

MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS OF
THE PUEBLO CONSERVANCY DISTRICT

September 11, 1923.

The regular weekly meeting of the Board of Directors of The Pueblo Conservancy District was held in Room 740 Thatcher Building, at 10:30 A.M. September 11, 1923.

The meeting was presided over by the President Chas. W. Lee.

Directors present: Lee, Raber, Nuckolls.

Directors absent: none.

The minutes of the meeting of August 28 were read, and, upon motion, approved.

The following bills were read, and, upon motion, duly allowed, and warrants ordered drawn upon the Treasurer for the amounts:

1301-1318 Payroll for one half month ending August 31, 1923. Engineering Department	\$2,034.00
1319-1324 Payroll for one half month ending August 31, 1923, General and Appraisals	729.16
1325 Pueblo Star Journal	6.90
1326 Chas. M. Rose (expense account)	42.58
1327 Globe Fire Ins. & Inv. Co.	29.70
1328 Southern Colorado Power Co.	1.00
1329 Chas. W. Lee (Automobile expense)	50.00

Mr. Raber offered the following Resolution and moved its adoption:

Be It Resolved by the Board of Directors of The Pueblo Conservancy District: That an amendment to the Official Plan hereto attached, entitled "Amendment to Official Plan providing for Continuance of Road, Irrigation and Drainage Facilities on Tract of Land Belonging to E. G. Donley in NE 1/4 of Sec. 34, T 20 S., R 65 W., 6th P.M.", be and the same is hereby approved and adopted as a detail of the Official Plan heretofore filed, it appearing to the Directors that the matters and things therein contained were considered as part of the Official Plan in general and included in former estimates of cost.

Introduced by

The motion was seconded by Mr. Nuckolls, the vote upon which resulted as follows:

Ayes: Raber, Nuckolls, Lee.

Nays: none.

Thereupon the Chairman declared the motion duly

passed.

The amendment referred to in the above Resolution reads as follows:

Amendment to Official Plan providing for Continuance of Road, Irrigation and Drainage Facilities on Tract of Land Belonging to E. G. Donley in NE 1/4 of Sec. 34, T. 20 S., R. 65 W., 6th P.M.

E. G. Donley

Construction of the relocated Denver & Rio Grande Western Railroad main line tracks across the property of E. G. Donley in the NE 1/4 of Sec. 34, T 20 S., R. 65 W. of 6th P.M. closes the road, irrigation ditch, and drainage serving the Southern portion of the tract.

The road will be replaced by another following the slag dike and provided with a grade crossing near the East end of the proposed railroad bridge. This road will have a top width of 12 feet, and grades not to exceed six feet per hundred.

The necessary ditches will be excavated and a suitable concrete or vitrified tile culvert not less than 12 inches in diameter, will be laid through the railroad embankment at such elevation and location as will be necessary to preserve the present conditions of drainage.

A concrete or vitrified tile culvert of suitable size will be laid through the railroad embankment at such elevation and location as will be necessary to preserve the present irrigating ditch facilities.

Mr. Haber then introduced the following Resolution and moved its adoption:

Be It Resolved by the Board of Directors of The Pueblo Conservancy District: That the Official Plan be amended in detail by adding to that part thereof appearing on pages 22 and 23 of said Official Plan entitled "Bessemer Ditch", the following:

E. G. Donley

The Pueblo Conservancy District shall acquire from the Bessemer Irrigating Ditch Company an easement in the right-of-way of said Bessemer Ditch for the construction of necessary works according to said Official Plan, and an easement in the right-of-way of said Bessemer Ditch for the overflow water caused by the execution of said Official Plan, as the extent of said easements and the necessity therefor may appear upon the Appraisal Record of the District; that in lieu of other or different considerations given to the Bessemer Irrigating Ditch Company, the Pueblo Conservancy District shall enter into the agreement hereto attached.

And it is further ordered that a copy of this Resolution with the proposed agreement attached, shall be filed with the Official Plan as an amendment thereof.

Introduced by

The motion was seconded by Mr. Nuckolls, the vote upon which resulted as follows:

Ayes: Raber, Nuckolls, Lee.

Nays: none.

Thereupon the Chairman declared the motion duly passed.

The proposed agreement referred to in the above resolution is as follows:

THIS AGREEMENT made and entered into in triplicate, this _____ day of _____ A.D. 1923, by and between the Pueblo Conservancy District, a public corporation created, organized and existing under the Conservancy Act of Colorado, hereinafter called the "District", of the first part, and THE BESSEMER IRRIGATING DITCH COMPANY, a corporation organized and existing under and by virtue of the laws of said State of Colorado, hereinafter called the "Ditch Company", of the second part, WITNESSETH:

THAT WHEREAS the Board of Directors of said District has adopted the Official Plan of flood protection for said District, and the same has been approved by the District Court of the Tenth Judicial District of the State of Colorado, sitting within and for the County of Pueblo, in said State, as provided by the Conservancy Act of Colorado; and the execution of said Official Plan and the construction and maintenance of the works therein projected requires the acquisition by the District of easements in the right-of-way of the Bessemer Ditch, for the location of structures according to the Official Plan, and for the flow of back water upon said right-of-way in certain extreme conditions; and such acquisition of easements and construction and maintenance of said works may cause damage to the said Ditch and appurtenant structures, including the diversion structures, of said Ditch Company, part of which lie within the high water line of the Retarding Basin projected in said Official Plan, which ditch is known and is herein referred to as the "Bessemer Ditch"; and the parties hereto are unable to agree as to the amount, kind and character of the damages, if any, and the compensation for rights acquired, for which said District is responsible to said Ditch Company, and realize that it would be difficult to determine and assess in advance the amount of damages which may hereafter occur; and,

*Bessemer Ditch Co
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WHEREAS both parties hereto desire to avoid litigation and to amicably adjust and settle the matter;

NOW, THEREFORE, in consideration of the premises, and in consideration of the grant by The Bessemer Irrigating Ditch Company to The Pueblo Conservancy District of an easement in the right-of-way of the said Bessemer Ditch for the construction of necessary works according to said Official Plan, and the grant by the said Ditch Company to the said District of the flooding easement upon said right-of-way for overflow waters caused by the execution of said Official Plan, and the acceptance, as consideration for the grant of said easements, by the said Ditch Company of the obligation of the District created by this agreement in lieu of any further or different payment of compensation or damages to said Ditch Company by award of the Board of Appraisers of said District, or by appeal from such award in the mode provided by said Conservancy Act, or in any other manner, the parties hereto have agreed and do hereby agree as follows:

1. In lieu of an award of either compensation or damages, or both, to said Ditch Company by the Board of Appraisers of said District for the easements hereinbefore mentioned to be granted to the Pueblo Conservancy District by The Bessemer Irrigating Ditch Company and for damages which may result as a consequence of the execution of said Official Plan and of the construction and maintenance of the works contemplated in said Official Plan, and as full compensation for any and all claims of whatsoever kind and character that may accrue to said Ditch Company from the execution of said Official Plan, and which, except for this agreement, might be included in the award of said Board of Appraisers to said Ditch Company for compensation and damages, or might be included in an award to said Ditch Company in eminent domain proceedings pursuant to the Conservancy Act of Colorado, the said District shall promptly pay to said Ditch Company the amount of any and all physical damage caused to said Bessemer Ditch and its appurtenant structures, (including diversion structures), by the construction of the works provided in said Official Plan, and by their maintenance, as often as the same shall occur, as soon as the causing of said damage to the Bessemer Ditch by such works and the amount thereof shall have been ascertained as provided in paragraph numbered 2 of this agreement. The words "physical damage" as used in this paragraph 1, and throughout this agreement, with reference to said Bessemer Ditch, shall include, and shall be taken and construed to include, the necessary cost of removing any deposits of silt or other material caused by the existence and maintenance of the works

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of said District, if such deposits obstruct the diversion of water into said Bessemer Ditch, so as to retard the flow of water into said Bessemer Ditch as it would have continued but for such obstruction.

2. Within ten days after such physical damage has been incurred, the said Ditch Company shall personally serve upon the Secretary of said District, or shall mail by registered letter addressed to said District, notice in writing that said Ditch Company claims that physical damage has been done to said Bessemer Ditch or its appurtenant structures by the works of said District provided for in said Official Plan and stating the amount of the damage so claimed; thereupon the said District shall within ten days thereafter either pay the amount so claimed, or within that time shall notify said Ditch Company in writing that the said District desires to arbitrate the question as to whether the damage so claimed was caused in whole, or only in part, or at all, by the works of said District, and the amount of the damage caused by the works of the District, and shall in the same notice notify said Ditch Company of the name of some person who shall represent said District as one of the arbitrators to determine said question, and thereupon, in the latter event, said Ditch Company shall within ten days after receiving such notice, notify said District in writing of the name of some person to represent said Ditch Company as one of the arbitrators in such arbitration, and said two arbitrators shall thereupon, within ten days thereafter, select a third arbitrator, and if they do not agree upon such third arbitrator within such time, said third arbitrator shall be selected by the then County Judge of said Pueblo County upon the application of either party, upon notice to the other, and said three arbitrators shall then proceed to determine the question, first, as to what, if any, physical damage to the Bessemer Ditch and its appurtenant structures was caused by the works of the District, and second, the amount of the said damages, if any, so caused, taking into consideration the necessity of prompt repair of such damage, if they shall find such emergency existed, and the decision of said arbitrators, or any two of them, shall be final, binding and conclusive upon the parties, but in no case shall said award exceed the cost of actual repair to said Ditch of damage caused by works of the said District; and if said arbitrators shall find in favor of the Ditch Company, said District shall within twenty days after receiving notice of such decision, pay the amount so awarded to said Ditch Company. Payment shall be made by said District as often as the aforesaid damage to said Bessemer Ditch shall occur. The costs of such arbitration shall be borne by the losing party.

*Bessemer Ditch Co.
agreement*

3. This agreement shall embrace and cover, and shall be in lieu of, all compensation for easements hereinbefore mentioned, and of all damages or claims for damages of whatsoever kind or character upon which an award of damage could otherwise have been made to said Ditch Company in eminent domain proceedings by the District pursuant to the Conservancy Act of Colorado, or by the Board of Appraisers of said District, and said Board of Appraisers shall take cognizance of this agreement; but nothing herein contained shall relieve, or be construed as relieving, said District from any and all damages resulting from any negligence of said District, its officers, agents, employees, contractors or sub-contractors, in the construction of the works of said District provided for in said Official Plan, or in maintaining or operating the same.

4. The signing of this instrument by The Bessemer Irrigating Ditch Company shall operate as a grant and conveyance to The Pueblo Conservancy District of the easements hereinbefore mentioned in the Bessemer Ditch right-of-way subject to the conditions of this agreement and without further instruments of writing.

5. This agreement shall be, and shall be made and considered, a part of the Official Plan of said District, effective as of the date of this agreement, subject to the approval of said District Court of Pueblo County, or the Judge thereof having jurisdiction of the matter.

6. This agreement, and each of the covenants, terms and conditions herein contained, shall apply to, inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF the respective parties hereto have caused this agreement to be executed in their respective corporate names by their respective Presidents, and their respective corporate seals to be hereunto affixed, and attested by their respective Secretaries, the day and year first above written.

THE PUEBLO CONSERVANCY DISTRICT,

(Seal) By _____ President.

ATTEST:

Secretary.

THE BESSEMER IRRIGATING DITCH CO.

(Seal) By _____ President.

ATTEST:

Secretary.

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Mr. Raber then offered the following Resolution and moved its adoption:

WHEREAS, heretofore an Official Plan of the Pueblo Conservancy District has been adopted and the same has been approved by order of the Tenth Judicial District sitting in and for the County of Pueblo, State of Colorado, and the said Official Plan describes generally certain lands to be taken by the District for public use in the execution of said Official Plan.

NOW, THEREFORE, pursuant to Section 26 of the Conservancy Act of Colorado,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE PUEBLO CONSERVANCY DISTRICT, That a public necessity exists for the taking for public use of the lands or interests therein, hereinafter more particularly described; that the execution of the Official Plan heretofore adopted and approved requires the appropriation by the Pueblo Conservancy District of the said lands and interests therein and the ownership thereof by the Pueblo Conservancy District; that public interest and necessity and the proper execution of the Official Plan of the Pueblo Conservancy District require the ownership in fee simple by the Pueblo Conservancy District of the said lands, except where a different interest therein is hereinafter specifically designated; and that notice and report be made to the Appraisers of the Pueblo Conservancy District accordingly with respect to the following lands and interests therein, to-wit:

The motion was seconded by Mr. Nuckolls, the vote resulting as follows:

Ayes: Lee; Raber; Nuckolls.

Nays: none.

Thereupon the Chairman declared the motion passed.

The land or interests referred to in the above Resolution are contained in the pages inserted between pages 74 and 75.