

**JOINT POWERS WATER BOARD MINUTES**  
**Regular Meeting of**  
**March 30th, 2009**  
**5:00 PM JPWT Plant Board Room**

6:00 PM **Call to Order** by Martin Waters

**Board Members Present:** Jerry Zachman, Dave Malewicki, Ron Klecker, Tom Fay and Joe Hagerty

**Board Members Absent:** None

**Staff Present:** Kelly Daleiden and Shelly Keyes, Veolia Water NA; Chris Larson, HR Green

**Staff Absent:** None

MOTION BY KLECKER, SECOND BY ZACHMAN, TO ADOPT THE AGENDA AS PRESENTED. MOTION CARRIED UNANIMOUSLY.

MOTION BY ZACHMAN, SECOND BY HAGERTY TO APPROVE THE MINUTES OF THE FEBRUARY 23rd, 2009, REGULAR MEETING. MOTION CARRIED UNANIMOUSLY.

MOTION BY ZACHMAN, SECOND BY FAY, TO APPROVE THE CONSENT AGENDA AS PRESENTED. MOTION CARRIED UNANIMOUSLY.

There was no **Unfinished Business**.

Under **New Business**, Andy Berg of Abdo, Eick & Meyers presented the 2008 audit. Berg's discussion of the Management Letter included three reportable conditions. New audit reporting standards require auditors who draft financial statements as part of regular audit services to inform clients of the risk of misstatements occurring and must be considered an internal control deficiency. Berg added the condition, along with the limited segregation of duties condition, is not unusual for small governmental organizations with limited staff. The other reportable condition was in regard to year end journal entries for accounts payable and depreciation which were completed by Abdo, Eick & Meyers and therefore must be reported in the audit. Berg added the opinion issued for the Joint Powers Water Board was an unqualified or clean opinion. Waters asked about the three findings which were essentially the same as 2007 and questioned how long Abdo, Eick & Meyers had been doing the audit. Berg explained the firm has been employed by Joint Powers Water Board since 2003 but the audit standards changed for the 2007 audit.

Berg continued with discussion of the Operations and Cash Position Summary. Operating revenue increased over the past three years, while non-operating revenue, which consists mainly of connection fees, decreased significantly due to the slow housing market. Berg added that cash and temporary investments held consistent, while bonds payable declined each year as the bi-annual payments are made. General discussion followed. MOTION BY WATERS, SECOND BY KLECKER TO APPROVE THE 2008 AUDIT AS PRESENTED. MOTION CARRIED UNANIMOUSLY.

Under **Engineering**, Waters requested Daleiden summarize the current Well 9 valve situation. Daleiden explained that in January one valve at the Well 9 site did not function properly and water damage occurred at the site. The final pay request to EnComm was tabled until more information became available from the insurance company. Daleiden added the insurance adjuster did contact her regarding the claim last week, but has not provided any further details. Daleiden introduced Jim Lindberg as the legal representation of EnComm, along with Lon Hollister and Gary Pike of EnComm. Daleiden clarified for Malewicki that EnComm's insurance company was working the claim.

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Lindberg introduced himself, stated he represented EnComm and wished to discuss the unfortunate spill, the repairs and the pay request. Lindberg's understanding was that the Well 9 site had been turned over to Joint Powers approximately one year ago and questioned if there had been independent investigation done to determine if damages should be paid by EnComm. Lindberg stated the site had been operating for a year and the caps that were left off had been done by employees of the Joint Powers Water Board. Lindberg noted he or EnComm had never received any written documentation that indicated EnComm's responsibility. EnComm's insurance company was contacted, but Joint Powers has confirmed the insurance coverage and a surety bond. Lindberg questioned why the final payment was being withheld.

Larson responded that Article 13.06 of the construction contract provides a one year correction period for work completed and the correction period was not up when the incident occurred. Training started in February 2008 with punchlists beginning in late March or early April 2008 and generator training completed later in the year. The correction period remains in place until one year after substantial completion. Lindberg asked when the site was turned over to Joint Powers employees and Larson explained the site is still not a fully active facility. Lindberg asked if that was EnComm's fault or a regulatory matter and Larson repeated that since the start up was not until February of 2008 and the incident occurred in January 2009, the correction period was still in effect.

Larson added the incident was caused by a valve operator being installed backwards. Larson stated the Board's position is that it is the contractor's responsibility to re-install the valve operator properly and fix the damages caused by the defective installation. Lindberg asked if the valve has been properly installed now and Larson confirmed. Lindberg asked about repairs and Larson explained several yards of soil and erosion dirtwork needs to be completed.

Lindberg also had concerns with the pricing of the repair dirtwork completed immediately following the incident. The costs of the skid loader and other heavy equipment seemed excessive and Lindberg requested the Board require quotes for any further repair work since the cost responsibility hasn't been determined. Larson explained the construction contract allows the Board to complete emergency work as needed but agreed that quotes can be obtained for the repair completion. Fay added the emergency repair work by Dennis Fehn was quality work completed in a timely manner by a local company at a competitive price and questioned Lindberg's implication. Lindberg replied he just wants to make sure the remaining repairs are completed at the best possible price if his client is found to be responsible for payment. Lindberg assured the Board that EnComm has liability insurance coverage and if a determination is made that EnComm is responsible, will move forward to resolve the issue.

Larson asked Lindberg who he believes makes the decision for responsibility and Lindberg replied that a judge would make the call if the Board and EnComm can't agree. EnComm believes there are intervening factors, but will wait for their insurance company's report and possibly a project review by a consulting engineer. Waters asked when the Board should expect EnComm's insurance report and Lindberg explained they're waiting for the insurance adjuster's report, who is typically an independent party.

Zachman inquired if EnComm is able to complete the landscaping and dirtwork and Hollister of EnComm confirmed. Hollister added it wasn't necessarily EnComm's intent to do the work, but the hourly rates on some of the quotes seemed very high. Their concern is the costs of the remaining repairs which they are capable of completing.

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Lindberg stressed that EnComm's presence at the meeting indicated they are actively seeking resolution to the situation. Lindberg stated the repairs need to happen before spring planting and Larson agreed and added that the adjacent field would need restoration also. Hollister explained again that EnComm was not present tonight to admit or deny liability, but to understand the reason why Joint Powers was withholding final payment when there is both a warranty bond and insurance available to cover liability.

Malewicki inquired about the amount left to pay on the project and Larson explained that other than the estimated costs of the current incident, there is not a substantial amount of work to reach project completion; approximately \$50,000 in retainage is currently being held. Larson added the estimates to repair the current incident are about \$40,000 which includes about \$6,000 of existing costs. Zachman asked about the total project completion costs and Larson replied about \$1.5 million including change orders.

Malewicki asked about insurance and surety bonds and Lindberg explained the performance bond was filed with the project contract and EnComm also carries liability insurance. Larson added that if the insurance adjuster denies the claim and the retainage gets paid out, the Board's only recourse to recover repair costs for this incident would be legal action.

Lindberg explained tonight's visit wasn't to determine liability but to show the Board EnComm recognizes there is an issue and if some or all liability is assigned to EnComm, they do have insurance but want the repair work completed at a reasonable cost. General discussion followed and Larson agreed he would acquire a minimum of three bids for the remaining repair work and move forward as quickly as weather permits. The Board tabled any further action until the next meeting. Lindberg requested the April agenda include EnComm for discussion of retainage payment for any items not related to the incident.

Also under **Engineering**, Larson discussed the status of the ASR project at Well 9. Larson stated the ASR Pilot Study was concluded and all required samples collected. The next step is to gather all the sample results and complete the analysis for reports which should be ready for the May Board meeting. Zachman questioned why it took so long and Larson explained the lab work can take several weeks for some tests. The project is scheduled for water injection on a full scale basis this winter and withdrawal in the summer of 2010. Larson added that all permits and monitoring requirements by state and federal authorities have been met so the project should be ready to move into the final Cycle 3 stage.

Under **Operations/Office**, there were no discussion items.

The Board reviewed the list of claims. MOTION BY KLECKER, SECOND BY ZACHMAN, TO APPROVE THE LIST OF CLAIMS AS PRESENTED. MOTION CARRIED UNANIMOUSLY.

In **Other Business/Announcements/Correspondence**, there were no discussion items.

MOTION BY ZACHMAN, SECOND BY KLECKER, TO ADJOURN AT 6:48 PM. MOTION CARRIED UNANIMOUSLY.

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Recording Secretary