



Board Meeting Minutes

Wednesday March 27, 2024 @6:00 P.M.
102 West Forest Street
Brigham City, UT 84302

In Attendance:

DJ Bott, Chairman
Lyle Holmgren, Financial Chairman
Lesley Kendrick
Joseph Summers
Jay Capener
Mark Larson

Board Members

Richard Day, Vice-Chairman
Riggin Holmgren
Brodie Calder
Tim Munns
Boyd Bingham

Staff:

General Manager, Carl Mackley
Office Manager, Jamie Williams

Assistant General Manager, Chance Baxter

Consultants:

Peter Gessel, Smith Hartvigsen, PLLC
Lance Nielsen, Hansen Allen & Luce

1- Welcome – Chairman DJ Bott

Chairman DJ Bott welcomed all in attendance and called the meeting to order at 6:00 PM. Chairman Bott asked consent from the Board to make an adjustment to the agenda, moving agenda item #10, after the closed meeting (item #12), in order to take possible action as a result of the closed meeting. Trustee Tim Munns made a motion to accept the changes as presented by Chairman Bott; seconded by Trustee Jay Capener; all members voted aye, motion passed.

2- Invocation & Pledge of Allegiance

Offered by Trustee Joe Summers

3- Declaration of Conflicts of Interest

No conflicts declared

4- Consent Agenda

A- Adoption of Agenda
B- Approval of Minutes – January 24, 2024

Trustee Tim Munns made a motion to approve items A and B on the Consent Agenda, seconded by Trustee Brodie Calder. Trustee Mark Larson informed the Board that in the Minutes for January 24, 2024 there was no mention of going from the closed session back into the open session, Trustee Larson made a motion that we amend the motion to correct the January 24, 2024 meeting to include a motion to leave the closed session and to return to the open session. Trustee Munns accepted the motion made by Trustee Larson; all members voted aye, motion passed.

5- Approval of Financial Statements – Financial Chairman Lyle Holmgren

- A- January 2024
- B- February 2024

Financial Chairman Lyle Holmgren reported that he has reviewed the check register and the financial statements for February and January of 2024 and finds them in order. Trustee Riggins Holmgren made a motion to approve the February and January 2024 financial statements as presented, seconded by Trustee Mark Larson; all members voted aye, motion passed.

6- Adoption of New Retail Water Rates

General Manager Carl Mackley: We previously discussed the proposal to adopt standardized water rates in all five of the District's water systems and we held a public hearing. The Board now needs to make a decision on whether or not to adopt the new water rates, as listed. There was one question that came up in previous discussion regarding Tier 5 and its rate, it is the same rate as Tier 4. Tier 5 was included in the chart in the event a customer was to use that amount of water. We want it to have its own separate tier for data tracking purposes. There have been retail customers in the past that have gone over 250,000 gallons in a month. During the drought we found that all those customers had leaks and the District helped them find their leaks. Just to clarify; anything above 100,000 gallons per month is at a rate of \$10.00 per thousand gallons. The Tier 5 purpose is just for data. Trustee Mark Larson made a motion to adopt the new retail water rates, seconded by Trustee Brodie Calder; all members voted aye, motion passed. Chairman DJ Bott clarified that the rates were effective immediately.

7- Adoption of BRWCD Privacy Policy

Trustee Lesley Kendrick made a motion to approve the Privacy Policy Statement, seconded by Trustee Mark Larson; all members voted aye, motion carried.

8- 2023 Audit Report – Mariah Reyes, Child Richards

Mariah Reyes with Child Richards CPAs prepared and provided a copy of the 2023 Financial Audit to each of the Board Members. She reviewed various items in the report stating that there were no deficiencies in internal controls. The District is in compliance with the state requirements with the exception of one finding; three Board Members either did not have the required training or did not provide the certificate of completion for the trainings. When an entity spends more than \$750,000 in federal funds, the entity is required to have a single audit for that item. The District did spend more than \$750,000 in federal funds in 2023 and we therefore required to have a single audit for that. There were no findings in regard to the single audit.

9- Requests for Water

A- Summerland Ranches – Jim Flint

Jim Flint: Thank you, I think you have seen Summerland Ranches before and I think most important thing we can say is "Thank you!" There is going to be a main line extension for about 3400 ft across Summerland Ranches and it will continue for another 5,000 ft by the District. The plans are completed. We have been working with Chance and we are looking forward to constructing our portion of the waterline. Summerland Ranches is located in the Bothwell area. There will be three phases of 12 lots each, for a total of 36 lots.

Trustee Tim Munns addressed the Chairman and said that while reading the Board member reference material several times it pointed out there is to be no cost to the District regarding developers and asked if that was the case with Summerland Ranches. Chairman Bott stated that the developers are responsible for installing all the infrastructure for the subdivision and the District will install 5,000 ft of 12-inch water line to complete the loop (segment A). Joe Summers asked about the secondary water. Flint said they

have the 12 inch waterline installed, and have a well that produces 2000 gallons a minute, that was constructed to provide water to two irrigation pivots.

Chairman DJ Bott asked how much water they are requesting. Mr. Flint said there would be 24 residential connections for the unapproved Phases II and III. Trustee Brodie Calder made a motion to approve the request for water for Summerland Ranches Subdivision Phases II and III, seconded by Trustee Mark Larson; All members voted aye, motion passed.

B- Riverside North Garland – Neil Capener

Tabled

C- Jeff Richins Development – Danny McFarlane

Danny McFarlane: Jeff Richins owns roughly 60 acres in Bothwell 10400 N 10000 W. Our request is for 67 retail water connections. I know the nearest connection is at 11200 North. We understand we would be responsible for installing the service line, and also there has been some discussion with Carl about contributing to the construction of "Segment A". Thatcher-Penrose said they will not service this property.

Trustee Joe Summers voiced his concern about the District encroaching on another water provider's area. The property is located within Thatcher-Penrose's service area. He stated the issue with Thatcher-Penrose servicing this area is they do not have enough water. However, if the District is willing to sell Thatcher-Penrose water, then they could service the proposed 67-lot subdivision and they can get the revenue to help their own community. Chairman DJ Bott asked Trustee Joe Summers if he felt Thatcher-Penrose would be amenable to coming and making a presentation. Trustee Summers said "yes".

General Manager Carl Mackley recognized there must be some frustrations with this conversation, especially for the developer. He explained that the District along with others have long had the understanding that Thatcher Penrose is not providing water. The District policy allows us to provide water anywhere in the county that we need to. If it is in another water providers retail service area, then our policy requires a letter certifying that the service area water provider is not willing to provide the water. Mr. Richins provided the District with a letter from 2021 stating that Thatcher Penrose was not willing to provide water. Mr. Mackley told Mr. Richins that a lot can happen in two years, and they would need to provide an updated letter. Mr. Mackley then received a letter this week from the Developers stating that Thatcher Penrose was not willing to provide water to those two parcels. Mackley said there needs to be clarification on whether or not Thatcher Penrose is willing to provide them water. It is the understanding of the District that they are not willing to provide water. Trustee Joe Summers said his understanding was yes, they are willing to provide water. Mr. Summers pointed out that Randy Nelson (President of Thatcher-Penrose Service District) was in attendance at the meeting. Mr. Nelson stated that this development will impact the Thatcher/Penrose area, and that BRWCD would receive the revenue in their area. Thatcher-Penrose Service District needs to renegotiate their wholesale agreement with BRWCD to purchase additional water, which will allow them to collect the revenue for retail connections.

Chairman DJ Bott mentioned that the Board is hearing two different ideas and suggested inviting Thatcher Penrose to the next Board meeting to make a presentation regarding how they would do this and what their needs from the District would be to accomplish servicing this area, and also invite Jeff Richins and Danny McFarlane back next month.

Trustee Tim Munns made a motion to table the water service request for the Jeff Richins Development until the next board meeting, seconded by Trustee Jay Capener; all members voted aye, motion passed.

Chairman DJ Bott invited Danny McFarlane, Randy Nelson and Trustee Joe Summers to the executive meeting on April 5th at 9:00 am to further discuss the possibilities of water service for this development.

11- Mitigation Agreement

Resolution to authorize the Chairman to sign final mitigation agreement with Bear River Club Co. and U.S. Fish and Wildlife Services.

Mitigation Procedures were approved at the August 30, 2023 Board Meeting. At the January 24, 2024 meeting, the Board gave General Manager Carl Mackley the authority to negotiate on behalf of the District. Chairman DJ Bott was asking the Board to authorize the signing of the final mitigation agreement. Trustee Riggin Holmgren had questions regarding the validity of the District's need to mitigate. Trustee Mark Larson asked for clarification; if the agreement is signed by the District, will the Bear River Club Co and the U.S. Fish and Wildlife Services automatically withdraw their protests? General Manager Carl Mackley stated that this was correct.

Trustee Jay Capener stated that in entering into this mitigation agreement we are selling agriculture down the river a piece at a time and if we don't value that in our community we better wake up. Chairman DJ Bott asked Trustee Capener to explain. Capener said every share that goes down there leaves our economy.

Trustee Joe Summers asked why the Developers aren't buying the water shares. If they want to develop, they should be investing in water shares, instead of the Conservancy District buying shares and giving them away. General Manager Mackley said we do not have a procedure in place for how that will work yet. We only approved the procedures that will need to be followed. We could update our policy to consult with our attorney regarding exaction of water rights and shares. The fact is there is very limited water, and we will only be able to use what is already here.

Trustee Brodie Calder brought up the challenges of the State coming out with drastic new policies with respect to the water in the Great Salt Lake. He stated "The District either needs to show that we are trying to mitigate or all of our applications and everything we are trying to do is going to get denied. We have to stand up and do something or we will get denied. The Denton John case was in 2017 or 2018 but a lot has changed since then. The state has denied a lot of water right applications since then. Neil Capener's well application was recently denied and that was near Denton John's area. We are looking at different times of water transitions and we have to look at different options."

General Manager Carl Mackley stated that he understands the Board's concerns, and he believes they are concerns that the District needs to talk about, and keep in mind with the County Water Master Plan. However, the Board already adopted these specific procedures. Mackley could not understand the need to question the foundation of why we are doing this when it has already been approved.

Trustee Jay Capener expressed his concern that it has been mentioned that there are so few shares involved with the mitigation agreement that it doesn't matter. Capener said "it does matter, it matters to his suppliers, it matters to the Ag community, and it matters to him personally. We have collected taxes, but we won't even test whether or not the mentioned protesters have validity to be mitigated."

General Manager Mackley asked the Board for a better plan than the one that was already approved. People will still find a way to make their development happen. They will have more money and influence and they will get what they want.

Trustee Tim Munns questioned whether the agreement has been approved. Trustee Boyd Bingham said that the agreement itself was not approved, only the procedures were approved, which gave the General Manager the responsibility and the opportunity to negotiate and then he was to bring it back to the Board for approval. The Board has the authority to give direction to the Manager for virtually everything, and that responsibility was given to General Manager Mackley to negotiate, but it needs to be brought back to the Board for approval.

Chairman DJ Bott stated that the Board approved the policies and our legal counsel does not have a problem with the mitigation agreement. He asked what the Board wanted changed. Trustee Boyd Bingham did not like the Board speaking for the Canal Company, saying we will give the protestants shares. He feels the District needs to sit down with the Canal Company and discuss with them the real possibilities. Chairman Bott asked if what was being suggested as the next step in the process, is for the District to negotiate with the Canal Company for specifics, Trustee Bingham said "yes".

General Manager Carl Mackley asked for permission to hear from the District's Attorney, Peter Gessel on this matter, as he reviewed the mitigation agreement. Permission was granted.

Peter Gessel, Legal Counsel for the District, reviewed the mitigation agreement and the mitigation procedures. Gessel said the framework of mitigation procedures that the Board approved was in line with the mitigation agreement. Gessel explained the District would acquire blocks of shares and then convey some to Fish and Wildlife Service and some to the Bear River Club Co. At that point it is their (Fish and Wildlife & Bear River Club Co.) problem to figure out how to use the shares. If there is not enough canal capacity down at the end, this does not affect Bear River Canal Company's rights to manage its shares and have its by-laws determined, its service areas determined, and its policies as it sees fit. That is beyond the scope of the agreement. The agreement does not and cannot say what the canal company will do. The agreement goes as far as to say the protestants get the shares and then it is up to them to figure out with the canal company whether or not they are going to be able to get the water, where they want the water, and if it is even in their service area. Gessel stated that "If it is not, it sounds to me like a shareholder change application would not be approved. That is entirely within the purview of the canal company; and to be clear, if they can't use those shares for the purposes for which they believe they are going to be able to use them, which would be to use those shares and bring the water down the canal and irrigate their property, the agreement doesn't allow take backs. They couldn't come back and say they can't use this share the way they intended and take back their approval of the agreement. Whether it gets there and how it gets there is between them and the canal company, and they will have to go through the same process as any shareholder and be subject to the same provisions of the articles, by-laws and policies of the company".

In Peter Gessel's Legal opinion, the District's four water applications cannot be approved without the mitigation agreement.

12- Closed Meeting

The Board will enter into a closed meeting to engage in a strategy session to discuss pending or reasonably imminent litigation, as well as the purchase, exchange or lease of real property; to be held in accordance with the provisions of Utah Code 52-4-205.

Trustee Tim Munns made a motion to suspend the discussion and move into a closed session, seconded by Trustee Lesley Kendrick.

Roll Call:

Richard Day, aye

Joseph Summers, aye

Lyle Holmgren, aye
Jay Capener, aye
Riggin Holmgren, aye
Brodie Calder, aye
Mark Larson, aye

Lesley Kendrick, aye
Tim Munns, aye
Boyd Bingham, aye

10- Coldwater Canyon Well

Trustee Brodie Calder made a motion to approve and authorize the Chairman to sign the mitigation agreement and move forward with the Coldwater Canyon Well Request for Reconsideration, seconded by Trustee Mark Larson; aye (4) nay (6), motion failed.

Aye

Richard Day
Lyle Holmgren
Brodie Calder
Mark Larson

Nay

Jay Capener
Riggin Holmgren
Joseph Summers
Lesley Kendrick
Tim Munns
Boyd Bingham

13- Action on Closed Meeting

Action taken under Coldwater Canyon Well

14- Adjournment

Trustee Tim Munns made a motion to adjourn, seconded by Trustee Riggin Holmgren; all members vote aye, meeting adjourned at 9:00 pm.