



MINUTES

Regular Meeting of the KID Board of Directors
And Board of Equalization
Carl W. Petersen Board Room
Tuesday, January 5, 2010, 9:00 a.m.

Call to Order/Roll Call: President Jaksch called the meeting to order in open session at 9:02 a.m. and District Manager Freeman called the roll.

Directors Present:

John Jaksch
David McKenzie
Patrick McGuire
Gene Huffman
John Pringle

Staff Present:

Charles Freeman, District Manager
Scott Revell, Planning Manager
Joetta Rupert, Real Estate Manager
Brian Iller, Legal Counsel
Harry Fox, Operations Manager
Beth Smith, HR/Risk Manager & Acting Engineering Mgr
Sandra Dallas, Administrative Assistant
Doris Fiske, Executive Assistant

Interim Chair Iller presided.

Approval of Agenda: Director Jaksch added the following agenda items: water entitlement changes, Palfinger purchase, letter from Robert Narum regarding water entitlement relegation, and an update on MacKay & Sposito's work on irrigable acres. He also asked to switch the agenda positions of scheduled and unscheduled visitors. **Director Jaksch moved to approve the agenda as amended. Director McKenzie seconded the motion and it carried unanimously.**

Oath of Office Administered: Mr. Iller administered the oath of office to Directors Patrick McGuire and Gene Huffman.

Election of 2010 Board Officers: Mr. Iller called for nominations for President. Director Huffman nominated Director Jaksch and Director McKenzie seconded the nomination. Hearing no other nominations Mr. Iller called for discussion. Director Huffman cited Director Jaksch's involvement on water rights issues and Red Mountain and work with other agencies, and the need for continuity in support of the nomination. Hearing no further comments Mr. Iller called for a vote. Director Jaksch was elected as President unanimously.

Mr. Iller called for nominations for Vice President. President Jaksch nominated Director Huffman and Director Pringle seconded the nomination. Hearing no other nominations Mr. Iller called for discussion. President Jaksch said Director Huffman has the time and judgment to serve as Vice President. Hearing no further comments Mr. Iller called for a vote. Director Huffman was elected as Vice President unanimously.

Interim Chair Iller was excused. Board President Jaksch presided.

Committee Appointments: President Jaksch made the following committee appointments:

Operations and
Engineering Committee
David McKenzie, Chair
John Jaksch

Realty Committee
Gene Huffman, Chair
John Pringle

Finance Committee
Patrick McGuire, Chair
John Jaksch

Vice President Huffman move to approve the appointments as stated. Director McKenzie seconded the motion and it carried unanimously.

Consent Agenda: Director McKenzie moved to approve the consent agenda. Director Pringle seconded the motion and it carried unanimously.

Items on the consent agenda were:

1. KID O&M Vouchers

Accounts Payable

Numbers:	58689 through 58773	\$	187,274.14
	58774 through 58827		47,813.81
	58828 through 58865		109,914.24

Total Accounts Payable 345,002.19

Payroll

Numbers:	31339 through 31350	\$	9,827.14
	31351 through 31351		316.00
	31352 through 31352		2,145.46
	31353 through 31353		217.15

Direct Deposit 62,332.76

Total Payroll 74,838.51

Total Disbursements \$ 419,840.70

Voided Checks: None

2. Minutes, KID Board Meeting, December 14, 2009
3. Minutes, KID Special Board Meeting, December 23, 2009
4. Approve Letter to USBR Regarding Early Water
5. Rescind Policies 4.5 Electronic Mail and 4.6 Internet Use
6. Extend Contract 2008-15 for JUB Engineers
7. Resolution 2010-02, Project Acceptance and Release of Retainage for Public Works Contract 2008-19 Aqualastic Sealer Phase 2

Unscheduled Visitor:

Loren Watts, of Watts Construction, and residing at 4006 S Reed addressed the Board regarding delayed payment of an invoice from his company. He asked why the September billing was not paid for 95 days. Mr. Freeman said review by staff took too long but was an anomaly which has been addressed and apologized to Mr. Watts for the inconvenience. Mr. Freeman noted that additional authorized signers for checks are being considered.

New Business:

1. **Policy & Procedure 1.1 Conflict of Interest–Board Members/District Officers:** President Jaksch noted that the Directors have filed their 2010 Conflict of Interest statements.

2. **Confirmation of Appointment of Secretary:** Director Pringle moved to confirm Charles Freeman, District Manager, as Board Secretary. Director McKenzie seconded the motion and it carried unanimously.

3. **Appointment of Officers:** Director McKenzie moved to appoint Scott Revell as Assistant Secretary, Clark Haueter as Treasurer, Darrell Stewart as Auditing Officer, Diane Rourk as Claims Agent, and Rettig Osbourn Forgette as Legal Firm. Director Pringle seconded the motion and it carried unanimously.

4. **Committee Appointments:** Addressed previously in agenda.

5. **Approval of Bylaws:** Vice President Huffman moved to approve the KID Bylaws as amended. Director McKenzie seconded the motion and it carried unanimously.

6. **Trust Water Authorization:** Mr. Revell introduced the staff request based on previous discussions with the Board of Directors that the Board authorizes the District Manager to put up to 10,000 acre-feet of the District's water entitlement in the temporary trust program. The procedure for drawing water out of the trust program was discussed. Mr. Revell said the procedure will be specified in a contractual agreement with the District, the terms of which are being negotiated and will be brought back to the Board prior to execution. He clarified that the request is for authority to apply to place the water in trust only and that the contract must be approved before any water can be put in trust. Mr. Revell said the amount of water may be modified based on operational minimum flows which he said would be deferred to technical experts.

Mr. Iller recommended the motion be modified to read "I move to authorize the District Manager to apply to place up to 10,000 acre feet of the District's water entitlement into the State's temporary trust water program subject to terms to be approved by the Board in the future." Discussion continued regarding the purpose of using the trust program. Mr. Revell said internal review of the amount of water put to beneficial use and operational spills was part of the consideration of the point of diversion change to Kiona and Edison Street. Discussions held with the Department of Ecology and the Board indicated this will provide the maximum protection to District's water right. Mr. Iller said the intent is to avoid protracted litigation over relinquishment issues being alleged by the Department of Ecology. He said staff will not recommend the Board agree to any terms that would waive any arguments the District has that relinquishment does not apply to the District and/or if it does apply that there are exceptions to relinquishment that protect the District's water right from relinquishment. If this type of agreement can be reached, KID won't have to litigate those issues. President Jaksch moved to authorize the District Manager to apply to place up to 10,000 acre feet of the District's water entitlement into the State's temporary trust water program subject to terms to be approved by the Board in the future. Vice President Huffman seconded the motion and it carried unanimously.

7. **Approve Job Descriptions:** Mr. Freeman presented the revised Executive Assistant job description and the job description for the new GIS Technician position which will report to the Planning Manager. Director Pringle moved to approve the revised job descriptions for Executive Assistant and GIS Specialist. Director McKenzie seconded the motion and it carried unanimously.

8. **Policy 4.2 Protection of KID and USBR Rights-of-Way and Easements:** Referring to materials distributed before the Board meeting, Ms. Smith reviewed the policy revision and the

first of four accompanying procedures planned to replace the existing procedure which will be rescinded. Policy 4.2 and Procedure 4.2A have been reviewed by the Board, the Operations and Engineering Committee and legal counsel. Ms. Smith noted that legal counsel's changes to the policy were included in the original Board packet materials. The only change to Procedure 4.2A was to eliminate appeal to the Board of the District Manager's decision to deny an application. She noted that anyone may come to the Board but that the formal procedure will be eliminated in this case. Discussion ensued. **Director McKenzie moved to approve Policy 4.2 Protection of KID and USBR Rights-of-Way and Easements. Vice President Huffman seconded the motion and it carried unanimously.** Discussion ensued regarding the need for a second motion to authorize the District to rescind Procedure 4.2 and approve Procedure 4.2A. **Vice President Huffman moved to revise Policy 4.2 with tracking changes from the attorney, Policy 4.2 Protection of KID and USBR Rights-of Way and Easements, and Procedure 4.2A Encroachments on KID Rights-of-Way or Easements. Director Pringle seconded the motion and it carried unanimously.**

9. **Palfinger Crane Purchase:** Mr. Fox discussed the background of the Palfinger purchase and requested Board approval for the planned trade-in. This is a budgeted item which has been discussed in committee. **Vice President Huffman moved to authorize the KID Operations Manager to trade in the 1990 Ford truck chassis and Palfinger crane for the purchase of a new Palfinger crane mounted on the KID 2007 Mack dump truck and that this purchase shall not exceed \$90,000. Director McKenzie seconded the motion and it carried unanimously.**

10. **Water Entitlement Relegation Eligibility Revisions:** Mr. Revell reviewed a correction to Policy 3.2-2 to clarify the Board's intent to allow relegation when property is isolated from the canal system or there is not a water delivery system to the property or the property is served by a well or private water system, but not allow relegation if there is an easement and connection to the water delivery system. He confirmed that the requirements for "extreme economic conditions" were also eliminated by the Board on October 13, 2009. Discussion ensued. Director McGuire requested that the District Manager vet policies before they are presented to the Board. President Jaksch cautioned staff against adding last-minute items to the Board meetings. Mr. Revell thanked Ms. Dallas for catching the inconsistencies. **Director McKenzie moved to approve the proposed revisions to Policy 3.2-2 as listed in Attachment 1. Vice President Huffman seconded the motion and it carried unanimously.**

11. **Letter from Mr. Narum regarding Water Entitlement Relegation:** Ms. Smith confirmed that Mr. Narum has been called and will give the policy. She said a press release will be issued announcing the policy.

12. **Update on MacKay & Sposito's work on irrigable acres:** Mr. Freeman reported he received the report from Derrick Smith today and will send it to the Board. It will be included on the agenda of the next board meeting.

13. **Open Board of Equalization:** **Director Pringle moved to open the Board of Equalization. Director McKenzie seconded the motion and it carried unanimously.**

Dale Walter, residing at 5624 W. 10th Avenue, said the Board has his letter (on file) challenging the equalization. He said he is in tier 6 in LID 25 Ranchette Estates, one of four and the assessment for the LID was \$80 in '05, \$108 in '06, \$108 in '07, and \$95 in '08. Mr. Walter said, with those assessments KID generated a \$6,000 reserve. He said that with the tier rate for tier 6 KID is charging \$170 for those LIDs. Mr. Walter stated that it is going to generate a surplus

immediately. He noted he has argued before the Board previously, that with the current assessment of the LIDs KID will recoup, by the end of 2010, the \$1.4 million refunded in '09. Mr. Walter said this is not ethical and he doesn't see how the Board can pass these types of assessments.

Director McGuire noted there are only three LIDs now.

President Jaksch asked Mr. Walter if he could show that the assessment of \$170 exceeds the benefit to his property. Mr. Walter said he believed he could and that he does not believe KID has met the statute pertaining to the benefit. He said these benefits have not changed for three or four years. He said that in tier 6 he is paying \$1.84 for the canal repair whereas an individual with nine acres or more is paying \$0.90, and asked if he is getting 18 times the benefit for his acreage. He said the tier rate is way out of range. Mr. Walter noted that KID shows a benefit for his acre of water as \$10,000 on the assessment. He said he is not getting a \$10,000 benefit.

President Jaksch asked Mr. Walter how he would determine benefit to his property. Mr. Walter said he would have to research the answer, but thinks court cases show water is not the only measurement but it is the primary measurement to come up with a benefit. He said the \$10,000 benefit per year on his acre is high.

Mr. Haueter joined the meeting in process and explained that statute requires KID to identify benefits to pressurized and non-pressurized parcels. He said that in 2009 KID contacted local real estate offices and it was determined that difference in value of parcels in the city with and without access to KID irrigation is approximately \$10,000, based on the market value of properties. Mr. Walter said a public records request he submitted showed KID contacted two realtors and others didn't answer. He questioned their ability to evaluate it. Mr. Walter suggested comparing properties in Creekstone with KID irrigation versus City of Kennewick water to see if there is a \$10,000 difference.

Mr. Iller said Mr. Walter seems to be admitting that he has not done that and therefore does not have any evidence that the assessment to his property exceeds the benefits occurring to his property. Mr. Walter asked about the appeal process if the Board rules favorably. Mr. Iller responded that there is no appeal process beyond the Board so his understanding of statutes is that the next appeal would be to the Superior Court.

President Jaksch asked if anyone else wished to address the Board of Equalization. There being no further comments, he asked if any Director wished to comment on Mr. Walter's issue. Hearing no comment, President Jaksch called for a motion to close the Board of Equalization.

14. Close or Extend Board of Equalization: Vice President Huffman moved to close the Board of Equalization. Director McKenzie seconded the motion and it carried unanimously.

President Jaksch called short break at 9:50 am.
The Board reconvened in open session at 10:10 am.

President Jaksch asked if anyone wished to make any changes based what was heard during the Board of Equalization. No motion to change the assessment roll was offered.

Executive Session: At 10:12 a.m., the Board went into executive session for one hour to discuss with legal counsel litigation regarding Acquavella and foreclosures.

At 11:10 a.m. the executive session was extended for thirty minutes. The Board reconvened in open session at 11:20 a.m.

President Jaksch moved to authorize Legal Counsel, Brian Iller, to delay foreclosure as long as good cause shown to Mr. Iller and staff. Vice President Huffman seconded the motion and it carried unanimously.


Director Pringle moved to adjourn the meeting at 11:22 a.m. Vice President Huffman seconded the motion and it carried unanimously.

Attest:

Witness:



John A. Jaksch, Board President



Charles Freeman, Secretary/Manager

Prepared by Doris Fiske, Executive Assistant