

**MINUTES OF THE REGULAR MEETING OF THE  
KINGSBURY GENERAL IMPROVEMENT DISTRICT BOARD OF TRUSTEES  
TUESDAY, APRIL 28, 2009**

**CALL TO ORDER** – The meeting was called to order at the Tahoe Transportation Center located at 169 Hwy 50, Stateline, Nevada at 6:05p.m. by Chairperson Schussel who led the pledge to the flag.

**ROLL CALL** – Present were Trustees Hayes, Barratt, Treanor, Peck and Schussel. Also present was General Counsel Scott Brooke, General Manager Cameron McKay, Business & Contracts Manager Michelle Runtzel and Operations Supervisor Eric Johnson. Present and for a portion of the meeting was Jennifer Roman of JWA Consulting Engineers, Jerry Placzeweiki, Donna Logan, Julie Backman, Brien Walters, Wayne Klomp of Jones Vargas, and George Housken.

**PUBLIC COMMENT** – There was no public comment.

**APPROVAL OF AGENDA**

**M-4/28/09-1** – Motion by Treanor, seconded Treanor, and unanimously passed to approve the agenda as presented.

**APPROVAL OF CONSENT CALENDAR** –

**M-4/28/09-2** - Motion by Treanor, seconded Peck, and unanimously passed to approve Consent Calendar Items as follows:

- A. Minutes of the Regular Meetings of March 10, 2009 and Special Budget Workshop of March 31, 2009
- C. Approve staff to enter into a 5-year lease agreement with Konica Minolta for a Konica Minolta Bizhub C353 copier.

**CONSENT CALENDAR ITEMS BROUGHT FORWARD FOR DISCUSSION** - Hayes asked to pull Consent Calendar Item B, List of Claim and asked about check #42826 to Manchester Enterprises in the amount of \$12,500. Runtzel explained that during the 2007/2008 snow removal season, Manchester incorrectly reduced their equipment rates after \$250,000 was expended and the correct cap should have been \$300,000. 25% of the \$50,000 difference in the cap is \$12,500 that MEI under billed. Schussel questioned check #42761 to HDR Engineering in the amount of \$1419 for LT2 work and asked if that was an initial payment. Runtzel explains HDR has been working on LT2 for several months; this is a monthly billing and should be the final bill since we received the final document.

**M-4/28/09-3** – Motion by Treanor, seconded by Peck and unanimously passed to approve claims in the amount of \$776,221.59 as represented on the List of Claims by check numbers 42753 through 42914.

**UNFINISHED BUSINESS**

**EXTENSION OF EXISTING GENERAL MANAGER CONTRACT FOR TWO MONTHS AND RELATED MATTERS** – The GM reported he made a number of changes to last years contract that gives him equality with the benefits of the existing salaried employees. Some of the changes are self-explanatory such as the starting and ending dates but for the rest, the explanations are as follows:

- Compensation: A. I have increased my salary by 3% to \$\$9,613 per month.
- Compensation: C. I have added dependants to this paragraph.
- Employee Benefits: A. I removed the last part of “A” and added a new “B” to come equal to the other existing salaried employees. When I signed the original contract, I was led to believe that all salaried employees at KGID had the same. Within one month, I found that the other salaried employees received PTO or what I call “sick leave” in addition to the 80 hours of administration leave.
- E. Again, other salaried employees are not required to use their vacation time within the year it was accrued.
- Vehicle Allowance: I removed this completely. I use a company vehicle now and will continue to do so.

- The only other item refers back to the PTO or Personal Time Off. When I originally signed this agreement I was under the impression that all employees received the same admin leave etc as I was getting. Only after being here for 1 month and going over everything for a new superintendent and renewing Michelle's pay increase did I find that I was not given the same. Had I know that at the time I would have asked to be on par with the other salaried employees. I would now ask the Board that I be given retroactively, the 12 PTO days that will allow me to take care of some personal family medical problems.

McKay reports he included a performance review that he would like completed before the contract is renewed and recommends extending the contract for 60 days. After a performance review is completed then he recommends moving forward with a contract extension. Schussel polls the board to see if everyone agrees with the format or if anyone wants to change anything. Peck recommends adding a comments section. Barratt asks if this is a standard form for evaluation. McKay reports this is Nevada Rural Water form used nationally for water general managers. Peck would like to add a comment section adjacent to each area that is rated excellent to poor.

Performance information should be provided to the negotiating committee. Performance evaluations should be submitted to one board member and have that Trustee and come back to the board. Hayes asks if any board member wants to volunteer. Hayes would be comfortable doing this. Evaluation forms can be turned into 1 or 2 people to compile and go forward with an evaluation with the GM. Peck volunteers with Hayes. All board members would complete the evaluation and eliminate the previous committee and Peck and Hayes will complete a performance evaluation based on the individual evaluations with the GM.

Hayes recommends that GM meets with Cook and Beattie one more time to try to come to consensus, if no consensus, the board will proceed with the new committee. KGID Trustees will still complete an evaluation. GM will email evaluation forms to board, board will complete

**M-4/28/09-4** – Motion by Barratt, seconded Treanor, and unanimously passed to extend the existing contract to August 31, 2009 during which time trustees will complete a performance evaluation of GM by the May 21, 2009 meeting.

## **NEW BUSINESS**

**DISCUSSION AND POSSIBLE ACTION ON ACQUISITION OF THREE (3) EASEMENT INTERESTS FROM THE WHITEBARK HOMEOWNERS ASSOCIATION BY EMINENT DOMAIN; TO CONFIRM PRIOR BOARD ACTIONS OF RELATED EMINENT DOMAIN; AND PURSUANT TO DIRECTION IN THE PENDING MATTER OF KGID V. WHITEBARK HOMEOWNERS ASSOCIATION, INC., ET AL., NINTH JUDICIAL CASE NO 09-CV-0101** – On April 15<sup>th</sup>, Scott Brooke, Chuck Zumpft, Steve Johnson, Michelle Runtzel, and the GM were in court to present our case to Judge Gibbons regarding the condemnation of the extra 20 foot wide piece of property on the west side of our existing easement for the construction of Tank 10B, plus the underground easement to connect the two water tanks together.

It was a very long drawn out process, but to make a long story short, the Judge did rule in our favor.

Action was taken on the following items:

**a. January 22, 2009**

Discussion and possible action on confirming the status of the KGID Public Utility easement (23,460 square feet) located within the Whitebark subdivision, a property owned by the Whitebark Homeowners Association (APN 1319-30-310-026), including the filing of an action to quiet title, or for eminent domain, as may be deemed appropriate; and to enlarge said easement by twenty feet (20') on the western edge thereof, by eminent domain. Such action is in furtherance of the construction of the Tank 10B water tank.

**Action taken:**

**M-1/22/09-6** – Motion by Hayes, second Treanor, and unanimously passed approve Legal Council and staff to proceed to acquire quiet title or eminent domain as deemed appropriate, and to attempt to enlarge said easement by twenty feet on the western edge by eminent domain and that the KGID Board has reviewed and adopted the findings provided by Legal Counsel.

**b. February 17, 2009**

Discussion and possible action to attain an easement, quiet title, or for eminent domain, as may be deemed appropriate, of property, located within the Whitebark subdivision, a property owned by the Whitebark Homeowners Association (APN 1319-30-310-026), approximately twenty feet by eighty feet, between northeast corner of existing KGID Public Utilities Easement (23,460 SQ.FT.) and existing KGID property; A.P.N. 1319-30-301-004. Such action is in furtherance of the construction of the Tank 10B water tank.

**Action Taken;**

**M-2/17/09-6** – Motion by Hayes, seconded Peck, and unanimously passed to approve District Council and staff to proceed with necessary action to acquire approximately a 20' x 80' easement necessary for waterline to connect the existing tank with the proposed Tank 10B and again to adopt the seven findings as previously reviewed and again discussed with a change that items 5 & 6 of such findings refer to the twenty foot x eighty foot easement as opposed to the prior twenty foot easement.

The notification letters were delivered to both Jerry Placzowiecki, homeowner, and Pete Quenzer resident agent, on April 21<sup>st</sup>, 2009.

Jerry Placzoweiki, Julie Backman and Wayne Klomp representing WBHOA attended this meeting. McKay read the entire agenda item and reports that Exhibit 1 is available for review. Exhibit 1 includes legal descriptions of the three easements in question.

McKay read the findings that the board made at the January and February 2009 meetings.

1. Kingsbury General Improvement District (KGID) owns the public utility easement consisting of 23,460 +/- square feet on and over a portion of Douglas County Assessor's Parcel No 1310-30-310-026 (former APN 1319-30-310-013) as shown on the KDT Development Company, LLC's August 2002 Record of Survey Supporting a Boundary Line Adjustment, and the prior May 2001 Final Subdivision Map for White Bark Townhouses.
2. The White Bark Homeowner Association, Inc. a Nevada domestic non-profit corporation (Whitebark), is the current owner of the burdened parcel and has informed KGID that it questions the easement and does not agree to KGID's intended immediate use of the easement area.
3. KGID is required by the Nevada Division of Environmental Protection (NDEP) to repair or replace its existing 1.2MG water tank 10A. KGID needs to construct a replacement 1.2MG tank (10B) as required.
4. KGID has investigated all available alternatives and has concluded that the only available location is its easement on APN 1319-30-310-026, the property owned by Whitebark Homeowners Association. KGID has prepared design specifications for the tank 1.2MG water and must go to bid thereon immediately in order to be able to construct the tank in the 2009 building season. KGID has provided all such information to the Whitebark Homeowners Association and requests is agreement for the project, which has not been provided.
5. The utility easement and tank site must also be expanded by the addition of twenty feet (20') on the westerly side because of the steepness of the terrain and to accommodate the planned tank.
6. The use of the easement, both as existing and as expanded by the addition of twenty feet (20') on the westerly side, is for a public use and is necessary for such public use. The construction of a water tank to replace the existing water tank is necessary and is a public use.
7. KGID must proceed immediately and as necessary to clarify its existing rights to its public utility easement, to expand such easement and to take all actions appropriate thereto. An appraisal of the value of any interest, which must be obtained by eminent domain, and preparation and filing of litigation to quiet title and/or obtain rights by eminent domain as necessary, are approved as determined to be necessary and appropriate.

Exhibit 1 – is the existing KGID Public Utilities Easement

Exhibit 2 – utility easement of tank site need expansion of 20 to west to accommodate tank construction.

Exhibit 3 – utility easement necessary to connect the existing Tank 10 to the new Tank 10B

Zumpft comments that there should be finding by board for an additional public use needed as depicted in Exhibit 3, which is necessary to connect existing Tank 10A to the new Tank 10B. This is the action that staff is recommending that the board affirm after public comment on this item.

Jerry Placzoweiki asks what steps has KGID done to evaluate the repair of the existing tank. McKay replies Tank 10A cannot be repaired without taking it out of service. We would need temporary storage at the same location. This water tank serves the north and south side of Kingsbury Grade. This tank is also used for fire protection, can pump 550-600gpm. If there is ever a fire there is not enough water to fight it. Placzowieki asks if we will remove the old tank once the new one is in service? Once we complete the new tank, we will drain the old tank, study the structure to determine whether we can repair it or if we must replace it. PER completed by Lumos stated that we needed approximately 1.75MG in the area.

Julie Backman asks what aspects of the tank does EPA want repaired specifically? McKay explains the roof structure didn't come with original rebuilt used tank. Roof is an integral part of structure on the tank. There are gaps in the roof today that diminish the structural strength of the upper part of the tank.

What is the possibility of a temporary tank and was that engineered? McKay reports there is no place to store 400,000 gallons of water storage. USFS will not allow us to store on their property. Bladders can only hold about 20,000 gallons and take significant space because they are only about 4' tall.

Ms. Backman asks if KGID has given any consideration to building a temporary tank for purposes of repairing the old tank. A temporary tank must meet standards the same standards as a permanent tank. We would have to excavate a pad just as we will for a permanent tank and the expense would be out of line for this project. Ms. Backman asks if we will end up with 2.4MG in total that we don't need? Runtzel explained that the Lumos report shows 2.8MG needed to include fire protection and 1.75MG needed just for domestic use. McKay hadn't seen that.

Schussel explains that we looked for an alternative place and spent considerable time and in the end the USFS denied the request. Runtzel added that even before looking at the USFS site, our engineer looked at the possibility of replacing the existing tank in its place. At that time it was determined that that was not a feasible option. Runtzel was not heavily involved but she believes it was due in part to not having room to have temporary water storage.

Wayne Klomp asks if tonight's action is to continue with eminent domain? Yes. Whitebark still questions whether the easement is valid for the intended use and there is still some question on if this is a taking in fee and Whitebark questions if enough diligence was pursued on finding other sites. The 2005 negotiations between KGID and Whitebark ceased. Schussel comments when we were negotiating, KGID wasn't progressing in negotiations like we needed to, now we have a timeline to avoid losing funding for the project. As we've tried to work with Whitebark, we've found ourselves against the calendar and funding issues. Runtzel clarified that in 2004 and 2005 there was some extensive negotiations taking place and during that time we were designing a water storage tank on the easement site that we are talking about today. We bid the tank project in 2006 on the KGID easement. On bid opening, bids received were 1.5M over the engineer's estimate of 1.1 million for the entire job. At the time, the District did not have the additional grant funding to support awarding the project. We decided at that time to begin looking for alternative sites and found the USFS site that was at the same elevation as the existing tank. We pursued trying to obtain a special use permit from USFS to build a new tank and after some time we were denied. Since that time, we applied for and received additional grant funds and have now re-designed on the KGID easement located on WBHOA common grounds.

Zumpft comments to Mr. Klomp in response to the issues he raised. KGID won't comment on the issue of whether we have a valid existing easement because Whitebark has not filed its contention yet on the issue. Zumpft asked Runtzel to explain in further detail what specific efforts has the district made towards obtaining an additional site for the tank. McKay explains that in looking for alternative sites, we have to find a site at the same elevation. McKay adds that the district acquired a two-year extension on the grant funding and must complete the project by 2010.

Placzocwieki comments that the \$2000 that KGID would pay Whitebark for the easements to build the tank is just not fair. Zumpft replies that the issue in the eminent domain action is “what is fair?” Ultimately the judge will decide this and at this point in time we don’t have any information of what Whitebark contends to be the value of the remaining property interest. If there is an argument as to whether KGID has any easement right at all, that will change the value of just compensation. Whitebark has not provided us any appraisal. It is our position that Whitebark owns that fee and KGID has a public utilities easement, which, in turn, diminishes the value of the fee. That’s what a judge will ultimately determine unless we are able to come to some compromise.

Hayes commented the need for the tank started a long time ago and KGID did a lot of searching for a good site. KGID traded out-of-basin water allocations which are very valuable and allowed development of WBHOA for the site. This was a negotiation with the previous owner of the lot who wanted to develop it, and he took these water allocations in consideration for the tank site that allowed him to develop Whitebark.

Ms. Backman asks what KGID instructed our appraiser to appraise? McKay replied the appraiser appraised the value of the additional 20’. Zumpft states if they want specific detail about what was appraised, they can review the appraisal. Whitebark has that and it is public record. KGID sought a change in the type of easement we had from a non-exclusive easement to an exclusive easement and condemnation of a 20’ exclusive easement and also for a strip for a pipeline.

Zumpft encourages the board to make the factual finding presented by McKay at the beginning of this item along with the express finding that the easements are for public use and all three are immediately necessary.

**M-4/28/09-5** - Motion by Hayes, seconded Treanor, that the KGID Board supports and confirms the statements by the General Manager and Business and Contracts Manager and those made by the Trustees and that the KGID Board wish to proceed in obtaining the (3) three easements and find it is necessary to do it in short order and to proceed with the condemnation action.

Barratt comments that order the board received is unsigned. Zumpft explains that Whitebark has five days to comment, they received it last Wednesday so the must comment by tomorrow. Either they won’t comment or we will resolve differences we have between counsel, or if not, we will go before the judge to resolve the issue. Should have an order by Friday, subject to the judge’s availability.

Schussel thanks the Whitebark representatives for attending the meeting and notes we appreciate the feedback and we are trying to be good neighbors.

**APPLICATION FOR REQUEST FOR ALLOCATION OF OUT-OF-TAHOE BASIN WATER UNITS BY HEAVENLY VALLEY LIMITED PARTNERSHIP FOR (55) FIFTY-FIVE ALLOCATIONS FOR DOUGLAS COUNTY APN 1319-30-645-001** – On April 3, 2009, KGID received a check in the amount of \$250 with no accompanying paperwork. Upon inquiry with Andrew Strain office, the check was to supplement an application for water allocations. On April 9, 2009, an Application for Reservation for Allocation of Out-of-Tahoe Basin Water Units was provided to KGID.

Runtzel contacted Andrew Strain on April 10, 2009 to try to ascertain what Heavenly’s intent for the application was. The form provided by Heavenly for was Reservation and is only used by District staff when water allocations are available. At this time, no water allocations are available. In the April 10, 2009 discussion, Runtzel explained to Mr. Strain that Heavenly is on the waiting list for water allocations for the next 53 units that may become available. Heavenly’s initial application was for 55 allocations and in December 2008, they were offered and issued 2 water allocations that Rancho Pacific returned to the allocation pool. Therefore, this leaves Heavenly at the top of the waiting list for the next 53 units. In explaining the need for the additional application, Mr. Strain stated that Heavenly filed this application as a “back up position” on the waiting list. He offered no other explanation at that time. Runtzel further explained to Strain that the application for the waiting list form is different than the reservation form. Runtzel faxed the correct form to Mr. Strain.

On April 13, 2009, KGID received the correct Application for Request for Allocation of Out-of-Tahoe Basin Water Units, used when someone wants to be on the waiting list. Heavenly also provided a letter dated October 21, 2008 from Douglas County regarding their Stagecoach Project.

In reviewing the KGID Policy and Procedures Regarding the Priority and Validity of Requests for Out-of-Tahoe Basin Water Allocations, Runtzel was unable to find anything that either specifically allowed or specifically disallowed an applicant to have more than one application for the same water allocations, same parcel, same owner and for the same project. It is staff's belief however, that the intent of the policy was to provide procedures to ensure that allocations are addressed properly and issued fairly using clearly defined procedures as stated in the Declaration. These water allocations are extremely limited and highly sought after by a few developers and a couple property owners.

Staff's concern is that if any applicant is allowed to have more than one application for the same parcel, same project, same owner and same number of water allocations on file at any given time, someone with a project ready to go would not stand a chance of receiving water. Staff believes the policy was approved and adopted by the KGID board to avoid such circumstance.

Theoretically, if the Heavenly request is approved, there would be no limit to the number of applications on file and no one would have a chance at obtaining water allocations. The purpose of the waiting list is to prioritize applications on a first come first served basis when water allocations are not available. If and when allocations become available they are offered to the wait list applicants in order of receipt of completed application. This seems to be a fair approach.

In order for Heavenly to increase the number of water allocations for this Stagecoach project, KGID would require a letter from Douglas County demonstrating that the project is allowable under the existing master plan and also meets zoning on the parcel. The letter provided by Heavenly with the April 13, 2009 application refers to the Stagecoach Project as having 120 residential units, same as the original May 13, 2008 application; therefore, the project has not changed with respect to the total number of residential units. Per an agreement with the State Engineer, 55 out-of-Tahoe basin and 65 in-basin water allocations are required to complete this 120 residential unit development.

Runtzel requested that Scott Brooke review the policy and provide a memo to the Board for consideration, which is attached. Brooke finds this request as both duplicative and unnecessary. The recommended action above is a combination of legal counsel and staff recommendation.

Mr. Ron Alling was provided with a draft staff report and Mr. Brooke's memorandum and offered the attached brief email response including a request that this item be tabled to the May meeting. Of the recommended action, staff recommends the board approve item C – to table this to the May meeting.

Runtzel explained that she is asking any action to be deferred until the May meeting. She wanted to provide the information available so that the board could have a chance for review. She requested Scott Brooke review the issue and the policy guidelines and provide his position that was included in the backup information. Runtzel doesn't understand the need to have a backup position on the waiting list, so she would like to give Heavenly the opportunity to present its position in person. They were unable to attend the April meeting.

Schussel wants to be sure he understands this issue correctly; they are on the waiting list for 55 allocations. Now they are asking for another position on the waiting list for another 55 allocations for the same project and same location. Schussel doesn't understand what a second position will do that the first doesn't. Runtzel thought it may be that because the waiting list requirement is for a one-year term but also has a provision to extend it annually provided that 30-days in advance of expiration they request the extension in writing. If someone fails to do so, they fall off of the waiting list. However, in discussions with Mr. Ron Alling and Mr. Strain, this did not appear to be the reason for the "backup position." Mr. Alling represented to Runtzel in an email that in order for Stagecoach to move forward with Phase II, they need these allocations. This explanation makes no sense to Runtzel. They were on the list for 55 allocations, they were issued 2 allocations and they only need 55 allocations to complete their 120-unit development consisting of both phases 1 & 2 of their project. They are not proposing to build more than 120 units, so Runtzel doesn't understand and she would like to give Heavenly the opportunity to explain this to us further. Hayes believes they are trying to toll the time on the two allocations they already hold. Runtzel agrees. On the Rancho Pacific issue, it is likely we will have to defer action until we receive something from the judge. We have not received the order to include KGID in the lawsuit.

Runtzel is concerned that allowing any applicant to have more than one position on the waiting list for the same project, same property and same owner, where does it end? The intent of the policy was to create fairness so that if anyone is ready to build they can apply for allocations from us and to deter someone hanging onto allocations indefinitely.

M-4/28/09-6 – Motion by Barratt, seconded Peck, and unanimously passed that per Mr. Strain and Mr. Alling's request, table this item to the May regular meeting so that they can both be present to make their argument.

**CONTINUATION OF WATER METER INSTALLATION PROJECT WORKSHOP –**

There is not much more information that I can give you that you have not already seen. The main thing to stress here is that we are looking for fairness to each and every customer of KGID.

To do this, the complete District must be metered. Only then, with a reasonable amount of data, can a fair and equitable water rate that will meet KGID's revenue needs be put into place. To guess at that rate now would be foolish.

I have included all of the information that was given to you at the previous meetings/workshops for your review.

So let me go over what I feel are the highlights of this workshop:

- A. KGID was not allowed any grant funding from AB198 for the meter installation project because a financial audit showed we still had the ability to borrow >\$3,000,000 from the SRF.
- B. Absolutely no more grant funding from the State of Nevada will be available until meters are installed in the Kingsbury District.
- C. To continue to upgrade the water distribution system by borrowing funds from the SRF would cause the water rates to increase dramatically. By getting at least 57% grant funded for water line replacement projects cuts the rate increases down by more than half.
- D. With the current water rates, KGID can borrow \$3,000,000 in a low cost loan for the Nevada State Revolving Fund, install meters district wide, with an increase in cost of service of \$4.69 per month per EDU. This cost will not cause any increase in water rates as they stand now and still allow us to fund depreciation.

McKay wants to go over where KGID is in the water meter program. We want to meter the entire district before anyone gets a metered bill. This is the only fair way to see how much water is being used. We were under the impression that we could obtain a grant fund for meters late fall last year. Because we could borrow up to \$3M, it made us ineligible for grant funds. We have the ability to borrow \$3m, over 20 years at approximately 2.95% loan, or \$4.69/mo per equivalent dwelling unit. In the current rate structure, we can absorb the additional costs without a rate increase at no cost to homeowners at this point. We still have \$15 million in infrastructure improvements, if we install meters we can go back and request further grant funding to take care of the rest of infrastructure improvements needed.

Internally we've decided that once meters are installed we will monitor for a set period of time to come up with an equitable fair rate that meets KGID revenues.

George Housken asks what time frame? Are we considering going out to bid so that entire district can be metered in one summer? We may separate the project into several areas so that we can complete the project in one summer. May have several contractors.

Mr. Housken reports he has been receiving leak notices from the district where approximately 700 gallons per week are being used. Eric Johnson explains we would be happy to help investigate the source of the leak. Mr. Housken's tenants report there is no leaking toilets or anything on the property and he doesn't understand how there could be such a leak with no evidence. Runtzel explains this is not a significant leak and likely from a toilet.

Hayes comments he has discussed the meters with some of his neighbors. We aren't communicating well, people aren't reading their newsletter and aren't aware of meetings. It's important to reach these people that are now involved. Hayes recommends hand deliver newsletter or spend money and time to reach these people. McKay recommended sending the newsletter in a separate envelope as opposed to including it in the billings. Treanor commented the people who showed up at the last public hearing might not come back. They came and spoke their peace. Runtzel thinks it's a good idea to mail the newsletter separately. She also adds that she believes the reason we had over 100 people at the last hearing was strictly because of rates. Our customers are not concerned with getting a water meter; they are concerned with how much they will be paying for water usage. At this point we are not talking about rates now. We have decided we are not going to bill metered water until we have had the time to review usage and develop a rate. People don't care about meters; they care about their bill.

Schussel hopes that when we do install meters we are good at communicating how much water is being used and how much the bill would be. Brien Walters commented that at Roundhill, they installed meters and didn't charge for a period of time. Runtzel added this is what KGID told its customers a year ago, we won't charge until the entire district is metered. Treanor admitted along with Runtzel that when they receive bills they throw out everything other than the bill and return envelope.

Schussel asks whether we are still letting customers know how much water they are using and what their bill would be. Runtzel clarified that we still let any metered customer know how much water usage they have, but we don't calculate their bill amount. This is a task that must be completed manually. These were manually typed letters that went out. Schussel asks why we did that then? Runtzel explained it was because the KGID Board approved a tiered water rate structure that was going to be effective on October 1. Runtzel felt it was imperative to notify customers how much their utility bill would be under the new rate structure. We no longer calculate the bills for customers but we did include a rate calculation sheet for customers to use to calculate their own bill. Now we are not charging the adopted rate structure, so customers are not as concerned.

Barratt suggested we could mail a postcard as well to communicate with customers. McKay suggested a glossy newsletter. Runtzel explained that the letterhead envelopes are very different than the billing envelopes and she didn't feel we needed to be extreme on bringing attention to it. Hayes just wants to ensure that it is well known that we are having meetings discussing these issues now so that people have the opportunity to be involved. He wants to be able to document that people are informed while it is open for discussion.

**M-4/28/09-7** – Motion by Treanor, seconded by Peck and unanimously passed to approve the General Manager to continue with Water Meter Installation Project, initiate a funding agreement with either the USDA Rural Development or the Nevada State Revolving Fund. This agreement must then be brought back to the Board of Trustees for proper procedural continuation and staff will continue to work to notify public on board actions.

A brief break was taken.

**COMMITTEE ON OUT OF BASIN WATER ALLOCATIONS** – Since the last meeting where this item was tabled, I have talked to a couple of the people I know at the Division of Water Resources in an attempt to get a feel on how we would be received if we attempted this increase again.

The first thing I was told was that any increase proposal should come from KGID alone. They do not want to see any outside influence pushing this at all. That means even past board members who may be under influence of another company and attempting to use their influence in this process. That means that any committee should be made up of staff and the existing Trustees.

Secondly, we have to think of who would benefit the most from this. Without mentioning any names, there are some major corporations that would benefit more than individual homeowners from any sort of increase or quantification.

Having said that, KGID is in the business of selling water and the increase or quantification of these units would help our bottom line.



There is one person out there that will be dead set against increasing the amount of units and who still carries a considerable amount of influence at the DWR. That person is Roland Westerguard.

Roland was instrumental in the original documentation and put the original restrictions in the language. He sits on the board of the League to Save Lake Tahoe and still carries a lot of influence with the Division of Water Resources staff.

To combat this influence, we will need to get some higher up politicians to back us. I have put in some calls to a couple of lobbyists but due to their heavy workloads they are not ready to do anything with us at this time. After the legislative session is complete they will have more time.

I honestly do not think that this is an item that needs a committee or working group. This can easily be done in house with existing staff that has a greater knowledge of the intricacies of the Division of Water Resources and the Out of Basin Water Units.

McKay has been in contact with the Division of Water Resources. Any public members are not encouraged to go to them because they have an agenda. In setting up a committee, we need to look at a few things. We are in the business of selling water; this can be done in house with existing staff. No problem with political support backing us. We need to hire a lobbyist. One person having considerable influence would be dead set against additional out-of-basin allocations. McKay would like to quantify a unit and believes this was never done. He would like to move forward without forming a committee, no use trying to secure lobbyist now until legislature over, and allow staff to quantify water allocations, reach out and find lobbyist and then come back to board to retain lobbyist.

Treanor asks why Mr. Westergard is dead set against additional out-of-basin water allocations? McKay believes it is because of more development or draining resources. The TROA was developed in the 70's and our water rights are tied to it. Where does 1000 units come from or what is the volume of water? What it means to Mr. Westergard is restricting development at Tahoe.

Hayes is against spending a lot of time or money on this issue. For us to spend a lot of money to get a few units when there is only a few interested parties he's against. Until we meter, we shouldn't spend any time on it. For Hayes, this issue is slipping down the priority list. Runtzel adds that if we do go back to the State Engineer, she would like to see that we determine exactly how many water allocations are needed for the remaining lots based on current zoning, if we obtain the allocations, we then issue them to the individual parcels and be done with it. No more waiting list or allocation lists and never go back to State Engineer for additional water.

**M-4/28/09-8** – Motion by Peck, seconded Treanor, and unanimously approved to defer this item until staff feels its necessary to bring back.

### **AWARD A CONSTRUCTION CONTRACT FOR THE KGID TANK 10B PROJECT**

KGID received ten bids for the Tank 10B Project which will include installation of a new 1.2 million gallon concrete water storage tank, approximately 400 lf of 16" water main, 650lf of 18" storm drain, fencing and associates appurtenances. Low bidder Aspen Developers Corp. has not performed work for the district in the past. Reference checking was completed by AMEC Infrastructure Inc. and district staff completed informal checking and all references were relatively positive. One project reference noted that subcontractors who were not paid issued stop notices.

The engineer's recommendation letter and bid summary are attached. The engineer's estimate for the project was \$2,470,000 million. The FY 2009 budget and 2010 tentative budget provided for expenditure authority for this project. The project will be 61.9% grant funded.

Additionally, Aspen bid \$121,000 as a credit back to the district in the event that the district chooses to accept excess material of approximately 5,500cy. At this time, I'm requesting that the board approve the higher base bid amount and allow staff to determine whether we can store the excess material onsite at the operations yard and take advantage of the cost reduction.

As reported under a separate agenda item, KGID has obtained immediate possession of the easements necessary from Whitebark HOA to complete this project. Aspen Developers reports they would like to start construction on or around May 18, 2009.

Runtzel asked Zumpft if he had concerns with the Board awarding this project tonight since he mentioned something earlier. Zumpft replied his recommendation would be the motion specifically include contingency of receipt of a signed order from the judge acceptable to counsel. Barratt asks what the likelihood is that if the judge rules in our favor that Whitebark will appeal it? Zumpft explains that there's always that possibility, but an appeal wouldn't matter because the district court order remains in effect even in appeal. They could make a request to stay the order, but the appellant would have to post a bond. Zumpft is not too worried that an appeal would hold up the action.

Schussel asks whether the additional dirt that could be used is a benefit to the district. Runtzel explains that there would be a \$121,000 credit if we can take all excess material. She further explained that there are two projects that can contribute to improvements at the Operations Yard, the tank project and the NDOT project. Access improvements for the Operations Yard were estimated to require 20,000 cubic yards and Jennifer Roman of JWA has estimated about 9,000 cubic yards to bring the lower level to the mid-level elevation. In total, we can use about 15,500 cubic yards per her calculations.

Jennifer clarifies that her estimate of stockpile will use some of the middle pad as well as NDOT right-of-way for storage.

Hayes asks about the failure to include schedules on Aspens part. He is concerned that we are doing a very sensitive project and if they are sloppy completing the paperwork, he is nervous. AMEC completed an interview questionnaire on Aspen and generally received very good comments. Peck adds that in his experience with Aspen, there was a schedule problem and the fact that they didn't include a schedule further concerns him. Runtzel clarifies that there wasn't a construction schedule required at time of bidding the project. They failed to complete a reference submittal for the tank contractor. Also, the second list of subcontractors, they failed to list Natgun as a subcontractor, they believed since they put them on the first list of subs, they weren't required to include them again on the second 1% list.

Hayes asks if McKay is okay with awarding to Aspen. McKay is because some of the key people came from Q&D Construction. Runtzel explained that all references came back good with the exceptions that the STPUD job, gave a good reference, noted that some truck drivers on the job put a claim against Aspen for non-payment. We received a copy of the stop order initiated by the trucking companies and the outstanding payments were less than 30 days delinquent. They had received partial payment. Peck reported they were brutally slow at installing the waterline and destroyed the roadway as well as they couldn't meet schedule. Peck believes most of the people on that job no longer work there.

Schussel is also concerned that if any project needs to go good and smooth, it's this one. This project would surprise the GM if it goes smooth regardless of the contractor. We will have an onsite representative engineer. The three managers anticipate additional effort on this project and will be heavily involved. We will have full time inspection on this job.

Barratt asks whether Aspen can bid as a General Contractor when they are not completing more than 50% of the job. McKay reports in Nevada they can.

Barratt reports it seems that due diligence has been done although some may be somewhat uncomfortable.

**M-4/28/09-9** – Motion by Barratt, seconded Treanor, and unanimously passed to award a contraction in the amount of \$2,296,975 to low bidder Aspen Developers Corporation for the Kingsbury General Improvement District Tank 10B Project and authorize the Business and Contracts Manager to sign contract documents and to approve change orders up to 15% (\$344,546) of the bid amount. Award is contingent on receipt of a signed order in the Whitebark matter acceptable to counsel.

Barratt asks what is the risk of an appeal of the Superior court. Party can seek a stay of the order, if judge grants the stay, party must post a bond. They may appeal, not likely that appeal would hold up the action.

**OPERATIONS YARD DEVELOPMENT AND RELATED MATTERS** - At the January 22, 2009 regular board meeting, a draft Cooperative Agreement prepared by NDOT was presented to the board and was conceptually approved and authorized the BCM to work with legal counsel to make a revisions deemed necessary. The agreement was prepared to document roles and responsibilities of each of the three parties involved, KGID, NDOT and Heavenly to complete the sale of a portion of the KGID Operations Yard and a portion of Heavenly property to NDOT. The total sale price per an appraisal completed last year by Johnson & Perkins was \$750,000. KGID would share 50/50 in access improvements required for any build out with NDOT, which were estimated at \$717,814. Heavenly would benefit from use of the new access without requiring cost participation on their part. NDOT has completed some preliminary work on designing an access that would allow Heavenly to access their property.

Since that board meeting, the BCM and legal counsel provided revisions to NDOT and received feedback and additional revisions from NDOT. This agreement was presented to Heavenly in mid-February and a response was requested from Andrew Strain. Mr. Strain advised that he would be out of town and could meet with KGID/NDOT representatives the first week of March upon his return. In early March, Strain reports he “would need input from his side in order to move forward as we are in a very challenging season.” The GM had a brief discussion with Strain who said he would try to work on the agreement. In April, while having a conversation on Heavenly’s application for water allocations, Runtzel again asked Strain for the status of his review of the agreement and whether we could set up a meeting between Heavenly, NDOT and KGID. Runtzel advised that likely NDOT’s purchase funding for the Operations Yard would not be available after June 30 this year and it is very important to complete sale. Strain reported that his boss (Blaise Carrig) would not allow Strain to work on the agreement at this time. Strain was uncommitted as to when he may be able to work on the project and stated again his boss would not allow him to. Earlier this week, Strain told NDOT that his boss has “forbidden” him to work on this. Strain said he would try to convince Mr. Carrig to change his mind.

In the event that Heavenly chooses not to sell to NDOT, KGID does not have a sufficient amount of land to sell NDOT a 150’ strip. KGID would then be solely responsible for building a new access for any future build out of the operations yard.

Last week, MKD Construction who was bidding on the NDOT Erosion Control Project contacted the BCM. MKD estimated that they would need to dispose of approximately 20,000 cubic yards of clean material excavated from the project. Runtzel asked Jennifer Roman of JWA to calculate whether the district could store that much material at our operations yard. It was previously estimated that 20,000 cubic yards of borrow embankment would be needed to construct the new deceleration lane and access to the ops yard. After running some calculations, Jennifer Roman of JWA believes the district could store up to 15,500cy at the yard, which included bringing the lowest level up to the same elevation as the middle level and then stockpiling on top. There is approximately a 12’ height difference between the two levels today. This would provide much more flexibility in designing the site and will also reduce the amount of fill needed for the new access. Approximately 8,300cy would be used on pad build up, leaving 7,200cy stockpiled for the access.

In NDOT’s preliminary cost estimates for the new access and deceleration lane, \$399,000 of the total amount of \$717,824 was budgeted for borrow embankment. This amount includes placing and compacting the material, however, taking the material would be a significant cost savings to the district as it eliminates any trucking costs.

Runtzel attended the bid opening for NDOT and contacted the low bidder El Camino Construction out of Las Vegas. They did not have plans for export and disposal of the material and verbally agreed to give it to KGID. A meeting will be held with El Camino within a couple weeks to discuss any additional needs or requirements for accepting this material. It is anticipated that the district could require El Camino to place and compact the material and install a piped drainage system at little or no cost to the district. The NDOT Erosion Control Project is anticipated to be a two-year project and presumably the material would not all be brought in this summer.

Currently, the lowest level of the operations yard stores a few pieces of equipment, that can be moved to another level, it houses the fuel tank that the district will consider moving and the septic leach field is located next to the property line along the fence which is proposed to remain in its current location at this time.

Jennifer Roman indicates that we are planning to store extra material in the NDOT right-of-way. Treanor thinks it's a good idea. Runtzel reports is a very good deal for KGID, if Heavenly decides not to sell to NDOT, it would leave KGID to install the \$750,000 new access on its own. Hayes confirms that if this happens it would be KGID's sole access. NDOT could require that the existing access is used only as right-in and right-out only, that will be up to NDOT. McKay reports there are some things we need to think about. A concrete wall would have to be installed on the lower level to retain that level. We need to discuss this with the NDOT contractor. This will be contingent on whether El Camino would be willing to install the wall. Runtzel reported that several years ago the KGID Board approved a proposal with JWA Consulting Engineers for civil engineering services at the Operations Yard. There is approximately \$60k of unspent budget left from that agreement that Runtzel proposes to use towards this project. She has received a verbal okay from El Camino to take the material and we will have to negotiate how much work they may be willing to do.

Schussel asks where the new access would be located, approximately 300 feet above the existing access. We must meet site visibility in both directions. Schussel asks if Heavenly understands the ramifications of not selling to NDOT. Runtzel isn't sure they fully understand, but she feels they should. Runtzel explained to Heavenly that NDOT stands to lose their funding if the sale is not completed by June 30. Runtzel proposes to send Heavenly a letter with a deadline to respond outlining the ramifications if they don't. KGID will proceed, will build our own access and will not provide them access to their parcel.

Barratt asks why we want Heavenly involved? Runtzel explained that NDOT needs a 150' wide parcel, which Heavenly would sell 64' and KGID would sell 86' of its existing parcel. If Heavenly doesn't sell to NDOT, KGID does not have enough land to accommodate them. NDOT is the one standing to lose here. KGID would lose a significant amount of land by NDOT at the yard. Runtzel believes that Heavenly thinks we need them for this operations yard and she thinks it's important to let them know we don't. Treanor comments that if this transaction works out the way we want, KGID will be putting out about the same amount of money for the access. Per Andrew Strain, his boss forbids him to work on this project.

Hayes comments that in the past we had verbal agreements and didn't follow through. He thinks the letter is important also to let them know how we feel about this if for no other reason than the working arrangement has changed. This should be documented. Treanor believes they are blaming us for the current water situation, which was their responsibility. Treanor agrees that we should right the letter. McKay believes they are punishing us. If Heavenly wants to put a building on site they will be subject to NDOT approval.

Runtzel commented that she spoke with NDOT and if Heavenly doesn't sell, they may still have interest in a shared sand/salt and dewatering basin. They would prefer to have a maintenance building at the site. Hayes asks if there is any way to accommodate NDOT if Heavenly doesn't sell. Runtzel explained that if the lower level is brought up in elevation it gives KGID much more flexibility for designing the site.

Hayes asks if the board needs to provide staff with spending authority to build the wall before next meeting? Jennifer estimates the cost of the wall at approximately \$100,000. Runtzel noted that the district's budget includes approximately \$300k for Operations Yard Improvements. There is a septic system on the lower property line that we will try to avoid and leave in place. It would be difficult and costly to move the leach field. Can't move it to compacted area.

**M-4/28/09-10** – Motion by Hayes, seconded Peck, and unanimously passed as follows:

- A. Authorize the Business and Contracts Manager to accept 15,000 – 20,000 cubic yards of suitable material from El Camino Construction Company Inc. for use at the KGID Operations Yard, including, building up the lowest level of the site to same elevation as the middle level and stockpiling material for use for the new access improvements, and
- B. Authorize the Business and Contracts Manager to utilize funds from JWA project #K0605 2006 Operations Yard Site Improvements with unused funds remaining in that project of \$61,970 to provide engineering services relating to accepting the excess materials to build up the lowest level to the mid level elevation, preliminary design, permitting, final design and construction related tasks, and
- C. Provide a letter to Heavenly explaining concerns and deadline for action. The GM to discuss with Brooke whether to provide the Heavenly attorney with a heads up.

Hayes wanted to include authorization for staff to spend a not to exceed amount of \$120k in the event things move rapidly. Zumpft was uncomfortable with that due to open meeting law and how the issue was worded on the agenda as well as there was no mention of building a concrete retaining wall in the staff report. Hayes reminded Zumpft that we already have expenditure authority in the budget. Zumpft is offering an opinion and informs the board to act as they feel is appropriate. Expenditure authorization will be an agenda item at the May meeting.

**APPROVAL OF INTERGOVERNMENTAL GRANT ADMINISTRATION AGREEMENT WITH SOUTH TAHOE PUBLIC UTILITIES DISTRICT FOR GRANT FUNDING OF FIRE PROTECTION RELATED PROJECTS**

- The attached Memorandum of Understanding with South Tahoe Public Utility District is part of the omnibus-spending bill passed by congress the end of March. This bill included \$5,000,000 spending for fire fighting projects in the Tahoe basin. Of this grant, KGID is scheduled to receive \$350,750 as a 50% matching fund grant, paid as a reimbursement of costs incurred. To receive this money, a project has to have the capability to increase or sustain fire protection in our District.

For the first year, I plan to install generators at each pump station, (2,3,4,7. Station 5 already has an old generator). This has been long overdue and would give our system full pumping capacity during a catastrophic disaster such as a wild fire when power may be shut off.

Another advantage of having only a small portion of money available is the ability to pick out some smaller projects for water line replacement as stand-alone projects instead of trying to combine a number of these into a larger project. Ski Court or Vesper water line replacements would be a perfect fit for something like this.

We have two years to use up this money and then the plan is to go back to the Feds and see if we can get another grant on the same line as this one.

Our attorney, Scott Brooke has reviewed this MOU and has no problems with the language.

McKay reports this is part of a spending bill that has been worked on for some time totaling \$5M split between major public agencies depending on service area. South Tahoe PUD and USFS will take administrative costs. Allowable projects for this grant include water line size increase, we will install generators at all stations, and all must be fire related. Grant fund term is two years; we will apply October 1 this year. We will finalize the budget, include generators, and a small waterline project and keep the costs low.

**M-4/28/09-11** – Motion by Hayes, seconded Barratt, and unanimously passed to authorize the board chairperson to sign a Memorandum of Understanding with South Tahoe Public Utilities District.

**REQUEST BY TAHOE DOUGLAS FIRE PROTECTION DISTRICT FOR USE OF KGID STREET SWEEPER AND ASSOCIATED LABOR FOR PROJECT CLEANUP AT HEAVENLY'S BOULDER LODGE PARKING LOT AS CONTRIBUTION TO THE COMPOST YOUR COMBUSTIBLES PROGRAM AT THE END OF THE PROGRAM IN JUNE 2009**

- Chairman Larry Schussel requested KGID assistance on behalf of Tahoe Douglas Fire Protection District in cleaning up the fine debris left at the end of the Compost your Combustibles project that takes place each year at Heavenly's Boulder parking lot. He reported that the project would begin towards the end of May and end one month later. KGID will go in after the project is completed and sweep the fine debris left from the project. Schussel previously indicated that if the sweeper is unable to pickup the debris, the debris is too large, or if the debris could cause any damage to the KGID sweeper, he would make alternative arrangements.

KGID provided this service last summer to TDFPD and the Street Maintenance Specialist, James Warwick indicated that he spent approximately 4 hours sweeping the area and reported no problems.

Schussel clarified that this is not actually a TDFPD program, its run between several entities including TDFPD, KGID, Heavenly, South Tahoe Refuse, and Tahoe Village HOA. Schussel explained that after the chipper is done and all material is removed, there is fine material left that KGID will sweep up. Treanor comments that this is a good program and reduces burning in our area. She supports the program.

**M-4/28/09-12** – Motion by Treanor, seconded Peck, and unanimously passed to approve request for use of street sweeper and associated labor for the Compost your Combustibles Program project cleanup at Heavenly's Boulder Lodge parking lot at no cost to Tahoe Douglas Fire Protection District.

**BOARD REPORTS** – There were no board reports.

**STAFF REPORTS** – Written staff reports from the General Manager, Business and Contracts Manager and Operations Supervisor were included in the meeting backup provided to the board. Bookkeeper, Kim Garon, provided draft financial statements as of March 31, 2009.

**General Manager Report** – Brooke received phone call from the Tahoe Beach Club attorney wondering where we stood on negotiations and as far as McKay believes we are back at square one. Firm stance has been taken, likely to continue. Hayes believes we haven't accomplished anything. The longer we wait the stronger our position is because of legislation in two years where a building cannot be located within 100' of an ozone plant.

Barratt asks what GIS is? McKay responds Geophysical Information Systems, basically where our manholes and water and sewer lines are located.

Barratt is glad to see we are receiving a new transmission on the sweeper.

McKay requested that the board follow chain of command if they need anything and come directly to him instead of other staff members.

McKay reported on remarks made from a past KGID employee at a LTWIP that KGID didn't know where most of the storm water infrastructure was and didn't know how to clean what it had. McKay reported that he contacted this person's boss and he will be making a statement at the next meeting. KGID was not notified of the meeting.

**Business & Contracts Manager Report** – Runtzel reports the only significant item to add to the written report is that she held a bid opening on the Snow Removal Contract and the sole bidder was Manchester Enterprises Inc. The project was open for bidding about 3 ½ weeks. Hayes was surprised in this economy that no one else bid. One other contractor took out the contract for review but didn't bid. There is a rate increase of approximately \$7/hr on each piece of equipment compared to the current contract rates. The contract is a 3-year contract with a provision to extend it annually for up to another 3 years. Costs for being a sole bidder are not out of line. There is a 25% discount on equipment rates after \$300,000 is expended. There is a \$300,000 minimum guarantee annually also. Manchester would like to see the reduction in rates removed from the contract. That provision was put in some 20 years ago under Charlie Manchester's contract. It was suggested that if in fact Manchester wanted that provision removed, they should consider lowering equipment rates and they felt that was a good idea. The Contract will be brought back to the May meeting for award. Manchester can rent the Operations Yard to use for staging if needed in exchange for rent.

Barratt comments that it's great that we have vehicle repair and maintenance logs.

The first portion of Tramway Drive will be paved this year in the base bid. The section just beyond the TVHOA pool to Wells Fargo may be paved in September pending progress on the water tank project. The Palady Perkins/Granite Springs areas will be bid as an alternate item that we will consider when we receive prices for the overall project.

Barratt asks why we had to turn off 9 condo units in a single building? Runtzel replied it was for non-payment. Some units were occupied and the crew met with property manager's onsite to ensure that the water valves for each unit was marked so that we didn't shut off the wrong units.

Kim provided financials through March 31, 2009 and Runtzel would be happy to answer any questions.

**Operations Supervisor Report** – Eric covered the major activities for the month in his written report.

**ATTORNEY'S REPORT** – Brooke provided a "Verified Complaint in Eminent Domain" filed on March 19, 2009 against Whitebark Homeowner's Association, Inc.

Zumpft reported generally on the condemnation proceeding that is pending. If the board members choose, Zumpft suggests that the board call a non-meeting for details on the proceeding. Schussel asks if Zumpft feels comfortable that this will go in our direction. Zumpft replied it depends on how you define our direction. There are bumps along the way that we'll look at but that's not going to effect our ability to access the site. The court has determined that it is necessary for public use and that there is no alternative site. Site is secure, potential bump in the road is that the judge or jury will have to decide whether the appraiser has provided just compensation. The appraiser is good. The issue is whether or not the KGID PUE on the map gives us what we say it gives us. We could end up paying more or they could determine that the appraiser is right on. There is an existing tank on the hillside within the subdivision.

**CORRESPONDENCE** - The following correspondence was received during the month, 1) Meeting notes of the Lake Tahoe Wastewater Infrastructure Partnership from the March 13, 2009 meeting.

**ADJOURNMENT**

**M-4/28/09-13** – Motion by Hayes, seconded by Treanor and unanimous approval the meeting was adjourned at 9:26 p.m.

Respectfully submitted,

\_\_\_\_\_  
Larry Schussel - Chairman

Attest:

\_\_\_\_\_  
Carolyn Treanor, Secretary