “YES”

Gilbertson – “YES”

Henson – “YES”

### **SET I.S.C. RE-LOAN INTEREST RATES**

Director Bruhn made the motion to set the I.S.C. rate at 4%. The motion was seconded by Director Henson. Motion carried 5-0.

Directors Voted:

Perkins – “YES”

Lopez – “YES”

Bruhn – “YES”

Gilbertson – “YES”

Henson – “YES”

### **LAND USE REQUEST OF HARRY HECKENDORN**

Director Bruhn made the motion to write an agreement approving this land use. The agreement would require BOR approval. The motion was seconded by Director Lopez. Motion carried 5-0. The BOR approved agreement would be presented to the Board for final approval.

Directors Voted:

Perkins – “YES”

Lopez – “YES”

Bruhn – “YES”

Gilbertson – “YES”

Henson – “YES”

### **BURNING OF CANALS AND LATERALS**

Director Lopez made the motion to start the scheduling of burning the canals and laterals. The motion was seconded by Director Bruhn. Motion carried 5-0.

Directors Voted:

Perkins – “YES”

Lopez – “YES”

Bruhn – “YES”

Gilbertson – “YES”

Henson – “YES”

### **DIRECTORS COMMENTS**

President Perkins stated that when the burning begins it would be a good idea to let each director know when the burning is in their district.

Director Bruhn asked about the bill from the attorney. Manager McCasland stated that the bill is for professional services from September 2009 thru December 31, 2009.

### **CONSIDERATION OF BILLS**

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

Perkins – “YES”  
Bruhn – “YES”

Directors Voted:

Gilbertson – “YES”

Lopez – “YES”  
Henson – “YES”

### **ADJOURNMENT OF REGULAR MEETING-**

With no further business to discuss, the meeting was adjourned at 10:43 a.m. with a unanimous vote.

ARCH HURLEY CONSERVANCY DISTRICT

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President Larry Perkins

**ATTEST:**

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Secretary/Treasurer UV Henson



