

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

February 9, 2010

MINUTES

The Regular Meeting of the Board of Directors of the Cherokee Metropolitan District was held on Tuesday, February 9, 2010, 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	Sandy DeCarolis
Art Sintas	Griff Rainford
David Shohet	Len Meyer
Dave Frisch	Sara Howard
Todd Laxson	Pete Heidebrecht
Brian Beaudette	

OTHER GUESTS SIGNING ATTENDANCE LOG

Ty Keller	Lynne Bliss
Ward Olson	Jan Cederberg
Chloe Olson	

ITEM 1:

The meeting was called to order by Chairman Steve Hasbrouck at 5:30 p.m. Ms. Howard called roll call of the Board of Directors, all Directors were present except for Robert Lovato who arrived at 5:41 p.m.

ITEMS 2 and 3:

Mr. Hasbrouck asked if there were any changes or amendments that needed to be made to the Agenda. Mr. Petersen asked that the Addendum allowing

Woodmen Hills membership into the Pikes Peak Regional Water Authority be placed on the Agenda under New Business.

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

**MR. HACKER MADE A MOTION TO APPROVE THE AGENDA, AS AMENDED. SECONDED BY MR. BYERS. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (4-0).**

ITEM 4:

The Minutes of the Regular Meeting of January 13, 2010, 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 JANUARY 13, 2010. SECONDED BY MR. VANDENBOOGAARD. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (4-0).**

ITEM 5:

⇒ Public Comments

- Mr. Hasbrouck asked if anyone wished to speak from the audience. Mr. Petersen stated Ms. Hardekopf was not present at the meeting because she was ill. There were no other public comments.

ITEM 6:

⇒ Legal Report – Mr. David Shohet

- In Mr. Culichia's absence, Mr. Shohet updated the Board on the developments of several legal issues. The malpractice trial date against Mr. Susemihl has been indefinitely postponed as Mr. Susemihl has filed a summary judgment against the District. The District's response is due February 25.
- Although the Upper Black Squirrel has filed a declaratory judgment against the District stating Wells 9-12 cannot be used in the Replacement Plan, the District has filed a motion to dismiss. No hearing is yet scheduled on this outcome.
- The Sweetwater water rights (30% of Morrealli) sale with Mr. Morrealli was closed on January 29, 2010, and will be an ongoing,

long-term planning process. The District is delaying the closing of the Duncan Well, as legal counsel will be filing a declaratory judgment action.

- Legal counsel has refiled the Gunzelman application in order to get a decree for the full amount of 72 acre feet from that well.
- The Sand Creek augmentation plan, which involves the District's Golf Course and Fontana's Golf Course, has been filed.
- The Denver Basin Lease Case is under appeal on the Hearing Officer's initial decision. Cherokee has submitted a draft decree for the quantification of water under the parcels that Cherokee has obtained the consents. This hearing before the Commission is set for May, 2010.
- Appeal is currently before the Colorado Supreme Court on Judge Maes' order to abandon wells 14-17. The opening brief is due at the end of March 2010.

#### ITEM 7:

⇒ Engineering Report - Mr. Dave Frisch

- In Mr. Meyer's absence, Mr. Frisch provided a report on the wastewater project and related issues (see attached). Glacier Construction's 19<sup>th</sup> pay request has been received and reflects \$15,865,114.47 earned to date. Taking both the retainage and the prior payments into account, the net amount due the contractor is \$122,870.07. GMS recommends approval of the pay request in that amount.

#### **\*\*\*MOTION\*\*\***

**MR. LOVATO MADE A MOTION TO APPROVE PAY REQUEST NO. 19 TO GLACIER CONSTRUCTION IN THE AMOUNT OF \$122,870.07. SECONDED BY MR. HACKER. THERE WAS NO FURTHER DISCUSSION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- Ninety-eight percent of the wire has been pulled throughout the site. SBR Basins No. 1 through 4's walkways and handrails are 99% complete. The electrical building has 98% of the control equipment and wiring installed.
- Lift Station 1 drawings have been approved by the Colorado Department of Public Health and Environment. Site grading on Lift

Station No. 2 is 80% complete. The buildings footing and stem walls have been completed. Yard piping is in place, and underslab conduit and plumbing are complete. Concrete pads are in place for the generator and pumps.

- Pay Request No. 10 has been received from Timber Line Electric & Control Corporation and reflects \$359,359.00 earned to date. Taking into account the retainage and prior payments, the net amount due Timber Line is \$16,271.91. GMS recommends approval of the Pay Request in that amount.

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

**MR. LOVATO MADE A MOTION TO APPROVE PAY REQUEST NO. 10 TO TIMBER LINE ELECTRIC & CONTROL CORPORATION IN THE AMOUNT OF \$16,271.91. SECONDED BY MR. HACKER. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- The domestic well being installed by Kunau Drilling is 100% complete. With the work completed, final Change Order No. 1 consisting of quantity adjustments has been compiled and results in an increase in the contract price by \$562.50, bringing the final contract cost to \$20,870.05. GMS recommends approval of Change Order No. 1 in that amount.

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

**MR. LOVATO MADE A MOTION TO APPROVE CHANGE ORDER NO. 1 TO KUNAU DRILLING IN THE AMOUNT OF \$562.50. SECONDED BY MR. HACKER. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- Kunau Drilling has submitted both Pay Request Nos. 1 and 2. The net amount due on Pay Request No. 1 is \$19,826.55. Pay Request No. 2 calls for the release of the retainage totaling \$1,043.50. With the two pay applications collectively totaling \$20,870.05, GMS recommends approval in that amount.

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

**MR. LOVATO MADE A MOTION TO APPROVE PAY REQUESTS NO. 1 AND 2 TO KUNAU DRILLING IN THE AMOUNT OF \$20,870.05. SECONDED BY MR. HACKER. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- The advertisement for final payment has been initiated. It will advertise February 12<sup>th</sup> and 16<sup>th</sup> indicating that the final payment will be made on or after February 26, 2010.
- The Water Pollution Control Revolving Fund Loan Request No. 25 has been prepared, and it requests a total of \$160,356.62 to be remitted to the District to cover eligible costs for January. GMS recommends approval of the requisition in that amount.

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

**MR. LOVATO MADE A MOTION TO AUTHORIZE REIMBURSEMENT OF WPCRF REQUISITION #25 BACK TO THE DISTRICT IN THE AMOUNT OF \$160,356.62. SECONDED BY MR. HACKER. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

- Mr. Frisch provided to the Board the attached Allocation of Costs on January's Contractor Draw Requests and a breakdown of the Project Expenditure Reimbursement Request No. 25.

ITEM 8:

⇒ Manager's Report – Kip Petersen

- Mr. Petersen advised the Board that he has been re-elected another year term, as President, to UPAC and the Pikes Peak Water Authority.
- The dedication of the Wastewater Treatment Plant is tentatively scheduled for the latter part of May or when it is fully functional and the weather is amiable to the occasion.
- Mr. Petersen provided to the Board a copy of an interesting article published in *The Gazette*. Mr. Scott Whatcott, a previous resident of the District who, without the permission of the District, erected a shed in one of the District's-owned fairways, was erroneously representing himself as an attorney in other legal matters filed in El Paso County. He is charged with offering a false instrument for recording, attempted theft, perjury and attempting to influence a public servant. This is the individual who fraudulently obtained a permanent restraining order against Mr. Petersen.

ITEM 9:

⇒ Water/Wastewater Report – Art Sintas

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

ITEM 10:

⇒ Golf Course

See attached memos. Mr. Byers asked how many inches of moisture the Golf Course had received so far this year, and Mr. Laxson stated the amount was very small as the moisture content in the snowfalls has been low.

ITEM 11:

⇒ Old Business

There was no old business to report.

ITEM 12:

⇒ New Business

- Mr. Petersen read to the Board an Addendum to Intergovernmental Agreement Establishing the Pikes Peak Regional Water Authority, whereby Woodmen Hills is requesting to be a member. He asked the Board to approve this Addendum.

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

**MR. LOVATO MADE TO A MOTION TO APPROVE THE ADDENDUM TO INTERGOVERNMENTAL AGREEMENT ESTABLISHING THE PIKES PEAK REGIONAL WATER AUTHORITY AS READ. SECONDED BY MR. BYERS. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

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

A short break was taken at 6:08 p.m.

Executive Session was entered into at 6:15 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 LOVATO. ALL BOARD MEMBERS PRESENT APPROVED. MOTION CARRIED (5-0).**

The Regular Session began at 7:46 p.m.

Mr. Petersen stated that the Board discussed negotiating strategies for ongoing legal matters.

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 7:47 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