

**INSCRIPTION CANYON RANCH SANITARY DISTRICT**

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

**~ PUBLIC SESSION MINUTES ~**

**December 21, 2018**

**Date:** Friday, December 21, 2018

**Time:** 9:30 a.m.

**Place:** The meeting was held in a conference room at Springhill Suites by Marriot, 200 E. Sheldon Street, Prescott, AZ

**1. CALL TO ORDER.**

The Governing Board for the Inscription Canyon Ranch Sanitary District convened into public session at 9:30 a.m.

**2. ROLL CALL.**

Present were: David Barreira, Board Chairman; Bill Dickrell, Board Member; Robert Busch, District Manager; Stephen Polk, Legal Counsel, Robert S. Lynch, Legal Counsel and Jeannine Yeager, Clerk.

Members of the Public: Ray Damesek, Jim Barrett, Vickie and Jerry Fogarty, Alan Cocherell, Marcia Holdsworth, Wally Holdsworth, Bob Frisch, Lisa Jensen, Carol Boberg, Dick Boberg, Dick Brubaker, Virginia Brubaker, Clint Poteet, John Burke, Gary Rito, Chad DeVries, Tim McCabe, Laurel Bailey, Bob Summers, Jeanette Summers, Mark Emanuele, Jimmy Stoner, Chris Stoner, Bob Hilb, Karen Benavides, Evelyn Zimmerman and Walt Gontowski.

Mr. Barreira stated that he was going to take item 8C out of order for discussion:

**Section 8, Item C. Discussion of possible action re: selection and authorization of one District Board Member to negotiate on behalf of the District as the District's representative in negotiations with Talking Rock Land, LLC, limited to settlement of pending or contemplated litigation by and between the District and Talking Rock Land, LLC, modifications to the Development Agreement, and funding of future plant expansion, and subject to the review and approval of all terms and agreements by the District governing board in public session.**

Mr. Barreira entertained a motion to approve that item. Mr. Busch asked for who was the approval. Mr. Polk stated it was for Mr. Barreira to be approved as the Board member to represent the District in the negotiations with Talking Rock Land, LLC. Mr. Dickrell

seconded the motion. Mr. Lynch stated that he wanted to point out that the Board took this same action on May 24, 2018 and that this was just a reaffirmation of that decision. Mr. Barreira stated that was correct and that Mr. Dickrell had been acting as Board Chairman at that time because Mr. Barreira was out of State and that they now wanted to restate that decision to have Mr. Barreira approved as the member who would be negotiating with Talking Rock Land, LLC.

Mr. Polk stated that he just wanted it to be clear that Mr. Dickrell was acting on Mr. Barreira's behalf on May 24<sup>th</sup> when they agreed that Mr. Barreira would be the spokesperson for the District.

Motion carried, Mr. Dickrell stated "aye" and Mr. Barreira stated "aye".

### 3. **CALL TO PUBLIC**

Mrs. Fogerty asked about the 69.3% tax increase that she received and asked what it was for and what the funds would be used for. She asked if it would be used for attorney's fees, what was the purpose of the increase in rates in general was for and if it was for development in the future. She requested to know what the \$35.00 per month increase was going to be used for. Mrs. Fogerty also asked why the developer was not getting hit for the increase because of the future homes that were being developed.

Mr. Barreira explained that because of the Open Meeting law, since her item was not on the agenda, that they could put it on a future agenda and that he and Mr. Busch could discuss it with her after the meeting.

Mr. Hilb wanted to discuss the newsletter articles about the 2013 agreement and an illegal moratorium between the developers and the District. He stated that the agreement stated there should be enough of the sewer capacity but also that the capacity could be increased with planning. He stated that there was a clear path for the capacity with funding was good for 10 years. He stated that he told the District that if they broke the agreement that they probably would get sued and he would hate to see them lose all of that money on lawsuits. Mr. Barreira stopped Mr. Hilb at the two minute mark and thanked him for his comments.

### 4. **CONSENT AGENDA**

Mr. Barreira made a motion to approve the Consent Agenda, Mr. Dickrell seconded and the motion passed unanimously. Mr. Barreira stated "aye" and Mr. Dickrell stated "aye".

5. Mr. Barreira made a motion to 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. Status of litigation brought by Talking Rock Land, LLC (TRL), possible next steps, alternatives:
- B. Status of monetary claim filed by Talking rock Land LLC.
- 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.
- E. Vacancy on the Governing Board and possible actions concerning filling the vacancy.

Mr. Dickrell seconded the motion, Mr. Barreira stated “aye” and Mr. Dickrell stated “aye” also. The board members, legal team and Clerk moved to another room. Mr. Barreira requested that Mr. Polk admonish the board regarding the Executive Session which Mr. Polk did and he requested that it be reflected in the minutes and Mr. Polk asked if Mr. Busch needed to be present at the Executive Session and Mr. Barreira stated that there were some items on the table that Mr. Busch needed to be present for.

**CONVENE into Executive Session at 9:48a.m.**

**RECONVENE from Executive Session at 10:10 a.m.**

## **6. REPORTS**

Mr. Busch reported that they had an inspection of the laboratory by the Department of Health. Minor record keeping irregularities were noted. The errors have been corrected and a response sent to the Department of Health. The District had a problem with Yavapai County Treasurer who have not able to produce a financial report for the District accounts for September and October until late November. They finally produced a report in late November covering both months. Average flows at the treatment plant for November were 50,998 gallons per day and there were three days over 60,000; November 26<sup>th</sup> was 69,100 gallons, the 24<sup>th</sup> was 61,000 gallons and the 27<sup>th</sup> was 68,200 gallons. The average flow was 82% of capacity.

On the Phase 1 expansion at the WWTP covers the installation of a new generator and some air conditioning to the equipment room. APS has held up the connection of the new generator for 6 weeks and it should have been completed over two months ago. Mr. Busch is keeping after APS to get the new power panel hooked up. Mr. Busch stated that they need the power connection to start up the new generator. Mr. Busch stated that Talking Rock has been billed several weeks ago for the design review for Sterling Ranch and it was about \$1800. It has not yet been paid. Mr. Barreira asked if we could charges any interest if they didn't pay it within 30 days.

Mr. Barreira asked about a broken inflow meter and asked Mr. Busch when it would get fixed. Mr. Busch said that he would look into that, along with adding another inflow meter before the next meeting.

## **7. OLD BUSINESS**

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

Mr. Barreira asked Mr. Busch to email everyone in regards to dates and times available for the next meeting in January.

**Mr. Barreira stated that the next four items, B., C., D., and E.** regarding the status of the litigation and claims with Talking Rock Land, LLC, would be discussed by Mr. Lynch. Mr. Lynch stated that the litigation was filed on April 24<sup>th</sup> and during the summer there was a judgment and the District doesn't agree with the judge's decision. The legal team filed a Motion for Reconsideration. This was filed on June 19<sup>th</sup>. The next step for the judge is to either ask the plaintiff to respond to the motion, he could set both for hearings on his own or he can create a final judgment. The District is in waiting mode to see what the judge will do. The risk to the District is that due to the claim of damages in May for \$5 million, which is the limit of the Districts insurance policy. When the insurance company feels that there is money involved, they will step in and have their own lawyers get involved and deal with Talking Rock. The insurance company says that in a lawsuit that does not involve money the insurance company will not get involved. So it is just a matter of waiting.

The dispute will first go to mediation and then to arbitration. Mr. Lynch received a letter about an informal meeting without the lawyers in early January. Then the next step is mediation and the legal team has given the District the name of 5 mediators and then after that it would go to arbitration. The District Manager has put these last three documents on the website and if anyone has any questions, they should call Mr. Busch.

Mr. Barreira discussed his conversation with Mr. Poteet and they agreed to meet on January 3<sup>rd</sup> or 4<sup>th</sup> with Peter Burger and Mr. Busch.

**F. Ratification of Manager's issuance of Work Order #101.** Mr. Barreira made a motion to ratify, Mr. Dickrell seconded and Mr. Barreira and Mr. Dickrell both responded "aye".

### **G. Approval to increase spending authority of District Manager from \$1000 to \$2500.**

Mr. Barreira made a motion to approve that and Mr. Dickrell seconded. Then Mr. Barreira asked Mr. Busch if the \$2500 would be sufficient to giving him the authority to spend money on things for the normal operation without having to wait for a meeting to get board approval. Mr. Busch felt that was a reasonable number, because he has approved things in the past without board authority in an emergency situation. Mr. Barreira stated that with Phase 13, they only have 30 days to approve or deny it and they can't wait to get things ratified. Mr. Hilb raised his hand to make a comment about making emergency meetings over the phone in the case of something needing to be done right away. Mr. Lynch stated that Mr. Hilb is correct in stating that they could do an emergency meeting or they can ratify to do so. Mr. Dickrell stated "aye" and Mr. Barreira also stated "aye" and motion passed.

**H. Possible approval of revised procedure for handling developer submittals and applications for new facilities**

Mr. Barreira stated Item H is going to be deferred because Mr. Busch is doing more research to get things done more easily. Mr. Lynch stated that the District needs to review its ordinances and the development agreements., as there are conflicts.

**8. NEW BUSINESS**

**A. Appointment of Board Member to fill the vacancy on the Governing Board for the position expiring at the end of 2020.**

Mr. Barreira stated that the vacancy was advertised according to the bylaws they received one application and it was from Mr. Bob Summers. Mr. Barreira made a motion to appoint Mr. Summers to the position, Mr. Dickrell seconded. Motion passes with both stating “aye”. Mr. Barreira welcomed Mr. Summers aboard. Mr. Dickrell will be retiring from his term of service at the end of the month and Mr. Barreira stated that he wanted to thank Mr. Dickrell for his service to the board.

**B. Financial reports for October**

Mr. Busch stated they only had the report for October because of the problem at the County Treasurers Office. There is a \$3,250 fee for a lot fee for Talking Rock and Whispering Canyon and it goes into a capital fund for expanding the plant in the future. This fee is in account 6125 and it is for one lot. On the second page of the P& L the amount of \$12,158 for repair and maintenance for two repairs for leaks in the lines. Mr. Dickrell asked if that could come out of the restricted account and Mr. Busch stated that the amount could come out of the unrestricted account. Mr. Busch then went to the balance sheet and said that account #1040 has \$680,689 which is dedicated for the expansion of the plant. Mr. Barreira said that there is about \$900,000 in the two accounts, restricted and unrestricted. The budget anticipated the sale of ten lots but there has only been one sale so far. When properties in Talking Rock and Whispering Canyon are connected to the system we currently charge only a fee for an inspection of the line.

There are consulting fees and attorney’s fees and that amounts to 81% of the budget and 29% is litigation fees. Mr. Barreira moved to approve the financial report and Mr. Dickrell seconded. Both voted “aye”. Motion passed. Mr. Polk stated that they could put something on the next agenda for Mrs. Fogerty’s questions and that anyone who had questions could contact Mr. Busch and he can help them.

Mr. Barreira adjourned the meeting at 10:52a.m.

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Board Clerk

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Date