

INSCRIPTION CANYON RANCH SANITARY DISTRICT

P.O. Box 215 Chino Valley, AZ 86323

PUBLIC SESSION MINUTES SPECIAL RATIFICATION MEETING

November 7, 2011

Approved 5/1/12

1. CALL TO ORDER

The Governing Board for the Inscription Canyon Ranch Sanitary District convened into public session at approximately 3:00 p.m. at Days Inn Conference Room 1, 688 Fletcher Court, Chino Valley, AZ 86323

2. ROLL CALL

Present were Bob Hilb, Board Chairman; Brian Ray, Board Member; and Scott Robbins, Board Member, Bob Busch, District Manager; Jeff Coughlin, Counsel; Bill Whittington, Counsel; Isabel Yribe, District Clerk; and the following audience members according to the sign in sheet:

Charles Turney	Leo Sullivan
Barb Hilb	John Freeman
Harvey Roberts	Robert Cella
Dick Tracey	Gene Leasure
Eileen McGowan	Dayne Taylor

3. PUBLIC FORUM

- **Harvey Roberts** asked whether the pending contracts would be public documents.
Chairman Hilb stated that they would be public documents and would be available to the public.
- **Dayne Taylor** stated that he went to the guard shack to pick up the documents for this meeting and they were not available. He also requested a copy of the ratification documents and a copy of the audio of those documents. *Chairman Hilb and Bill Whittington spoke on the process of making those items available to the public. There would be a fee associated with doing so and wanted Mr. Taylor to be aware of that Mr. Whittington stated that if you have a fee schedule you are obliged to charge consistent with that fee schedule.*
- **Leo Sullivan** had a question regarding the fee schedule. *Both Chairman Hilb and Mr. Whittington stated that the fee schedule could not be discussed as it was not on the agenda. Mr. Hilb stated that he would add that item to a future agenda.*
- **Charles Turney** asked whether or not these documents were on the District's website. *Chairman Hilb stated that they were.*
- **Dick Tracey** asked if he could have a copy of the ratification documents. *Mr. Tracey came to the table and picked up a copy.*
- **John Freeman** asked if the present board did not have the cost of making an audio tape on the fee schedule perhaps they could follow the previous Board Members fee schedule. He stated that it was the best way to approach this issue. *Mr. Hilb stated that this would be put on a future agenda.*

3. EXECUTIVE SESSION.

Member Bob Hilb made a motion to go into executive session to receive legal advice from the District's legal counsel pursuant to A.R.S. §38-431.03(A)(3) and to give instructions to the District's counsel pursuant to A.R.S. §38-431.03(A)(4) on the issue of the pending litigation with Harvard Investments, et. al., Case#P1300CV2010000036 and P#1300CV2010-01855, the pending litigation with Marvin Kaiser, et. al., Case#P1300CV201100061, a claim against the District by Alfred and Nancy Moss, Claim#AZSP210040024, the request for indemnification by the prior District Board members in conjunction with the above referenced litigation and claims, issues pertaining to the negotiation of the proposed MOU referencing the various pending business/services negotiations between Harvard and the District, the pending contract for accounting and auditing services, the Robert Busch management contract, and a possible contract with Isabel Yribe for secretarial and administrative services. Member Brian Ray seconded the motion. There was no discussion and the motion carried by unanimous vote.

Executive session commenced at 3:13 p.m. and the audience members were asked to leave. Executive session ended at approximately at 4:18 p.m.

4. RATIFICATION

Mr. Hilb read the Ratification Item (number V. on the agenda).

A. The ratification of the approval of the vote to go into executive session during the meeting of October 19, 2011 pursuant to A.R.S. §38-431.03(A)(3) for legal advice and A.R.S. §38-431.03(A)(4) to give instruction to the District's attorneys regarding the District's position regarding pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation, including the following:

Pending litigation with Harvard Investments et. al., Case #CV2010000036 and #P1300CV210-01855; pending litigation with Marvin L. Kaiser et. al., Case #P1300CV201100061; A claim against the District by Alfred & Nancy Moss, Claim #AZSP210040024; and possible indemnification of the prior Board members.

And providing for:

B. The ratification of the action taken by the Governing Board in public session immediately following the above-referenced executive session, to direct legal counsel to proceed with the negotiations for a possible resolution of the pending litigation with Harvard Investments, et. al., Case #P1300CV2010000036 and P#1300CV2010-01855; the pending litigation with Kaiser, et. al., Case #P1300CV201100061; and the claim made by Moss, Claim #AZSP210040024, including the request for indemnification of the prior Board members.

Ratification Resolution No. 2011-2

WHEREAS, on November 7, 2011 the Governing Board of the Inscription Canyon Ranch Sanitary District (the "Governing Board") met in special session at 3:00 p.m. in Conference Room #1 at the Days Inn, 688 Fletcher Court, Chino Valley, Arizona 86323, with the following members present:

Bob Hilb
Brian Ray

WHEREAS, those present were advised that certain members of the public believe that a violation of open meeting law may have occurred when the Board voted to go into executive session on October 19, 2011, by reason of a failure to include a specific mention of the request for indemnification made by the previous board members, through their attorney, discussed during the executive session in conjunction with the possible resolution of the litigation relating to the following matters:

1. Pending litigation with Harvard Investments et. al., Case #CV2010000036 and #P1300CV210-01855;
2. Pending litigation with Marvin L. Kaiser et. al., Case #P1300CV201100061; and
3. A claim against the District by Alfred & Nancy Moss, Claim #AZSP210040024.

WHEREAS, as part of the executive session, the Board received legal advice and gave instructions to its legal counsel on the issue of possible resolution of the above-referenced litigation and claims, as well as a request received from the prior members of the Sanitary District Governing Board, through their attorney, for indemnification as part of a proposed resolution of the litigation with Harvard Investments, et. al., Case #CV2010000036 and #P1300CV210-01855; the pending litigation by Kaiser, et. al., Case #P1300CV201100061; and the claim by Moss, Claim #AZSP210040024; and

WHEREAS, after the above-referenced executive session, the Board reconvened into public session to give instructions to legal counsel on the above-referenced issues, as recommended by legal counsel during said executive session, for legal counsel to proceed as recommended by legal counsel in regard to the possible resolution of the pending litigation with Harvard Investments, et. al., Case #CV2010000036 and #P1300CV210-01855, the pending litigation by Kaiser, et. al., Case #P1300CV201100061, and the claim by Moss, Claim #AZSP210040024 (including the request for indemnification of the previous members of the Board).

THEREAFTER, the following resolutions were introduced in written form, and pursuant to motion duly made by _____ and seconded by _____ were adopted:

RESOLVED, ratifying the Governing Board's vote to go into executive session on October 19, 2011 for legal advice pursuant to A.R.S. §38-431.03(A)(3) and to give instruction to the District's legal counsel pursuant to A.R.S. §38-431.03(A)(4) regarding the district's position regarding pending or contemplated litigation or settlement discussions conducted in order to avoid or resolve litigation, including the following:

1. Pending litigation with Harvard Investments et. al., Case #CV2010000036 and #P1300CV210-01855, pending litigation with Marvin L. Kaiser et. al., Case #P1300CV201100061, a claim against

the District by Alfred & Nancy Moss, Claim #AZSP210040024, and possible indemnification of the prior Board members as a part thereof;

FURTHER RESOLVED, ratifying the Governing Board's decision of October 19, 2011 to instruct its legal counsel in public session to proceed as recommended by legal counsel in executive session, in regard to the possible resolution of said pending litigation and claims, including the request for indemnification.

ADOPTED AND APPROVED this 7th day of November, 2011.

The Board Chairman made a motion that the Ratification Resolution #2011-2 be passed. The motion was seconded by Board Member Scott Robbins. The following discussion ensued:

- **Eileen McGowan** asked what indemnification meant. *Mr. Whittington stated that he was not inclined to give legal advice in public session. Chairman Hilb stated that he could not give legal advice and suggested that Ms. McGowan submit her question via the District's website. Counsel Whittington also stated that it could also put on a future agenda for a future meeting pending the outcome of pending litigation.*

Chairman Hilb called for a vote and the motion passed unanimously.

5. BUSINESS

Item 6E: Counsel Whittington suggested that Chairman Hilb make a motion to move Item 6E out of chronological order so that Counsel Jeff Coughlin could be excused from the meeting. Bob Hilb made a motion to move Item 6E as the next item, Brian Ray seconded the motion and the motion passed.

Item 6E: regarding the consideration and possible action re: authority to prepare an agreement for indemnification of the prior Governing Board members of the Inscription Canyon Ranch Sanitary District as part of an overall resolution of the pending litigation with Harvard Investments, et. al., Case#P1300CV2010000036 and P#1300CV2010-01855; the pending litigation with Kaiser, et. al., Case#P1300CV201100061; and the claim made by Moss, Claim#AZSP210040024, consistent with the terms recommended by legal counsel in executive session.

Chairman Bob Hilb made a motion as authority to prepare an agreement for indemnification of the prior governing board members as part of the overall resolution of the pending litigation cases in Item 6E above consistent with the terms recommended by legal counsel in executive session. Scott Robbins seconded the motion and the following discussion ensued:

- **Gene Leasure**, regarding the indemnification of the former governing board, asked if this was the notice for the entire public. *Mr. Hilb stated that because this*

was discussed in executive session, he could not respond to this issue. Mr. Whittington stated that it was possible that once the agreement was submitted for consideration, and if it was decided upon, it could be distributed, but it was not required. He also stated that usually this distribution did not occur until after the approval.

- **Leo Sullivan** had a question regarding the order of discussion for an agenda item.

Chairman Hilb stated that because this item was discussed in executive session, it could not be addressed at this time.

The motion passed unanimously after the discussion.

Item 6A: Consideration and possible action re: contract for accounting/auditing services with Alyx Cohan, CPA, PC.

Chairman Hilb made a motion to approve the contract for auditing services with Alyx Cohan. Scott Robbins seconded the motion and the following discussion ensued:

- **Dayne Taylor** asked whether this contract was approved. He also asked if it would be available to the public. *Mr. Hilb stated that it was going to be voted on at the moment and if it was approved, a copy of the contract would be made available.*

The motion passed unanimously after the discussion.

Item 6B: Consideration and possible approval of the use of the services of Robert S. Lynch and Jeffrey Walsh re: specialist legal services on issues of negotiations with Harvard Investments, including various terms of the proposed MOU and issues relating to the previous Board members' request for indemnification. *Counsel Whittington began by reciting the rates of Mr. Lynch and Mr. Walsh. Mr. Walsh's rates are \$495/hr and the person who works under him works for \$220/hr. Mr. Lynch's litigation rate is \$400/hr and non litigation is at \$300/hr. The people that work under him work at \$250/hr, \$200/hr and respectively and others at \$100/hr. He suggested that approval for these rates be included in the motion to follow.*

Chairman Hilb made a motion to approve the use of services at those rates for Robert Lynch and Jeffrey Walsh for opinions on the proposed MOU and issues pertaining to the indemnification. Brian Ray seconded the motion and the following discussion ensued:

- **Eileen McGowan** asked when the previous Board members put in the request for indemnification. *Chairman Hilb stated that he did not know, and that the request was made through their lawyer.*

The motion passed unanimously after the discussion.

Item 6C: Consideration and possible action re: contract with Robert Busch to provide management services to the District.

Chairman Hilb made a motion to authorize Counsel to modify the employment agreement previously presented to engage Robert Busch as District Manger and once it was modified, to tender it and execute it to Mr. Busch. Brian Ray seconded the motion and the following discussion ensued:

- **Gene Leasure** stated his concern about whether or not there was an issue with Mr. Busch working for the District after having participated in the recall election. *Counsel Whittington reiterated to Chairman Hilb regarding the confidentiality*

about items discussed in executive session. This item could not be discussed at this moment.

- **Eileen McGowan** asked if Mr. Busch would be considered an employee or an individual contractor. She also wanted to know if the district would be responsible for benefits for Mr. Busch. *Counsel Whittington stated that it was his recommendation for Mr. Busch to be contracted as an employee of the District.*
- **Harvey Roberts** wanted to know what the reasons were for not making him a self employed vendor. *Chairman Hilb stated that those reasons were discussed in executive session and could not be disclosed in public session.*
- **Dayne Taylor** asked for confirmation on whether or not the Board, as a government body, was hiring an employee. *Chairman Hilb confirmed that it was the case. Anything further could not be discussed as it pertained to the executive session.*
- **Eileen McGowan** wanted to know what the benefits were to have Mr. Busch as an employee as opposed to an independent contractor. *Chairman Hilb reiterated that executive session discussions could not be brought into the public session.*
- **Harvey Roberts** wanted to know why it was so secret. *Counsel Whittington stated again that executive session talks could not be discussed in public. Mr. Whittington advised that it could be put on a future meeting agenda if the Board chose to.*
- **Dayne Taylor** made a request that the information be made to the public prior to the adoption of Mr. Busch's contract. *Chairman Hilb stated that at that time, he would not comply with his request.*
- **Gene Leasure** voiced his concerns regarding the impact the insurance for Mr. Busch would make on the District. He also suggested that the Board research it before the contract was approved. *Chairman Hilb stated that the Board would look into the matter. Mr. Robbins asked if Mr. Leasure meant liability insurance.*

Chairman Hilb withdrew the previous motion and Brian Ray withdrew his second to that same motion regarding the modification and tendering of the employment contract with Mr. Busch.

Chairman Hilb then made a motion to authorize Counsel to modify the employment contract for Mr. Busch as discussed in executive session and investigate the insurance implications of this action and put it on the next agenda. Brian Ray seconded the motion and the following discussion ensued:

- **Dayne Taylor** asked if the Board was going to openly discuss the implications of the insurance situation. *Chairman Hilb stated that there was no need for this item to go into executive session and therefore would be discussed publicly.*

The motion passed unanimously after the discussion.

- **Harvey Roberts** asked if there would be a public discussion regarding the reasoning behind the choice to make Mr. Busch an employee rather than an independent contractor. *Mr. Hilb stated that it would have to be discussed in a future executive session to review the implications of revealing what was discussed in today's executive session and decide at that point.*

Item 6D: Consideration and possible action re: contract with Isabel Yrube to provide secretarial and administrative services to the District.

Chairman Hilb made a motion that the contract with Isabel Yribe to provide secretarial and administrative services to the District be revised as an employment contract to be considered along with Mr. Busch's contract at the next meeting. Scott Robbins seconded the motion and the motion passed unanimously.

6. ADJOURNMENT.

Thereafter, the public session adjourned at approximately 4:49 p.m.

Date

Board Clerk