

CHEROKEE METROPOLITAN DISTRICT
REGULAR MEETING OF THE BOARD OF DIRECTORS

March 10, 2009

MINUTES

The Regular Meeting of the Board of Directors of the Cherokee Metropolitan District was held on Tuesday, March 10, 2009, at 5:30 p.m. at 6250 Palmer Park Blvd., Colorado Springs, Colorado.

BOARD OF DIRECTORS PRESENT

Steve Hasbrouck	Dave Hacker
Gayle Jones	Robert Lovato
Sean Byers	

OTHERS PRESENT

Kip Petersen	Ed Meyer
Dian Hardekopf	Pete Heidebrecht
Jim Culichia	Sara Howard
Art Sintas	

OTHER GUESTS SIGNING ATTENDANCE LOG

David and Linda Mattes	David Mattes
Ken and Rita Martinez	Mary Hernandez
Chloe Olson	Jan Olson
Mariah Olson	

ITEM 1:

The meeting was called to order by Chairman Steve Hasbrouck at 5:30 p.m. Ms. Hardekopf called roll call of the Board of Directors, all Directors were present.

Before he proceeded with the Regular Meeting, Mr. Hasbrouck proposed a change in the way motions were addressed for approval in Board Meetings. It was his suggestion that the format be changed to an "Aye" or "Nay" vote in lieu of the roll call format. Ms. Jones agreed, stating the "Aye" or "Nay" format would be more time economical; and she also stated if one was in

disagreement on the issue being addressed, it could be switched to the roll call format. Mr. Lovato disagreed, stating the "Aye or "Nay" format would hold no accountability with how each person voted. Mr. Petersen suggested that if there were any action items requiring a motion, the Board should continue to use the roll call format, and if there were general discussion motions, i.e., to approve the Agenda or Minutes, etc., the Board could use the "Aye" or "Nay" format.

*****MOTION*****

MS. JONES MADE A MOTION TO USE THE "AYE" OR "NAY" FORMAT ON GENERAL DISCUSSION ITEMS AND THE ROLL CALL FORMAT ON THE MORE SERIOUS ACTION ITEMS. SECONDED BY MR. HACKER. MR. BYERS-YES; MR. LOVATO-NO; MR. HACKER-YES; MS. JONES-YES, AND MR. HASBROUCK-YES; MOTION APPROVED. (4-1)

ITEM 2 and 3:

Mr. Hasbrouck asked if there were any changes or amendments that needed to be made to the agenda. There were none noted.

*****MOTION*****

MR. HACKER MADE A MOTION TO APPROVE THE AGENDA OF THE REGULAR MEETING OF MARCH 10, 2009. SECONDED BY MS. JONES. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).

ITEM 4:

The Minutes of the Regular Meeting of February 10, 2009, were reviewed. Mr. Hasbrouck asked if there were any changes that needed to be made to the Minutes. There were none noted.

*****MOTION*****

MR. HACKER MADE A MOTION TO APPROVE THE MINUTES OF THE REGULAR MEETING OF FEBRUARY 10, 2009. SECONDED BY MR. LOVATO. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT WERE IN FAVOR. MOTION CARRIED. (5-0).

ITEM 5:

⇒ Public Comments

Mr. Hasbrouck asked if there were any public comments at this time. There were none.

ITEM 6:⇒ Legal Report – Mr. Jim Culichia

- Mr. Culichia addressed the Board with two major items: The Denver Basin Lease Case trial and the Replacement Plan trial.
- Although the entire week of March 2nd was devoted to the trial for the Denver Basin Lease Case, it finished in two days. The first day entailed arguments, opening statements, and expert witnesses by both parties. The District solicited a professor from the University of Oklahoma as an expert witness in oil and gas; and the plaintiff's hired an oil and gas attorney in their defense. Mr. Petersen and Mr. Curt Wells were asked to testify the second day of the trial.

A ruling from the Judge is not anticipated for at least six weeks. The District's closing arguments are due in writing by March 13th, and then the Judge will review the case. Mr. Culichia thought that, overall, the trial went pretty well. In all likelihood, however, there will be an appeal by either party. Mr. Lovato asked how many acres affected the lease case. Mr. Culichia stated the main opponents were the Booker family; and the District has settled with the Shaw family (515 acres) and is very close in settling with the Jim Burnside family (about 1700 acres).

- A two-week trial is set for June regarding the Replacement Plan. Mr. Culichia stated that the Farmer's attorneys were conducting depositions of Cherokee's experts and should be completed by the end of the week. Mr. Culichia anticipates that the Upper Black Squirrel Management District will request a postponement to the trial. Mr. Lovato asked what UBS's benefit would be in taking such action, and Mr. Culichia stated that there really isn't much of a benefit it would just postpone Cherokee taking any of the water out at an earlier date. It would just fill up the aquifer and more than likely be lost downstream. In any event, the building of the Treatment Plan cannot be stopped as this is all approved; the objection is only for the replacement plan.
- Mr. Dave Mattes asked Mr. Culichia to show him the tracts of land where the District's wells and recharge basins were located.
- Mr. Byers asked if the District just assumed it would get the Replacement Plan without getting issues taken care of beforehand. Mr. Culichia stated the District had no choice but to plan it, given that the District had to construct a new wastewater plant based on the federal government's mandated requirements on our lagoon

system. Mr. Meyer stated that the District understood that even if the replacement plan was not approved, there would still be water put back into the basin so that our existing wells would sustain better pumping.

- Mr. Hacker advised the Board he was able to attend the trial on Tuesday, and he thought overall it went well. Complimentary remarks for doing a job well done were given to Mr. Petersen, Mr. Culichia, and Mr. Shohet by members of the Board.

ITEM 7:

⇒ Engineering Report - Mr. Ed Meyer

- Mr. Meyer provided a report on the wastewater project and related issues (see attached). Glacier Construction's 8th pay request has been received. It reflects \$8,275,664.75 with retainage at \$763,045.00. The retainage will be placed in the District's COLO Trust account established for this purpose. Taking both the retainage and the prior payments into account, the net amount due the Contractor is \$887,778.82. GMS recommends approval of the pay request in that amount.

*****MOTION*****

MR. HACKER MADE A MOTION TO APPROVE PAY REQUEST NO. 8 TO GLACIER CONSTRUCTION IN THE AMOUNT OF \$887,778.82. SECONDED BY MR. BYERS. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).

- Work is progressing on several fronts of the WWTP. Yard piping and electrical conduit installation continues. Aerobic digester and SBR basin 1, 2, 3 and 4's concrete work is completed. Also, the flow equalization basin and day tanks' concrete work has been completed. Foundation work is continuing on the Operations Building, and block work is scheduled in approximately two weeks. Footing and stem wall concrete work is in progress on the Solids Handling Building. The Electrical Building's metal roof is scheduled to be installed within the week, and interior work is nearing completion. The Ultraviolet Disinfection Building's concrete work is finished, and block work is scheduled in approximately one week.
- Ms. Hardekopf interjected that the District's website has a slide show of the treatment plant, which is available for public perusal.

- Last month an additional \$1,200 was processed by ABJ/Sanitaire as a Change Order increase in the contract amount to accommodate storage through January, 2009. This Change Order has resulted in ABJ/Sanitaire's Pay Request No. 4 which also includes the reduction of retainage to 5% of the original contract amount. The net amount due the contractor is \$51,600. GMS recommends approval of that amount.

*****MOTION*****

MS. JONES MADE A MOTION TO APPROVE ABJ/SANITAIRE'S PAY REQUEST NO. 4 IN THE AMOUNT OF \$51,600. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).

- Timber Line Electric & Control Corporation's Pay Request No. 2 has been received and reflects \$34,253.10. Taking into account 10% retainage and the prior payment, the net amount due the contractor is \$29,792.79. GMS recommends approval of the pay request in that amount.

*****MOTION*****

MS. JONES MADE A MOTION TO APPROVE TIMBER LINE'S PAY REQUEST NO. 2. IN THE AMOUNT OF \$29,792.79. SECONDED BY MR. BYERS. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).

- The Water Pollution Control Revolving Fund Loan Request No. 14 has been prepared, and it requests a total of \$580,618.75 to be remitted to the District to cover eligible costs for February. GMS recommends approval of the requisition in that amount.

*****MOTION*****

MR. BYERS MADE A MOTION TO AUTHORIZE REIMBURSEMENT OF WPCRF REQUISITION #14 BACK TO THE DISTRICT IN THE AMOUNT OF \$580,618.75. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).

ITEM 8:⇒ Manager's Report – Kip Petersen

- Mr. Petersen provided to the Board three recent articles from *The Ranchland News* (see attached). The first was a statement that he read to the UBS which *The Ranchland News* mistakenly printed as a Letter to the Editor. The second article was a Letter to the Editor that was in reply to what was perceived as Mr. Petersen's Letter to the Editor, and the third was an apology from the Editor which was the result of his mistakenly placing the statement in the newspaper as a Letter to the Editor.
- Mr. Petersen is working closely with counsel in preparation of the Replacement Plan trial. As the trial approaches closer, counsel will be acquiring a motel room to accommodate their stay in Denver, and District staff will commute daily. Mr. Petersen encouraged the Board and any interested staff members to attend part of the trial if they wished to do so.

ITEM 9:⇒ Water/Wastewater Report – Art Sintas

- Mr. Sintas provided an update on the District's water demands. Water demands for February were 1.675 mgd compared to last February, 2007, of 1.646 mgd and February, 2006, of 1.630. Even though the District is currently in the Winter Stage of the Water Conservation Plan, irrigation watering has picked up for the month of March; and the District is currently around 2 mgd. Woodmen Hills has cut back considerably on the water intake.
- The District has started using Tipton and Pikes Peak, and consumption is at approximately 6%.
- There have been no water leaks since the last Board Meeting.
- Currently the winter schedule of non-irrigation watering is in effect. However, April 1st begins Stage 2 of the Water Conservation Plan, and the staff does not recommend any changes from last year.
- Mr. Byers asked if the District was once again participating in the Water Returns Program. Mr. Petersen replied that it was but will not be the host community this year. He advised that Mr. Bryan English, the coordinator of the program, has been contacted by eight or nine individuals interested in participating, and he has three committed participants. Mr. Byers stated he believed sprinkler

heads on irrigation systems wasted a lot of water, especially commercial accounts. He suggested if the District serviced any landscape companies specializing in sprinkler heads, the District could perhaps invite them for a presentation. Mr. Petersen said he would talk with Mr. English about this possibility.

- Mr. Lovato asked if the District had seen an increase in delinquencies based on the sluggish economy. Mr. Petersen stated he believed there had been approximately a 10% increase in delinquencies. Mr. Lovato stated that Woodmen Hills promotes a program similar to Project Cope, whereby money is reserved, or set aside by donations to help those in need of paying their water bill and that possibly our District could do something similar.

ITEM 10:

⇒ Golf Course, Pro Shop, and Maintenance

- Because of Mr. Laxson's and Mr. Rainford's excused absence, Mr. Petersen referred to their monthly reports (see attached). He did want to direct the Board's attention to Mr. Rainford's report, however, and focus on the statement that all watering done by the Golf Course to this date had been supplied by the well and lake complex located on the Course. Because the water used to irrigate the greens is non-potable, it was mentioned that signs be placed in and around the Course stating the water was 'non-potable' 'do not drink' and also 'well water in use' to better inform the public.

ITEM 11:

⇒ Old Business

There was no old business to report at this time.

ITEM 12:

⇒ New Business

- Mr. Hacker advised the Board he would be unable to attend the June Board Meeting as he will be in the State of Michigan attending his granddaughter's wedding.

ITEM 13:

⇒ Executive Session: CRS 24-6-402(4)(b)

*****MOTION*****

MR. HACKER MADE A MOTION TO ENTER INTO AN EXECUTIVE SESSION CITING 24-6-402(4)(b) LEGAL CONSULTATION. SECONDED BY MS. JONES. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).

Executive Session was entered into at 6:51 p.m.

A short break was taken before Executive Session commenced.

*****MOTION*****

MR. HACKER MADE A MOTION TO COME OUT OF EXECUTIVE SESSION AND RETURN THE MEETING TO THE OPEN SESSION OF THE REGULAR MEETING. SECONDED BY MS. JONES. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).

The Regular Session began at 7:49 P.M.

Mr. Culichia stated that the Board needed to make a motion to authorize Mr. Petersen and the Attorney's to complete the negotiations and signing of the Denver Basin waters with the Burnside family. The agreement for the Burnsides family is the same as that which was approved and signed by the Shaw family.

*****MOTION*****

MR. HACKER MADE A MOTION TO APPROVE THE NEGOTIATIONS AND SIGNING OF THE AGREEMENT FOR THE DENVER BASIN WATERS WITH THE BURNSIDE FAMILY. SECONDED BY MS. JONES. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).

ITEM 14:

⇒ Adjournment

There being no further business to come before the Board at this time, a motion was made for adjournment.

The Meeting adjourned at 7:53 p.m.

Steve Hasbrouck, President

Board Members

Term Expires

Steve Hasbrouck, President	May, 2012
Dave Hacker, Vice President	May, 2010
Gayle Jones, Secretary/Treasurer	May, 2010
Robert Lovato, Director	May, 2012
Sean Byers, Director	May, 2010