

**MINUTES OF THE
REGULAR MEETING OF THE
I.C.R. SANITARY DISTRICT
December 8, 2010**

Approved: 1/12/11

Date: Wednesday, December 8, 2010
Time: 9:00 a.m.
Place: Williamson Valley Fire Station 15450 Williamson Valley Road, Prescott, Arizona 86305

I.C.R. Sanitary District Board of Directors

Gene Leasure, Chair
Dayne Taylor, Director
Charlie Turney, Director

Gloria Lorntzen, District Clerk
Doug Nelson, Counsel for the District

Guests

Jimmy and Chris Stoner, Homeowners
Skip Reed, Homeowner
Cheryl Ibbotson, Wallace & Assoc.
Eileen McGowan, Homeowner
Shirley Leasure, Homeowner
Pat Carpenter, a Quality
Harvey Roberts, Homeowner
Craig Brown, Homeowner
Bob and Barb Hilb, Homeowners
Hal Lobaugh, Lot Owner
Clint Poteet, Talking Rock
Larry Bligh, Homeowner
Leo Sullivan, Homeowner

1. Call Regular Board Meeting to Order

The meeting was called to order at 9:02 a.m. by Chair Gene Leasure. A quorum was present for the purpose of conducting business.

2. Introduction of Attendees. Present were Gene Leasure, Chair; Charlie Turney, Director; Dayne Taylor, Director; Gloria Lorntzen, District Clerk; Doug Nelson, Counsel; Cheryl Ibbotson, Jimmy and Chris Stoner, Skip Reed, Eileen McGowan, Shirley Leasure, Pat Carpenter, Harvey Roberts, Craig Brown, Bob and Barb Hilb, Hal Lobaugh, Clint Poteet, Larry Bligh, and Leo Sullivan.

3. Approval of Minutes

- a. Approve minutes from Special Meeting of November 9, 2010, and Regular Meeting of November 10, 2010. Approve Executive Session minutes of November 10, 2010, and November 22, 2010.**

The Minutes of the November 9, 2010 special meeting were reviewed and revised. Gloria will e-mail the revised Minutes to Doug Nelson for his review, and the Board anticipates approving the Minutes at the next meeting.

Action Item: Gloria to e-mail to Doug Nelson the revised Minutes of the November 9, 2010 Special Meeting.

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The Minutes of the November 10, 2010 Regular meeting were reviewed and revised.

Motion: Mr. Leasure moved to approve the Minutes of the Regular Session of 11/10/10; Mr. Taylor seconded; motion passed unanimously.

The Minutes of the Executive Session of November 10, 2010 were reviewed and revised in Executive Session.

The Minutes of the Executive Session of November 22, 2010 have not been prepared yet, so this item is tabled.

4. NEW BUSINESS

a. Financial Report by Wallace & Associates

(1) Review October 2010 Financial Report discussion and possible action

The Board reviewed the October 2010 financial reports with Cheryl Ibbotson.

(2) Review Constance Pinney Financial Statements and invoice discussion and possible action

Mr. Leasure gave Doug Nelson the financial statement and invoice from Constance Pinney for his review. There were some revisions that need to be made by Ms. Pinney, so the financial statement will be approved subject to those changes being made. Cheryl will contact Constance Pinney to schedule a meeting to go over the proposed revisions.

Action Item: Cheryl Ibbotson to contact Constance Pinney to set up a meeting to go over the proposed changes to the financial statement.

(3) Yavapai County Election invoice discussion and possible action

Mr. Leasure advised that he received an invoice from Yavapai County for the November 2, 2010 election in the amount of \$188.30. Cheryl will pay this invoice.

(4) Building permits in District discussion and possible action

Cheryl Ibbotson advised that there were two hook up requests in November, but nothing new since then.

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b. Operator Report by a Quality Water

(1) Review operator report discussion and possible action

Mr. Leasure gave Pat Carpenter a copy of a letter from ADEQ, stating that everything is in good shape. Mr. Leasure informed the audience that Chris Williamson of A Quality is in the hospital after having surgery yesterday.

Mr. Leasure stated that the daily flow for Thanksgiving Day was 50,600. Mr. Carpenter advised that a new flow EQ tank pump stopped working and it was replaced with the back up pump. The Board agreed that Pat should order a new back up pump.

Mr. Carpenter also advised that the line flushing was done on November 9 and 10. Six cul-de-sacs were flushed in ICR. Also, according to the operator notes, nitrates increased from November 10 through November 13.

(2) Status of ICR ground water intrusion inspections discussion and possible action

This item was tabled.

c. Canvass November 2, 2010 election results discussion and possible action

Mr. Leasure stated that he printed out a certified copy of the official canvass, and that at a public meeting, the Board has to agree with the election results. Mr. Turney was re-elected. Mr. Leasure will complete the official canvass form and return it to the Clerk of the Board of Supervisors for Yavapai County.

Motion: Mr. Leasure moved to canvass and approve the November 2, 2010 election results; Mr. Turney seconded; motion passed unanimously.

d. Resolution No. 2010-01 Moratorium on Sewer Hookups and Conditions for Lifting Moratorium or Partial Lifting of Moratorium discussion and possible action

Mr. Nelson stated that he recommends that the Board take comments and then have a brief Executive Session.

Mr. Leasure gave a quick summary of the Partial Lifting of Resolution 2010-01. He stated that the Resolution for the Moratorium is still in effect. This Resolution leans towards where the District goes from here in curing the reason for the Resolution 2009-1. There are several things that can be done:

Get financial assurances to pay the complete costs of the MBR plant at no cost to the District. Those financial assurances would have to come from the developers, and can be in the form of an irrevocable letter of credit, subdivision bond, cash deposit in escrow account, or some other financial guarantee

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acceptable to the District. The amount of the financial assurance shall be recommended by a professional consultant selected by the District. Financial assurances are to be filed with the District on or before December 27, 2010. If they are not filed with the District before that date, the District will transfer complete operation of the Santec plant to Harvard, along with the legal requirements of meeting ADEQ and Arizona laws, effective January 1, 2011. If Harvard accepts the Santec plant operation, they shall then determine when the wastewater treatment plant capacity should be expanded. Harvard will be paying all of the operation costs and will accept all responsibility for compliance with Arizona laws and ADEQ requirements. If Harvard rejects the Santec plant operation offer, then the 2009-1 Moratorium remains in effect and Harvard remains responsible for plant maintenance and equipment replacement costs, plus 60% (adjustable amount) of the operation costs as the price of effluent delivered to Harvard. The District would be paying 40% of the operation costs to cover ICR and The Preserve. If Harvard rejects the Santec plant operation offer, the District would request release of all escrow funds to the District to pursue wastewater treatment plant expansion. The District will determine the wastewater treatment capacity required, the cost of constructing the wastewater treatment plant capacity, and the wastewater lot fee for lots not connected. Lot fees shall be paid into a District-only escrow account for the purpose of constructing an expanded wastewater treatment plant.

Mr. Taylor stated that in this Resolution, Harvard will be responsible for the cost of operation of the Santec plant, and they are not involved with any expenses of the accepted infrastructure for ICR or The Preserve.

Public Comments:

Skip Reed: Is there a legal precedent for a Board of a taxing district like this transferring a responsibility for the plant to a private party, specifically, a developer?

Mr. Nelson: I presume that's directed to me, Mr. Chairman. I'm not aware of it. This is an unusual animal. As you know, the plant was built. The plant has not been approved or accepted by the District and, apparently because the District had an operator that pre-existed with the SBR plant, that operator took over the operation of a plant the District didn't own. And so, that creates this cloud because typically what you would have is the developer builds and operates the plant. That didn't happen in this scenario. Issues obviously are present in the transfer regarding ADEQ, but I wouldn't think that would be a problem because, basically, the significant amendments have been going through the developers, with the District the co-signer because the project is within the District, not because it owns the project. And so that's unusual and, again, it makes it murky with ADEQ, but I think it's worth resolving and then just cleaning it up and putting it all under one hat for independence and control of the operation, as well as most of the new infrastructure. As the Board mentioned, that which has previously been accepted would continue to be the District's own, maintained by the District, and then as the District matures, then the steps can be made for taking over and work through the transition appropriately.

Mr. Leasure: I don't have it with me today, but I read in one of the Arizona Revised Statutes that there is language in there about private ownership of facilities within a district. I can't quote exact words, but it may not be precedent, but it's covered.

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Mr. Nelson: Again, part of the strangeness of this whole endeavor is one could start a District and not own anything. So, you could actually have this District, by contract, receive all of its services. But you have to go and have an election, and there was never an election for any of these _____, where there was this creation of these projects that the District didn't own and were to be used. Typically, a Board could come in and say, "We don't want to own any equipment, no facilities, we're just going to contract," and they can do that. But you, as the lot owners and the ones receiving the service, get to decide this, not the Board. It's an election thing.

Skip: So you're saying this would be subject to election?

Mr. Nelson: I've looked at that and it's hard to say, but I don't think so because there was no election coming in, so I guess we're just stepping back and saying, "let's just start all over." And if someone wanted an election, that would be fine, too, you know, to have a vote on whether or not to give --- well, let me back up. When we were negotiating early on, trying to update all the development agreements, that's an issue I had in the background. Whether or not this Board could actually go and sign onto a new development agreement, bringing all this history --- you have Whispering Canyon, The Preserve, along with Harvard, and sign a development agreement, clean it all up, because of the arrangements in there and the way the statutes are worded, I'm not totally clear that it can be done without an election. It probably would be preferable to do an election. And that way, everybody knows. Even if you were sitting up here instead of --- I think you would want that comfort that you didn't make the choice for everybody.

Harvey Roberts: If the developer accepts running the plant, will the Board be paying part of the cost? Other than waiving rent, will you be paying 40%?

Mr. Leasure: It will be an adjustable amount.

Mr. Roberts: If you went to the other mode where you would be billing 60 and paying 40, you would be doing a similar deal if Harvard took it over?

Mr. Leasure: No.

Mr. Roberts: Why wouldn't Harvard get paid for the ICR section?

Mr. Leasure: This is what's being offered.

Mr. Roberts: So, you're saying they're going to do all the costs if they take it over?

Mr. Nelson: And not pay rent.

Mr. Roberts: Suppose you go into this mode where you charge new hook ups, new fee. How are you going to get the plant paid for by paying a charge of \$15,000 or whatever? How long is it going to take

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before you get a plant built? How does that solve your original problem of not having enough capacity and wanting the plant built right now?

Mr. Leasure: What's missing out of the Moratorium as it sits on the site is that amount. In my mind, that amount will be a large amount.

Mr. Roberts: You're going to be charging an individual \$100,000 for hookup?

Mr. Nelson: It's a capacity fee, not a hookup, not a connection. It's a capacity fee. Capacity means, "I'm developing a lot and putting in a home. I need so much capacity." And this Board can say, "we don't have the capacity," or "we don't have the money for the capacity." So, you find out what capacity you need and how much it will cost. And experts can do that, going forward. The problem we have is until the expert gets that number, what do we do with this six or nine that are on this Moratorium deal? Because it will probably take until next Spring. That's one latter part of the resolution is to pick a number and then if that real number is higher than that, they will pay more. If it's lower than the number picked, and it's more than picked --- it's estimated --- there'll be some thoughts to it, then there would be a refund. But it gets the process moving in that respect for some interim folks. That's being laid on the table. With the idea also that this is all a backdrop, hopefully, for some ultimate resolution, like I mentioned before, with the developers, with the election, and just go forward. But how do we get there from today to next June, because we know the development agreement's not going to be there, if everything went very well, until next spring sometime.

Mr. Roberts: So, putting it into simpleminded terms that I can understand, you're saying to get the people, the 10, or 11, or 12, whatever, that want to be hooked up now, you're going to come up with a new fee based on a capacity that you think --- I don't know how you come up with a fee --- it's not to build a new plant.

Mr. Nelson: It is. That's capacity fee. That's why it's going --- these dollars are going to a separate escrow account. They stay there until there's a plant.

Mr. Roberts: So the \$3,000 that we paid . . .

Mr. Nelson: Is out there somewhere trying to come back to the District.

Mr. Roberts: This is an update of that \$3,000 fee. It's still not going to be enough to build a plant. So, you're betting that there will be some other agreement later that will somehow get the plant built.

Mr. Leasure: The District's gotta take charge of the fee to build the plant.

Mr. Roberts: Ten houses isn't gonna pay for the plant.

Mr. Nelson: No.

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Mr. Roberts: And the houses that are going to be built in the next couple of years is not going to pay for the plant either. Even if they come up with the 49 or 47, that's not going to be enough. Right?

Mr. Nelson: Maybe. I don't know.

Mr. Leasure: Have you read the document?

Mr. Nelson: Let me walk you through it. You have situation No. 1: people pay. There's a number they would pay and if they pay that, their lots release from the moratorium. They can do whatever.

Mr. Leasure: With the caveat that they have to sign a Deed of Trust. Don't forget it.

Mr. Nelson: Okay. Back on No. 1. You've got the start group, the ones that prematurely started, legally, illegally, or whatever, trying to clean up that mess. And it's capacity fee they pay. And if they walk in and say they already paid it, we'll ask them where. Because they haven't paid a capacity fee that I've seen anywhere, although it might have been alleged that --- in the public reports and so forth, it talks about for the infrastructure. So, we're cleaning that up. Second part is the determination of that number. What that reasonable number is as we know it today. And the only way you can come up with that number is if you have the best idea of what the total demands are and what that facility will cost. So you go out and try to get some quotes, and say this is how much it is going to be per lot. Who knows if it's \$10,000, \$15,000, or \$3,000. Hopefully, we'll get a stamp from an engineer. And then we have people come in later who want to open up this development. And we say, "pay this capacity fee." That's the money source going towards the funding of that plant down the road.

Mr. Roberts: So it will be new lots that will be platted.

Mr. Nelson: No, it would be lots that seek to build. On these that are out there. Just like the people that got stuck now, and so if somebody comes in and wants to subdivide and do all that, no. The moratorium is still on. They're not part of this plan. But the Board in the Resolution has left the door open. If the developers want to come up and update their plans and say, "okay, from what we know today, we're not going to have as many lots or we're going to have a lot more lots," we need to know the number of lots. We need to know the demand. And it can be adjusted over time, because capacity fee might be changed five years from now by a different Board. They might double it before people can come in, or cut it in half. How is it fair? So that you're not paying three times for the developers to sell your treatment plant. Because it's their obligation to pay that. And they can have the lot owners pay it or it can come out of their own pocket. But as far as the Board is concerned, it's got the money in the escrow.

Bob Hilb: For those who have already paid their fee in their closing, is that fee a credit towards this or is this an entirely new fee in addition to what was already paid?

Mr. Nelson: This has to be a new fee right now because those funds are still in limbo as far as the Board's concerned. Either into escrow or coming to escrow, because of the Pivotal regime. That's why it's called a capacity fee. That's why this Board is the only one that can set the capacity fee and it can

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only set that fee after a hearing. And that's why in the Resolution, it sets the timeline for getting information from the developers to the Board by April so that maybe they'll have some additional information to base the capacity fee. For instance, if the expert comes in, say February or March, I'll just pick a number, and it's \$8,000 per lot, and then if the developers come in and change the number of lots, it might be a way to bring it down to \$7,000, or something of that nature. Just using the best information the Board has, and it doesn't have to be set at any particular time. The reason there is, in other words, the capacity fee can be set whenever a Board wants to set it so long as it gives notice and holds a hearing. It's probably most convenient to set it at the same time a Board does its budget, which is typically in June for the taxes that you're getting, so they would be addressing what's coming from the capacity fee, what they need for the ad valorem tax, and what the outlook is for future development. Hopefully going forward, there would be a developer presentation in the spring, where they can come in and do their PowerPoint or video, so that everybody here knows what the community is going to look like. It's no secret what's going on in the market. I don't think there's a lot of proprietary type things in that regard. You're entitled to that information.

Mr. Reed: I have to believe that this has been presented to or discussed with Harvard. I'm curious if you are at liberty to say what their reaction was.

Mr. Leasure: It hasn't been discussed with Harvard. Not to my knowledge. They haven't shown up at a meeting.

Mr. Nelson: Let me just put it this way. Just in general, some broad concepts of this nature, perhaps have been thrown out there in the past, but the Board is trying to get off the dime and help people, but not hurt the financial future of the District.

Skip: Does this improve the Board's position in litigation when it goes before the Judge?

Mr. Nelson: I have no idea, and that wasn't the basis for it. They're trying to go ahead and get something done because during that evening open meeting, there were some people who were caught in the middle, and the Board doesn't feel that it is responsible for that, but if it can help folks and still not create much additional exposure, and how can we move forward and make sure there is not financial exposure for you all in terms of allowing others to come in during the interim out of that pool of sold lots.

Mr. Roberts: Your position all along has been you don't have enough capacity for the lots that were sold. You have a consultant that you paid for, that Doug paid for, to come up and look at the capacity and the flows. Do you have a new number for the house gallons per day?

Mr. Leasure: No.

Mr. Nelson: The number has basically been 200 gallons per day per home, and that's what the regulatory standard was when ADEQ approved the Santec permit. There's nothing in the regulations or anything else that would indicate there can be other numbers, other than, obviously, there's some

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flexibility the Board can exercise, which it has been exercising in the past, and continues today to allow some adjustment to that number. As you know, the approach of the developers is just to take the history of the past use and use that number. Well, the past doesn't reflect the future, and doesn't deal with the peaks, and so forth. The bottom line is that the number of lots sold is the number of lots that are committed to a plant, and so that's why the Moratorium has to stay there until the money is in the pot. And that's why the Resolution came about – it's one way to fill the pot.

Mr. Roberts: I'm still confused. In order to fill the pot, you're going to have to have a lot more people hooking up.

Mr. Leasure: Or a lot more money per person. You need either a lot more money per lot or a lot more people pay.

Mr. Roberts: A lot more money. They're not going to build if they're gonna pay \$100,000.

Mr. Leasure: I don't know that.

Mr. Roberts: Well, you said you needed three or four million, and you've only got \$550,000, so where are you going to get the rest?

Mr. Leasure: I think the number is bigger than three or four million.

Mr. Roberts: Well, maybe it is. So that means more.

Mr. Nelson: I don't think it's going to be that shocking. The more realistic problem is whether or not the money flow trails, which it will, the plant cost and construction. What I mean by that is you'll have money trickling in for building --- when the plant needs to be built, you can't build it in little increments of 5 homes or 15 homes. You've got to build it for 500 homes, and the money is still behind that. So, that's part of the risk the Board has to take in doing this.

Mr. Roberts: That's what I said last meeting. We should assess --- you're saying that people are getting grandfathered in. What I was saying last time was everybody should contribute \$5,000 to \$10,000 per person, and then get repaid over a period of time, which wasn't put in the notes properly, but that's what I was saying last time. You need the plant now if you believe what you people believe, that you don't have enough capacity, so in order to get it built, you need money. So assess the people that are living in houses, residences, not property, but residences, again which I put in last time. 500 residences would pay for the new plant, and then get repaid by these people who would be buying and building, and then the developer would put in money also. This Resolution seems like you're trying to get a few people built, but not really solving the problem.

Mr. Nelson: I agree. The problem needs to be solved by the ultimate amendment of the development agreement that includes all developers. That's the solution. But from an equity point of view, I would disagree that the homeowners should fund any more and suffer any risk, and as a practical matter, there

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is no way you would get that done anyhow. It's impractical from a homeowner perspective. It has to be District-wide or by lot, and the only way you can do it by lot --- well, it's not the only way, but the easiest way is by what I'm proposing, is this capacity fee per lot.

Mr. Stoner: I'd like to clarify one thing. Right now, you're obligated to use the ADEQ number of 200 gallons per day per resident. Is that correct?

Mr. Leasure: No. Our ordinance says 286, something like that.

Mr. Nelson: I think the ordinance says 285. And the Board in the past has agreed to numbers like 200 and probably some --- and it's been thrown out even 160 by some folks --- but the point is, when ADEQ conducts its review, it says "we're going to look at this plant, and we're looking at your area, and so for whatever your developing out there, you better be careful. And we're telling you it should be . . ." and it's more complicated than this, but let's say it's 200 gallons per day per lot. To be on the safe side to protect people and the environment. But the ultimate responsibility comes to the local city, town, the entity that has the obligation to protect, which in this case is the District. And so ADEQ says to use five if we want, and then somebody gets hurt, we'll get fined and put in jail, or whatever.

Larry Bligh: You're saying the regulator establishes a base?

Mr. Nelson: A guide. The regulatory standard says if we were doing it, this is what we'd do.

Larry Bligh: But you can't go below that number.

Mr. Nelson: Well, you can if you can justify it.

Mr. Bligh: The Board has taken a good approach and a safe approach in taking a number that's somewhat greater than that.

Mr. Nelson: For the ordinance. But what they've done in terms of allowing for the future planning is they've accepted like 200. They said you can go ahead and use 200 going forward.

Mr. Bligh: That's the base established by ADEQ?

Mr. Nelson: Right.

Mr. Bligh: That seems reasonable.

Mr. Nelson: And so that's what we've been working off of for the most part here. And then the consultants come in and say it should be lower. And then someone says you should start from the floor up. What are you doing right now in terms of your needs for capacity? That's where you hear all these numbers . . .

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Mr. Bligh: I understand. Isn't it their obligation to take that to ADEQ and convince them?

Mr. Nelson: That's what we've said. That's part of the reason why the approach is to give the plant back to Harvard. They can use 5 or 10 or whatever, and if they don't want to expand it until it reaches 70,000 gallons per day, fine, you've just accepted the responsibility. This Board doesn't use --- members are not exposed. Harvard is exposed.

Mr. Reed: That makes me nervous. Harvard's been dragging its feet ever since the beginning, and they have no motivation to take care of the people on this side of the road. Wouldn't that be a violation of these guys' fiduciary duty to simply say, if you agree to accept it, we'll give it to you, but you indemnify us for any exposure. I don't know if you can do that if it's apparent on the face of it that that is not responsible to do.

Mr. Nelson: That may or may not be the case. I think it puts us back to where it began. That is, they should be operating it to start with.

Mr. Bligh: They've said all along they don't want to operate a sewer plant.

Mr. Nelson: The Board should not have been operating their plant, so we're just going back to status quo before that happened.

Mr. Reed: Doesn't that put everybody that's now hooked up to that at risk?

Mr. Nelson: Maybe, but again, it's no different than what we have now.

Mr. Reed: It is. These guys are acting responsibly and trying to be sure that we've got adequate capacity and maybe a cushion in that capacity, and there's nothing to suggest that we would get the same sort of consideration from a private developer who has a demonstrated record of irresponsibility.

Mr. Bligh: Doesn't ADEQ step in at some point?

Mr. Leasure: No.

Mr. Taylor: Only if there's a violation.

Mr. Leasure: If that plant overflows, then they step in.

Mr. Bligh: You're saying they never respond to records to say you're not operating . . .

Mr. Leasure: They were just out here last month.

Mr. Nelson: It's got to be pretty flagrant, and that's why when they typically happen, they're pretty serious.

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Mr. Taylor: But we've known our situation that we do not have capacity to serve the lots that have been sold. So consequently, the Board is attempting to be proactive to get this subject behind us. And we've sold 1,416 lots. I'm sorry, they're divided, but the lots that have been sold are 1,074. And so take that number by 200. We have 446 connects, but you have roughly twice as much that we need to serve. When do you know when the houses in the community will not be occupied? It's a dwelling that is constructed. So, until you know exactly the day that it won't be occupied, you have to assume that you have to serve it. And 446 times 200 is 90,000 gallons. How hard is the arithmetic?

Mr. Bligh: As he said, this has been going on since Day One. As long as I can remember.

Mr. Taylor: So consequently, as a Board, we're at risk right now. I'm asking you people, what would you do if you were sitting on this side of the table?

Mr. Reed: Reduce the District to what it was in the beginning with ICR, and let Harvard take care of itself. They're the pain, they're the burr under the saddle. Let them build their own plant or not. Let them get approval to let people put in septic. Let them deal with it. They're simply causing us grief.

Mr. Taylor: I'm exactly where you are, Skip. Because that's what I have said. But we have a plant there, and there are things that I learned last night regarding the SBR. So, there are some things that, really, right now, I'm not saying I'm nervous about, but there are some conversations that I've heard. I have a lot to think about.

Chris Stoner: Can you explain why the original plant that had a larger capacity was taken off line?

Mr. Turney: Decommissioned is a better term.

Mr. Taylor: It was stated in Dwight Zemp's deposition, which I read last night, it was taken off line because the flows were not 30% of the capacity of the SBR. It was not effective to try to operate the SBR. That was in 2003, and the flows were approximately 15,000 gallons. The SBR is built for capacity of 120,000, permitted for 46,000. If you take 15,000, it's about 30% of the 46,000, so those numbers didn't work in my mind, but I can only see what is written. They put in the Santec system. Also, in 2003, they went from the Orenco system to the grinders. Well, the sulfites from the two systems is entirely different because with Orenco, you don't have the solids. We have an odor issue that would have been not good, and with that said, it is my understanding that the setbacks would need to be approximately 500 feet. Why was it taken off line? I just learned that there can be coverings put over SBR. There are lots of things that can be done to mitigate odors. Air scrubbers, and so on, and so forth. Your question is valid. Why was it taken off line? Well, they had a new thing, but the other part is that the SBR was permitted for C water. They needed B+ for the golf course. So, as you put that in the equation front and center, the SBR couldn't do it. It could not meet what was negotiated with the County and the world, so to speak, to provide effluent for the golf course. I think if I was going to pick and choose, I would say that knowing what I know today from seven years ago, they made a decision

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that they didn't want to muddy up the water anymore. It was just to shut it down, decommission it, and be able to walk off and produce B+ to go to the golf course.

Ms. Stoner: But you went from 120,000 gallons down to 62,500.

Mr. Taylor: You have two subjects. You have the gallonage and the quality of water. Mr. Carpenter has shared with me that an SBR can produce B+ water. Put in some filtration, there's some things that need to be done. Why that was not looked at, I have no idea. I've looked at engineering reports – well, not engineering reports, but comments – that the people that I have read what has been written, they always push it off on somebody else who's done this and done that. One person happens to be deceased, so that's rather difficult to say why that decision was made. And another person who worked for another company is no longer with them. You have a stack of papers that really means nothing to me anymore.

Bob(?): I thought I heard the operator make a statement somewhat to the effect that for 100,000 to 200,000 _____ I thought I heard you just say 100,000 would cover all the lots that have been sold. Why wouldn't we take that intermediate step?

Mr. Taylor: No, we have sold 1,074, and if you take that times 200 gallons per lot, that would be a facility for 200,000.

Mr. Stoner: 214,800 gallons per day.

Bob(?): But if it takes at least a year to build a house, and you know how many houses will be built within the next year, how long does it take to up the capacity in increments? And if a couple hundred thousand or less would bring you up to cover all the lots now, why wouldn't you want to do that increment now and another increment when you have enough houses that have building permits to need more capacity?

Mr. Nelson: Conceptually, for the sold lots, that would be doable. In other words, provided that the capacity fee range is sufficient. I think the Resolution addresses that phase. The problem is, how do you keep the developers' feet to the fire on this thing to complete all the obligations? What I mean by all the obligations, we've got a big problem with capacity and plant size, and so forth. We're trying to find a solution for the dozen or so folks that people who bought and there's no capacity. That's the capacity fee. Other issues that are out there include, what's Harvard going to pay for this stuff? What's their incentive to come to the table and say, "we're not going to pay anything. You're not going to change the pipe. We're getting it free now. Send us a bill. What are you going to do about it?" That's one of about fifteen other issues in the development agreement that puts the District at a disadvantage because the District really never had a lawyer at the outset sitting there as an advocate on behalf of the District. Where do you get that leverage? This water is worth quite a bit and will be worth a heck of a lot in the future. It's your water.

Ms. Stoner: Why can't we cut them off?

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Mr. Nelson: How would you do it?

Ms. Stoner: Get a permit to dump it down the wash.

Mr. Nelson: Well, you might have to eventually, if it comes to that, but hopefully not.

Ms. Stoner: They'd cut us off if we didn't pay our bills.

Mr. Bligh: Has it been explored, or has anybody looked at that?

Mr. Nelson: It's not off the table.

Mr. Bligh: Are you thinking of a Plan B?

Mr. Nelson: Absolutely. It's no secret. The Board has looked at calling a time out, everything just stopped. What could you do with the balance in the escrow account? Take care of the people that right now needs it. Maybe they're not flushing now, but they will be. If you have a half a million dollars, how would you correct that problem? And that's basically where you start with Option 1 and then go through these other scenarios.

Mr. Turney: Another factor when we were doing the studies in 2007, the cost to run the Santec plant is \$.29 per gallon to treat sewage. \$.29 a gallon. It should be \$.03 or \$.04 a gallon, so as it grows larger and larger, that cost is going to grow and grow right with it. So it's a very inefficient operating plant when you put a cost factor to it.

Mr. Bligh: But now, you've got your B+ coming out of the other facility, right?

Mr. Turney: The Santec has B+.

Mr. Bligh: That's the idea of exploring the idea of putting it down the wash. I mean, if it's good enough to go to the golf course, it should be good enough to go down a wash, right?

Mr. Leasure: You can't just put it down the wash. We've explored that.

Mr. Bligh: I'd rather see it going there. Rather than feel that we're being taken advantage of.

Mr. Turney: They haven't paid a dime since November 2009.

Mr. Stoner: That's why your taxes went up.

Mr. Bligh: Everyone feels they're being taken advantage of, and are being taken advantage of again and over and over. The same was true with the water issue.

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Mr. Turney: You also have to remember it took two years to get the new APP for the MBR plant. We're going to get that same process to run it down the wash.

Mr. Stoner: Why would it take two years? You're not designing anything new. You're just asking where you can divert the water. There's no design change.

Mr. Leasure: I can't answer why it takes two years. It just does.

Mr. Reid: They were permitted previously putting C water on the lots down there so it seems to me that they would be even more inclined to approve something like B+ quality water going down there.

Mr. Bligh: If it's good enough for the golf course, it should be good enough to put down the wash.

Mr. Leasure: I was told if you want to get a permit to dump it in the waters of America, they also want a permit which is recharge. I've been advised by an expert in the field that there's no way you can recharge the amount of water that we're going to be discharging into this granite ____ around here. It's kind of like a catch 22.

Mr. Bligh: Prescott's doing some of that.

Mr. Roberts: I hate to see it broken up into one side of the street vs. the other side because looking at your charts here, you've got 190 lots that are sold on this side of the street that haven't been built on, and that again has to be taken into account using your 200 gallons per day. That's 38,000 which you don't have the capacity to serve. Don't think that you can just divorce the two sides of the street. That's not a solution. I was in a meeting with the homeowners where Craig had offered to expand the plant by 40%. Craig Krumwiede. It wasn't in writing to me.

Mr. Leasure: Is there a plan?

Mr. Roberts: All he said was . . .

Mr. Leasure: Words are cheap.

Mr. Taylor: We've not been involved. We've not been informed.

Mr. Roberts: That might be a short term solution. You're not getting anywhere near 200 gallons a day at present. What's your solution? If you said 200, you don't have enough today.

Mr. Leasure: That's right. Welcome to the group.

Mr. Roberts: So, what are you going to do about it? Just say okay, and keep going on and on?

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Mr. Leasure: No, we're working on it.

Mr. Nelson: I think the Resolution addresses that.

Mr. Leasure: Yes, it does.

Craig Brown: When will you determine the amounts to those people who are building so that they can be brought in if they pay the fees?

Mr. Leasure: I wish it was today, but we don't have the number today.

Mr. Nelson: I don't know. I guess what we can do – there are a couple of items I'd like to talk about in the Executive Session, and there are a couple of typos in there too. The Board has to consider whether or not it will adopt an interim number and what that number will be until there's a more solid number. It's up to the Board whether they want to select that interim number today.

Craig Brown: So, sometime in the near future?

Mr. Leasure: I can pick a number today.

Mr. Nelson: But you don't want to do that just out of the air. You want to base it on something, you know.

Eileen McGowan: I think what you folks are doing with the Resolution at this point, I would agree with. It's a good effort to move things moving on and help the folks who are stuck in the middle right now. Although I have to agree with Dayne. I would like a separation.

After Executive Session, Mr. Leasure advised that more discussion is necessary to make a decision on the Resolution. A future meeting will be scheduled for such discussion. It will be explored to schedule a meeting on December 14, 2010, after the meeting with the County.

e. Resolution 2010 on the 2009-1 Moratorium resolution on sewer hook ups discussion and possible action

f. Meeting request with County representatives scheduled for December 14, 2010 – 2009-1 Resolution Moratorium and Resolution No. 2010-01 Moratorium on Sewer Hookups and Conditions for Lifting Moratorium or Partial Lifting of Moratorium discussion and possible action.

Mr. Leasure advised that there is a meeting scheduled with the County on December 14, 2010, regarding the Moratorium.

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Mr. Brown discussed a re-districting that is set to take place. He asked if the District will be involved in this. Mr. Leasure stated that this should have nothing to do with the Sanitary District.

g. Review invoice from Doug Nelson discussion and possible action.

The Board reviewed the November 17, 2010 invoice, for charges of 9/26-10/8, of Doug Nelson, in the amount of \$17,985; November 26, 2010 invoice, for charges of 10/9 – 10/18, of Doug Nelson, in the amount of \$15,967.89; November 15, 2010, and December 2, 2010 invoices from EUSI, in the amounts of \$6,893.50 and \$3,250, respectively.

Motion: Mr. Leasure moved to approve paying the November 17 and 26, 2010 invoices of Doug Nelson; Mr. Turney seconded; motion passed unanimously.

Motion: Mr. Leasure moved to approve two invoices from EUSI, with the caveat that the words “Southwest Groundwater Consultant” be stricken from detail data sheet for the hours that were spent; Mr. Turney seconded; motion passed unanimously.

h. Legal Representative Agreement with Douglas C. Nelson, P.C., discussion and possible action

Mr. Leasure advised that the Board has reviewed the new Legal Representative Agreement. Mr. Taylor stated that he needs more time to review the document. After Executive Session, Dayne Taylor advised the public of Mr. Nelson’s new rate change: from \$200/hr. to \$250/hr for non-litigation hours, and \$295/hr for litigation hours. Mr. Nelson explained that there previously was a \$5,000 per month retainer agreement, which is no longer in existence.

Motion: Mr. Leasure moved to accept the new Legal Representation Agreement by Mr. Nelson; Mr. Turney seconded; motion passed unanimously.

Mr. Leasure stated that the consultant Paul Hendrick’s rate cap of \$10,000 has been exceeded.

Motion: Mr. Leasure moved to approve going over the \$10,000 initial rate cap for the consultant, Mr. Hendricks of EUSI; Mr. Turney seconded; motion passed unanimously.

Discussion before approval of motion: Mr. Taylor was hesitant to approve an open-ended contract and suggested a \$20,000 limit. Mr. Nelson stated that he will only use the consultant as he needs to be used. Mr. Leasure believes that we need to pay the consultant’s rate.

i. Status of Property Rights Act suit filed by Plaintiff Developers discussion and possible action

Mr. Nelson stated that a separate lawsuit was filed by the developers against the Board, stating that the Board violated the Property Rights Act. The District has turned this lawsuit over to its insurance company, and the lawsuit is being handled by the insurance company’s attorneys.

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j. Review October Escrow Account report discussion and possible action

The Board reviewed the October escrow account report. There was one interest payment made by Pivotal, but the Board does not know the basis of the amount paid. The Board and Mr. Nelson discussed the alleged missing money from the escrow account.

Mr. Leasure advised that the District's counsel has asked for a complete accounting of all the lot fees that have been collected. The Board does not know what that accounting is because Plaintiffs have not shared it with them. The Board doesn't know if some of the lot fees went to pay for infrastructure or to build the Ranch Compound, but they believe there is a lot of money missing. Mr. Nelson stated that motions can be filed [with the Court] to obtain the information. The developers have stated that it doesn't matter what's been paid because they are going to pay the bill. Craig Brown asked if this would be considered redirecting of public funds, which is a criminal offense. Mr. Nelson stated that that's an issue that has been out there. Craig said that if someone purchases a lot and, in escrow, gives the \$3,000 required to go to the District for the infrastructure, and that money is taken and then redirected to another location, that's a criminal offense. Mr. Nelson stated that Mr. Brown could be right, but he has not looked into that issue. Mr. Brown stated that he will look into it.

Meeting was recessed at 11:44 a.m. for Executive Session.

Meeting reconvened at 1:15 p.m.

k. Review Action List and Motion List discussion and possible action.

The Board reviewed the Action List and the Motion List.

5. OLD BUSINESS

a. Status of letter to property owners who have received building permits since Resolution 2009-1 went into effect discussion and possible action.

Mr. Leasure advised that he has not yet done this item.

b. Status of letter to property owners who connected to the sewer system without District approval discussion and possible action.

Mr. Leasure advised that he has not yet done this item.

c. Status of Court date for hearing on Mr. Zemp access to District Plant site

Mr. Nelson advised that nothing has occurred at this time.

d. Pending litigation – Harvard Simon I, LLC, et al. v. ICR Sanitary District

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To be discussed in Executive Session.

e. Notice of Claim of ICR, L.P.

To be discussed in Executive Session.

f. Notice of Claim of Marv and Joyce Kaiser

To be discussed in Executive Session.

g. Properties in violation of District hookup ordinance discussion and possible action.

To be discussed in Executive Session.

6. Call to the Public

Mr. Stoner questioned whether Constance Pinney's financial statement is going to be approved after discussion in Executive Session. Mr. Leasure answered that the report cannot be approved until it's revised.

7. Announcements – 180 Day Notice for Election Dates for 2011

Mr. Leasure discussed the 180 day notice for 2011 election dates, and that the third Tuesday in May is the next date that an election can take place for the recall.

Motion: Mr. Leasure moved to adjourn the regular meeting; Mr. Turney seconded; motion passed unanimously.

Meeting adjourned at 1:50 p.m.