

**INSCRIPTION CANYON RANCH SANITARY DISTRICT**

**P.O. Box 215 Chino Valley, AZ 86323**

**~ PUBLIC SESSION MINUTES ~**

**September 27, 2018**

Approved November 27, 2018

**Date:** Thursday, September 27, 2018

**Time:** 8:32 a.m.

**Place:** The meeting was held at the Inscription Canyon Real Estate Office, 5360 W. Inscription Canyon Drive, Prescott, Arizona

**1. CALL TO ORDER.**

The Governing Board for the Inscription Canyon Ranch Sanitary District convened into public session at 8:32 a.m.

**2. ROLL CALL.**

Present were: David Barreira, Board Chairman; Al Poskanzer, Board Member; Bill Dickrell, Board Member; Bob Busch, District Manager; Stephen Polk, Legal Counsel; Bill Whittington, Legal Counsel; and Jeannine Yeager, Clerk.

Members of the Public: Tom Blair, Bob Hilb, Vickie Fogarty, Ray Damesek, Tim Emberlin, Alan Cocherell, Roy Kneale, Derrill Fulkerson, Sid Stoewer, Brad Meade, Roberta Ayre, Ron Trotta, Clint Poteet, John Terwillinger, Evelyn Zimmerman, Jack McGowan and Eileen McGowan.

**3. CALL TO THE PUBLIC.**

Mr. Barreira, asked how many people present were going to speak and show of hands so Mr. Barreira told everyone that they would only have two minutes to speak due to the amount of people at the meeting.

Mr. Hilb stated that it wasn't acceptable that the financial reports were not out in a timely manner. Mr. Blair stated that reading the data and numbers that he looked at, he had a \$311 increase for taxes overall and of that increase \$200 was for the ICRSD and no one had any notice of that other than the people who attended the last meeting at the Days Inn in May. The County assessor told Mr. Blair that ICRSD had a 69% increase this year. Mr. Blair stated that he felt that this was a very poor way to run the business. Mr. Barreira said that he would not respond to all of the comments but that he would respond to this

comment. Mr. Barreira said that he was sorry that Mr. Blair was not aware. Mr. Whittington stopped the response from Mr. Barreira since it was not on the agenda for today. Mr. Terwillinger asked about the opening on the Board. Mr. Busch responded that there was not an opening on the Board anymore and Mr. Barreira stated that the position had been filled. Mr. Terwillinger asked if the election was open to the public and how that person was placed in that position.

Mr. Whittington explained that the candidates submitted their petitions to be on the ballot and if there are only enough candidates to fill the empty slot, then the County will cancel the election. Since there was only one application from Mr. Hilb, the County cancelled the election and appointed Mr. Hilb to fill that spot. Mr. Terwillinger asked if the general public was not advised about the opening. Mr. Barreira explained that anyone could submit a petition but that there was a deadline and that only Mr. Hilb had submitted a petition for the position and he was therefore given the position. Mr. Terwillinger asked if Mr. Hilb was sitting on the Board now. Mr. Barreira responded that Mr. Hilb would not be taking his position on the Board until January 1st. Mr. Terwillinger stated that he was not aware of the opening on the Board. Mr. Whittington explained that the District does not advertise the opening so much as the County actually handles the election process. The District Board is not in the position of sponsoring the elections and it's the County that does the elections. Mr. Whittington instructed Mr. Barreira that he could elect to put the item on the agenda for the next meeting. Mr. Terwillinger asked how many people applied for the position and Mr. Whittington responded that he guessed there was only Mr. Hilb who had applied.

Mr. Poskanzer stated that the Board election was in Section 5A on the agenda. Mr. Terwillinger said that he felt that it wasn't fair that the public wasn't notified. Mr. Barreira explained to Mr. Terwillinger that he could speak with him after the meeting and Mr. Barreira could let him know how the County and the District handles the elections.

Mr. Trotta stated that he did not understand why he was speaking to the attorneys and not just the Board. Mr. Trotta was upset that he was limited on the amount of time that he could speak and he felt that the Board works for the Public not the other way around. He wanted to know why he couldn't put things on the agenda and he didn't feel that the attorneys should be there and that the public should not be paying for the attorneys. Mr. Barreira explained that the Board has to follow the letter of the Law and the attorneys were there to make sure that the Law was followed properly. Mr. Trotta was upset that the attorneys were there. Mr. Whittington stated that the Board was constrained by the Open Meeting law and that questions could be placed on future agendas instead of answering the questions during the Call to Public. Mr. Whittington explained that he was just there to make sure that the procedures were following the Open Meeting law and that

the Board was not in violation of the law. Mr. Whittington stated that the public can submit questions and the Board can place them on the agenda. Mr. Barreira stated that any person could submit items for future agenda discussions by submitting them in writing to Mr. Busch. Mr. Barreira stated that the Board has to follow the letter of the law so that the Board would not be in violation of the law. Mr. Terwillinger stated that Mr. Barreira did not need to apologize to him and then Mr. Terwillinger apologized for upsetting the meeting. He stated that it was the responsibility of the Board to ask for legitimate questions to be submitted for the agenda. Mr. Terwillinger stated that the Board should not feel that they should take up all of their time from their personal lives but Mr. Terwillinger was upset that he could not talk longer than two minutes.

Mr. Stower stated that his neighbor called him about the 60-70% increase in the bill from ICRSD and Mr. Stower wanted to know why the increase was so high and who made the decision to come up with that number? Mr. Barreira stated that this item was not on the agenda and therefore he could not comment on that. Mr. Fulkerson stated that he seconded Mr. Stower's questions and that the Board could do more to let the population know what is going on.

Ms. McGowan stated that she had looked at the previous minutes for May and asked where the notice was regarding the opening for the open Board position. She stated that she talked to the County and asked them if they were responsible and the County told her that the District was responsible for posting the opening. Ms. McGowan requested that when there is an opening, the general public should be informed via a letter or something so that those who are interested in being on the Board could apply.

Ms. Fogerty requested Mr. Busch's email. Mr. Busch responded that his email address is [R.Busch@ICRSD.net](mailto:R.Busch@ICRSD.net). Then Ms. Fogerty stated that she agreed with Mr. Terwillinger that there should not be any attorneys at the meetings and that the public should not have to pay for the attorneys unless they were working Pro Bono. Then Ms. Fogerty stated that her bill went from \$501.49 to \$849 and she was wondering if that increase was going to also pay for the maintenance on her grinder, which she is required to have for her property for the Sanitation District. She is wondering if the \$849 fee is going to replace her grinder and that some of the other residents do not have grinders. She also asked if vacant lot owners have a right to vote and why does the Board only have quarterly meetings and not monthly meetings. Ms. Fogerty was also upset that she was not informed about the opening on the Board. She also asked about the water being used for the golf course. She requested that there be monthly meetings and she wanted to know what the money from the increase was going to be used for.

Mr. Dameseck stated that he agreed with Mr. Stowers about the two minute rule and that the public should be allowed to speak for five minutes. He wanted to know why the increase was 68.5% and whether that money was going to be used for attorneys and he heard a rumor and wanted confirmation that this additional surcharge of \$35/month was going to be on the property tax.

Mr. McGowan stated that he wanted to know why the Board was bending over backwards for the developers and that there are meetings being held in secret and that the homeowners were not being compensated but the developer is being compensated.

Mr. Poteet stated that he was wondering why he didn't see all of these other people at the monthly meetings that are held at the Days Inn or at the Realty office and he stated that if the people wanted to be involved, then they needed to be at the monthly meetings to voice their concerns. Ms. Fogerty stated, "We don't trust the Board" and Mr. Poteet agreed that he did not trust the Board also and Ms. Fogerty and Mr. Poteet stated that they should bring a Class Action Suit against the Board. Mr. Poteet stated that the Developer could have a golf course and that the golf course is a Private Course and that they could buy a lot if they want to use the golf course. Mr. Poteet stated there was no special interest between the Board and the Developer.

Mr. Busch asked if everyone had signed the role call sheet. Mr. Barreira and Mr. Whittington discussed ending the public session and having an Executive Session. Mr. Whittington stated that there was no need to discuss item E in the Executive session and that Bob Lynch would be available for legal advice on the phone during the Executive session. Mr. Whittington stated that the Board could discuss items A-D of the agenda. Mr. Busch made the motion to end the Call to Public portion, Mr. Barreira seconded the motion and all Board members stated "Aye" to adjourn the session. Ms. Fogerty requested how long the Executive Meeting would take and Mr. Barreira and Mr. Whittington said that they did not know.

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

*Motion: Mr. Barreira moved to go to 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. *Status of litigation brought by Talking Rock Land, LLC (TRL), possible next steps, alternatives;*
- B. *Status of monetary claim filed by TRL;*
- C. *Status of insurance company response to District and coverage; and*

D. *Status of actions, if any, pursuant to Section 12 of the Amended and Restated Development Agreement.*

*Mr. Dickrell seconded. Motion passed unanimously with Messrs. Barreira, Poskanzer and Dickrell voting "aye".*

Session ended at 8:55 a.m.

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

**Reconvene Public Meeting** Mr. Barreira reconvened the meeting with the public present at 10:02 a.m.

## 5. REPORTS

**REPORT FROM DISTRICT MANAGER-** Mr. Busch reported that the daily averages for August through the plant were 54,582 gallons per day and that on August 19<sup>th</sup> the high was 97,600 gallons on that day. Mr. Poskanzer asked about the testing and if it was daily. Mr. Busch stated that he thought that they only run samples on Monday through Thursday. Mr. Poskanzer asked how about the capacity being 67K and that when the high is 97K how can they determine if the effluent was in compliance since the high was on a Sunday when the samples were not tested that day. Mr. Barreira stated that the District would have to tell the operator to test every day since they never know when they are going to have a high. Mr. Busch stated that they have to report at least 4 days out of the week and even if they tested every day, they only have to report 4 of those days and that they could still be out of compliance the other 3 days. The ADQ requirements are only 4 days out of the 7 so there is no way of knowing that they were in compliance or not. Mr. Poskanzer stated that they are trying to determine if they need to expand the capacity of the plant. Mr. Barreira asked if Mr. Busch should instruct the plant operators to test every day and Mr. Wittington stated that it sounded like they were trying to get a consensus but that they would not do that here because it is not on this agenda.

Mr. Busch proceeded and stated that there were two days where the levels were 62,500 or higher, the 20<sup>th</sup> and the 27<sup>th</sup>, and there were 10 days where the levels were over 60K and we were compliant with ADEQ for the whole month. There were a couple of sizable repairs. One was a street valve on Tyler which had defective valves, the street was torn up and the cost was about \$5000. Another repair was a leaking relief valve on Almosta Ranch and that was about \$5000. The additional variable frequency drive for the FEQ tank has been completed. Phase 1 generator for treatment plant cost about \$46,000 and was supposed to be shipped to the plant on a flatbed but instead was shipped in a container and so it was diverted to Flagstaff and it is sitting there waiting to be installed. APS was slow in giving their permit to have it installed. The generator slab did not need to be redone but they had to put in scab footing for the fuel tank for the generator. The A/C contractor is scheduled to put in the generator in October. Improvements for everything combined is \$172,856 in total cost. There are some inspection fees that the

County required which is about \$500 and other fees of about \$1500 so the total will be about \$175,000. The original estimate was \$200,000.

Mr. Poskanzer asked if there was any idea when the improvements would be complete and Mr. Busch stated that he hoped that it would be complete by the end of the year. Mr. Busch reported that they had received several record requests from the attorneys for Talking Rock and that he believes all records have been supplied. If there is anything else needed to just let him know. Mr. Busch talked about assets under construction. There is \$193,101 “under construction” and about \$113,000 has been funded by transfers from the Restricted Capital fund to the General Fund. There is almost \$80,000 due from the Restricted Fund to the General Fund. Currently there is \$752,480 in the Restricted Fund. After all Phase I work is complete there will be about \$600,000 in the account until we receive the reimbursement from Talking Rock.

Mr. Busch stated that there have been a lot of documents produced in the recent court action, however, the District does not have them on file. The District should have a complete set for filing. Mr. Whittington replied that his office will prepare a complete file and turn it over to the District.

## 6. **CONSENT AGENDA**

*Motion: Mr. Barreira moved to approve the consent the agenda items. Mr. Poskanzer seconded. The motion passed with Messrs, Dickrell, Barreira and Poskanzer stated “aye”.*

## 7. **OLD BUSINESS**

### **A. Setting a date and time for future ICRSD Board Meetings.**

**The District Manager was directed to schedule a future meeting as needed with the availability of members and legal counsel.**

Mr. Barreira went to old business, item 7. Item B through E. Mr. Barreira requested that Mr. Whittington speak about these items. Mr. Whittington stated that the minutes should reflect that the Board has received legal advice on items B through E during the Executive Session and that there is no action needed at this time so information only. Mr. Barreira directed Ms. Yeager, the Clerk, to reflect in the minutes what Mr. Whittington had just stated. Ms. Yeager complied.

## 8. **NEW BUSINESS**

### **A. Approval of proposed service contract with Empire Cat for servicing of Generac backup generator. Contact covers semi-annual and annual services at \$1,223.00**

Mr. Busch stated that the generator is the one at Talking Rock.

*Motion: Mr. Poskanzer made a motion to approve the contract with Empire Cat for \$1223.00 for services and to direct the Manager to sign the contract. This was seconded by Mr. Dickrell. Motion passed with Messrs. Mr. Barreira, Poskanzer and Dickrell voting "aye".*

**B. Discussion and review of responses to the Request for Proposal for Engineering and Design services in connection with a planned capacity increase to the wastewater treatment plant, and selection of the firm to be awarded the contract.**

Mr. Busch stated that the RFP was sent to 8 different engineering firms and that the proposals deadline was September 21<sup>st</sup>. There were two responses. One was Civiltec Engineering and the other was Santec Corp/Shepard Westnitzer.. Both were over \$100K with the one from Civiltec being \$107K and the one from Santec being \$115K.

Mr. Busch stated that representatives from both firms were available by phone at this time if the Board has any questions. Mr. Busch stated that Dwight Zemp is being used as a consultant for both firms. Mr. Poskanzer requested that they contact the two companies to ask questions. Mr. Busch called Eric Ness, President of Santec and reached his voicemail so then Mr. Busch contacted Civil Tech and the Board spoke with Shim Hawes from Civiltec. Mr. Poskanzer questioned Mr. Hawes regarding the information on their proposal. Mr. Hawes explained their proposal for the expansion and the use of sound engineering judgement. Mr. Haus discussed reviewing the data sent to them and the daily flows and what is needed to expand the system. Mr. Hawes stated that they would work with the operators for the current plant and would meet all requirements as far as BOD loading and analysis of the data from the samples. Mr. Poskanzer asked about projecting the proposal for the expanding of the plant to the 90K gallons per day. Mr. Hawes stated that they would use sound engineering judgment and practice for that projected capacity. Mr. Busch stated that it would be a design capacity and that they would not be able to demonstrate it. Mr. Busch asked if the quarterly reports would be sufficient and Mr. Hawes stated that they would coordinate with plant personnel to take addition sampling for testing. Mr. Barreira asked what is their track record as far as cost estimate vs actual cost. Mr. Hawes responded that initially they would go through the process of the project and their track record is usually very close to the actual costs. Mr. Poskanzer asked concerning the initial cost estimate of \$115,000 plus meetings, is the Company willing to make their contract on a firm fixed price contract. Mr. Hawes stated that their estimate was based on man hours and can offer a fixed price contract. Mr. Poskanzer asked if the current capacity was already close to 90,000 gallon capacity what would be Civiltec's proposal be. Mr. Barreira stated that if the capacity was already at the increased capacity and the current plant is handling the increased capacity, then there would be no need to increase the plant capacity. Mr. Poskanzer requested a graph of the amount of flow and

Mr. Barreira asked if the operators sent the data to Civiltec then they could provide the graph for Mr. Poskanzer. Mr. Hawes stated that if the plant was able to already handle the increased capacity then the contract could be cancelled and they would only bill for the processes that they have performed already.

Then Mr. Busch contacted Eric Ness with Santec so the Board could ask more questions. Mr. Ness said that he would be happy to answer their questions. Mr. Poskanzer asked Mr. Ness about the existing operating conditions for \$29,000 and Mr. Poskanzer stated that he would like to see daily samples and if that was included in the proposal. Mr. Ness stated that they would analyze the data and produce a graph showing their results. Mr. Barreira asked if Santec would require additional samples for their lab testing. Mr. Poskanzer stated that the plant is rated for 62K+ per day and that we had a 90K flow on a Sunday with no sampling, if the findings were that the plant can already handle 90K. Mr. Ness stated that they were planning to double the train to 100-150K if that is what the District would want. Mr. Barreira asked if the plant could handle the current increases then is the rest of the contract cancelled if the expansion wasn't needed. Mr. Ness stated that yes they could cancel the rest of the contract and just bill for the work that they had already done. Mr. Poskanzer asked if the contract was a firm fixed price contract not to exceed the \$114K and Mr. Ness stated that he would have to check with his partner but that Santec would be okay with that. The call to Mr. Ness was concluded.

Mr. Barreira stated that the Board should state in the contract if the contract is cancelled, then there would be no cancellation fees and only billed for the work done to that point. Mr. Barreira stated that Mr. Whittington should put that language in the contract. Mr. Barreira stated that he personally favored the first company, Civiltec, because their fees were less and Mr. Hawes had been very responsive and didn't have to check with anyone else in regards to the contract.

*Motion: Mr. Barreira moved to award the contract to Civiltec, subject to final approval of the contract terms. Mr. Poskanzer seconded. The motion carried unanimously with all three Board members voting "aye".*

### **C. Approval of financial report: June, July & August, 2018**

Mr. Busch stated that the first portion of the section was the budget verses actual to show where they came out at the end of the year. Mr. Busch said that this is from 2016 prior to their review from the auditor who may make some adjustments and that the auditor will give them the final report. The District revenue is at 106% of the budget and non-operating revenue at \$42,550.. This was over budget forecast. On expenses, most significant expenses were right at or close to the budget. The lab permits were over budget because both the testing lab and the treatment plant require permits at about \$2,500 each. Consulting services were estimated at \$25,000 and they went over at

\$188,000. \$135,000 spent on Bob Lynch's billings. Thru the end of June, \$140,155 has been spent for improvements to the treatment plant, including engineering work by Sunrise Engineering on Phase 2 improvements. Nothing out of the ordinary in July except \$15,000 for Sunrise Engineering, and for the District Attorney and litigation fees. Mr. Barreira asked Mr. Busch if he had had a discussion with the accounting firm to get the financials out in a more timely manner. Mr. Busch stated that he had had a few discussions with the firm about being more timely on the reports. Mr. Busch stated that the August financials were on time

*Motion: Mr. Barreira made a motion to approve the financial reports for June, July and August. Mr. Dickrell seconded the motion, The motion carried with Mr. Poskanzer, Mr. Dickrell and Mr. Barreira voting "aye".*

**D. Motion to authorize the Board Chairman to review and release a newsletter to be sent to property owners.**

Mr. Barreira said that he asked to put this on the agenda and the attorneys have had a chance to look it over. Once the Order to Show Cause is ruled on, the attorneys will draft a letter to include in the newsletter to let everyone know what is happening with the litigation. Mr. Poskanzer stated that he didn't remember seeing the newsletter but *that he didn't want to hold up the proceedings.*

*Motion: Mr. Barreira made a motion to approve authorizing the Chairman to review and release the newsletter and Mr. Poskanzer seconded it. Motion passed, with Mr. Dickrell, Mr. Barreira and Mr. Poskanzer voting "aye".*

Ms. Fogerty asked if the newsletter would be monthly and if it would be mailed to the homeowners. Mr. Barreira stated that it would be mailed and that they were not sure at this time if it would be monthly or not.

Mr. Barreira adjourned the meeting at 11:20 a.m.

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Date

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Board Clerk