

DISTRICT COURT, PUEBLO COUNTY, COLORADO Court address: 501 N. Elizabeth Street., Pueblo, CO 81003	
IN THE MATTER OF THE PUEBLO CONSERVANCY DISTRICT.	▲ COURT USE ONLY ▲
Donald J. Banner, #3026 Banner & Bower, P.C. Attorneys for the Pueblo Conservancy District 115 E. Riverwalk, Suite 400 Pueblo, CO 81003 (719) 544-5086	Case No. 67 CV 17664 Div. No. 405
MOTION FOR AUTHORITY REGARDING ASSESSMENTS	

The Directors of the Pueblo Conservancy District by its attorneys Banner & Bower, P.C., pursuant to CRS 37-5-107 (1) move this Court for an Order authorizing funding flexibility for the Pueblo Conservancy District and state as follows:

1. **BACKGROUND:** The Pueblo Conservancy District (the "District") was organized under the Conservancy Law of Colorado C.R.S. 37-1-101 through 37-8-101 in response to the 1921 flood in Pueblo County.

After proper notice and a hearing, the District's boundaries were expanded by Court Order on January 26, 2013 to include all of Pueblo County. Simultaneously, the Court adopted in its Order a new method to determine the Maintenance Fund Assessments to be made by the District. The Court made Findings of Fact including:

- a. Properties outside of the flood plain as determined by FEMA would benefit from improvements made to the levee by the levee protecting improvements in the Downtown Area such as the 911 Call Center, Pueblo County Sheriff's Department, Pueblo City-County Health Department, the City of Pueblo Municipal Justice Center, the Pueblo County new Judicial Complex, and other government owned and controlled structures and improvements from being inundated to the detriment of all residents of Pueblo County.

b. A three-tier method of assessment wherein properties within the flood plain would be assessed at a greater rate than properties outside the flood plain is fair and reasonable and in compliance with the Conservancy Law of Colorado.

c. Properties within the flood plain (Tier III) were assessed at a rate of \$105.82 per \$100,000.00 of actual value of property. Properties within the City of Pueblo, but outside the flood plain (Tier II) were assessed at the rate of \$9.87 per \$100,000.00 of actual value. Properties within the County of Pueblo, but outside of the flood plain and outside of the City of Pueblo limits (Tier I), were assessed at the rate of \$6.81 per \$100,000.00 of actual value.

d. The Maintenance Fund Assessment of the Pueblo Conservancy District has been determined by the Colorado Supreme Court to be a fee and not a tax. The Court confirmed that the Maintenance Fund Assessment is not a tax. The Pueblo Conservancy District has the power to levy a tax, but has chosen alternatively to levy a fee in the form of the Maintenance Fund Assessment.

e. The methodology proposed to be used by the Pueblo Conservancy District to impose a Maintenance Fund Assessment on all properties within Pueblo County, excluding federally owned and controlled properties, is fair and equitable and in compliance with the Colorado Conservancy Law.

f. The actions of the Board of Directors of the Pueblo Conservancy District in determining and imposing a Maintenance Fund Assessment are in accordance with the Conservancy Law of Colorado.

2. **LEGISLATIVE PROVISIONS:** CRS 37-5-107 provides a Maintenance Fund Assessment to allow the District to maintain, operate, and preserve the District's improvements. On or before the first Monday of November of each year the board of directors may levy an assessment on property within the District which assessment is to be known as the "Maintenance Fund Assessment." The Maintenance Fund Assessment was collected in calendar years 2013, 2014, 2015 and 2016. To the date of this Motion, the Maintenance Fund Assessment in 2016 has yielded \$1,090,990.

3. **NEED FOR FLEXIBILITY OF FUNDING:** There is an immediate need to comply with Federal regulations to certify the District's levee through the City of Pueblo. Phases I and II of the levee repair have been completed including making necessary repairs to the Wildhorse Levee. Phase III is substantially complete. The District discovered unforeseeable conditions in Phase I of the repair process. The most significant of which was the need for sheet piling to

de-water the site and the discovery that the footing of the levee in certain locations was 6-8 feet deeper than anticipated. These two factors created significant additional costs from those originally anticipated. To fund Phases I, II and III of the levee repair, the District borrowed \$10,000,000 from a local bank. Completing the levee repair to enable it to be certified to FEMA requirements is estimated by independent engineers to have a cost of approximately \$12,000,000 bringing the total project cost to \$22,000,000.

The current annual income from the Maintenance Fund Assessment is approximately \$1,100,000. This is insufficient to pay a debt of \$22,000,000 and annual operating costs of the District in the amount of \$150,000. New debt of \$22,000,000 would retire the existing \$10,000,000 of debt.

The remaining \$12,000,000 would be used to finish the levee repairs. The District wishes to take advantage of temporarily low interest rates that currently exist. The District needs to demonstrate to potential lenders or bond issuers the District has the legal authority to increase the Maintenance Fund Assessment to pay debt service.

The exact amount needed to retire the District's debt will be determined by the interest rate required to be paid and the term over which the debt is being repaid. The Board has determined to use a 30 year term to retire the debt. As an example of the District's need to increase the assessment, a \$22,000,000 debt repaid over 30 years at 3.00% interest requires an annual debt service payment of \$1,122,424 per year. When added to the annual operating cost to operate the District, the District would need \$1,272,424 per year. This would require an increase in the existing Maintenance Fund Assessment of approximately 15.7%.

Another example is \$22,000,000 debt repaid over 30 years at 5.00% interest requires an annual debt service payment of \$1,431,132 per year. When added to the annual operating cost, the District would need \$1,581,132. This would require an increase in the existing Maintenance Fund Assessment of approximately 43.67%. This is a greater percentage than the District is requesting. The interest rate cannot be determined without exploring lending and bond markets to see what rates are available. However the District cannot contact the lending and bond markets without being able to confirm that the District has the legal authority to increase the Maintenance Fund Assessment and thus, repay the debt.

It is urgent to establish the Board of Directors authority to increase the Maintenance Fund Assessment to fund the required repairs, by a percentage not to exceed 35%. The Federal Reserve Board has twice increased the rate of interest in the last four months and other increases are anticipated in 2017.

4. **REQUEST FOR AUTHORITY:** The Directors of the District believe it is in the best interest for the health, welfare and safety of the Pueblo County

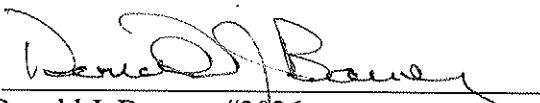
community for the Court authorize the Directors to have the authority to increase each of the three existing tiers of the Maintenance Fund Assessments from time to time as may be needed by not more than 35% of the existing tier amounts. The Directors further request the Court to authorize the Directors to decrease each of the three tiers of the Maintenance Fund Assessments by any percentage at any time when there is no longer a need for additional funds. This authority will allow the District to properly budget for all necessary construction expenses. Without this authority, the Directors will not be able to comply with the FEMA requirements to certify the levee to prevent the downtown area of the City of Pueblo from being declared to be in a Flood Zone for FEMA mapping purposes. Even adopting an increase of 35% of the existing levy amounts, the cost to all property owners in all three tiers would be significantly less than the cost of flood insurance.

WHEREFORE, the District requests the Court to enter an Order to authorize the Directors to a) increase the existing Maintenance Fund Assessment by not more than 35% and to b) decrease the Maintenance Fund Assessment by any percentage when the Directors determine such action is appropriate.

The undersigned further requests the Court to enter an Order setting this Motion for public hearing and providing Notice of a hearing on this Motion be published in the Colorado Tribune once a week for three consecutive weeks and a copy of the Motion and Proposed Order be posted with the Notice in those places where Notice of meetings of the Pueblo Conservancy District are normally posted, one of which is the Pueblo County Courthouse.

RESPECTFULLY SUBMITTED this 22nd day of March, 2017.

BANNER & BOWER, P.C.

By: 

Donald J. Banner, #3026

Attorneys for the Pueblo Conservancy District