

DISTRICT COURT, PUEBLO COUNTY, COLORADO Court address: 320 W. 10th St., Pueblo, CO 81003 Phone number: (719) 583-7125 (Information)	RECEIVED IN THE OFFICE OF THE CLERK OF THE PUEBLO COMBINED COURT MAY - 4 2007 PUEBLO COUNTY, COLORADO ▲ COURT USE ONLY ▲
IN THE MATTER OF THE PUEBLO CONSERVANCY DISTRICT.	
Donald J. Banner, #3026 Banner & Bower, P.C. Attorneys for the Pueblo Conservancy District 503 N. Main St., Suite 221 Pueblo, CO 81003 (719) 544-5086	Case No. 17664 Div. No. B
MOTION FOR APPROVAL OF AMENDED OFFICIAL PLAN FOR THE PUEBLO CONSERVANCY DISTRICT	

COME NOW, the Directors of the District by and through their attorney Banner & Bower, P.C., pursuant to CRS 37-4-113 and hereby moves this Court for an Order approving a new Official Plan for the Pueblo Conservancy District and **STATE AS FOLLOWS:**

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 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.

For years PCD has 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 Wildlife and the

Army Corps of Engineers.

PCD has 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.

The 1923 Official Plan of the PCD had been sufficient to direct the policies and actions of PCD until now. With the additional purposes authorized by statute, substantial maintenance needs and new federal flood control regulations requiring Certification of the Levy it is necessary that PCD adopt an **Amended Official Plan**, 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 PDC 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.

The undersigned submits the following additional historical information which was originally presented to the Directors of the District by its then acting attorney on August 17, 1977:

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 limits of the County 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 original Official 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, 72 Colo. 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)

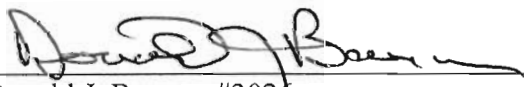
From the historical Court records filed in this case, it appears that the original appraisal of benefits was valued at \$9,496,910.00 (Court Order of 9/22/1921).

The Directors of the Pueblo Conservancy District believe that it is in the public's best interest for the health, welfare and safety of the Pueblo County community that the new Official Plan be adopted as presented herein.

WHEREFORE, the undersigned prays that this Court would enter its Order approving the Amended Official Plan of the Pueblo Conservancy District as set forth herein.

RESPECTFULLY SUBMITTED this 3rd day of May, 2007.

BANNER & BOWER, P.C.

By: 
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Attorneys for the Pueblo Conservancy District