

CHEROKEE METROPOLITAN DISTRICT
REGULAR MEETING OF THE BOARD OF DIRECTORS

June 14, 2011

MINUTES

The Regular Meeting of the Board of Directors of the Cherokee Metropolitan District was held on Tuesday, June 14, 2011, at 2:30 p.m., at 6250 Palmer Park Blvd., Colorado Springs, Colorado.

BOARD OF DIRECTORS PRESENT

Dave Hammers	Steve Hasbrouck
Larry Keleher	William Beahan
Jan Cederberg	

OTHERS PRESENT

Sean Chambers	Art Sintas
Dian Hardekopf	Pete Heidebrecht
Lily Baker	Todd Laxson
Griff Rainford	

OTHER GUESTS SIGNING ATTENDANCE LOG

Rita Martinez	Mary Hernandez
Linda O'Riley	Dave Hacker
Dave Mattes	Linda Mattes
David Mattes	Lewis Borgognone
Paula Schofield	Linda Keleher
Chloe Olson	Don Laughlin
Walt Bell	R.L. Stoltz
Gary D.	

ITEM 1:

The meeting was called to order by President Hammers at 2:34 p.m.

ITEM 2:

Mr. Hammers asked Ms. Baker for the roll call of the Board of Directors, all Board Members were present.

ITEM 3 and 4:

Mr. Hammers asked if there were any changes or amendments that needed to be made to the June 14, 2011, Regular Board Meeting Agenda. Mr. Hammers stated that he would like to start a discussion under new business entertaining possibly getting a stenographer to take the minutes. Mr. Keleher suggested that, for this meeting and for future meetings, perhaps the Golf Course would like to move their reports to come after public comments but before the Manager's Report as it could be quite lengthy. Ms. Cederberg wanted to add board comments to the agenda under new business as well. Mr. Chambers noted that, after executive session, summary will be given outlining topics discussed within the executive session.

*****MOTION*****

MS. CEDERBERG MADE A MOTION TO APPROVE THE AGENDA OF THE REGULAR BOARD MEETING OF JUNE 14, 2011, WITH THE RECOMMENDED CHANGES ADDED. SECONDED BY MR. BEAHAN. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).

ITEM 5:

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

*****MOTION*****

MS. CEDERBERG MADE A MOTION TO ENTER INTO EXECUTIVE SESSION CITING 24-6-402(4)(B) LEGAL CONSULTATION AND THE TOPICS LISTED ON THE JUNE 14, 2011, AGENDA. A DISCUSSION ENSUED, CITING STATUTES, TO SEE IF ALL ITEMS LISTED UNDER THE HEADING EXECUTIVE SESSION QUALIFIED AS EXECUTIVE SESSION MATERIAL. AFTER FURTHER DISCUSSION, THE MOTION WAS SECONDED BY MR. BEAHAN. MR. KELEHER-NO. MS. CEDERBERG-YES. MR. BEAHAN-YES. MR. HASBROUCK-NO. MR. HAMMERS-YES. MOTION FAILED (3-2).

Mr. Hammers recommended a motion to move the Executive Session topics to the public session portion of the June 14, 2011 meeting, as the Board could not agree to go into Executive Session. Ms. Cederberg asked that the meeting then be held at 5:30 p.m. as not many of the public was in attendance. Mr. Hammers stated that the meeting needed to move forward, elaborating that there are critical legal issues to discuss, water supply

planning and a report on the engineering and construction issues at the water reclamation and treatment plant's Rapid Infiltration Basins (RIBS), all of which must go forward, executive session or not.

*****MOTION*****

MS. CEDERBERG MADE THE MOTION TO TAKE THE EXECUTIVE SESSION TOPICS INTO THE PUBLIC SESSION OF THE REGULAR MEETING. SECONDED BY MR. BEAHAN. WITH A ROLL CALL VOTE, MR. KELEHER-YES. MS. CEDERBERG-YES. MR. BEAHAN-NO. MR. HASBROUCK-YES. MR. HAMMERS-YES. MOTION CARRIED (4-1).

The Regular Session continued at approximately 2:50 p.m.

Ms. Whitmore lead a historical discussion of 98CW80, which she termed as a diligence application filed in 1998 on the Sweetwater wells that had a number of objectors, mostly the Upper Black Squirrel. This lead to a discussion of the 1999 stipulation that provided all recharge water from certain subdivisions would go to recharging the Upper Black Squirrel Basin. A discussion ensued about the replacement plan and how that affects Cherokee's and Meridian's return flows as well. Ms. Whitmore and Mr. Donovan advised that further legal negotiations were needed. An appeal to the Supreme Court was recommended.

*****MOTION*****

MR. BEAHAN MADE A MOTION TO ALLOW LEGAL COUNSEL TO MOVE FORWARD AND PREPARE A NOTICE OF APPEAL TO THE SUPREME COURT REGARDING THE 1999 STIPULATION. MS. CEDERBERG SECONDED THE MOTION. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS IN FAVOR. MOTION CARRIED (5-0)

Another discussion ensued regarding whether or not it was prudent to discuss the Meridian settlement offer in public. Legal counsel advised that, because it was potential litigation, that it would be better to discuss in executive session.

*****MOTION*****

MS. CEDERBERG MADE MOTION TO DISCUSS POSSIBLE SETTLEMENT OFFER WITH MERIDIAN UNDER EXECUTIVE SESSION AT THE END OF THE PUBLIC MEETING UNDER 15B WITH BOARD COMMENTS BEING 15A. SECONDED BY MR. BEAHAN. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS IN FAVOR. MOTION CARRIED. (5-0)

Mr. Chambers advised the board of possible land and water acquisitions that he was looking into but also advised them that he was not comfortable talking about them in the public session. He felt that was topic for executive session as well.

*****MOTION*****

MS. CEDERBERG MADE MOTION TO DISCUSS POSSIBLE LAND AND WATER ACQUISITIONS UNDER HEADING 15C IN EXECUTIVE SESSION AND ALSO TO DISCUSS THE DUNCAN WATER RIGHT DEAL UNDER 15D IN EXECUTIVE SESSION AS WELL. SECONDED BY MR. BEAHAN. WITH A ROLL CALL VOTE. MR. KELEHER-YES. MS. CEDERBERG-YES. MR. BEAHN-YES. MR. HASBROUCK-NO. MR. HAMMERS-YES. MOTION CARRIED (4-1)

A discussion lead by Ms. Whitmore transpired regarding the loss of Wells 14-17 and how that was affecting Cherokee's water supply and how much water was needed to fill the deficit. Ms. Whitmore passed out a memo on the unique issues facing the District water, supply scenarios, and strategies with discussion following.

*****MOTION*****

MS. CEDERBERG MADE MOTION TO MOVE ITEM #6 ON AGENDA TO VERY END OF MEETING AS ITEM 15 E, SUMMARY OF EXECUTIVE SESSION. SECONDED BY MR. BEAHAN. WITH A ROLL CALL VOTE. ALL BOARD MEMBERS IN FAVOR. MOTION CARRIED (5-0)

ITEM 7:

⇒ Approval of Minutes

The Minutes of the Regular Board Meeting of May 10, 2011, were reviewed. Mr. Hammers asked if there were any changes that needed to be made to the Minutes. No changes were made.

*****MOTION*****

MS. CEDERBERG MADE A MOTION TO APPROVE THE MINUTES OF THE REGULAR BOARD MEETING OF MAY 10, 2011 AS WRITTEN. SECONDED BY MR. BEAHAN. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).

The Minutes of the Special Meeting of June 7, 2011, were reviewed. Mr. Hammers asked if there were any changes that needed to be made to the Minutes. There were none noted.

*****MOTION*****

MS. CEDERBERG MADE A MOTION TO APPROVE THE MINUTES OF THE SPECIAL MEETING OF JUNE 7, 2011 AS WRITTEN. SECONDED BY MR. BEAHAN. ALL BOARD MEMBERS PRESENT IN FAVOR. MOTION CARRIED (5-0).

ITEM 8:

⇒ Legal Report - Kevin Donovan (Not given at this time)

ITEM 9:

⇒ Engineering Report

- There was not an Engineering Report at this time

As most of the public had not shown up at this point in the meeting, Item #10, Public comments was moved down in the agenda. This was also true for Item #11, Manager's report.

ITEM 12

⇒ Water/Wastewater Report-Art Sintas

- Mr. Sintas gave out a memo to the public detailing the District's water demands for the month of May. Mr. Chambers and Mr. Sintas were apprehensive but felt that the district could handle going to Stage 1 Watering on a trial basis, which allows for 3-day-a-week watering. This would also benefit the district for augmentation with the Substitute Water Supply Plan.

*****MOTION*****

MR. BEAHAN MADE A MOTION TO ENTER INTO STAGE 1 WATERING SCHEDULE ON A TRIAL BASIS AND TO USE THIS OPPORTUNITY TO EDUCATE THE PUBLIC ON WATER-WISE IRRIGATION. SECONDED BY MS. CEDERBERG. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS IN FAVOR. MOTION CARRIED (5-0)

At this time, Nolte Engineering made a presentation on the Rapid Infiltration Basins and what they found upon observation. A packet was given out at that time detailing the work that had been done thus far with a review of the material by the Representative of Nolte Engineering.

Mr. Hammers asked how much money was spent on the rehab of basin #1 with Mr. Chambers stating that roughly \$300,000 including the geotech work and staff time and are currently boring holes in basins 2, 4, 5, & 10. Ms. Cederberg asked if the monies spent on the rehab of the basins should be looked at if the District is unable to re-use the water.

Discussion on moving forward and possibly drafting a complaint against the Engineers and Construction Companies ensued. Mr. Hammers asked what the lawsuit would cost the District and would it be worth it, then suggested looking at the performance bonds issued for the project and deal with it that way. Mr. Donovan stated that that would be the quickest way to handle the suit is by going to the Bond Company.

*****MOTION*****

MR. BEAHAN MADE A MOTION TO MOVE FORWARD WITH THE LEGAL ACTION AND DRAFT THE COMPLAINT. SECONDED BY MS. CEDERBERG. WITH A ROLL CALL VOTE. MR. KELEHER-YES, MS. CEDERBERG-YES, MR. BEAHAN-YES, MR. HASBROUCK-ABSTAINED, MR. HAMMERS-YES. MOTION CARRIED (4-0-1)

Mr. Hammers explained to the public that the approval of the minutes, Mr. Sintas' water update, and review of the legal report had been discussed earlier in the meeting and was now requesting a short break. Mr. Chambers asked that the public be briefed on 98CW80 ruling after the break.

Break was taken at 5:49 p.m.

The regular open session resumed at 6:09 p.m.

The remaining topics from the Legal Report were now given.

- Ms. Whitmore explained the ruling on the suit filed against Cherokee from the 98CW80 stipulation regarding Recharge vs. Replacement. Under the terms of the stipulation, it was ruled by Judge Maes that Recharge meant that Cherokee would leave the water in the basin to recharge and not to be re-used. More damaging language in the ruling indicates that any waters current or future that the District is to place back in the basin can never be pulled back out as replacement water. Mr. Chambers stated that the Replacement Plan that has been in the works for over 10 years will be "out the window" unless an appeal is won in the Supreme Court or a potential settlement is made with the Upper Black Squirrel District that would allow some use of recharged waters. Mr. Chambers also commented that this ruling not only affects our District but our partners, Meridian Ranch Service District.

- Mr. Pichi reported on the malpractice case against former Legal Counsel, Felt, Monson, & Culichia.

Mr. Pichi explained that there are 3 principle claims against the firm of Felt, Monson, & Culichia. The first of the claims is the failure to file for absolutes on well #17. The second is the Recharge vs. Replacement, failure to disclose issue which is reinforced by the recent ruling against the District. Mr. Pichi stated that former legal counsel issued an opinion, in 2006, which stated they were not aware of any issues that could potentially harm the Replacement Plan approval. The third complaint is regarding purchase of the 30% ownership of the Sweetwater Absolute Rights from Mr. Morealle, as Mr. Felt represented Mr. Morealle up until the time he came to work for the District. Mr. Pichi explained that because Mr. Morealle did not exercise his use of the water rights, Mr. Farmer owned through adverse possession, any water that may exist. Also, the Upper Black Squirrel District Board stated that those waters had been abandoned, so they go back to the basin. Mr. Donovan added that the only water purchased by Cherokee while Felt, Monson, & Culichia's Firm was working for the District was the Morealle water, no other water was obtained. Other issues with this complaint is that the only individual that signed a "waiver" for the conflict of interest was Mr. Petersen, nowhere did Mr. Morealle sign and this would be an un-waivable right, nor did the Cherokee Board sign anything.

The meeting was now turned over to the Public Comments section.

- A question was raised as to how the golf course water can be claimed but the water out in the UBSB cannot be and it was explained that the water claimed for the golf course was part of an augmentation plan that is needed for the water that is pumped from the well drilled for the course.
- A concern was addressed as to why the District would appeal the court ruling to the Supreme Court rather than attempt negotiations with the UBSGWMD? Ms. Whitmore explained that the District has tried to negotiate a settlement with the UBSGMD and has not been successful thus far, but the District will continue to try that avenue. The appeal may be necessary because there is too much at risk given the building of the 30 million dollar wastewater plant and the contract with Meridian Service District.
- Another comment from the public was a concern over the Board not having Executive Sessions as it was believed the District probably needs at least an hour within that setting to discuss negotiations,

strategies, etc. It was also noted that some feel Mr. Hasbrouck has been an obstructionist, and not working with anyone to resolve the District's issues.

⇒ Golf Course – Todd Laxson and Griff Rainford

- Memos regarding the Pro Shop and Golf Course Maintenance were discussed (memos on file in office). Mr. Beahan acknowledged the great program of the Pikes Peak Linkers and the Jr. Golfers. Mr. Laxson added that the Linkers was started back in 1998 with about 40 kids and has grown to 200 kids with a waiting list of roughly 100.

⇒ Old Business

- There was no old business at this time.

⇒ New Business

- Mr. Hammers stated that he would like to see the minutes for the Cherokee meetings be taken by a Stenographer and asked if staff could please look into this as an option and its costs.
- Mr. Donovan suggested that the Board look at approving a resolution to allow Mr. Chambers to do more negotiations and allow for more decision making and then bring to the Board at regular or special meetings. Mr. Donovan offered to write up a resolution if desired.
- Ms. Cederberg stated that she would like to recommend Mr. Bill Beahan as a nominee for this year's SDA Outstanding Board Member of the Year. Ms. Cederberg believes with all of Mr. Beahan's years with the Cherokee Metropolitan District and years at the Fire Station that he was a deserving candidate for this award.

*****MOTION*****

MS. CEDERBERG MADE A MOTION TO CREATE A RESOLUTION TO NOMINATE MR. BILL BEAHAN FOR THE 2011 SDA OUTSTANDING BOARD MEMBER OF THE YEAR. SECONDED BY MR. HAMMERS. WITH A ROLL CALL VOTE, MR. KELEHER- YES, MS. CEDERBERG- YES, MR. BEAHAN- ABSTAINED, MR. HASBROUCK- YES, MR. HAMMERS-YES. MOTION CARRIED (4-0-1)

⇒ Manager's Report – Sean Chambers

- Mr. Chambers stated he would like to have the District pay off the 99 series bonds. This bond has an outstanding balance of 3.8 million and by paying off the bond it would save the District \$760,000 in interest. Mr. Chambers added that a good portion of the payment would come out of the overall capital budget and with the rehab of the basins, the District will be doing a revised budget for 2011. This payoff would also free up the District for more bonding capability for when a water project is undertaken.

*****MOTION*****

MS. CEDERBERG MADE A MOTION TO ALLOW THE PAYOFF OF THE 99 SERIES BONDS TO BANK OF NEW YORK FOR THE 3.8 MILLION OUTSTANDING. SECONDED BY MR. BEAHAN. WITH A ROLL CALL VOTE, MR. KELEHER- YES, MS. CEDERBERG- YES, MR. BEAHAN- YES, MR. HASBROUCK- ABSTAINED, MR. HAMMERS-YES. MOTION CARRIED (4-0-1)

- Mr. Chambers told the Board that the Backflow Prevention Ordinance and Regulation will be discussed at a later date. It will be tabled for now.
- Mr. Chambers reported that the District will still work with the water returns program and implement educating the public for the Stage 1 watering. He also informed the Board that the District's Consumer Confidence Water Quality Report was mailed out to the customers as required by the State.
- The District has given direction to Mr. Mefford, the District's Hydro-geologist and Engineer, to work with the legal water counsel and staff to develop and evaluate plans for long term water resources along with a support matrix to help the Board in making decisions on water purchases.
- Staff met with Meridian Service District and GTL to discuss the plan ahead and the issues of the Rapid Infiltration Basins, which are a continuing issue and will require further work and capital resources.
- Mr. Chambers stated that he spoke with Mr. Dave Doran of the UBSCGMD and they would like to sit down and talk Board to Board. Ms. Whitmore commented that if the meeting was to discuss settlement negotiations, she believed it could be done in executive session. Follow up with the Special Districts Association will take place to ensure proper procedure.

*****MOTION*****

MR. BEAHAN MADE A MOTION TO AUTHORIZE THE GENERAL MANAGER TO SET A MEETING WITH THE UBSCGMD BOARD AND THE CHEROKEE BOARD WITH OUT THE ATTORNEYS PRESENT AND TO FIND OUT IF UBSCGMD WOULD LIKE TO HAVE A PUBLIC OR EXECUTIVE SESSION SETTING. SECONDED BY MR. KELEHER. WITH A ROLL CALL VOTE, ALL BOARD MEMBERS IN FAVOR. MOTION CARRIED (5-0)

- Mr. Chambers reported that the Goss well has been pumping for 65 days. Given the ruling on the return flows, the Board now needs to think about the money we spend on single use waters. Discussion of a 3-4 hour Special Board Meeting for the following week ensued. Ms. Whitmore stated that the discussions needed to be done in an executive session setting as the topics would be to discuss, litigations, water purchase negotiations and water supply strategies. Suggestions to meet June 21st from 1:00 – 5:00 p.m. were entertained, however, to allow for all Board members to be present at the start of the meeting. It was determined that the time frame of 2:00 – 5:00 p.m. would work the best.

*****MOTION*****

MR. BEAHAN MADE A MOTION TO CONDUCT A SPECIAL MEETING ON JUNE 21ST FROM 2:00 – 5:00 P.M. FOR THE PURPOSE OF HAVING AN EXECUTIVE SESSION TO DISCUSS LITIGATIONS, WATER PURCHASE NEGOTIATIONS AND WATER SUPPLY STRATEGIES. SECONDED BY MR. KELEHER. ALL BOARD MEMBERS IN FAVOR. MOTION CARRIED (5-0)

- Mr. Chambers read a memo to the Board on a personnel issue involving him, the challenges facing the District, and issues with the Board of Directors acting inappropriately (memo on file in office). Mr. Chambers explained that the Board's division and political tactics create a hindrance on his ability to do his job, in particular, issues involving Mr. Hasbrouck which are outlined in the memo. Ms. Cederberg stated that she believes Mr. Chambers is doing a great job and feels she is also being harassed by fellow Board Members. Mr. Donovan suggests that maybe at the July board meeting that the Board has a Special District Association Attorney down to discuss the ethics of Board Members.

ITEM 15B:⇒ Board Comment

- Mr. Beahan stated that he appreciates the Managers memo and if it is at all possible, could Mr. Chambers send the memo out with the packets so the Board has time to read before the meetings.

*****MOTION*****

MR. BEAHAN MADE A MOTION TO GO INTO EXECUTIVE SESSION FOR DISCUSSION ON MERIDIAN RANCH SETTLEMENT, NEW LAND/WATER ACQUISITIONS, AND THE DUNCAN WATER RIGHTS NEGOTIATIONS. SECONDED BY MS. CEDERBERG. WITH A ROLL CALL VOTE, MR. KELEHER- YES, MS. CEDERBERG- YES, MR. BEAHAN- YES, MR. HASBROUCK- NO, MR. HAMMERS- YES. MOTION CARRIED (4-1)

Executive Session began at 8:32 p.m.

*****MOTION*****

MR. KELEHER MADE A MOTION TO COME OUT OF EXECUTIVE SESSION AND RESUME WITH THE OPEN SESSION OF THE REGULAR MEETING. SECONDED BY MR. BEAHAN. ALL BOARD MEMBERS IN FAVOR. MOTION CARRIED (5-0)

The open session of the regular meeting resumed at 9:55 p.m.

Mr. Hammers gave a brief summary of the executive session discussions stating that they met with the Attorney for the Duncan water purchase contract; discussed options on settlement with the Meridian Ranch Service District; reviewed a possible purchase of property within the Ellicott area; and discussed water rights purchase.

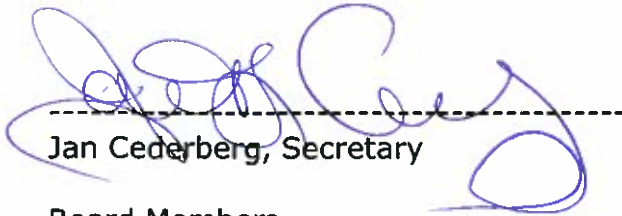
*****MOTION*****

MR. BEAHAN MADE A MOTION TO APPROVE THE WATER RIGHTS LEASE OPTION WITH MILDRED DUNCAN CONTINGENT UPON TWO CHANGES, 1)WATER QUALITY 2) 50% LEASE PAYMENT. SECONDED BY MR. KELEHER. ALL BOARD MEMBERS IN FAVOR. MOTION CARRIED (5-0)

ITEM 16:

⇒ Adjournment

There being no further business to come before the Board at this time, the meeting adjourned at 9:58 p.m.



Jan Cederberg, Secretary

Board Members

Term Expires

Dave Hammers, President
Larry Keleher, Vice President
Jan Cederberg, Secretary/Treasurer
Steve Hasbrouck, Director
William Beahan, Director

May, 2014
May, 2012
May, 2014
May, 2012
May, 2014