

**CHEROKEE METROPOLITAN DISTRICT**  
**REGULAR MEETING OF THE BOARD OF DIRECTORS**

June 8, 2010

MINUTES

The Regular Meeting of the Board of Directors of the Cherokee Metropolitan District was held on Tuesday, June 8, 2010, at 5:00 p.m. at 6250 Palmer Park Blvd., Colorado Springs, Colorado.

BOARD OF DIRECTORS PRESENT

Robert Lovato	Jan Cederberg
Steve Hasbrouck	William Beahan
Dave Hammers	

OTHERS PRESENT

Kip Petersen	Ed Meyer
Art Sintas	Griff Rainford
Jim Felt	Len Meyer
Dian Hardekopf	Pete Heidebrecht
Sara Howard	Todd Laxson
Sandy DeCarolis	Jon Waker
Lee Rosenbaum	Mark Fontana

OTHER GUESTS SIGNING ATTENDANCE LOG

Rita and Ken Martinez	Audrey Clark
David Mattes	Dave Mattes
Mary Hernandez	Assunta Manning

ITEM 1:

The meeting was called to order by Chairman Robert Lovato at 5:06 p.m. Mr. Lovato asked for Ms. Hardekopf to do the roll call of the Board of Directors. All Directors were present with the exception of Mr. Beahan.

ITEMS 2 AND 3:

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

**\*\*\*MOTION\*\*\***

**MR. HAMMERS MADE A MOTION TO APPROVE THE AGENDA AS PRESENTED. SECONDED BY MR. HASBROUCK. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (4-0).**

ITEM 4:

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

**\*\*\*MOTION\*\*\***

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

Executive Session was entered into at 5:09 p.m.

**\*\*\*MOTION\*\*\***

**MR. BEAHAN MADE A MOTION TO COME OUT OF EXECUTIVE SESSION AND RETURN THE MEETING TO THE OPEN SESSION OF THE REGULAR MEETING. SECONDED BY MS. CEDERBERG. ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

The Regular Session began at 6:11 p.m.

Mr. Lovato advised those in attendance that no decisions were made in Executive Session and asked for the record to reflect that Mr. Beahan arrived at 5:19 p.m. and is in attendance at this meeting.

ITEM 5:

The Minutes of the Regular Meeting of May 11, 2010, were reviewed. Mr. Lovato asked if there were any changes that needed to be made to the Minutes.

**\*\*\*MOTION\*\*\***

**MR. BEAHAN MADE A MOTION TO APPROVE THE MINUTES OF THE REGULAR MEETING OF MAY 11, 2010. SECONDED BY MR. HASBROUCK. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).**

ITEM 6:

⇒ Public Comments

- Mr. Lovato asked if anyone wished to speak from the audience and, if so, to sign in and state their name. Rita Martinez asked how the citizens of the District could contact a Board Member, and Ms. Hardekopf stated they could call the office and that information could be provided to them with the approval of each Board Member. She also added that if the Board wished, the individual contact information could be posted on the District's WEB site, once again with each individuals approval. Mr. Hasbrouck stated he was publicly listed in the phone directory. Ms. Hardekopf asked the new Board Members and Mr. Lovato to provide their biography and pictures so that information could be placed onto the District's website.
- To come to a better understanding of the dissatisfied relationship between the District and Black Squirrel, Assunta Manning attended one of their Board Meetings and was told that "it was our fault." She asked the Board who wanted to come with her to address existing issues with the Black Squirrel Board of Directors. There has been some attempted phone communication and correspondence about trying to get together, and Mr. Beahan stated he would try to meet with their Board. Mr. Hammers stated he had had a conversation with Dave Doran, and Mr. Lovato wants to take a look at all legal action and review to determine what can be done to remedy without further legal intervention. He stated the two Districts needed to break the barriers. Ms. Cederberg encouraged all Board members to get together as a Board to talk with the UBS Board. Mr. Lovato stated he would call Mr. Doran the following day.
- Dave Mattes and his son also went to one of the Board Meetings and witnessed one of the Board Members needlessly interrogating Ms. Millie Duncan. The Public is invited to their Board Meetings which are held the first Tuesday of each month.
- Mary Hernandez stated the rumors she heard last month about terminating the service of current legal counsel and the current General Manager have not gone away. Mr. Lovato stated that every time you have turnaround of new Board Members, there will be an opportunity to "try to fix something," and at this point in time there are only questions. Ms. Hernandez responded by saying she hoped there was "not an agenda." Mr. Lovato did have a concern about the number of court cases the District has lost and what could be done to make the District successful. He said the District has to fight the battle to win, and he believed in his personal opinion as a Board Member, the District has failed. Although Mr. Mattes believed the District has lost all law suits, Mr. Felt stated that was not a true

statement. Mr. Felt also stated that everyone needs to understand that these lawsuits were not created by the District and their current management and legal counsel, but from stipulations signed years back.

- In a letter Mr. Beahan recently received from a purported resident of the District, it stated residents of the District wanted a change. Mr. Beahan believed the District is not talking to the community. Ms. Cederberg read the letter and stated there was information in the letter she had no knowledge about. The three newly elected Board Members were elected because the District desires change, and she stated if legal counsel was removed, the process would have to start all over again. Mr. Lovato believed the letter contained some bad information. As signers of this letter do not exist nor did the return address.
- A question was raised in the audience as to why there was a need for the wastewater treatment plant, and Mr. Meyer explained that it was a necessary mandate by the federal government to build a new treatment plant to accommodate the District's wastewater needs. The current wastewater plant could not meet the mandated permitting and federal stream quality standards. The need for a new plant would be there regardless of any new construction of homes; past, present or future.

#### ITEM 7:

##### ⇒ Legal Report – Mr. Jim Felt

- Mr. Felt stated that on June 3<sup>rd</sup> there was a two- and one-half hour work session regarding the District's objectives, and at the July Board Meeting a generic course of action will be proposed concerning the legal he District is facing. Mr. Petersen will be scheduling another work session in the near future which will consist of pending legal concerns, and some of the session will be open to the public. Mr. Felt stated that the next public work session is scheduled for June 23<sup>rd</sup> and will be relating to the Replacement Plan.

#### ITEM 8:

##### ⇒ Engineering Report – Mr. Ed Meyer

- Mr. Meyer provided a report on the wastewater project and related issues (see attached). Glacier Construction's 23<sup>rd</sup> pay request has been received and reflects \$16,498,822.83 earned to date. Taking both the retainage and the prior payments into account, the net

amount due the contractor is \$90,340.93. GMS recommends approval of the pay request in that amount.

**\*\*\*MOTION\*\*\***

**MS. CEDERBERG MADE A MOTION TO APPROVE PAY REQUEST NO. 23 TO GLACIER CONSTRUCTION IN THE AMOUNT OF \$90,340.93. SECONDED BY MR. HASBROUCK. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- CDPHE has issued the District a discharge to ground water permit effective June 12, 2010. The "wet test" using construction water began on June 1<sup>st</sup> and will continue until all SBR's have successfully completed a decant cycle along with other major components of the facility having been tested.
- In response to Mr. Lovato's question, Meridian does not lose their water rights when discharging their water into the WWTP. Mr. Lovato has heard Meridian is considering filing for their own replacement plan.
- The installation of the ground water monitoring wells is being undertaken in the form of a Change Order with Kunau Drilling LLC. They have provided a quotation for installing the six ground water monitoring wells and will also install two independent test holes to accurately define the depth to ground water at each cluster. The Change Order for the additional work totals \$26,442.00 and shows a completion date of June 28. It increases the overall contract with Kunau Drilling to \$47,312.05. GMS recommends approval of Change Order No. 2 in that amount.

**\*\*\*MOTION\*\*\***

**MR. BEAHAN MADE A MOTION TO APPROVE CHANGE ORDER NO. 2 TO KUNAU DRILLING LLC IN THE AMOUNT OF \$26,442.00. SECONDED BY MR. HASBROUCK. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- Pay Request No. 14 from Timber Line Electric and Control Corporation has been received and shows a total amount earned to date of \$417,049.93. Taking the 10% retainage from prior payments into account, the net amount due Timber Line on Pay Application No. 14 is \$9,620.04 GMS recommends approval of the payment in that amount.

**\*\*\*MOTION\*\*\***

**MR. BEAHAN MADE A MOTION TO APPROVE PAY REQUEST NO. 14 TO TIMER LINE ELECTRIC AND CONTROL CORPORATION IN THE AMOUNT OF \$9,620.04. SECONDED BY MR. HASBROUCK. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- The Water Pollution Control Revolving Fund Loan Request No. 29 has been prepared, and it requests a total of \$130,605.72 to be remitted to the District to cover eligible costs for May. GMS recommends approval of the requisition on that amount.

**\*\*\*MOTION\*\*\***

**MR. BEAHAN MADE A MOTION TO AUTHORIZE REIMBURSEMENT OF WPCRF REQUISITION #29 BACK TO THE DISTRICT IN THE AMOUNT OF \$130,605.72. SECONDED BY MR. HASBROUCK. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- Mr. Meyer provided to the Board the attached Allocation of Costs on May's Contractor Draw Requests and a breakdown of the Project Expenditure Reimbursement Request No. 29.

ITEM 9:

⇒ Manager's Report – Kip Petersen

- Mr. Petersen has spent much of his time this last month orientating the new Board on the District's future. He read Resolution No. 10-2, a Resolution for the Cherokee Metropolitan District designating authorized individuals for the Colorado Water Resource and Power Development Authority Loan Agreement and asked the Board to approve the same. Mr. Beahan asked specifically what loan did the District enter into for \$15 million dollars, and Mr. Petersen stated the loan from CWRPRDA was entered into sometime in 2005 and had a 3.48% interest rate. Mr. Meyer stated the District saved more than \$1 million dollars by doing so and not entering into private funding. Mr. Hammers asked who was responsible and in control of the funds. Mr. Meyer stated that the funds are approved, as the Board did earlier in the evening, at each regular board meeting with the recommendation from GMS; the paperwork is then sent in and the funds sent to the District accounts which are handled by the District's Accountant, Ms. DeCarolis.

**\*\*\*MOTION\*\*\***

**MR. HASBROUCK MADE A MOTION TO APPROVE AND ADOPT RESOLUTION NO. 10-2, A RESOLUTION FOR THE CHEROKEE METROPOLITAN DISTRICT DESIGNATING AUTHORIZED INDIVIDUALS FOR THE COLORADO WATER RESOURCE AND POWER DEVELOPMENT AUTHORITY LOAN AGREEMENT. SECONDED BY MS. CEDERBERG. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

ITEM 10:

⇒ Water/Wastewater Report – Art Sintas

Mr. Sintas apprised the Board on water demands for May, 2010, stating only 23% of the District's water has been used thus far (see attached). He provided an update on the parks to the Board and is considering xeriscaping more of the District's medians. A memo was represented to the Board whereby a commercial account on Industry Road incurred an extremely high bill in April, resulting from a broken valve in the sprinkler system. Mr. Sintas projected water had to be flowing through the 1" meter at 13 gallons a minute for three weeks in order to incur that large of a bill. It was his and Mr. Petersen's opinion that the tiered rate costs should not be waived but the customer should be given the opportunity to repay the bill over a six-month timeframe while keeping the current month's bill paid by the due date. Discussion ensued regarding allowing more time and the Board suggested that allowing a nine month timeframe for paying the large bill.

**\*\*\*MOTION\*\*\***

**MR. BEAHAN MADE A MOTION TO APPROVE, TRANSPORTATION UNLIMITED, TO MAKE MONTHLY PAYMENTS OVER A PERIOD OF NINE MONTHS TO PAY OFF A VERY LARGE WATER BILL. SECONDED BY MR. HASBROUCK. MR. HASBROUCK-YES; MR. HAMMERS-ABSTAINED; MS. CEDERBERG-YES; MR. BEAHAN-YES, AND MR. LOVATO-YES. MOTION CARRIED (4-1-0).**

ITEM 11:

⇒ Golf Course

See attached memos. In the future, if the Board requests input from Mr. Laxson or Mr. Rainford, they will provide updates on an as-needed basis. Mr. Lovato asked how much rain had the Golf Course received over the first two weeks in May and was told the Course measured 1" of moisture. Mr. Rainford said a good year for moisture would be approximately 13".

ITEM 12

⇒ Old Business

There was no old business to report.

ITEM 15:

⇒ New Business

- Mr. Petersen apprised the Board of the attached Water Service Agreement Between Cherokee Metropolitan District and Fontana Enterprises, Inc., and requested approval of the same.

**\*\*\*MOTION\*\*\***

**MR. BEAHAN MADE TO A MOTION TO APPROVE THE WATER SERVICE AGREEMENT BETWEEN CHEROKEE METROPOLITAN DISTRICT AND FONTANA ENTERPRISES, INC. SECONDED BY MR. HASBROUCK. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- Before adjourning the meeting, Mr. Lovato wanted to make one last comment concerning the rumor circulating that he wants Mr. Petersen's position. He requested that the Minutes state, boldly, that HE DOES NOT WANT KIP PETERSEN'S JOB, and he requested this subject not to be brought up again.
- Ms. Cederberg interjected that she, too, did not want Mr. Petersen's job. Mr. Beahan stated that the evening's meeting had been enlightened by the past. Looking back as a past Board member, he realizes he didn't ask enough questions.
- Mr. Petersen summarized his tenure with the District stating he had been employed with the District for over four years and has 32 years of public service. He will diligently serve this District as he always has done, until such time the Board of Directors feel he is not performing his job; he will then, offer his resignation. Mr. Petersen's hope is that he will not have to offer this.

ITEM 16:

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

**\*\*\*MOTION\*\*\***

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

Executive Session was entered into at 8:01 p.m.  
With a break taken, the Executive Session began at 8:16 p.m.

**\*\*\*MOTION\*\*\***

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

The Regular Session began at 10:26 p.m.

Mr. Lovato stated that no decisions needed to be made from the Executive Session.

Mr. Petersen stated that he would like to have a series of work sessions for the new Board and the Public; the first would be to discuss the Replacement Plan from start to present. Mr. Petersen thought that two hour sessions would be sufficient for all topics. The first work session will be held on June 23<sup>rd</sup>. Discussion on having the work session begin at 4:00 or 5:00 p.m. ensued. Mr. Lovato stated that there may be other items that arise and would need to be discussed and maybe decisions made. Mr. Petersen stated that it would then have to be a Special Meeting rather than a work session. Mr. Beahan stated that to allow the public to attend the meeting should remain at usual time of 5:30 p.m. so that those that work could still attend the meeting.

Mr. Petersen stated that we would post for a special meeting to be held at 5:30 p.m. on the 23<sup>rd</sup> of June. Also, he would send out the requested information; the employment contract, Mr. Susemihl's deposition, and the statute that clearly defines that a Special District can not pay more than fair market value (CRS 32-1-1001(1)(f)).

ITEM 17:

⇒ Adjournment

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

The Meeting adjourned at 10:42 p.m.

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Jan Cederberg, Secretary

Board Members

Term Expires

Robert Lovato, President	May, 2012
Steve Hasbrouck, Vice President	May, 2012
Jan Cederberg, Secretary/Treasurer	May, 2014
Dave Hammers, Director	May, 2014
William Beahan, Director	May, 2014