

**MINUTES OF MEETING OF  
THE BOARD OF DIRECTORS OF THE  
WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY**

May 18, 2017

**Present:**

Scott Roberts, President  
Ray Whisenant, Secretary  
Fred Goff, Vice President  
Bill Goodwin, Assistant Secretary  
Don Walden, Assistant Secretary

**Staff and Consultants:**

Robert Pugh, General Manager  
Curtis Wilson, District Engineer  
Jennifer Riechers, Agency Program Manager  
Keith Parkan, Senior Engineer  
Jennifer Smith, Agency Controller  
Stefanie Albright, (Lloyd Gosselink Rochelle & Townsend, P.C.), Agency General Counsel  
David Klein, (Lloyd Gosselink Rochelle & Townsend, P.C.), Agency General Counsel  
Dennis Lozano (Murfee Engineering Company, Inc.), Agency Engineer  
Autumn Phillips (Municipal Accounts & Consulting), Agency Bookkeeper

**I. CALL TO ORDER**

Director Roberts called the meeting to order at 10:00 a.m.

**II. ESTABLISH QUORUM**

A quorum was established. Also present were the above-referenced staff and consultants.

**III. PUBLIC COMMENT**

Mr. Gerald Kuchinsky addressed the Board regarding water and sewer rates of the PUA and stated that they are regressive and wasteful. He stated that he understands that costs need to be covered, but there are other rate structures that may be available to be employed. He detailed his usage and the cost per thousand gallons, stating that there is no incentive to reduce the use of water. He stated that there has to be a way to ensure that revenue is sufficient, but not burden low-use customers.

Tony Corbett addressed the Board on behalf of Travis County MUD No. 22 relating to an SER denial conveyed to the district for the Masonwood West/Provence development. Mr. Corbett stated that he asked for clarification from staff regarding the denial of the SER as well as

information regarding how much capacity is available. He requested clarification and that this item be included on a future agenda if needed.

#### **IV. SPECIAL RECOGNITION**

##### **1. Recognize employees and consultants for successful completion of Spillman Pond Liner Project.**

Director Roberts recognized Ben Bourland, Tanner Fields, Lazarus Gonzales, Curtis Jeffrey, Adam Mena, Keith Parkan, Javier Rangel, Eddie Rodriguez, Michael Sarot, Glen Schwabe, Scott Wetzell and Curtis Wilson for their work regarding completion of the pond liner project.

#### **V. CONSENT AGENDA**

- A. Approve minutes of April 20, 2017 Board Meeting.**
- B. Approve bookkeepers report, payment of outstanding invoices and other related bookkeeping matters.**
- C. Approve Contractor Pay Requests including:
  - 1. Pay Application No. 13 for SH71 1280 Elevated Storage Tank Project.****
- D. Approve Murfee Engineering Work Authorizations for:
  - 1. CT Study revision at the Uplands WTP to obtain the required approval to change the chlorine dosing system.**
  - 2. Bohl's WWTP Expansion Design, Permitting, and Construction Administration.****
- E. Approve First Amendment to Rutherford West Non-Standard Service Agreement – 238 LUEs – Extension of agreement.**
- F. Approve Second Amendment to City of Dripping Springs Wholesale Agreement for Blue Blazes Development.**
- G. Approve Letter Agreement with City of Dripping Springs (the “City”) for Assignment of retail customers in Sunset Hills.**
- H. Approve Developer Reimbursements to:
  - 1. Reunion Ranch/Taylor Morrison (\$207,500)**
  - 2. Green Builders (\$229,194).****

**MOTION:** A motion was made by Director Whisenant and seconded by Director Roberts to approve the consent agenda items A, C, E, G, and H, as presented, attached as **Exhibits A-E.**

The vote was taken with the following result:

Voting Aye: Directors Roberts, Whisenant, Goodwin, Goff, and Walden

Voting Nay: None

Absent: None

Director Goodwin spoke to Item B, provided as Exhibit F, stating that he is not seeing all of the credit card invoices and receipts that are outstanding. Ms. Smith stated that cards that had no activity were not included in the packet.

Director Goodwin addressed Item D, provided as Exhibit G, and stated that as an almost \$500,000 expenditure he thought it needed additional clarification. Mr. Wilson addressed this item, stating that this chlorine contact time study is necessary for TCEQ. He also stated that the Bohls WWTP Expansion Work Authorization, included in Exhibit G, involves advanced planning on the Capital Improvements Plan (“CIP”), and will take the Bohls Plant from 325,000 gpd to 800,000 gpd for a total of 1.5 MGD wastewater capacity. Mr. Lozano stated that this work order is for the treatment facilities themselves and many of the ancillary facilities are already in place. Director Roberts asked if an item of this magnitude is put on the agenda, that the agenda language note when previous approval was given by the Board.

Director Goodwin addressed Item F, provided as Exhibit H, and confirmed that this is an amendment to an existing wholesale agreement inherited from the LCRA. Ms. Albright confirmed that this amendment is substantially similar to the standard wholesale amendment relating to rates approved by other wholesale contracts.

**MOTION:** A motion was made by Director Goodwin and seconded by Director Roberts to approve remaining consent agenda items B, D, and F, as presented, attached as Exhibits F-H.

The vote was taken with the following result:

Voting Aye: Directors Roberts, Whisenant, Goodwin, Goff, and Walden

Voting Nay: None

Absent: None

## **VI. STAFF REPORTS**

### **A. General Manager’s Report.**

Mr. Pugh presented this item, provided as Exhibit I. He stated that staff is still waiting for a determination from USFWS as to how much mitigation will be required for the proposed raw waterline and stated that PUA staff is working with LCRA to possibly obtain credits from the mitigation bank LCRA is participating in. Director Walden suggested that Mr. Pugh reach out to Senator Watson and Representative Workman on this issue.

Director Whisenant stated that he would work with Director Walden to help move this project forward.

Discussion ensued regarding the Installment Purchase Agreement (“IPA”) and mitigation credits. Director Roberts asked why the agreement relating to mitigation banking was not transferred to the PUA. Ms. Albright clarified that this agreement is not referenced in the IPA as being included or excluded from the transfer, and due to the sheer volume of documents and facilities being transferred in a short period of time, the PUA had to rely on LCRA’s representation of applicable documents for the system. She stated that the agreement regarding mitigation was not included in the documents identified by LCRA as relating to the transfer of the West Travis County System.

Mr. Pugh stated that the Impact Fee Advisory Committee (“IFAC”) met on May 5, 2017 and the next meeting would be held in November. He stated that TCEQ conducted a 2-day inspection and that there are a few items that Staff will follow up on.

Discussion ensued regarding possible illegal connections to the wastewater system. Mr. Wilson confirmed for Director Goodwin that it is likely from gutter systems being connected to the system, and that this could be a source of odors. Mr. Wilson stated that odor complaints have greatly decreased in Lake Pointe.

Director Walden addressed the IFAC item and asked that the minutes be included in the next Board packet. He asked for clarification regarding a meeting with WTCMUD No. 5, and Mr. Pugh stated this was a meet and greet where the new raw waterline and the access road to the raw water intake were discussed in general.

Director Goodwin asked about the backflow program and Mr. Pugh confirmed that this related to commercial and industrial application, as well as irrigation. Director Goodwin also stated that the Leak Adjustment Policy was included, and Mr. Pugh stated that there is some additional clarity that could be provided regarding the limitations to the service line, for example. He confirmed for Director Goodwin that the changes would likely be proposed at the June meeting.

## **B. Controller’s Report.**

Ms. Smith presented on this item, provided as Exhibit J.

Director Roberts stated that multiple checks are written to BB&T and inquired what they were for. Ms. Smith replied that those were for employee credit cards. Ms. Phillips confirmed that if one check was sent, they would not get reflected to the proper accounts. She also confirmed that the multiple checks to MEC have different checks because they are paid from different funds.

## **C. Engineer’s Report**

### **1. Capital Improvements Plan Update.**

This item was provided as Exhibit K.

In response to a question from Director Roberts, Mr. Lozano stated that the beneficial reuse application had been filed. The minor amendment on the TLAP permit is complete with review and is waiting for public comment closure and approval. Once the minor amendment is approved, the major amendment will be filed.

Director Goodwin asked about the 1340 Transmission Main and Mr. Lozano confirmed the location of this line is near Bush Ranch. Director Goodwin confirmed that the summary table included all CIP projects underway.

## **2. Operations Report.**

This item was provided as **Exhibit L**.

Trey Cantu introduced Michael Sarot, the pump and motor maintenance manager. He stated that he appreciates the offer to stay on board during the transition.

Director Goodwin asked about the water referenced as being flushed and asked if there was a regular flushing program in years past. Mr. Cantu stated that there was flushing that occurred before, but it was not necessarily a program and was used to address concerns.

Director Goodwin confirmed that a customer service staff member was no longer with the PUA.

### **D. Legislative Update**

Ms. Albright gave a brief update of HB 4327 and HB 922, stating at this point in the legislative session, HB 4327 is not likely to pass, but HB 922 is moving through the process.

## **VII. OLD BUSINESS**

At 12:09 p.m., Director Roberts announced that the Board would go into execution session pursuant to Texas Government Code § 551.071 – Consultation with Attorney, to address Items VII.A, VII. B., VIII.C., and VIII.E, and pursuant to Texas Government Code § 551.074 – Personnel for Item VII. D.

Director Roberts announced that the Board would go back into open session at 1:50 p.m. and that no action was taken in executive session.

### **A. Discuss, consider and take action regarding pending and/or anticipated litigation, including:**

- 1. Cause No. D-1-GN-16-000538; *Travis County Municipal Utility District No. 12 vs. Public Utility Commission of Texas in the 250<sup>th</sup> District Court of Travis County, Texas***

This item was discussed in executive session.

2. *Travis County Municipal Utility District No. 12 v. West Travis County Public Utility Agency; in the 201st Judicial District Court, Travis County, Texas; Cause No. D-1-GN-16-002274*
3. *CCNG Development Co., L.P. v West Travis County Public Utility Agency and Lower Colorado River Authority; in the 345th Judicial District Court, Travis County, Texas; Cause No. D-1-GN-14-000163*

This item was discussed in executive session.

**B. Discuss, consider and take action on WTCPUA Organizational Chart.**

This item was discussed in executive session. Subsequently, in open session, the following motion was made:

**MOTION:** A motion was made by Director Roberts to approve the Organizational Chart, as presented, with one additional change that a dashed line is made between the “CSI/Water Quality” Staff member(s) to the Operations Manager. The motion was seconded by Director Whisenant.

The vote was taken with the following result:

Voting Aye: Directors Robert, Whisenant, Goodwin, Goff and Walden  
Voting Nay: None  
Absent: None

**VIII. NEW BUSINESS**

**A. Discuss, consider and take action regarding establishment of bulk water fill stations in the WTCPUA service area.**

Mr. Wilson presented on this item stating a proposal that bulk fill kiosks could be put at certain locations. He stated that these stations are self-contained and the costs of the units are between \$20,000 - \$30,000, and the site work costs would depend on the location of the units on the system. Director Whisenant asked what the income would be, to which Mr. Wilson stated that this analysis had not been conducted. Director Roberts asked if the PUA could set a bulk water rate, to which Mr. Wilson stated this is addressed in the Tariff. Director Whisenant asked how this would affect the administration of hydrant meters, to which Ms. Riechers stated that she didn't think that this system would have an administrative impact.

Director Roberts stated that he would like to see revenue estimates and get an estimate of how many loads could be purchased. He asked that this be placed on next month's agenda and that the PUA get an estimate of how much water is being sold by DSWSC.

Director Goff confirmed that there could be a financial benefit to the PUA in not using some of the fire hydrant meters.

Director Roberts stated that he wanted to expand the inquiry into selling treated effluent as well.

**B. Discuss, consider and take action on increasing fines for fire hydrant tampering.**

Mr. Wilson presented on this item, provided as Exhibit M. He stated that, as had been raised at the April meeting, the PUA had experienced hardship due to damage to fire hydrants when the PUA was not previously notified.

Director Whisenant asked which entities are typically violating the policy, to which Mr. Wilson stated bulk water haulers, contractors, and testing companies testing fire flow for developers. Director Whisenant asked about the fire departments, to which Mr. Wilson stated that they generally report to the PUA when hydrants are accessed. Director Whisenant stated that the PUA needs to notify the public of the new fines, including notification to the fire departments. Director Whisenant stated that damages to a hydrant can include time, materials, and lost water.

**MOTION:** A motion was made by Director Whisenant and seconded by Director Roberts to approve the increase in fines for tampering or unauthorized use of a fire hydrant.

The vote was taken with the following result:

Voting Aye: Directors Roberts, Whisenant, Goff, and Walden

Voting Nay: Director Goodwin

Absent: None

**C. Discuss, consider and take action on William R. Holmes v. West Travis County Public Utility Agency; in Travis County Court at Law #2; C-1-CV-17-003601.**

This item was discussed in executive session.

**E. Review all Professional Services Agreements for performance, efficiency, cost and any necessary amendments/updates.**

This item was discussed in executive session.

**F. Discuss, consider and take action on ability to refund impact fees.**

Mr. Klein addressed this item and stated that the Board does have the ability to refund impact fees, and if the Board intends to do so that the Board adopt a policy to put parameters on the circumstances that impact fees are refunded. Mr. Klein noted that the Board had asked that two questions be addressed regarding the refunding of impact fees and the modification of the PUA's

impact fees. As to the first issue, Mr. Klein stated that as a general rule, neither the applicable laws concerning impact fees in Texas Local Government Code, Chapter 395, nor the PUA's Tariff prohibit the PUA from issuing a refund of impact fees for impact fees previously paid by that developer, if it turns out that the developer had paid the PUA impact fees for more LUEs of capacity than it actually needed. Mr. Klein also noted that another option for the PUA would be to establish a policy whereby a developer could assign or sell any unused LUEs to a third party, instead of (or in addition to) refunding the impact fees. However, given that the PUA (and the LCRA) requires an NSSA with a developer before the PUA will accept the payment of impact fees for capacity, the PUA will need to review the NSSA with that developer to verify whether there are any unique contract terms prohibiting or otherwise placing conditions on the refunding of impact fees. Mr. Klein clarified that this analysis is different from a situation where a developer requests that the PUA reconsider the number of LUEs of service that is attributable to a development and brings evidence to support such request under Section 3.03(e) of the PUA's Tariff. The second issue was addressed in Item VIII. G.

**G. Discuss, consider and take action on feasibility of amending Land Use Assumptions, Capital Improvements Plans, and Impact Fees.**

Director Roberts stated that the PUA will be issuing bonds and the impact fees are based on the cost of the projects as well as the interest on the life of the bonds. Mr. Klein stated that the PUA's CIP is based on the debt service cost as well as the cost of the projects. He stated that the PUA can cash fund projects, but the PUA will need to determine the cost of debt service associated with the project and refund that amount.

Director Roberts asked what was the process to amend the PUA's CIP. Director Roberts also asked if Dripping Springs WSC's request for service is driving the necessity to interconnect the Highway 290 and Highway 71 water systems. Mr. Wilson indicated that Director Roberts was correct. Director Roberts indicated that he would like to have the engineer move forward with such analysis.

Then, Mr. Klein addressed the question regarding modifications to the PUA's land use assumptions ("LUA"), CIP, and impact fees ("IF"). Mr. Klein indicated that the PUA has the ability to amend its LUA/CIP/IF at any time, subject to the laws in Chapter 395 of the Texas Local Government Code ("TLGC"). Specifically, the Board would need to: (1) have the PUA's engineer revise the CIP as needed, and work with the PUA's financial staff and consultants to determine the impact on the amount of the assessed impact fee; (2) issue an order scheduling a public hearing regarding amendments to the LUA/CIP/IF, to be scheduled more than 30 days after the date of that order; (3) have the PUA's IFAC hold a meeting to consider the amendments and provide comments to the PUA Board; (4) hold that public hearing regarding any such amendments; and (5) take action regarding the proposed amendments.

A question arose from the Board as to how the PUA could use the money currently held in its impact fee fund account to cash fund projects for new service in the PUA's CIP now. Mr. Klein indicated that, from a conservative point of view, if the PUA wanted to use the money currently held in its impact fee fund account to cash fund projects for new service in the PUA's CIP, then it would first need to evaluate whether impact fee refunds would be necessary under TLGC

Chapter 395. Mr. Klein noted that, generally speaking, entities that assess and collect impact fees have the ability to cash fund CIP projects with impact fees. At this time, however, the PUA has moderate refunding risks by using collected impact fees to cash fund the water and/or wastewater projects identified on the PUA's approved CIP, as opposed to issuing debt to fund such projects. He said that this concern, from a conservative point of view, arose from TLGC § 395.024(c), which states that impact fee funds may be spent only for the purposes for which the impact fee was imposed as shown by the CIP and as authorized by this chapter. Here, the PUA's CIP states that the PUA assesses and collects impact fees to pay for the design/construction costs and debt service associated with the CIP projects, which means that a portion of the collected impact fees was intended to pay for debt service expenses arising from the issued debt instruments. So, if a CIP project is cash funded, instead of through the issuance of debt, a question arises as to whether there is a portion of the collected impact fee that may never be used and will need to be refunded to the customer in accordance with TLGC § 395.025.

Therefore, for the PUA to cash fund CIP projects with impact fees collected thus far, rather than issuing debt to pay for such projects, the PUA will need to identify such portion of the impact fees collected that were intended to pay for debt service (interest) expense for the CIP projects that will be cash funded and determine whether it would require the PUA to issue a refund to the proper party, plus interest, per TLGC § 395.025(e). He indicated that the amount of the refund has not been calculated at this point since it is unknown what CIP projects may be cash funded, and whether those projects would be cash funded in whole or in part.

Mr. Klein noted that alternatively, the PUA can amend its LUA/CIP/IF to remove the debt service expense from the costs for each project listed in the CIP that the PUA desires to cash fund, and then use impact fees collected in the future, after such amendments, to cash fund such CIP projects. After additional questions from the Board, Mr. Klein indicated that such amendments would not retroactively apply to impact fees previously collected, and this alternative solution may still trigger refunds for previously collected impact fees, depending on how the CIP is amended and which CIP projects are cash funded. Mr. Klein further noted that it is uncertain whether such amendments to the CIP would require the PUA to reduce the amount of its impact fees. Given that the PUA's impact fees are currently set at 75% of the maximum allowable impact fee under TLGC, Chapter 395, there is a possibility that the current impact fee amount is still less than 100% of the maximum allowable impact fee amount after removing the debt service expenses. Prior to moving forward and implementing this alternative solution, it is strongly recommended that the PUA analyze the financial impact on the maximum allowable impact fee by removing the debt service expenses.

The Board had further questions regarding the refunding process, asking whether there was any other way to seek guidance on this issue. Mr. Klein indicated that the PUA could evaluate whether to request an opinion on this issue from the Texas Attorney General's Office- in particular, asking how the Attorney General interprets the word "purposes" in TLGC 395.024(c) when it says that impact fee funds may be spent for the purposes for which the impact fee was imposed as shown by the CIP and as authorized by this chapter. Mr. Klein indicated that he will follow up on the process for requesting the opinion and report back to the Board next month.

The Board asked that PUA staff, in the meantime, to initiate the process to amend the PUA's LUA/CIP/IF to enable the PUA to cash fund projects with impact fees collected in the future.

**H. Discuss, consider and take action on Budget and Rate Planning Calendar.**

Jennifer Smith presented this item. Ms. Smith provided a proposed schedule for the budget and rate planning process in 2017, provided as Exhibit N.

**MOTION:** A motion was made by Director Roberts to approve the calendar, as presented. The motion was seconded by Director Goodwin.

The vote was taken with the following result:

Voting Aye: Directors Robert, Whisenant, Goodwin, Goff and Walden  
Voting Nay: None  
Absent: None

**IX. ADJOURNMENT**

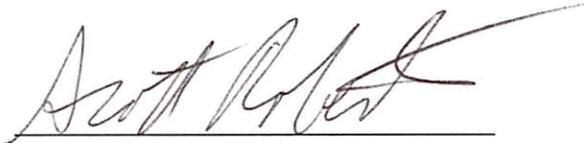
**MOTION:** A motion was made by Director Walden to adjourn. The motion was seconded by Director Whisenant.

The vote was taken with the following result:

Voting Aye: Directors Robert, Whisenant, Goodwin, Goff and Walden  
Voting Nay: None  
Absent: None

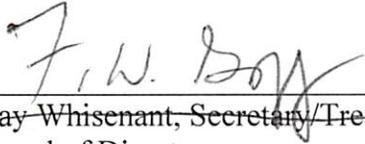
The meeting adjourned at 1:53 p.m.

PASSED AND APPROVED this 15th day of June, 2017.



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Scott Roberts, President  
Board of Directors

ATTEST:



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Ray Whisenant, Secretary/Treasurer  
Board of Directors