

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

July 13, 2010

MINUTES

The Regular Meeting of the Board of Directors of the Cherokee Metropolitan District was held on Tuesday, July 13, 2010, at 5:30 p.m. at 6250 Palmer Park Blvd., Colorado Springs, Colorado.

BOARD OF DIRECTORS PRESENT

Robert Lovato  
Steve Hasbrouck  
Dave Hammers  
Jan Cederberg  
William Beahan

OTHERS PRESENT

Sean Chambers	Ed Meyer
Art Sintas	Griff Rainford
Dian Hardekopf	Len Meyer
Kevin Donovan	Pete Heidebrecht
Sara Howard	Todd Laxson
Janie Lane	Jon Waker
Sarah Stampka	

OTHER GUESTS SIGNING ATTENDANCE LOG

Andy Anderson	David Hacker
Assunta Manning	Tom Sistare
Chloe Olson	Audrey Clark
Dave and David Mattes	Mary Hernandez
Walter Herley	Robert King
Ken & Rita Martinez	Gayle Jones
Lynne Bliss	Frank Gonzalez
Dennis Daniels	

ITEM 1:

The meeting was called to order by Chairman Robert Lovato at 5:34 p.m. Mr. Lovato asked for Ms. Hardekopf to do the roll call of the Board of Directors. All Directors were present.

ITEMS 2 AND 3:

Mr. Lovato asked if there were any changes or amendments that needed to be made to the Agenda. Mr. Chambers requested to add the Presentation of the 2009 Audit Report for Year Ending December 31, 2009, as 3a. Mr. Lovato requested to move the Selection of Water Attorney from Special Meeting Interviews to 3b.

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

**MR. BEAHAN MADE A MOTION TO APPROVE THE AGENDA, AS AMENDED. SECONDED BY MS. CEDERBERG. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).**

Mr. Lovato introduced and welcomed the new Fire Chief of Cimarron Hills, Mr. Matt Love.

ITEM 3a:

⇒ Presentation of 2009 Financial Audit Report

- Mr. Tom Sistare, representing Hoelting & Co., provided a summary sheet of the Cherokee Metropolitan District Audit Year Ending December 31, 2009. Hoelting & Co issued an unqualified opinion stating the books and records were well organized and expenses were properly supported. Because the District does not employ a certified public accountant, they enlist Hoelting & Co. to prepare its financial statements. Since the District's accounting system does not segregate funds, they did recommend an update in the accounting system to accommodate fund accounting. Also, better communication is needed for non-cash transactions. Ms. Hardekopf stated that they are looking at implementing the fund accounting system for 2011.
- Ms. Cederberg applauded the Golf Course for their hard work and encouraged them to keep it up. Mr. Sistare stated his company would submit the financial audit to the State Auditors before July 30, 2010.

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

**MR. BEAHAN MADE A MOTION TO APPROVE THE DISTRICT'S FINANCIAL AUDIT REPORT FOR THE YEAR 2009. SECONDED BY MR. HASBROUCK. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).**

ITEM 3b:

⇒ Selection of Water Attorney From Special Meeting Interviews

- It was the general consensus from Mr. Donovan and Mr. Chambers that their recommendation to hire Martha (Marti) Phillips Whitmore has not changed. Her water law experience and lack of personal conflicts supports their decision. She would be hired for water law related duties. If the Board feels comfortable, it is Mr. Donovan's recommendation to hire Mr. Tourtillott's firm to help support Ms. Whitmore in the highly detailed tasks on the Sweetwater rights. One of Ms. Whitmore's objectives would be facilitating and developing a master plan for the District.
- Mr. Lovato stated he was impressed with Ms. Whitmore and her track record had proven her to be successful, even against the District's current counsel. Mr. Beahan thought she would be resilient undertaking tasks assigned to her.
- Mr. Hasbrouck had some continuity concerns and suggested that, in lieu of hiring another water attorney, just retain current counsel, of Felt, Monson & Culichia. Ms. Cederberg's stated her concerns about Ms. Whitmore's hourly rate of \$350 when Felt, Monson, & Culichia are charging \$235. Mr. Chambers was concerned about the bad blood created between the current law firm and Pueblo's Judge Maes. Mr. Lovato stated that he feels the current legal counsel should remain in place to finish the legal issue of recharge versus replacement.

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

**MR. HASBROUCK MADE A MOTION TO RETAIN CURRENT COUNSEL IN LIEU OF SELECTING NEW COUNSEL. SECONDED BY MS. CEDERBERG. MR. HASBROUCK-YES. MS. CEDERBERG-YES. MR. HAMMERS-NO. MR. BEAHAN-NO. MR. LOVATO-NO. MOTION FAILED (2-3).**

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

**MR. HAMMERS MADE A MOTION TO HIRE MS. WHITMORE AS THE DISTRICT'S WATER LAW COUNSEL. SECONDED BY MR. BEAHAN. MR. HASBROUCK-NO. MS. CEDERBERG-NO. MR. HAMMERS-YES. MR. BEAHAN-YES. MR. LOVATO-YES. MOTION CARRIED (3-2).**

ITEM 4:

⇒ Approval of Minutes

- The Minutes of the Regular Meeting of June 8, 2010, were reviewed. Mr. Lovato asked if there were any changes that needed to be made to the Minutes. There were none.

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

**MR. BEAHAN MADE A MOTION TO APPROVE THE MINUTES OF THE REGULAR MEETING OF JUNE 8, 2010. SECONDED BY MS. CEDERBERG. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).**

- The Minutes of the Special Meeting of June 23, 2010, were reviewed. Mr. Lovato asked if there were any changes that needed to be made to the Minutes. There were none.

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

**MR. BEAHAN MADE A MOTION TO APPROVE THE MINUTES OF THE SPECIAL MEETING OF JUNE 23, 2010. SECONDED BY MR. HAMMERS. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).**

- The Minutes of the Special Meeting of July 7, 2010, were reviewed. Mr. Lovato asked if there were any changes that needed to be made to the Minutes. Mr. Beahan requested Ms. Hardekopf to clarify under Item 5. Public Comments, as to whether or not comments from the audience were recognized in the content of the Minutes. She said they were duly noted. Ms. Hardekopf also stated that the level of detail presented in the minutes is up to the Board.

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

**MS. CEDERBERG MADE A MOTION TO APPROVE THE MINUTES OF THE SPECIAL MEETING OF JULY 7, 2010. SECONDED BY MR. HAMMERS. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).**

ITEM 5:

⇒ Public Comments

- Mr. Lovato requested the audience to limit their comments to three minutes and to keep the content civilized with no derogatory remarks. He stated he would give one warning to those who were unruly; upon second warning, he would ask them to leave.
- Mary Hernandez requested clarification of Mr. Donovan's salary. She was told Mr. Donovan is being paid \$235/hour, and the current counsel had recently raised their rates to \$235/hour. With Mr.

Chambers receiving \$75,000 a year, and the prior Manager receiving a year and a half severance package, she wanted to know where the dollars were coming from within the budget. Mr. Lovato stated that Mr. Chambers will be giving the Board some dates for a budget work session in the very near future.

- Assunta Manning asked Mr. Donovan why Ms. Whitmore had sat in on the other applicants' interviews, but no applicants were present to hear her interview. Mr. Donovan and Mr. Lovato stated that the interviews were conducted in a public meeting, and all candidates were invited to attend.
- Gayle Jones stated she had a some questions/comments for Mr. Chambers and/or the Board. Ms. Jones asked Mr. Chambers how he would like to be addressed and was told addressing him by his first or last name would be fine. Ms. Jones stated an observation she overheard by an individual leaving last month's meeting saying "Well, it's obvious who they picked." This was regarding the water attorney.
- Ms. Jones asked about Cherokee's policy of posting in-house when there were vacancies to be filled, giving as an example the act of overlooking Mr. Sintas for the new Manager's position and then opening it up to outside applications. Ms. Jones asked for clarification of work history on Mr. Chamber's resume. Although his budgetary experience was limited at the Sunset Metropolitan District, he felt he was well prepared to take on the assignment with Cherokee.
- Mr. Mattes again questioned how many lawsuits were pending and was told there are approximately 15-20 legal actions and five lawsuits pending.
- Rita Martinez asked Mr. Donovan if the legal counsel interviewees had an inside track as they seemed to have knowledge about the District's legal situation and were able to answer quickly about conflicts of interest.
- Ms. Jones asked if other Board members had the opportunity to meet with the candidates as Mr. Donovan and Mr. Chambers had. Mr. Lovato stated that every Board member had the opportunity to meet with the potential lawyers prior to their interviews. Ms. Cederberg and Mr. Hasbrouck added they had found out about Mr. Chambers selection the day of the meeting, and at the meeting that evening they were able to review Mr. Chamber's resume. Mr. Hasbrouck stated for the record that there needs to be discussion and decisions made in a public forum as emails can be unreliable.

ITEM 6:⇒ Legal Report – Kevin Donovan

- Mr. Donovan reported that the Supreme Court decision for the Wells 14-17 case was kicked back to Judge Maes' court rather than it being heard by Judge Schwarz; and has asked that current counsel to remain handling this case and that they also remain as main counsel for the 'recharge vs. replacement' hearing. Currently Mr. Culichia has requested an extension in order for the new attorneys to become familiar with the cases. Mr. Donovan stated that at this time, current counsel has not filed a Motion to Withdraw.
- Mr. Donovan also reported that Cherokee received an offer from Mr. McDougal regarding the Springs Airport Case, and that a follow-up offer of settlement was forthcoming from Mr. McDougal.

ITEM 7:⇒ Engineering Report – Ed Meyer

- Mr. Meyer provided a report on the wastewater project and related issues (see attached). Glacier Construction's 24<sup>th</sup> pay request has been received and reflects \$16,648,938.82 earned to date. Glacier Construction has requested \$700,000.00 of the retainage be released and is based upon the Contractor having achieved substantial completion on the WWTP portion of the project. A discharge from the facility was undertaken on July 1, 2010. Therefore, a Certificate of Substantial Completion has been issued for just the WWTP work excluding the lift station work. The Notice of Final Payment has been initiated indicating that final payment will be made on or after July 29, 2010. GMS recommends approval of both the Certificate of Substantial Completion effective July 1, 2010, approval of the Notice of Final Payment, and the approval of Pay Request No. 24 in the amount of \$850,115.99.

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

**MR. BEAHAN MADE A MOTION TO APPROVE THE CERTIFICATE OF SUBSTANTIAL COMPLETION, THE NOTICE OF FINAL PAYMENT, AND PAY REQUEST NO. 24 TO GLACIER CONSTRUCTION IN THE AMOUNT OF \$850,115.99. SECONDED BY MS. CEDERBERG. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- The WWTF began accepting sewage from Meridian and SAFB on June 21<sup>st</sup> and began limited discharging to the recharge basins on

July 1. Lift Station No. 1 has been relocated from SAFB to the Peterson WWTF site. Start up of Lift Station No. 1 occurred July 13th with continuous pumping of CMD wastewater anticipated to begin July 15. Lift Station No. 2 has been connected to the 14-inch force main and start up of Lift Station No. 2 occurred July 13.

- The installation of the required six ground water monitoring wells was completed June 28<sup>th</sup> by Kunau Drilling LLC. Kunau has submitted their final pay request, and the Notice of Final Payment has been initiated on their project. It indicates final payment will be made on or after July 19, 2010. Taking into account the previous payments, the net amount due Kunau is \$26,442.00. GMS recommends approval of Pay Request No. 3 in that amount.

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

**MR. BEAHAN MADE A MOTION TO APPROVE THE NOTICE OF FINAL PAYMENT AND PAY REQUEST NO. 3 TO KUNAU DRILLING LLC IN THE AMOUNT OF \$26,442.00. SECONDED BY MS. CEDERBERG. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- Pay Request No. 7 from ITT – Advanced Water Treatment has been received and shows a net amount due of \$126,000.00. Also, the Certificate of Substantial Completion has been completed as of June 1, 2010. GMS recommends the approval of the Certificate of Substantial Completion and Pay Request No. 7 in the amount of \$126,000.00.

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

**MR. BEAHAN MADE A MOTION TO APPROVE THE CERTIFICATE OF SUBSTANTIAL COMPLETION AND PAY REQUEST NO. 7 IN THE AMOUNT OF \$126,000.00 TO ITT – ADVANCED WATER TREATMENT. SECONDED BY MR. HAMMERS. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- The Water Pollution Control Revolving Fund Loan Request No. 30 has been prepared, and it requests a total of \$205,976.34 to be remitted to the District to cover eligible costs for June. GMS recommends approval of the requisition on that amount.

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

**MS. CEDERBERG MADE A MOTION TO AUTHORIZE REIMBURSEMENT OF WPCRF REQUISITION #30 BACK TO THE DISTRICT IN THE AMOUNT OF \$205,976.34. SECONDED BY MR. HAMMERS. WITH A**

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

- Mr. Meyer provided an update to the Board on the Marksheffel Road Water Transmission Line. He also provided to the Board the Attached Allocation of Costs on June's Contractor Draw Requests and a breakdown of the Project Expenditure Reimbursement Request No. 30.

ITEM 8:

⇒ Manager's Report – Sean Chambers

- Mr. Chambers handed out a memo (see attached) to the Board regarding the items that he has been getting up to speed with since he began at Cherokee; this includes existing contracts, IGA's, and administrative matters. Oral arguments on the Denver Basin Lease Case will take place on August 20. The Springs East Airport proposal made by Mr. Sandy McDougal was received on July 12. Mr. Chambers has been in discussions with Steve Harrison regarding the Pueblo West Augmentation Water Lease which is needed once Cherokee starts sending the wastewater to the new WWTF. Mr. Chambers is looking at scheduling a budget workshop and a workshop to get everyone up to date on the replacement plan and the modeling sometime around the last week of July.

A short break was taken at 7:32 p.m.

The Regular Meeting reconvened at 7:42 p.m.

ITEM 9:

⇒ Water/Wastewater Report – Art Sintas

- Mr. Sintas apprised the Board on water demands for June, 2010 with 5.0 mgd compared to June, 2009, of 3.4 mgd (see attached memo). Water demands for June, 2008, were 4.6 mgd. The District's usage this time of year is average. Total peaking water is 1765 acre feet, and the District has consumed 690 acre feet which is approximately 39% of the District's use. The District remains on the Stage 2 watering schedule which is twice a week watering, and at this time the staff recommends no changes.
- Mr. Beahan made a comment that he recently watched Mark Cuchiara and Mike Corder vacuum out a sewer system near K-Mart and was impressed with their hard work and with the limited equipment they had.

ITEM 10:

⇒ Golf Course

- See attached memos. Mr. Rainford stated the Sand Creek Well were pumping approximately 170-180 gpm. Mr. Beahan commented he has a grandson who plays in the Pikes Peak Linkers program, and he is very much appreciative of the Golf Course's participation.

ITEM 11:⇒ Old Business

- Procedures on hiring Cherokee employees, specifically the General Manager's position, was discussed. In the past, the Board would identify the requirements and post the application in house for two weeks. If any staff wished to apply, interviews would be conducted; then the position would be advertised to the public. In the selection process with the previous Manager, four Board Members interviewed the applications, and Mr. Meyer sat in on two of the interviews. It was decided the same qualifications, with possibly some tweaking, would be used in this upcoming application process.

ITEM 12:⇒ New Business

- The need for a vehicle for Mr. Chambers was discussed. Currently Mr. Chambers is comfortable driving a spare vehicle the company has on hand. Mr. Beahan stated that, in the Personnel Manual, the position of General Manager is afforded a vehicle and a new vehicle should be acquired to adhere to the District's policies.

ITEM 14:

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

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

**MS. CEDEBERG MADE A MOTION TO ENTER INTO AN EXECUTIVE SESSION CITING 24-6-402(4)(b) LEGAL CONSULTATION. SECONDED BY MR. HAMMERS. ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

A short break was taken at 8:42 p.m.

The Executive Session began at 8:53 p.m.

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

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

The Regular Session began at 9:56 p.m.

Mr. Lovato stated that no discussions or decisions resulting from the executive meeting needed to be made at this time.

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 9:58 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