

**Upper San Pedro Water District Organizing Board
November 16, 2009
Cochise County Foothills Complex**

I. CALL TO ORDER:

Meeting was called to order at 6:30 P.M. by Vice-Chairman Holly Richter.

II. CALL OF ROLL:

PRESENT:

Steve Pauken
Holly Richter
James Herrewig
Carl Robie
John Ladd
Rick Coffman
Mike Boardman
Susan Shuford

ABSENT:

Mike Rutherford
Mary Ann Black

OTHERS PRESENT:

Tom Whitmer
Tom Carr
Dave Seward, Cochise County Procurement Director

III. REQUEST FOR APPROVAL OF MINUTES:

October 19, 2009, Meeting

Jim Herrewig moved to accept the Minutes of the Meeting of October 19, 2009.
Seconded by Rick Coffman.

VOTE: Unanimous in favor. Minutes of October 19, 2009, were accepted. No objections heard. Coffman abstained (as he was not present at the October 19, 2009, Meeting.)

IV. PUBLIC OUTREACH:

Dave Seward (Cochise County Procurement Director) gave an update for the Outreach Contract. Please note the proposed Contract and two attachments/addendums were emailed to the Board on Tuesday, November 17, 2009. Seward stated that the eight firms were shortlisted to three by the committee. The recommendation had been at the last meeting to interview the top three firms. After considerable debate, Gordley Design Group, Inc. was selected. There were strengths and weaknesses with each firm. Negotiation in advance based on the addendum with Gordley Design

Group regarding any work the Board might need was completed so that it would not be necessary to negotiate after the fact. The base award of the contract was for \$49,840.00. Subsequent to the interview, an addendum was added for additional work not to exceed \$20,298.00. This might be for additional public meeting (outside of the scope in the contract), an additional survey if necessary and for Gordley to prepare and file a report.

Coffman asked if the amount is inclusive of all reimbursables. Seward said yes it is all inclusive. There should be no additional fees outside of the base contract and the potential of the items in the addendum.

Boardman asked how the contract would be administered, had that been defined, who would authorize work under the addendum, who defines the deliverables and who accepts the deliverables.

Richter pointed out that administration would be an internal working of the Board and would more than likely not be in the contract. According to Seward, the contract does not include how the Board will internally function. It is implied that the firm will be working directly with the Board. Robie stated that it is not realistic to think that the firm will come to the Board two times per month at the expense of the Board.

Richter said that the way it is proposed at this time is that Rutherford as the Chairman will sign the contractual invoices and other needed items. She said that it is an internal decision of how the Board will support that. Seward suggested that someone act as the project manager. Robie said that the firm does anticipate meeting with the Board on several occasions.

Boardman asked what performance meets the standard. Seward said that they will submit itemized invoices for work done and they are to be reviewed by someone as decided by the Board.

Coffman asked about the duration for the work to be done. Seward said eight months.

Boardman said that the Board has a fiduciary duty on the spending of the public's money. Richter asked Boardman if it was his opinion that a subcommittee work with Mike as the Chairman and signatory and that bigger financial decisions be brought to the Board. Boardman felt that the logical choice would be the ones who are supervising or managing the outreach effort. Richter said the subcommittee would welcome offers for others to be involved. Robie said that there wasn't a conclusion that the subcommittee would be managing the outreach effort, but only to make a selection of the outreach person/firm.

Boardman said he didn't feel that it was fair that the three on the subcommittee be required to have the extended duty of managing the outreach effort. Boardman volunteered to be involved.

Richter asked that if the three members of the subcommittee continue to move forward, that the full Board would be kept informed of any meeting should there be interest in attendance, that it will be the subcommittee's responsibility to update the Board as to progress.

MOTION: Carl Robie made a motion to accept the recommendations of the selection committee of the contract for Gordley Design Group, Inc. and authorize Rutherford to sign the contract. Seconded: Mike Boardman.

Discussion: Coffman asked if the addendum amount is a combination of additional fees and reimbursables. Boardman asked if there are additional deliverables included in the addendum. Robie said it is for built in for additional meetings for attendance, reimbursables, if a second survey is necessary, and reassessment of the public if necessary.

Robie stated that the purpose of the Addendum is so that the contract does not have to be renegotiated or rewritten. Richter stated that it gives the Board flexibility.

Boardman stated that the contract itself does not specify who on the Board is authorized to accept deliverables or authorize extra work. Richter said that it names Rutherford as the signor through the contract.

Coffman said that his only concern is that on the extra public meetings is that we are not signing that now, as it is just an estimate of what might happen in the future. He said the Board can modify it in the future at the time it becomes necessary. He stated that the Board may not need three additional meetings. Robie said the selection committee felt it was reasonable to consider the additional possibility of meetings after a review of each of the eight (8) proposals.

Coffman asked the committee if there was anything else that they felt may be added to the scope of work. Robie said because the committee had the advantage of reviewing eight (8) proposals, the committee was able to use those to make an assessment and give consideration to additional items. Richter said that she feels that Gordley is the right team and includes the scope of work which will be required. Herrewig said the committee discussed thoroughly the eight (8) proposals, the pros and cons of each, which also allowed the assessment made by the committee to have the awareness of what it felt all possibilities within the scope of work that could be necessary. Herrewig further thanked Seward and the County for their assistance through the process.

Coffman said that he is concerned that the contract does not designate who and how the Board is spoken for on an interim basis or a long term basis. He said that could be an internal designation.

Boardman stated that if the contract is approved, then, he has a motion on how the internal process is controlled. He feels that bears discussion. Coffman stated that Gordley is signing on to do this and they should want to know who and how they will be managed. Coffman said that he would like for it to be spelled out. Pauken stated that what the Board is being asked to do is to award a contract between the Board and Gordley. Pauken said that the process for administration of the contract is not typically in the contract. It is typically an internal set of governing policies that is adopted by the governing Board. He said that it is unnecessary in light of the contract for the governing policies to be included therein.

VOTE: All in favor. No objections heard.

Richter stated that she believes that it is important that the Board get the internal processes clarified prior to the first meeting with Gordley. Boardman stated that since he has not reviewed the contract as it was just provided, and he felt that was a shortfall in the process. Richter stated the contract was just completed in the late afternoon of today, Monday, November 16, 2009. Boardman stated that he voted in favor of the contract based on his confidence in the three member selection committee.

Boardman stated that his recommendation is that the Chairman (Rutherford) is the only authorizing approval in any contractual matter. He stated that secondly the Board should appoint a three member subcommittee whose responsibility is outreach and as a subset of those responsibilities they be responsible for supervising the outreach contractor. They should report to the Chairman. That would give the Board three people who work with the contractor and insure that the contractor is consistent with the Board's overall outreach goals. He stated further that it also gives the Chairman and the subcommittee a check system. Richter asked if it was believed that the firm could deal with three people. Coffman said yes. Boardman said it is important to have one person who is ultimately responsible. He said that any recommendations made by the subcommittee be made in writing and possibly have the full Board's approval or the committee. Boardman said that there can be no space between the contractor and the Board so that the contractor isn't given free rein. He also feels that the outreach committee should be authorized to deal directly with Rutherford in executing the base funds of the contract. He said that as a point of order nothing outside of that would be spent unless authorized by the Board. That also keeps the Board informed. He said the Board can keep informed if they want to as well. He felt it should be a full Board discussion.

Robie stated that the limitation on outreach does not extend to yes or no advocacy on the election. It is information exchange with the public. It is to make sure that the public gives input to the Plan and that the public understands what the election is about.

Boardman stated that he thinks that Rutherford should be authorized to approve the execution of anything necessary with the consent of the committee.

Carr stated that what Boardman is saying is consistent with the contract. The contract says that each invoice must bear witness certification by an authorized USPWD representative. He said that authorization can be extended to the subcommittee that Boardman is suggesting. Then all notices, receipts and invoices go to the Chairman (Rutherford) for actions. Boardman said that his suggestion is that only Rutherford be allowed to sign those authorizations.

Coffman asked if the invoices would still need to be signed by him as the Treasurer (as they have been in the past). Shuford (Board's Assistant) stated that in the past after a bill is submitted to the Board and receives approval at a Meeting, a Demand for Payment is completed by her and forwarded to Coffman for his signature/approval. Then, Coffman forwards the Demand for Payment with the attached invoice to the County for the payment. Pauken stated that Coffman has not been approving the payments in the past (the Board has done so at Meetings), but he is the signor that is required on the County Finance form as the authorized person because he is Treasurer.

MOTION: Boardman made a motion that the three members of the selection committee (currently Richter, Robie and Herrewig) supervise the contractor, that they will continue and update the Board as to the progress on an interim basis and advise the Chairman for all signatures required for the work to proceed within the base contract amount of \$49,840.00. Further, that the Chairman is the sole person who shall be allowed to authorize any payment of invoices under the contract with the advice and majority consent of the selection committee. Any expenditure beyond the base amount in the supplemental addendum requires full Board approval. Coffman seconds the motion.

Discussion: Coffman stated that it would seem that a designation of whether the committee has to be a majority or unanimous consent. Pauken said that he didn't feel that the Motion should micromanage the process.

Boardman stated that it is important to protect Rutherford in the process and give him sufficient authorization to sign what is necessary.

VOTE: Unanimous in favor of the above motion. No objections heard.

Carr asked when will ADWR be needed in order to consult with the outreach consultant. Richter said she would estimate at the first of the year. Carr further asked who from ADWR will be needed at the public meetings. Robie said that they can discuss that with the outreach consultant.

V. ELECTIONS PROCESS:

Carl Robie had no further information to present at the Meeting (as they were busy with over rides). Robie is planning to talk with the Special District's person, particularly the person who handles the minority issues.

It was further pointed out by Robie that the Elections Plan has to be accomplished yet. Pauken stated that much of the election plan will defer to the Arizona statutes. This would also outline the dates required.

Richter asked if there are individuals on the Board who will be willing to work as a subcommittee to work towards the benchmark dates. Boardman stated that he would be a member of the subcommittee with regard to a plan of action.

Richter stated that it may be important for Tom Schelling to return to talk with the Board further and outline the estimated timeline based in statute. Robie will work with Schelling to appear for a session to talk with the Board in December (actually he will see if Schelling can appear on November 23, 2009). Richter asked if Schelling could help outline the Plan for the Board. Robie will talk further with Schelling.

Richter urged the Board to thoroughly review the previous handout that Tom Schelling provided to the Board when he came and spoke and outlined the process.

VII. BOR IGA:

Summaries of previous drafts were emailed again to the Board on or about October 21, 2009. Richter asked where BOR's process was and what consideration. They are open to input from the Board. Richter states that it is important to let BOR know the Board's position.

Boardman stated that he is concerned about the provision that the parties in the group's votes are based on the amount they input financially. BOR's study purports to study the whole of the watershed. He said clearly Sierra Vista has an interest. He states that the Board was appointed by the Governor and that the Board represents the community. He said that the Board should not be kept out of the voting because of financial input. Richter asked for Boardman's input and ideas on how best to be involved and participate constructively. He said that someone or a committee needs to be chosen to attend the meetings. He doesn't see how the Board can afford to stay out. He doesn't think the Board should accede to not having a full vote in the deliberations of the study. He said BOR may overrule

that, but our response back should be the Board should be a full participant regardless of the financial input it brings at this time.

Richter stated that the Board brings a potentially a unique prospective as a possible recipient in the process in its participation. Richter stated it is important that the Board give input, and how we see the Board's role, the support that the Board can give and the proposed contribution of the Board.

Pauken stated that since a contract has just been approved that is substantial for the Board regarding public outreach and the results will provide BOR and others with valuable input and he recognizes in the IGA the possibility of in-kind services or contributions. Assuming that the whole point of the Board's spending this time in order to organize the Water District, Pauken believes that providing public information as a part of the outreach process will be valuable enough to BOR to allow the Board's input. He stated that the Board can offer only what it is able to offer. Richter stated that is important in stating what it is the Board can offer. Richter suggested the possibility of preparing a letter to BOR of the desire to participate and offer and assist with coordination of the Feasibility Study.

Richter asked is there any reason not to participate with BOR. Ladd said that a study has already been done. He does not feel there is justification for another study to be done since there are no viable options within the first study and BOR said that. Richter stated that sharing information is a positive thing in order to keep communication open and Ladd agreed.

Robie pointed out that there is confusion regarding stakeholders, project management team and other various groups. Is it a plan or a study? The Board should declare itself a stakeholder should the District come to fruition. Robie said that he does not feel the Board should be arguing that somehow the Board be the study team and/or do any of the work as one of the partners. Robie said the Board is for organizing. Robie said if that gets confused then, it will be hard to explain to the public what the Board is doing for an election if the Board creates an impression if the Board is already "it." Robie said we should talk about what the District would do.

Richter stated for clarification that it sounds like the Board wants to be a stakeholder, and to communicate and to share information, some of which may be the outreach process.

Coffman asked if the Board is asking for a position on the project management team. There were multiple no responses heard. Pauken said we would declare ourselves as stakeholders and share information only.

Boardman asked if the status of stakeholder guarantees us access in all of BORs deliberations. Robie pointed out that the meetings are public. Boardman stated that there was a voting process in the IGA he reviewed. Robie further pointed out that the Board is for planning and organizing. Whitmer pointed out that there is no voting involved in the Feasibility Study. He said that at the end of the study, then, there will be a decision that has to be made by the principals about whether they want to proceed to the next phase which is construction. That is very far out in the future and it has not been decided who will make that decision.

The Feasibility Study is only to see if it is feasible to pursue any of the augmentation alternatives. Boardman said it seems so closely related. Further, Boardman said that the Organizing Board came up with projects that should be considered.

Richter asked, pursuant to the last meeting if there had been clarification from Britt Hanson (as attorney to the Board) about the Board entering an IGA. It was noted that Hanson is away for a personal matter at this time.

Herrewig stated that he believes that the Board is tasked with all it can handle at this point.

MOTION: Robie made a motion that the Organizing Board be a stakeholder, and that the Board is willing to share what the Board is doing for the Permanent Board's possible inception. Ladd seconded the motion.

Discussion: Boardman said that the motion does not go far enough. Whitmer said that as a stakeholder, the Board will have influence. Boardman said the way he reads the IGA the biggest influence has the most money invested.

VOTE: Richter called for a vote. Boardman objected.

X. CALL TO THE PUBLIC:

TRICIA GERRODETTE: I have been involved with the League of Women Voters for many years. They are not partisan. They are political. They sometimes take stands on issues and they run forums. They do education and outreach. They might have a role for the Board in whatever election cycle you wind up having this before the voters. She is more than half way certain that to be on the November ballot, you have to have text into the County by July. She is pretty dubious that the Board will be on the 2010 ballot. You will be finding that out in the next month or so. She has informed the local league that at some point this will come before the voters and that they would be able to put on some public forums for the Board.

GENE FENSTERMACHER: What is the Board looking for out of the study? What kind of recommendation. The Board already has its own conclusions that we may have CAP water, desalinization and detention basins. Those seem to be the three options. I keep asking myself the same question. Is there something more than that? The Study in 2006 is the best one he has seen. Where can detention basins be put....downstream....downstream? Incidental recharge as much as you want. If you need a copy of the report, I can provide it to you.

XI. FUTURE MEETING DATES AND LOCATIONS:

Vice-Chairman Richter confirmed the next meeting would be as follows:

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

Discussion was had about the possibility of December 7, and/or December 14, 2009, for upcoming meetings.

XII. ADJOURNMENT:

There being no further business Vice-Chairman Richter adjourned the Meeting at 8:00 P.M.