

DISTRICT COURT, PUEBLO COUNTY, COLORADO 320 W. 10th Street Pueblo, CO 81003	EFILED Document – District Court 1967CV17664 CO Pueblo County District Court 10th JD Filing Date: Jan 26 2013 09:15AM MST Filing ID: 49141276 Review Clerk: N/A ▲ COURT USE ONLY ▲
IN THE MATTER OF: THE PUEBLO CONSERVANCY DISTRICT	Case No. 67 CV 17664 Division: B - Courtroom 214
ORDER ON EXPANSION OF DISTRICT BOUNDARY	

THIS MATTER came before the Court for a hearing on January 9, 2013. The matter under consideration is a Notice filed by the Pueblo Conservancy District to expand the boundaries of the District. Notice was given by publication in *The Colorado Tribune* with three consecutive insertions, the first of which was October 27, 2012 and the last of which was November 10, 2012.

Present in Court were Donald J. Banner with the firm of Banner & Bower, P.C. representing the Pueblo Conservancy District and Carla Sikes representing the City of Pueblo.

The Court notes that at the initial return date on November 19, 2012, the only party present in Court in opposition to proceeding at that time was Thomas J. Mullans representing the Pueblo West Metropolitan District. County Attorney, Daniel Kogovsek, was present as was Assistant City Attorney, Carla Sikes. Pueblo West Metropolitan District indicated that it wanted additional time within which it may file an objection or other pleading in this matter. This Court set the matter for hearing on January 9, 2013. Pueblo West Metropolitan District did file an Objection on January 4th, 2013 and Pueblo Conservancy District filed a Response on January 7th, 2013. Neither Pueblo West Metropolitan District nor the County of Pueblo appeared on January 9 for the hearing.

The Court heard testimony from Sean Tapia, former Director of the Pueblo Conservancy District; Rick Kidd, Professional Engineer and District Engineer for the Pueblo Conservancy District; Paul Willumstad, current Director of the Pueblo Conservancy District; Kim Kock of NorthStar Engineering, Professional Engineer and one of the four team members hired by the Pueblo Conservancy District to make a recommendation for a mechanism to fairly and equitably apportion a Maintenance Fund Assessment; and Attorney David Lytle with the firm of Altman, Keilbach, Lytle, Parlapiano & Ware, P.C., another member of the team that made a recommendation concerning the Maintenance Fund Assessment.

THE COURT ADMITTED THE FOLLOWING EXHIBITS INTO EVIDENCE:

- Exhibit A:** History and status of the Pueblo Conservancy District
Exhibit B: Current Boundary Map of the Pueblo Conservancy District
Exhibit C: Phase II Final Report dated September 25, 2012 of the Pueblo Conservancy District Assessment Project
Exhibit D: A Maintenance Fund record, including the names of the owners of property to which benefits were appraised, a description of the property appraised and assessed, and the total Maintenance Fund Assessment levied against each item of property in the proposed expanded boundaries of the District

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT:

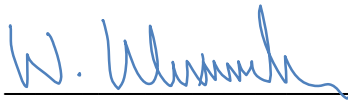
1. This Court has jurisdiction over the matter.
2. Proper notice was given concerning the hearing on the Notice of the Pueblo Conservancy District to expand the boundaries of the District.
3. The Board of Directors of the Pueblo Conservancy District examined different methodologies for imposing a Maintenance Fund Assessment and determined that the most proper methodology to use was that contained in the Phase II Final Report of September 25, 2012, as set forth in Exhibit "C".
4. In order to protect properties in the Downtown Area of the City of Pueblo from being included within a Federal Emergency Management Agency (FEMA) Flood Plain Map, the Pueblo Conservancy District needs to make repairs on the levee through Pueblo and needs to have the levee certified to FEMA standards.
5. Expansion of the Pueblo Conservancy District to include all of Pueblo County, excluding owned by the United States of America or any of its agencies or departments would provide a benefit to the public and to the District by a) enabling the Pueblo Conservancy District to participate with other entities in Pueblo County on recreational developments; b) enabling the Pueblo Conservancy District to work with other districts, ditch companies and jurisdictions to address flood and erosion control problems within Pueblo County; and c) expanding the number of qualified applicants to serve on the Board of Directors of the Pueblo Conservancy District.
6. 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.

7. The 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.
8. Properties within the flood plain will be assessed at a rate of \$105.82 per \$100,000.00 of actual value of property. Property within the City of Pueblo, but outside the flood plain will be 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, will be assessed at the rate of \$6.81 per \$100,000.00 of actual value.
9. 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. This Court confirms 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.
10. 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.
11. The Maintenance Fund Assessment Record has been set forth on Exhibit D.
12. 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.

CONCLUSIONS OF LAW AND ORDER:

The boundaries of the Pueblo Conservancy District be and are hereby expanded to include all lands within Pueblo County excluding all lands owned by the United States of America or any of its agencies or departments.

DONE BY THE COURT THIS 26TH DAY OF JANUARY, 2013


WILLIAM D. ALEXANDER
DISTRICT JUDGE