



**BOARD OF TRUSTEES REGULAR MEETING MINUTES  
NOVEMBER 10, 2021, 6:30 PM ZOOM**

Trustees Present: John Ott, Tony Rizzo, Griff Foxley, Sharon Caulfield (Clay Stranger excused)  
Manager Present: Keith Edquist

Homeowners Present for some or all of the meeting: Stephen Whitelande, Gayle Morgan, Jill Sabella, Helene Slansky, Tim Lindholm, Pete Voorhees. Also present were new residents Chad Clark, as well as Ben Howard and his Steven Dunn.

**Guest Presenter: Bill Blakeslee, District 38 Water Commissioner**

**1. Quorum and Minutes**

- Four Trustees were present, constituting a quorum
- The Minutes of the Board's meeting of October 13, 2021 were approved unanimously and will be uploaded to the LECVHOA website

**2. Public Comment and Board Reports**

Tim Lindholm requested that the Board reconsider the trail location at the bottom of Alexander Avenue, which is currently situated directly next to his property line.

- 3. Consent Agenda Reports.** All consent agenda items should be dated on the date of submission and identified by the report author. Consent agenda items will be loaded onto the website along with meeting minutes.

Sharon Caulfield moved, and Griff Foxley seconded, acceptance of the following consent agenda reports. The Board approved unanimously.

- Water System Report
- Paving Project report
- Topics for Covenant and policy updates
- Septic system information for residents
- Split of costs on recent water service line break at Roberts home
- Ponds Update
- Good Neighbor Policy update adoption re drones

- 4. Consent Agenda Items removed for further discussion:** None

**5. ACA reports.**

- **The Board reiterated how important it is for residents to follow the Architectural Control Authority process outlined in the subdivision Covenants and other documents. The ACA protects our interests in our most important shared resources: water, viewsheds, infrastructure, property values, and good neighbor relations. It is not ok to go ahead with a project without ACA involvement. We know that it may feel like an imposition to seek ACA approval for actions on your property, but with ACA approval, hard feelings in the neighborhood may be warded off, relevant information can be identified, and good ideas can come through the consultation. The ACA also works in tandem with the Pitkin County regulations that govern our properties.**
- Site Plan Review for 82 Haystack: Jackie Kaplan and Chad Clark. All requested materials have been submitted, and all neighbor comments were positive. The 2' property line setback variance for the attached shed was not the subject of neighbor objection and is therefore approved. The plans for the 2800 ft/2 house and 700 ft/2 garage were approved. The homeowners will come back at a



later date with fencing and irrigation proposals.

- **Shed at 35 Katydid.** The shed that was approved by the ACA for 35 Katydid was not installed in the location identified in the approved drawings. The shed has been moved to a new locations that was acceptable to all neighbors. Because the style of the shed was previously approved and the neighbors approved the new location, President Tony Rizzo approved the new location between meetings. The board ratified that approval.
- **Home at 13 Alexander.** New resident Ben Howard and his architect Steven Dunn presented the plans for the new home to be built at 13 Alexander. Generally the plans for the home are well presented and well received as a design. The homeowner was reminded that a properly -sized culvert must be placed under the driveway connection to Alexander Ave. There is also a culvert at the road that is likely part of the LEC Ditch: the homeowner will check with LEC ditch manager Dan Oppenheimer. All ditches must be maintained by the homeowner. There is a plan for an irrigation water storage tank on the property line shared with Jeff Weiss; the homeowner and Mr. Weiss were asked to have a formal easement prepared and filed to describe their mutual rights and responsibilities, and to provide a copy to LECVHOA for the Association's records. Caulfield moved, and Rizzo seconded, that once these conditions are met, the project will be deemed approved: the ACA voted unanimously in favor.

6. **Old Business.**

- Meeting with Water Commissioner Bill Blakeslee from District 38. See the recorded question and answer period from the Board meeting at <https://www.youtube.com/watch?v=HYjuwxST9x4> and notes of this section of the meeting at Attachments A and B. In addition, The Board asked certain questions concerning the LECVHOA adjudicated water augmentation plan, e.g. concerning the management of the LECVHOA water supply well field. Mr. Blakeslee said he would check with the augmentation plan manager in his office to answer these questions.

7. **New Business.**

- George Johnson has provided the Board with a copy of a Water System Handbook that he prepared some years ago. It appears to contain very helpful information for residents. Some points of discussion are out of date. The committee that will meet to consider covenant/policy updates will review the handbook with George and others to create a new edition, and it will be posted on the LECVHOA website after board approval.

8. **Financial Reports** were reviewed and accepted by unanimous vote. The board recognized with gratitude that a few residents whose accounts were delinquent have now brought the accounts to current status.

9. **Adjourn.** The meeting was adjourned at approximately 8:50 pm.

The next meeting will be held on December 8, 2021 at 6:30 pm by Zoom.



Attachment A to Meeting Minutes of LECVHOA Board for November 10, 2021:  
Caulfield Unofficial Notes of Meeting with Bill Blakeslee, Water Commissioner for District 38.  
To view the conversation in full at the recorded Board Meeting, see  
<https://www.youtube.com/watch?v=HYjuwxST9x4>

Key information that Mr. Blakeslee offered includes:

- There are two ditches that flow through the LECV: Little Elk Creek Ditch (LEC) and Borum-White Ditch (B-W). Most of the water that flows in these ditches comes from Capitol Creek. The historical Little Elk Creek, which ran through the valley before the ditches were established, was a very small waterway that has been subsumed into the two ditches. It ran through the lowest part of the valley, generally in the center of the LECV. The groundwater table in the subdivision is quite close to the surface because the Mancos Shale, which lies underneath the surface gravel layer at a range of ten feet or so, is essentially impermeable. Therefore, the groundwater is moving downhill through the LEC valley gravels on top of this impermeable geologic layer, going toward Capitol Creek and eventually Snowmass Creek.
- LECVHOA is the owner of the water rights in these ditches, not individual homeowners. Ditch water rights are adjudicated by Colorado water court order to establish ownership and the extent of the rights, i.e. how much water may be used and for what purposes. LECVHOA purchased water rights adjudicated in the 1880s to establish the subdivision supply for community potable water and irrigation purposes.
- There are other upstream and downstream water rights owners that receive water from the LEC ditch and the B-W ditch. Ditch companies manage the ditch as a whole, notably as to the amount of water sent through the headgates from the natural creeks (Capitol Creek, in our case) into the ditches at any point in time. George Johnson has been the ditch company manager for the B-W ditch, while Dan Oppenheimer has been the ditch company manager for the LEC ditch.
- Once the ditches cross into the LECVHOA boundaries, ditch management is the responsibility of the water rights owner, LECVHOA. Homeowners may not change laterals without LECVHOA approval.
- The Army Corps of Engineers is responsible for, and may require permits for, changes to a “riparian waterway.” A riparian waterway is, basically, a creek or river bed. But there is an agricultural exemption to the Army Corps’ authority, and the LEC and B-W ditches fit that agricultural exemption. Therefore, no Corps of Engineers permits are required for ditch changes that are undertaken by the ditch companies to fulfill their agricultural activities.
- It is permissible for a water rights owner like LECVHOA to shut down the water in a ditch to make ditch repairs.
- Water rights may be forfeited if there are ten years or more of abandoned usage.
- Most homeowners’ ponds within the LECVHOA are not adjudicated by a court for homeowner use, and that is ok so long as they are used as LECVHOA-approved agricultural “irrigation control structures.” To be an irrigation control structure, the water must turn over within a 72 hour period – in practice, this means they should drain at the end of the irrigation season. If held through the rest of the year, then there is too much evaporation of the water that is supposed to flow downstream, and this impacts the court-adjudicated water delivery system. Lined ponds within the LECVHOA should be pumped out after irrigation season to avoid this evapotranspiration – this water management may require pond liner ballast to avoid damage from groundwater ‘float’ of the liner.
- County approval of homeowner ponds does not overcome the adjudicated water rights control of the State. If a homeowner wishes to impound water for purposes other than irrigation rights consistent with LECVHOA ownership, then the homeowner must have a court-adjudicated water right.
- On the other hand, the LECVHOA has a court-adjudicated decree to operate an “augmentation system” that allows the full calendar year use of the ponds that are used to drain into the groundwater to fill the wells used for the LECVHOA community water supply. Even those augmentation ponds should go down some after irrigation season to reflect reduced ditch water supply, but they need not drain.



Attachment B to Meeting Minutes of LECVHOA Board for November 10, 2021:  
Rizzo Unofficial Notes of Meeting with Bill Blakeslee, Water Commissioner for District 38.  
To view the conversation in full at the recorded Board Meeting, see  
<https://www.youtube.com/watch?v=HYjuwxST9x4>

District 38 (Upper)  
Water Commissioner  
Bill Blakeslee  
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Questions Posed to Mr. Blakeslee in advance of the meeting:

1. Who has the water rights? The individual owner in the subdivision or the subdivision itself?

Answer: It is Bill's opinion that the water decisions are that of the HOA board and not individual home owners unless a home owner can produce legal documentation that explicitly gives them a specific individual water right. Short of this the HOA has the deeded water right. Bill states that "The two ditches that run through the sub-division (Little Elk Creek and Borum and White) are both stated in our database, that the ownership of the water right was to the sub-division itself."

Sharon restated that the letter that she supplied to the board that she obtained when purchasing her home many years ago stated the same opinion as to the ownership of the water right was held by the sub-division. Bill was then asked if there is any way that a person could have a water right included with their deed. He responded that "That used to be the case, now what I found of recent years is that a lot of people's deeds do not reflect their water rights. So therefor if a party has a water right that is separate from the deed it would be in a separate document." After clarification of the question that the sub-division has the water right unless a document is produced bill said "the document would give them a specific amount of water in a specific ditch." If the document did exist.

Keith asked for a clarification as to the specifics as to the rights possessed by each ditch. He was thinking that each ditch may have a different water allotment. Tony reiterated that the water right no matter what amount was allocated to the sub-division was the right of the sub-division and not the individual home owner. Bill confirmed this statement.

2. Who has the responsibility to maintain the ditches? The owner or the sub-division? Or both depending on private or common space?

Answer: The sub-division. Tony then asked "by maintain are you talking about cleaning the ditches or the actual physical maintenance of things that need to be done to the ditches to make them operate properly?" Bill's response was all of the above.

Bill went on to say "As long as the sub-division owns the water right, then it becomes the sub-divisions responsibility to maintain that water right by physically maintaining the ditches and laterals thereof."

Sharon asked "is that a little different as to the diversions? You know where the diversions are outside of Little Elk Creek. Who manages and is responsible for the maintenance of the diversions?" Bill responded "my experience in the past has been George Johnson has the responsibility to maintain the head gate or manage the head gate on the Borum and White ditch. And then the Little Elk Creek ditch is managed by Dan Oppenheimer. Dan expressed the desired to me that when that amount of water or that ditch enters the sub-division then he does not want to be responsible for managing that water within the sub-division. He will continue to manage the head gate of that ditch, but when that ditch water enters the sub-division he doesn't want to be involved with the division of water within the sub-division.

Sharon asked if both Dan Oppenheimer and George Johnson told him that they both did not want to get involved in the management of water in the sub-division. Bill said both told him that. Sharon then went on to ask when George or Dan are managing the head gate, they are actually managing that for the ditch company, because they are not only managing water for LEC but for all of those that are served by that ditch. Bill responded "that is



correct". He said the responsibility was mainly to operate the head gate to maintain a specific amount of water deeded to the end users, it is their responsibility to carry that through.

3. Does the subdivision have responsibility to maintain and or change all tributaries off the main incorporated ditch?

Answer: Tony asked if the HOA has the full responsibility for making those changes. Because we have the water right, the HOA has an obligation to deliver water to each lot in the sub-division for irrigation. Bill responded "that would be correct and it is in your purview to dole that water out as needed. In other words you can change the laterals or create new laterals should you desire to do that so you can service the amount of parties that are interested in using that water." Tony went on to clarify that the home owner does not have the right to change or add any lateral to meet their own needs, it has to be done by or authorized by the HOA. Bill responded "yes, by the HOA". Keith asked a question about who is responsible for maintenance of a head gate when a third party has paid for or installed a new head gate. Bill said whoever is using that water directly is responsible for the maintenance of that head gate.

4. Does the right or responsibilities change if the waterway is a Riparian area or waterway?

Answer: Bill stated that "from my experience or to the best of my knowledge a Riparian waterway would be something that would be in the control of the core of engineers, that's a federal entity. However, I am familiar with the specific place that Steve Smart is talking about and it is not a Riparian waterway but part of the Borum and White ditch system. So that particular place where that water enters the Smart property is not a Riparian waterway for one and secondly it is in the control of the sub-division. To clarify Tony asked if that means that once it enters the sub-division if the designation of Riparian is not valid. Bill responded that the term Riparian is a term mainly used for a stream bed and that is not a stream be it is the bed of a ditch. Sharon then asked "so Bill once it becomes agricultural water is it your understanding that agricultural water in a ditch is no longer a Riparian waterway?" Bill responded "that is correct". John then asked "can we turn water off to that ditch or divert it temporarily to do work to that ditch?" Bills response is that if repairs are needed the ditch owner has the right and authority to shut down and dry out the ditch for repairs. John then asked "that ditch is not a running river, a dedicated river?" Bill's response was "that ditch is the entity that is approved by the division 5 water court and so the court itself is the primary factor that controls the amount of water that goes into the ditch and the uses thereof.

John asked "is it fair to say that because the historic Little Elk Creek is fed by ditch water now and not by a natural stream is it then in our right or control. Bill responded "that is a correct statement". Sharon added "and the reason it's fed by ditch water is because we have a court decree that says that's the right thing to do." Bill responded "that is correct".

5. Who is responsible for monitoring the water flow amounts?

Answer: The ditch managers should be monitoring the amounts. They monitor and report the amounts along with Bill sometimes as far as reporting goes. Tony asked if we are not monitoring the amounts or water flow and we started using less than our allotted water right amount could we ever lose the right to that amount of water? Bills response was it could, because of my monitoring, and if you did not use the water for a period of ten years or more to its decreed beneficial use then it could be placed upon the abandonment list and the HOA would have to challenge that abandonment declaration and would have to take on the challenge through the water court. John then asked if that is reason to monitor the amount of water in and out of the sub-division. Bill responded that the information is reported and historically recorded by him and as long as it is in his hands that water right is well protected.



6. Who makes decisions on approval of irrigation ponds? Is this a different process?

Answer: Many ponds in the sub-division are not decreed or adjudicated, but as long as the pond is being used for irrigation control structures it is OK if the water turns over in a 72 hour period. The pond also has to be drained at the end of the season as to not create an evaporation situation.

Bill also said he would review our augmentation plan. The 3 ponds are to replenish the water we are taking out of the ground/wells. Bill said our three ponds are in good stead with our augmentation plan. Bill believes the ponds should release a certain amount of water into the stream. The agri-drain should be used to lower the pond.

There is not a specific amount of water that is specified in the augmentation plan to flow through the agri-drain. This has been historically done by Dan Harris not George.

Keith asked if there is the ability to add another well, we have a 4<sup>th</sup> well head that is capped? Bill responded he will have to talk to his assistant division engineer who is also the augmentation plan coordinator. Bill will get back to us on that.

7. Open Questions: Sharon asked about the new water commissioner looking into ponds. Bill responded that the new water commissioner will be him. And things will pretty much stay the same. He will work with us if there are any changes needed.

8. Open Questions: John asked can we relocate the 4<sup>th</sup> well or are we limited to the locations they are already in? Bill said again he has to check with the augmentation plan coordinator for a review. Bill also said if he had to take a wild guess that our 4-5 wells are considered a well field and if one needed to be re-drilled that would be acceptable. But again he has to check with the augmentation plan coordinator.

9. Open Questions: John asked if there is lined pond does that have to be drained at the end of the season. Bills response was more so because that water does not return naturally to the system and the evaporation will continue. The reason for lining a pond is to keep the pond from encountering ground water. Otherwise if you put in an unlined pond that is not drained as an irrigation control structure at the end of the irrigation season you need an augmentation plan to be approved.

10. Open Questions: Sharon asked if the county approved a lined pond are you involved? Bill's response is that the county doesn't really have authority over water issues. Bill would be the one to approve this.

11. Open Questions: Keith asked if an irrigation storage tank had to be drained as well. Bill said no, because there is no evaporation because it is underground.

12. Open Questions: Tony asked if each pond has to be evaluated separately. All ponds are not automatically lined; Bill would make that call or approval. ACA should be looking for approval from Bill or the current water commissioner. Bill also told us that the county does now require fire mitigation in the form of stored water on the property. Bill thinks they do not have the right to require this but there is a stalemate between the water commissioner and the county right now.