

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE
BACA GRANDE WATER AND SANITATION DISTRICT

June 19, 2020

9:00 AM

District Office – 57 Baca Grant Way South
Crestone, Colorado 81131

Meeting held via Zoom due to COVID-19

ATTENDANCE

Directors in Attendance:

John Loll
Robert Salmi
Gregg Conlee
Mike Smith
William Peck

Also in Attendance:

Marcus Lock; Law of the Rockies
Cathy Fromm; Fromm and Company (for a portion of the meeting)
JoAnn Slivka; District Manager

Members of the Public:

Michael Scully
Dan Gray

CALL TO ORDER

President Loll opened the meeting at 9:10 AM.

DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

Attorney Lock has discussed with the Board the requirements pursuant to Colorado law to disclose any potential conflicts of interest or potential breaches of fiduciary duty to the Baca Grande Water and Sanitation District Board of Directors and to the Secretary of State. It was noted that a quorum was present and members of the Board were requested to disclose any potential conflicts of interest with regard to any matters scheduled for discussion at this meeting. No new disclosures were made.

AGENDA

MOTION: FOLLOWING DISCUSSION, UPON MOTION DULY MADE BY DIRECTOR CONLEE SECONDED BY DIRECTOR PECK AND UPON VOTE, UNANIMOUSLY CARRIED, THE BOARD APPROVED THE AGENDA.

CONSENT AGENDA

The board considered the following consent agenda items:

Approve Minutes from the May 15, Regular Meeting
Approve Minutes from the May 26, Special Meeting

MOTION: FOLLOWING DISCUSSION, UPON MOTION DULY MADE BY DIRECTOR CONLEE, SECONDED BY DIRECTOR PECK AND UPON VOTE, UNANIMOUSLY CARRIED, THE BOARD APPROVED THE CONSENT AGENDA.

PUBLIC COMMENT (ITEMS NOT ON THE AGENDA ONLY. NO ACTION MAY BE TAKEN). *The District is subject to the Colorado Open Meetings Law, which states that no Board discussion or action will take place until a later date, if necessary. You must sign in before speaking. Please limit your comments to three minutes or less.*

There was no public comment.

BOARD AND STAFF REPORTS

The board reviewed and discussed the reports incorporated herein by this reference.

Storage Tank Project:

The bid set for the Brookview and Moonlight Storage Tanks only included the Brookview Storage Tank. The board directed the district manager to discuss alternatives with JVA.

FINANCIAL MATTERS

Financial Statements: Ms. Fromm reviewed the unaudited financial statements with the board.

Check Register: The board considered approval of the check register through the period ending June 19, 2020 as follows:

General	\$	11,359.52
Capital Projects	\$	422.50
<u>Enterprise</u>	\$	<u>69,303.19</u>
	\$	81,085.21

MOTION: FOLLOWING DISCUSSION, UPON MOTION DULY MADE BY DIRECTOR, SECONDED BY DIRECTOR, AND, UPON VOTE, UNANIMOUSLY CARRIED, THE BOARD APPROVED THE CHECK REGISTER FOR THE PERIOD ENDING JUNE 19, 2020.

DISCUSSION AND/OR ACTION ITEMS

The Board of Directors discussed the current COVID-19 situation as it relates to office closures and in-person meetings. Everyone agrees that meeting via Zoom is not ideal and having in-person meetings is always desirable. The district provides essential services to our customers and it is important to keep the staff and community safe and healthy. We ask that any visitors entering the office lobby wear face masks. District services are available and can be conducted via telephone, email and the internet. We are not aware of any disruption in administrative or operational services because of office closures. It was agreed by all to keep this item on the agenda every month until the pandemic concludes.

LEGAL MATTERS

Mr. Lock announced that we have received the final judgment and decree for Well 17a and Well 18. The decree corresponds to the way we have been operating the wells. Mr. Lock is working with the Division of Water Resources to repermit the wells in accordance with the decree.

Before entering into executive session Mr. Lock reminded the Board about the importance of properly entering into executive session. There are basically three things you need to do before entering into executive session:

1. provide the appropriate statutory citation that references the subject matter to be discussed
2. reference the statutory category that applies to the topic of discussion
3. provide the public as much detail as possible on the matter to be discussed in executive session without jeopardizing the purpose of the executive session.

This is an important reminder that we must do as much as possible while in public session before entering into executive session.

EXECUTIVE SESSION MATTERS - §24-6-402(4) (a), (b), and (e)(I), C.R.S. Discussion of the lease and potential purchase of water rights, obtain legal advice from the District's attorney regarding the same, and discuss negotiations with USFWS.

MOTION: DIRECTOR CONLEE MOVED AND DIRECTOR PECK SECONDED THAT THE BOARD OF DIRECTORS ENTER INTO EXECUTIVE SESSION AT 10:15 AM FOR THE PURPOSES OF DISCUSSING THE LEASE AND POTENTIAL PURCHASE OF WATER RIGHTS FROM USFWS, RECEIVING LEGAL ADVICE FROM THE DISTRICT'S ATTORNEY REGARDING THE SAME, AND DISCUSS NEGOTIATIONS WITH USFWS.

MOTION: DIRECTOR SALMI MOVED AND DIRECTOR LOLL SECONDED THAT THE BOARD OF DIRECTORS RECONVENE TO REGULAR SESSION AT 10:55 AM. USING THE ORIGINAL ZOOM MEETING LINK THAT IS POSTED ON THE REGULAR MEETING AGENDA.

MOTION: FOLLOWING DISCUSSION, UPON MOTION DULY MADE BY DIRECTOR SALMI, SECONDED BY DIRECTOR LOLL, AND, UPON VOTE, UNANIMOUSLY CARRIED, THE BOARD DIRECTED MR. LOCK TO COMPOSE A LETTER TO USFWS STATING THAT USFWS FAILED TO PRODUCE AN OPINION OF VALUE FROM AN APPRAISER OR ENGINEER QUALIFIED TO ASSESS THE VALUE OF WATER UNDER CIRCUMSTANCES SIMILAR TO THOSE AS DICTATED BY THE WSA ON OR BEFORE MAY 7, 2020, AS AGREED TO BY THE PARTIES. USFWS HAS FAILED TO PRODUCE SUCH AN OPINION ON OR BEFORE THE RENEWAL DATE. ACCORDINGLY, APPLGATE'S DETERMINATION THAT \$39 PER ACRE-FOOT OF RAW WATER DIVERTED IS THE ONLY

DETERMINATION OF REASONABLE MARKET PRICE COMPLETED PRIOR TO THE RENEWAL DATE AND THUS CONSTITUTES THE NEW BASE PRICE FOR LEASED WATER FOR THE NEXT 20-YEAR TERM OF THE WSA.

IN THE INTEREST OF SETTLEMENT AND COMPROMISE OF THIS MATTER, THE DISTRICT'S BOARD – AS A COURTESY AND ACCOMMODATION TO USFWS AND NOT PURSUANT TO ANY OBLIGATION – VOTED UNANIMOUSLY TO PROCEED IN THE FOLLOWING FASHION:

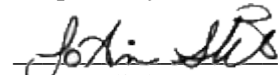
1. THE DISTRICT WILL PAY USFWS \$39 FOR EACH ACRE FOOT IT DIVERTS DURING THE MONTHS OF JUNE, JULY, AND AUGUST 2020.
2. THE DISTRICT WILL VOLUNTARILY SET ASIDE THE DIFFERENCE BETWEEN \$39 PER ACRE FOOT AND \$244.27 PER ACRE FOOT DURING JUNE, JULY, AND AUGUST 2020.
3. THE DISTRICT RESPECTFULLY REQUESTS THAT USFWS COMPLETE THE APPRAISAL PROCESS SET FORTH IN PARAGRAPH 2 OF THE WSA AND ALL OF ITS OBLIGATIONS RELATED THERETO ON OR BEFORE AUGUST 31, 2020.
4. IN THE EVENT USFWS COMPLETES THE APPRAISAL PROCESS SET FORTH IN PARAGRAPH 2 OF THE WSA AND ALL OF ITS OBLIGATIONS RELATED THERETO ON OR BEFORE AUGUST 31, 2020, THE FAIR MARKET PRICE DETERMINED BY COMPLETING THE APPRAISAL PROCESS SET FORTH IN PARAGRAPH 2 OF THE WSA SHALL BE THE BASE PRICE FOR THE NEXT 20-YEAR TERM OF THE WSA.
5. IN THE EVENT USFWS COMPLETES THE APPRAISAL PROCESS SET FORTH IN PARAGRAPH 2 OF THE WSA AND ALL OF ITS OBLIGATIONS RELATED THERETO ON OR BEFORE AUGUST 31, 2020, THE DISTRICT SHALL PAY TO USFWS ON OR BEFORE SEPTEMBER 30, 2020, THE DIFFERENCE BETWEEN \$39 PER ACRE FOOT OF WATER THE DISTRICT DIVERTS IN JUNE, JULY, AND AUGUST OF 2020 AND THE FAIR MARKET PRICE FOR SUCH WATER AS DETERMINED BY THE PARAGRAPH 2 APPRAISAL PROCESS. THEREAFTER, STARTING SEPTEMBER 1, 2020, THE DISTRICT SHALL PAY USFWS THE AMOUNTS REQUIRED BY PARAGRAPH 3 OF THE WSA FOR THE NEXT 20-YEAR TERM THEREOF, USING THE BASE PRICE FOR SUCH TERM DETERMINED BY THE PARAGRAPH 2 APPRAISAL PROCESS.
6. IN THE EVENT, USFWS FAILS TO COMPLETE THE APPRAISAL PROCESS SET FORTH IN PARAGRAPH 2 OF THE WSA AND ALL OF ITS OBLIGATIONS RELATED THERETO ON OR BEFORE AUGUST 31, 2020, THE DISTRICT WILL PAY ONLY \$39 PER ACRE FOOT FOR THE WATER IT DIVERTED IN JUNE, JULY, AND AUGUST, AND WILL PAY USFWS THE AMOUNTS REQUIRED BY PARAGRAPH 3 OF THE WSA FOR THE NEXT 20-YEAR TERM THEREOF, USING \$39 PER ACRE FOOT OF WATER DIVERTED AS THE BASE PRICE FOR SUCH TERM. TO BE CLEAR, THIS IS WHAT THE DISTRICT BELIEVES IT IS CONTRACTUALLY OBLIGATED TO PAY TO USFWS GIVEN USFWS'S FAILURE TO PROVIDE ANY DETERMINATION OF REASONABLE MARKET PRICE ON OR BEFORE THE RENEWAL DATE, AND THE FACT THAT THE ONLY DETERMINATION OF SUCH REASONABLE MARKET PRICE PRODUCED PRIOR TO THE RENEWAL DATE WAS THE DETERMINATION PRODUCED BY APPELATE ON BEHALF OF THE DISTRICT.

ADJOURNMENT:

THERE BEING NO FURTHER BUSINESS TO DISCUSS, UPON MOTION DULY MADE DIRECTOR SALMI, SECONDED BY DIRECTOR PECK AND UPON VOTE, UNANIMOUSLY CARRIED, THE MEETING WAS ADJOURNED AT 11:06 AM.

THE NEXT REGULAR MEETING IS SCHEDULED FOR
July 17, 2020

Respectfully submitted,



JoAnn Slivka

Secretary for the meeting

THESE MINUTES ARE APPROVED AS THE OFFICIAL June 19, 2020 MINUTES OF THE BACA GRANDE WATER AND SANITATION DISTRICT BY THE BOARD OF DIRECTORS SIGNING BELOW:

John Loll

Robert Salmi

Gregg Conlee

William Peck

Michael Smith

ATTORNEY STATEMENT

Regarding Privileged Attorney-Client Communication

Pursuant to §24-6-402(2)(d.5)(II)(B), C.R.S., I attest that, in my capacity as the attorney representing the Baca Grande Water and Sanitation District, I attended the executive sessions on June 19, 2020, and it is my opinion that the portion of the executive session that was not recorded constituted attorney-client privileged communications.

Marcus J. Lock

General Counsel

Baca Grande Water and Sanitation District