

MINUTES OF TWSD BOARD OF DIRECTORS REGULAR SATURDAY SESSION ON DECEMBER 19, 2009

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

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: Joe Mainello. "Approve the agenda".

Second: Burt Rubinowitz. Unanimously approved.

Minutes of:

11-21-09

Motion: Burt Rubinowitz. "Dispense with the reading and approve as submitted".

Second: Joe Mainello. Unanimously approved.

12-10-09

Motion: Joe Mainello ""Dispense with the reading and approve as submitted".

Second: Burt Rubinowitz.

Discussion: Virgil Beagles said he had asked for comments to be inserted in the minutes and they were not there. Chairman Schug asked Secretary Ross to redo the minutes with the comments requested by Virgil Beagles and they would be considered at the next meeting.

Motion and second withdrawn.

12-15-09

Motion: Burt Rubinowitz. "Dispense with the reading and approve as submitted".

Second: Joe Mainello. Unanimously approved.

Treasurer's Report: Joe Mainello said that in lieu of a regular report we have the bank statements which we will go over.

- Western Bank Checking: Covers almost all expenditures done by the district. As of 30 Nov the balance is \$22,324.02
- Western Bank Savings: The statement is received every 3 months and the one here is from September 30th. The savings account is where most large amounts are deposited such as from a grant or a reimbursement. The balance was \$29,399.43. Virgil Beagles requested the bank be called and an updated balance be obtained.
- First National Bank: Standby fees are placed here and as of 30 Nov, there was \$24295.77.
- Compass Bank: This is our water reserve account which is \$58.88.
- Otero Federal Credit Union: These are the general fund reserves. There is some FEMA money in there and the balance was \$16,048.48.

Treasurer Mainello requested Dr. Moore to provide an updated balance for the Western Bank Savings account for next months meeting. Dr Moore stated he would do that and the current balance is approximately \$24,000 but he believes it is higher and will get the exact amount for the board.

Manager's Report: Dr. Moore's report:

A. Introduction

The purpose of this report is to update the Board of Directors and the public on work performed by TWSD staff and volunteers.

B. Progress Summary: Accomplishments

Accomplishments in this reporting period include:

- New Mexico Homeland Security reimbursed TWSD an additional \$30,000 +/- for FEMA 2006 flood work.

- Approximately \$133,000 in additional grant reimbursement requests has been reviewed by the New Mexico Environment Department's Las Cruces office, and we are awaiting word from the Santa Fe office, which is conducting its final review.
- It has now been 360 days since the last community wide water outage.
- The lower trout lake has been test filled and has not successfully held water.

C. Professional Activities:

Water

- Water leaks continue to be monitored and fixed, with priorities based on severity.
- The new spring water membrane filtration system plumbing parts and supplies list has been priced out and will be ordered shortly.

Recreation

- The golf course is closed for the winter.
- The fishing lakes are icy, and the trout in the lakes still look healthy.
- The swimming pool re-surfacing project is waiting for re-authorization of the swimming pool grant by the State Department of Finance and Administration. In addition, we still await New Mexico Environmental Department clearance for final work.

Roads

- TWSD performed snow removal work.
- TWSD heavy equipment is being serviced and repaired as needed in preparation for FEMA road work. Specifically, the transmission has been replaced on the main dump truck and we are awaiting parts for the brakes.

Solid Waste

Nothing new to report.

Maintenance

A "courtesy" health and safety inspection has been conducted by New Mexico Occupational Health and Safety (OSHA) on TWSD equipment, land, and structures. A number of improvements are required. Major issues we have already started addressing include, but are not limited to:

- Constructing a proper containment area around gas and diesel tanks
- Installing a roll cage on the front end loader that meets industrial safety requirements
- Re-wiring the maintenance barn
- Installing eye wash stations in the maintenance barn and the water treatment plant

Administration

- DTI still owes TWSD \$1,
- TWSD is interviewing for two heavy equipment operators to assist with FEMA work. These will be paid for with FEMA grant reimbursement funds.
- The office will continue to be closed to the public on Fridays. If you need to make a payment on Fridays, please drop them in the payment slot.
- TWSD Worker's Compensation insurance coverage has been changed to reflect three (3) office staff (including the general manager) and four (4) field staff.
- TWSD financial transactions have been entered and reconciled for fiscal years 2007/2008 and 2008/2009. Fiscal Year 2006/2007 is well underway. The records for the 2007/2008 and 2008/2009 audit have been prepared, with the exception of the finalized trial balance and general ledgers which await reconciled ending balance numbers for 2006/2007. The 2006/2007 audit has a projected time-line for end of January, 2010 completion. The audit will include financial reporting, contracting, and fund use issues raised in that fiscal year.

Additional Comments made by Dr. Moore:

- We received approximately \$72,000 in property tax monies and about \$55,000 in bills were paid, including several attorney's bills.
- We received an annual drinking water survey by the Drinking Water Bureau and they noted some security issues. They want security fencing around all of our water tanks. We have sufficient chain link fencing which is only 5ft 8in tall but with barbed wire on top it will be

alright. We have enough to do tank 5 but will have to get additional material to do tanks 2 and 3, as well as, the well behind the fire station and at the golf course. We are checking the old well on Sacramento to see if that fencing is adequate.

- We are working to correct other safety issues brought to our attention by the Drinking Water Bureau and OSHA to give everything a professional look. We have 30 days to come up with a plan to make corrections and submit them. We must fix these issues or get non-compliance orders with fines so we must hire some temporary personnel to help address the problem areas. Our goal is to have all the issues back into compliance, except for the fencing, by the end of February. Because we asked for a courtesy safety inspection by OSHA, by our own initiative, they are working with us instead of dictating to us. He commended field workers and others who came out at 2 or 3 in the morning and on weekends to work on roads and start up back generators to keep the water going. The fire department was also very cooperative and we worked together to make sure people got out OK and that is the kind of community spirit we need.

Discussion: Pete Bowidowicz asked Dr. Moore if he had coordinated with Homeland Security about security fencing. Dr. Moore said he had and they do have some potential mitigation grant funds. He went to them and started going through an application, but part of the problem is that, Otero County has a mitigation program which is under final review and they expect it to be approved shortly, if it hasn't been already, and we will be getting with them on grants. Homeland Security has grants for areas in earthquake zones and we happen to sit on a fault. We don't feel the tremors but they are there. We are going to see if we can take advantage of that. Virgil Beagles asked if the vehicle insurance was up to date and Dr. Moore stated to the best of his knowledge in talking with them we were. Virgil Beagles asked if Dr. Moore had talked with Congressman Teague about getting a moto-grader and loader he had said he was going to help us get from surplus. Dr. Moore said he had missed him but was working with his staff. A discussion was had concerning the summary and ledger accompanying the bank statements Virgil Beagles pointed out the district was approximately \$100,000 in debt and Dr. Moore said we are playing catch up and a month ago we were almost \$200,000 behind. Mr. Beagles also pointed out that DFA had requested the 09/10 budget by June 15th and Dr. Moore advised DFA had further said they did not want the budget submitted until the 06/07 budget had been reconciled and we were still in that process. The communications with DFA were all verbal and he would get them in writing and present it to the board. He said Accounting Associates was at a stopping point because they were also waiting for some carry forward numbers to insert before continuing the audits.

Old Business:

1. Election Procedures

Intro: Virgil Beagles said he had asked Dr. Moore how the election judges had been appointed. Dr. Moore said he had previously seen where the election manager has been appointed to do this. Chairman Schug asked Secretary Ross to talk about this. Secretary Ross said he had contacted 8 people and confirmed them as judges and clerks for the election. Virgil Beagles said NMSA 73.21.14 gives the responsibility to the board. Dr. Moore said the election judges and clerks could be confirmed in a special session if that is what the law requires. Chairman Schug stated we will review the Water and Sanitation Act and do what is required. DeWayne Beagles pointed out that the Election Proclamation states the ballot requisition form will be posted on the website. Secretary Ross stated it is not there now but will be tonight, but as an alternative it also states ballot requests can be made through the office. Virgil Beagles asked if someone can put there name in to be a judge. He said they advertise in the paper and on TV in Roswell. He asked Secretary Ross if someone could come to him and volunteer. Secretary Ross said that now that he is aware of this procedure he could do that. Chairman Schug instructed Secretary Ross to post a notice requesting volunteers to be judges for the election. Secretary Ross said he would do that.

Motion: None.

Second: None.

Discussion: None.

2. Accounts Payable

Intro: Chairman Schug said I think we covered that. Virgil Beagles said yes.

Motion: None.

Second: None.

Discussion: None.

3. Update on the Swimming Pool

Intro: Dr. Moore said that as of October, the state Environment Department and Construction Industries Bureau both have permits we are required to have and we are working to get them. The state has not reissued any grant agreements even previously issued grants that had been partially used are on hold. So until the county tells us to go ahead the contractor work on the pool is on hold and we are taking that time to satisfy the Environment Department requirements. Our goal is to try and get the pool open by next year. The new skimmers were put in with no extra charge to the district. He also said he would follow up with the county to get any inspections needed scheduled.

Motion: None.

Second: None.

Discussion: None.

4. Gideon vs TWSD Lawsuit

Intro: Dr. Moore said we had spoken with the Hinkle law firm to see if they could represent us after they had first searched their files for any conflicts. He recommend we hire them subject to completion of their search.

Motion: Joe Mainello. "Hire Hinkle firm to represent us in Gideon vs TWSD if they conclude there is no conflict".

Second: Burt Rubinowitz. Unanimously approved.

Discussion: Virgil Beagles asked Dr. Moore if he was aware there was a motion pending out there and they have been shopping judges and a judge turned it down. Dr. Moore said he was and the last attempt to assign a judge was on the 14th or 15th of December. Virgil Beagles asked if this would be a subcontract and Dr. Moore said it would not and falls under the \$30,000 cap and if it doesn't the board will have to go back and look at it again. Virgil Beagles stated we are about to spend \$30,000 on something we can settle for 10 or 15. Dr. Moore said that if it started to approach that amount then he would have to come back to the board for an RFP. Virgil Beagles asked why don't you sit down with Mr. Gideon and see if you can work something out. Dr. Moore said that if you hire the Hinkle firm that you make it specific to answering the charges and/or filing a motion to set aside default judgment and that we work to try to get this case put to bed.

Amendment to the Motion: Virgil Beagles. "Authorize the manager to sit down and negotiate before we spend any money on attorney fees".

Second: Burt Rubinowitz. Unanimously passed.

Discussion: None.

5. Resolution 09/10-001 District Court Jurisdiction

Intro: Virgil Beagles said he had two people read it and it means nothing. It says we have to go to the district court but it doesn't say for what. Chairman Schug asked if he had a motion on how to amend it. Virgil Beagles read from the resolution and reiterated his claim that it doesn't specify what the district comes under the jurisdiction of the court for. Chairman Schug agreed it was vague and that we should add the language from the water and sanitation district act about setting charges ect. He said this does not affect anything we have done because the water and sanitation district act says that unless you vote to be under the PRC then you come under the jurisdiction of the district court.

Motion: Chairman Schug. "Add the language from the water and sanitation district act to the end of the third paragraph".

Second: Joe Mainello.

Discussion: Virgil Beagles said the water rate increase voted on 14 Dec had no validity. Chairman Schug said that was not true and we would have to go to the district court anyway as we had not passed a resolution to come under the PRC and we didn't need to write this resolution we just thought it was a good thing to do. Virgil Beagles replied there you go spending court money again. Chairman Schug asked if he was planning to sue us. Virgil Beagles said you are getting more lawsuits and he didn't say he was going to sue. He also said someone was going to sue unless you get it right. Chairman Schug said we did it right and followed everything in the water and sanitation district act. Burt Rubinowitz stated that NMSA 73.21.55 stated if you don't elect to be under PRC rules you are automatically under the jurisdiction of the district court. Virgil Beagles said you cannot put a rate increase request in front of the judge and expect them to approve it if it hasn't been voted on. Chairman Schug said the only thing that would go before the court is if it was protested. Joe Mainello asked Virgil Beagles if his concern was about running the district properly, because we do need the rate increase, or do you feel we could better get our rate increase through the PRC. Virgil Beagles replied the PRC will give us a temporary rate increase immediately I guarantee you have to have someone file a motion before the court before they will hear it. You just can't go in there and file a piece of paper and have a rate increase, the judge has to have something to put a seal of approval on. The PRC has told us at least four times they can give us a temporary rate increase to help us. He asked Dr. Moore if this was true. Dr. Moore said the commissioner for our regulatory district under the PRC had shown a willingness to push through an interim rate adjustment. Chairman Schug asked how much of a rate increase. Virgil Beagles said he didn't tell us how much. Chairman Schug said the most you can get is 3 to 6 percent. Chairman Schug said we voted to stay out of the PRC and as far as I'm concerned that's it. Burt Rubinowitz made a point of order that unless the chair excuses itself and hands over chairmanship to another member it cannot make a motion but if the chairman would withdraw his motion he would make one it's place.

Motion Withdrawn by Chairman Schug.

Second Withdrawn by Joe Mainello.

Motion: Burt Rubinowitz. "Modify paragraph 3 of resolution 09/10-001 to add (for the purpose of adjusting rates, tolls, fees and charges)".

Second: Joe Mainello. All voted aye except Virgil Beagles who voted nay.

New Business:

6. Negotiators for Affidavit in the Federal Election Lawsuit

Intro: Chairman Schug said we had a settlement offer for the federal election lawsuit if we would negotiate an affidavit to be put in for voting to be agreed upon by both parties. We need negotiators to come up with the language to be put on this affidavit. Virgil Beagles said he thought it was to change the bylaws to be codified to the election procedures so it couldn't be changes by future boards. Chairman Schug said it was both. Dr. Moore agreed. Chairman Schug said we need to get a couple of negotiators to work on this to get this settled. Burt Rubinowitz volunteered and suggested the General Manager be involved as well.

Motion: Joe Mainello. "The Chairman, Vice-Chairman and the General Manager should serve as negotiators on the affidavit for the federal election lawsuit".

Second: Pete Bowidowicz.

Vote: Chairman Schug – Aye

Vice-Chairman Rubinowitz – Aye

Treasurer Mainello – Aye

Director Bowidowicz – Aye

Director Beagles - Abstained

Discussion: Virgil Beagles said that he thought having the Chairman as a negotiator might not be advisable due to personality conflicts with himself on this issue. Chairman Schug stated we went up there with the best possible goals of settling this lawsuit. We agreed with what the mediator said and there was not a problem with the affidavit portion of it, you guys would not agree to it for some other reason. Virgil Beagles said that was your take on it. Burt Rubinowitz said this required a two thirds vote.

7. Dues for the New Mexico Rural Water Association

Intro: Chairman Schug stated we have a letter from the New Mexico Rural Water Association that our dues are due in the amount of \$288 for the year. He said they provide classes for water operators and you don't have to be a member to take advantage of some of their stuff but they do a lot of good things and are a national organization. They have come down here and helped us find water leaks and they are a really good organization and worthwhile to be a member of.

Motion: Burt Rubinowitz. "Pay the dues to the New Mexico Rural Water Association".

Second: Joe Mainello. All voted aye except Virgil Beagles who voted nay.

Discussion: Joe Mainello said he had attended a meeting in Cloudcroft they gave and it was very informative. We asked them to come here and they spent the better part of a day going over a lot of what we needed to do and helped as towards an asset management program when we were not a member. Dick Dysart said as a member we can vote at their meetings and otherwise we are just bystanders. Someone from the audience asked Virgil Beagles why he voted nay and he said we owe more money than we have and he can't see paying for this when we are broke and can't pay our bills. He said there may be advantages to being a member but we are broke.

8. Endorsement of the Timberon Development Council Community Action Plan

Intro: Virgil Beagles said he had not time to review it enough to vote on it and would like it to be taken up at next months meeting. Chairman Schug tabled this item.

Motion: None.

Second: None.

Discussion: None.

Committees:

Swimming Pool Committee: Covered during the manger's report.

Budget Committee: Joe Mainello said we are still waiting on the reconciliation but have done some preliminary work on the 09/10 budget with some figures we received from the general manger and Sharon Northcott.

By-Laws Committee: No report.

Water Rate Committee: Chairman Schug said attendance was very scarce at the water rate hearing last Tuesday night and we got a lot of compliments on the presentation. We voted to proceed.

Golf Course Committee: Virgil Beagles said he wanted to complement the manager because he had never seen the golf course look better.

Website Committee: Burt Rubinowitz said it is up and running and the problems we were previously having are fixed and Charlie is doing a great job.

Water Rules and Rights Committee: No report.

Directors Remarks:

Virgil Beagles wanted to thank who ever brought the goodies.

Pete Bowidowicz said he wished everyone a happy new year.

Joe Mainello wished everyone a very Merry Christmas and Happy New Year. He wanted to remind everyone to get out and vote in the upcoming election. He also thanked Chairman Schug and Burt Rubinowitz for the professional presentation they made at the Water Rate Hearing.

Burt Rubinowitz said the Water Rate Hearing went very well and it was very orderly.

Chairman Schug said we are nearing the end of our fiscal updating after being way behind trying to catch up on problems from previous years. We will get the audits caught up and done and have a good background so we know where we stand and everything will be cleaned up properly. The water rate we need drastically. He thanked everyone for being here.

Agenda Request: None.

Executive Session: None.

Unscheduled Citizens Communications:

BF Adams said there was some concern about write ins during the upcoming election. Chairman Schug deferred to Secretary Ross who said he understood the issue had been resolved in the past and that the voting machines were not capable of counting write ins anyway. Virgil Beagles said the water and sanitation district act says you will conduct the election as closely as possible to the general election and you can do a write in on the general election. Dr. Moore said that at the county level we had write ins. Chairman Schug asked Dr. Moore how the machine counted write ins. Dr. Moore said the machine will flag that ballot and it will have to be hand counted.

Eva Dysart said she believed that to be a write in you still had to be registered as a candidate. Dr. Moore said he thought that you had to be a qualified elector to be eligible to be a write in. Burt Rubinowitz said he thought there was a cut off date for declaring as a write in candidate. Chairman Schug asked Secretary Ross to check with the county.

Karin Mainello asked why the county doesn't run our election. Bill Gideon said the water and sanitation act makes it the responsibility of the board and the secretary to run the election and there is no provision for the county clerk to run it. We have asked the county clerk to do it before and she said she would not run it.

Meeting Adjourned at 11:48am upon a motion from Burt Rubinowitz which was seconded by Virgil Beagles.

Minutes submitted by Secretary Charlie Ross_____Date

Approved by Chairman Arden Schug_____Date