

VIRGIN VALLEY WATER DISTRICT REGULAR BOARD MEETING
VIRGIN VALLEY WATER DISTRICT OFFICE
JULY 7, 2009

Minutes of a Regular Board Meeting of the Virgin Valley Water District Board held on July 7, 2009, at the Virgin Valley Water District Office at 3:00 p.m. Attending were President John Paul, Secretary-Treasurer Cecil Leavitt, and Board Members Ted Miller and Robert “Bubba” Smith. Vice-President Kenyon Leavitt was not present, but was called and put on speaker phone from item No. 7. Also present were Michael Winters General Manager, George Benesch District Counsel, 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 3:00 p.m.
Cecil Leavitt offered a Prayer and Bubba Smith led the pledge.
Public Comment – There was no public comment at this time.

Discussion: Board Comments - None

President of Board Comments – John Paul commented on the correspondence included within the packets from Barney McKenna & Olmstead, Attorneys at Law regarding the Administrative Legal Counsel position.

CONSENT AGENDA:

John Paul requested that item #2 be removed for further discussion. John further commented on item #4 and read the memo included with this item.

Bubba Smith made a motion to approve the agenda as presented and the consent agenda items #1, #3 and #4 with item #2 being removed for further discussion. Ted Miller seconded this motion.

Cecil Leavitt questioned item #7 stating that this item was placed on the agenda by Kenyon Leavitt and he is unable to be present and would like the item removed and placed on the next agenda two weeks from today. **Cecil Leavitt moved to amend the motion to remove the item and placed on the agenda two weeks from today.** The motion died for a lack of a second.

John Paul called for a vote on the motion and the second on the floor and it was passed by a vote of 3 to 1 with Cecil Leavitt opposed.

1. Discussion & Action - Approve Agenda
3. Discussion & Action – Approve Bills Paid - **\$1,279,004.02**
4. Discussion & Action – Approve Purchase Order Over \$2,500
 - A. CDW Government, Inc. - **\$4,474.45 – Computer Rack with Accessories**

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

2. Discussion & Action – Approve Minutes from 6/16/09 Regular Meeting

John Paul referred to page 3 of the minutes, 5th paragraph down which is under item #9 and the third sentence from the end that reads “John Paul stated that he did not agree with that statement and that he was quite impressed with the resumes.” John asked that this be corrected not to read that way because it was not exactly what he said. John Paul stated that what he said was not that he didn’t agree with that statement because it could be misread and misunderstood and would like it to read that, “John Paul stated that he did not agree with that statement as it pertains to the qualifications and the resumes submitted, I was impressed with the resumes”; and would like to note this change. John Paul further stated that on the last paragraph of page 3 in the middle of it “John Paul stated that after looking at the paperwork submitted by Bingham & Snow that he was highly impressed with this firm.” John stated that this was not quite exactly what he said. What he did say was that he was impressed with the firm because they had addressed each point that was listed in the Request for Proposal and would like the record to read that way.

John then moved to page four and the fourth and fifth paragraphs down under the General Manager’s Report and questioned whether Mike had forwarded this letter in question and then he asked about Mike Chandler’s comments and asked where the arsenic plants were. John further questioned the Hydrologist’s Report and the pump for well #30. It was stated that these questions could be answered under the General Manager’s and Hydrologist’s Reports later on the agenda.

John Paul made a motion to correct the minutes on page 3 under item #9 and the third sentence from the end in the 5th paragraph to read “John Paul stated that he did not agree with that statement as it pertains to the qualifications and the resumes submitted, and that he was impressed by the resumes,” and that the last paragraph on page 3, third sentence should read that “John Paul stated that after looking at that the paperwork submitted by Bingham & Snow that he was impressed with the firm because they had addressed each point that was listed in the Request for Proposal”. Bubba Smith seconded this motion and it was unanimously carried. 4-0

5. Discussion - Presentation by Randy Robison Updating the Board on the 2009 Legislative Session

Randy Robison, District Government Affairs Liaison, gave a brief overview of items of interest. The budget and taxes issues overshadowed every other issue. Randy stated that there was not a great deal of water issues proposed. The substance of AB416 requires a basin inventory before basin transfers. AB480 increased fees to help offset State Engineer Costs. SB66 dealt with the Virgin and Muddy River. Randy further commented on other smaller issues.

Mike Winters commented on the stimulus money of \$19 million that would be used for arsenic treatment for other entities.

6. Discussion & Possible Action – Consideration to Approve Donations to Julia Woods and/or Mesquite Cancer Help Society

Mike stated that the board had budgeted \$5,000 this fiscal year with \$4,000 earmarked to be split evenly at \$1,000 for each school within the District leaving an extra \$1,000 for the board to use at their discretion. Julia Woods was present and stated that she would be in the 6th grade at Hughes Middle School on the cheer squad and had presented a letter in the packets requesting a donation stating that cheer would probably cost about \$450 per cheerleader. The board discussed the \$1,000 for each school. Bubba questioned the District's Donation Policy and Mary read off the policy the board had previously approved. It was further discussed whether to donate money from the extra \$1,000 to Julia or whether to designate an amount certain to the cheer squad from the \$1,000 to the school.

Cecil Leavitt made a motion to approve \$450 to Hughes Middle School Cheer Squad from the \$1,000 already designated to that school. Ted Miller seconded this motion.

Bubba questioned how many cheerleaders there were and was informed that there are to be 20 cheerleaders. There was further discussion. **John Paul called for a vote and it was unanimously carried. 4-0**

The second part of this item was heard for the Mesquite Cancer Society and there were no representatives present.

Cecil Leavitt made a motion to table this portion of the item until a representative for the Mesquite Cancer Society was present at the next board meeting. Bubba Smith seconded the motion and it was unanimously carried. 4-0

7. Discussion & Possible Action – Interview with Attorney, Bo Bingham and/or Representative(s) of Bingham & Snow and Consideration to Retain Firm for Professional Services for Administrative Legal Counsel for the VVWD

Mike Winters telephoned Board Member Kenyon Leavitt and had him on speaker phone. John Paul commented that he thought this item should be heard by all board members and now it would be. John Paul further stated that he felt the VVWD should have more than one firm to choose from.

John Paul moved to expand and modify this item to include attorney Nancy Harkess along with attorneys Bingham & Snow and to be placed on the next regularly scheduled meeting agenda of the VVWD Board which would be July 21st.

Bubba had a question stating that Bingham & Snow were present today to be interviewed,

and were we going to speak to them today and then add some more presentations next week? John Paul stated that that was not part of his motion as it stood now. Ted stated that he didn't understand

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John's motion and Bubba asked again if we were not going to interview Bingham & Snow today. John Paul stated that it was not a recognized motion until there was a second. Cecil Leavitt stated that he would second it, but that he felt that there needed to be more than one more firm to be interviewed. Ted Miller called for a point of order stating that the agenda item was pretty plain. John Paul stated that he had made a motion and was waiting for a second on it.

Kenyon Leavitt seconded the motion on the fact that he would like to be present so that he could see them.

Ted Miller again called for a point of order. John Paul asked George Benesch for his direction on the agenda item. George stated that the board was limited to the agenda item to interview Bo Bingham. Mike Winters stated that his belief from the beginning was that none of the attorneys who submitted a resume had met the RFP or RFQ and that there has not been a RFP or RFQ established. John Paul questioned Mike as to why there had not been an RFP or RFQ established. Ted Miller again called for a point of order and asked what the agenda item was and John Paul proceeded to read item #7 on the agenda aloud again. Bubba stated that when it was brought up earlier in the meeting to approve the agenda, item #7 was not tabled then, the agenda item is pretty clear and he feels that we should go ahead with the interview today and if we want to hear other presentations at the next meeting that would be okay.

John Paul stated that he was sorry to disappoint Kenyon, but that he was going to withdraw his motion.

Bo Bingham and Eric Wilbanks were present representing Bingham & Snow. The RFP and RFQ were further discussed, how they received them, what was stated on them and if they were given a scope of duties and what would the attorneys be doing.

Ted Miller stated that the District occasionally required legal advice on water matters, but required an attorney for administrative legal actions. Ted further stated that they have experience with Open Meeting Law and other administrative legal actions and have worked with other entities in this capacity and that this would work for the District and that if they required assistance on legal water matters he would hope that they would contact George, but that they would handle the day in and day out legal matters.

Jeff McKenna with Barney McKenna & Olmstead was present and stated that he saw the ad in the Nevada Lawyer and contacted the VVWD, but he received no additional information and would like the opportunity to also work with the District. Mayor Susan Holecheck commented that she felt that the District would be well served from either of the firms present today, but felt that the board should verify with their current attorney if it is appropriate and/or legal for a board member to participate with only certain agenda items. George Benesch again directed the board back to the agenda item.

Bubba questioned Bo Bingham and Eric Wilbanks if they had looked at the performance of

the Water Board in the past year, and how their services would help the VVWD Board's performance and better organize meetings, contracts, and some of the other performances that they have to do. Bo answered that he has attended a few meetings and has read the newspaper articles.

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Bo informed the board regarding Mayor Holecheck's question of the appropriateness or legality of a board member participating telephonically, that there was nothing specifically in NRS Section 241 regarding this issue, nor did he think there would be any case law on this issue; but as a matter of practice, you would always want to have a full board present. Bo further stated that he felt that they could offer significant assistance on general laws, contracts, litigation, Open Meeting Law and agenda items. Bo conceded that they were not water law experts and would go outside for water laws. Bubba further asked if they would be able to assist with better background information for agenda items and Bo stated that they could assist staff to do this, but their role would be legal. Bubba stated that he understood that they would be on a retainer and not an employee and would bill hourly. Bubba further asked about the District belonging to the Pool Pact and if they would use that resource. Bo stated that he understood they would bill on an hourly rate and if they were getting a fair amount of work, their rate could be discounted. Bo further stated that he was aware of Pool Pact and that he has stated previously to other clients that if they are paying insurance premiums and the Pool Pact can assist that you should definitely take advantage of that.

John Paul questioned if they had an understanding from the RFP that they would attend board meetings and be available to give counsel and advice? Bo stated that "yes" he understood that board meetings were the first and third Tuesday of every month at 3:00 and if the board wanted them here, they would be here. John further asked about the agenda and the agenda items being clear and complete according to the Open Meeting Law (OML) and also the background material for agenda items and if they would be able to assist in putting this together; what it should consist of and being able to train some of the staff so that they could accumulate that as they go and to be mindful of it and to keep the records in place that would allow the board to have backup material available? Bo answered that absolutely they would be able to assist in this matter.

Cecil Leavitt questioned the need for Bingham & Snow if the Pool Pact was available, and Bo answered that would be up to the board, but they were willing to assist in any way they could. Cecil questioned Bo if they had an employee whose father sits on our Board and Bo answered that Marcus Smith would be an intern for a few weeks this year and had worked as an intern last year for them, but saw no conflict of interest. Cecil further asked if they represented other people or entities in the Virgin Valley concerning water issues that would cause conflict or opposition to the VVWD. Bo answered that they had represented people/companies in the Valley that do own water rights, but that the rules of professional responsibility pertaining to attorneys is very clear and if we have a conflict of interest they [attorneys] cannot represent a party against another; and attorneys and their firm take this very seriously. Bo further stated that they have declined representation on a number of matters that he would have liked to be involved in but they just couldn't do it. They have to maintain the ethical rules. Primarily, if you have inside information on one transaction, you cannot use that information on another transaction.

Bubba asked about "Robert's Rules" and his frustration on serving on the board with the lack of structure and asked if Bo had any feelings about parliamentary procedure and Robert's Rules and how we could adopt and incorporate those procedures. Bo stated that these rules exist and that

they are tried and true and felt that it would be in the board's best interest to apply them.

Ted inquired about the other municipalities that Bingham & Snow have or currently represent. Bo mentioned several entities that they represent and that they are licensed in Utah, Arizona and Nevada.

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Bo concluded that he was happy to answer any questions that the board had and welcomed the opportunity to assist the VVWD and hopefully work together. He further stated that they would be able to help on issues that have come up before the board, especially those that were mentioned today; but at the end of the day, it was up to the board to decide what would be best for the District and hopefully they could help.

Bubba questioned about hearing from other firms. Kenyon commented that he felt that the board's responsibility was to interview more than one firm. Mike Winters asked about current cases that the District was involved in and stated that his assumption was that George would continue to handle these matters. Ted stated that we wanted to retain these attorneys for our legal matters and if they couldn't handle those case(s), that they would look to another attorney to assist and hopefully they would look to George Benesch to handle these water issues. Mike asked if we would still be retaining George for water rights and other water issues. John Paul commented that he expected we would. Kenyon commented that we had an attorney now for water issues and the reason for the new attorney was for administrative issues.

Bubba disclosed that he had a son in law school who would intern for Bingham & Snow for five weeks and his son is aware that he would not be able to participate or be involved with any issues for the Water District because of his position on the board, which he serves on at the pleasure of the mayor. John Paul questioned Bubba if he had any indebtedness to Bingham & Snow and Bubba stated that he did not.

Ted Miller made a motion to retain Bingham & Snow for professional services for Administrative Legal Counsel for the VVWD. Bubba Smith seconded the motion.

Cecil Leavitt questioned if a majority of the vote was no if this would exclude Bingham & Snow from being the legal counsel. George stated that you could structure the motion any way you wanted and if you wanted to interview another firm he would hope that Bingham & Snow would not be precluded from consideration.

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

Mike asked if we should set up a time with Bingham & Snow to negotiate a price and was directed to do so.

8. General Manager's Report

Mike had not included a written report. Mike informed the board that the District had received a certificate of completion for the arsenic site at well #28. Mike Chandler reported that site

#28 was about 75% automated with sites #32 and #31 about 50% automated. Mr. Chandler further stated that after this week, sites 28 and 31 would be fully automated with site #32 coming in fully automated within two weeks. Mike Winters further informed the board that a Colonel with the ACOE would be here for a site visit on July 15th. Mike also informed the board that he had applied for another grant from the ACOE and the VVWD will be receiving an additional 4.8 or 4.9

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million dollars. John Paul President of the Water District immediately congratulated Mike Winters, General Manager, for securing that money for that grant. Mike stated that the last payday had approximately 70 hours of overtime (OT) between two people and that was cut down to 15 hours between 3 persons, but now we had OT due to leaks again. Mike stated that he had sent out a request for bids to other contractors for their price per linear foot for labor to assist in fixing leaks if we would need it. Mike further stated that he has been working with Bowen & Collins on PRV sites for the north side of the freeway to cut the pressures in some areas. Mike stated that George Benesch had drafted a letter to Lincoln County and forwarded the letter the day after our last meeting stating that the District would not be submitting a proposal to service the Lincoln County Land Act in July because of the change of circumstances.

9. Hydrologist's Report

Michael had not included a written report. He informed the board that well #30 had been turned on and was pumping water for the first time in several years. Boomer had called the board members for approval to rent a larger crane because of the weight so the pump would not be dropped and he will have the invoice ratified at the next meeting. Boomer further stated that the pump being set at 2,200 feet was the deepest setting on the planet and it worked. Boomer will also have a meeting with RBF Consulting next week regarding aquifer storage.

10. Public Comment

Sandra Raymaker commented that she was surprised how ill prepared the Board is and the fighting amongst themselves and mentioned that AWWA could be a good source of assistance to the District.

11. Adjournment

President John Paul adjourned the meeting at 5:21 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.