

INSCRIPTION CANYON RANCH SANITARY DISTRICT

P.O. Box 215 Chino Valley, AZ 86323

~ PUBLIC SESSION MINUTES ~

January 22, 2019

Approved February 4, 2019

Date: Tuesday, January 22, 2019

Time: 1:00 p.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 the Call to Order at 1:04 p.m.

2. ROLL CALL.

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

Members of the Public: Alan Cocherell, Wally Holdsworth, Dick Boberg, Jeanette Summers, Mark Emanuele, Jimmy Stoner, Chris Stoner, Stan Salzman, John Terwilliger, Charles Lehr, Tim Moon, Laurel Bailey, Randy Clifford, Al Poskanzer, Bob Klamer, Jack & Eileen McGowan, Roy Kneale, Derrill Fulkerson, Gloria Cody, and Tim Emberlin

Mr. Barreira called the meeting to order at 1:04pm and the roll call of the Board Members was taken. Mr. Barreira stated that Mr. Lynch was running a little bit late so Mr. Barreira said that he would be taking some of the items from the agenda out of order so that Mr. Lynch could be there for his part of the meeting.

3. CALL TO THE PUBLIC

Mr. Poskanzer spoke first regarding elections of officers for 2019 and a term of office for one year for the Board Members. Mr. Poskanzer stated that last year there was no item on the agenda and that the election of officers was skipped and that this allowed Mr. Barreira to be the Board Chairman for two years. Mr. Poskanzer felt that it would be

inappropriate for Mr. Barreira to be the Board Chairman for a third year in a row and that there should be some rotation of the Board Members. Since Mr. Poskanzer's membership on the Board has not yet been fully adjudicated, he feels that if the Board's announcement of vacancy is illegal, then Mr. Summers' position as a new Board Member might be invalidated and any of his votes might be held invalid.

Next, Mr. Cocherell asked about last year's vacancy on the Board which Mr. Hilb has filled. Mr. Cocherell stated that the vacancy was not advertised and therefore he would like to see a By-Law change, even though the election followed Arizona election laws, he feels that Mr. Hilb's election was unopposed because the public was not informed of the opening. Mr. Cocherell also asked about the expansion for the plant and he wanted to know who was paying for the expansion and if that would be coming from the taxpayers or somewhere else.

Mr. Barreira asked Mr. Polk if he could answer Mr. Cocherell's question regarding the plant expansion and Mr. Polk stated that since that item is on the agenda under Old Business, then Mr. Barreira could answer that question. Mr. Barreira stated that at this time they are waiting for the meeting on February 4th when they will have an estimate from the engineering company. Mr. Barreira stated that the Board believes that they have enough funding in the Capital Account for the expansion to 90,000 gallons and it will cost approximately \$500,000. There is currently approximately \$600,000 in the Capital Restricted account and that they can only use that money for this type of project.

Mr. Cocherell stated then that it was his understanding that there would be no additional taxes charged for this project.

Mr. Barreira stated that taxes would not be used. Mr. Hilb pointed out that taxes may have to be increased because of legal fees and other expenses and Mr. Barreira stated that the Restricted Capital Account is not used for legal fees.

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

Mr. Barreira made a motion to approve the meeting minutes from the December 21, 2018 meeting and also the reimbursement to the District Manager for \$748.97 for Springhill Suites meeting room rental of \$357.00 and Go Daddy Office 365 email renewal for Inscription Canyon Ranch Sanitary District of \$391.97. Mr. Hilb seconded the motion. Mr. Barreira stated "aye", Mr. Hilb and Mr. Summers stated "aye". Motion was passed.

Mr. Lynch arrived and went to his seat.

5. POSSIBLE VOTE TO GO INTO EXECUTIVE SESSION:

Mr. Barreira made a motion to adjourn to the Executive Session pursuant to A.R.S. Section 38-431.03. (A)(3) Mr. Summers seconded the motion and Mr. Hilb stated "aye" and Mr. Barreira and Mr. Summers stated "aye".

He requested that Mr. Polk give the Board admonitions. Mr. Polk stated that under A.R.S. 38-431.03 that Executive Sessions are closed to the Public and only Board members and persons necessary to the Executive Session should be in attendance. Mr. Polk asked Mr. Barreira if the District Manager and the Clerk should be included in the Executive Session. Mr. Barreira stated that they were necessary to the Executive Session. Mr. Polk then admonished all members included in the Executive Session that the information should remain confidential and that this should be reflected in the minutes as well.

Call to the Public was adjourned at 1:17p.m.

Reconvene into public session at 2:40 pm

6. REPORTS

Status of District Operations. Mr. Busch reported on the December flow rates which were 1,619,600 gallons total which amounts to an average of 52,245 gallons per day. There were 6 days when the capacity was over 60,000 gallons: December 6th 63,100, December 15th 68,500, December 22nd 67,400, December 25th 63,800 December 29th 67800 and December 30th 70800. There were no recent repairs, 660 connections and 32 connections pending. There were rebills for inspection fees of \$450 each regarding the Phase 1 improvements for the generator and continued problems with APS. After 8 months, APS said that the transformers have to be upsized. It looks like that project will be involved for over a year by the time it is done. APS will pay for the upsized transformers. Regarding the contract with Civiltec for the expansion design, the Board is scheduled to attend a meeting on February 4th to review the status of their contract. The Board received a letter from Yavapai County that Whispering Canyon has been granted permits for construction of Phases 5 thru 7.

The records request from Mr. Poteet has been assembled and when he pays the \$35 fee then the records will be given to him. Also the request from Al Poskanzer for copies of the executive session minutes will be discussed as an item on this agenda. At previous meetings, Mr. Busch was asked to look into repairs of a meter at the WWTP thought to be on an incoming line. That meter doesn't measure incoming flows so it isn't important and doesn't need to be replaced or repaired. Talking Rock and Whispering Canyon meters measure incoming flows, but not this meter. The fee for the design review for Sterling Ranch has been paid, \$1557 from Talking Rock. They have also been invoiced for a review of TRR- Phase 13. That payment hasn't yet been received.

7. OLD BUSINESS-DISCUSSION AND POSSIBLEACTIONS RE:

A. Setting the date and time for future ICRSD Board Meeting

The next Board meeting is set for February 4th and that will be at 1:00 pm at the conference room at the Springhill Suites in Prescott.

- B. Report on status of litigation
- C. Report on status of claim by Talking Rock Land, LLC
- D. Report on status of communication with insurance company

Mr. Barreira stated that all three of these reports went together and he called on Mr. Lynch to explain the status of these. Mr. Lynch stated that there was a minute entry order from December 31, 2018 and the Judge dismissed Mr. Poskanzer from the suit. The new board members, Mr. Summers and Mr. Hilb were added to the suit. Pending the status on hearing of September 11th, the judge dismissed as premature and is considering the attorneys fees. The Board is waiting to hear from the judge. Talking Rock filed a dispute and it requires mediation and then arbitration and then litigation and it is still sitting there with a \$5million price tag and that is the upper limit of the insurance policy.

Mr. Lynch received a note from the insurance adjuster after New Years and Mr. Lynch sent the original claim and letters to the adjuster to bring them up to speed. They have not gotten back to Mr. Lynch yet so the ball is in their court. The Insurance Company will get involved when they feel it is necessary.

- E. Report on status of activity pursuant to Section 12 of the Amended and Restated Development Agreement.

The three developers and the District have to go through arbitration, then mediation and then litigation. There have been some informal discussions about the possibility of a settlements.

8. NEW BUSINESS-DISCUSSION AND POSSIBLE ACTION RE:

- A. Discussion and possible action concerning implications of votes cast by Mr. Summers if his appointment to the Board is found to be invalid.

Mr. Polk stated that Mr. Summers actions on the board are covered by the Doctrine of Defacto and that Mr. Summers votes are valid, even if someone goes back to try to remove Mr. Summers membership on the Board.

- B. Discussion of Consideration of Settlement Proposal from Peter Burger, Symmetry Companies.

Mr. Barreira made a motion to direct the attorneys to proceed with the response to the proposal from Mr. Burger and Mr. Hilb stated that he thought there was more to that. Mr. Barreira again made the motion, Mr. Hilb seconded and Mr. Summers and Mr. Barreira stated "aye". Mr. Barreira and Mr. Busch will get together and draft what is needed for the changes for the agreements for the finances for the expansion and they need the engineers report and then they can get some direction for the future expansions.

Mr. Cockerell asked if the board could discuss what the terms were from that meeting. Discussion ensued about whether the board could discuss that and Mr. Polk stated that it was issued as a Rule 403 which is a confidential settlement agreement and that means that they could not use anything that could be used in the court case. Mr. Polk stated that there didn't seem to be any reason why they could not disclose their offer to the public and that is what was just going to be used in the litigation

Mr. Cocherell asked if it would be possible to be posted to the website and Mr. Barreira stated that he didn't see any reason that it couldn't be posted to the website. Mr. Polk felt that it might harm the negotiations with Talking Rock but that it was a Board decision whether to put it on the website or not. Mr. Barreira wants to post it on the website to dispel all of the rumors going around. Other board members agreed that it would be okay to post it on the website. Mr. Polk cautioned that the Board should take action and to double check that and find out if that should be at a future meeting on the agenda. Mr. Barreira asked if he can direct the Manager to post it on the website and Mr. Polk will research this before posting in order to not violate the Open Meeting law.

- C. Appointment of District Manager as Responsible Corporate Officer in connection with reporting periodic reports and testing results to ADEQ. This will permit electronic filing reports.

Mr. Barreira stated that Mr. Busch would become that corporate officer and the reports would go to the ADEQ thru electronic filing and eliminating the human error in reporting. Mr. Barreira asked legal counsel if Mr. Busch had to be an elected official or if he could be appointed by the Board and Mr. Polk stated that he would have to research that and let the board know.

- D. Discussion and Approval of procedure of distribution, filing and retention of Executive Session Minutes and tape recordings.

Mr. Barreira stated that the minutes are not being filed where they are supposed to be and that the Clerk has to approve and then file the minutes and also needs to take care of the recordings, according to the regulations. Mr. Barreira opened it up to the Board for discussion. The Clerk can designate the District Manager to do the filing after the minutes are approved by the Clerk. The Executive Session minutes from February 23, 2018 to current are misplaced and the Clerk can be assigned to fix that problem.

- E. Possible Implications and Impact on ICR Sanitary District by HB 2126 concerning rejection of bids and possible District action.

This has not been approved yet by the State.

- F. Approval of Repayment to Developers for Calendar Year 2018.

Mr. Busch stated that per the development agreement, certain amounts of repayment to the developers are required annually. The District pays developers 20% of gross revenue from calendar year receipts. Since the District is on a fiscal year, the last half of fiscal 17-18 is added to the first half of fiscal 18-19 to determine the payment.

First, from January to June 1, 2018, \$16,829 in revenue was received. During the last half of 2018, the District received \$10,419 in revenue plus the ad valorem tax for 2018 which brings it to a total of \$421,253. District is required to pay 10% or \$42,125, twenty percent going to Old Capital which is \$8,425.10 and 80% to Talking Rock which is \$33,700.30. Mr. Busch stated that the repayment is to cover up to ½ the cost of the treatment plant or for 20 years, whichever comes first.

Mr. Barreira motioned to approve the repayment per the contract with the developers and Mr. Hilb seconded. Mr. Barreira, Mr. Hilb and Mr. Summers stated “aye”.

G. Approval of financial reports for November 2018.

Mr. Busch said this was for July through November 2018. The profit and loss statements were nothing unusual except for 6 months on the collection fees which were \$475 for the month and \$2545 year to date and the only collection fees that they have is the \$3250 from Inscription Canyon so that needs to be bumped up to the other account, 6118, because it's in the wrong place. The total fee number is correct. On the second page under 7750, services, the \$1567.50 that was billed to review the plans for Sterling Ranch. So that has been billed to Talking Rock and that has been paid. Account 1800 there's \$229,660 in that account that represents the work in progress on the plant upgrade, that's for the generator replacement and the upgrade of the air conditioner, Phase I and part of Phase II. There is over \$100,000 in fees in that number. Everything looks pretty close and they are over on application transfer fees, all the other expenses are correct. Mr. Barreira asked Mr. Busch if he was going to make the corrections to account 6118 and Mr. Busch said that he would do that. On the bottom of pages 2 of 3, there was \$1568 for engineering services and in November there was about \$13,000 for attorney's fees. Since November they have received \$37,200 of billing for the attorneys' fees that is not in this report. Mr. Busch has not received any billing for December from the attorneys.

Mr. Barreira made a motion to approve the financial report as amended by Mr. Busch and Mr. Summers seconded the motion. Mr. Barreira stated “aye” . Mr. Summers and Mr. Hilb stated “aye”.

H. Possible action concerning request for Executive Session Minutes by Al Poskanzer
Mr. Polk commented on the request for minutes from Al Poskanzer. A.R.S. 38-431.03 Executive Session statute states that the minutes from the executive session minutes are confidential. Mr. Barreira made a motion for legal counsel to draft a letter to Mr. Poskanzer from the Board and that Mr. Busch will sign the letter and then send it to Mr. Poskanzer regarding this decision. Mr. Summers seconded the motion and Mr. Barreira, Mr. Hilb and Mr. Summers stated “aye”.

I. Election of Officers: Board Chair and Board Clerk

Mr. Hilb made a motion to make Mr. Summers the Board Clerk, Mr. Barreira seconded and Mr. Summers and Mr. Hilb stated “aye”. Then Mr. Summers moved to have Mr. Barreira to remain as the Board Chairman and Mr. Barreira seconded and asked if there was any discussion. Mr. Hilb questioned that, because of the bylaws,

this would be Mr. Barriera's third year in a row being the chairman and he didn't think that was in accordance with the By-Laws.

However, there is an exception in the by-laws which Mr. Barriera read to the public that stated that "the Chair and the Clerk will serve for a period of one year or until their successor has been named at which time the Board shall consider to appoint a new Chairperson and a new Clerk". Mr. Summers commented that with the current litigations going on that they should stay the course and keep Mr. Barreira as the Chairman. Mr. Hilb commented that they seemed to be having endless lawyer fees and that maybe that calls for new leadership. Mr. Barreira asked for any further discussion. Mr. Barriera and Mr. Summers stated "aye" to approve the motion and Mr. Hilb stated "no" to the motion to maintain Mr. Barreira as the Chairman.

9. ADJOURNMENT

Mr. Barreira adjourned the meeting at 3:20 p.m.

Date:

Board Clerk