



Minutes

Meeting of the KID Board of Directors
 Carl W. Petersen Board Room
 Tuesday, May 17, 2011, 9:00 a.m.

President McKenzie called the meeting to order at 9:00 a.m. Mr. Freeman called roll.

Directors Present:

David McKenzie, President
 Gene Huffman, Vice President
 John Jaksch
 Patrick McGuire
 Kirk Rathbun

Staff Present:

Charles Freeman, District Manager
 Ed Everaert, Engineering/Operations Manager
 Colleen Storms, Comptroller/Treasurer
 Scott Revell, Planning Manager
 Jason McShane, Staff Engineer
 Beth Smith, Assistant Operations/Maintenance Manager
 Con Higley, Assistant Operations/Maintenance Manager
 Adam Gonzales, Vegetation Control Specialist
 Brad Crawford, Purchasing, Inventory & Tech. Coordinator
 Doris Rakowski, Executive Assistant

Other Persons Present:

Gary Hall, WRAC Member
 Tim Berk, WRAC Member
 Brian Iller, Legal Counsel

APPROVAL OF AGENDA:

Director Jaksch moved to approve the agenda. Vice President Huffman seconded the motion and it carried unanimously.

CONSENT AGENDA:

Director Rathbun moved to approve the consent agenda. Vice President Huffman seconded the motion and it carried unanimously.

Items approved by consent agenda were:

1. Approve Revised Contract for FCS Group Cost of Service/Rate Study
2. Acceptance of Completion of Phone System Contract
3. Appoint Assistant Auditing Officer
4. Plat Approval - Royal Ann Estates Phase 3A
5. Kidney Dialysis Center - Binding Site Plan
6. KID O&M Vouchers

Accounts Payable

Numbers: 62193 through 62232	\$ 61,369.68
62233 through 62273	45,798.04
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Total Accounts Payable 107,167.72

Payroll

Numbers: 32012 through 32020	\$ 9,615.62
Direct Deposit	66,597.39
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Total Payroll 76,213.01

Total Disbursements \$ 183,380.73

Voided Checks

Check No. 62122 Void and reissued to correct vendor

PRESENTATIONS:

Jose Chavallo, Regarding Proposed Resolution 2011-14 to Rescind Water Entitlement Allocation and Remove Parcel from 2011 KID Assessment Roll:

Persons present for this agenda item:

Jose Chavallo

Larry Costich, Attorney representing Mr. Chavallo

Michael Black, Geotechnical Engineer representing Mr. Chavallo

Paul Christenson, Civil Engineer representing Mr. Chavallo

Chuck Garner, USBR Yakima Project River Operations Supervisor

Chris Regilski, USBR Geotechnical Engineer (by telephone)

Walt Larrick, USBR Yakima Field Office Manager

Carron Helberg, USBR Yakima Field Office Working Group

President McKenzie discussed the purpose of the presentation and the Board's actions. He noted that Mr. Chavallo through his attorney asked the Board to revoke its action rescinding approval of the water entitlement transfer and the refunding of Mr. Chavallo's monies resultant to the transfer due to the revocation. He listed claims made by Mr. Chavallo regarding the Board's action.

Mr. Costich confirmed the statement was correct and discussed his intended focus for the presentation. In response to Mr. Iller, Mr. Costich said Mr. Chavallo was not removing or withdrawing comments regarding inadequate notice and noted that it was subject to ongoing litigation. He reserved the right to pursue those issues depending on the outcome today.

President McKenzie polled the Board regarding action to be taken. Discussion ensued. The Directors agreed that while they believed the action taken previously was appropriate, they were willing to rescind the previous action and to allow Mr. Chavallo to address the issues and present evidence regarding safety.

Discussion ensued regarding the refunded monies. Mr. Costich confirmed that Mr. Chavallo would return the check if the water entitlement transfer revocation was rescinded.

President McKenzie referred to an email from the USBR which indicated that additional analysis was needed and Mr. Costich indicated they were prepared to discuss it.

Director Jaksch moved that the Board revoke its prior action rescinding the water entitlement transfer for Mr. Chavallo's property contingent on the refund of monies KID paid pursuant to that transfer revocation and that this refund shall be returned to the KID no later than close of business on May 27th. Director Rathbun seconded the motion and it carried unanimously.

President McKenzie discussed the basis for future KID actions. He reviewed the format for the proceedings and Mr. Costich agreed to the format.

In answer to questions from the Board, Mr. Costich indicated that at present there were no immediate plans to start construction work on site. He discussed where the Citadel Estates project was in the preliminary plat process with the City of Kennewick.

Mr. Iller reviewed KID staff concerns, referring to a letter from Mr. Everaert dated April 21st and additional communication from the USBR regarding an email from Mr. Black. Mr. Iller read into

the record an email received by Ms. Rakowski from Shlomo Orr dated May 9, 2011 and an email from Kenneth G. Erickson, dated May 5, 2011 (emails appended to minutes).

Mr. Chavallo addressed the Board regarding his career background and his intent for the project. He said he was a KID water user and had purchased property from KID in the past. Mr. Chavallo said he felt he was a victim of circumstance because KID had a revolving door with different people telling him yes and no.

Mr. Costich discussed his client's feelings about defending the water entitlement. He said information was provided before April 19th and that the Board's action was based on incomplete and incorrect information. He accused Mr. Everaert of using hyperbole and exaggeration in his April 21st letter. Mr. Costich showed the Board Mr. Regilski's (USBR) comments and read a passage regarding the need for more information in order to make a determination of safety. Mr. Costich showed a copy of Mr. Black's response dated April 6th to the Board. He discussed those documents and asserted that Mr. Black's response addressed all of Mr. Regilski's concerns and that the premise of Mr. Everaert's letter was false. He said they believed the project had an adequate level of safety. Mr. Costich said Mr. Black prepared three reports for the site which all showed that it was safe and referred to Mr. Black's conclusion that reasonable design and homeowner cooperation could mitigate risk.

Mr. Costich discussed Mr. Black's qualifications.

Mr. Black discussed his background and experience. He described his work for Citadel Estates from 2005 to present, including a review of previous work by others, a geologic survey of the area, a 2007 geotechnical investigation, a 2009 critical areas report and 2010 work in response to KID's requirement for submittal to USBR.

Mr. Black said that, as his investigations indicated most slides were triggered by water, he recommended Mr. Chavallo put in a very controlled discipline of protection of water injection into the soil column. He said it would entail pipelining and moving water off site to a storm drain, including water from roof drains and drainage behind retaining walls. He said each home site would have a full geotechnical review and would be provided a system operated by a third party to control the amount of water going into the system. He described the WeatherTRAK system.

Mr. Black discussed the adjacent Panoramic Heights development and indicated places where contours were similar to those of Citadel Estates. He showed the Board pictures of the areas.

Mr. Black discussed issues raised by Mr. Regilski including use of a more powerful geotechnical computer program. He referred to his April 6th email to Ms. Helberg. He explained why the canal was not surveyed and included in the analysis. He referred to 2002 data regarding ground water level, and said he needed to discuss with Mr. Regilski how Mr. Regilski wanted the basalt layer handled.

Mr. Black said the amount of water introduced into the soil column was important. He said that there should be no problem with watering to 18 inches, as use of the WeatherTRAK system could assure. Mr. Black included the caveat that leaks from KID or city water could result in a washout even with a moderate slope of 15 to 20 percent.

Mr. Black discussed his use of low book values compared to blow counts and said he and Mr. Regilski could come to an agreement on that. He referred to his errors and omissions insurance policy and said he was comfortable with what was done.

Mr. Black read the last sentence of a May 4th email from Mr. Everaert to Mr. Iller regarding the Chavallo Water Entitlement. Mr. Black said if this site, with constraints for water management into the soil column, was not safe he knew of no Tri-cities hillside development that was safe.

In response to Vice President Huffman, Mr. Black said they made five bore holes, used one which was drilled by Shannon Wilson in 2005 and used three of the KID's psiometers installed in 2002.

Director Jaksch asked about Mr. Black's assertion that with development there would be no more than four feet of water penetration, relative to the statement regarding potential slide danger with a 15 to 20 degree slope. Mr. Black clarified by saying that one could saturate any slope in the Tri-Cities. He gave an example of geotechnical failure at Nancy Thurston's house in Canyon Lakes, where the house on a 20 percent slope was damaged by a regressive slide due to the quantity of water introduced into soil through irrigation.

In response to Director Rathbun, Mr. Black provided further information on the WeatherTRAK system. He discussed programming options and confirmed it was not an engineered system. He said that, in Mr. Chavallo's project, access would only be allowed to a third party, such as a landscape architecture company, which would be given constraints regarding how to program it.

Director Rathbun asked about the geotechnical bores. Mr. Black said the bore holes were about 35 feet deep. He referred to a report and read the findings from the bore holes. Mr. Black said he had submitted his full geotechnical reports to the KID and to Mr. Regilski.

Mr. Costich added that boring logs were in Mr. Black's 2007 and 2010 reports, and that third party monitoring and maintenance of the WeatherTRAK system was in the Homeowner Association requirements. He said his clients did not agree with Mr. Regilski that further information was needed to determined safety, but that to the extent that is a requirement, they understand that requiring additional information is within the Board's purview and control, and that Chavallo is prepared to comply and provide additional information. He reviewed Mr. Black's findings and Mr. Regilski's comments. He asserted that Mr. Black used appropriate standards of practice and while we respect Mr. Regilski's comments and do not take exception to those comments and we feel those were an honest review, Mr. Everaert's April 19th letter contained hyperbole. Mr. Costich said there was no threat to safety and restated the request to withdraw and reverse the decision of April 19th.

Director Jaksch asked Mr. Chavallo if he still wanted part of the KID/USBR right-of-way. Mr. Chavallo said it started in 2005 as a water right issue and that attorney Terry Miller was still on his legal team. He reviewed his request for a 25 foot easement and discussions with USBR and past KID personnel. He said he did not need the easement.

Mr. Regilski's telephone connection was lost and then reestablished and Mr. Regilski indicated he had heard Mr. Black's comments.

Mr. Regilski noted that regarding the canal location, he needed to know where it was to know if it was relevant. He asked if piping the canal was being considered.

Mr. Costich indicated there was no proposal to pipe the canal.

Mr. Regilski said non-circular slope stability analysis was important to do. He said that unless it was done, it was impossible to know if it was critical. He stated his qualifications and

experience with geotechnical work and slides, and said that the non-circular failure plane was often the most critical. He discussed likely failure planes relative to the basalt.

Mr. Regilski said in his experience massive failures due to leaks of various types other than the irrigation practices was critical to consider. He said limiting irrigation was great, but it would be good to consider how to limit other types of risks, though outside the normal slope stability work usually performed.

Mr. Regilski said he was concerned about elastic silts layers found at the site, as failure planes were likely to go through them. He said they should be modeled, and discussed challenges in doing so. He discussed slope stability sections analysis of how much worst-case rain or irrigation saturates soil, which he said was basic analysis, though it often had to be requested.

Mr. Regilski confirmed to Mr. Iller that, per his email of February 11, 2011 to Carron Helberg, he still could not recommend the project without additional information and a complete analysis. He discussed his qualifications as they related to the level of analysis with which he felt comfortable. He has done this for twenty years, and is licensed by the State of California specifically for slope failure analysis, which is a special license only in California and Oregon due to the number of failures they have had. A general P.E. license is not sufficient in California.

Mr. Costich asked Mr. Regilski if he was saying this was an unsafe project. Mr. Regilski said he could not approve it without further analysis. He noted that there were risks associated with housing developments that introduce water to hillsides that were outside the analysis requested, such as leaks in sewer or water lines.

Mr. Garner indicated the USBR had no further comments.

In response to Mr. Iller, Mr. Garner said the current USBR land classification for Mr. Chavallo's Citadel Estates property was class 6 non-irrigable.

Mr. Iller suggested the Board might want to look at the slope of Panoramic Heights and Citadel Estates and decide whether there was a significant difference. He noted that there were issues at Panoramic Heights. He displayed photographs of water from Panoramic Heights on the up-slope side of KID main canal for which KID proposed to install a drain.

Mr. Christenson responded that the pictures were from November, when there was rain, not irrigation water. He discussed a city street system dry well that collected water from 25th, 26th and Kellogg Streets. He said they hoped to run their drainage pipeline system past there, intercepting the water and removing the drywell, though they would have to work with the city. Mr. Christenson said further analysis would be needed to determine the water source. Mr. Iller clarified that just because this was taken in October doesn't mean that this is not irrigation water seeping through the soil that is shown in the pictures. Mr. Christenson said the source could be a dry well, but further analysis would have to be done.

Mr. Christenson noted that each home site would be required to have a geotechnical study for the foundation design. They would have footing drains and drain systems for any pools.

Mr. Iller referred to Mr. Everaert's letter and Mr. Black's July 1, 2009 report, and asked Mr. Black whether Mr. Chavallo could ensure constant monitoring to avoid risk to soil stability if soil saturation exceeded 24 inches anywhere in the development.

As follow-up to Mr. Christenson's information on the Panoramic Heights seep, Mr. Black suggested KID check a psiometer he installed on the north side of road in 2002.

In response to Mr. Iller, Mr. Black discussed low angle slides and noted they would be bounded by retaining walls in many places. He said he had been in Canyon Lakes and Panoramic Heights where there were problems due to irrigation saturation up to 24 inches deep. He noted that the County Extension Agent had a publication that said watering to eight inches was needed for grass and 24 to 36 inches for trees. He said his premise was that less was better and said that monitoring would be done through WeatherTRAK and third party review, not the homeowner.

In response to Director Rathbun's concern that level of commitment to WeatherTRAK monitoring could reduce over time, Mr. Black said use of a third party through the covenants and the Homeowner's Association was meant to address that issue, though he agreed things that started with good intentions might drift off over the decades. He said the retaining walls could be an indicator of problems if water or stains appeared at the base. Mr. Black also said no one could assure KID would be maintaining canals years from now either.

In response to Vice President Huffman, Mr. Black said he was not an attorney but that the engineer, the developer and the water provider would be on the list of those liable if a slide blocked the canal and took out houses.

Mr. Costich said the KID would be liable. He said the Board should consider likely catastrophic failures and take appropriate actions to mitigate the risk, and not base decisions on conjecture.

Iller agreed, but added that due to past events it was not speculative to say there could be slope failures due to irrigation. He said the Board might like more information on WeatherTRAK.

Mr. Freeman confirmed to Director Rathbun that, if approved, irrigation design would have to be reviewed and approved by District staff.

Mr. Costich thanked the Board.

Mr. Regilski said he had no further issues. He confirmed to Director Rathbun that there was additional work to be done to confirm slope stability, specifically non-circular failure analysis.

Mr. Black confirmed on behalf of Mr. Chavallo that they were willing to pursue that additional effort. Mr. Costich added the qualification, that when Mr. Chavallo was to withdraw water subject to his water entitlement or move forward with the design, at that time they would provide the additional information to the USBR. He said whether additional work was forthcoming was a question of timing.

President McKenzie said time frame should be considered in fairness to Mr. Chavallo. He encouraged quick action.

Mr. Costich said that according to his understanding of the Board's motion today, the condition was now as it was prior to April 19th. He said timing should be based on the project moving forward.

Mr. Iller noted that so long as land was classified as Class 6 by the USBR, KID could not deliver water to it, as KID's contract only authorized delivery of water to irrigable lands.

Mr. Garner said that though the USBR required the additional items, just providing them would not guarantee approval. He noted that there was an informal process for land classification of non-farm land. He confirmed that KID could not apply water until the land was reclassified and approved by secretary.

Director McGuire noted that KID policy included a three-year timeframe for use of water, and cautioned Mr. Chavallo to keep that in mind.

Mr. McKenzie thanked the participants for providing information to the Board.

President McKenzie called a break at 10:53 a.m. The meeting reconvened in open session at 11:10 a.m. and President McKenzie changed the order of the remaining items on the agenda.

WORKSHOP:

Discussion of Draft Policy 2.24 Assessment Calculation Principles: Mr. Freeman presented the draft policy which was being created based on the discussion at the May 3, 2011 Board meeting. He reviewed the draft policy line by line. Items reviewed included:

- Section 1.1, Definition of Agricultural Land. Discussion ensued regarding dealing with exceptions. Mr. Iller suggested the Board consider going beyond statutory requirements for notice of the board of equalization.
- Section 1.2-8, Definitions of transmission system, distribution system pipe, distribution pump, CID, acreage charge, fixed charge, construction subsidy, wells, potable, PLA, and PSA.
- Section 2, Fixed Charge per Account
- Section 3, Federal Subsidy of Original Construction
- Section 4, Capital Upgrade & Improvement Funding
- Section 5, Rate Exceptions (Condominiums, Townhouses, and Small Parcels)
- Section 6, Phasing in the Change.

Discussion ensued regarding the definition of agricultural land, the cost of urbanization, and the two different types of federal subsidies (construction subsidy and financing subsidy) and how the remaining portion of the subsidies should be allocated. Mr. Freeman stated that, as the KID system was built for agricultural customers and would not exist otherwise, it was appropriate to pass a portion of the construction subsidy to the remaining agricultural customers.

Mr. Hall stated that he alone on the Water Rate Advisory Committee thought the construction subsidy should be shared by all KID customers. He said Section 2.1 Cost of Urbanization was enough to account for the difference in agricultural and residential delivery.

The proposal to have fixed and variable components to the Capital Upgrade and Improvement assessment was discussed. Mr. Freeman said he believed it would make that component more fair and equitable. He confirmed to Director Rathbun that this capital charge would be set annually, based on work to be completed each year.

Mr. Freeman discussed the press release and advertising for the special board meeting which was to be held Monday, May 23 at 6:00 p.m. He reported that the consultant would give a

PowerPoint presentation and that there would be a public comment period. Publication of the presentation materials was discussed.

Mr. Freeman discussed plans to construct an interface for the website which would allow water users to estimate their assessment using the proposed rate structure. Ms. Storms cautioned against doing this before the board had settled the policy decisions upon which the model would be based.

Timeline for completion of the rate model was discussed.

Tim Berk said section 2.1 addressed customer density, not land use. Discussion ensued regarding causes of the higher cost of urban service, the fixed account charge and the application of the construction subsidy.

Topics for future discussions were considered. Director McGuire noted that Monday's discussion would be about methodology.

Mr. Berk said the draft policy was true to heart of the WRAC's discussions. Mr. Freeman said it and Mr. Gordon's handout would be available Monday. Mr. Revell said there would be opportunity for oral or written public comment.

Special meeting was to be held at 6:00 p.m. on Monday, May 23, 2011.

PRESENTATION:

Monthly Financial Report for April 2011: Ms. Storms distributed the April 2011 financial report and reviewed highlights. Pages reviewed included:

- Balance Sheet as of April 30, 2011
- Statement of Revenues and Expenditures
- Statement of Revenues and Expenditures - Budget to Actual. Discussions ensued regarding reaction to the new policy regarding delinquencies, how vehicle, equipment and fuel expenses were categorized, and the Distribution System Expense category.

PUBLIC HEARING: None

BOARD REPORTS: None

ACTION ITEMS:

Amend Policy 2.11 Realty Reserves: Mr. Freeman said the revised policy language was drafted by legal counsel, Fran Forgette, in response to discussion at the March 17, 2011 Board workshop. He said the Realty Committee reviewed the changes and recommended approval.

Director Rathbun moved to approve the revised Policy 2.11, Realty Reserves. Director Jaksch seconded the motion and it carried unanimously.

Approve Request for Qualifications for Professional Engineering Services for Red Mountain LID Irrigation Project: Mr. Everaert introduced the proposed RFQ for the 30% design for the Red Mountain LID Irrigation Project. He discussed the history of the project, reviewed the scope of work, project schedule correction and date for submittals. Mr. Everaert noted that page three of the project schedule was corrected to read 30%, and that the correct date of delivery for the RFQ submittals was Tuesday, July 5, 2011, before 4:00 p.m.

Director Jaksch moved to approve the RFQ for Professional Engineering Services for the 30 percent Preliminary Engineering Design for the Red Mountain LID Irrigation Project, making the corrections Mr. Everaert noted (page three of the project schedule to read 30%, and the date of delivery for the RFQ submittals to be Tuesday, July 5, 2011, before 4:00 p.m.). Vice President Huffman seconded the motion and it carried unanimously.

RESOLUTIONS:

Resolution 2011-17 Adopting a Salary System and Setting Salary Ranges for the District: Mr. Freeman discussed history of the salary survey project. He reviewed staff policy recommendations to the Board regarding what to consider pay within market, positions over 105%, adoption of pay ranges, and application of a CPI factor to salary ranges annually.

Director McGuire moved to accept the Salary Survey as complete and to approve Resolution 2011-17 Adopting a Salary System and Setting Salary Ranges for the District. Vice President Huffman seconded the motion and it carried unanimously.

Resolution 2011-16 Project Acceptance and Release of Retainage for Public Works Contract 2010-07 Main Canal Turnout: Mr. McShane discussed the proposed resolution and reviewed the project history. He confirmed that the contractor filed final paperwork with the state and that the project was completed.

Vice President Huffman moved to approve Resolution 2011-16, Project Acceptance and Release of Retainage for Public Works Contract 2010-07 - Main Canal 9.0 Turnout 2010 Piping Project. Director Rathbun seconded the motion and it carried unanimously.

PUBLIC COMMENTS: None

STAFF REPORTS: None

President McKenzie called a break at 12:25 p.m.

EXECUTIVE SESSION:

At 12:35 p.m., the Board went into executive session for ninety minutes to discuss with legal counsel litigation regarding Acquavella and one other matter per RCW 42.30.110(1)(i)(i), to consider the minimum price at which real estate will be offered for sale per RCW 42.30.110(1)(c), and to plan or adopt the strategy or position to be taken by the governing body during the course of any collective bargaining per RCW 42.30.140(4)(b).

Following a short break, the meeting returned to open session at 2:07 p.m.

Director Jaksch moved to adjourn. Director Rathbun seconded the motion and it carried unanimously.

Attest:


David McKenzie, Board President

Witness:


Charles Freeman, Secretary/Manager

Gene Huffman, Board Vice President,
acting as Chairman at June 21, 2011
Board Meeting

Prepared by Doris Rakowski

From: [Shlomo Orr](#)
To: [Doris Rakowski](#)
Subject: Citadel Estates development
Date: Monday, May 09, 2011 11:43:23 AM

Dear Ms. Rakowski,

Thank you for taking a cautious approach re the proposed Citadel Estate development. Indeed the slope is very steep, and a water canal there is very risky. As a hydrologist / hydrogeologist for many years, I agree - even a small, unnoticeable leak could soon cause a slope failure that could lead to disastrous consequences. Thanks again for your responsible stand.

Best regards,

Shlomo Orr, PhD, Hydrogeologist

Dr. Shlomo Orr
5900 W. 25th Avenue
Kennewick, WA 99338
Tel.: (509) 736-3111
cell: (509) 591-8196
shlomo@mrds.us
shlomo@sorrassociates.com
www.sorrassociates.com

From: [Erickson, Kenneth G](#)
To: [Doris Rakowski](#)
Subject: Citadel Estates & KID
Date: Thursday, May 05, 2011 9:39:48 AM

I am concerned about the feasibility of this project based on the steep hillside and the impact of re-landscaping Thompson Hill to allow the construction of houses at Citadel Estates. The hill needs to have enough buildable lots to allow construction. However, this will require significant amounts of fill and retaining walls. It will also involve irrigation of the property for plants and grass. Adding large quantities of water to a newly sculpted hill appears to be tempting fate. I believe there were similar issues in Canyon Lakes. I would not support the project and potentially destroy canals and create landslides on this steep area, unless significant (independent) engineering studies were performed.

Ken Erickson
5700 W 25th Ave
Kennewick, WA 99338
509-308-4628