

MINUTES
BEXAR METROPOLITAN WATER DISTRICT
REGULAR BOARD MEETING
2047 W. MALONE, SAN ANTONIO, TEXAS 78225
P. O. BOX 245994, SAN ANTONIO, TEXAS 78224
MAY 31, 2005

In accordance with Chapter 551 of the Texas Government Code, Vernon's Annotated Civil Statutes, Section 31, the Board of Directors for the BEXAR METROPOLITAN WATER DISTRICT held a **Regular Board of Directors Meeting at 5:00 p.m. on the 31st day of May, 2005**, in the Board Room of Bexar Metropolitan Water District, 2047 W. Malone, San Antonio, Texas.

BOARD MEMBERS PRESENT: Victor Villarreal; Lesley Wenger; Jim Clement; Jose Gallegos.

STAFF MEMBERS PRESENT: Gil Olivares; Adolfo Ruiz; Larry Bittle; Mike Albach; Diane Pfeil; Steve Sandoval; Martin Kufus; Melissa Wilson; Jesse Morin; Liliana Oranday.

CONSULTANTS PRESENT: Louis Rosenberg; Ciro Rodriguez, (Rio Strategy Group); Clay Binford (Winstead Sechrest).

GUESTS PRESENT: David Sosa; Gilbert Gallego; James Fenimore; Bob Anderson; Sylvia Gonzalez (CRWR); Joe Thaxton (United Water); Lee Niles (Pape-Dawson); Pete Maldonado (Premier Government Capital); Dean Davenport (Davenport Drilling); James Allen (Water Exploration Company).

PRESS PRESENT: Jerry Needham, *Express-News*.

MINUTES

The open session of this meeting was tape recorded. These minutes are a summary record of the Board's actions at the meeting. For a detailed record of discussions and statements made by persons speaking at the meeting, please consult the audio files at the District's office.

Item 1:

Mr. Villarreal called the meeting to order 05:02 p.m.

Item 2:

[Upon motion of Mr. Gallegos, seconded by Ms. Wenger and passed without opposition, the Board adjourned into Executive Session at 5:05 p.m.]

Item 3:

The Board reconvened in Open Session at 6:12 p.m. and took the following action regarding discussion in Executive Session.

Ms. Wenger requested a point of personal privilege to recognize ratepayer Sylvia Gonzalez, Secretary of the *Committee to Reduce Water Rates*. Mrs. Gonzalez and her family were on the front page of the Metro section of the San Antonio Express-News because of her famous father, Manuel Martinez. He was the first Hispanic to reach a high rank at the San Antonio Police department and had his 92nd birthday yesterday. Ms. Wenger wished a Happy Birthday and congratulations to Mrs. Gonzalez and her father.

2(a) GBRA

[No action was taken at this time.]

2(b)

Mr. Olivares requested the Board authorize counsel to proceed with affirmative defenses in this matter and authorize staff to discuss development issues with Timberwood Development Company.

Ms. Wenger moved to authorize. Motion was seconded by Mr. Clement.

Motion carried unanimously.

2(c) Employment Contract

[No action was taken at this time.]

Mr. Villarreal inquired as to whether or not the Board wanted to suspend the orders of the day and discuss Item 7. Mr. Olivares suggested the Board go down the agenda as is.

Item 4:

[No citizens signed up to be heard.]

Item 5:

Ms. Wenger moved to accept the resignation of Director, Ysidro Solis. Motion was seconded by Mr. Gallegos.

Motion carried unanimously.

Mr. Clement moved to begin accepting applications by persons interested in serving as a director for District 7, tomorrow, June 1, 2005 at 8:00 a.m. and close

the process at 5:00 p.m. on June, 15, 2005 and that a mailing to all resident rate payers of District 7 be sent tomorrow advising them of the open Board seat and inviting all interested and qualified individuals to apply; and that following the close of applications the Board will allot a period of not more than two weeks to interview potential candidates and schedule a meeting to vote on filling the vacant seat. Motion was seconded by Ms. Wenger.

Mr. Gallegos stated the Board meeting scheduled for June 27, 2005, is the indicated date for appointments of the candidates nominated for Director's 2 and 3. He asked Mr. Clement to clarify the motion because there was no specific date set for appointing these Board positions. Mr. Clement stated a special meeting can be held at anytime to appoint the other Board members and that it would be advantageous for the Board to fill all vacant positions at one time and therefore simplify the matter.

Mr. Gallegos advised that he would be voting in opposition of the motion because no specific date was set for the appointment of District 7, and the period of consideration for candidates to apply has been shortened. The same courtesy that was extended to applicants for District seats 2 and 3 is not being extended to potential applicants in District 7. He stated during the initial attempt to fill vacancies in Districts seats 2 and 3 the majority of the Board elected to extend the period of consideration for candidates to apply for those positions to 30 days and if the period is shortened the Board would be setting the wrong precedent.

Mr. Clement stated there will be a mailing on June 1, 2005 advising all rate payers in District 7 that there is a vacancy on the Board. He stated that for the other two Districts a flyer went out with the water bills in separate mailings during the month. That was one of the reasons the process was carried out for a full month. He stated Ms. Pfeil informed him she could accommodate a special mailing tomorrow in order to advise District 7 rate payers of the vacancy on the Board. He stated this mailing would satisfy the need to inform everyone in the District. He stated that the full board should consider a future date for selecting all the people to fill the vacant positions as long as the applications are returned in time for the Board to review them and speak with the candidates. He asked Mr. Gallegos to reconsider voting in favor of the motion.

Mr. Villarreal called for the vote.

Ayes: Villarreal, Wenger and Clement.

Nays: Gallegos.

Motion carried.

Mr. Gallegos requested a point of order for a ruling from counsel on the legality and approval of the motion. He stated there are only four Board members in office. The District calls for a seven member Board and by law there have to be four members present to conduct business. He asked if the Board was conducting its meeting legally at this time.

Mr. Ruiz responded there have to be four members present to constitute a quorum. He referenced Texas Water Code 49.053 which indicates presence of the majority of the entire membership is needed to conduct business. Texas Common Law indicates that a majority of all members being present is a sufficient amount to hold meetings and be qualified to vote. In this case, four members constitute a quorum, three of whom would be a majority.

Mr. Gallegos confirmed four members would constitute a quorum, but cautioned the Board to be careful how they proceed. He stated his concern of being in violation of Texas Common Law and therefore nullifying any actions that take place. Upon a request for clarification by Mr. Villarreal, Mr. Ruiz reassured the Board that with regard to the Board's current situation, having four members present does constitute having the majority of the Board present and is consistent with Texas Common Law.

Item 6:

Mr. Olivares stated the budget was amended at the Budget Session to give Director's fees up to \$7,200.00 per annum. However, Statute requires a Resolution amendment in order to give payment to Directors. The Board members were given a packet containing the amended Resolution. The second paragraph was amended to state that each Director is entitled to receive the Director's fees of office, not more than \$150.00 of each day or portion thereof in which substantial business is conducted on behalf of the District in a manner approved by the Board. The actual policy document states there will be an allowed amount of \$7,200.00 per Director per fiscal year.

Mr. Villarreal moved to approve the Resolution to amend the "Directors' Fees of Office Policy" provision in BexarMet's Administrative Policies to change the amount of fees that a director may receive in a year to an amount not to exceed \$7,200.00 per year. Motion was seconded by Ms. Wenger.

Mr. Olivares explained this allows the policy to be amended appropriately. Mr. Villarreal made a statement, which was confirmed by Mr. Olivares, that the fee amount was previously approved by the Board, and Mr. Olivares is merely adding it to the policy at this time.

Motion carried unanimously.

Item 7:

Ms. Wenger moved to approve the recommendation from the General Manager and staff to execute a non-binding Letter of Intent by and between BexarMet and Water Exploration Company ("WECO"). Motion was seconded by Mr. Clement.

Mr. Gallegos pointed out that this is a non-binding letter of intent by the District with Water Exploration Company (WECO) and is in no way an indication that the Board is

pursuing a contract with said entity; it is merely a feasibility study. Mr. Olivares confirmed that Mr. Gallegos statement was correct.

Mr. Villarreal called for the vote.

Motion carried unanimously.

Item 8:

Mr. Ruiz advised that the Utility Service Agreement creates infrastructure standards for developers which BexarMet has never had in writing before. This format will fill in the blanks of individual contracts, and the Board will approve the each specific contract. The exhibits attached to each contract will change on a circumstantial basis, but will serve as a model for future dealings.

Mr. Ruiz noted the last exhibit in each contract will change with regard to the specific dollar amount agreed upon and the size of the development. Mr. Gallegos asked if there is any urgency in approving the contract.

Ms. Wenger answered that there is urgency because the North West side of San Antonio is a large developing area and the developers have not been able to work with BexarMet for a number of years. The developers have requested BexarMet move ahead with this urgent matter. They are willing to put millions of dollars into the ground that will actually help BexarMet in the long run.

Ms. Wenger moved that the Utility Service Agreement be approved as stated on the Agenda. Motion was seconded by Mr. Clement.

Mr. Villarreal called for the vote.

Motion carried unanimously.

Item 9:

Mr. Olivares reported on the timeline for the construction of the Southside pay station. The cost was approved by the Board.

[There was no need to vote on the item 9].

[Upon motion of Ms. Wenger, seconded by Mr. Villarreal and passed with only the opposition of Mr. Gallegos, the orders of the day were suspended in order to proceed to Agenda Item 14.]

Item 14. Department of Justice Resolution

Mr. Ruiz stated this is the Resolution needed for the Department of Justice in order to get pre-clearance to change the term of District 3 from November 2008 to November 2006. Mr. Olivares informed the Board that although Ms. Wenger proposed a

Resolution alternate to the one in the packets, Mr. Ruiz reviewed that particular Resolution and made amendments.

Ms. Wenger noted Mr. Ruiz' Resolution lists an incorrect Agenda Item number. The Item number should be listed as Item 14 instead of Item 16. The mistake was confirmed and corrected by Mr. Ruiz. Mr. Ruiz went on to explain the amendments to the resolution which include a change in the language with regard to the Water Code and the preference for BexarMet to comply with State Law.

Ms. Wenger stated she had no problem with Mr. Ruiz' amendments and went on to read the amended Resolution out loud.

Ms. Wenger moved to approve the amended Resolution. Motion was seconded by Mr. Clement.

Mr. Gallegos expressed concern to Mr. Ruiz' amended Resolution. He confirmed that he understood the maker of the motion's intent when it was placed on the Agenda last week and at the time indicated to Mr. Ruiz that there can be any number of (District) options for the staggered term. For example, when he spoke to Mr. Villarreal with regard to this matter, Mr. Villarreal indicated he would be willing to take a lesser term if that were necessary. Mr. Gallegos inquired as to why the Resolution suddenly went from changing the office term of either of the Districts to singling out District 3.

Mr. Villarreal asked Mr. Ruiz to elaborate on the subject. Mr. Ruiz answered because of the changes made by the Federal District Court, which cut all terms from six years to four years, it is difficult to continue with the staggered terms of election every two years as previously implemented. The Board has the option to stagger the terms in any way they deem fit. However, in order to avoid an election every year, and to balance the number of seats every two years, it would be preferable not to have two seats up in 2006 and five in 2008.

Mr. Villarreal responded to Mr. Gallegos' earlier statement about Mr. Villarreal agreeing to a shorter term. He and Mr. Gallegos were elected to serve until 2008. Mr. Olivares has assured him that there is no need for his term to be shorter since changing the vacant District 3 term would prevent the Board from having to hold a costly election every year. He agrees this would be more manageable and less disruptive to the Board, and employees. Mr. Ruiz agreed, and Ms. Wenger added that the other reason for this is that the Board is interested in expanding the voting rights of the rate payers and to appoint someone for a longer term denigrates those voting rights. The term of the other two appointed seats are up in 2006 so there is no reason to move them. Moving District 3 would simply give all the rate payers in that District an opportunity to vote sooner. Mr. Gallegos stated he now understands the reasoning behind this.

Mr. Villarreal called for the vote.

Motion carried unanimously.

Item 10. Legislation

Congressman Rodriguez reported that the Legislative Session is over, and thanked everyone for their help and support in Austin. He stated some of the Representatives were watching out for the interest of BexarMet. Mr. Rodriguez pointed out he would like to specifically give thanks to Representatives Carlos Uresti, Frank Corte, and David Leibowitz for their efforts. He thanked members from the Bexar County Delegation as well as members from the committee that are not from the region.

Congressman Rodriguez updated the Board on the following bills:

House Bill 3565 has not been removed from calendar.

Senate Bill 3 died on the State calendar on the House floor.

House Bill 2445 (which the Board endorsed and supported) died in the Senate.

Congressman Rodriguez said that several bills have passed and he intends to prepare a summary of those bills. He wanted to highlight that Senate Bill 1892 by Madla and Uresti regarding the Espada development passed. He stated although the Legislative Session is over, there is talk about a special Session that may develop with a focus in the area of education. If this Session develops, the only bills that can be dealt with are those bills that the Governor opens it up to, which will most likely be in the interest of education. It may be possible to pass other bills at this time as he has personally done in the same situation, however, it can be a difficult task. In addition he will begin checking on some of the bills that were passed, beginning June 1, 2005, to assure that everything is okay with them. He thanked the Board again for allowing him the opportunity to work with them, and suggested they continue to reach out to the Delegation throughout the year in order to help with the next session.

Ms. Wenger stated the Board would also like to thank Senators Frank Madla and Leticia Van De Putte for their support.

Mr. Gallegos thanked Congressman Rodriguez for his diligent work in Austin. He stated there was a united effort by the Board and the District to start building consensus for the future of the District, the ratepayers and the employees. Mr. Gallegos also thanked rate payer, Lorenzo Martinez, who traveled to Austin and testified before the House Natural Resources Committee. Mr. Martinez's presence, along with the phone calls and lobbying by other rate payers and members helped immensely. He stated that without their united effort the same outcome would not have been achieved.

Ms. Wenger thanked Lorenzo Martinez for his passion and statements to the Natural Resources Committee. She stated the excellent letters presented, and the support of several cities - specifically Somerset, Castle Hills and Hill Country Village really helped make a difference.

Mr. Villarreal thanked Congressman Rodriguez again, and mentioned that this Legislative Session should serve as an example that it really helps to be involved in these types of issues in order to make a difference. He also thanked and congratulated Mr. Martinez and all the other individuals who participated in the Session.

[No action was taken at this time with regard to Agenda Item 10.]

Item 11. Amendment to Contract

Mr. Villarreal stated the amendment was discussed in Executive Session.

Mr. Clement moved to amend the contract to Rio Strategy Group for a lump sum of \$3,000.00 for the duration of the contract. Motion was seconded by Ms. Wenger. There being no discussion, the vote was taken.

Motion carried unanimously.

Item 12. Partial Sale Study

Mr. Gallegos moved to instruct the General Manager to proceed with the feasibility study of a sale of a piece of the property located at 2047 W. Malone and to obtain an appraisal for the property. Ms. Wenger seconded the motion and clarified that the Board is only referring to 3.38 acres of land that is part of the District headquarters.

Motion carried unanimously.

Item 13. Hill Country Hydraulic System Model

Mr. Olivares explained that a Water Distribution System Model of BexarMet's Hill Country service area is an important tool to evaluate and adjust high and low pressure within the system. The LAN engineering firm responded to an RFQ for this service. The Stone Oak/Hill County System is a large system, and the cost is \$80,000.00. He stated the money will come out of professional fees.

Ms. Wenger moved to approve the recommendation for the contract to Lockwood, Andrews & Newman, Inc. (LAN). Motion was seconded by Mr. Clement.

Motion carried unanimously.

Item 15: Appraisal of Land Assets

An appraisal on BexarMet's land assets needs to be conducted in order to determine their true value. Mr. Olivares would like to issue an RFQ for appraisal services. He indicated the unnecessary property can be declared surplus. Mr. Gallegos asked if the appraisal would be for the entire collection of District properties owned at this time. Mr. Olivares answered, it would be for the non-productive land only. He explained, for example, that the BexarMet facility (located on W. Malone) would not fall into this category because it is currently being used. However, there are several tracks of land owned that are simply vacant pieces of land which would qualify.

Mr. Gallegos moved to approve the Item 15. Motion was seconded by Ms. Wenger.

Mr. Gallegos commented that for many years of the history of BexarMet, most, if not all properties were being purchased without an appraisal. He stated that discovering BexarMet had conducted business in this manner disturbs him considerably. He stated he feels this motion is very long over due. Ms. Wenger stated that there is some history on Mr. Gallegos' part in having mentioned this topic previously in finance committee meetings.

Motion carried unanimously.

On a point of personal privilege, Mr. Gallegos apologized and announced to the audience that he had a previously scheduled commitment to attend and stated that he would be leaving the meeting.

[Mr. Gallegos' Announcement lasted for 1.2 minutes.]

Ms. Wenger asked if he could stay for one more minute to at least vote for the Item 16 Consent Agenda. Mr. Gallegos declined and left the room

Mr. Villarreal stated he would need a motion to adjourn at this time. He asked Mr. Olivares if the Board had to set a time for the next Board session. Mr. Olivares said that could be done at a later date.

Items 16-18c:

[No action was taken on Agenda Items 16 through 18 (c).]

Items 19:

[Date and time for the next Board meeting was not scheduled.]

Items 20:

Mr. Clement moved, seconded by Mr. Villarreal, to adjourn the meeting.

Motion carried.

The meeting was adjourned at 07:12 p.m.

Minutes approved this ____ day of _____, 2005.

**Victor V. Villarreal, President
BexarMet Water District**

**Jim Clement, Secretary
BexarMet Water District**