

**QUARTERLY MEETING OF THE BOARD OF MANAGERS
OF SPECIAL IMPROVEMENT DISTRICT #5
OF THE RIO GRANDE WATER CONSERVATION DISTRICT
October 19, 2020 at 1:30 p.m.
By Zoom/Teleconference**

Present: David Schmittel, President; George Whitten, Vice-President/Secretary/Treasurer; Dale Gerstberger, Manager; Kit Caldon, Manager; and, Peggy Godfrey, Ex-Officio Member.

Absent: Corey Hill, Manager.

Staff and Consultants: Pete Ampe, Hill & Robbins, P.C.; Chris Ivers, Program Manager; Amber Pacheco, Program Manager; Rose Vanderpool, Program Assistant; Allen Davey and Clinton Phillips, Davis Engineering; Michael Carson, Data Base Administrator; and, April Mondragon, Administrative Assistant.

Guests: David Hofmann, Thad and Sue Englert, Ed Nielsen, Tyrel Mares, Mike Kruse, Jennifer Faller, Cody Redden, Kyrina Danforth, Tom McCracken, Marty Shallenbarger, and Willie Hoffner.

Meeting Called to Order

President Schmittel called the meeting to order at 1:37 p.m. A quorum was present.

Approval of the Agenda

President Schmittel asked for additions or a motion to approve the agenda. The agenda was amended to add a Closed Basin Project Operating Committee update by George Whitten and the Englert's presentation was moved up to right before the Attorney's Report. A motion was made by Kit Caldon to approve the agenda as amended. The motion was seconded by Dale Gerstberger and unanimously approved.

Approval of the Consent Agenda

President Schmittel asked for approval of the consent agenda which included the following minutes:

- July 22, 2020-Quarterly Meeting
- July 22, 2020-Executive Session
- August 31, 2020-Special Meeting
- August 31, 2020-Executive Session
- September 10, 2020-Special Meeting
- September 10, 2020-Executive Session
- September 24, 2020-Special Meeting

A motion was made by Kit Caldon to approve the consent agenda items as presented. The motion was seconded by George Whitten and unanimously approved.

Public Comment

President Schmittel asked for public comment. There were none.

Closed Basin Project Operating Committee Update

President Schmittel asked for the Closed Basin Project Operating Committee update. George Whitten updated the Board on the decision to close down Stage 5 of the Closed Basin Project and shut down all of the other wells except for the ones being used for mitigation. Mr. Whitten reported on the runoff, obligations of the Project and when they shut down the wells. He also highlighted the area with a drop in the water table. Peggy Godfrey asked when water was not going to the river. Mr. Whitten explained how the compact and obligations work. Allen Davey reported when the Project will start back up and stated they must keep a certain amount of flow in order to prevent the Project from freezing up. Mike Kruse asked for an estimated amount of water going to the river for the year and reported the Subdistricts are relying on that water for replacements. Chris Ivers provided the acre foot amount going to the river. Ed Nielsen asked a question regarding the Closed Basin Project pumping in relation to the runoff forecast. David Hofmann reported on the number of Subdistricts relying on Closed Basin Project water for winter depletions in order to meet the conditions of their ARP's.

Thad Englert Presentation

President Schmittel asked for Thad Englert's presentation. Thad Englert reported he and Sue Englert have examined a large amount of data, he presented a snap shot of their findings. Mr. Englert presented monitoring well data for the past 20 years and thanked Rich Roberts at the BOR for providing data. Mr. Englert highlighted the unconfined aquifer water level from January 2019 as he pointed out the location of his home and the Closed Basin Project on a map. He presented a map of the Saguache Creek annual flow and highlighted the fluctuations in the water table for various monitoring wells around the Closed Basin Project. Ed Nielsen commented on the cones of depression per well and the lack of recharge. Mr. Englert reported on the basins he believes the Closed Basin Project effects and provided the actions he feels need to be taken. Ms. Godfrey commented on how the amended legislation is written. Tom McCracken commented on the 2019 water year. Marty Shallenbarger commented on how he believes the Closed Basin Project and well pumping has affected his operation. Cleave Simpson reported the Closed Basin Project is operating under its decreed and legislative authority and has responded accordingly by shutting down several wells. George Whitten reported on the growing number of wells that are being shut off on the Closed Basin Project. Mr. Simpson reported being an advocate for many years to allow Subdistrict No.'s 4 and 5 to use Closed Basin Project water year around for impacts to the Rio Grande River. Dale Gerstberger suggested the Board of Managers of Subdistrict No. 5 make a request to the Rio Grande Water Conservation District Board of Directors to use a portion of the Closed Basin Project production to cover their depletions on the Rio Grande River. Kyrina Danforth commented on the effects she believes well pumping has had and will have to the Town of Crestone. President Schmittel thanked Mr. Englert and Mrs. Englert for the presentation.

Attorney's Report

President Schmittel asked for the Attorney's Report. Pete Ampe updated the Board on a meeting he and Chris Ivers attended with NRCS regarding conservation easements. Mr. Ampe reported Well Injury Payment agreements would not have an impact on conservation easements. Mr. Ampe reminded the Board how fast March is approaching and the importance of getting people signed up for Well Injury Payment agreements.

Program Manager's Report

President Schmittel asked for the Program Manager's report. Chris Ivers presented the financial report which included the balance sheet and the profit and loss statement.

A motion was made by Dale Gerstberger to approve the financial report as presented. The motion was seconded by George Whitten and unanimously approved.

Mr. Ivers reported asking the Colorado Cattlemen's Association to send a letter out to the well users updating them on the conversation with NRCS regarding Well Injury Payments. Mr. Ivers provided an update on the status of the geologist report. Kit Caldon reported on the importance of moving forward quickly with an alternate plan if they do not get Well Injury Payment sign ups. Mr. Ivers reported that Mr. Baxter requested to meeting with Kit Caldon to have a discussion.

Consideration of Policy Regarding Participation Contracts and Inclusion Agreements

President Schmittel asked for the consideration of policy regarding participation contracts and inclusion agreements. Chris Ivers presented the proposed policy to use when contracting other wells into the Subdistrict. President Schmittel confirmed that each contract would need to be approved by the Board of Managers. Pete Ampe highlighted the contracts are negotiable.

A motion was made by Kit Caldon to approve the Subdistrict No. 5 policy when considering participation contracts and Inclusion agreements. The motion was seconded by George Whitten and unanimously approved.

Discussion on Well Injury Payments

President Schmittel asked for the discussion on Well Injury Payments. Mr. Ivers reported potentially asking for one-year agreements. Dale Gerstberger reported he would be signing an agreement. George Whitten reported not getting much interest in Well Injury Payments when he spoke to a group of people. Mr. Gerstberger suggested publishing an add in the newspaper and attending a Saguache Creek Water Users meeting to encourage others to sign up for Well Injury

Payments. Mr. Whitten provided the challenges his Ranch faces when considering signing a Well Injury Payment agreement. Tom McCracken asked for an explanation of Well Injury Payment agreements, which Mr. Whitten explained. David Hofmann described how the model projects the pumping and river flows.

Discussion on Replacement Sources

President Schmittel asked for discussion on replacement sources. Chris Ivers reported on a couple potential properties for sale along Saguache Creek. Discussion was held on other properties and water rights that may benefit the Subdistrict.

New Business

President Schmittel asked for new business. Allen Davey reported many misconceptions would need to be addressed regarding the Englert's presentation in the near future.

Executive Session

President Schmittel asked for a motion to enter into executive session to receive legal advice regarding a potential real property purchase. A motion was made by Kit Caldon to enter into executive session. The motion was seconded by Dale Gerstberger and unanimously approved.

Mr. Ampe stated the Board was entering into executive session to discuss a potential real property purchase. The Board would take no formal action or position during the executive session.

Action on Executive Session Discussion

Pete Ampe stated the Board was in executive session and had voted to come out. Discussion was related to potential property purchases.

New Business


President Schmittel asked for new business. There were none.

Next Meeting


President Schmittel asked for the next meeting. The next quarterly meeting is scheduled for January 20, 2021 at 1:00 p.m.

Adjournment

The meeting was adjourned at 4:46 p.m.



President



Vice-President/Secretary/Treasurer

Subdistrict No. 5 Policy No. 20-01

Policy Regarding the Review and Consideration of Participation Contracts and Inclusion Agreements with Special Improvement District No. 5 of the Rio Grande Water Conservation District

Purpose

The purpose of this policy is to establish the preferred method for which Participation Contracts and Inclusion Agreements are reviewed and considered for approval by the Board of Managers for Special Improvement District No. 5.

Policy

The Board has approved Rules and Regulations which allow for well owners to submit requests to have their non-exempt wells covered under the Subdistrict's Annual Replacement Plan. Participation Contracts can be submitted to include those non-exempt wells and the lands the wells benefit in future ARPs where the wells were not included in the Subdistrict's Petition to Establish the Subdistrict. Subdistrict Members with land included in in the Petition to Establish the Subdistrict' may submit an Inclusion Agreement to include other non-exempt wells which were not included on an Individual Petition collected at Subdistrict formation but otherwise benefit Subdistrict Lands. In order to consider each request in a fair and consistent manner, the Board of Managers will follow these procedures when considering any Participation Contract or Inclusion Agreement filed for the Board of Manager's review.

Procedures

1. Subdistrict Staff will prepare, with the well owner's assistance, all necessary supporting documentation for the non-exempt well and submit that information to the Board of Managers along with the filed Participation Contract or Inclusion Agreement for their review and consideration.
2. The Board of Managers will consider the Participation Contract or Inclusion Agreement at a public meeting of the Subdistrict and will set terms for each Participation contract or Inclusion Agreement based on a review of the following:
 - a. Is the request being made by an entity that is a governmental or quasi-governmental organization that was unable to petition their non-exempt wells into the Subdistrict based on their organizational structure?
 - b. Is the well owned by a new individual/entity that was not the owner at the time petitions were collected to form the Subdistrict?
 - c. Was the current owner of the non-exempt well contacted during the petition process to allow them the opportunity to join the Subdistrict?

d. Was there a complicating issue that existed at the time petitions were being collected that made it challenging to include the well in a petition?

e. Was the current well owner contacted for an opportunity to contract once the Subdistrict Plan of Water Management was approved?

f. Should the Subdistrict Board of Managers assess any past formation costs based on the information collected in a-e above?

g. Based on the information collected in a-e above, should the Subdistrict Board of Managers assess all or a portion of the past Administrative and Pumping Fees as if the non-exempt well had been included in the Subdistrict at the time of formation?

3. Based on the Board of Manager's review of the information gathered above, they will vote to either approve or deny the Participation Contract or Inclusion Agreement and to set additional costs they may determine are appropriate.

4. The Board can take into account such unique circumstances as may be necessary to arrive at an equitable decision.

5. This policy does not establish any right, interest, or action in any person or entity other than the Board of Managers and is enforceable only by the Board of Managers in their sole discretion.

This policy will be effective as of October 19, 2020 and will remain in effect until changed by vote of the Board of Managers of Special Improvement District No. 5.



Dave Schmittel, President



George Whitten, Secretary-Treasurer