

Rio Grande Citizens Forum
March 23, 2010
El Paso, TX
Tentative Meeting Notes*

Board Members in Attendance:

Louis Irwin
Mary Frances Keisling
John Hernandez
Doug Echlin
Conrad Keyes, Jr.
Philip Partridge

USIBWC Staff in Attendance:

Daniel Borunda
Edward Drusina
Carlos Peña
Gabriel Duran
Michael Tarabulski
Alex Moga
Gilbert Anaya
Sally Spener
Beto Arenas
Tony Solo
Eric Meza
Carl Fietze
Hayley Goodstein

Members of the Public in Attendance:

America Tirado
Joachim Schalk
Juan Garza, USCR
John Sparks, Malcolm Pirnie
Sandra Hernandez, Parkhill, Smith & Cooper
Doug Solon, Project Navigator
Gus Sanchez, Texas Department of Transportation
Alicia Fogs, Malcolm Pirnie
Jason Doil
Kirsten Arroyo
Sam Irrinki, Ch2MHILL
Pam Holguin
Sam Legate
Sarah Guernez, CDM
Ben Stewart, MWH
Bill Addington, Sierra Club
Matt Garcia, MWH

Lorenzo Arriaga, Bureau of Reclamation
David Morris
Karl Putnam
Debra Kelly
Jim Kelly
Neysa Hardin
Heather McMurray
Rob Dunlap
Yvonne Corry, Condy, Inc.
Connie Burtz
Chris Burtz
David M.
Robert Kimpel, Esperanza Farmers Association
Mark Kimpel, Esperanza Farmers Association
Esteban Quirarte
John Eyberg
Ernesto Ochoa, Ninyo & Moore

Welcome and Introductions

Citizens Forum Co-Chair Louis Irwin made welcoming remarks. He asked the board members and members of the audience to introduce themselves. He introduced Carlos Peña, the new Principal Engineer for the USIBWC, who is the new co-chair for the Rio Grande Citizens Forum.

Remarks by Commissioner Edward Drusina

Dr. Irwin introduced Commissioner Drusina for brief remarks. Commissioner Drusina commented on the \$220 million in Recovery Act funds appropriated to the USIBWC of which \$146 million has been obligated to date. The USIBWC is ahead of other departments in putting people back to work and improving the levee system. He mentioned other projects and challenges faced by the Commission including water quality concerns related to the New River at Calexico, California-Mexicali, Baja California, an aging sewage pipeline in Nogales, Arizona, and water shortages in the Colorado River Basin. For the Rio Grande region, the U.S. Section's recent activity has focused on rehabilitation of flood control levees.

Recovery Act Levee Construction Projects in El Paso and Doña Ana Counties

USIBWC Engineer Planner Gabriel Duran gave a presentation on this topic. He mentioned the Recovery Act funding for USIBWC levee rehabilitation and the need to meet FEMA criteria for the levee system. This is being accomplished by raising the levees to provide three feet of freeboard and by improving the levee slope with impermeable material.

Hatch area – USIBWC will be doing some improvements in the Hatch area along 14 miles of levee. He noted that in 2006, the Placitas Arroyo caused a flood in Hatch but this was considered interior drainage and is not the responsibility of the IBWC. He showed a map with an overview of the levee improvements in the Hatch area.

Mesilla Phase 1 (Shalem Bridge to Vado Bridge) - A construction contract has already been awarded for this levee segment. He showed slides of different levee segments and the expected dates of construction. He also showed a map of the contractor's haul route for the Mesilla work, which is in an isolated area near Mesilla Dam. For levees north of Mesilla Dam, the contractor will traverse an isolated area to the Picacho Bridge

Canutillo Phase 1 (Vado Bridge to Borderland Bridge) – This segment will be finished by February of 2011 or sooner. He showed slides of the map segments and construction schedules. He mentioned an area near Vado where the levee is too close to the railroad embankment so, instead of improving the levee, a mini floodwall will need to be built. Likewise, for the community of Canutillo, when the project was built in the 1930s, the Commission used the railroad embankment as a levee but FEMA doesn't allow this. So, for this 5-mile reach of the east levee at Canutillo, the USIBWC will be building a floodwall. We will design it with Recovery Act funds but will construct it with out-year funding. It is a complicated project due to the need to drain the water from the mountains into the river. This is known as Canutillo Phase 2, the east levee from Vinton Bridge to Borderland Bridge. A design contract will be in place by September 30, 2010, with construction to be performed as funding is appropriated in subsequent fiscal years.

Upper Valley/Sunland Park Area (Borderland Bridge to Rio Grande Power Plant) – USIBWC completed some of this work with in-house crews. The contractor will double check the work USIBWC did on both sides in the Country Club Bridge area and will complete the work by July 2011.

For the El Paso area, from downtown to downstream of the Ysleta-Zaragoza Bridge, the USIBWC is in the process of certifying that segment by April 2010. The Commission can certify the levee but FEMA accredits the levee.

For the Rio Grande Rectification Project, the part of the river that is on the boundary with Mexico, USIBWC is going to be improving the levees in the Fabens-Tornillo and Ft. Hancock areas. Design is 90-95% complete.

He showed photos of what construction will look like. He explained that special soils will be used that are designed to prevent seepage and to withstand moving waters. USIBWC is also increasing levee height to ensure 3 feet of freeboard. The public will see heavy equipment on top of the levee during construction. The long-term benefits of improvements to the flood control project are worth the minor inconvenience that will occur during construction.

Question – How long does it take for FEMA accreditation?

Duran – It's about a one-year process. The community has the opportunity to review the preliminary maps.

John Hernandez – At a previous meeting, some members of the community expressed concern about construction near Hatch and downstream from there.

Duran – For Hatch, the Commission was not responsible for that levee break that occurred in 2006 on the Placitas Arroyo. There was a concern expressed at the last Citizens Forum meeting about the area where the levee ends due to water coming on the back side of the levee and flooding land. USIBWC is currently looking into the situation there. There was also concern about construction traffic in the Mesilla area. The USIBWC will ensure that our contractor keeps vibration to a minimum.

Mary Frances Keisling – When the levees are certified by the IBWC then that certification goes to FEMA and then they accredit the levee. What is the time frame that it normally takes?

Duran – They mentioned that it can take six months to get the levee accredited.

Keisling – Is the 5-mile stretch in Canutillo scheduled to be finished in 2012?

Duran – We think we will have our design complete and issue a contract in 2012. But I cannot make any promises. It's complicated and the interior drainage needs to be worked out.

Keisling – Does the entire levee have to be finished before FEMA will accredit?

Duran - It is important to have continuous levee through the valley. We will not be able to do that for Canutillo due to the complexity in the area that requires a floodwall. But we will certify as much as we can. The puzzle has to all fit together before FEMA will accredit the entire system.

Philip Partridge – For the Sunland Park segment, Borderland Bridge to the Rio Grande Power Plant, what accommodations are there for the Sunland Park walking trail that's being built there from Sunland Park to Country Club Bridge.

Daniel Borunda, USIBWC – The USIBWC did coordinate with the City of Sunland Park. Where they are starting construction is where we have finished our levee work. We issued a permit for a walking trail to extend it from their existing trail upstream to about Frontera Road. The Commission has already completed the levee work in that reach.

Partridge – Are there going to be accommodations made for pedestrian access? You can get on at Sunland Park but there is a 2.5-mile spot where there is no access.

Duran – The levee project has no provisions for additional recreational access. If that's a concern for the community, it's something the Commission could look into.

Save the Valley Member – The river park will go from Sunland Park to Vinton but there is no access, no designated parking area. There is now a park in the Upper Valley but that is the only place where there is good parking with access to the river. There is also Public Service Board (PSB) land -- wellhead protection areas, that have been wired off near Strahan or on the west side from Farm Road up Bosque Road toward the Vinton Bridge. All of those would be good areas to establish more access and parking areas. The levees will be impacted by people driving on them due to lack of access.

Duran – At Picacho Bridge in Las Cruces there is a park with parking. The Commission does not have any right-of-way except for what supports our levee. That is more of a community or city issue but we are happy to work with the community. If you put something in writing and send it to us, we will provide you with a written response.

Carlos Peña, USIBWC – Unless it's a complicated issue, the Commission will respond within a couple of weeks.

Question – Who owns the land from the levee to the river?

Duran – That is owned by USIBWC.

Peña – We are working with the City of El Paso to put up signs at the Country Club Bridge directing people to Valley Creek Park so they know there is parking there for river park access.

Carl Fietze, USIBWC – For Canutillo Phase 2, will there be construction on the east side of the railroad track?

Duran – We don't have any right-of-way there and we only have authority to construct works within our right-of-way.

A Brief History and Update on the USIBWC's Claim against Asarco

Eric Meza, J.D., Paralegal Specialist, USIBWC, gave a presentation on this topic. The USIBWC Legal Office assisted the Department of Justice in representing the agency in the Asarco litigation.

The American Dam and American Canal Project were authorized in 1935. The site consists of a dam, canal, and field office. American Dam was built to divert waters pursuant to the Convention of 1906. The American Canal receives such waters and is about 12 miles long. The American Dam/Carlos Marin Field Office is the center for operation and maintenance of the American Dam and Canal project.

The Asarco smelter is situated directly across from the American Dam and American Canal site. In 2001, the USIBWC determined the need for renovation of the American Canal because it was outdated and in deteriorated condition. Studies showed that Asarco's operations had caused major arsenic and lead contamination of the soil and groundwater at the site. Contaminants released from the smokestacks had leached into the soil and groundwater. Asarco was determined to be liable for contamination of the site.

Asarco filed for bankruptcy in 2005. The USIBWC filed as a creditor based on its claim of contamination at the site. In 2007, a settlement agreement was reached between the Department of Justice and Asarco for payment of the USIBWC claim. Under the agreement, the USIBWC would receive \$19 million for clean-up while Asarco would be released of any past or future liability for contamination. On November 13, 2009, the court approved the Parent company's bankruptcy plan. The Plan was consummated on December 9, 2009, when the Parent transferred funds into various trusts set up for the creditors. The total amount paid to USIBWC was \$22,356,980, which includes the \$19 million settlement plus \$3,356,980 in interest. The total claim is still subject to administrative expenses of 3% by the Department of Justice. The overall payout for the Asarco case was approximately \$1.79 billion, covering clean-up at more than 80 sites. EPA stated the Asarco case to be the largest environmental bankruptcy in U.S. history.

USIBWC Plans for the Asarco Remediation

Daniel Borunda, Acting Chief, Environmental Management Division, USIBWC, gave a presentation on this topic. USIBWC will be doing remediation, which is the removal of pollution or contaminants from the environment. The main concerns were arsenic, a human carcinogen, and lead, which causes neurological damage, especially to small children. The risks to health from soil exposure are low but increase significantly when contamination moves into the water supply. There are various remediation methods – isolation (capping), immobilization (solidification/stabilization), toxicity reduction (alter the form of metal contaminants through chemical or biological process), physical separation (screening), and extraction (washing with extraction agents).

The two remediation projects we have before us include the American Dam/Carlos Marin Field Office and island, and the remediation for the American Canal, of which about a two-mile segment is being targeted. For the field office, we plan to remove about 4,000 cubic yards of soil. For the American Dam Island, we will remove

about 13,000 cubic yards of soil. The remediation method has not been determined but we are thinking of removing soil for two feet.

The next remediation project is the actual canal, which consists of three open channel segments totaling about two miles in length. It will require soil remediation and groundwater remediation along the construction footprint. For the upper part, the plan is to reconstruct the canal with two open channel segments and one closed conduit segment where it abuts the Asarco property. We anticipate three construction phases during the non-irrigation season (October to February). No work is anticipated on the closed conduits under Paisano Drive. The upper reach has more contamination. We will do pump and treat remediation for the groundwater.

Debbie Kelly – How long will it take to pump and treat the water?

Borunda – We need to work with our consulting firms to determine the treatment technology. We had anticipated cleaning 8,000 gallons/per minute. That's a substantial amount to treat. We would remove metals and put the clean water in the river. We need permits from the State and EPA.

Question – Will you be constructing your own treatment plant or using the city's plant?

Borunda – We will have our own water treatment system.

Question – How is this different from the Asarco remediation plan?

Borunda – The entire Asarco complex was put into a trust. We have been in communication with the Texas Commission on Environmental Quality, which is part of the trust arrangement, to discuss what we are doing. If we have to purchase and utilize a water treatment system, we will work with them so we can share the system. Their settlement was \$52 million to clean up the entire Asarco complex.

Conrad Keyes, Jr. – In 1992-1993, we bypassed the canal and used the river for a year when we had a problem with a diesel spill. Can we not do that so you could have a full year to do the work?

Borunda – That's a potential option but many details would have to be worked out if we were to affect the diversion for U.S. water users. The status of the old diversion that was used is unclear.

Philip Partridge – Above American Dam, there are signs posted to avoid body contact and no fishing. The Clean Rivers Program does bacteria studies. There are high bacteria counts at the state line, at Sunland Park, and at Tornillo. What enforcement is going on for the polluters?

Borunda – The Boundary Commission does not have regulatory authority to enforce Clean Water Act violations. The Texas Clean Rivers Program is managed by IBWC employees for the State of Texas and the Texas Commission on Environmental Quality (TCEQ) does have regulatory authority. In New Mexico, the Paso del Norte Watershed Council is working on source tracking to determine the sources of bacterial contamination.

Partridge – Monitoring is great but we need to do something about it.

Borunda – The Clean Rivers Program goes out regularly and data is on our web page and is used by TCEQ in their assessments.

A member of the public suggested that USIBWC establish a blog with a RSS feed with the water quality data and a map.

Debbie Kelly – We were told the railroad decided not to build at Asarco because it was going to cost over \$500 million to clean up there. Who is going to cover that cleanup? Where will you take the contaminated soil that will be removed?

Borunda – I cannot speak for the Asarco trust and the cleanup of the Asarco site. Our intent is to clean up our property to residential standards. We do not yet know where the contaminated soil will be disposed -- perhaps a hazardous waste site or a solid waste facility depending on the levels of contamination.

Jim Kelly – When you replace the concrete in the canal, what is the lifespan for that concrete?

Gabriel Duran, USIBWC – We design for 100 years.

Borunda – The upper segment is open, the middle reach is open now but our plan is to remove it, clean it up, and put a box culvert to be closed completely.

Juan Garza - Water users irrigate from the Franklin Canal. In 2006, there was a flood and effluent from Asarco entered the American Canal. You say you are interested in water quality but do not do enforcement. My understanding is that you have known of this contamination since 1980 and our water has been contaminated since then. What will you do to prevent stormwater from that area getting into the canal and damaging the water supply? What steps will you put in place to prevent Asarco materials from entering into the canal?

Borunda – That really is a city issue to control stormwater. The Asarco trust needs to control runoff from the site.

Garza – They are only going to mitigate on the property. But there is contamination that is not on their property. I request a written response.

Duran - We will be putting in a sealed system so it won't be leaching back into the canal. Our intent is to have a sealed system so only water from the Rio Grande will convey.

Question – Can you give me some sort of idea of the timeline?

Borunda – We are working to try to tackle the soil remediation at the field office and the island. We hope to have the design and planning completed this year. For the American Canal reach, we have a design in place. The settlement is for remediation only, not for construction. We need congressional appropriations for the actual canal construction work. We don't have money at this point for the actual physical construction work.

Question – So it will be years and we will continue to drink contaminated water. Is 2 feet enough? Asarco says the contaminants will continue to leach for 50 years.

Duran – In 2002, we had an engineering firm come and they did borings and determined where those levels were the greatest and we will follow their recommendations. We have scientific data to determine how much soil to remove.

Question - Is that report available to the public?

Commissioner Drusina – We will make it available. Any reports or information are available to the public to view.

Question – You mentioned sharing a water treatment plant. What is your relationship and how do you see it playing out?

Borunda – It's going to be a close relationship as we address similar issues.

Heather McMurray – IBWC workers have been desperately trying to get the attention of governmental agencies that need to fund them to remediate this canal. As far

back as 2001, they were asking for money because they realized the canal needed work, and you have been proactive for some time.

Bill Addington, Sierra Club – We appreciate your work and have used your studies to show the threat to the community and the canal water. In 2006, there was overflow from Asarco into the canal. We appreciate that your plan calls for sealing off the canal. The Asarco site has 400 acres and the cleanup settlement is for \$52 million. But we need \$500 million to adequately clean it up. A 97-acre site in Tacoma has had much more money for it. Our leaders in the local community and Governor Perry did not go after the money. This entire site is leaching dangerous metals into the Rio Grande, which they finally admit. We hope that you will continue to advocate as an agency of the federal government for proper remediation and to get more monies.

Carl Fietze, USIBWC – Does the Legal Office know who owns the property where the American Dam site is? That needs to be researched.

Eric Meza, USIBWC – It's USIBWC.

Jim Kelly – If it's a sealed system, why do you need to do the groundwater remediation?

Duran – We need to have a dry condition in order to construct. If you have to take that water out, you have to treat it.

Borunda – This year we will begin the work on the soil remediation at the field office and the island. The second part is the American Canal work.

Question – Why did you decide to remediate to residential rather than commercial levels? The Asarco site is going to be cleaned up to industrial levels.

Borunda – We pursued the stricter standard of cleanup for our property. We were an affected party from offsite contamination. The Texas Risk Reduction Regulations call for clean-up of those types of areas to meet residential standards. Also, we don't want the title of our property to have that stigma attached to it.

Public Comment

John Eyberg read a statement and provided a copy to USIBWC. He likes to take visitors to Monument #1. In his view, the U.S. side of the monument is neglected (as opposed to a park on the Mexican side) because, on the U.S. side, the monument site is simply used as a turnaround point for the Border Patrol. It is virtually impossible to reach Boundary Monument #1, he stated, because it is trespassing to follow the brick factory bridge or to get to the site by accessing McNutt Road. In July 2012, a vocational education conference will be held in El Paso with the participation of 460 educators. The host committee would like to show the visitors the region's historical resources and would like to have access to Boundary Monument #1.

Heather McMurray offered public comment. In August 2007 at a USIBWC meeting, Ms. McMurray spoke about Asarco. She read her comments into the record (see full text of her comments at <http://www.scribd.com/doc/13486399/20070822-Comments-Given-to-the-IBWC-at-the-River-Rectification-Comments-Session>). She spoke about the contamination that exists underneath the American Canal. She noted that canal repairs were made in 2006 without use of protective suits by the workers who performed the repairs. She expressed concern about the impact of contamination on the drinking water, which is conveyed through the American Canal. She also stated that

Asarco secretly and illegally incinerated toxic waste at the smelter for over a decade and she expressed concern that documentation confirming this was kept confidential by government agencies for years. She also noted the importance of knowing the contents of the hazardous waste that was burned there, some from military or plutonium sites. She stated that independent medical review is needed of USIBWC workers who, she said, are sick from Asarco contamination. She expressed pride in how well the IBWC levees worked during the 2006 flood. She urged honesty from public officials.

Board Discussion

Mary Frances Keisling, Save the Valley – We want a trail system for horses, an intermodal trail system for people on bicycles and horses in the Upper Valley. Many people have horses but are losing access. We applied for a bridal trail in a city park, which we now have in Valley Creek Park. We have trail rides going out from there to the river. We want to ensure that horseback riders and other river trail users maintain access. We want to get some land from the PSB for parking areas for people to use this trail. They would like horse-friendly signs on USIBWC property, like horse crossing signs, so they have a good place to ride. We need to make sure the IBWC is okay with the horses in the area.

Carlos Peña, USIBWC – If there is a specific project you would like for us to look at, please contact us and we will respond accordingly.

Commissioner Drusina – I have met with Mayor Cook to discuss access and we are looking at ways to work together and are talking about a parking area near Country Club Bridge but there is significant traffic there. Since there is a park nearby where you can access the river, we are talking about putting up signs to direct people to Valley Creek Park to park over there. We will need to look into the horse riding points and signage.

Suggested Future Agenda Items

Mary Frances Keisling -- Suggests discussing the bridal trail issues as a future agenda item.

John Hernandez, Elephant Butte Irrigation District – The area outside the levees belongs to private people yet when there is localized flooding, people mistakenly blame IBWC. For the next agenda, we should have the Doña Ana County Flood Control Office give insight on work with FEMA regarding interior drainage. The Elephant Butte Irrigation District is working to try to corral and use as much of that floodwater as possible. We could get all three of those agencies to talk about how we are trying to control floodwaters that originate outside the river.

Carlos Peña – At the next El Paso meeting, we could give an update on the Asarco activities of USIBWC.

Louis Irwin – The next meeting is June 15 in Las Cruces.

*Meeting notes are tentative and summarize in draft the contents and discussion of Citizens Forum Meetings. While these notes are intended to provide a general overview of Citizens Forum Meetings, they may not necessarily be accurate or complete, and may not be representative of USIBWC policy or positions.