

INSCRIPTION CANYON RANCH SANITARY DISTRICT

P.O. Box 215 Chino Valley, AZ 86323

~PUBLIC SESSION MINUTES~

May 1, 2018

Revised May 5, 2018

Approved May 8, 2018

Date: Tuesday May 1, 2018

Time: 3:30 p.m.

Place: The meeting was held in the Conference Room at 5360 W. Inscription Canyon Drive
Prescott AZ

1. CALL TO ORDER.

The Governing Board for the Inscription Canyon Ranch Sanitary District convened into public session at 3:35 p.m.

2. ROLL CALL.

Present were David Barreira, Board Chairman; Al Poskanzer, Board member; and Bill Dickrell, Board Member. Also present were Bill Whittington, legal counsel; Bob Lynch, legal counsel; Bob Busch, District Manager and Isabel Yribe, Clerk.

3. CALL TO THE PUBLIC

There were no members of the public in attendance.

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 changes to the Amended and Restated Development Agreement, including but not limited to Sections 5, 7, 8 and 9.**
- B. Possible changes and corrections to Capacity Assurance Forms for Sterling Ranch at Talking Rock submitted by Talking Rock Land LLC (TRL) and instructions to counsel presented concerning their execution and delivery.**
- C. Future efforts to finance and expand the Treatment Plant.**

- D. Proposals for plant expansion engineering from two engineering firms and legal issues thereby.**
- E. Possible action re: ratification of the Board's instructions to counsel regarding the District's position pertaining to District's Amended and Restated Development Agreement.**
- F. Advice from and possible instructions to counsel concerning the Complaint filed in Yavapai Superior Court by TRL (Case number P1300CV2018003800), Talking Rock Land, LLC v. Inscription Canyon Ranch Sanitary District, et al). and Order to Show Cause Issued therefrom.**

Mr. Poskanzer seconded the motion. The motion passed unanimously without discussion.

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

CONVENE INTO EXECUTIVE SESSION at 3:40 p.m.

RECESS from 6:07 p.m. to 6:13 p.m.

RECONVENE INTO PUBLIC SESSION at 6:13 p.m.

5. REPORTS Report from District Manager

- **Status of Plant Operations** *Mr. Busch stated that there was a line break on Quartz Creek in The Preserve subdivision that is being repaired. Mr. Busch asked that Ms. Yribe successfully complete the transition from GoDaddy email service to the Outlook email service. He suggested that perhaps that was the reason why emails were not being received from her account. Ms. Yribe stated that she would call the helpline to get the issue resolved. The admin@icrsd.net account MDI also is not working correctly. Mr. Busch stated that the financial report for April has yet to be received from MDI Financial Services. He reported that it is currently two weeks Mr. Busch said that he is working on a possible billing discrepancy from MDI. MDI reported 31 move ins/outs for March, but the District received only 2- \$35 account transfer fees.. Every time someone moves in, the district should receive \$35 transfer fee. Mr. Busch told the board members that he was disappointed in MDI's performance during their tax season. Mr. Busch recognized that tax time was busy for them, but the District was a regular customer and deserved more than second class service. Mr. Busch told the board that the account assistant at MDI that handles the ICRSD account will leave at the end of May.*
- **Status of Phase 1 of Improvements to WWTP Project** *Mr. Busch reported that all the contracts for Phase I are in place. The contract for the generator is \$45,654.99; the electrical is \$53,327.50 and the HVAC system contract is \$7,511.80 (the vendor has agreed to sign that contract). Mr. Busch stated that he will receive that shortly. He also reported that another \$10-15,000 is expected for the crane and concrete. Mr. Busch estimates that for approximately \$125-\$130,000, Phase I will be completed. He also said that one half of that amount will be billed to the developer under the development agreement. Mr. Barreira stated that the district had the right to bill them \$100,000. He*

said if the developer paid \$50,000, the sanitary district would still have about \$50,000 on the books. Mr. Busch confirmed that statement.

- **Plant treatment daily averages** Mr. Busch reported that the daily average flows and the daily average peaks for the months of December, January, February, and March were as follows:

December: 50,498 gpd	Peak: 3 days over 60,000 gpd.
January: 39,692	Peak: 58,000 gpd on January 28th
February: 47,600 gpd	Peak: 56,400 gpd on February 4th
March: 47,103 gpd	Peak: 59,500 gpd on March 6 th

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

Minutes of Meetings

- Minutes of Public Meeting of February 23, 2018
- Executive Session Minutes of February 23, 2018
- Minutes of Public Meeting of March 30, 2018
- Minutes of Public Meeting of April 3, 2018
- Minutes of Public Meeting of April 16, 2018

Mr. Barreira moved to approve the consent agenda with the removal of the following meeting minutes:

- March 30, 2018 Executive Session minutes
- April 3, 2018 Executive Session minutes
- April 16, 2018 Executive Session minutes
- April 23, 2018 Public and Executive Session minutes

Mr. Dickrell seconded the motion. The motion passed without discussion.

7. OLD BUSINESS - DISCUSSION & POSSIBLE ACTION RE:

A. Discussion and possible action re: approval of proposed changes to the Amended and Restated Development Agreement including but not limited to Sections 5, 7, 8 and 9; possible instructions to legal counsel re: same. Mr. Barreira moved to authorize legal counsel to finalize the changes to the Amended and Restated Development Agreement including proposed changes to Sections 5, 7,8, related to the same. Mr. Dickrell seconded the motion. The motion passed unanimously.

B. Discussion and possible action re: approval of changes and corrections to Capacity Assurance Forms for Sterling Ranch at Talking Rock submitted by Talking Rock Land LLC (TRL) and instructions to counsel concerning their execution and delivery. Mr. Barreira moved to authorize legal counsel to modify and correct the Capacity Assurance Forms by Sterling Ranch at Talking Rock and to submit the same to legal counsel for the developer for consideration and further authorizing board chairman and district manager the same, to be delivered after execution of supplemental agreement by all parties. Mr. Dickrell seconded the motion. The motion passed unanimously without discussion.

C. Discussion and possible action re: approval of an agreement and directions concerning the matters discussed in items A. and B. and future efforts to finance and expand the Treatment Plant. *Mr. Barreira moved to approve a supplemental agreement to current amended Restated Agreement prepared by legal counsel proposing an update to permit the district to move forward with the expansion plans and financing related thereto. Mr. Poskanzer seconded the motion. The motion passed unanimously without discussion.*

8. NEW BUSINESS - DISCUSSION & POSSIBLE ACTION RE:

A. Discussion and possible action re: approval of Financial Reports for February and March 2018. *Mr. Barreira moved to approve the financial reports for February, as there was no report for March. Mr. Dickrell seconded the motion. The motion passed without discussion.*

B. Discussion and possible action re: setting date for next Board Meeting to approve Rates/Tariffs and publication of 2018-19 Budget and set date for Hearings. *By consensus, the board will tentatively meet on May 8 2018 at 1:30 p.m.*

C. Discussion and possible action re: ratification of the Board's instructions to counsel regarding the District's position pertaining to District's Amended and Restated Development Agreement. *Mr. Barreira moved to authorize the posting the Notice of Ratification, ratifying action taken by the Governing Board on March 30, 2018, to the extent necessary to address any allegations of Open Meeting Law violations which may have occurred during that meeting as alleged by Developer in case #P13000CV201800380 complaint filed in Yavapai Superior Court. Mr. Dickrell seconded. The motion carried unanimously without discussion*

D. Discussion and possible action re: authorization for legal counsel to appear in Yavapai Superior Court on behalf of the District and the Board in Case number P1300CV201800380), Talking Rock Land, LLC v. Inscription Canyon Ranch Sanitary District, et al. or any related proceedings to defend the District and the Board and take other necessary action, including but not limited to responding to the Order to Show Cause presently pending before the Court and, in conjunction therewith, to provide the Court with such District documents and records as counsel deem appropriate; and further authorizing each Board member and the District Manager to execute such documents as counsel may require. *Mr. Barreira moved to authorize legal counsel for the district, including Robert S. Lynch and Mr. William R. Whittington to appear in Superior Court on behalf of the District in case # P1300CV201800380 Talking Rock Land, LLC v. Inscription Canyon Ranch Sanitary District, et al and the proceedings related thereto, in order to provide an appropriate defense to the District and its board in conjunction with any claims made therein, including but not limited to; responding to the order to show cause presently pending before the court and in conjunction with, to provide the court such documents, witnesses and records as counsel deems necessary and appropriate, and to further authorize each board member and the District Manager to execute such documents counsel may require in conjunction therewith. Mr. Poskanzer seconded the motion. The motion passed unanimously.*

The following discussion ensued: Mr. Poskanzer asked if the board is filing a claim with the D/O insurance policy. Mr. Whittington recommended that they should. Mr. Barreira said that once they were served, the board members had ten days to report it to the insurance company. Mr. Whittington stated that it was “tendering a defense”. Mr. Barreira asked Mr. Busch if he had already done so with the insurance carrier. Mr. Busch stated that he had only spoken to them regarding coverage. Mr. Barreira asked him to do so immediately as the first date of service was on Wednesday April 25, 2018. Mr. Whittington said that the carrier should have a copy of the court documents and for Mr. Busch to also notify them in writing to show proof that they did so. Mr. Poskanzer asked about the possibility of the insurance company changing legal counsel. Mr. Whittington stated that the insurance company usually hires its own legal counsel for litigation as a matter of contractual obligation.

E. Discussion and possible action re: possible employment of Hans Clugston, PLLC to assist as local litigation counsel regarding case # P1300CV201800380. *Mr. Barreira moved to approve the hiring of Hans Clugston to assist as local litigation counsel regarding case # P1300CV201800380. Mr. Dickrell seconded the motion. Mr. Dickrell asked how the board could control the frequency that Mr. Clugston would be used. Mr. Whittington stated that it would depend on how often Mr. Lynch would use him. Mr. Whittington stated that the board members could be apprised on how Mr. Lynch employed him. The motion passed unanimously.*

F. Discussion and possible action re: possible approval of a proposal for plant expansion from one of two engineering firms. *Mr. Busch presented the board the amounts two proposals, one from Sunrise and from Granite Basin Engineering. Mr. Busch mentioned to the board that Mr. Zemp did not possess E/O insurance. Mr. Whittington recommended that the condition for acquisition of E/O insurance be included in the contract. Mr. Poskanzer mentioned that the proposal from Sunrise Engineering had gone way up since their initial estimate.*

Mr. Barreira moved to authorize Mr. Busch to work with Granite Basin Engineering to convert their proposal, dated April 20, 2018 for plant expansion in an amount not to exceed \$50,000 and that any contractors or sub-contractors that Granite Basin Engineering employs, possess E/O insurance. Mr. Busch reminded Mr. Barreira that Mr. Zemp’s consultation fees were not included in this proposal. Mr. Barreira stated that a proposal with the new amount would have to be submitted because the agenda item did not provide for a different amount than the one that was posted. Mr. Poskanzer seconded the motion. The motion passed unanimously without any further discussion.

5. ADJOURNMENT

Therefore, the meeting was adjourned at 7:25 p.m.

Date

Board Clerk