

APA WATERMARK

Assessment Payers Association of the Middle Rio Grande Conservancy District P.O. Box 326 Los Lunas, NM 87031 August 2009

Revised Water Bank Heralds Transformation

At a special meeting on May 29, 2009, the Middle Rio Grande Conservancy District passed a long-awaited revision to its disputed water bank policy. The amended rules represent an unexpected and vital first step toward real water accounting in the central Rio Grande basin.

The new policy differentiates between senior water rights (including Pueblo and pre-1907 rights,) and MRGCD water bank leases made to lands from which the vested rights have been severed. The distinction marks a change in ideology for the district, which previously operated on a “parity” basis regardless of whether water had been transferred from a parcel of land, a practice that eliminates all possibility of priority administration. As former MRGCD Chairman Gary Perry acknowledged at the special meeting, until adjudication occurs, “the only juniors we know are those who have sold their water rights and are leasing from the MRGCD.”

Under the new rules, leases will be made on a one-year basis, and delivery to lease lands can be curtailed in times of shortage. The

district is also stepping up its effort to obtain from the State Engineer a list of middle valley properties from which pre-1907 water rights have been transferred, so that letters can be sent to owners of any retired lands still being irrigated. In order to continue receiving water, landowners will have to show proof of another source of supply, such as a leaseback agreement with the City of Albuquerque, or a water bank contract with the MRGCD.

The policy also puts the OSE on notice that the conservancy intends to do priority administration, and that it must have access to the state’s accumulated data on water right transfers. Authority for such action is contained in existing conservancy statutes.

Reversing A Trend

In 1988, the State Engineer asked the MRGCD for a Proof of Beneficial Use on the 123,000 acres served by its irrigation works. Aside from the fact that other subdivisions of the state have not been required to produce such a document, the OSE granted the district repeated extensions for

filing the PBU, and neither agency has been particularly conscientious about tracking senior water rights. Although the conservancy traditionally nixed transfers beyond its boundaries, in recent years it has failed to protest such losses. At the same time, the State Engineer has continued to approve numerous transactions to strip senior water rights from parcels inside the MRGCD as offsets for groundwater pumping both within and outside of the district, and information on those supposedly retired properties has seldom been communicated to the district. Which agency is ‘at fault’ is far less meaningful than the fact that more water rights have undoubtedly been promised as offsets than actually remain in the mid-Rio Grande basin, and that the “double-dipping” occurring on retired lands is detrimental to senior right holders, Rio Grande Compact deliveries, and even to the viability of basin ecosystems.

In 2008, the conservancy formed a committee to revise the water bank rule originally adopted in 1995. The new policy is the work of that committee, which included then-Chair Gary Perry, and board members Janet Jarratt

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water bank transformed...

and Jim Roberts. It is not an exaggeration to say that the redraft is the most significant action undertaken by the MRGCD in decades.

“The revision makes it clear,” says Janet Jarratt, “that [water bank water] is a fluctuating supply.” Under the old rule, individuals who sold their water rights could continue irrigating with leased water at a minimal cost and on an equal basis with historic lands. “That seemed unfair to those who *haven’t* sold,” Jarratt said, because it abetted the transfer of irrigation rights to groundwater pumping, which is far less subject to the whims of nature than are surface flows. During drought, pumping continues unabated while surface right holders are subject to shortages and tightly regulated through irrigation rotation. Maintaining surplus MRGCD permitted rights as surface water in the water bank provides insurance against an unpredictable supply, and ensures there will at least be carriage water and ecological flows in drier-than-average years.

A Comparison

There are salient differences between the previous water bank regulations and the newly adopted rules. The current policy specifies that leases are to be for agricultural and related purposes only. The old policy was not restrictive about how the water could be used.

While the former rule allowed for five-year leases, the revised policy stipulates that all leases will be made on an annual basis, in acknowledgement of the fact that the supply is variable from year-to-year.

The amended policy allows for pre-1907 leases to be administered by the district, but rates can be negotiated between private parties. In the old policy, pre-1907s were leased at the same price as other water.

Under the earlier rule, the conservancy board could modify or terminate a loan agreement after a thirty-day notice. The new policy offers much greater leeway for keeping pace with actual conditions, mandating that the board meet at least once a month during the irrigation season to determine whether there is a full supply of water, and requiring only a five-day notice prior to modification or curtailment of water bank leases.

The new policy is explicit that water bank leases are *junior in priority* to all other water delivered through the conservancy works, and contains further criteria to ensure that the water bank is not interfering with any individual senior water right. It should be remembered that the district predates the Rio Grande Compact, and that district rights are senior to most pre-basin groundwater rights.

In addition to the revamped policy, the previous board also adopted a resolution (see page 3), drafted and presented by board member Janet Jarratt at the May 29 meeting, which outlines the method for beginning priority administration in compliance with the water bank policy, and obligates the MRGCD to an ongoing assessment of water availability.

Who Wins

The new water bank rules garnered a single ‘no’ vote, that of then board member Bill Turner, who contends the district doesn’t own any water rights. For Turner and other water right brokers who will have to work harder to convince farmers to part with their liquid assets; for those who have already traded away historic rights with the expectation that they can keep on irrigating for free; for developers contemplating cashing in senior water rights and marketing the dried up lands as “irrigated” ranchettes; and maybe even for some at the Office of the State Engineer, where fuzzy accounting will no longer suffice to airbrush hydrologic truth, the conservancy’s revamped water bank may feel like a crushing blow. For everybody else, the new rule is a welcome banner, proclaiming that the law *does* matter, and that the MRGCD *can* lead.

no longer your grandpa's MRGCD

A New Board Confronts Old Issues

June's MRGCD election shuffled the deck, all right. Urban constituents, as unconvinced as ever that the conservancy has their best interests at heart, swapped Bernalillo County incumbents Jim Roberts and the controversial Bill Turner for an environmentally inclined attorney (Adrian Oglesby) and an urban planner (Karen Dunning). Sandoval County voters traded thirty years of representation by the Wagner family of Corrales for Sandia Pueblo member Derrick Lente, who ran for the district's at-large seat in 2003. Down south, board chairman Gary Perry bowed out after thirteen years in what he often acknowledged was a 'hot seat,' passing it on to fellow Socorro farmer Chris Sichler. Now Dunning, Lente, Oglesby and Sichler join Eugene Abeita, Janet Jarratt and Augusta Meyers in what a previous conservancy executive labels "the most qualified group of directors to ever serve the MRGCD."

The eclectic team boasts two Pueblo members (Abeita and Lente); two attorneys (Lente and Oglesby); three ladies (Dunning, Jarratt and Meyers); three urbanites (Dunning, Meyers, and Oglesby); and three active farmers (Abeita, Jarratt, and Sichler). Observers have already learned, however, that allegiances may not break along apparent planes, and that it is no longer possible to scan the agenda prior to a meeting and predict the outcome of any vote.

The new board's first action—selection of a chair and vice-chair—took two meetings to accomplish. Meyers, Jarratt, and Lente were nominated for chair, splitting the membership into three

camp. Jarratt eventually won on a four-to-three vote, to become the first woman to ever wield the gavel at the MRGCD. The vice-chairmanship went to Eugene Abeita, partly in recognition for the superb job he turned in as temporary chair during the unprecedented two weeks sans a designated leader.

Now, two months into the journey, the neophytes are still settling in, but the issues aren't cutting anybody any slack. When an octogenarian agricultural organism winds through the heart of an increasingly urban locale, prickly problems are simply a given.

- A heartbroken young woman who has lost her dog to a dangerous district siphon pleads for more protection in the name of all who use conservancy rights-of-way for recreation. With hundreds of miles of ditches spread out over four counties, safety is a nightmare for the MRGCD. Fencing makes maintenance of the crucial conveyance system all but impossible, and declaring conservancy facilities off-limits to the public denies non-irrigators the one 'benefit' they most treasure.

- Another liability literally hangs over every ditchbank in the form of trees. Half of the MRGCD's constituents want troublesome vegetation cut down or trimmed, at district expense; the other half denounces the loss of even one square inch of habitat and green amenity.

- On a different scale, the limits of an elderly river levee system have been reached, and the price for addressing—or *not* addressing—that breakdown will be environmentally and financially huge. Acres of riparian vegetation (read: bosque) may have to

be sacrificed in order to restore insurance coverage to floodplain property owners.

There are no quick fixes for any of these physical dilemmas, and the MRGCD's Assorted Seven also face the daunting challenge of restoring the conservancy's tarnished reputation by winning back public confidence, reforming relations with other agencies, and reversing perceived patterns of deal brokering and favoritism. Opportunities abound for pursuing these essential goals.

- After years of relinquishing control to non-elected personnel, the previous conservancy board resumed oversight of all non-standard licenses issued by the MRGCD. It was an eye-opener to directors and observers alike to discover the variety of entities needing something from the district, and the long-range significance of some of those requests. The exercise revealed plenty of policy gaps, and a general lack of consideration for the district as a public agency by some of its fellow governments. At its second meeting, however, the *new* board voted to restore staff control of licenses and permits via a consent calendar, thereby eliminating public discussion of such items. Elected officials need to protect the assets of the public they serve, so reviewing unusual license requests should be considered an obligation and not a chore to be unloaded.

- With Pueblo representation restored to the MRGCD board, input from a strong Pueblo Coalition, and willingness among the non-Indian contingent to improve communication between tribes and the district, perhaps the longstanding

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new board...

disagreement over O&M on Pueblo lands can finally be resolved. What a statement *that* would be as to benefits and impartiality!

- The district is in a position to help move the state toward desperately-needed adjudication of the the MRG by supplying unique data; by renewing the conservancy's traditional protest policy regarding water transers; and by making a full account of every drop of water diverted. MRGCD is *the* key to overall sustainability on the Rio Grande; all that's needed is a readiness to assume the role.

The current board looks to be quite capable of continuing the recent trend toward transparency and open debate, *if* each director takes the responsibility to bone up on agenda items prior to meetings, and to make treks into the real world to witness problems on the ground. Crewing the MRGCD demands personal time, and board members haveto come to terms with that burden. On the other side of the coin, every conservancy elector ought to have to sit through a meeting now and again to see what they're asking of their representatives, and to extend to those overstressed, under-appreciated servants at least a smidgen of encouragement and support.

Next APA Meeting

August 20, 2009

6:00 PM

Teofilo's Restaurant

144 Main Street

Los Lunas, NM

Public Welcome

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E-mail readers of the Watermark may access the revised MRGCD water bank policy and accompanying resolution, plus a transcript of the May 29, 2009 board meeting, on the MRGCD's website at www.mrgcd.us