

CHEROKEE METROPOLITAN DISTRICT
REGULAR MEETING OF THE BOARD OF DIRECTORS

December 8, 2009

MINUTES

The Regular Meeting of the Board of Directors of the Cherokee Metropolitan District was held on Tuesday, December 8, 2009 at 5:30 p.m. at 6250 Palmer Park Blvd., Colorado Springs, Colorado.

BOARD OF DIRECTORS PRESENT

Steve Hasbrouck	Kurt VandenBoogaard
Robert Lovato	Dave Hacker
Sean Byers	

OTHERS PRESENT

Kip Petersen	Ed Meyer
Dian Hardekopf	Pete Heidebrecht
Jim Culichia	Sara Howard
Art Sintas	Todd Laxson
Sandy DeCarolis	Len Meyer
Griff Rainford	

OTHER GUESTS SIGNING ATTENDANCE LOG

Chloe Olson	Jan Cederberg
Ron Pace	

ITEM 1:

The meeting was called to order by Chairman Steve Hasbrouck at 5:32 p.m. Ms. Howard called roll call of the Board of Directors, all Directors were present including Mr. Lovato who was present via teleconferencing.

ITEMS 2 AND 3:

Mr. Hasbrouck asked if there were any changes or amendments that needed to be made to the Agenda. Mr. Petersen explained Mr. Meyer would have additional pay requests not included on the Agenda, but it would not necessitate an amendment to the Agenda.

*****MOTION*****

MR. BYERS MADE A MOTION TO APPROVE THE AGENDA OF THE REGULAR MEETING OF DECEMBER 8, 2009. SECONDED BY MR. HACKER. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).

ITEM 4:

The Minutes of the Regular Meeting of November 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 NOVEMBER 10, 2009. SECONDED BY MR. VANDENBOOGAARD. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).

The Summary of the Meeting Work Session of November 18, 2009, was reviewed. Mr. Hasbrouck asked if there were any changes that needed to be made. There were none noted.

*****MOTION*****

MR. HACKER MADE A MOTION TO APPROVE THE SUMMARY OF THE MEETING WORK SESSION OF NOVEMBER 18, 2009. SECONDED BY MR. VANDENBOOGAARD. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).

ITEM 5:

⇒ Budget Hearing: 2010 Budget

- At 5:37 p.m. Mr. Hasbrouck announced the Public Hearing to review the 2010 Budget was in session. The Hearing was turned over to Mr. Petersen. Mr. Petersen advised this was the last and final meeting of the 2010 budget, and the public was given this third opportunity to comment.

- Few changes were made in the November 18th work session. An 87% increase in water rates was proposed for 2010, which will incur an average increase in a non-irrigation homeowners' rates of approximately \$13.50 per month. Sewer rates will increase at the rate of 10% which will increase the monthly fee by \$2.45.
- Judge Maes could grant a stay of execution in the disbarment of Wells 14-17; however that would not affect the 2010 water rate increase. It could, however, result in a positive change in the District's resources and deter long-term rate increases. Mr. Petersen provided an overview and explanation of the Revised Supplemental Budget 2009 accounting for an additional budgetary expenditure of \$1.6 million dollars for possible acquisition of water rights.
- Mr. Hasbrouck thanked the staff in sacrificing their raises for another year and to legal counsel for their due diligence and hard work.

*****MOTION*****

MR. BYERS MADE A MOTION TO CLOSE THE PUBLIC HEARING OF THE 2010 BUDGET. SECONDED BY MR. HACKER. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).

At 5:44 p.m. Mr. Hasbrouck closed the Public Hearing and returned to the Regular Session Meeting.

ITEM 6:

⇒ Adoption of Budgets

- Mr. Petersen read to the Board the 09-05 Cherokee Metropolitan Resolution for Supplemental Budget and Appropriation.

*****MOTION*****

MR. BYERS MADE A MOTION TO ADOPT 09-05 CHEROKEE METROPOLITAN RESOLUTION FOR SUPPLEMENTAL BUDGET AND APPROPRIATION AS READ. SECONDED BY MR. HACKER. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS APPROVED. MOTION CARRIED (5-0).

- Mr. Petersen read to the Board the 09-06 Cherokee Metropolitan District Appropriation Resolution for budget year 2010.

*****MOTION*****

MR. BYERS MADE A MOTION TO ADOPT 09-06 CHEROKEE METROPOLITAN RESOLUTION APPROPRIATION RESOLUTION AS READ. SECONDED BY MR. HACKER. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS APPROVED. MOTION CARRIED (5-0).

- Due to the timing of the adoption of the Budget for 2010, and if the Board had no objections, Mr. Petersen proposed the rate increase to take effect the first billing cycle of February, 2010, to allow notification of the increases through the newsletter. The Board had no objection.

ITEM 7:

⇒ Public Comments

Ms. Olson complimented the Golf Course in their assistance and timely response in locating her cell phone on the Golf Course grounds.

ITEM 8:

⇒ Legal Report – Jim Culichia

- Mr. Culichia advised the Board of the Duncan Well purchase, mentioned in the Supplemental Budget. On November 13th, a letter to the Upper Black Squirrel requesting affirmation that an export permit is available for the District's use was not answered. The Duncan well received an export order back in 1977 so there should be no objection to this request; however the Upper Black Squirrel Board is refusing to answer the questions in the letter or at their meeting. Legal action may need to be taken for the court's to intervene and interpret the order. Because of this issue, the contract for the purchase of the Duncan water needs to be amended for protection on both the Duncan side and for Cherokee.

*****MOTION*****

MR. BYERS MADE A MOTION TO AMEND THE CONTRACT ALLOWING MRS. DUNCAN TO RECEIVE INTEREST MADE OFF THE ESCROW FUNDS PENDING THE PHYSICAL SUPPLY TEST RESULTS, AND THE DECISION OF THE COURTS ON THE DECLARATORY JUDGMENT. SECONDED BY MR. VANDENBOOGAARD. WITH A ROLL CALL VOTE ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).

- Judge Maes has granted a Stay of Execution on Wells 14-17.
- The continuance of the Replacement Plan Trial was approved on December 8, 2009.
- Legal counsel filed a motion on Friday, December 4, 2009, to enter an Order stating Judge Maes has no jurisdiction in the Groundwater Commission Trial.

ITEM 9:

⇒ Engineering Report – Ed Meyer

- Mr. Meyer provided to the Board a report on the wastewater project and related issues (see attached). GMS has prepared additional Change Orders on Glacier Construction's contract. Change Order No. 4 specifically relates to the two lift stations and existing plant modifications being constructed, and the net effect is a contract increase of \$153,175.00 which brings the modified contract amount to \$16,969,705.10. GMS recommends approval of Change Order No. 4 in the amount of \$153,175.00.

*****MOTION*****

MR. HACKER MADE A MOTION TO APPROVE CHANGE ORDER NO. 4 TO GLACIER CONSTRUCTION IN THE AMOUNT OF \$153,175.00. SECONDED BY MR. BYERS. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED. (5-0).

- Change Order No. 5 is all wastewater treatment plant related. It contains ten different items, all of which relate to refinements of the desired work on the wastewater treatment plant covering a variety of activities. The overall impact of Change Order No. 5 is an increase of \$25,300.00. The timeframe for the treatment facility to be operational is unchanged and remains at March 17, 2010. GMS recommends approval of Change order No. 5 in the amount of \$25,300.00, which brings Glacier's adjusted contract amount to \$16,995,005.10.

*****MOTION*****

MR. VANDENBOOGAARD MADE A MOTION TO APPROVE CHANGE ORDER NO. 5 TO GLACIER CONSTRUCTION IN THE AMOUNT OF \$25,300.00. SECONDED BY MR. HACKER. THERE WAS NO FURTHER

DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED. (5-0).

- Glacier Construction has submitted Pay Application No. 17 and reflects \$15,565,415.76 earned to date. It includes some activities on Change Order Nos. 3 to 5, and retainage stands at 5% of the total contract amount. Taking both the retainage and the prior payments into account, the net amount due Glacier Construction for Pay Request No. 17 is \$706,536.13. GMS recommends approval in that amount.

*****MOTION*****

MR. BYERS MADE A MOTION TO APPROVE PAY REQUEST NO. 17 TO GLACIER CONSTRUCTION IN THE AMOUNT OF \$706,536.13. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED. (5-0).

- Eighty-seven percent of the wire has been pulled throughout several areas of the site. The Solids Handling Building is now energized. WAS vaults are 100% complete. SBR Basin Nos. 1 through 4's walkways and handrails are 98% complete. AD Basin Nos. 1 through 3's walkways and handrails are 100% complete. The SBR splitter box is 100% complete. ITT-Advanced water treatment is 73% complete pertaining to startup and training for owner furnished SBR blowers and equipment. The electrical building has 98% of the control equipment and wiring installed. The headworks building is 95% complete with SCADA and HVAC remaining. The digester building is 94% complete, and the solids handling building is 92% complete.
- Timber Line Electric and Control Corporation has submitted their eighth pay request and reflects \$315,384.10 earned to date. Retainage is 10% of the amount earned. Taking into account retainage and prior payments, the net amount due Timber Line is \$18,594.90. GMS recommends approval of that amount.

*****MOTION*****

MR. HACKER MADE A MOTION TO APPROVE PAY REQUEST NO. 8 TO TIMBER LINE ELECTRIC AND CONTROL CORPORATION IN THE AMOUNT OF \$18,594.90. SECONDED BY MR. BYERS. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED. (5-0).

- Mr. Meyers advised the Board that a decanter built by ABJ Sanitaire had to be shipped back to the State of Ohio to be repaired, and GMS has agreed to pay half the cost of shipping associated with this repair. This results in a Change Order No. 3 to ABJ Sanitaire in the amount of \$1,755.13. GMS recommends approval of this amount.

*****MOTION*****

MR. VANDENBOOGAARD MADE A MOTION TO APPROVE CHANGE ORDER NO. 3 TO ABJ SANITAIRE IN THE AMOUNT OF \$1,755.13. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED. (5-0).

- Mr. Meyer stated the Wastewater Treatment Plant will have an on-site well, and the District has submitted an application to the State Engineer's Office for the well permit. Formal plans and specifications for the installation of the well and the project was advertised and subsequently bid on December 3, 2009. Low bid was in the amount of \$20,307.55 to Kunau Drilling LLC, Calhan. GMS recommends approval of the project to Kunau Drilling in that amount.

*****MOTION*****

MR. HACKER MADE A MOTION TO AWARD THE CONTRACT BID OF \$20,307.55 TO KUNAU DRILLING FOR DRILLING OF THE ON-SITE WELL AT THE WASTEWATER TREATMENT PLANT. SECONDED BY MR. VANDENBOOGAARD. 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. 23 has been prepared, and it requests a total of \$592,606.26 to be remitted to the District to cover eligible costs for November. GMS recommends approval of the requisition in that amount.

*****MOTION*****

MR. HACKER MADE A MOTION TO AUTHORIZE REIMBURSEMENT OF WPCRF REQUISITION #23 BACK TO THE DISTRICT IN THE AMOUNT OF \$592,606.26. SECONDED BY MR. VANDENBOOGAARD. THERE WAS NO FURTHER DISCUSSION. 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 November's Contractor Draw Requests and a breakdown of the Project Expenditure Reimbursement Request No. 23.

ITEM 10:

⇒ Manager's Report – Kip Petersen

- Mr. Petersen advised the Board he would be out of town all of the next week, and a staff Christmas breakfast is scheduled for the morning of December 18.

ITEM 11:

⇒ Water/Wastewater Report – Art Sintas

See attached memo; there were no comments at this time.

ITEM 12:

⇒ Golf Course

See attached memos; there were no comments at this time.

ITEM 13:

⇒ Old Business

- Mr. Petersen stated the Work Session and tour at the Golf Course went well, and he believed the Board received a good interpretation of how the Golf Course operates.

ITEM 14:

⇒ New Business

- Mr. Petersen provided the Board a schedule of the Board Meeting dates for 2010(see attached). Mr. Petersen stated that the Regular Board Meetings are set for the second Tuesday of each month commencing at 5:30 p.m., and asked for the Board's approval.

*****MOTION*****

MR. HACKER MADE A MOTION TO ADOPT THE CHEROKEE METROPOLITAN DISTRICT BOARD MEETING DATES OF 2010 AS PRESENTED. SECONDED BY MR. BYERS. THERE WAS NO FURTHER

DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).

ITEM 15:

⇒ 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 MR. BYERS. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).

At this time, a short break was requested, and the meeting recessed at 7:09 p.m.

Executive Session began at 7:19 p.m.

*****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 MR. BYERS. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).

The Regular Session began at 8:39 p.m.

Mr. Petersen stated that negotiations for the purchase of Mr. Morealli's 30% ownership of the Sweetwater rights was discussed and needed to Boards approval to move forward and enter into a contract.

*****MOTION*****

MR. VANDENBOOGAARD MADE A MOTION TO ALLOW MR. PETERSEN AND MR. CULICHIA TO NEGOTIATE AND PRODUCE A CONTRACT FOR THE MOREALLI PURCHASE. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).

ITEM 16:

⇒ Adjournment

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

The Meeting adjourned at 8:41 p.m.

Kurt VandenBoogaard, Secretary

Board Members

Term Expires

Steve Hasbrouck, President
Dave Hacker, Vice President
Kurt VandenBoogaard, Secretary/Treasurer
Robert Lovato, Director
Sean Byers, Director

May, 2012
May, 2010
May, 2010
May, 2012
May, 2010