

HISTORY AND STATUS OF THE PUEBLO CONSERVANCY DISTRICT as of June, 2014

The Pueblo Conservancy District (PCD) was organized under the Conservancy Law of Colorado C.R.S. 37-1-101 through 37-8-101 in response to the 1921 flood. The law was originally passed in 1921 (see Chapter CLXXIV of the Compiled Laws of Colorado of 1921, Subdivision III, entitled "Conservancy Districts" beginning with Section 9515 and ending with Section 9580), in direct response to the flood which ravaged Pueblo in 1921.

The primary function of PCD is the continuing responsibility related to flood protection of its designated boundaries. The Statutes set forth the specific purposes of PCD as they related to floods and the methods of financing construction, maintenance and operations. In addition to this flood control purpose the Colorado Legislature amended the powers of the Conservancy Districts by expanding the purposes to include conservation of soils and other surface resources; studying correcting and controlling natural and artificial pollution of surface and ground waters; encouraging and participating in the development of parks and recreational facilities within its boundaries. This amendment became effective April 7, 1994.

The District was created by decree of the Pueblo District Court on September 14, 1922 following hearing upon Petitions of the County of Pueblo, City of Pueblo, two school districts, two water districts and private citizens for organization of the District under the Act. Three directors were appointed by the Court under an Order of September 30, 1922 and the first meeting of the Board of Directors was held October 7, 1922 to organize the board. At a meeting of the directors on November 7, 1922, a contract with Dayton-Morgan Engineering Company as Chief Engineer to develop a plan for flood protection was approved by the directors. Several plans were presented. On March 10, 1923, an official plan was announced being described as Plan R: the Bluff Channel Plan. A Notice of Hearing was ordered published.

On June 2, 1923, the official plan in five parts was adopted by the Board. Notice of the adoption of the plan was ordered published and was generally described as a barrier at Rock Canyon west of the City of Pueblo, and a channel along the bluff south of Union Depot from above the Fourth Street Bridge in the City of Pueblo to a connection with the Arkansas River below Santa Fe Avenue. The stated capacity of the channel was to be approximately 125,000 cubic feet per second and the approximate cost was estimated at \$4,000,000.00. Bonds were issued to fund the constructed improvements and were paid in full in 1955.

The District as organized is situate wholly within Pueblo County, Colorado. It originally embraced 7,651.6 acres or 11.95 square miles of territory. It is in the form of an irregular narrow strip averaging approximately one mile in width by eleven miles in length following the course of the Arkansas River in a general southeasterly direction from a point 9 1/2 miles west of the City limits as they existed in 1922 through the heart of the City of Pueblo to the eastern City limits as they existed in 1922. 1.28 square miles was included in the boundaries of the City of Pueblo itself as the same existed in 1922. This property was in the heart of the business district of Pueblo and included at that time 46.3% of the total assessed valuation within the City of Pueblo (as compared to only 11.28% of the total area of the City of Pueblo).

When the directors of the District assessed benefits under the proposed Plan, 51.1% of the total taxes for the Pueblo Conservancy project were levied against six municipal corporations: The City of Pueblo (45%), the County of Pueblo (5.1%), the Northside Water Works (0.56%), the Southside Water Works (0.15%), School District No. 1 (0.26%) and School District No. 20 (0.03%). At present, the Northside Water Works and the Southside Waters Works have been consolidated in the Board of Water Works in the City of Pueblo and old School Districts No. 1 and 20 have been consolidated in School District No. 60. 21.064% of the total taxes were levied against railroads and public utilities and 27.3% were levied against private owners of real estate. It is significant to note that the City agreed to such assessment and the right of the District to make such an assessment was upheld by the Colorado Supreme Court in a decision hereafter referred to.

The decree of the Pueblo District Court establishing the District and the constitutionality of the Conservancy Act was upheld by a decision of the Colorado Supreme Court rendered February 27, 1923, known as People ex rel Setters v. Lee, 598, 213 Pac. 513 (1923). The Court upheld the right of the legislature to create a quasi-municipal corporation and to provide for the manner of its administration. Significantly the Court said, Page 606, “The governing body of the district is the Board of Directors. The act contemplates and provides for the permanent existence of that Board. It is as much the governing body of the district as the Moffat Tunnel Commission is of the Moffat Tunnel Improvement District, and is as permanent.” One of the major attacks on the act was that the Board’s power to appraise the benefits and damages accruing to cities, towns, counties and other political entities, and to assess taxes accordingly violated Section 8, Article XI of the Colorado Constitution. The Court rejected this contention and at Page 612, stated as follows: “Such taxation, and the indebtedness involved, is not such taxation and indebtedness as is contemplated by Section 8, Article XI of the Constitution, above quoted. That Section applies only to taxation and indebtedness incurred for the governmental purposes of the City . . . here the tax is for the purpose of paying an assessment to carry out the purposes, not of the City, but of the Conservancy District.” (Emphasis supplied)

For years, PCD had relied on its reserve and investments for operations and maintenance as well as for additional construction and participation in the added purposes projects development with the City of Pueblo, Colorado Division of Wildlife, the Army Corps of Engineers and the Historic Arkansas River Project (HARP).

Prior to 2009, PCD received no public financing since terminating its mill levy in 1955. For years, investment policies allowed substantial growth in reserves thus eliminating the need for further public taxes or assessments. In approximately 1990, the Colorado Legislature established investment practices for government bodies including PCD. Since that time PCD has been restricted to investments that are collateralized or statutorily authorized. When investment returns fell, expenses of PCD exceeded income resulting in diminishing reserves for maintenance. In 2008, 2009 and 2010 PCD certified to the Treasurer of Pueblo County a maintenance fund assessment on all lands that were within the Pueblo Conservancy District Boundary. These assessments were collected in 2009, 2010 and 2011 respectively. PCD did not make a maintenance fund assessment for 2011, collectable in 2012. On October 29, 2012 the Directors notified the Treasurer of Pueblo County that an Assessment would be made for the

calendar year 2012 payable in arrears in 2013. A Maintenance Fund Assessment has been made each year since that time, primarily for the purpose of complying with newly adopted regulations requiring the certification of the Pueblo Levee to avoid much of the downtown area of Pueblo being considered to be located in a flood zone.

The Official Plan of the Pueblo Conservancy District was amended by Court Order on May 29, 2007 and a Notice of the Amended Official Plan was recorded in the office of the recorder of Pueblo County on August 1, 2007 under reception number 1738292. The Amended Official Plan is as follows:

1. To continue its operations with the assistance of a single staff person who is both the Engineer and Administrator of PCD. This contract of services shall pay a monthly fee for administrative services, routine examination of district properties and its levies; attendance at meetings of the board and reasonable time given to meetings with other public entities with whom PCD maintains relationships. Specific engineering projects, consultations or extended meetings shall be subject to additional billing as agreed to by the board of PCD.
2. To continue the necessary examination and maintenance of the concrete flood protection levee from 11th Street in Pueblo to Runyon Lake; the earthen levee along Wildhorse Creek and to evaluate every three years the need for any additional flood protection requirements within the boundaries of PCD. The maintenance includes but is not limited to levee stability; erosion repair and prevention; levee seam caulking; water gate maintenance; removal of debris, vegetation and blockage; maintenance road repairs and property maintenance within PCD boundaries.
3. The PCD shall as soon as possible initiate maintenance repairs to the concrete levee between the diversion dam located below the Fourth St. Bridge and the Santa Fe Bridge at an estimated cost of \$300,000.00. PCD shall seek assistance from the Army Corps of Engineers and any alternative funding possible to complete the maintenance necessary to insure levee stability and the ability of the flood protection construction to be certified in accordance with Federal Emergency Management Agency (FEMA) requirements.
4. The PCD shall over a period of five years and thereafter as needed re-caulk the seams of the concrete levee and establish maintenance plans to prevent erosion on the South slope of the levee between Dutch Clark stadium and the Santa Fe Railroad Bridge with annual costs estimated at \$60,000.00.
5. The PCD shall over a period of ten years initiate maintenance improvements on the unimproved portions of the levee slopes through brush removal, erosion control and water diversions with annual costs estimated at \$15,000.00.

6. The PCD shall initiate annual maintenance of the earthen levee to include drainage, brush, weed and debris removal with annual costs estimated at \$8,000.00. This maintenance on the earthen levee is necessary to insure eligibility for certification in accordance with FEMA requirements.
7. The PCD shall cooperate with the Historic Arkansas River Project (HARP) in the development of parks and recreational facilities which lie within the PCD District, with annual costs estimated at \$10,000.00 and special project costs funded as is appropriate from time to time.
8. The PCD will assist in the maintenance of the public access and use of Runyon Lake and the property of the District in proximity to the Lake and Runyon Field.
9. The PCD will assist in the maintenance of the public access and use of the Arkansas River and Thomas Phelps Creek for fishing, kayaking and hiking.
10. PCD will not purchase additional lands or property without this Court's prior consent.
11. The PCD will continue to budget for routine operational expenses in addition to necessary maintenance, repairs, insurance, directors' fees, cleaning and weeding operations, brush removal and protection of assets currently part of the flood protection system of PCD and the recreational enhancements contained within the boundaries of PCD.

In November of 2011 the PCD and the City of Pueblo filed a joint Motion to the supervising District Court to appoint three commissioners as a Board of Appraisers to appraise all benefits to land within the District. The District Court entered an Order on December 19, 2011 appointing the existing Board of Directors as a Board of Appraisers. The PCD then issued a Request for Proposal (RFP) soliciting engineers and others to submit proposals for the purpose of determining a process that provided for a fair allocation of the Maintenance Fund Assessment to be made pursuant to statute. The RFP required those responding to become familiar with the appraisal methodology set forth in CRS § 37-4-102 and then developing an appropriate assessment rate for each parcel or entity in the District. The RFP further required those submitting responding to determine if there was land within Pueblo County but not currently within the PCD boundaries that in benefitted by the PCD and to appraise the benefits to such land in accordance with the statute.

On March 23, 2012 the law firm of Altman, Keilbach, Lytle, Parlapiano & Ware, P.C., Northstar Engineering and Surveying, Inc., Arrowhead Real Estate Appraisals, Inc. and Garren Ross & Dinardo, Inc. (hereinafter referred to as the "ANAG submitted a joint proposal in response to the RFP. After review of the proposal, on April 12, 2012 an Agreement for Services was entered into between PCD and ANAG wherein ANAG would proceed with Phase I of the project. In addition to the matters set forth in the RFP,

the Agreement for Services asked ANAG to make a determination as to whether it was in the best interest of the public to continue the existence of the PCD. On June 27, 2012 ANAG presented a Phase I Report to the Board of Appraisers (and District Directors) outlining options for a fair and equitable maintenance fund assessment and recommending that the assessment be applied to all property in the County, City and flood plain.

On July 25, 2012 the District retained the ANAG group to proceed with developing a final report that would include the details of the proposed maintenance fund assessment. On September 25, 2012 the ANAG group submitted the "Pueblo Conservancy District Assessment Project Development of Assessment-Phase II Final Report".

The Federal Emergency Management Association (FEMA) is requiring the levee to be certified by an appropriate, licensed engineer. Failure to certify the levee could result in the entire downtown area of the City of Pueblo to be designated as being within a flood zone. The most likely consequence of that designation by FEMA would be that properties within the flood zone would be required to maintain flood plain insurance on their property. The ANAG group analyzed the cost of a proposed maintenance fund assessment compared to the cost of flood zone insurance. The cost of flood zone insurance is significantly higher than the proposed maintenance fund assessment. Details concerning this are found in Appendix M of the Phase II Final Report.

After notice to the public and hearing, the boundary of the District was expanded to embrace the entire County of Pueblo. The Court Order approving expansion of the boundary was issued on January 26, 2013. . In 2014 HB 14-1184 was passed by the Colorado legislature and signed into law by the Governor. This law expanded the number of Directors of the District from three Directors, each appointed by the District Court, to nine Directors some appointed by the City of Pueblo and some appointed by the County of Pueblo.