

**MINUTES OF  
TWSB BOARD OF DIRECTORS  
SATURDAY REGULAR MEETING  
JULY 18TH, 2009 - 10:00AM**

In attendance were Chairman Arden Schug, Vice Chairman Burt Rubinowitz, Treasurer Joe Mainello, Virgil Beagles, Pete Bowidowicz and General Manager Dr. Martin Moore.

**Approval of Agenda**

Motion: Joe Mainello "Approve the Agenda"

Second: Pete Bowidowicz. Unanimously approved.

**Minutes of 20 Jun 2009.**

Read by the Secretary Charlie Ross and corrections noted.

Motion: Joe Mainello "Accept the minutes as read with corrections".

Second: Burt Rubinowitz. All approved.

**Manager's Report:** Dr. Moore advised that for the record, since he didn't get it in the report when we met with the head of the local government division of the Dept. of Finance and Admin. and the coordinator in charge of reviewing our budgets, there was a question how we used a transfer in and transfer out at the beginning of the year for the budget. They requested that we show beginning cash/ending cash instead. We agreed to make those corrections before submission for approval. They also wanted us to go back and justify where attorney's fees are allocated in the budget. Negative expenses in the budget were discussed and how to properly account for them. Beginning cash balances were also requested to be looked at again and that final fiscal year bank statements be submitted with the budget. Grants were requested to be accounted for on a detail sheet and to create a new fund code of 299 for grants. Details for accounting for transfers between restricted and unrestricted funds and the use of budget resolutions to authorize such transfers was discussed. We also discussed the change to Quickbooks and some problems that could arise such as erasing transactions which we understand is difficult with the 2009 version being able to track any attempts to do that with a ghost auditing trail feature. We were able to get the Tank 2 engineering report, purchases made and checks cut before the end of June to recapture monies from the 2004 grant. The summary hydrology report on Carissa Springs showed we have a lot of water available there. The state engineers approved our permit requesting to combine well rights so we can draw 500 acre feet from any combination of wells we have. Tank 5 pump was replaced and we will get a back up ready probably from parts cobbled together while the pump is being refurbished. On roads we are basically responding to problems arising from rains and we are starting a work order system to better track work done to help justify money we will be requesting from the state. The swimming pool is on hold and Otero County is investigating the contractor who did not apply for the necessary permits and they will follow up on this and the skimmers which were part of the contract and will be replaced or repaired. Due to legal costs we have suspended 3 part time workers except one who will spend about 20 hours reading meters. We are looking at reductions and layoffs with non-collective bargaining employees and negotiations with union representatives and employees if we decide we have to cut back there. Due to reductions and layoffs we will be closing the office on Fridays and adjusting hours Monday through Thursday. We have recommended to the Treasurer that he not give a report because we have given out figures to the public that do not match up. We have three different sources of information being pulled from to prepare that report which are being reconciled properly and we will suspend the current treasurers report format until we get that reconciled. In the interim we will be working with a new person to get some information out with emphasis on using our past bank statements to insure accurate information is provided. Future treasurers' reports will provide a transaction history similar to your personal bank statements. We will also require GL line codes be assigned every transaction for accountability purposes. The manager's report is available upon request and posted on our website, [Timberonwater.com](http://Timberonwater.com).

**Treasurer's Report:** None, as explained in the General Managers report.

**Old Business:**

**1. Report on New Mexico Board of Finance (NMBF) meeting**

Statement: Chairman Schug stated they had presented the Asset Management report and Water Rate Study. We were told we were doing good work and what needed to be done.

Motion: None.

Second: None.

Discussion: None.

**2. Attorney's Fees Report**

Statement: Chairman Schug said he had gone through in detail one attorney's transactions and determined that we had paid a 60% to 40% split, water fund and general fund. In looking at the cases from 2005 he determined a 50/50 split had been justified. In the FEMA case the split should have been 90/10 in favor of general fund. On the election

case it was 50/50 and for general counsel I took an over all average of 64/36 and applied that. Over all expenses for these cases should have been \$97,032 general fund and \$34,000 water fund which he felt was more equitable and DFA also agreed.

Motion: Virgil Beagles "Continue discussion of attorney fees".

Second: Joe Mainello. All voted aye.

Discussion: Virgil Beagles asked when the agenda item had been voted to come up with the fund split on attorney's fees. GM Moore explained this was done as part of the interim budget to justify expenses by fund. A discussion was had as to how and why funds were allocated to either the water or general fund. In response to Virgil Beagles, GM Moore explained that this report covered only one law firm and the others would be covered on subsequent reports. Virgil Beagles stated Gambel Et Al had offered to settle everything for \$129,000 and we were turned down when attorney fees at that time were \$29,000. All of this could have been settled then and saved money. Chairman Schug stated all the fees for the bankruptcy were all charged to water and other fees are still to be looked at. In the end, we can take money from the water fund and move it to the general fund as a loan and pay it back in the future as there are no funds in the general fund to pay for these legal fees. Virgil Beagles asked if they had it in writing from DFA to do that and Chairman Schug stated they would get it. He also said the last letter he had from DFA two years ago stated this could not come out of standby fees and it had to be approved by the PRC. GM Moore recommended that the 08/09 budget, when submitted, should show the transfers with a request for them to address them specifically. A discussion of how to repay the loan and restricted versus unrestricted funds usage was had. Chairman Schug requested suggestions on other ways to handle paying the fees.

Motion: Burt Rubinowitz "Move to the next actionable item on the agenda".

Second: Joe Mainello. All voted aye.

Discussion: None.

### 3. Update on Lawsuits

Statement: Virgil Beagles stated that after the last closed meeting no decisions had been made but Octavio Sanchez had subsequently filed motions in court and who told him to do that on the 14<sup>th</sup> of July. GM Moore stated the agreement between TWSD and the Board requested he be a conduit of information and without violating attorney client privilege, the attorneys were directed to prepare the cases, and discussions are held with the board in either closed or executive session while observing attorney client privilege. Virgil Beagles discussed specifics of current lawsuits and requested other board members and GM Moore to respond. Joe Mainello said this will be settled by our attorneys in court. Chairman Schug gavelled the meeting to order and stated this would not be settled in a board meeting and inquired if anyone present had any more updates on lawsuits. There were none.

Motion: None.

Second: None.

Discussion: None.

### 4. Bylaws Revision Presentation

Statement: Burt Rubinowitz stated the Bylaws committee recommended approving the minutes as read from the May 16<sup>th</sup> meeting. In the July meeting the Board had asked the committee to look at HB337 and incorporate any needed changes. The committee decided that HB337 only conflicted with the bylaws in the area of elections and that it conflicted with itself in chapters 14 and 15 concerning elections thus the committee recommended making no changes based on HB337. In the matter of DeWayne Beagles objection to article 10.4 the committee found it had merit but recommends it be addressed immediately after the second reading and passing of the original revision.

Motion: Joe Mainello "Dispense with second reading and vote to approve the revision to the bylaws".

Second: Burt Rubinowitz. All voted to approve.

Discussion: None.

First reading of the amendment to article 10.4 was done and explained by Burt Rubinowitz.

### 5. Update on Swimming Pool

Statement: Chairman Schug said the general manager's report had covered this already. Virgil Beagles asked if Timberon had been responsible for any delays on the pool. Dr. Moore stated neither the board nor Timberon were responsible for delays, the fault lies with the contractor failing to get the proper permits and schedule the proper inspections. Virgil Beagles suggested we should ask the county to impose the liquidated damages clause in the contract against the contractor for failing to meet the 90 day time requirements.

Motion: Virgil Beagles "Have the General Manager contact the county and the contractor and set 45 day time limit to complete the work or the county will invoke the liquidated damages clause".

Second: Joe Mainello.

Discussion: Joe Mainello asked Dr. Moore if the motion contained the proper language for him to get it done. Dr Moore stated that he would prefer to see additional language setting up some kind of time limit for work completion. Chairman Schug expressed the need for negotiation since there had been delays because of faulty wiring, and new requirements for lights and drains.

Virgil Beagles "Motion Withdrawn".

Motion: Joe Mainello "Have the General Manager get with the county and the contractor and do what is necessary to get the work done in an expeditious manner.

Second: Burt Rubinowitz. Virgil Beagles abstained all others voted aye.

Discussion: Chairman Schug noted his gratitude to Mr. Beagles for having us look deeper into the contract and saving us from an unnecessary expenditure on the skimmers.

6. Update on audit

Statement: Dr. Moore stated he had covered the audit in the General Managers report and if the board members need any additional info, please let us know. A lot of work is being done. Aug 31 is the scheduled exit conference when they will tell us what they found and what has to be corrected.

Motion: None.

Second: None.

Discussion: None.

7. Update on Drug Testing

Statement: Dr. Moore stated all but one individual took the drug test and they all came up negative. The person who didn't test claimed exemption because of contracted services status and he felt that is not appropriate and appropriate corrective action will be taken. Virgil Beagles stated that item 6 of the drug policy states the employee can be asked to take a test and if the employee agrees they will show up. The federal statute doesn't allow discrimination and if one takes it then all do. Dr. Moore said the employee policies have some discrepancies besides drug testing and he would like to have an agenda item added to the next meeting to look at personnel policy.

Motion: None.

Second: None.

Discussion: None.

8. Update on Water Plant

Statement: Dr. Moore said they had been in touch with the manufacturer of the membrane system and they intended to get it to us ahead of schedule. We have made the first payment and started the reimbursement process under the grant and the state says they will probably get the check to us in August. This will enable us to use Carissa Springs to provide drinking water to the new 2010 standards and save us between \$20,000 and \$30,000 in electricity.

Motion: None.

Second: None.

Discussion: None.

9. Work Comp Report

Statement:

Motion: Virgil Beagles "Discuss the Workman's Comp Report".

Second: Joe Mainello.

Discussion: Virgil Beagles pointed out that the Workman's Comp Report had been filled out improperly. This is very serious and could lead to very heavy fines to the district and possible lawsuits. The person who filled this out knew the personnel and their jobs and could have left us wide open to serious problems if someone had got hurt. A discussion of the type of jobs on the report and actual work done here was had. Dr. Moore said this document was made based on the employment conditions back in November or December and people had been added since then and not staying on top of this has created a significant exposure to the district.

Motion: Virgil Beagles "The General Manager shall notify Transpo Insurance of the additional classifications and also notify the Work Comp Bureau of New Mexico of our mistake and correct it".

Second: Pete Bowidowicz. All voted aye.

Discussion: A discussion was had of the details of how work comp is paid and on what time basis. The rest of the board thanked Mr. Beagles for bringing this to their attention.

**New Business:**

10. Report of DFA Meeting

Statement: This item was skipped and not discussed or acted upon.

Motion:

Second:

Discussion:

11. Initiate Financial Policy and Procedures Manual

Statement: Chairman Schug said after meeting with DFA that we did not have financial policies and procedures to handle things that come up.

Motion: Arden Schug "Discuss Chairman Schug's list of financial policies and procedures".

Second: Joe Mainello

Discussion: Dr. Moore stated he felt this is essential and controls should be put in place for the General Manager and staff to follow. In addition to the paper submitted, other state agencies and the auditors should have additional input. He recommended the board direct the manager to prepare a policies and procedures manual to submit to the board.

Chairman Schug explained some his rationale for the some of the items on the list and invited the other board members to discuss his ideas and come up with additional ideas. Virgil Beagles voiced his opinion that the standby fees should be protected and used for water projects only.

Motion: Virgil Beagles "Establish a financial policies and procedure manual".

Second: Joe Mainello. Unanimously approved.

12. Ratify Union Contract

Statement: None.

Motion: Virgil Beagles "Ratify the union contract".

Second: Joe Mainello. Approved unanimously with amendments.

Amended Motion: "Ratify the union contract with additions of "being capable of doing the same job" in section 20.2, the wage rates for water operator as suggested in the union email and change classification laborer to helper".

Discussion: Chairman Schug said he had two areas of concern. In 20.2 it needs to be added "being capable of doing the same job" in preference to union versus non-union employees when lay offs are being conducted. Also the water operator pay rate was not finalized. A discussion was had on that and Dr. Moore said he had gotten with the union rep and they had agreed on a wage scale but it had not been put in the contract yet. The board went on to other agenda items while Dr. Moore went to retrieve the email from the union rep on suggested wages. When the meeting returned to this item, the wage scale email from the union was read and the figures were agreed to by the board.

13. Approval to Prepare and Submit Loan Application for Water System Improvement

Statement: Dr. Moore said the bids for the main street project were all at least \$100,000 over. We think the board should approve a low interest loan for this with payment to be made from standby fee funds.

Motion: Pete Bowidowicz "Prepare and Submit Loan Application for Water System Improvement".

Second: Joe Mainello. Virgil Beagles voted nay all other s voted aye.

Discussion: Some specifics of the project were discussed at the request of Mr. Beagles. Virgil Beagles asked how the loan could go through so quickly and get it approved by the people. Chairman Schug stated HB337 now allows water system improvement loans without a vote being conducted. Virgil Beagles stated "this ain't gonna work". A discussion of the ability to repay, consequences of not doing the project and availability of funds was had.

14. TWSD Board and GM Appearance at Court Hearing, 9:00am, 20 Jul 2009 in Truth or Consequences

Statement: None.

Motion: Joe Mainello "Approve Board member(s) and GM Appearance at Court Hearing, 9:00am, 20 Jul 2009 in Truth or Consequences

Second: Burt Rubinowitz. Unanimously approved.

Discussion: None.

15. Website Committee presentation

Statement: Burt Rubinowitz said the committee had met and come up with policies and procedure based largely on Eldorados. Initial costs would be approximately \$65 to \$100 a year for web hosting and the domain name plus the board secretary's time to create and update the site and possibly a consultant fee to help setup the site and that should not exceed \$100. At Virgil Beagles request Burt Rubinowitz explained the cost details.

Motion: Virgil Beagles "Adopt the website policies and procedures document, purchase hosting, get the website up and running, within a \$300 limit, and revisit this in 90 days".

Second: Joe Mainello. Unanimously approved.

Discussion: None

16. Treasurer's report for Jan thru June

Statement: None.

Motion: "Discuss Treasurer's report for Jan thru June".

Second: Pete Bowidowicz.

Discussion: Virgil Beagles passed out copies of the treasurer's reports to the board members for the Jan. thru Jun. time period and stated he had his accountant look at it and he can't make head nor tails of it. There are many discrepancies, especially in metered water at Western Bank. He discussed figures from the reports and said he would like these addressed by next month's meeting. Pete Bowidowicz said he is concerned about the disconnect in the line item accounting and the process is dysfunctional. Virgil Beagles said the employee doing this is the same one who did the work comp report. Joe Mainello felt he had been chastised and he would attempt to do a better job in the future. Chairman Schug promised a more comprehensive treasurer's report soon and the software has been a significant contribution to this problem. Joe Mainello said that a year ago we were in substantial disarray and when the new manager came on board, he thought we might not even be in business at this time. In defense of the staff, at least they have been able to supply me with some information when there was none a year ago. A discussion of past problems and efforts to clear them up was had. Donna Millar asked for an update on the change to Quickbooks. Dr. Moore explained the current status of updating to Quickbooks which is in the initial stages.

17. PRC / District Court for Rate Increases

Statement: A discussion was had on the current jurisdiction applicable to the district.

Motion: Joe Mainello "Go to the District Court for Rate Increases".

Second: Burt Rubinowitz. Virgil Beagles voted nay, Pete Bowidowicz abstained and all others voted aye.

Discussion: Dr. Moore made a point of information that a resolution would have to be adopted. Chairman

Schug stated this could be handled at a special meeting.

18. Tour of the golf Course after today's Work Session

#### **Committees:**

Swimming Pool Committee: None. See the General Managers' Report.

Budget Committee: Joe Mainello stated we are working with the new guidelines the DFA gave the chairman and the general manager. We are still in the process of getting the figures and finalizing that budget.

By-Laws Committee: None. See item #4.

Water Rate Committee: Chairman Schug stated we have to write up the increases and what will stay the same. Ron Wyatt asked when a public hearing might be held. Chairman Schug stated he expected it to happen fairly soon. He also stated it would have to be voted on in a meeting, then published and then followed by the public hearing.

Golf Course Committee: Pete Bowidowicz said he had comments that it's the best it's looked in 12 years. Within 10 days the greens will be rolled and the plug patterns are good. Creeping bent grass is spreading. Everything is looking better. Guy and Herb Wimberley have agreed to prepare a golf clinic and demonstration at a cost of \$30 including a breakfast and lunch. We're showing increasing revenues and Christy Albert may make an appearance here.

Website Committee: None. See item #15.

#### **Directors Remarks:**

Virgil Beagles updated the status of our attempt to lobby the state for stimulus money. Our lobbyist is in the state office for stimulus funds and waiting to hear whether we get into the governors office for a hearing. We have prioritized our requests with the new water tank and repair of tank #2 getting the highest priority.

Peter Bowidowicz stated nothing compares with a Timberon board meeting. I wish we could expedite them.

Joe Mainello said many of the board members went to training in Alamogordo earlier this week and got some pretty good training to help benefit the board and the community. He appreciates the public attending these meetings.

Burt Rubinowitz reminded everyone we have new ways to participate during the board meetings and since the bylaws revision was passed and he explained them. There was a discussion of participation by the audience.

Chairman Schug thanked everyone for being here and said we are trying very hard to ensure Timberon has a future and clean safe drinking water.

#### **Agenda Request:**

Helen Cook: A few years ago there was a lot of talk about Timberon declaring bankruptcy. Did that happen?

Chairman Schug replied the judge threw it out. She requested how many people have been hired since trying to declare bankruptcy and how much money is in the standby fee account. Dr. Moore said there were \$94,000 to be refunded from the membrane filter, \$4,000 on hand and another \$15,000 in receivables for an approximate total of \$120,000. Chairman Schug explained that money had to be put upfront for grants and then we are reimbursed by the state. Dr. Moore said there had been about 14 people hired and 4 temps since the bankruptcy. She asked Dr. Moore if he was fully employed at this time. Dr. Moore replied yes mam.

#### **Executive Session: None**

#### **Unscheduled Citizens Communications:**

BF Adams said he wanted to report the 4<sup>th</sup> of July celebration was a big success and especially wanted to thank Jane Huisingh to headed the whole thing. He wanted thank everyone for all there hard work.

Bill Brown introduced himself and observed that if the meetings were on the website maybe the secretary wouldn't have to spend so much time reading them. Chairman Schug stated we can't publish them until they are ratified and okayed. They cannot be published in draft either.

Virgil Beagles motioned for adjournment. Pete Bowidowicz seconded. Unanimously approved at 2:11pm.

Submitted by: \_\_\_\_\_  
Secretary Charlie Ross Date

Approved by: \_\_\_\_\_  
Chairman Arden Schug Date