

**Upper San Pedro Water District Organizing Board
October 19, 2009
Cochise County Foothills Complex**

I. CALL TO ORDER:

Meeting was called to order at 6:30 P.M. by Chairman Rutherford.

II. CALL OF ROLL:

PRESENT:

Mike Rutherford
Steve Pauken
Holly Richter
Mary Ann Black
James Herrewig
Carl Robie
Mike Boardman
Susan Shuford

ABSENT:

Rick Coffman
John Ladd

OTHERS PRESENT:

Tom Whitmer
Britt Hanson
Dave Seward, Cochise County Procurement Director
Eve Halper, BOR
Mayor Bob Strain, Sierra Vista
Councilman Pat Call, Cochise County

III. REQUEST FOR APPROVAL OF MINUTES:

September 21, 2009, Meeting

Jim Herrewig moved to accept the Minutes of the Meeting of September 21, 2009.
Seconded by Steve Pauken.

Discussion: Richter requested one change from Robie to Committee on last sentence of 2nd page. Change made and accepted by Board.

VOTE: Unanimous in favor. Minutes of September 21, 2009, were accepted. No objections heard. Richter abstained (as she was not present at the September 21, 2009, Meeting.)

IV. PUBLIC OUTREACH:

Carl Robie spoke with Dave Seward (Cochise County Procurement Director) because of the request that the candidates be interviewed by the Board at a public meeting. He stated that the

proposals, under the County processes have to remain confidential until an award is made. He stated that interviewing the three in a public meeting breaches the confidentiality requirement. In addition, to conduct the interviews, the candidates must each be asked the same questions. Further, there were candidates that needed to be interviewed by telephone. He then introduced, Dave Seward, who attended the Meeting in order to discuss the procedures further.

Seward stated that the requests for proposals were prepared for the eight candidates. The Evaluation Committee (Robie, Richter and Herrewig) reviewed the eight candidates and chose the top three (3) firms that were shortlisted. The next step would be that the Evaluation Panel facilitated by Mr. Seward would bring in the candidates for an interview. The candidates would be asked questions, they could provide a power point presentation and then, there would be a question and answer session. The Evaluation Panel would then, make a selection as to the number one candidate.

Seward addressed the confidentiality issue and stated that one of the reasons for confidentiality is about the cost proposals. They should remain confidential because the Board needs the most qualified firm to provide the solution for the requirements of the Board.

Seward recommended that the County process be followed with the Evaluation Panel (facilitated by him) interview the top three (3) candidates and choose the top candidate for an award. He stated that this doesn't need to be done and that the Board or the Panel could just choose the top candidate from the three.

Rutherford asked if other Board Members can attend the sessions. There may not be a quorum of Board Members and they would not be able to vote.

Robie made a motion that the County policy be followed, that the Committee (Robie, Herrewig and Richter) meet and interview (if determined to be necessary) and make a selection to the Board. Pauken seconded. Rutherford asked for any discussion or concerns. None heard.

VOTE: Unanimous in favor. No objections heard.

V. *ELECTIONS PROCESS:*

Carl Robie talked with Tom Schelling (Cochise County Elections) and confirmed that there is not already a pre-existing list of minority designees. Robie stated that the jurisdiction of this anticipated election is problematic. Robie suggested that he would meet with the Minority Elections Officer and request input. Robie believes that the Board may be premature in this. Boardman requested clarification of the issue being discussed. Rutherford advised about the definition of the polling locations. Robie stated that Arizona is required by the U.S. Department of Justice that elections be reviewed prior to going to ballot and one issue is minority participation. Boardman asked if this would be the responsibility of DOJ. Robie stated that it is the responsibility of the people/group asking for the election. Boardman suggested that this duty could be included into the Outreach Coordinator's duties. Rutherford stated that this doesn't coincide with an Outreach duty. Boardman inquired about whether the Board has to define the polling places or does the County. Rutherford said that the County defines the places. Robie stated that the identification of the minority designees is the responsibility of the Board, but the selection is not.

Boardman stated that this difficulty has been pointed out by him on numerous occasions because of the geographic boundaries. Others agreed that this difficulty has been discussed on numerous occasions by multiple members of the Board. Robie pointed out that Whitmer and Carr are working with the County and Whitmer stated that the County now has the GIS coverage of the District.

Richter inquired about the steps required that need to be accomplished prior to the identification of the minority designees. Robie stated that he is willing to work on the definition and starting the search for designees.

Pauken suggested that the three (3) City Clerks in the municipalities in the District might be able to assist in the identification of the minority participants, how they are chosen and who has been chosen in the past.

VII. BOR IGA:

Rutherford advised Eve Halper (BOR) that there were concerns (at the last meeting) about whether the Board is in a position to enter into any agreement with BOR (or anyone else) and whether she had any information and/or opinion that counters that. Halper stated she is not an attorney. She pointed out that one of BOR's main conclusions was that any type of infrastructure that is going to serve the local community, that is going to be built, will need for there to be an entity to administer, fund, manage, repay the capital costs, and the various other tasks. She stated there is no such entity in the area. She understands that is why the Water District was created.

Rutherford said that she was correct to a point. He stated that would be a function of the Permanent Board. He stated that a Permanent Board would have that responsibility (through the election process). He stated that it is the overall opinion of the Board that they will be making recommendations to the Permanent Board, but not to bind the Permanent Board in to any agreements. He stated that this Board was in the position of planning and recommending.

Halper inquired whether Whitmer has any opinion about this. Robie stated that several members of the Board were involved with the legislation.

Robie pointed out that the District has not been created and will not be until the voters elect it. He further stated that the Board can plan and recommend for the Permanent Board when and if it comes about. He stated further that this Board has a letter with the BOR that says there is a mutual interest and that we are mutually involved in planning for the future with regard to water augmentation. He stated that is sufficient for what the Board needs to do as an Organizing Board. Halper stated that the Board should obtain a legal opinion. Halper further stated that the Feasibility Study will be started this year, that there will be an IGA with partners.

Robie asked if the Organizing Board should be on the management team. Halper stated that the whole point of the Feasibility Study is to see if some sort of infrastructure makes sense in Sierra Vista and whether it can be practically constructed.

Richter suggested that Britt Hanson be consulted for a legal interpretation of the legislation.

Richter further stated that a further question would be how can the Board best work with BOR. She stated that one way is to coordinate and communicate well on the public outreach process. Rutherford stated that it doesn't appear that it is a concern to work with and communicate with BOR

and recommend to the Permanent Board. He believes that any obligation would be for the Permanent Board to enter into.

Mayor Bob Strain (Sierra Vista) stated that there is going to be a meeting over the memo of understanding that sets up the project management team and it will likely be the Organizing Board and the Upper San Pedro Partnership will be the stakeholder groups. He stated and Halper concurred that the meeting will be with ADWR, BLM, Fort Huachuca, City of Sierra Vista, Cochise County is welcome, Organizing Board and the Nature Conservancy.

Boardman stated that the way he understands the legislation, this Board can legally bind itself, but it cannot bind the Permanent Board. He stated that it seems paramount that the feasibility study is a major governmental effort and ongoing operation that the Organizing Board should be involved. He stated that all parties must understand that the Board cannot bind the Permanent Board and anything done expires with the Organizing Board's end or the election of the Permanent Board. He further stated that at this time, the Board represents the community as appointed by the Governor. Rutherford further stated that the Board can be involved and understanding the possible solutions and recommending to the Permanent Board, but not by binding the Permanent Board. He doesn't feel there is merit in signing any agreement because it doesn't carry any weight. At the dissolution of the Organizing Board the agreement doesn't mean anything so the Board should participate and work alongside and be involved in meetings and have knowledge of the options.

Robie stated that the Organizing Board does have a stake and to be involved in the process and make the Board's position clear. Richter stated that the Board could do more by contributing resources in terms of the outreach process about information that could be helpful to the Feasibility Study.

Boardman stated he has seen a proposed IGA written by the City. He says he hasn't seen anything else. [NOTE: The IGA that was provided by BOR (Halper) was provided to the Board on or about July 28, 2009, via email in anticipation of the August 3, 2009, Work Session.] He said that the proposed IGA implies that there is a financial buy-in to have a vote. Boardman stated that since the Governor appointed the Board that should carry some weight. He stated that the Organizing Board could have potentially three more years to represent the Governor and the community. He said it is his opinion that the Organizing Board can commit whatever it can until possibly 2012. Boardman stated that the IGA does not mean a commitment of money; that it could mean a commitment of time, opinion and/or other resources at the Board's disposal. He stated that the Board should not be a spectator in the process.

Rutherford stated that the Board is certainly involved and is participating. He stated that the knowledge gained by the Board over the many months certainly lends itself to a value for benefit of participation with stakeholders that can financially participate.

Richter pointed out further the need to talk with Attorney Britt Hanson (Board's counsel) about the ability of the Board to enter such an agreement.

Robie pointed out if the Board signs an IGA as a part of the project management team to manage the Feasibility Study then, who among the volunteer Organizing Board will attend all meetings. He stated further that if the Board would sign and IGA, if accepted as a non-funding contributor then, the Board needs to have someone at every meeting.

Black requested that any updated copy of an IGA be provided to the Board for further review. Halper has received comments – the comments contradict each other. However, she will send the IGA to the Board’s Assistant. (NOTE: The updated IGA with comments was emailed to the Board on October 21, 2009.)

Mayor Bob Strain made a comment about a project up north, but his comment was muffled.

Rutherford requested that the Board review the IGA and be prepared to discuss it further at the next session. Further, he stated that Hanson be consulted with about the legal ramifications of the Board entering into any such agreement.

Councilman Pat Call stated that the County is looking to participate and the IGA is going to be changing in the next 30 to 60 days.

Boardman stated since there is a draft in existence, then, he suggests that the Board make comment to BOR regarding the terms that would be of interest to the Board.

X. CALL TO THE PUBLIC:

STEVE HESS, Sierra Vista Herald: He stated that he has one simple question of Mayor Bob Strain and Mr. Pat Call – Is it the intention of the Board of Supervisors and the City of Sierra Vista to eventually control this Board and any Permanent Board that may be established? He stated that he wanted an answer now and in the presence of the Board and the public.

NOTE: He was told by Pat Call that this is a call to the public and that this isn’t an appropriate question. He was further advised of this by Chairman Rutherford.

Hess stated further that what he is hearing in the discussion is that the City of Sierra Vista and the County of Cochise wants to eventually have the power over this Board and any Permanent Board that may come into existence. He stated that if that is true, than the state law establishing the Board is worthless.

TRICIA GERRODETTE: She wanted to express her surprise and disappointment that after promptly emailing everyone the IGA and a quote about the Board’s powers that at tonight’s meeting she hears personal opinions expressed rather than having had a consultation and having obtained a legal opinion on what the Board could or could not do. She stated that for clarification the Board is not being asked to sign anything, but being asked to comment on a working paper so that the Board’s points of view can perhaps be included. But if the Board does not comment, they won’t be heard.

GENE FENSTERMACHER: He stated that it appears to him that the copy (of the IGA) that Boardman is commenting on is the “mock up” copy that the City is working on. He stated that the IGA that was originally provided to the Board (on or about July 28, 2009) is different and doesn’t have all of the marks.

Chairman Rutherford stated further that the IGA will be received by Shuford and forwarded to the Board.

XI. FUTURE MEETING DATES AND LOCATIONS:

Chairman Rutherford confirmed the next meetings would be as follows:

Work Session: November 16, 2009, 6:30 P.M. at Cochise County Foothills, **SIERRA VISTA**, Arizona

Meeting: November 23, 2009, at 6:30 P.M. BOS Conference Room at **BISBEE**, Arizona

***Note: Locations.**

XII. ADJOURNMENT:

There being no further business Chairman Rutherford adjourned the Meeting at 7:30 P.M.