

ICR SANITARY DISTRICT
PO Box 2344 Prescott AZ 86302

~ Regular Meeting ~

Wednesday August 12, 2020

Approved August 24, 2020

Date: Wednesday August 12, 2020

Time: 9:00 a.m.

Place: WingSpace Conference Room - 371 Garden Street, Prescott, AZ

1. CALL TO ORDER *Mr. Summers called the meeting to order at 9:00 a.m.*

2. ROLL CALL *Present were: Bob Summers, Board Member; Jerry DeSantis, Board Member; Charles Lehr, Board Member; Bill Whittington (via telephone), Legal Counsel; Bob Busch, District Manager; Isabel Yribe, Clerk*

Mr. Stoner was present, via telephone, for the public session.

3. Mr. Summers made a motion to GO INTO EXECUTIVE SESSION: For discussion or consultation for legal advice with the attorneys of the Inscription Canyon Ranch Sanitary District pursuant to A.R.S. § 38-431.03(A)(3) and discussion or consultation with the attorneys of the Inscription Canyon Ranch Sanitary District in order to consider its position and instruct its attorneys regarding the District's position regarding contracts that are the subject of negotiations, or in conjunction with pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation pursuant to A.R.S. Section 38-431.03(A)(4) re:

A. Talking Rock Land, LLC vs ICRSD, Case No. P1300CV201800380 and Case No. P1300CV201900298 including, but not limited to: the remand to the lower court; possible mediation negotiations with Developer; Possible direction to the attorneys of the Inscription Canyon Ranch Sanitary District relating to the mediation and mediation -related issues; issue relating to pending judgment for attorney's fees; possible settlement options.

B. Possible direction to legal counsel relating to the declaratory action filed by Allied World Specialty Insurance Co., relating to insurance coverage in the Talking Rock litigation; correspondence received from Allied World Specialty Insurance Co., re: same.

C. Status and possible direction concerning Quo Warranto case.

D. Possible ratification of actions taken since November 2018 by less than a quorum of valid Board Members; possible approval of ratification resolution 2020-3.

E. District Manager Contract.

F. Advice on ethics issues.

G. Demand letter for reimbursement of repair costs caused by line blockage at 5300 W. Meem Lane.

H. Possible action regarding lot transfer fees.

I. Status of Statecraft Law.

J. Status of reimbursement demand -Chloe Trail

Mr. DeSantis seconded the motion. The motion passed unanimously without discussion.

During the Executive Session, the public will be asked to leave the Board meeting until the general session is re-convened

CONVENE INTO EXECUTIVE SESSION: 9:02 AM

RECONVENE INTO PUBLIC SESSION: 10:30 AM

1. INTRODUCTIONS & CALL TO THE PUBLIC

Mr. Stephen Polk, legal counsel was present (via telephone).

Mr. Bob Hilb, Mr. Jeff McLeod, Mr. John Koksha, Mr. Jimmy Stoner, Mr. Barry Meltzer, Mr. Ray Damasek were present in the audience. (Via teleconference)

2. REPORTS

- **Report from the Chairman** *Mr. Summers read the following:*

“I would like to take this opportunity to provide some background to the user fee bill received or soon to be received by the Sanitary District users. The 2019/2020 budget that ended June 30, 2020, was extremely optimistic, but in legal fees alone it fell approximately \$144,000 short of actual expenses. The 2019/2020 budget needs required this board to raise the cost to residents and property owners. Unfortunately, while some minor progress has been made on the multimillion dollar lawsuit initiated several years ago by Talking Rock Ranch, this lawsuit has driven the need for the Board to budget attorney fees to cover the ongoing litigation plus monies to cover legal fees awarded to Talking Rock Ranch in a prior action. Additionally, Sanitary District Board actions from June 7, 2019 into May 2020 ruled unlawful by Judge Mackey, have cost us, the Sanitary District residents, approximately \$70,000 and this number will continue to grow as your current Board works to ratify and fix issues passed during this period. You can see, just the two items I have mentioned cover about \$214,000. When you consider the entire Ad Valorem tax in the 2019/2020 budget was \$363,620 and the entire budgeted revenue was \$592,070; \$214,00 in unbudgeted expenses creates a mess for the next year’s budget. We apologize for the need for increased revenue for the 2020/2021 budget, but it was the responsible action for this board to take. The user fees will help to solidify the financial position of the District and they also establish a revenue stream the Water Infrastructure Finance Authority (WIFA) recognizes, hopefully enabling the Sanitary District to look into grants and/or low interest loans in the future. This Board takes no pleasure in having to increase the cost residents pay the Sanitary District and we are working to get Attorney fees and other costs under control to return next year’s budget needs to a reasonable level. On a positive note, the new accounting firm hired by this board has identified over 80 users not previously on record and they have also found a couple of cases where users double paid a fee. The unknown accounts will receive requests to fill out a user application and pay the required fees, those that have double paid will receive a refund. I hope this information is beneficial to the District residents”. That concluded the Chairman’s report.

Mr. Meltzer, resident, stated that the Board was obligated to give the District residents a 60-day prior notice before billing. Mr. Summers stated that the option to bill the residents for user fees was on “the books” for approximately three years. Mr. Meltzer stated that he felt the lack of a 60-day notice was neither fair, nor legal. Mr. Stephen Polk, legal counsel, asked for the basis of Mr. Meltzer’s concerns. Mr. Meltzer stated that under the rules for a sanitary district in the Arizona Corporation Commission, a 60-day prior notice is required. Mr. Polk stated that the

District was exempt to that rule and operated under the rules of Title 48 of the Arizona Revised Statutes. Mr. Polk also stated that the District held an adoption hearing recently and was published in the newspaper, as required by state law. Mr. Meltzer asked for the date of the publication, as he recently bought property in the District. Mr. Summers stated that it was published approximately on June 10, 2020, twenty days before the June 30, 2020 Rate and Fee Hearing. Mr. Jeff McLeod stated that the actual date of publication was on June 5, 2020.

- **Report from District Manager** *Mr. Busch stated that the plant flow for the month of July was 2,100,000 gallons. He stated that the average flow was 67,743 gallons per day and that the highest day was on July 5, 2020 with over 85,300 gallons per day. Mr. Busch stated that there were eight days with over 75,000 gallons per day. Mr. Busch stated that Wallace and Associates Accounting found 718 active accounts and 77 accounts are pending. He stated that approximately 82 accounts were billed \$35 for unbilled and unpaid property account transfer fees. Mr. Busch stated that the audit cost the District \$2,000. Mr. Busch stated that he transferred \$200,000 from the Unrestricted Account to the General Fund cover District expenses. He also stated that he transferred \$4,250 from the Restricted Account to the General Account to cover the reimbursement of Developer Lot fees that were overpaid. Mr. Busch reported that the District will pay about \$1,800 for renewal of the laboratory permit. He stated that due to a change in credit card expiration dates the website was inadvertently down for a couple of days and apologized for the inconvenience to the District's residents. Mr. Busch stated that the website was back online.*

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

Minutes of Meetings

- **Minutes of Public Meeting -July 10, 2020**
- **Minutes of Executive Session – July 10, 2020**
- **Minutes of Public Meeting -July 20, 2020**
- **Minutes of Executive Session – July 20, 2020**

Reimbursement to District Manager (\$167.98)

- **WingSpace- Conference Room and Speaker Phone rental (August 12, 2020) (\$75.00)**
- **Walmart – Copy Paper (\$12.99)**
- **GoDaddy – SSL Certificate Renewal (\$79.99)**

Mr. Summers made a motion to approve the consent agenda once Ms. Yribe corrects the typographical errors, as specified, on the meeting minutes. Mr. DeSantis seconded the motion. The motion passed unanimously without discussion.

4. OLD BUSINESS - DISCUSSION & POSSIBLE ACTION RE:

A. Talking Rock Land, LLC vs ICRSD, Case No. P1300CV201800380 and Case No. P1300CV201900298 including, but not limited to: the remand to the lower court; possible mediation negotiations with Developer; Possible direction to the attorneys of the Inscription Canyon Ranch Sanitary District relating to the mediation and mediation -related issues; issue relating to pending judgment for attorney's fees. *Mr. Summers made a motion to authorize Mr. Hoffman, legal counsel, to proceed as instructed in the executive session. Mr. DeSantis seconded the motion. Mr. Bob Hilb asked if the board would give him a summary of the court proceedings. Mr. Summers asked Mr. Polk to respond to Mr. Hilb's request. Mr. Polk stated that the District representative, legal counsel, and the insurance carrier representative attended the mediation scheduled between the District and Talking Rock Ranch, LLC. Mr. Polk stated that both parties were unable to reach a resolution. He stated that Talking Rock Ranch, LLC attempted to garnish the monies from the District, but the District objected. Mr. Polk stated that the District was exempt from*

garnishment and that the court quashed the matter. Mr. Jeff McLeod stated that he was aware that the District owed \$50,000 for one court action but was confused about the District owing \$86,000. Mr. Summers clarified that there was another \$36,000 in attorney's fees for the appeals action in addition to the \$50,000 mentioned. Mr. McLeod stated that if the court documents were posted on the District website, the residents would know what was going on. Mr. Summers stated that he did not have a problem with posting the court documents on the District's website. Mr. Hilb asked if the District was accruing interest on the \$86,000 owed. He also asked if the interest was more than what the District was paying to have further discussions with Talking Rock Ranch, LLC. Mr. Summers stated that the Board did not have any numbers available at this time. Mr. DeSantis that an active court case limited the amount of information that the Board could speak on. Mr. Hilb stated that he asked the same questions before the matter went to court. Mr. Summers stated that the Board was not in favor of pursuing the matter, but legal counsel informed the Board that it had a fiduciary duty to do what most benefited the District's residents. The motion passed unanimously without further discussion.

B. Possible direction to legal counsel relating to declaratory action filed by Allied World Specialty Insurance Co., relating to insurance coverage in the Talking Rock litigation. *No action was taken for this agenda item at this time.*

C. Status and possible action concerning Quo Warranto case. *No action was taken for this agenda item at this time. Mr. Summers asked Mr. Busch to remove this item from the agenda.*

D. Possible formation of work groups/committees to develop recommendations for Action by the Board including forming groups to address, board expansion to 5 members, future plant requirements, financial planning, ICRSD website and newsletters, and to accept public group suggestions. *No action was taken on this agenda item at this time. Mr. Jeff McLeod stated that he would like to be on the financial planning committee. Mr. McLeod also stated that a newsletter would be worth discussing as the District had a lack of participation from its residents. He also stated that most people do not know what is going on regarding District business. He stated that perhaps several newsletters would increase knowledge among its residents. Mr. DeSantis stated that he was okay with the idea of multiple newsletters.*

E. Possible action regarding lot transfer fees. *There was no action taken for this agenda item at this time. Mr. Summers asked Mr. Busch to remove this item from the agenda.*

F. District Manager Contract. *Mr. Summers stated that Mr. Busch's employment contract automatically renewed at the end of the term. There was no action taken on this agenda item at this time.*

G. Possible ratification of actions taken since November 2018 by less than a quorum of valid Board Members; possible approval of ratification resolution 2020-3. *Mr. Summers stated that this item was passed during a previous meeting. He stated that Mr. Whittington was finalizing the letter and would submit it to him so that he could sign it. Mr. Summers also stated that Resolution 2020-3 would be posted on the District's website once completed. Mr. Busch asked if the remaining items to be ratified would be included in the document. Mr. Summers stated that only the items that were previously approved would be in the document.*

5. NEW BUSINESS - DISCUSSION & POSSIBLE ACTION RE:

A. Possible demand for reimbursement of repair costs caused by line blockage at 5300 W. Meem Ln. *Mr. Busch stated that the line was excavated to determine where the problem was and the property owner's plumber found rock and debris in the line. Mr. Busch stated that it cost the District*

approximately \$2,515 to assist in that effort. Mr. Busch asked the Board for authorization to send a demand letter to the property owner for that amount. Mr. Summers made a motion to authorize Mr. Busch to send the demand letter to the property owners at 5300 W. Meem Lane. Mr. DeSantis seconded the motion. The motion passed unanimously without further discussion.

B. Moving the ICRSD website builder from GoDaddy to Wix.com. Mr. Busch stated that GoDaddy would no longer provide support for their website builder program. He stated that he sent the Board members samples of pages developed from the Wix program to review. Mr. Busch stated that it would cost the District between \$200 and \$400 to make the transition from GoDaddy to Wix.com. Mr. Summers made a motion to authorize Mr. Busch to move the ICRSD website builder from GoDaddy to Wix.com. Mr. DeSantis seconded the motion. Mr. Barry Metzler stated that Mr. Busch should make sure to ask GoDaddy for the District's domain name. Mr. Busch stated that he had all the necessary items to complete the transition. The motion passed unanimously without further discussion.

C. Review and possible approve of financial reports for June 2020. Mr. Busch went over the Budget vs. Actual figures with the board members. Mr. Busch also went over the financial reports and answered any questions they had. Ms. Cheryl Ibbotson of Wallace and Associates Accounting stated that the District, as of yesterday, had a total of \$376,192.39 in its accounts.

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| Chase Bank Account | \$34,718.63 |
| General Fund Account | \$132,993.69 |
| UnRestricted Capital Account | \$131,649.98 |
| Restricted Capital Account | \$76,830.09 |

Mr. Busch stated that the County has District had yet to collect about \$7,000 in outstanding taxes as of the end of June. He also stated that the user fee bills have gone out to the District's residents. Ms. Ibbotson stated that she has received 41 calls thus far from residents questioning the bills. Mr. Busch stated that the calls were mostly residents confirming the validity of the bills they received. He stated that the residents he spoke with agreed to pay the bills. Mr. DeSantis made a motion to approve the Financial Reports for June 2020. Mr. Lehr seconded the motion. The motion passed unanimously without further discussion.

D. Status of Statecraft Law. Mr. Summers made a motion directing legal counsel to proceed as instructed in the executive session. Mr. DeSantis seconded the motion. Mr. McLeod asked the Board who Statecraft Law was. Mr. Summers stated that Statecraft Law was the legal counsel involved in the Quo Warranto case. The motion passed unanimously without further discussion.

E. Status of reimbursement demand -Chloe Trail There was no action taken for this agenda item at this time.

6. ADJOURNMENT

Therefore, the meeting was adjourned at approximately 11:15 a.m.

Board Clerk

Date