

VIRGIN VALLEY WATER DISTRICT REGULAR BOARD MEETING  
VIRGIN VALLEY WATER DISTRICT OFFICE  
MARCH 3, 2009

Minutes of a Regular Board Meeting of the Virgin Valley Water District Board held on March 3, 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, John Gleave District CFO and Mary Johnson taking minutes and other interested parties of agenda items.

**President John Paul called the meeting to order at 3:00 p.m.**

**Cecil Leavitt offered a Prayer and Kenyon Leavitt led the pledge.**

**Public Comment** – Mayor Holecheck read a statement regarding the District's increase in Ordinance II fees and the impact that this could cause for the growth of Mesquite and requested that the Board revisit this item and look at lowering this fee. Quincy Edwards, Ken Philips, George Rapson, Kelby Hughes and Chuck Bentley all offered similar comments to the mayor regarding the Ordinance II fees.

Discussion: Board Comments – Ted Miller commented that he agreed with everyone regarding their comments on Ordinance II fees and that the fee was outrageous and that the board should cancel that fund.

Bubba Smith stated he had a couple comments and cautioned board members of agreeing and/or disagreeing with public comment. He also would like to direct staff to put that agenda item (Ordinance II Fees) back on for the board's reconsideration of the action that was done and to get more input from developers and contractors on the impact of the increase of Ordinance II fees at the next regularly scheduled meeting. Secondly, Bubba read a written statement to the public stating he had filed a complaint with the Attorney General's (AG) office on February 25, 2009. First Bubba wanted it known that the written statement he was reading was of his own opinions and not representation of the VVWD or VVWD Board of Directors. The complaint covers two basic categories. First, he has reason to believe that contracts and agreements have been signed without board approval and without proper procedure according to the By-Laws of the District. Second, he also believes these contracts executed without board approval also violated Open Meeting Law because they were not placed on the agenda for approval, no discussion or action was taken, nor was there a chance for public comment on the item.

President of Board Comments - None

**CONSENT AGENDA:**

**Kenyon Leavitt made a motion to approve the consent agenda as listed below. Cecil Leavitt seconded this motion and it was unanimously carried. 5-0**

1. Discussion & Action - Approve Agenda
2. Discussion & Action – Approve of Minutes from **02/17/09 Regular Board Meeting**

3. Discussion & Action – Approve Bills Paid - **\$935,223.11**
4. Discussion & Action – Approve Purchase Orders Over \$2,500
  - a. Xtreme Technologies - **\$3,332.99 – 2 Printers**

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

5. Discussion & Possible Action – Consideration to Approve Engagement Letter from Hinton, Burdick to Perform Annual Audit for Fiscal year Ending June 30, 2009

Hinton, Burdick submitted an engagement letter to perform the District's annual audit for fiscal year ending June 30, 2009 with the pricing the same as last year's audit; \$14,600 for the annual audit and \$3,750 for single audit. Mark Tichnor representing Hinton, Burdick was present to answer any questions.

**Cecil Leavitt made a motion to approve the engagement letter from Hinton, Burdick to perform the District's annual audit for fiscal year ending June 30, 2009 for an amount not to exceed \$14,500 for the annual audit and \$3,750 for the single audit. Bubba Smith seconded this motion and it was unanimously carried. 5-0**

6. Discussion & Possible Action – Consideration to Authorize Staff to go out for Bids for Well #27 Access Road & Site Preparation

Mike stated that in order for the District to obtain an easement to this parcel from Mr. Lee that preparation was needed because the dirt is too high. Plans were drawn up for what we need which is a 100' radius with an access road and a small retaining wall. Plans have been approved by the Mesquite Vistas HOA. The District will paint the building and have the landscaping done in house. Cecil questioned whether there was a legal hold on the property and if the District was able to go out to bid with Longview having filed a court action suit against MMC, Inc. George Benesch stated that there was no injunction on this property but on the Hardy Way Arsenic Site.

**Cecil Leavitt made a motion to authorize staff to go out for bids for Well #27 access road and site preparation. Ted Miller seconded this motion.**

John Paul opened the item for public comment and Dave Bundy with Longview Construction who had just walked in asked whether this property had anything to do with his lawsuit and he was informed that his lawsuit only put an injunction on the Hardy Way Arsenic Site not this property in question. Bob Shively representing the Mesquite Vistas HOA questioned the time frame of the project.

**John Paul called for a vote and the motion was unanimously carried. 5-0**

7. Discussion & Possible Action – Consideration to Approve Advertisement of Irrigation Water Shares and to Set Time for Said Auction

Mike had submitted a draft advertisement that we would put in the paper on the 64 shares the District has available to lease. Kenyon stated that he thought we should scratch the 5% increase from the previous bid and let the market decide where to go. After discussion, the date was changed from March 24<sup>th</sup> to March 31<sup>st</sup> for the auction and payment due by April 1<sup>st</sup>. Cecil stated that the last line should read “highest” bidder(s) in lieu of “next successful” bidder(s). Kenyon questioned how the auction would work with no one ever being involved in something like this.

Kraig Hafen asked to have the advertisement read aloud and Mike did so. Cecil requested that “Pacific Standard Time” be changed to “Pacific Daylight Savings Time.” Bubba asked for clarification of the number of shares to lease and what about other parameters: 180 days notice for severability, 1<sup>st</sup> right of refusal, keeping the shares in the valley, no profit and not being able to sub-lease. Bubba stated that he didn’t know if we were ready to advertise and that the VVWD should come up with our own long term solution and not keep trying to keep up with SNWA. Bubba has a problem with leasing to the highest bidder and not for the best use. Boomer suggested that we could go out for lease for 3 blocks of 10 shares; blocks of 5 and then single shares. It was questioned about the point of diversion and Boomer stated that they are all out of the Mesquite Ditch and in other leases from the District there is a stipulation that the lessee is responsible to file with the State Engineer for place of use.

Bob Coache, Deputy State Engineer, explained that he has been involved in a couple auctions and what they’ve done is start at the minimum bid and work their way up until there is a bid amount to be taken (i.e. \$400) and they state that they want so many shares and then you begin again until all the shares are gone. Mr. Coache further stated that if you use the water from the ditches in Mesquite that you would be okay, but if you were to take the water from elsewhere and not the ditches, you could apply for a temporary change application and you could get that done in about two weeks. You would have to file under Mesquite Irrigation.

George stated that the board should set the parameters and maybe table the item until the board set a policy. The board is having a special meeting on March 11, 2009 at 2:00 and the board could set the parameters and revise the advertisement for bid.

**Kenyon Leavitt made a motion to table this item until the March 11, 2009 Special Meeting at 4:00 p.m. for setting the parameters and approving the advertisement for auction. Ted Miller seconded this motion and it was unanimously carried. 5-0**

8. Discussion & Possible Action – Consideration to Authorize Staff to Sign a New Purchase Agreement with Bunk Farm, LLC for 8 shares of Bunkerville Irrigation Water

Mike reported that staff had done exactly as the board had instructed and the lease terms were changed to a one year lease with Bunk Farm, LLC being given first right of refusal. With the change of terms to a one-year lease in lieu of 5 years, the purchase price was higher totaling

\$638,089.84.

Bubba Smith stated he would abstain and recuse himself from this item because he feels that this item has not met the requirements of Open Meeting Law and is in violation of the Open Meeting Law. Bubba further stated that this item says nothing regarding a "lease back" to Bunk Farm, LLC. and while it is the opinion of staff and legal council that this is not a lease, but a purchase agreement, he must take opposition to this view because the agreement clearly states that a condition of this sale is that buyer will lease back to seller the irrigation shares. He believes that the public by reading the agenda item would not be aware of the contents of the agreement. John Paul recused Bubba and Bubba left the conference room.

Ted Miller stated that since the District was purchasing water shares at SNWA prices of \$80,000 plus, and then leasing them back at only \$300 per share that we should hear from the citizens.

John Paul opened item for public comment. Duane Magoon with Bunk Farm, LLC stated that he needs to sell the water and wanted to keep it in the valley and would be using the water on his farm and did not intend for anything to be underhanded or under the table, but that contingent to the sale we could lease it back. Trent Graves on behalf of Rick Anderson with Bunk Farm, LLC came to the District to sell the shares contingent upon leasing back the shares and nothing was being done underhanded as portrayed in the newspapers.

**Kenyon Leavitt made a motion to authorize staff to sign a new purchase agreement with Bunk Farm, LLC for 8 shares of Bunkerville Irrigation Water for a purchase price of \$638,089.84. Cecil Leavitt seconded this motion and it was passed by a vote of 3 to 1 with Ted Miller opposed and Bubba Smith being recused.**

9. Discussion & Possible Action – Consideration to Approve a Cost of Living Allowance (COLA) for VVWD Employees effective July 1, 2009

Mike stated that this is brought before the board at this time every year along with the evaluations for the next budget session. The consumer price index was included for the board's consideration with a COL increase of 3.5% for year ending 2008. Mary explained that the employees' retirement, PERS (Public Employees' Retirement System) would increase from 20.5% per paycheck to 21.5% per paycheck and the company is required to pay .5% and the employees must cover the other .5%. Any COLA given to the employees would be reduced by .5% to cover their portion on the PERS increase and if no COLA given, the employees' hourly wage would be reduced by .5%.

**Cecil Leavitt made a motion to give no COLA to the employees at this time.**

Bubba questioned the motion and if the VVWD would cover the .5% so the employees would not lose money on their hourly wage.

**The motion died for a lack of a second.**

**Kenyon Leavitt made a motion to approve a cost of living allowance (COLA) of .5% to all employees effective July 1, 2009. Bubba Smith seconded this motion and it was unanimously carried. 5-0**

10. Discussion & Possible Action – Performance Evaluation of Michael Johnson, Chief Hydrologist, Including, but not Limited to, Renewal of Employment Agreement, Salary Increase, Termination, Suspension, Demotion, Reduction in Pay, Reprimand, Promotion, Endorsement, Engagement, Retention, or ‘No Action’

Cecil asked as a point of question stating that Mr. Johnson and Mr. Winters are not under employment agreements but working under the Administrative Policies and Procedures Manual and feels that items 10 and 11 should be stricken from the agenda **and so moved. Bubba Smith seconded the motion.** John Paul asked for a legal opinion if we could do both items at once or do them separately. George stated that it would be better to do them separately since they were two separate items on the agenda.

**Cecil Leavitt amended his motion to remove item #10 from the agenda and brought back at the next regular meeting with the correct verbiage on the agenda. Bubba Smith seconded this motion and it was unanimously carried. 5-0**

11. Discussion & Possible Action – Performance Evaluation of Michael Winters, General Manager, Including, but not Limited to, Renewal of Employment Agreement, Salary Increase, Termination, Suspension, Demotion, Reduction in Pay, Reprimand, Promotion, Endorsement, Engagement, Retention, or ‘No Action’

**Cecil Leavitt made a motion to remove item #11 from the agenda and brought back at the next regular scheduled meeting with the correct verbiage on the agenda. Kenyon Leavitt seconded the motion and it was unanimously carried. 5-0**

12. Discussion & Possible Action – Consideration to Issue a RFQ for VVWD Administration Operations Legal Council – Requested by John Paul

John had included in his e-mail to Mike requesting that this item be put on the agenda stating that “qualifications is to be a licensed attorney in good standing with the State of Nevada. Familiarity with State of Nevada Open Meeting Laws and the VVWD enabling legislation of the Nevada Revised Statute, Chapter 100.” John also had passed out a memo and read aloud “This item is to offer a restructuring of the VVWD. It is designed to see if there is sufficient support amongst other VVWD members to restructure the process of the VVWD; pertaining to presentation of Agenda Items, and to receive legal opinions and advise, on whether or not compliance to all Nevada State Rules and Regulations is met.”

Kenyon questioned items 12 and 13 and didn’t see how they jived with John’s statement.

Kenyon thinks that John is saying we want to get new legal counsel, but John Paul stated that he was asking for restructuring of the VVWD and it would be for only qualified people and it would

Minutes of a Regular Board Meeting

March 3, 2009

Page 6

be a separation from our current legal counsel and water laws. This attorney would be to oversee the District on day to day operations and that agenda items are all in compliance with Nevada rules and regulations. Mike stated that if agenda items are not correct that would not be George's fault but his and we can send agendas to George for approval or to John, if that would correct the problem. Kenyon stated that the District couldn't afford to give employees a COLA, but then you want to hire a new attorney, which hasn't been budgeted for and that we should have George approve agendas, etc because that is what we pay him for. Cecil commented that if you had 10 attorneys, you could have 10 different opinions and if we are meeting the laws of the state and feels that we are on solid ground and now is not the time to change. Bubba commented that he understood that this would be restructuring and we would change the amount we currently pay our legal counsel. Bubba stated that he personally felt the District was way past the need for restructuring and feels that the District cannot get an unbiased opinion from George and thinks this is a good idea and feels that it is urgent that we act now. Ted Miller commented that he felt it was prudent business practices and agrees that we need a change, but that we should look at during the budget process and that this was the wrong time to address it.

**Bubba Smith made a motion to issue a RFQ for VVWD Administration Operations Legal Council. Ted Miller seconded the motion and the motion passed by a vote of 3 to 2 with Kenyon Leavitt and Cecil Leavitt opposed.**

13. Discussion & Possible Action – Consideration to issue a RFP for VVWD Administration Operations Legal Council – Requested by John Paul

John Paul stated that this item also pertained to the same back-up material stated in item #12 and that “duties will be to attend the VVWD board meeting and provide legal opinions and advice on compliance with Nevada Open Meeting Laws, the VVWD enabling legislation of the Nevada Revised Statute, Chapter 100. An all other documents which govern the conducting of business regarding issues brought before the VVWD Board.”

Bubba asked for verification that the RFQ was a request for qualifications and the RFP was a request for proposals and pricing.

**Bubba Smith made a motion to issue a RFP for VVWD Administration Operations Legal Council. Ted Miller seconded the motion.**

Cecil questioned this item and how vague it seems and Bubba recused himself from item #8, but was willing to make motions on these items that Cecil feels is vague on the agenda.

**John Paul called for vote and the motion passed by a vote of 3 to 2 with Kenyon Leavitt and Cecil Leavitt opposed.**

#### 14. General Manager's Report

Mike had not included a written report. Mike reported that one of our employees, Bryan Plum, was called up to active duty and was shipped to Iraq and while there was involved in a bombing accident and the last we heard he was in the hospital and hopefully would be coming home the end of March. Mike further stated that we had begun working on the budget and that a Notice was published in the Desert Valley Times regarding arsenic violation because the plants were not up and running by January 1, 2009. We should be up and running by May.

Don Paff commented that he thought the District should also publish a notice of progress and not just the violation notifications.

Ted asked about the 1.3 million dollar grant and Mike informed the board that the grant had been signed and the money was there for the District.

#### 15. Hydrologist's Report

Michael had not included a written report. Boomer stated that he has been working on the EIS report for the Mesquite Airport regarding the NEPA documents and the hydrological impact an airport would have on the system and that these forms were necessary for the City to purchase the property. Boomer also went to the Lincoln County Water District (LCWD) meeting 2/25/09 and one of the items was servicing water to the Toquop Township. They are still working with the VVWD and deciding how best to service water to that area. We should have future discussions between the VVWD and LCWD regarding these issues. Boomer further stated that he was trying to receive the GID for the area, or an audit for expenses spent to the Tule Desert. Boomer also stated that on the 26<sup>th</sup> of February he issued a letter to Longview Construction rejecting their invoice until the As-Builts and submittals were recorded and filed with the State as required. Also, Boomer informed the board that the District received an official notice of mediation from Southeast Drilling and these documents were forwarded to George, but our contract was with Longview not with Southeast Drilling. Boomer further stated that he has been working with the Salinity Coalition and they are working on removing the salt, the total dissolved solids (TDS), and improving and lowering the TDS in the Virgin River through the Bureau of Reclamation.

#### 16. Engineer's Report

Erik had not included a written report. He stated that his two major functions were checking the development plans as they come in and making sure they are in compliance with the District's Specs. Erik also works closely with Kevin Amen, District Inspector, regarding materials and methods and that they are in compliance.

#### 17. Public Comment

There was no public comment at this time.

Minutes of a Regular Board Meeting  
March 3, 2009  
Page 8

#### 18. Adjournment

**President John Paul adjourned the meeting at 5:18 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.