

MINUTES OF TWSD BOARD OF DIRECTORS REGULAR SATURDAY MEETING ON FEBURARY 20th, 2010

Present were Chairman Arden Schug, Vice Chairman Burt Rubinowitz, Virgil Beagles, Pete Bowidowicz and General Manager Dr. Martin Moore. Absent was Treasurer Joe Mainello.

Pledge of Allegiance

Salute to New Mexico Flag

"I salute the flag of the state of New Mexico, the Zia symbol of perfect friendship among united cultures."

Approval of Agenda

Motion: Virgil Beagles. "Move item #7 under old business to the top".

Second: Pete Bowidowicz.

Vote: All approved.

Discussion: None.

Intro: Burt Rubinowitz noted that under item #4 of old business, CV507 should be CV577.

Motion: Burt Rubinowitz. "Approved the agenda with changes".

Second: Virgil Beagles.

Vote: All approved.

Discussion: None.

Minutes of: 1-16-10, 1-21-10, 2-5-10, 2-16-10 and 2-18-10

Intro: Chairman Schug stated we have all had a chance to review the minutes and asked if anyone had a motion.

Motion: Virgil Beagles. "Do the minutes of 1-21-10 at a later meeting after receiving further input from Dr. Moore. Dispense with the reading of the minutes of 1-16-10, 2-5-10, 2-16-10 and 2-18-10 and approve as submitted"

Second: Burt Rubinowitz.

Vote: All approved.

Discussion: None.

Treasurer's Report: Dr. Moore stated the reconciliation of the 06/07, 07/08 and 08/09 have been completed and the fiscal audit of 06/07 has resumed. The auditors have requested that he not discuss any details of their audit until it has been completed and they have issued the report. An exit conference will be held for the board members when they are finished and they will then begin the 07/08 fiscal audit. We have received a letter from the state auditors office reminding us of our obligation to commence the 09/10 audit as soon as these three audits are finished. Anyone wanting to look at the bank statements is welcome to though he did not have them with him at this meeting. We received an additional \$35,000 grant on our water projects and that, with some reimbursements received last month, allowed us to make payment of the second installment of the membrane filtration system of approximately \$47,000. The final payment will not be made until the machine is installed, up and running and working. Our general fund monies are under \$10,000 and we're skating on thin ice. We have just over \$100,000 in standby fee funds in the bank. We also have some money in the credit union account we are hanging on to for the temporary equipment operators we're going to hire to help us out with our roads once they dry out a bit. We can put the bank statements online if the board would like since they are public documents and then anyone can look at them anytime they want. Virgil Beagles asked if the standby fee money would only be used for water. Dr. Moore said the money would only be used for necessary repairs and upgrades to the water system. He also said once some of the FEMA work is done we will apply for reimbursements that will help us pay some of bills in the general fund area and get our roads back in shape.

Manager's Report: Dr. Moore stated it has been a busy winter because of roads. Part of the reason for the problems in the general fund area is because of all the snow removal efforts. Being as wet as it has, the conditions of the roads have been revealed as to whether they have a good rock base or have become mud bogs, as we have seen. Significant stretches of road do not have a good base or foundations and we are trying to get prices on some fill. We are assessing our options and I have talked with state homeland security

emergency management about our road situation but we do not have a declared emergency. Other communities in the area are experiencing the same thing and this will be a recurring problem every time we have a wet winter. Homeland security said there may be some funds available next fall if we can get some money and get the engineering to recommend what we need. We solved the problem with a few houses over on Wishita not getting water and have replaced about 300 to 500 feet of pipe that over the years have become less than a foot under the road. We have buried it three feet down and put in pipe up to code. This winter has revealed a lot of the weaknesses in our water district and I have been discussing this with the water operators. We think we may have up to a mile of frozen line in the Pawnee and Washita area but we are not aware of any houses without water. We have gotten more of our grants and that is helping our water standby fee accounts as we had promised to pay back those accounts. The springs are running pretty good and we are going to replace a meter. We are going to put in a valve and new diversion point at that old meter location. We've been working hard in the office to get our paper work in the office straightened out which was brought to light by the audit and their requests for contracts and other things. This also helps in the day to day operations as well. When we can, we are going to digitize our records. The last community wide outage ended Dec. 24th of 2008. I saw the pool specialist at the Environmental Department in Las Cruces and she said they had spoken with the contractor and they know they cannot do any more work until they get an Environmental Department permit in addition to the Construction Industries permit. New regulations were set up in August of last year and that is part of the reason we are sitting on hold with this. I asked them to please cooperate and communicate with the Construction Industries Division so we can have clear instructions from everybody. We have made it clear to the county that as stewards of this project with oversight duties that we are staying on top of this. Virgil Beagles that Dr. Moore should send a letter to the contractor saying we are going to invoke the penalty clause in the contract and put them on notice. Dr. Moore said he would do that. Chairman Schug asked if the new rules could be in force retroactively on the contract we had prior to them being enacted. Dr. Moore said that was our question on that also and it would have to be settled in Santa Fe. Chairman Schug noted that Wishita to Baghdad is a county roads and couldn't we ask them to bring in some fill to bury our pipes. Dr. Moore said he thought that was a good idea but that a letter from the Chairman would carry more weight with the county. Chairman Schug asked Dr. Moore to write it up and he would sign it and get on the agenda for the next county meeting. Chairman Schug asked if we had looked at either USDA or colonias grants for fixing roads. Dr. Moore said he had met with a USDA rural development specialist and there is indeed the possibility.

Old Business:

7. Report on Reconciliation

Intro: Sharon Northcott said she had reconciled the books for 06/07, 07/08 and 08/09. The records for 06/07 were there with her now although they are under audit, so they are not available for review. She and Dr. Moore met with the auditors last Tuesday and she thought it went very well. Virgil Beagles asked if she had verified the invoices for split billings. Ms. Northcott said she would if Dr. Moore requested that. Dr. Moore said that the problem of split billings had been brought to the attention of the auditors and that, with state purchasing and procurement laws, the temptation to split billing to get around the \$5000 limitation had been abused in the past. Dr. Moore explained some of the issues Ms. Northcott had to contend with during the reconciliation and characterized it as forensic accounting. She also produced accurate profit and loss statements for the three years. We will have a list of findings we should have available for the April meeting. The outcome of this reconciliation has highlighted the need for accounting and book keeping policies and procedures and this experiment here is being closely watched by other water and special districts throughout the state. Pete Bowidowicz asked if there had been a managerial oversight root problem in the past. She indicated she felt the filing system was the main problem. Dr. Moore said there was a period of time in the past where there was no manager and volunteers came in and kept the district running. Chairman Schug asked when Quickbooks would be on our system and be able to be used. Dr. Moore said all the data is input and the foundation created, and the next step is reconciling what has been put in for the current fiscal year against what she put in for previous fiscal years, then you can use it on a day to day basis. Chairman Schug asked if there were experts out there who could recommend financial policies and procedures we could follow since the budget committee doesn't have the background or experience to do that. Dr. Moore suggested the board task the general manager to put together the draft for the budget committee to review.

Motion: Burt Rubinowitz. "Direct the general manager to put together a draft of accounting and book keeping procedures for review by the budget committee".

Second: Pete Bowidowicz.

Vote: All voted aye except for Virgil Beagles who abstained.

Discussion: Chairman Schug asked for a time frame in which Dr. Moore could have this done. Dr. Moore indicated he should be able to do it in time for the April meeting. Chairman Schug complimented Sharon Northcott on the work she had done.

1. Results of Closed Meetings of 2-5-10 and 2-18-10

Intro: Chairman Schug said that at the meeting of 2-5-10 that only the Valentine case was discussed. During the meeting of 2-18-10 we discussed the Valentine case and made a motion to have the attorney file a motion for reconsideration. Virgil Beagles asked Dr. Moore where the money was coming from to pay the attorney when the general fund is so short on funds. Dr. Moore said he could not give an answer. Chairman Schug asked why Mr. Beagles said only the general funds could be used. Mr. Beagles said this was about a public records request and has nothing to do with water and should come out of general funds, period. Chairman Schug said half the employees work on water and he said he saw no reason why part of it couldn't come out of the water fund. Mr. Beagles said you are going to do what you want to do, but guaranteed it is going to come back and bite you. We offered to settle this and you've let it go on for months and then you are also going to spend \$3000 or \$4000 on an attorney who lied to the court in open meeting. Chairman Schug declared Mr. Beagles as being out of order and called for the next item on the agenda.

Motion: None.

Vote: None.

Second: None.

Discussion: None.

2. Findings of Valentine Court Case

Intro: None.

Motion: Burt Rubinowitz. "Do not discuss the findings of the Valentine case until final orders are issued by the court".

Second: Pete Bowidowicz.

Vote: Chairman Schug, Vice Chairman Rubinowitz and Pete Bowidowicz voted aye. Virgil Beagles voted nay.

Discussion: DeWayne Beagles objected to the motion. Mr. Beagles said he thought the public had a right to know and this is what has been going on in this district for eight or nine years and spent \$5, 6 or 700,000 in attorney's fees because you don't want to talk about anything. Burt Rubinowitz pointed out that in the previous item that the results of the meeting of 2-18-10 the board had voted to file a reconsideration motion and none of the findings of the court are final so he felt there was no need to discuss it.

3. Bob Beauvais's letter concerning Octavio Sanchez

Intro: None.

Motion: Virgil Beagles. "Take it off the agenda as you are not going to discuss it, anyway".

Second: Burt Rubinowitz.

Vote: All voted aye except Virgil Beagles who did not vote.

Discussion: None.

4. Disgorgement of Attorney Fees/Liability Insurance in the Reynolds Case CV507

Intro: None.

Motion: Burt Rubinowitz. "Do not consider any issue related to case 577 until final orders have been issued by the court".

Second: Pete Bowidowicz.

Vote: All voted aye except Virgil Beagles who voted nay.

Discussion: None.

5. Disgorgement of Wausson/McCall Invoices for Material

Intro: None.

Motion: Burt Rubinowitz. "In the previous item we have already voted not to discuss items related to that case and this item is part of that case".

Second: Pete Bowidowicz.

Vote: All voted aye.

Discussion: Virgil Beagles said this is not the Reynolds case. It has been dismissed from the Reynolds case. There's nothing left in it. It's public record, and it needs to be brought out because you've been lying to the public all along, Mr. Chairman, about what fees had been paid. Chairman Schug said you are trying to slander me. Mr. Beagles said he was telling the truth and the invoices would show that and you said it in open meetings and court. Chairman Schug disputed he said it in court and asked Mr. Beagles specifically if he heard him say it in court. Mr. Beagles said he wanted to know why the Chairman was afraid to discuss in public that the district paid for material that belonged to it. Chairman Schug said Mr. Beagles had the facts wrong. Burt Rubinowitz made a point of order that his motion was on the floor and he called the previous question.

6. Endorse Timberon Development Council (TDC) Community Action Plan (CAP)

Intro: None.

Motion: Virgil Beagles. "Approve the TDC CAP".

Second: Burt Rubinowitz.

Vote: Unanimous approved.

Discussion: Rick Merrick was available for questions of which there were none.

8. Update on Membrane Filter System

Intro: Chairman Schug said Dr. Moore covered this in the manager's report.

Motion: None.

Second: None.

Vote: None.

Discussion: None.

9. Approval for the General Manager to Apply for Additional Diversion Points at Carissa Springs

Intro: None.

Motion: Virgil Beagles. "Approve the General Manager to Apply for Additional Diversion Points at Carissa Springs".

Second: Burt Rubinowitz.

Vote: All voted aye.

Discussion: Pete Bowidowicz asked if there would be a dedicated diversion point for the golf course. Dr. Moore said there was one main 10 inch pipe coming from the springs and it split later. The new diversion points would be to improve the flow at the head.

New Business:

10. Approval of Sub-Grant Agreement for '06 FEMA Work Extension

Intro: Dr. Moore said this would extend the completion date until August of 2010. We asked for this because of budgetary and weather concerns.

Motion: Burt Rubinowitz. "Approve the sub-grant agreement for '06 FEMA work extension".

Second: Pete Bowidowicz.

Vote: All approved.

Discussion: None.

11. Approval for General Manager to Apply on Behalf of TWSD for Federal Surplus Property

Intro: Dr. Moore said he recommended approval of this item as long as the item did not exceed \$5000. Our goal is to try and get them to donate this equipment. We've been in contact with the appropriate person in Santa Fe and this is the first step in the process.

Motion: Pete Bowidowicz. "Approve the general manger to apply on behalf of TWSD for federal surplus property.

Second: Burt Rubinowitz.

Vote: Unanimously approved.

Discussion: None.

12. **Approval to Retain Hinkel, Hensley, Shanor and Martin Law firm (Drew Cloutier) in Dewayne Beagles vs. TWSD Cause No. CV-10-114**

Intro: Chairman Schug said this concerned DeWayne Beagles protest of the water rate increase.

Motion: Burt Rubinowitz. "Retain Hinkel, Hensley, Shanor and Martin Law firm (Drew Cloutier) in Dewayne Beagles vs. TWSD Cause No. CV-10-114."

Second: Pete Bowidowicz.

Vote: None.

Discussion: Dr. Moore said the court is treating this as an administrative review and I don't believe the other side has retained counsel. I was approached by the board to see if the law firm was interested and willing to do this and they agreed. But they are not doing anything on our behalf yet. Virgil Beagles stated he thought retaining an attorney was not necessary. DeWayne Beagles said that his appeal was against the water rate resolution. He said he had no plan to hire an attorney. He also had given his exhibits to Dr. Moore. Dr. Moore said he had reviewed them but not read them. Burt Rubinowitz asked Dr. Moore if it was his opinion we still needed an attorney. Dr. Moore said if we were discussing points of law he would. He said some people bring attorneys to the PRC hearings and some do not. This is a straight forward case but there is no history on this type of case and so he is hesitant to give advice either way. It depends on whether the board is more comfortable with having an attorney present or not. Chairman Schug asked Dewayne Beagles if they were protesting both the water rate and the standby fee increase. DeWayne Beagles replied yes. Chairman Schug said he would like to postpone this item until the board has looked at the exhibits.

Motion: Burt Rubinowitz. "Lay this on the table until the next meeting".

Second: Pete Bowidowicz.

Vote: All voted aye except Virgil Beagles who abstained.

Discussion: BF Adams asked if the standby fee was a legal issue concerning whether it is legal or not and so he thought a lawyer would be appropriate when discussing standby fees in court. Chairman Schug said his personal opinion is that a lot of lawyers are not familiar with and do not understand the water and sanitation district act. BF Adams asked if the court would have the ability to cancel the standby fee. Chairman Schug said he didn't think so from his understanding of the procedure in the water and sanitation district act.

13. **Authorize General Manager to Issue RFP for Pro Shop Services**

Intro: None.

Motion: Virgil Beagles. "Authorize General Manager to Issue RFP for Pro Shop Services".

Second: Burt Rubinowitz.

Vote: All voted aye except Pete Bowidowicz who abstained.

Discussion: Virgil Beagles commented he had not seen the pro shop in better shape in all the many years he had been coming here.

Committees:

Swimming Pool Committee Covered in general managers report.

Budget Committee Covered in general managers report.

By-Laws Committee Burt Rubinowitz said the bylaws committee had met about 10 days ago and that several issues were being considered for amendments to be brought to the board for approval. Probably by the next meeting the committee will be ready to bring them before the board.

Water Rate Committee Chairman Schug said there is a hearing scheduled with the newest district court judge, Judge Rupp, for April 12th.

Golf Course Committee Pete Bowidowicz said the snow outside is outstanding as it will feed and water the golf course for free. The crew filled in the sand trap on number nine and that will maintain good drainage on the site. There will be no sand traps on the golf course. This will save money on maintenance and golf course grade sand is expensive. Frost lines are probably anywhere from 12 to 18 inches and you cannot get growth and maintainability until you get a ground temperature of 60 degrees at a depth of eight inches. I am not looking to do anything until the

beginning of April. Fungus and herbicide treatment will begin in April or May when the dandelions and such start to root and show themselves. We have 200 pounds of rye and we are going to seed the womens tee boxes also. We also have railroad ties which I am going to use to dress up the tee boxes like we did on number one. I would also like to possibly name each hole and I will be asking for suggestions and no foreign languages please. I presented the manager with additional income producing mechanisms to consider and I want to get more items for sale in the pro shop as well as turning some of the pro shop into a work out center that we will charge for. There are machines around we could use. I am getting with vendors to get affordable merchandise for resale, some have donated things like the golf clubs from Wilson that we auctioned off. My goal is to have a Pro shop with reasonably priced, quality, seasonal wear. A question from BF Adams about having locally produced items on consignment in the pro shop was met with favorable comments and agreement by Pete and the general manager to research that possibility. Burt Rubinowitz reminded Pete of the Founders Day Proclamation that allowed free use of the recreational facilities for that day. Pete said that was not a problem and would work on the logistical aspects of it.

Website Committee Burt Rubinowitz said the website had not met and the web master Charlie Ross said he had nothing further to add.

Water Rules and Rights Committee Burt Rubinowitz said there was nothing new to report and the committee had not met since last month's meeting.

Directors Remarks:

Virgil Beagles said that Dell Telephone had sent out there ballots and it included a spot for write in candidates and he read that they have no problem with write-in candidates and he said this board shouldn't either. Chairman Schug said Dell Telephone is a private company. Virgil Beagles said that doesn't matter. Burt Rubinowitz commented that the bylaws committee was looking into including procedures for write-in candidates.

Pete Bowidowicz thanked everyone for coming in and showing interest in the community. He said he was appalled at the condition of the road by his house and especially the county roads. He requested the community get vocal with the county to get the roads repaired. He noted an eight inch decrease in the level of Pawhuska from scraping and no base course or crushed fines added. He said he knew many engineers and this is what is needed to improve the condition of the roads. Chairman Schug said the county number to call is 1-866-986-8376 and ask for Bill Parker.

Burt Rubinowitz said he had been on the board for approximately 14 months and is extremely happy to see that the reconciliation process is going so well.

Chairman Schug said there had been some communication between the Secretary of State's office and the board secretary. Secretary Ross said two weeks ago today they called me and asked for my physical address and said they were going to send me a letter which I have not seen yet. He thanked everyone for coming.

Agenda Request: None.

Executive Session: None.

Unscheduled Citizens Communications:

Rick Merrick said the Fourth of July committee had met a few times and encouraged everyone to attend the event and enjoy the food, music and other activities. There is also grant monies available to land owners for thinning your lots and to get with either him, Fran or the State Forestry Service in Capitan. He also invited everyone to attend the TDC meetings held every second Saturday at 10:00am at the TDC building. Chairman Schug asked if TDC was administering the thinning program and Rick said that the RC&D in Carrizozo was doing that and either he or the state forestry service should be contacted about having that done.

An update on getting cell phone service was given by Burt Rubinowitz as requested by BF Adams. The cost to the prospective provider to provide the cell phone service is not encouraging for the appearance of this service in the near future. Chairman Schug asked if he had gotten with the federal government about funding because this is a safety issue especially concerning new PSAP requirements. Burt said he had not looked into that and he would bring that up to the prospective providers the next time he talked to them.

Virgil Beagles asked Dr. Moore if we were still allowing free dumping in the slash pits which would be aggravated with another tree trimming program. Dr. Moore said we had not changed the policy and we do need to look at that and if some of these grants could help pay for the disposal that would be great. Chairman Schug said the history of this is that we used to receive \$3000 from the state forestry service for maintaining the slash pit. The fire department burns it for free as part of training. Dr. Moore said he would look into it. Rick Merrick said the biggest issue we have is the dry lake was recently burned and it is still burning. It needs to be shut down and rotation of the two smaller slash pits begun as originally intended. Chairman Schug said that at one time the dry lake had been setup for contractors to dump in and the smaller slash pits for home owners. Rick said that with the state Forestry Service budget as it now stands that we cannot expect any money to help with maintaining the dry lake. Virgil Beagles said a fine should be imposed and Chairman Schug said the law does not allow us to do that. Rick Merrick said education is the key starting with the office informing people of the proper place to dump their slash. Dr. Moore said he would be happy to shut down the dry lake as large dump areas are a danger and we are looking at some more sights to help manage this problem. He also said the county may be able to help us with this and he would check on that. Chairman Schug also pointed out that the trash dumpsters are a big problem he has no answer for. Dr. Moore said there is an answer but it will cost you. He said Cloudcroft had to put someone at theirs to control dumping and that seems to be the only answer to this.

Meeting Adjourned at 12:01pm on a motion from Pete Bowidowicz and a second by Virgil Beagles.

Minutes submitted by Secretary Charlie Ross_____

Date

Approved by Chairman Arden Schug_____

Date