

**Arkansas River Litigation Funds Advisory Committee  
2009 E. Spruce  
Garden City, Ks 67846  
(620) 275-7147**

The meeting of the Arkansas River Litigation Funds Advisory Committee was called to order by Chairman, Randy Hayzlett on September 30th, 2009 at 9:05 a.m. The meeting was held at the Southwest Kansas Groundwater Management District Office located at 2009 E. Spruce Street, Garden City, Ks.

**Present:**

Randy Hayzlett	Al Knoll
Ron Conway	Steve Hines
Harold Knoll	Mark Rude
Diane Coe	Hal Scheureman
Kevin Salter	David Brenn (by phone)
Jason Norquest	Patty Stapleton
Trevor Ahring	

**Approval of agenda and minutes**

Chairman Randy Hayzlett asked for discussion on the meeting agenda. Steve Hines moved to approve the agenda, Ron Conway seconded and motion passed with all in favor.

Mark Rude read the minutes from the September 1st, 2009 meeting. Steve Hines moved to approve the minutes with the mentioned corrections, Al Knoll seconded and the motion passed with all in favor.

**Projects Update**

**South Side Ditch ADS**

Mr. Hayzlett reported to the committee that the Right of Way papers with Greg Hands and Mr. Tacket are complete. Randy met with Greg Hands yesterday and provided him his Right of Way agreement and the permitting that South Side Ditch will allow the sprinkler to walk up on the ditch bank. Randy will provide copies of the Right of Way Agreements to GMD3. Mr. Tacket was glad for the opportunity to get the ditch moved out from between his two sprinklers. He did ask about a crossing going in from the North side however the estimate for that possible work was approximately \$30,000. Greg Hands also had various concerns of access into his pivot. Randy advised Mr. Hands if a new gravel road is needed then we may be able to work with him for reasonable access. Randy has not heard anything recently. Mark Rude advised in keeping with the frugal style of the committee authorized expenditures, it is appropriate to make a comment about some of the side issues of the projects. Mark asked the committee to think through the terms of necessary enhancements to secure what is needed to complete the project as distinguishable from normal maintenance issues or enhancements that may not be needed to accomplish the approved projects.

Randy brought to the committees attention a pipeline crossing issue. Randy contacted the owner OneOk to discuss options. Option one was to suspend pipe across the ditch but then the

contractor would have to work around a live line, which was not a feasible option. Option two: could redirect the gas and shut the problem line off, cut the line, dig the ditch and then still suspend over the top of the ditch. The last option was to bore under where the ditch would be. OneOk advised would share the expense of taking care of the gas line; a split in cost is estimated at \$7,200 to the Fund.

Steve Hines moved to do whatever it takes to get the pipeline under the ditch. Ron Conway seconded. Discussion was held on the depth of the pipeline and also if trenching was less expensive than digging. Motion passed with all in favor. The consensus of the committee was to have the money categorized from the first \$200,000 Right of Way budget.

Randy updated the committee regarding the fencing on the Unruh land. Noting that fencing is important for the safety factor, it is close to Deerfield, high liability reason, and aid in keeping cattle out. Randy met with a gentleman from Holly Colorado and received an estimate on a 5 wire barbed wire fence. The estimate received was \$1.50 a running foot with material and labor with an estimate of a mile of fencing needed. At some point in time, may want to consider a fence but not necessary at this moment. Mr. Conway also suggested posting No Trespassing signs around the property.

Randy mentioned to the committee that the Kearny County Commissioners and project representatives met regarding the two bridges on County roads. The Commissioners did agree to take care of the bridges. Discussion was held on the 14 foot duraspans culverts that the engineers recommended. The commissioners were trying to avoid these culverts due to the estimated total cost of \$100,000. Harold mentioned a double throated flume and the Commissioners said that would work for them. Ed Mighell mentioned to Randy that two eight foot flumes would work with a two foot fill in the middle. This would cause a very wide crossing. The Commissioners will decide which would work the best for them.

Concrete work is scheduled to begin on November 1<sup>st</sup>, 2009 with dirt work beginning March 1<sup>st</sup>, 2010 and the final construction date being July 2010.

Permits are cleared. The only hang up was with the Flood Plain Fill Permit. Kansas Wildlife and Parks were concerned about the Flat Head Chub in that area and the de-watering of the river. The representative with Kansas Wildlife and Parks could not meet until October 14<sup>th</sup>; however Randy stressed to him the need to meet sooner. The representative went ahead and signed off on the Flat Head Chub. Kansas Wildlife and Parks have now stressed concerns over the habitat for the Spotted Skunk in that area. Randy has submitted an application for litigation regarding the Spotted Skunk.

Randy spoke to the Committee regarding stabilizing the canal. Erosion has occurred on some of the areas that were completed last year. South Side Ditch Association President Bob Knoll called Underground Specialist to get a quote for crushed concrete. The quote came in at \$600,000 for the entire ditch. Grass drills were also researched. This method would save a lot of maintenance in the future. Larry Christianson advised the cost would be \$20.00 an acre for outside of the sprinkler and for the areas under the sprinkler \$40.00 an acre. Larry advised would only charge for the use of the drill per hour.

Randy reported that the draft agreement with the Finney County Water Users and South Side Ditch has been completed. There are still a few points to talk over but getting closer to finalize. Randy will circulate the draft agreement at the next South Side Ditch Board Meeting. Mark Rude advised that GMD3 received a bill from Mike Ramsey which is included in today's packet.

Mark went on to discuss the importance of the agreement as he understood it. He advised the ADS is not formally a project of this committee. It is a goal of this committee that we are encouraging and advising for purposes of Fund expenditures. It is formally and legally a project that tries to do three things. One: preserve the sovereignty and jurisdiction of the south side ditch, two: addresses the relationship of the Finney County Water Users to the South Side Ditch Association regarding the ADS operations and third it provides the narrative of the working relationship between to the two entities to work in good faith effort. Mark stressed that the purpose of the ADS is to assure Finney County Water Users and users of the Garden City Ditch to have their share of the supply of the river. Mark stressed that it's noteworthy to the committee that this should work and it doesn't pull anyone else into this relationship. Kevin Salter from Division of Water Resources added even though the agreement is important he doesn't feel like it's a make it or break it issue. Kevin advised if the hydrological conditions are really dry and we are not able to use South Side that means the farmers probably won't receive water that year, may want to consider a trigger in there to use down the road. Committee agrees it's more of an accounting issue that needs to be explored more.

### **Lake McKinney Project (Ron Conway)**

Mr. Conway spoke to about the timeline for the Lake McKinney Project. October 5<sup>th</sup>, 2009 was to be the start date with the ending date of July 29<sup>th</sup>, 2009. Concrete work is to be done by January; earth work is to be done between December – March, 2010. However a letter was received from the Division of Water Resources dated the 25<sup>th</sup> of September stating the project was placed under one permit allowing none dam projects to be placed on hold. Mr. Conway read to the committee the areas that must be addressed before the Chief Engineer can give favorable consideration to the plans and issue a permit authorizing construction. The nine points needing be addressed are as follows:

1. No vegetation or seeding requirements were shown on the plans for the disturbed areas.
2. The north dike will be reviewed as a levee due to the flows in Mattox Draw. This dike will be considered a Class C levee which requires the structure to have 3 feet of freeboard for the 1% chance flood event.
3. K.A.R. 5-45-15 (a) requires the side slopes of the levees to be no steeper than one vertical to 3 horizontal unless the applicant submits data and analysis to show that a steeper slope will be stable.
4. The description, location and elevation of at least two permanent benchmarks must be submitted.
5. Plans must include a map of the drainage pattern above and below the dam site drawn to an appropriate scale.
6. A topographic map of the dam site in the reservoir area shown to an appropriate scale must be provided showing the information noted in K.S.R. 5-40-2(c).
7. The elevation to which the top of the dikes are to be initially constructed in order to provide an adequate settlement allowance should be provided.
8. The hydrologic review submitted with the application states runoff from the 40%PMP is limited to the enclosed area of the reservoir due to the runoff. The entire drainage area that could flow into the reservoir area should be reviewed, and the peak inflow calculated using this drainage area.
9. Due to the fact that the original dikes were constructed without a permit or prior approval, this project will be considered after the fact and will require an additional \$300.00 application fee.

Ron forwarded the above letter to Ed Mighell. Ed later advised that he did review the letter and is recommending compliance with the aspects of the letter for all except #3, which refers to the side slopes of the levees. Ed states that they have data to support the slope that they determined in the contracts. The slope determined was due to the type of soil. October 9<sup>th</sup>, 2009 is the estimated date to have the re-submittal package and they will work with Leonard Bristow, to have his approval by October 23<sup>rd</sup>. This process may affect the deadline and may push the project back a year.

Ron mentioned that he received a letter from Stantec stating that the Stormwater Permit was authorized. Also, a change order was proposed by Stantec and reviewed with the committee. Additional detail on each of the items were read and discussed. Ron read through the items.

\*The Approach Road on the south dike of the old inlet road was found that elevations on the southern intake channel were lower than proposed elevations for the South Dike raising.

\*Borrow Area Investigation: The feasibility study work indicated that there would be sufficient suitable material from required exaction for construction of the embankment and fills.

\*Gaging provision was added to Drop Structure No. 1 on the Bypass Canal to accomplish desirable measure flows close to the offtake from the Amazon Canal.

\*Road Relocation: Road adjustments were found to be desirable to reduce the cost of culverts for the two road crossings of the Bypass Canal. The work involved consisted of designing the road alignments, slopes and grades, and adding details on the plan and profile drawings.

\*Toe Drain and Filter: The concept presented was to fill the abandoned section of the Great Eastern Canal with an unzoned compacted fill. It was determined that to prevent a phreatic pressure buildup within the embankment and to preserve monitoring ability, a zoned fill with a toe drain should be constructed.

\*Stormwater Permit: it was agreed that Stantec should apply for this permit on behalf of the Garden City Company; and upon receipt of the permit, it would be assigned to the successful contractor. Stantec's work has included determining the work needed to comply with regulatory requirements, preparing the application and supplemental submittals required, and will include receipt of the permit.

Hal Scheureman moved to approve the additional engineering fee. Steve Hines seconded. Motion passed with all in favor.

Ron advised the committee that there was a gas well right close to where the new measuring station is going to be on the by-pass canal. Also, there were two salt water tanks that were setting right next to the old dike area. Ron spoke to a representative of BP America about possible moving the electric line and the salt water tanks to the north near the gas well. This would make everything on the same side and BP America would not have to drive through the middle. Ron received an estimate to trench 900 feet of electric line (they didn't charge for the cost of the electric line) and move two 210 water tanks. One tank was moved from road to new location on site and the second tank was moved off site. The estimated total cost was \$3185.33. Garden City Company will be responsible for paying 50% of the bill and BP will pay the remainder. Al Knoll moved to accept the bill when provided and submit with payment voucher for payment. Hal Scheureman seconded. Motion passed with all in favor.

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Ron reported they are waiting to hear back from the Division on final permitting.

\*\*\*10 Minute Break\*\*\*

### **Preferred Interstate Supply Evaluation Status (GMD3)**

Mark handed out the revised draft report from Spronk Water Engineers. He reminded the committee of the areas that were suggested to Spronk Water for more elaboration. He asked the committee to read through it and report back to him in the next two weeks on any comments one may have. Mark noted that chapter 4 was added to clarify the HI Model Updates and calculation of Colorado accretion credits and how to best manage the accretion credit potential for the offset account use.

Randy brought to the Committees attention that any documents regarding the projects may be a good tool to provide to the Legislatures so they are aware of the improvements of the projects.

Kevin Salter from Division of Water Resources had sent out an informative email regarding summary of discussion on Stateline Accretions and Compact compliance accounting related to the Offset Account call. A handout was also supplied that provided information for Compact Compliance / Annual Results along with a chart that showed the Ten-year Accounting of Depletions and Accretions to the Usable Stateline Flow from the years 1999-2008. Mark added the ten years is not an average it is a running total. The amount coming across the state line and what is due across the state line under this approach. The next year may drop off a year that had a significant over delivery or under delivery with the New Year possibly bringing in a new figure that compounds one way or another the balance figure of whether they are in debt to us or we are in debt to them, figurative speaking. Mark added the question "what is the other water that they may add to the calculation?" Mark is hoping that the Spronk document will shine some light on the Run 1 and Run 2 and itemize so all persons involved will have a document that weigh each of those items against what we learn whether it be a Tri-State project or study initiative.

Kevin stressed that what Kansas has done to Colorado is not simple, it is complex. Therefore it may take several rounds of discussion with the committee and water users themselves. It could impact how water is run in the future. Kevin provided a current calibration chart showing the last ten years (1999- 2008). The total has changed from 33,881 acre feet to 34,111 acre feet. That result differs from what Kansas proposed for a run in early June and what we agreed too with Colorado.

Kevin advised the committee that the biggest effect that Kansas has is the Offset account deliveries. The Offset account started in 1997. At that time we also had the Colorado Use Rules that were in place in 1996 but probably didn't go into complete effect until 1997. Kevin discussed the Compact Compliance / Annual Results chart that was shared with the committee. Advising the committee that the red bars are the results from the H I model. Mark added that every other area in Colorado the presumption for consumption in any other area is much higher than it is in the Arkansas River. Kevin addressed that concern stating there was a retaining jurisdiction provided in the final decree. It stated the court would retain jurisdiction through December 31, 2008.

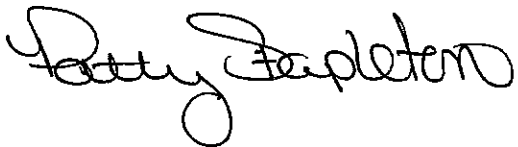
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Mark asked Kevin if there was a better time to call for water from the usability standpoint, and to have the transit losses calculated. It appears to be a set formula so we ought to be able to determine when the best time is to call and maximize the water. Kevin advised Spronk would be better qualified to answer that question; they are the H I Model expert.

**Adjournment**

Steve Hines moved to adjourn the meeting at 12:06 p.m. Al Knoll seconded. Motion passed with all in favor.

Meeting adjourned.

A handwritten signature in black ink, appearing to read "Patty Japleton". The signature is written in a cursive style with a large, looping initial "P".