

**St. Vrain and Left Hand Water Conservancy District
Minutes of the Special Board Meeting Held at
District Headquarters, Natural Resources Building
9595 Nelson Road; 1st Floor; Longmont, CO 80501
June 14, 2012**

I. ROUTINE ITEMS

A. Roll Call – *Amy Williams*

Board members attending the meeting were President Dennis Yanchunas, Secretary John Zweck, Directors Bob Brand, Harold Nelson, Bill Haselbush, Doug Lyle and Ron Sutherland with Vice President Glenn Patterson participating via phone. Absent from the meeting was Treasurer Michael Rademacher.

The following staff members were present: Executive Director Sean Cronin and Administrative Assistant Amy Williams. Also present was District Legal Counsel Scott Holwick.

B. Call to Order – *President Yanchunas*

President Yanchunas called the meeting to order at 2:00 pm.

C. Amendments or Additions to the Agenda – *President Yanchunas*

President Yanchunas asked for any amendments or additions to the agenda. Mr. Holwick will be discussing two additional items at the meeting, the DARCA member support of a bill introduced facilitating the operation of mutual ditch and irrigation companies and an update regarding the proposed ballot initiatives 3 and 45. There were no other amendments or additions to the agenda.

II. DISCUSSION AND/OR ACTION ITEMS

A. Proposed Petition to Modify Abandonment Decree – *Scott Holwick*

President Yanchunas asked Mr. Holwick to speak to the Board regarding the above petition. Mr. Holwick noted that his firm and Mr. Holwick specifically have been retained by Blue Mountain Livestock LLC (“BML”), which acquired the Sisk property in Apple Valley in 2006. BML asked Mr. Holwick to review the water rights acquired with the property. Among the rights acquired were a $\frac{3}{4}$ interest in the Sosey Ditch, as well as some in the Dave Miller Ditch. These water rights were adjudicated in the 1907 general stream adjudication for St. Vrain Creek, 2 cfs with an appropriation date of 1877 for agricultural use on 35 acres on the old homestead. This 2 cfs has historically been used to flood irrigate these 35 acres, and the owners were completely unaware of a notice of abandonment.

The Sosey Ditch was abandoned in Case No. 01CW273, the division engineer’s decennial abandonment decree which was entered on June 25, 2007. Although the statutory four year period to correct mistakes in the decree has lapsed, Mr. Holwick believes that BML’s predecessor-in-interest did not receive the required due process notice that the water right was placed on the

abandonment list. Further Mr. Holwick noted that currently there are only two owners on the Sosey Ditch, BML being one, and both were unaware of the abandonment.

Mr. Holwick has recommended that BML petition the Water Court to remove the water right from the list. However, because of the existing District policy whereby Mr. Holwick's firm can't file certain types of water court actions (change of use, augmentation plans) on behalf of other clients in the basin without first obtaining approval from the District; Mr. Holwick requests that the Board determine whether he can file this action on behalf of BML. After a brief discussion by the Board of Directors it was decided by general consensus the District would have no issues with Mr. Holwick representing Blue Mountain Livestock in this case.

B. Augmentation Program Billing Discrepancies – Sean Cronin

President Yanchunas then requested Mr. Cronin present to the Board the Augmentation Program billing discrepancies. Mr. Cronin reminded the Board of Directors that at the February 13, 2012 the District Board adopted the Membership rules for its members to maintain their membership. In these Membership Rules a section on fees notes that the Renewal Fee will be rounded up to the next acre-foot. An internal audit done by the administrative assistance has found that 36 of the 240 Program members or 18% have been billed incorrectly. Mr. Cronin stated to the Board that he felt that there were three options for consideration, 1.) to "write off" the under billings and correct the discrepancies beginning with the 2012 program year; 2.) collect the prior year's discrepancy amount along with the corrected billing amount for 2012; 3.) collect the last three years of under billings in addition to the corrected 2012 billing amount.

President Yanchunas asked about the history of the rounding up of the acre foot, wondering if it had been in place since the beginning of the substitute supply plan. Mr. Cronin believes it has been in place since the beginning of the program however it was not instituted as a motion by the board but rather as a general consensus of the Board of Directors at that time. A discussion ensued among the Board members with several voicing a concern over losing members if the District attempted to collect several years of fees. The consensus of the Board of Directors is to direct staff to follow option 1 and move forward from 2012 with the corrected billings. The Board also discussed the revalidation of the rule of rounding the acre foot amount up, agreeing this may need to be discussed at a later meeting, perhaps setting the rounding up at half or quarter increments.

It was mentioned that the District may want to be prepared for contact from those that had been overbilled in the past asking for a refund. Mr. Holwick noted to the Board of Directors that there is a three year statute of limitation requiring the District to provide a refund however a consideration could be made to offer a credit on future membership fees as opposed to refunding money to members. It was decided by consensus that the District would apply the rule in 2012 as it exists, bill for only the corrected amounts for 2012, and possibly revisit the rule of rounding up in the future.

C. DARCA Member Support of Bill – Scott Holwick

Mr. Holwick asked to include one small item for review by the Board; as staff provided a handout. DARCA has requested support for the support of a bill introduced, that would facilitate the operation of mutual ditch and irrigation companies. This bill supports excluding certain revenue streams such as recreational leases, crossing fees, and exchange of water rights from being taxed, helping the ditch companies maintain tax exempt status, while generating non-member income dedicated to operations and maintenance. This bill is intended for keeping ditch assessments affordable for farmers, and ensuring that the income provided by the above items are reinvested in

water infrastructure and local agriculture, helping to create and preserve agricultural jobs. Mr. Holwick felt that while there was no action required at this time, however that in the near future this should be addressed by the District as a bill that the District would support.

D. Proposed ballot initiatives – *Scott Holwick*

Signatures are now being gathered for the initiatives 3 & 45 to be added to the ballot in November. These would impose a public utility element in the analyzing of water rights. Colorado Water Congress has been the repository of all information relating to the ballot initiative and has a great deal of information regarding these on their website. A workshop regarding these ballot initiatives will be held Monday June 18th for those interested in obtaining more information pertaining to these initiatives. While the District cannot take a position regarding them, Mr. Holwick provided this information for those Directors as individuals who might be affected by the ballot initiatives.

III. ADJOURNMENT

With no further business to come before the St. Vrain and Left Hand Water Conservancy District Board of Directors, a motion to adjourn the meeting was made by Director Haselbush and seconded by Director Brand, passing unanimously. The meeting was adjourned at 2:55 p.m.

Respectfully Submitted,


Amy Williams, Assistant Secretary


Dennis Yanchunas, President

Additional Attendees:

None