

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

July 14, 2009

MINUTES

The Regular Meeting of the Board of Directors of the Cherokee Metropolitan District was held on Tuesday, June 9, 2009, at 5:30 p.m. at 6250 Palmer Park Blvd., Colorado Springs, Colorado.

BOARD OF DIRECTORS PRESENT

Steve Hasbrouck	Kurt VandenBoogaard
Sean Byers	Robert Lovato
Dave Hacker	

OTHERS PRESENT

Kip Petersen	Ed Meyer
Dian Hardekopf	Pete Heidebrecht
Jim Culichia	Sara Howard
Art Sintas	Craig Gelston
Sandy DeCarolis	Lily Baker
Brian Beaudette	Todd Laxson
Griff Rainford	

OTHER GUESTS SIGNING ATTENDANCE LOG

Mary Hernandez	Brian Kerschen
Heath Herber	Jan Olson
David McRobbie	Chloe Olson
Dave and Linda Mattes	Lynne Bliss
David Mattes	Frank Gonzalez
Stephen Schulze	Walt Bell

ITEM 1:

The meeting was called to order by Chairman Steve Hasbrouck at 5:33 p.m. Ms. Hardekopf called roll call of the Board of Directors, all Directors were present.

ITEMS 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. LOVATO MADE A MOTION TO APPROVE THE AGENDA OF THE REGULAR MEETING OF JULY 14, 2009. SECONDED BY MR. BYERS. ALL BOARD MEMBERS PRESENT WERE IN FAVOR. MOTION CARRIED (5-0).**

ITEM 4:

The Minutes of the Regular Meeting of June 9, 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. LOVATO MADE A MOTION TO APPROVE THE MINUTES OF THE REGULAR MEETING OF JUNE 9, 2009. SECONDED BY MR. BYERS. 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 noted. However, Mr. Petersen advised the Board that the discussion on the purchase of sod permits would be addressed on the Agenda under #12 New Business.

ITEM 6:

⇒ Legal Report – Mr. Jim Culichia

- Mr. Culichia advised the Board the Replacement Plan trial, which was held June 8-19<sup>th</sup>, is extended for another week beginning August 3. Thereafter, it could possibly be six to eight weeks before adjudication. Mr. Lovato asked if Meridian was involved in the trial and Mr. Culichia responded they are contributing their input and support if necessary.
- As a prerequisite to being able to use the water within the UBS basin, Cherokee will need to change the underlying water rights in

the District's existing wells for augmentation purposes. As a result of that, Well 13 is set for a two-day trial commencing in September. Three separate applications are required for the change use of these wells.

- An appeal has been filed by the District in the Springs Airport case; and also the appeal for the Denver Basin Lease case is scheduled for August 25, 2009.
- Meridian is primarily making all the legal preparations in the UBS Rules Case 17-18-19. The District's briefs and related appeals have been filed, although the District is keeping a low profile in the legal process.
- Mr. Mattes advised the Board he had attended a recent UBS Board Meeting whereby they addressed concerns that Cherokee Metro had knowledge of being aware of dangerously high nitrate levels in the basin. Mr. Petersen acknowledged the possible existence of the high levels only because of the high volume of septic systems populating the area and also the existence of nitrogen levels in sod farm production. Coincidentally, Mr. Petersen has addressed this very concern with the County authorities; and because of this, they have agreed to help conduct a study of the developmental impact of groundwater supplies in the UBS basin. Mr. Petersen cautioned there was no one particular issue involved, but many factors impacting the nitrogen levels in the soil; and it has and will be a long-term water concern.

ITEM 7:

⇒ Engineering Report - Mr. Ed Meyer

- Mr. Meyer provided to the Board a report on the wastewater project and related issues (see attached). Glacier Construction's 12<sup>th</sup> pay request has been received and reflects \$13,502,318.33 earned to date. The overall retainage level remains at \$764,604.60. Taking the retainage and the prior payments into account, the net amount due the Contractor is \$604,916.18. GMS recommends approval of the pay request in that amount.

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

**MR. LOVATO MADE A MOTION TO APPROVE PAY REQUEST NO. 12 TO GLACIER CONSTRUCTION IN THE AMOUNT OF \$604,916.18. 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 provided the Board a brief report on the developments of the WWTP, stating yard piping is approximately 99% complete and electrical conduit installations are close to being completed. Waste-activated sludge yard piping and transfer piping is completed and the electrical building structure is complete. Blowers and air handling piping in the operations building have been installed.
- Mr. Meyer recommended the Board approve Change Order No. 3 to Glacier Construction which would include the construction and startup of two new lift stations. Advantages to having Glacier Construction undertake the additional work would be the construction would occur within the timing of their contract, the savings associated with mobilization and demobilization costs, coordination considerations in the decommissioning and installation of new components, the startup of the wastewater treatment facility, and the sequential startup of lift stations and their operation subsequent to the treatment facility being online.
- On that basis, GMS is recommending approval of Change Order No. 3 to Glacier Construction in the amount of \$1,524,438.10. The recommendation of award is contingent upon Health Department approval of the design and the Change Order.

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

**MR. LOVATO MADE A MOTION TO APPROVE CHANGE ORDER NO. 3 TO GLACIER CONSTRUCTION IN THE AMOUNT OF \$1,524,438.10, CONTINGENT UPON HEALTH DEPARTMENT APPROVAL. SECONDED BY MR. BYERS. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- Mr. Brian Kerschen, Glacier Construction's Project Manager, was in the audience and answered questions regarding sub-contractor change orders and provided a variety of sub-contractors Glacier Construction had hired for the WWTP project.
- A lengthy discussion ensued concerning Meridian and Paint Brush Hills being given the ability and having the opportunity to pipe in to the new WWTP.
- Timber Line Electric and Control Corporation has submitted their fourth pay request and reflects a total amount earned to date of \$69,288.10. Retainage stands at 5%. Taking into account retainage and prior payments, the net amount due the Contractor is \$16,200. GMS recommends approval of the pay request in that amount.

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

**MR. BYERS MADE A MOTION TO APPROVE PAY REQUEST #4 TO TIMBER LINE ELECTRIC IN THE AMOUNT OF \$16,200. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- ITT-Advanced Water Treatment has submitted their fifth pay request and reflects a total amount earned to date of \$1,206,600.00 Retainage stands at 5%. Taking into account retainage and prior payments, the net amount due the Contractor is \$63,000. GMS recommends approval of the pay request in that amount.

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

**MR. LOVATO MADE A MOTION TO APPROVE PAY REQUEST #5 TO ITT-ADVANCED WATER TREATMENT IN THE AMOUNT OF \$63,000. SECONDED BY MR. HACKER. 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. 18 has been prepared, and it requests a total of \$416,964.49 to be remitted to the District to cover eligible costs for June. GMS recommends approval of the requisition in that amount.

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

**MR. LOVATO MADE A MOTION TO AUTHORIZE REIMBURSEMENT OF WPCRF REQUISITION #18 BACK TO THE DISTRICT IN THE AMOUNT OF \$416,964.49. 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 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. 18.

At this time, a short break was requested so Mr. Hasbrouck could provide signatory authority on the above contracts. The meeting recessed at 6:47 p.m.

The regular meeting resumed at 6:56 p.m.

ITEM 8:⇒ Manager's Report – Kip Petersen

- Mr. Petersen was pleased to announce that the District has received another offer to purchase Fountain Mutual shares for augmentation purposes; this item will be further addressed in Executive Session.
- Mr. Petersen provided the Board with an update on a meeting he attended two weeks ago with the Utility Advisory Committee regarding UPAC's policy. Mr. Petersen made a presentation to this Committee as a the Representative of the El Paso County Water Authority and the Pikes Peak Regional Water Authority as Mr. Petersen is the President of both groups.
- The Special District Association's conference will be held September 23-25, 2009, at the Keystone Conference Center. Mr. Petersen hasn't received the conference agenda, but both days will consist mostly of workshops. Mr. Lovato, Mr. Byers, and Mr. Hasbrouck expressed an interest in attending.
- Mr. Petersen suggested a work session be scheduled to give the Board the opportunity to focus on the options of short- to long-term water sources in the District. It was decided to have a work session on Tuesday, October 6, 2009, commencing at 5:00 p.m.

ITEM 9:⇒ Water/Wastewater Report – Art Sintas

- Mr. Sintas introduced the newest employee of the company, Mr. Craig Gelston. Mr. Gelston was hired in May as the Lead Park Maintenance Technician and will be actively involved in the upkeep and maintenance of the office grounds and all the medians and parks within the District.
- In Mr. Sintas' attached June update, he reported water demands for June, 2009, were 3.443 mgd compared to June, 2008, of 4.580 mgd and 3.767 mgd for June, 2007. Pikes Peak Wells produced 430 acre feet which equals 51% capacity. Tipton Well has produced 19 acre feet and is currently turned off. Guthrie Well started flowing on July 8, and the District has received to date 10 acre feet of 200 acre feet total. Pumping from Colorado Springs has begun and 192 acre feet have been received to date.
- Lengthy discussion followed regarding the District's water demands and how weather forecasting and high peak water consumption and

watering days could affect the remainder of the calendar year. Water violations are still down from this time last year.

ITEM 10:

⇒ Golf Course and Pro Shop – Todd Laxson

- Mr. Laxson reported in the attached memo that June, 2009, was a solid beginning to the Course's summer season and highlighted on the following: The Course hosted two large private tournaments for separate groups who will be returning next year; the 5<sup>th</sup> Annual Jim Lipp Memorial Match Play tournament was held, and the Pikes Peak Linkers program is meeting every Tuesday on the Course. Total number of students in the program this year is 204.
- The Course hosted one of the largest tournaments of the year in June called the Pepsi 3-Man Scramble.

Maintenance – Griff Rainford

- Mr. Rainford updated the Board on the June maintenance of the Golf Course (see attached). In June the Course recorded a total of 1.94 inches of rain which was significant compared with the .74 and .57 inches in 2007 and 2008 respectively.
- Greens and tees were fertilized and the bunker on the left of #5 green was rebuilt. The well levels have actually improved, and pumping has increased from 120 gpm to a high of 135 gpm. The tall grass along Palmer Park Blvd. has not been mowed as it is a low water use area.

ITEM 11:

⇒ Old Business

There was no old business to report.

ITEM 12:

⇒ New Business

- Westerra Developer Heath Herber requested the Board take into consideration his request for a sod permit to be used at a newly developed home in the Mule Deer Crossing subdivision. This home has been selected to be placed in the Colorado Springs Parade of Homes which begins August 7. While his request was outside the parameters of the dates to purchase sod permits, he was

requesting this variance based on the opportunity to attract new homeowners into the District and demonstrate his xeriscaping accomplishments to complement the objectives of the District's water conservation plan.

- The consensus of the Board was that if a precedent was allowed for Mr. Herber, other subsequent sod permit requests could not be denied prior to September 1. Mr. Culichia pointed out, by means of a quick calculation by Mr. Sintas and himself, there was good amount of water available at this time to allow for the early sale of sod permits for the District's customers to begin on August 1<sup>st</sup> rather than the September 1 date. Mr. Lovato agreed with Mr. Sintas' suggestion, however, Mr. VandenBoogaard disagreed with the suggestion.
- A lengthy discussion ensued, including suggestions allowing Mr. Herber the purchase of the sod permit, suggesting Mr. Herber use a water truck to water the sod, allowing the purchase of sod permits to commence early and thereby releasing a special mailing to the District, utilizing the media to announce the change in sale of sod permits, and raising the cost of sod permits if purchased before the established September 1<sup>st</sup> issuance date.
- Mr. VandenBoogaard believed that since only three special requests for sod permits had been brought to the Board, requests should be considered on a case by case basis. Mr. VandenBoogaard stated, as the Board has the ability to grant a variance, it should be voted upon.

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

**MR. VANDENBOOGAARD MADE A MOTION TO APPROVE MR. HERBER'S REQUEST FOR A SPECIAL SOD PERMIT COMMENCING AUGUST 1. SECONDED BY MR. BYERS. MR. BYERS-YES. MR. LOVATO-NO. MR. HACKER-NO. MR. VANDENBOOGARD-YES. MR. HASBROUCK-NO. MOTION DEFEATED (2-3).**

- Mary Hernandez from the audience commented that she took personal offense to Mr. Hasbrouck's comment that if any customer in the District had a green lawn, it was because they were cheating. Mr. Hasbrouck apologized stating that he did not mean this in a serious manner.
- Mr. Lovato again felt, that based on staff's recommendation, there was currently ample water supply and consideration should be given for sod permit purchases to commence August 1<sup>st</sup> for all of the District's customers.

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

**MR. LOVATO MADE A MOTION TO ALLOW THE PURCHASE OF SOD PERMITS TO COMMENCE AUGUST 1<sup>ST</sup> TO ALL DISTRICT'S CUSTOMERS. MOTION DIED FOR LACK OF A SECOND.**

- Mr. Byers suggested that if customers request a sod permit in the off season, they should address the Board with the extenuating circumstances and, if approved, would be required to pay a higher price for the sod permit. Although some Board members felt this was revenue driven, others felt it was a service-driven approach.
- Jan Olson from the audience stated that, although Mr. Herber is a very nice gentleman and developer, that his special request should be denied as too much expense would occur in order to humor the request and the select few that may approach the Board in the future.
- In conclusion, it was general agreement not to change the sod permit policy. Mr. Byers, however, requested another motion to again consider Mr. Herber's request.

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

**MR. BYERS MADE A MOTION TO APPROVE MR. HERBER'S REQUEST FOR A SPECIAL SOD PERMIT COMMENCING AUGUST 1. SECONDED BY MR. VANDENBOOGAARD. MR. BYERS-YES; MR. LOVATO-NO; MR. HACKER-NO; MR. VANDENBOOGARD-YES, AND MR. HASBROUCK-NO. MOTION DEFEATED (2-3).**

- A written special request from homebuilder D.R. Horton to hand water dying and/or dead sod at five homes in the Claremont Ranch subdivision was unanimously denied with no further discussion.
- The company summer picnic is set for August 15 at Eastridge Park. More developments will be forthcoming.

ITEM 13:

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

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

**MR. LOVATO 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).**

A short break was taken at 9:33 p.m. before Executive Session commenced.

Executive Session was entered into at 9:42 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 10:41p.m.

There were no actions to take place after executive session as the discussions were strictly legal advice.

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 10:42 p.m.

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Kurt VandenBoogaard, Secretary

Board Members

Term Expires

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