

**MINUTES OF
TWSB BOARD OF DIRECTORS
SPECIAL SESSION
April 2nd, 2010 AT 3:30PM**

Present for the meeting were Vice Chairman Burt Rubinowitz, Treasurer Joe Mainello, Virgil Beagles and General Manager Dr. Martin Moore. Attending telephonically was Chairman Arden Schug. Vice Chairman Burt Rubinowitz chaired the meeting by request of Chairman Schug.

Approval of Agenda

Motion: Joe Mainello. "Approve the agenda".

Second: Virgil Beagles.

Discussion: None.

Vote: Unanimously approved.

Agenda

1. Appointment of Board / Management representatives to attend the April 8, 2010 hearing in the Valentine lawsuit to be held in Las Cruces, New Mexico (D-1215-CV-200500329).
Intro: None.
Motion: Chairman Schug. "My self and Dr. Moore be there".
Second: Joe Mainello.
Discussion: None.
Vote: Chairman Schug and Joe Mainello voted aye. Virgil Beagles abstained.
2. Appointment of Board / Management representative(s) to attend the April 12, 2010 hearing and pre-trial conference in the FEMA lawsuit to be held in Truth or Consequences, New Mexico (CASE #D-1215-CV-200800577).
Intro: None.
Motion: Chairman Schug. "Joe Mainello and Dr. Moore represent the district".
Second: Joe Mainello.
Discussion: Joe Mainello said the water rate appeal hearing was the same day and wondered if Dr. Moore would better represent the district at this hearing or the water rate appeal hearing. Chairman Schug said he and Burt Rubinowitz had done most of the work on the water rate hearing and they would attend that hearing. Dr. Moore concurred.
Vote: Chairman Schug and Joe Mainello voted aye. Virgil Beagles abstained.
3. Appointment of Board / Management representative(s) to attend the April 12, 2010 water rate appeal hearing to be held in Alamogordo, New Mexico (CASE #D-1215-CV-201000114).
Intro: None.
Motion: Joe Mainello. "Chairman Schug and Burt Rubinowitz be our representatives at the water rate appeal hearing in Alamogordo."
Second: Chairman Schug.
Discussion: None.
Vote: Chairman Schug and Joe Mainello voted aye. Virgil Beagles who abstained.
4. Request approval to retain the services of Hinkle, Hensley, Shanor, and Martin for the water rate appeal (CASE #D-1215-CV-201000114).
Intro: None.
Motion: Chairman Schug. "Approve retaining the services of Hinkle, Hensley, Shanor, and Martin for the water rate appeal hearing."
Second: Joe Mainello.
Discussion: Virgil Beagles asked who would represent him since Hinkle, Hensley, Shanor, and Martin said they would not represent him in the Glenda Gentry case. Dr. Moore said they had indicated they could represent him as a member of the board as long as he was not named individually. Virgil Beagles wanted to know who had authorized the attorney to make an entry appearance yesterday in this case. Everyone else said they had not given authorization. Virgil Beagles said they could not represent the board prior to receiving authorization and DeWayne Beagles had a registered letter to that effect. The board had a short recess while Dr. Moore verified what had happened. Virgil Beagles said Dewayne

Beagles had documentation proving sufficient notification had not been published prior to the water rate hearing. Burt Rubinowitz retrieved affidavits of notice of publication from the paper stating they had run the notices on October 29th and November 11th and the hearing was on December 15th. Joe Mainello asked if we had been told we had to have representation for the hearing. Dr. Moore said Judge Counts told him the district would have to have representation. Virgil Beagles said he understood there was a problem with the first notice and it had to be redone and that was the problem. Burt Rubinowitz said he had no knowledge of that. Virgil Beagles said there was a posting on December 22nd and 29th. Dr., Moore said those were the post hearing announcements. Burt Rubinowitz said we are required to post them and they did not supersede the announcements as alleged by Virgil Beagles. Dr. Moore said the attorney cannot represent us until we have a letter of engagement with the attorney. Virgil Beagles said because the attorney had made an entry appearance he had caused DeWayne to go hire an attorney. Chairman Schug said DeWayne had said at the last meeting he would not hire an attorney whether we did or not. Virgil Beagles said Monday morning he would file a motion to have an attorney represent him. Joe Mainello asked Virgil Beagles if he would be going to the hearing with private representation as a board member supporting the water rate increase or a private citizen opposing the water rate increase. Virgil Beagles said he would be going in as a board member because the attorney said he would not represent him. Joe Mainello asked if Virgil Beagles and his attorney would go in and fight for the water rate increase. Virgil Beagles said he would be there to see what was happening. Joe Mainello asked if he was then an attendant attorney who would then advise you at our expense. Virgil Beagles said "Right". Chairman Schug observed that we should think about getting another attorney without a conflict of interest. Virgil Beagles said it would be cheaper to get an attorney from Alamogordo who wouldn't have to be paid for traveling from Roswell. Dr. Moore said he knew some attorneys in Alamogordo. Joe Mainello withdrew his motion and Chairman Schug withdrew his second.

Motion: Chairman Schug. "Have Dr. Moore retain an attorney and Chairman Schug and Burt Rubinowitz meet with the attorney and brief the attorney on the water rate appeal hearing".

Second: Virgil Beagles.

Vote: Unanimously approved.

5. Public Records Custodian presentation to the TWSD Board regarding Bill Gideon public records request.

Intro: Dr. Moore said his attorney had said private emails used to communicate public business are public communications in accordance with the open communications act. Only communications of attorney client privilege were exempt and it had to be direct communications with the attorney or in response to a query from the attorney. He said he was the central point of contact for this as the public records custodian. He requested the members of the board and Secretary Ross submit all emails from 1 July 2009 to 28 February 2010 to him by April 10th. He also said his emails were included in this request. Burt Rubinowitz asked in what form he wanted these. Dr. Moore said he could work with most formats as long as he can open it and Mr. Gideon can look at it. The district will make a computer available to Mr. Gideon so electronic copies would make the most sense.

Motion: None.

Second: None.

Discussion: None.

Vote: None.

6. Request approval for the General Manager to pursue funding options to address financial defaults and deficiencies and to aid TWSD operations.

Intro: None.

Motion: Chairman Schug. "Approve of General Manager to pursue funding options to address financial defaults and deficiencies and to aid TWSD operations."

Second: Joe Mainello.

Discussion: Virgil Beagles said no one at the top levels at DFA or the Board of Finance were aware of our financial difficulties and we need to inform them in writing. Dr. Moore said he would do that. A discussion was had as to the current state of personnel at those agencies as they had recently changed. Virgil Beagles said letters had been sent to the agencies from the auditors and the PRC. Dr. Moore said they were responding to the auditors letter but had not received a copy of the PRC's letter. Joe Mainello said neither he nor any of the other board members had received copy from the state auditors office or the PRC and he requested Virgil Beagles keep them informed of things like this. Virgil Beagles said he was doing that now. Joe Mainello expressed disdain that correspondence had been circulating putting the board in a bad light for 4 weeks and they had not been made aware of it. He asked Virgil Beagles when he had received a copy. Virgil Beagles replied 3 or 4 weeks ago.

Vote: Unanimously approved.

7. Request approval for the General Manager to submit TWSD's annual request to Otero County for funds to help pay for trash hauling. The amount requested last year was \$8,000. The deadline is April 2, 2010 to submit the request.

Intro: Dr. Moore said the requested \$8000 is what we need to make the the trash collection a wash monetarily.

Motion: Virgil Beagles. "Approve General Manager submit TWSD's annual request to Otero County for funds to help pay for trash hauling."

Second: Joe Mainello.

Discussion: None.

Vote: Unanimously approved.

8. Request approval for the General Manager to pursue an Intergovernmental Agreement with Otero County for the purchase of classified and unclassified road fill material at cost. This is needed for FEMA road work.

Intro: Dr. Moore said he had talked to the county manager and they could get on the April 14 agenda at the county meeting to get material at cost from the county. He said he called some local companies and the savings would be substantial. We have a good supply of unclassified fill in 2 pits. He agreed with Virgil Beagles that they needed base coarse material and recommended unclassified fill be removed from the request. Joe Mainello pointed out that this is just for the general manager to pursue fact finding and bring it before the board for approval and it's a win-win situation.

Motion: Joe Mainello. Approve the General Manager pursue an Intergovernmental Agreement with Otero County for the purchase of classified and unclassified road fill material at cost."

Second: Chairman Schug.

Discussion: None.

Vote: Unanimously approved.

9. Request approval for the General Manager to apply for a rough aggregate and gravel removal permit with the Bureau of Land Management. This is needed for FEMA road work to rebuild the road base in intersections and other low spots.

Intro: None.

Motion: Virgil Beagles. "Approve the General Manager apply for a rough aggregate and gravel removal permit with the Bureau of Land Management."

Second: Chairman Schug.

Discussion: None.

Vote: Unanimously approved.

10. Request approval to adjust the payment limit for Sharon Northcott from \$26,000 to \$30,000 for completion of extra audit work and account reconciliation services.

Intro: None.

Motion: Chairman Schug. "Approve to adjust the payment limit for Sharon Northcott from \$26,000 to \$30,000 for completion of extra audit work and account reconciliation services.

Second: Joe Mainello.

Discussion: Virgil Beagles read from previous minutes in which it had been reported that Sharon Northcott had received a total of \$26,000 and donated an additional \$5000 of her own time working on the reconciliation. He said at her hourly rate this amounted to 7 months worth of work on our reconciliation and there is just no way and adding an additional \$4000 would make it 8 months working on our books. Dr. Moore said that if you agree to this you would be paying her to work with whoever is finishing up the 08/09 audit. Virgil Beagles said he understood her contract was to complete the 06/07, 07/08 and 08/09 reconciliations for \$16,000 and after 5 or 6 months she requested another \$10,000 which was approved. She was also suppose to have us up and running on Quick Books and have all the reports done and we paid her for that. Dr. Moore agreed. Virgil Beagles asked why are we paying \$4,000 more to her if we paid her already and she has completed what was in her contract. Dr. Moore said he was just relaying her request to the board. Joe Mainello asked if we needed her to do 9/10. Virgil Beagles said everything should have been entered into Quick Books for 9/10. Dr. Moore said yes and no that everything had been entered. Chairman Schug said it been agreed that data entry and reconciliation could not be done by the same person. Virgil Beagles said Dr. Moore said she would be around to help with the audit and not work on 9/10. Chairman Schug asked Dr. Moore if she was going to do 9/10 for the extra \$4000. Dr. Moore replied no she's not. Dr. Moore said if you were going to approve this, he recommend you require her to also give advice on the 09/10 reconciliation. Virgil Beagles said he thought having her on an as need basis would be better. Dr. Moore agreed as long as it was kept under the \$4,000 ceiling. Chairman Schug agreed but wanted to know who would be doing

the 9/10 reconciliation which should be done every month. Dr. Moore said they couldn't be done until the previous reconciliations/audits were done. He said the board had previously tasked him to put out an RFP for this and maybe now is the appropriate time. Virgil Beagles said he was unhappy that Sharon Northcott's contract had not been available at the meeting to be referred to.

Vote: Unanimously disapproved.

Motion: Chairman Schug. "Hire Sharon Northcott at \$40.00/hour on an as-needed basis to support the 06/07, 07/08 and 08/09 audits.

Second: Joe Mainello.

Discussion: Joe Mainello asked if we wanted to include something about the 09/10 reconciliation. The other board members agreed they did not want to do that at this time.

Vote: Chairman Schug and Joe Mainello voted aye. Virgil Beagles voted nay.

11. Request from Accounting and Consulting Group to amend the audit contract, increasing the payment from \$26,260 to \$34,227 for the fiscal year 2006-2007 and 2007-2008 fiscal audits.

Intro: Dr. Moore said he recommended they lay this item on the table until the state auditors have reviewed their request. Virgil Beagles said he remembered the board allocating \$39,300 to them from the \$55,000 and the remaining \$16,000 would go to Sharon Northcott. Dr. Moore said the board voted to accept the contract for \$39,000 and some change for 3 fiscal years of audit. They went to the state auditors and said they would do the 06/07 and 07/08 audits but wanted a separate contract for the 08/09 audit. The State Auditor's office also said they would need clear and convincing evidence if Accounting and Consulting Group was required to expand the scope of the audit. Virgil Beagles said according to their letter we have provided everything they requested and they have no more money coming.

Motion: Joe Mainello. "Lay this on the table until we hear from the state auditors".

Second: Virgil Beagles.

Discussion: None.

Vote: Unanimously approved.

Dr. Moore said he wanted to let the board know the purpose of having this item on the agenda. He said when he talked to the state auditors office it came out that it would be very appropriate to get this on the public record of what we discussed here and I would like to forward a copy of this portion of the minutes to the office of the state auditor along with our letter.

Unscheduled Citizens Remarks: None.

Directors Remarks:

Virgil Beagles stated the motion to form a receivership had been filed 3 weeks ago and a copy of the state auditor and PRC letters were attached to it. All of this was included on that point of receivership and you should have seen it. You should all not be blind sided, these are all part of the official documents filed with the court. Burt Rubinowitz said he thinks he may have received that in the mail. Virgil Beagles said the state auditors letter and the PRC letter are attached. He said if you are getting documents from the lawsuit then you should know what's going on. Joe Mainello asked he should be looking at Dr. Moore for not getting these documents. Virgil Beagles said it was your attorney you should be looking at for not getting them to you. I keep asking you if you've seen this stuff and he (Dr. Moore) assures me he hasn't seen it. The attorneys are keeping this board and the general manager in the dark. Chairman Schug asked what the PRC letter was about. Virgil Beagles said the PRC was asking the Board of Finance to go to court and have this district put under receivership. Chairman Schug asked what the PRC had to do with it. Virgil Beagles said they are there for life and health. It's been out there for 3 or 4 weeks on the file of a motion, which is what I'm trying to point out.

Motion: Joe Mainello "Adjourn the meeting"

Second: Chairman Schug.

Vote: Unanimously approved.

Minutes submitted by Secretary Charlie Ross _____
Date

Approved by Chairman Arden Schug _____
Date

Posted: