

VIRGIN VALLEY WATER DISTRICT REGULAR BOARD MEETING
VIRGIN VALLEY WATER DISTRICT OFFICE
JANUARY 20, 2009

Minutes of a Regular Board Meeting of the Virgin Valley Water District Board held on January 20, 2009, at the Virgin Valley Water District Office at 3:00 p.m. Attending were President John Paul, Vice-President Kenyon Leavitt, Secretary-Treasurer Cecil Leavitt, and Board Members Ted Miller and Robert "Bubba" Smith. Also present were Michael Winters General Manager, George Benesch District Council, Erik Beyer District Engineer, Michael (Boomer) Johnson Chief Hydrologist and Mary Johnson taking minutes and other interested parties of agenda items.

President John Paul called the meeting to order at 3:03 p.m.

Kenyon Leavitt offered a Prayer and Bubba Smith led the pledge.

Public Comment – There was no public comment at this time.

Discussion: Board Comments – Ted Miller questioned the agenda and the number of items on this agenda, yet there was only one meeting the last couple of months and couldn't it be spread out more evenly.

President of Board Comments – John Paul seconded Mr. Miller's sentiments.

CONSENT AGENDA:

John Paul stated that if there were no objections that item #12 be moved up in the agenda to be heard after item #6 since the representatives were traveling from Las Vegas.

Kenyon Leavitt made a motion to approve the consent agenda as listed below with item #12 on the agenda moved to be heard after item #6. Cecil Leavitt seconded this motion and it was unanimously carried. 5-0

1. Discussion & Action - Approve Agenda – **Move item #12 to be heard after item #6**
2. Discussion & Action – Approve Minutes from **1/6/09 Regular Board Meeting**
3. Discussion & Action – Approve Financial Statements for **October and November 2008**
4. Discussion & Action – Approve Bills Paid - **\$234,533.25**
5. Discussion & Action – **Cancel Meeting Scheduled for February 3, 2009** Due to NWRA Conference in Reno that the General Manager and Chief Hydrologist will be Attending

**** End of Consent Agenda****

6. Discussion & Possible Action – Presentation by Eric Roberts of SH Architecture and Consideration for Direction to Staff Regarding the CMAR for a New Administration and Operation Facility

John Paul stated that the agenda was written with "CMR" and it should have been "CMAR", Construction Manager at Risk. Mike Winters stated that RFP's were sent out as instructed by the Board and Erik Roberts was here with the findings. Erik stated that they received ten (10) qualified proposals by five different firms. The ranking was completed as per NRS Statutes and they are required to weight 30% to costs of the proposals. The cost proposals were opened and notarized on January 5, 2009 and then scored. A team of disinterested parties rank the designs separate from the costs. The scoring was based for the designs on team competition and a 5% preference for Nevada firms. It is Eric's recommendation that the board interview the top two firms from each of the two divisions and continuation of this project. Questions were asked by board members and answered by Eric.

Cecil Leavitt disclosed that he had affiliations with Legacy Construction and was not sure if he should abstain, but he still had questions. George stated that since Cecil would gain no profit that he did not see why he could not still participate with the discussion.

Kenyon stated that with the present economy he was not certain whether the District should build now or later, but could not see asking for \$4 million more from customers.

Mike explained that if the board recalled they voted to float a bond 9 months to one year ago and that the money is in the bank and the money could not be returned. Mike also stated that he had spoken with Marty Johnson with JNA Consulting and that the District bought bond insurance which is no longer available for bonds under 100,000,000 dollars. There was further discussion regarding the money and availability of its use.

George Benesch stated that it may be in the best interest of the board to have Marty Johnson and bond council come to the next board meeting and explain the bond situation and how the District can use these funds.

There were further questions and comments regarding the proposals and process. Cecil also stated that the firms who submitted RFP's had also put a lot of money into this process.

Kenyon Leavitt made a motion to table this item until the February 17th meeting and to have Marty Johnson with JNA Consulting and bond council present with information regarding bonding money and to see what the District's options are. Ted Miller seconded this motion.

The item was opened to the public for comment with Crescent Hardy stating that the board should be forward thinking and that people had spent a lot of money on this project and that the board should move forward and find out who won the RFP. Other comments were made with Duane Magoon calling for a point of order and clarification on Cecil stating that he was abstaining, but still commenting on the item. George stated that he was just disclosing his association with Legacy Construction and could still participate in the discussion.

John Paul called for a vote and the motion was carried by a vote of 4-0 with Cecil Leavitt abstaining.

12. Discussion & Possible Action – Consideration to Enter into a Contract with Zee Designs for the Creation of the Virgin Valley Water District Website

Mike Winters began by stating that a contract had been received from Zee Designs and forwarded to George for review and approval. George stated that he had some concerns, but feels like we can work it out. George stated that he only had time to briefly look through the contract and recommended that the board table this item until the contract issues were resolved; or that the board could go forward subject to the contract concerns being resolved.

Zee Marie representing Zee Designs commented that the site could be up and running within 30 days except for the customer site. Zee stated that she would like the board to move forward and work out any concerns with George before the contract was signed.

Ted Miller made a motion to table this item and bring back contract at the February 17th meeting. Bubba Smith seconded this motion and it was unanimously carried. 5-0

7. Discussion & Possible Action – Consideration to Change Ordinance II in Regards to the Amount to be Paid Per EDU

Mike Winters began by stating that in the past, Ordinance II fees were raised along with the fair market value for what water is selling for in the valley. With SNWA purchasing shares the fair market value would be \$8,700 per EDU and/or acre-foot. The fees right now are \$3,300 per EDU and this is not enough to purchase an acre foot of water.

There were questions from the board regarding the fair market value and if this would increase or if this was the highest it would go. There were comments from the public. George explained the criteria to Ordinance II and how it was established and how it has worked thus far.

Kenyon Leavitt made a motion to increase the Ordinance II fees to \$8,700 per EDU effective as of this date. Ted Miller seconded this motion and it was unanimously carried. 5-0

8. Consideration to Adopt Resolution 2009-1 Amending the Criteria for Required Dedication of Water Rights Pursuant to Virgin Valley Water District Ordinance No. 2

Mike explained that this resolution would require an individual to turn water over to the District if they own water in lieu of payment. Cecil had questions regarding the shares in Bunkerville and Mesquite because he believed that Bunkerville shares could not be broke down and were only sold per whole share. Mesquite shares can only be split in half, but not fractured out more. There were several comments from the public and felt that they shouldn't be punished for owning water.

Mike stated that the idea was to keep water in the valley and that he was unaware that you couldn't split irrigation shares.

George stated that he based the resolution on Fernley's policies, but that the District's Ordinance II criteria now actually does require the dedication of water or the equivalent paid in money. Bubba questioned why there had not been a workshop beforehand on this item. There was further public comment on the item. Comments were made that there is public water and private water and you would be punishing people who hold water shares. Bubba stated that companies, individuals, etc. can form LLC's or put ownership in others' names and who is to say who actually owns the water and must dedicate it in lieu of paying the equivalent.

This item died for a lack of a motion.

9. Discussion & Possible Action – Consideration to Adopt Resolution 2009-2 Addressing the Criteria for Leasing of Mesquite Irrigation Company and Bunkerville Irrigation Company Shares Held by the Virgin Valley Water District

Mike stated that he had attended Moapa Valley Water District's Board Meeting and had included Moapa's memorandum to the chairman from the general manager regarding their criteria for leasing irrigation water. Mike also stated that in February that he would be bringing in sealed bids for irrigation leases.

Bubba stated that he sees a lot of similarities in this item and the last item. He asked where you draw the line on who you lease water to. As stated before, Bubba believes there is private water and public water and how can the District tell owners of private water what they have to do with their water and we should go by a case by case basis and entertain all requests to lease.

Kraig Hafen stated that he had been present at the board meeting on February 5, 2008 and that there was a motion to lease the District's Bunkerville shares to Hafen Dairy and that he has heard nothing from the District regarding this motion. He also stated that other shares had been leased in Bunkerville. Duane Magoon stated that the District purchased four shares from Bunk Farms with a lease back option. Kraig wanted to know if he would be put ahead since he was first to request to lease water from the District and has never been contacted. Mike stated that the Bunkerville shares were exchanged with SNWA for four times the amount of water for pre-1929 water for post 1929 water. There was further public comment regarding pre-1929 water.

Theron Jensen called for a point of order stating that while this was interesting discussion, what did it have to do with the agenda item. After further discussion, John Paul called for a vote.

The item died for a lack of a motion.

10. Discussion & Possible Action – Consideration to Increase the Secondary Rates on the South Side of the River

Mike reported that the District currently collects \$39,000 for the secondary system and is spending \$37,000 per year for power, which does not leave much money for maintenance and upkeep. If the District increases the secondary system \$3 this would give an extra \$5,000 to \$6,000 per year for maintenance and would also allow the District to qualify for an extra 1.3 million in

funding through the State for arsenic treatment on the south side of the river.

Cecil commented on his concerns with the habitat fee that the District must collect for the City of Mesquite, but had no problem paying the \$3 increase for the secondary since he uses that water. There was further discussion from the public with questions being answered.

Kenyon Leavitt made a motion to increase the secondary rates on the south side of the river \$3 per month per customer who uses the secondary system. Cecil Leavitt seconded this motion and it was unanimously carried. 5-0

11. Discussion & Possible Action – Consideration of the Rejection of Change Order No. 1 Submitted by Longview Construction & Development and Assessment of Liquidated Damages in the Amount of \$2,000 Per Day for Virgin Valley Water District Riverside Road Virgin River Crossing Contract No. 2008-01, PWP-CL2008-441

Michael Johnson had included a detailed memorandum stating in chronological order the events that occurred since the signing of the contract with Longview Construction for this project and verbally informed the board and public of these occurrences. He also included copies of the Notice to Proceed, Notice of Award, Longview's change order, Southeast's Directional Drilling letter to Longview Construction and invoices with change order amounts included. Completion of work associated with the contract was 75 calendar days from the Notice to Proceed or December 12, 2008. Boomer stated that at the preconstruction meeting the importance of completing on time was stressed to prevent conflict with the NDOT contract associated with replacing the bridge. Boomer has also included parts of the contract associated with the "Drilling System Equipment" and "Reports of Exploration and Tests" that all bidders received with the same contract documents. Boomer further stated that the geotech investigation was provided as part of the project. The geotech investigation was conducted within the NDOT ROW varying between 150 to 200 feet in width. Gravels and cobbles were identified in the geotech boring logs provided as a reference to the VVWD contract documents. There is no verification that the "Geotech Report did not provide accurate info." as stated on the change order requested by Longview Construction. There was sufficient time to properly submit a change order request instead of having the boring subcontractor request the change order when demobilizing equipment. The official completion date for VVWD project was January 6, 2009. With this completion date, 25 days of liquidated damages should be assessed against the contractor, with the total amount of liquidated damages totaling \$50,000.00.

Boomer's recommendation to the board is to reject the Change Order request No. 1, submitted by Longview Construction & Development in the amount of \$172,518.50 and assess liquidated damages in the amount of \$50,000.

Kenyon asked if our delay caused any other delays and Boomer stated that we don't know yet. If it comes down to Legacy Construction running over on their contract with NDOT, then yes, they of course would put the blame on the District because we ran over and the state liquidated damages are assessed at \$7,000 per day.

Cecil Leavitt disclosed that he is employed as a private contractor with Legacy Construction on the bridge replacement project and that he would be abstaining from voting on this item.

There was further discussion with the board regarding the liquidated damages and if we could hold money to see if we incurred any more costs or if they had to be collected. Boomer also stated that there could be additional delays besides the bridge replacement. The District is still working on a PRV and that there is not water running through the pipes yet.

Dave Bundy, owner of Longview Construction stated that his subcontractor, Southeast Drilling received a soil report that did not show any substantial cobble, or any cobble at that depth, nor did it show any rock baskets. Southeast Drilling had an 80,000 lb. machine that's been said that it was too small and he asked Boomer if he had specifications to prove that. Boomer was quick to respond that this was not his, nor the District's responsibility, but the contractor's responsibility and that Longview did not submit calculations as terms of the contract. Dave further stated that they had to wait for another machine to be moved from another location and that they worked 24 hours a day and over the holidays. There was further discussion regarding the soils reports and the contract and how it was written.

Bubba questioned if the board could have a closed door session with legal counsel for legality questions. George stated that it is usually agendized, but it did not have to be and that no action could be taken until the meeting was reopened.

John Paul called for a closed meeting with District counsel and asked the public to leave the conference room for a moment.

Meeting reopened and John Paul asked for a motion.

Bubba stated that he would like to see the liquidated damages set aside and applied if needed.

Bubba Smith made a motion to reject the change order submitted by Longview and look at the assessment of liquidated damages at a later date.

Bubba amended his motion to reject change order No. 1 submitted by Longview Construction & Development and that we do assess liquidated damages in the amount of \$2,000 per day, but at the same time that we hold that money until a future time when we decide whether it is needed or if we can refund that money to Longview Construction if the District does not incur any more costs. Kenyon Leavitt seconded this motion and it passed by a vote of 4-0 with Cecil Leavitt abstaining.

13. General Manager's Report

Mike reported that we should be getting the grading permit for well #27 site. Plans had been submitted to the HOA for the site and had been approved for leveling to do repairs on our rigs. We should also be getting our grading permit for the Hardy Way Arsenic Site. Mike further stated that with the arsenic plants that we have ran into a little delay with the media, but it should be shipped this week. The people installing do not want to come out to install one and then come back out in another week to install another, so we will wait until we receive all the medias and then they will be installed in three to four weeks and then the plants should be on-line.

Mike stated that we are also working on the PRV at the bridge and that should be completed

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by the end of the month and he has also been working with Jori on the Vanguard issues.

14. Hydrologist's Report

Michael stated that obviously he has been working on the paperwork for item #11 and that we are getting ready to begin the CO₂ injections. He further stated that he is finalizing the site on Riverside for the installation of the Ranney collector and working on implementing the VRHCRP agreement.

15. Engineer's Report

Erik mentioned water conservation as a quarterly report, but with it being winter, there was not much irrigation going on. Erik stated that the Emergency Response Plan (ERP) and Vulnerability Assessment had been completed and copies of the ERP were handed out to all board members and that a couple of the Vulnerability Assessment's had been given to Mike to keep in the safe. He explained that the Vulnerability Assessment was to be completed as if you were thinking like a terrorist and what we should be aware of and to keep the District safe.

16. Public Comment

George stated that he had a discussion with the Chairman and President of the board and was asked how he should be addressed and other members of the board. George found in the Enabling Legislature that the Chairman is called the "Chairman of the Board" and "President of the District"; and for members of the board there is no limitation and they can be called "member of the board", "board of director" or anything else.

Sandra Raymaker asked about her last comments in public comment at the last meeting regarding the safety issues and Mike responded that actions are being taken to correct any problems. Sandra also questioned the board having an "Executive Session" and that it is improper and illegal according to the Open Meeting Laws. George stated that this was not an "Executive Session", but it was an Attorney/Client consultation session which is allowed.

Bob Draskovich commented regarding contracts and liquidated damages.

17. Adjournment

President John Paul adjourned the meeting at 6:18 p.m.

(NOTE): The minutes of this meeting have been tape-recorded and will remain on file in the District office for a one-year period for public examination.