

INSCRIPTION CANYON RANCH SANITARY DISTRICT

P.O. Box 215 Chino Valley, AZ 86323

~PUBLIC SESSION MINUTES~

July 9, 2018

Revised 7/13/18

Approved August 1, 2018

Date: Monday July 9, 2018

Time: 2:00 p.m.

Place: The meeting was held at the Days Inn, 688 Fletcher Ct., Chino Valley, AZ

1. CALL TO ORDER.

The Governing Board for the Inscription Canyon Ranch Sanitary District convened into public session at 2:04 p.m.

2. ROLL CALL.

Present were David Barreira, Board Chairman; Al Poskanzer, Board member; and Bill Dickrell, Board Member. Also present were Robert Lynch, legal counsel; Stephen Polk, legal counsel; Bob Busch, District Manager and Carol Morrissey, Clerk.

Members of the Public: Jerry DeSantis, Eileen McGowan, Bob M. Simmes, Stan Salzman, John Terwilliger, Charles Lehr, Bob Hilb, Sterling Johnson, Tim Emberlin and Clint Poteet.

3. CALL TO THE PUBLIC.

Mr. Bob Hilb commented as follows:

You approved a moratorium hearing on May 8th but there was no discussion why this was needed. I believe this a violation of the open meeting law and could invalidate your hearing. I believe you have on numerous occasions violated the terms of the amended and restated development agreement. So far those actions have resulted in, I believe, two lawsuits. I feel that you could be open to a number of other lawsuits if you continue that course of action. There does not seem to be any pressing operational or fiscal reason that you took these actions. On May 1st, item 7A, you voted to unilaterally change a number of items in the agreement without any discussion on what these items were or why you were changing them. Another possible open meeting law violation. In addition is a multi-party agreement. I'm not sure why you don't think the other parties to that agreement will not take legal action against you to further increasing lawyer's fees. The original agreement was at a point in time when there was lots of legal fees reached in reaching the agreement in the millions of dollars. The agreement was austere but a total fiscal plan. Section 5A to disagree to expand Santec Plant for short-term needs. The expansion began in 2014 with the addition of a flow equalization tank. This brought the capacity to at least 70,000 gallons per day. In January, 2013 ADQ had said to the district it needed to do an engineering analysis to determine the actual install capacity of the plant. As far as I know, this was never done. The funding extreme in the agreement was predicated on the expansion of the Santec's Plant to at least 90,000. This would have given the time to build with the funding necessary per expansion with the technology determined by the district. However, it also assumed that the district formulated a business case that would be within its means. I have not seen such a business case that justifies shutting down the Santec Plant and replacing it with a new plant in near or mid-term. I believe that the only viable plan which is the plan in the

agreement is to keep the Santec Plant in operation until it reaches the end of its useful life. Building any future expansions with a technology that the district chooses as long as they can afford it. However the increments on this new expansions should only be about 25,000 gallons per day as recommended by ADQ, and based on reasonable growth expectations. The only fiscally responsible decision is to comply with the agreement to build a business case based on the current measured capacity. The business case should show when expansion is required and in what increments, and when it will be optimal to phase out the Santec Plant. My calculation is your current budget proposal would generate over three million dollars by the time you are able to build any of this new technology. That's of course the assumption that you still have the 1.3 million in cash you had on the May 31st balance sheet. You would also generate another seven million with the lot fees on the proposals for the increases in lot fees that you have talked about. I believe that means you would be putting the burden on for fully capacity on the lots of the current homeowners and lot owners. I also would like to know what you plan on doing with the additional seven million dollars you plan to collect. I think what you have right now is a total beyond unacceptable plan. Just a side comment-I believe that a bond election could be had at any of the quarterly elections that occur and not just at the November one. But I haven't researched that much, but I just see a number of bond issues that weren't done during November. Thank you.

Eileen McGowan made the following comment:

First of all Dave, I would really like to thank you for your patience in that last meeting that I attended. Because you really got bombarded with a lot of us for questions. I was looking at the budget that was posted in the notice in the paper on Friday and you have the \$7,000 which I brought up before that will only be charged to lot owners and ICR. Those folks when they buy their property, they paid into the cost their share for the sanitary district as well as the water company. I feel this is unfair to these lot owners who have no voice at this point because they have no idea what this board is intending. I don't understand why this can't, if we're all going to get taxed, at the loin why this can't be included, to all of us, instead of this select few people. Which this is a very shocking increase for this group. And I think this is a very unfair increase to this group. Thank you.

Charles Lehr stated that at the last meeting, Ron Erp was here and requested an amended agreement/contract and never received it. He wants to know how to get it. Mr. Busch responded that the document in question was delivered to the business office. Mr Erp will be contacted so he may pick it up at his convenience.

4. POSSIBLE VOTE TO GO INTO EXECUTIVE SESSION

Mr. Barreira moved that the Board go into executive session for: discussion or consultation for legal advice with the attorneys of the Inscription Canyon Ranch Sanitary District pursuant to A.R.S. Section 38-431.03.(A)(3) and discussion or consultation with the attorneys of the Inscription Canyon Ranch Sanitary District in order to consider its position and instruct its attorneys regarding the District's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation pursuant to A.R.S. Section 38-431.03.(A)(4) re:

- A. *Possible approval of Resolution 2018-3 providing for ratification of the Board's action in regard its actions at its meeting at 9:00 am on June 21, 2018 and at 1:30 pm on June 21, 2018 in connection with a Budget and Rate Hearing.*
 - B. *Possible approval of Capacity Assurance forms and Notice of Intent to Discharge form for the development at Sterling Ranch at Talking Rock.*
 - C. *Legal advice regarding pending litigation with Talking Rock Land, LLC, and future proceedings and filings, and additional litigation.*
 - D. *Notice of Claim served on the District by Talking Rock Land LLC; Notification of insurance carrier.*
 - E. *Response from insurance carrier and notification in regard to pending litigation, possible future communication by counsel.*
 - F. *Mediation process, status, future actions and issues per provisions in Section 12 of the Amended and Restated Development Agreement.*
 - G. *Moratorium process, status, future actions and issues per A.R.S. Section 48-2033.*
 - H. *Granting authority to verify Disclosure Statements.*
- Mr. Poskanzer seconded the motion. The motion passed unanimously without discussion.*

During the Executive Session, the public was be asked to leave the Board meeting room until the general session is re-convened

CONVENE INTO EXECUTIVE SESSION at 2:17 p.m.
RECONVENE INTO PUBLIC SESSION at 3:35 p.m.

5. CONSENT AGENDA (Routine items that may be approved by one motion)

Minutes of Meetings

-Minutes of Public Meeting(s) of June 21, 2018
 Executive Session Minutes of June 21, 2018

Reimbursement to District Manager (\$209.48)

Prescott Courier – Publish Notice of Budget Hearing - \$191.10
 Walmart – Copy Paper \$18.38

Mr. Poskanzer moved to approve the Consent Agenda. Mr. Dickrell seconded. Motion was passed unanimously.

6. OLD BUSINESS – DISCUSSION & POSSIBLE ACTION RE:

A. Approval of Capacity Assurance Forms and Notice of Intent To Discharge Form for Sterling Ranch at Talking Rock.

Mr. Dickrell moved to approve the Capacity Assurance forms and the Notice of Intent to Discharge form and the letter to Yavapai County.

Explanation of the forms for approval by Mr. Lynch:

There are three forms that are associated with this item. One is the Notice of Intent, a two page form which outlines the materials that the developer has developed and provided to the district for review and the district essentially has to accept responsibility for the accuracy of this work. Materials necessary for the review were supplied to the District on June 7th and June 19th. An engineering firm was engaged to analyze these in connection with the forms. Copies of the

report from the engineering firm have been received and made public and to the board as well. Using the engineering report, I assisted the District by taking the forms originally supplied by Talking Rock and altering certain specific provisions of the forms and those alterations are noted by asterisks (*) and explained in the draft letter to the County for their benefit. The changes are all engendered by the engineering report itself. Some numbers on these reports needed to be changed according to our engineer's advice from the prior forms to these forms. The draft letter to the County explains why these forms have these revised numbers in them. The Water Quality Report submitted had attached to it the three forms recently submitted by Talking Rock. Since these forms have different information in them, we wanted to advise the County what these changes were and why they were made. The second to last paragraph from the letter refers to the moratorium, and at this point we would like to eliminate it. The Notice of Intent, Capacity Forms, Letter and Engineering Report will be sent to the County.

Mr. Poteet remarked that the forms submitted were from Granite Basin Engineering, not Talking Rock.

Mr. Dickrell moved to amend the motion to strike the second to last paragraph of the letter to Yavapai County. Mr. Poskanzer seconded the amendment. The amended motion was passed to eliminate the paragraph regarding the moratorium in the letter to the County and was approved.

There was some discussion involving the constructed capacity of the plant between Messrs. Hilb, Poteet, Lynch, Poskanzer and Barreira. The issue was where constructed capacity is 70,000 or 62,500 gallons per day as entered on the forms.

Mr. Barreira called for a vote on the amended motion. Motion passed unanimously.

B. Setting a time and place for a future meeting of the Governing Board.

No action was taken on this item.

C. Complaint filed in Yavapai Superior Court by TRL (Case number P1300CV201800380, Talking Rock)

Mr. Lynch explained that There is an additional hearing July 10th at 4pm in Superior Court in Yavapai County, Prescott to be attended by counsel as the result of a prior hearing held April 19th. No action was required or taken on this item.

D. Moratorium process, status, future actions and issues per A.R.S. Section 48-2033

There was a discussion by the Board about a Hearing and meeting scheduled for July 18, and the possibility of postponing or cancelling the meeting. Mr. Barreira noted that daily samples are being taken during the month of July, and won't be available until after the scheduled meeting.

Mr. Poskanzer moved to cancel the Hearing and meeting scheduled for July 18th. Mr. Dickrell seconded.

Mr. Barreira stated that the he was concerned that cancelling the meeting might leave the wrong impression. He stated that the Board might still consider the moratorium when the testing and engineering study data is available after the end of July.

Motion passed unanimously.

7. NEW BUSINESS – DISCUSSION & POSSIBLE ACTION RE:

A. Approval of Resolution 2018-3; ratification of the Board’s actions in connection with the 9:00 am Budget and Rate Hearing and meeting of June 21, 2018 and meeting of June 21, 2018 at 1:30 pm in regard to the proposed 2018-19 Rates and Fees and Budget.

Mr. Barreira noted that the resolution is intended to ratify any potential Open Meeting Law violation that may have occurred in connection with the meetings on June 21st. He read the ratification resolution aloud.

Mr. Poskanzer moved to approve the Resolution 2018-3. Mr. Dickrell seconded. Motion passed unanimously.

B. Approval of Resolution 2018-4 and the Amendment #1 to District Ordinance 2008-1 regarding Rates and Fees Definitions

Mr. Barreira commented that the resolution modifies some of the definitions included in the District’s Ordinance 2008-1. He read the proposed resolution aloud.

Mr. Dickrell moved to approve Resolution 2018-4 and the Amendment to District Ordinance 2008-1. Mr. Barreira seconded. Motion passed unanimously.

C. Response from insurance carrier and notification in regard to pending litigation, possible future communication by counsel.

Mr. Lynch commented:

We communicated with the District Insurance Carrier to advise of litigation for the claim filed. Insurance companies use separate companies to handle claims. We will communicate with them after the July 11th hearing, after we know the results of the hearing.

No action is required at this time.

D. Mediation process, status, future actions and issues per provisions in Section 12 of the Amended and Restated Development Agreement.

Mr. Lynch commented:

The mediation process is spelled out in the document and we are in touch with the counsel of Talking Rock for potential mediators and dates. Opposing counsel is in touch with their client regarding starting this process. This is done under set rules from the American Arbitration Association in the agreement. We are waiting to hear from opposing counsel.

No action is required at this time.

E. Moratorium process, status, future actions and issues per A.R.S. Section 48-2033

No action is required at this time.

F. Granting authority to verify Disclosure Statements

Mr. Lynch commented:

In the process of civil litigation in Arizona, we have a set of rules. One thing that is required in litigation, after the pleadings have been made, a document is created by both sides called a Disclosure Statement. In the pending litigation, both the plaintiff and defendant have filed these. There is also a requirement for a verification of the document. Because of the rush to file these

before the deadline, neither side did that. We brought this to you today because it is part of the rules and procedures that need to be executed and put into the report.

Mr. Barreira moved that he should sign the verification statement to be filed in court. Mr. Dickrell seconded. Motion passed unanimously.

The next meeting date is being left open until after the July 11th hearing. Mr. Busch will email the Board with suggested dates to meet.

8. ADJOURNMENT

Therefore, the meeting was adjourned at 4:20 p.m.

Date

Board Clerk