

# INSCRIPTION CANYON RANCH SANITARY DISTRICT

P.O. Box 215 Chino Valley, AZ 86323

~PUBLIC SESSION MINUTES~

August 14, 2018

Approved September 27, 2018

**Date:** Tuesday, August 14, 2018

**Time:** 8:00 a.m.

**Place:** The meeting was held at 5360 West Inscription Canyon Drive, Prescott, Arizona

## 1. CALL TO ORDER.

The Governing Board for the Inscription Canyon Ranch Sanitary District convened into public session at 8:00 a.m.

## 2. ROLL CALL.

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

Members of the Public: Clint Poteet, Tim Emberlain and Bob Hilb.

## 3. CALL TO THE PUBLIC.

Nothing from the Public was expressed.

## 4. POSSIBLE VOTE TO GO INTO EXECUTIVE SESSION.

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. Legal advice regarding pending litigation with Talking Rock Land, LLC, and future proceedings and filings, and additional litigation.

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

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

*Mr. Barreira stated we have on the Agenda the possibility of going into Executive Session for three items. I don't feel that there is any need right now for any legal advice on those three items stated there. So I don't see a reason to go into Executive Session unless our legal counsel feels we need to. I would request that our legal counsel, under the Old Business Agenda item, give us a brief overview of where we're at on the legal proceedings and the mediation process. Mr. Polk replied he can do that.*

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

Minutes of Meetings

- \* Public Meeting Minutes of August 1, 2018 as revised August 5, 2018
- \*Executive Session Minutes of August 1, 2018
- \*Public Meeting Minutes of August 3, 2018
- Reimbursement to District Manager (\$30.95)
- \* Amazon.com – 8 gb flash drives – for recordings of minutes (\$17.99)
- \* Walmart – Copy paper (\$12.96)

*Mr. Dickrell moved to approve the Consent Agenda. Mr. Barreira seconded. Motion was passed unanimously by both Directors.*

**6. OLD BUSINESS – DISCUSSION AND POSSIBLE ACTION RE:**

A. Setting a date and time for future ICRSD Board Meeting(s)

*Mr. Barreira said we will set aside this item at this point, until later.*

B. Possible legal action regarding pending litigation with Talking Rock Land LLC, and future proceedings and filings, and additional litigation.

C. Possible action regarding mediation process and issues per provisions in Section 12 of the Amended and Restated Development Agreement.

*For items B and C, Mr. Barreira asked our legal counsel to give us a brief update where we are at. Mr. Polk stated in the litigation, Talking Rock Ranch filed a motion for leave to amend their complaint. What they want to do is get information from the Court to change the counts to a new set of complaints. They had to ask the Court for leave, we filed a response saying, here's why you should not grant the claim for leave to amend. Now there are ten days that Talking Rock has a chance to file a reply. After that the court will rule on it. Mr. Barreira asked how long the Court has to rule, once they receive the response. Mr. Polk replied that it could be 60 days. I imagine the Court will go faster on this, but they don't have to. So that's one set of pleadings.*

*The other set was, we filed a motion to dismiss the complaint, basically repeating the judge's orders from the last hearing about everything being moot right now, so there's nothing to rule on, so let's just dismiss the complaint. Again, that was our motion. I think Talking Rock gets 15 days to reply to that, rather than file a response, and then we get 10 days to file a reply after that. Then the Court would have 60 days to rule on that. Those are the two things on the Court. We're still moving along on that.*

*Another place we're at, talking about sitting down for mediation. I know legal counsel is exchanging emails back and forth on that. I do think Bob Lynch and Sean Hood are going forward to set a mediation date.*

*Mr. Barreira asked if there were any questions on that. There were none.*

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

*Mr. Barreira stated that nothing had changed at this point, so there is no action required. We'll set that aside for now.*

**7. NEW BUSINESS – DISCUSSION & POSSIBLE ACTION RE:**

A. Approval of proposed Request for Proposal for Engineering and Design services in connection with a planned capacity increase to the wastewater treatment plant and discussion of possible firms to be solicited for proposals.

*Mr. Barreira said there is a copy in the Board packet, along with an attachment which is titled Professional Services Agreement, which all the parties respond to our RFP have to agree to be signatory to the Professional Services Agreement or otherwise they wouldn't be qualified to bid. I have a question on the RFP, on the third page, paragraph E in bold print. Prepare final design*

report with process calculations along with a maintenance manual, and then below that it says, Prepare final basis of design report and operations maintenance manual (for inclusion with APP application). I want to make sure this language is clear enough, that the bidders understand that once they complete the construction, the engineering firm who responds to this, will also be responsible for conducting a study to determine what the actual capacity of the plant is, after construction is completed. The RFP requires them to perform a study to determine the actual capacity of the plant now, based on a hydraulic study. But I think it behooves the District to want to spend the money to install whatever equipment they are going to recommend being installed to supposedly get us to 90,000 gallons a day, that they perform a hydraulics study to prove from an engineering perspective, what that capacity is, so we don't have any situations like we have now where people are saying we are just guessing at what the capacity is. So, my question is, the people in your law firm went through this before we finalized it. What I read, do you believe that it's sufficient enough to require the engineering firm to perform the study to show hydraulically what the capacity of the output of the plant is, not the input. Mr. Polk replied that he likes that you want to be specific here but we can certainly amend the language to make sure that the engineer is clear on that for the reasons you identified. Are you suggesting adding language to it right now? Mr. Barreira replied he is. Before this gets published, I think that needs to be abundantly clear. I don't want to go down the road where we end up with the members of the Public coming forward, like we have had, giving their opinion on what the plant capacity is, when we don't have an actual engineering study that says what the capacity is.

Mr. Busch asked if it would be sufficient if they made the calculations to determine what's required, and submit that to ADEQ? They've got the calculations they need to support that. Isn't that sufficient to determine the capacity of the plant or do you want a separate study after the fact? They could try to use those calculations, and maybe actual flow and other information to try to determine what the capacity is that might be separate from what they calculated. Mr. Barreira responded that if the engineering firm is willing to, once they've designed the plant, say what equipment is necessary to be installed. If they are willing to certify up front, with their engineering stamp, putting their license at risk, that that's what the capacity of the plant is, based on the equipment they are telling us needs to be installed. Then I want an affirmative attestation from them, that's what the capacity will be. If we agree to spend this money to put this equipment in, you're guaranteed this amount of capacity. Mr. Polk said you just want a stronger opinion of what you got on the last plant. The study saying that in future, it will probably be this. How is the language for, so E in the first paragraph, then the second paragraph would say, Determine ecological and biological capacity of the final plant as constructed. Mr. Barreira said, Final output of the plant. I don't want any confusion about what the ability is to take in mass. Mr. Polk said, Determine hydrological and biological output of the final plant as constructed. Mr. Barreira said that should be sufficient.

Mr. Polk said the only other comment on the RFP would be that we added the language to it. There is nothing in this that promises that we will actually engage the firm. So if you get some proposals back and they don't match what we ask for, then the Board can reject them, and start a second round of requests. Mr. Barreira said, if any firm doesn't meet the full criteria of the RFP, they would be a disqualified bid. Mr. Polk responded, the question from the last Board meeting was, do we need to hire an engineering firm to write this bid? I think our law firm's opinion on that is since you are under no obligation to enter into any of these, if the bids come back or are unsatisfactory, you can rebid or hire an engineer to write the RFP. Mr. Barreira also said that under the law, the type of body we are, we are not obligated to go out to bid. We can direct award this work, if so desired. Mr. Polk agreed with that. Mr. Busch mentioned he set the

*deadline to respond to the RFP for September 21<sup>st</sup>. Mr. Barreira agreed it was satisfactory, as long as it goes out in the next day or so.*

*Mr. Barreira recognized Mr. Poteet, regarding a comment. He responded regarding the RFP. He suggested adding as designed and constructed to the sentence being worked on. Mr. Barreira didn't have a problem with that.*

*Mr. Busch commented that he included a list of possible firms to send the RFP to. Mr. Barreira suggested including sending it to Sunrise Engineering and Santec. It's their product, so I think we should solicit to them. That gives us eight organizations we'll send it out to. Mr. Barreira moved to approve the RFP as revised. Mr. Dickrell seconded. The motion passed without further discussion.*

*B. Approval of proposed quarterly billing of user fees to begin September 1, 2018 in accordance with approved 2018-19 District Fees.*

*Mr. Barreira entertained a motion to approve that item as written. Mr. Dickrell seconded.*

*Mr. Dickrell said the issue here is cash flow. We have the Unrestricted Account. When the ad valorem hits, probably November, what we have built in attorney fees and other things. Ad valorem taxes discussed in the Budget, our conversation was if we had to, if we were looking at plant expansion, then this user fee would come into play. Now we're basically invoking it, because of what we deem a cash shortage in our General Account. My question is, can we use the Unrestricted Funds and pay that back, as the ad valorem tax comes in, in November, rather than starting to bill for the user fees now. Is it our intent from this point forward to bill user fees, regardless, or this a temporary band-aid to get us to November when the ad valorem taxes come in? Mr. Busch responded, to be honest, the user fee billing is not going to make a big impact between now and December. Mr. Dickrell said, it will have an impact. Is it worth doing this now to get \$15-30,000 between now and November, then we stop because we have the ad valorem. Is that a better way of handling this? Mr. Barreira asked how much we have in Unrestricted at this time. Mr. Dickrell responded we have \$291,000. That is mostly for replacements and repairs as determined by a schedule of obsolescence. I'm not suggesting we raid it permanently. Let's get through to November, then we'll have a better picture whether we need to start with the monthly fees. Mr. Barreira asked about transferring \$50,000 from Unrestricted until we start receiving the ad valorem. Mr. Busch doubts it would cover us. We haven't gotten attorney billing for July or August. We're going into September, working on \$50,000 a month. Between now and December, that \$150,000 you're talking about in the Budget is going to be stressed. In my opinion, if it doesn't get settled. Mr. Barreira said maybe we need to transfer \$100,000 out of Unrestricted until ad valorem comes in and replace it then. Mr. Dickrell said at that time, we'll have a better picture of where we are on a number of fronts. Then we can invoke the user fees at any point. We can go back retroactively, I assume. Do we have the ability to, if we need to? We put it in the budget that it would be \$35.00 a month. Mr. Barreira said, we had a Public Hearing, where we approved in public, the institution of user fees. We didn't pull the trigger to actually send invoices out for the user fees, to start the billing. So the question is, from a legal perspective, can we retroactively, back to the date of the approval in the Public Hearing, collect user fees from the date we approved them? Mr. Polk said, for collecting fees, the law requires strict compliance of the statutes. The key provision is about notice to the public. When we adopted those user fees, the question would be, did we give fair notice that the user fees were effective on a specific date. If we said they were effective on the date we adopted them, then we will bill accordingly, absolutely. Mr. Dickrell mentioned the Budget was for the fiscal year effective July 1<sup>st</sup>. That was the Budget we approved. All we said was that a \$35.00 a month user fee is included, as part of the Budget. We didn't say when we would start or how we would bill*

*them. To me, the public was noticed it will be \$35.00 a month. Mr. Barreira said the question is, can we send a bill out retroactive to July 1 in December? Mr. Polk said, if that's true that we said effective July 1, then you can bill six months prior. But I want to go back to the full minutes to give you an opinion. Mr. Busch mentioned it is a bombshell PR wise. You're getting a bill that looks like you are six months in arrears. Mr. Dickrell said it may be a quarterly bill we send out. It's just that we have the capability. The issue is when we start billing, when we need to. Billing quarterly, monthly, in arrears, in advance, it's all new and going to be a painful process. It's never going to be a clean cut off for everybody. Mr. Polk said, if we gave fair notice the user fees were effective July 1, we can go ahead and bill later. Mr. Dickrell wants to sit tight and use the Unrestricted Fund until we have a better idea where we are.*

*Due to the discussion, Mr. Barreira withdrew his earlier motion. We will table this until our next meeting. Mr. Barreira will instruct the Manager to withdraw (borrow) from the Unrestricted Funds as needed to pay bills for the District. We will replenish the Unrestricted Funds when we start receiving the ad valorem taxes.*

*C. Approval to hold payment of attorney fee invoices pending sufficient cash in the General Fund. Sufficient funds are anticipated by December, 2018.*

*Mr. Barreira said there is no action required on this, as I have given instruction to take funds out of the Unrestricted Fund to the General Fund to pay the District's bills.*

*D. Possible Newsletter to District property owners to include various topics.*

*Mr. Busch explained, particularly with the approval of ad valorem taxes and user fees, it would be appropriate to notify all the residents of what is transpired and to the extent possible, let them know what's going on with the litigation area. There's a lot of misinformation out there.*

*Mr. Barreira instructed that Mr. Busch put together a draft of the newsletter to the District members and submit that draft to the law firm for review, and also send it to the Board members for comment. When it is finalized and approved by legal, then mail it out.*

*Mr. Barreira recognized Mr. Hilb. Mr. Hilb asked if changes had been made to procedure since the last meeting, because Call to Public was only for things not being discussed on the Agenda. Are you not doing that anymore? Mr. Barreira responded that we'll have Call to the Public, then once the Board goes into its official business, like any other public entity, we will be conducting our business, and member of the public will not be allowed to comment at that time, unless they are recognized by the Chair. That is being done to keep order in the business of the District.*

*Mr. Hilb asked, it seems to me that all the engineering costs and legal costs associated with expansion should be coming out of the Unrestricted Fund, not the Operating Fund. Was that a determination made by your accountant? Everything going on with these legal things are about the expansion and should be paid for out of the Unrestricted account. Mr. Barreira thanked him for his comment.*

*Mr. Barreira said, one item we set aside was setting a date and time for the next meeting. Unless something else comes up on the legal front, we should meet after we receive the RFP's and have had a chance to look at them. Mr. Busch will send a notice out to the members of the Board for availability, and meet during the week after the RFP's are due on September 21, so the end of the week after that.*

*Mr. Barreira recognized Mr. Poteet. He asked for the names of the engineering firms being sent the RFP. Mr. Dickrell gave him a copy of the list, to which Sunrise Engineering and Suntec*

were added. He also added, regarding the newsletter, caution on what is written about litigation updates. Mr. Barreira stated it will be reviewed by our legal team and be within the legal bounds.

**8. ADJOURNMENT**

Therefore, the meeting was adjourned at 8:40 a.m.

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Date

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Board Clerk