

**REGULAR BOARD MINUTES  
SOUTH PLACER MUNICIPAL UTILITY DISTRICT**

<b>Meeting</b>	<b>Location</b>	<b>Date</b>	<b>Time</b>
Regular	Zoom Meeting	October 6, 2022	4:30 p.m.

**I. CALL MEETING TO ORDER:** The Regular Meeting of the South Placer Municipal Utility District Board of Directors was called to order with Vice President Williams presiding at 4:30 p.m. using Zoom Meeting.

**II. ROLL CALL OF DIRECTORS:**

Present: Director John Murdock, Director James Durfee, Director Will Dickinson, Vice President Jim Williams

President Jerry Mitchell joined the meeting at 5:39 p.m.

Absent: None

Vacant: None

Staff: Adam Brown, Legal Counsel  
Herb Niederberger, General Manager  
Carie Huff, District Engineer  
Eric Nielsen, Superintendent  
Emilie Costan, Administrative Services Manager

**III. PLEDGE OF ALLEGIANCE:** Vice President Williams led the Pledge of Allegiance.

**IV. PUBLIC COMMENTS:**

ASM Costan confirmed that no eComments were received. Hearing no other comments, the public comments session was closed.

**V. TELECONFERENCING**

**1. RESOLUTION 22-37 DECLARING AND RE-RATIFYING THE STATE OF EMERGENCY AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE BOARD OF DIRECTORS DUE TO THE COVID-19 EMERGENCY**

GM Niederberger introduced the item to continue authorizing remote teleconference meetings due to the COVID-19 Emergency. He shared that new legislation was recently signed, AB 2449 which permanently extends the provisions under AB361 and lessens the requirements for a board member to attend a meeting remotely. He shared that staff would provide more information on the legislation at a future meeting.

Director Dickinson made a motion to adopt Resolution 22-37 Declaring and Re-ratifying the State of Emergency and Authorizing Remote Teleconference Meetings of the Board of Directors from

October 6, 2022 through November 5, 2022 due to the COVID-19 Emergency; a second was made by Director Durfee; a roll vote was taken, and the motion carried 4-0.

## **VI. CONSENT ITEMS:**

1. MINUTES from the September 1, 2022 Regular Meeting.
2. MINUTES from the September 20, 2022 Special Meeting.
3. ACCOUNTS PAYABLE in the amount of \$903,885 through September 27, 2022.
4. BILL OF SALE Acceptance of the Bill of Sale for the West Oaks Townhomes Sewer Improvements, with an estimated value of \$261,903.
5. RESOLUTION 22-38 AUTHORIZING THE GENERAL MANAGER TO PURCHASE A VEHICLE UP TO THE BUDGET AMOUNT OF \$86,000.

ASM Costan shared that the September 1, 2022 Board Minutes were revised from the original agenda packet to update the Roll Call of Directors and provide additional detail on the discussion regarding the true-up invoices received from the City of Roseville.

Director Durfee made a motion to approve the consent items with the proposed revisions to the September 1<sup>st</sup> Board Minutes; a second was made by Director Murdock; a roll call vote was taken, and the motion carried 4-0.

## **VII. BOARD BUSINESS**

### **1. AHERTON SEWER TRUNK UPGRADE**

GM Niederberger presented an update on the Atherton Sewer Trunk Upgrade Project located in the Northwest Rocklin Annexation Area. The project requires the existing Atherton Sewer Trunk to be replaced, as the existing pipeline has been identified as a hydraulic bottleneck. The City of Rocklin created a funding zone in 2014 to pay for the future upgrade project. The design portion of the project was scheduled to begin when 1,900 EDUs had connected to the line with construction beginning at 2,400 EDUs. There are currently 2,493 EDUs connected to the existing Atherton Sewer Trunk. The City is in the process of securing right-of-entry agreements from adjacent property owners. The District authorized a Temporary Sewer Connection and Use Agreement during construction at the September 1, 2022 board meeting. Failsafe precautions have been put into place to prevent a sanitary sewer overflow during construction. Finally, GM Niederberger shared that a pre-construction meeting occurred yesterday, and the construction is anticipated to take 6-8 weeks.

DE Huff added that the City of Rocklin has provided comments that would change the terms of the Temporary Sewer Connection and Use Agreement adopted by the Board on September 1<sup>st</sup>. The project will require that the contractor utilize the new pipe prior to acceptance. GC Brown shared that he has been in contact with the Rocklin City Attorney, and it does appear that they will be able to reach accommodations on the proposed terms. He does not believe that the agreement will need to come back before the Board.

Director Murdock asked about potential problems that the contractor may experience during construction. DE Huff shared that there is a change to the pipe alignment which may cause the contractor to encounter rock. The revised location centers the pipe in the access road. There is flexibility to shift the alignment back if needed. DE Huff commented that there are also provisions in the contract to address issues with groundwater if it is encountered. She also shared that the District recently received the preliminary bypass plan. Rain-for-Rent is the sub-contractor who will be completing the bypass work. They are an experienced firm, and the bypass plan contains redundancies to reduce potential impacts.

Director Dickinson commented that a rain event that occurs when the soils are saturated has the potential to have a more significant impact than a large rain event that occurs earlier in the season, and the project is close to a creek. He shared that he wants to ensure there are backup plans ready if the project doesn't proceed exactly as planned and that all available safety precautions are in place. He thanked staff for the tour of the project site.

Director Durfee commented that the City of Rocklin has criticized the District in the past for its connection fee; however, the City of Rocklin's development impact fee for this project was significantly less than the amount needed to fund the project thereby requiring the use of City general fund dollars.

## **2. RESOLUTION 22-39 AUTHORIZING THE ADOPTION OF A FORMALIZED RETIREE HEALTH REIMBURSEMENT ARRANGEMENT (RHRA) PLAN DOCUMENT**

GM Niederberger gave a presentation on the history of the District's Other Post-Employment Benefit (OPEB) which refers to the retiree medical premiums paid by the District directly to retirees. He shared information about the District's California Employee Retiree Benefit Trust (CERBT) a Section 115 Trust that can be used to fund a Retiree Health Reimbursement Arrangement (RHRA). GM Niederberger shared that the District went through a comprehensive Pension and Payroll audit. As a result of that audit, the District has been advised by its Special Legal Counsel to immediately adopt an RHRA with a third-party plan administrator to assist the District with the RHRA documentation, recordkeeping, claims processing, and compliance.

Special Counsel Jeff Chang presented his findings regarding the tax treatment of the District's retiree health reimbursement. He shared that Retiree Health Reimbursement Arrangements (RHRAs) are subject to two sets of rules, IRS publication 2002-45, and the plan documentation rules for IRS Section 105 Plans. He commented that it is clear to him that the District staff has been operating an RHRA on a functional basis; however, the District has not adopted a stand-alone integrated plan document. This has led American Fidelity, auditors, and other consultants to raise concerns about the tax treatment of the retiree reimbursement payments. He recommended that the District adopt a formalized RHRA managed by a third-party administrator to make the arrangement more integrated and ensure the proper viewing of the tax treatment of the benefit.

Director Murdock inquired as to how quickly the plan document needs to be adopted. Special Counsel Chang advised that the plan document be adopted as soon as administratively feasible.

Director Dickinson asked for confirmation that this recommendation eliminates the need to address past documentation and that the District has been in compliance but needs to document it better. Special Counsel Chang shared his advice and opinion that the District has been operating in a way that meets the requirements of the IRS notice governing RHRAs. He shared that there is legal precedence that multiple documents such as MOUs and employee manuals can be used to establish a plan document; however, it is not ideal on a go-forward basis because there is not a single integrated document to reference.

Vice President Williams thanked Special Counsel and shared that Mr. Chang is one of the premier experts in the State on this type of law. Vice President Williams shared that the intent through this whole process was to bring in outside people to review our practices and documentation, and the recommendations that have come out of that have been made by experts in those areas and not by staff.

District Retiree Charles Clark provided public comment regarding the RHRA. He thanked the Board for their quick action on this item as it was a serious concern for the retirees. He commented that the presentation from the Special Counsel was clear and concise. He shared that he and other staff at the time put together the reimbursement as best they could, following CalPERS instructions. He commented that his staff ran a minimalist shop and believed that this benefit was straightforward enough that it could be managed in-house. He shared that he has concerns about the General Manager's participation in developing the plan document and recommended that it be developed by General Counsel.

ASM Costan read eComments from Mr. Clark into the record. The comments included a request to revise the Board Resolution to have the District's Legal Counsel be the drafter of the "Retiree Health Reimbursement Arrangement" document and have someone from the Employee Association and/or retirees' group be allowed to have input.

Director Dickinson commented in response to the request from Mr. Clark, that the General Manager will continue to be advised by Counsel throughout the entire process. He commented that he has been working on this issue through his role on the Personnel Advisory Committee where he has received updates about the issue and finding a resolution. He shared that it has been a difficult question to find a resolution to. He apologized if employees or retirees have felt like or perceived there may be retribution of some kind. He shared that he does not perceive that there has been retribution of any kind and does not believe that there will be in the future. He commented that the Board and Management want to come to a resolution that works and is to the benefit of the retirees and employees. He stated that he does not see a need to modify the Resolution.

General Counsel Brown shared that he has been working with Special Counsel Chang regarding this matter, including reviewing the Resolution before the Board and the evaluation of how we have arrived at the current recommendation. GC Brown shared his full support for the recommendation.

Director Murdock echoed Director Dickinson's comments. He shared that the Board has been working with management to find a solution to this problem. This problem has been buried in

emails and files going back to 2012, and this action resolves the matter. He commented that the Board is here to address employee concerns and provide support. He shared his confidence in the District staff, management, legal counsel, and Board of Directors.

Director Durfee concurred with the comments made by Director Dickinson and Director Murdock.

Vice President Williams commented that the Board has always tried to do the right thing in its agreements with employees. He shared that he does not believe that there has ever been a diversion from that path. He shared that he has not seen where any action taken was done to endanger the benefits that have been approved for employees or retirees; to the contrary, management and the Board have been trying to make sure that everything is documented to protect the benefits. He commented that in the past, the District has not always gotten all the documentation right, due to being a very frugal Board and trying to keep expenses down. He commented that there are times when clarity is lacking, and this is one of those times. This action clarifies the benefits and keeps them safe from challenges. This should provide assurance. Vice President Williams shared that the Board's first loyalty is to the customers. He commented that the District is the best managed collection system in the State, and the Board wants to keep it that way. He reiterated his confidence that our management staff is doing a good job. He shared that he does not believe that there are any ulterior motives, and that management has a sincere interest in making sure that the District has good sound agreements in place that will withstand legal challenges and evolving statutory requirements.

Director Dickinson made a motion to adopt Resolution 22-39 Authorizing the Adoption of a Formalized Retiree Health Reimbursement Arrangement (RHRA) Plan Document; a second was made by Director Murdock; a roll call vote was taken, and the motion carried 4-0.

### **3. PG&E LEGACY CROSS BORE PROGRAM / DISTRICT ACCESS PERMITS**

GM Niederberger introduced the item. DE Huff shared that the Board requested additional information at the September board meeting on the PG&E Cross Bore Program and the District's Access Permits. She shared that the staff report on this item provides a history of the issues. Staff is requesting that the Board provide feedback on the letter to PG&E and authorize the Board President to sign the letter.

Director Murdock asked how long the PG&E Cross Bore Program has been in place. DE Huff responded that the program has been in place for several years and has been impacting District customers for approximately the last three years. Staff has been monitoring the access and working to implement a permitting process since that time. Director Murdock inquired as to what necessitates PG&E access. DE Huff shared that PG&E lacks records prior to 2010. PG&E is determining if projects were constructed via cross bore or open trench. If the project was constructed via cross bore, they are going back to determine if there has been any impact to other utilities. The District is pushing back on the areas where this work is required as many of the areas were constructed after 2010.

Director Dickinson asked if PG& E is utilizing the District's permit process. De Huff responded that they have attempted to submit applications; however, those applications have not been deemed complete to date. Staff has not received any follow-up submittals. No access permits have been issued. Director Dickinson asked if staff believes that PG&E is completing the work without a permit. DE Huff shared that she believes that when PG&E sees that they must justify the access that they are determining that the access is not justifiable.

Director Dickinson commented that in talking to constituents there are concerns that the crews do not have good identification or marked vehicles. This should be addressed in the communications with PG&E. He also recommended language to ensure that PG&E must use the District's permit process. DE Huff shared that item 3 of the PG&E letter covers the poor identification of PG&E's contractors. She shared that the District's fine schedule will address the consequences of not obtaining an access permit. Director Dickinson shared that the District may need to send a follow-up letter if there are future issues with PG&E accessing District facilities without a permit.

Director Murdock asked how the District can stop PG&E from accessing our facilities and inquired as to whether the letter should have stronger language. GM Niederberger asked DE Huff for more detail on the persons to whom the letter is addressed. DE Huff shared that the letter is being addressed to two individuals that are one level down from the CEO. DE Huff also suggested an article on this topic in the District's newsletter.

Director Dickinson shared his support for sending the letter as drafted and following up if necessary.

Director Murdock made a motion to authorize the President of the Board of Directors to sign the PG&E Cross Bore Program Letter; a second was made by Director Dickinson; a roll call vote was taken, and the motion carried 4-0.

## **VIII. REPORTS**

### **1. District General Counsel (A. Brown):**

General Counsel Brown had no report for this meeting.

### **2. General Manager (H. Niederberger):**

#### **A. ASD, FSD & TSD Reports:**

GM Niederberger shared changes to the GM Report. The Policy and Ordinance Committee meeting has been rescheduled which will mean that the introduction of proposed Ordinance 22-03 and the board policy revisions will be moved to December. GM Niederberger also shared that he will be out of the office until October 24<sup>th</sup>.

#### **B. Information Items: No additional items.**

**3. Director's Comments:**

Director Dickinson thanked staff for working through some important issues and bringing them to finality at tonight's meeting. Director Murdock also thanked staff for their work to obtain answers for the Board. Vice President Williams commented that he wants the General Manager and Administrative Services Manager to know that they have the Board's confidence. He commented that it has always been the Board's intent to do right by the employees, in some cases to the point where it has made him nervous. However, it is important because the Board wants this to be the best District and needs employees that feel like they are part of the team. He shared his hope that we can put this behind us and move forward.

GC Brown shared that the Board will only be going into closed session regarding the evaluation of the General Manager. The other closed session item on the agenda will not be discussed.

**IX. CLOSED SESSION READOUT**

The Board met in Closed Session at 5:39 p.m. to hear a report from District General Counsel regarding the discussion of the General Manager's Performance Evaluation and no action was taken.

The Board adjourned the closed session at 5:48 p.m.

**X. ADJOURNMENT**

The President adjourned the meeting at 5:50 p.m. to the next regular meeting to be held on November 3, 2022, at 4:30 p.m.



Emilie Costan, Board Secretary