

TRUCKEE MEADOWS WATER AUTHORITY
MINUTES OF THE JANUARY 15, 2020
MEETING OF THE BOARD OF DIRECTORS

The Board of Directors met on Wednesday, January 15, 2020, at Sparks Council Chambers, 745 4th Street, Sparks Nevada. Chair Hartung called the meeting to order at 10:11 a.m.

1. ROLL CALL

Members Present: Paul Anderson, Jenny Brekhus, Kristopher Dahir, *Naomi Duerr, Neoma Jardon, Vaughn Hartung, and Jeanne Herman.

A quorum was present.

**Member Duerr was present via telephone.*

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Gordon DePaoli.

3. PUBLIC COMMENT

There was no public comment

4. APPROVAL OF THE AGENDA

Upon motion by Member Dahir second by Member Jardon, which motion duly carried by unanimous consent of the members present, the Board approved the agenda.

5. APPROVAL OF THE MINUTES OF THE DECEMBER 12, 2019 MEETING

Upon motion by Member Dahir, second by Member Herman, which motion duly carried by unanimous consent of the members present, the Board approved the December 12, 2019 minutes.

6. INFORMATIONAL PRESENTATION ON THE STATE ENGINEER'S ADJUDICATION PROCESS

John Zimmerman, TMWA Water Resources Manager, provided an overview of water rights and the adjudication process of water rights.

Board members inquired about the moratorium set by the State Engineer's office in Cold Springs and impact on the Stonegate development. Mr. Zimmerman stated there is no impact and Stonegate is the exception because it is in our service territory, but staff is monitoring the events. Member Brekhus asked whether the Board should ask the State Engineer to adjudicate basins in which TMWA holds water rights. Mr. Zimmerman stated this request would not be necessary in basins in which TMWA holds water rights and would require a lot of staff time and resources. Ms. Brekhus also asked how would water rights be allocated if all the water rights were sold and the region experiences another drought. Mr. Zimmerman explained that the priority date of the water right controls and whoever appropriated rights to the source first would be entitled to take first in times of shortage and then the second person/party in line, and so forth.

7. PUBLIC HEARING ON RULE AMENDMENT

A. INTRODUCTION AND FIRST READING OF AMENDMENTS TO TMWA RULE 7 WATER DEMAND ESTIMATES FOR NEW OR MODIFIED SERVICE APPLICATIONS

Mr. Zimmerman stated staff has presented this item to the Board, the Standing Advisory Committee, and conducted public outreach. With no additional public comments received, staff is recommending the Board move forward to a second reading.

Member Brekhus asked if staff could add commentary boxes in terms to explain significant changes to Rule 7 and asked why staff recommended deleting Truckee Meadows Resource Area (TMRA) definition from Rule 7. Mr. Zimmerman replied staff would look at adding comments, that the TMRA is the area that can be served by Truckee River resources, but definition in Rule 7 applies to required dedication amount, which would be the same analysis whether a project is in an area that could be served by Truckee River resources or not so TMRA definition was not necessary. Member Brekhus asked if the Vidler water resources were Truckee River resources or serving areas in TMRA. Mr. Zimmerman responded that Vidler/Fish Spring water system is not part of the Truckee River water system, but could serve projects within TMRA.

B. PUBLIC COMMENT

There was no public comment.

Upon motion by Member Jardon, second by Member Dahir, which motion duly carried by unanimous consent of the members present, the Board

approved to refer amendments to TMWA Rule 7 water demand estimates for new or modified service applications to a second reading.

8. PRESENTATION OF TRUCKEE RIVER FUND ACTIVITIES FOR CALENDAR YEAR 2019

John Enloe, TMWA Director of Natural Resources, presented the staff report and provided an overview of all projects funded in 2019.

9. DISCUSSION AND ACTION, AND POSSIBLE DIRECTION TO STAFF REGARDING THE IMPLEMENTATION OF THE PREVIOUSLY APPROVED THIRD PHASE RATE ADJUSTMENT OF UP TO 2.5% CURRENTLY SCHEDULED TO BE IMPLEMENTED ON OR AFTER THE FIRST BILLING CYCLE IN MAY 2020

Michele Sullivan, TMWA Chief Financial Officer, reminded the Board of presenting the 5-year funding plan at their October 2019 meeting at which time staff recommended the 2.5% rate increase be implemented in the May 2020 billing cycle as currently scheduled. Since the Board deferred the 2019 rate increase to 2020, it will be 2 years without an increase by the time the increase is implemented in May 2020, and the 2.5% is in line with the Consumer Price Index (CPI) increase.

Discussion followed regarding why the Rate Stabilization Fund (RSF) was not being used now to circumvent a rate increase, and what circumstances would qualify the use of the RSF. Ms. Sullivan replied the 2.5% increase is taking steps towards closing the funding gap, and the RSF (currently at \$9.7m) should be used in the case of another drought year or an economic decline, but ultimately it is at the Board's discretion when to use the RSF. Ms. Sullivan added she could look at what other water utilities use to trigger the use of their RSF and report back to the Board at a future meeting. Mark Foree, TMWA General Manager, added the Board did change the financial policies recently that set some targets for unrestricted cash and the RSF to maintain a good credit rating. Member Brekhus noted that after looking at the financials from last year, she noted that revenue was higher than anticipated and asked whether this rate increase is needed. Ms. Sullivan explained that operating related revenues and expenses, and rehabilitation of current infrastructure, were on track, while developer contributions were higher. She explained that only operating income, expenses, and rehabilitation of the current infrastructure are considered when calculating the funding gap. Member Brekhus requested to revisit this since development contributions are being used elsewhere to redevelop the city center core. She also wanted to know how the current fiscal year is tracking to budget. Ms. Sullivan replied water sales are behind \$2.7 million for the year, but because TMWA is seeing savings in other areas, overall financials are tracking close to budget. Member Duerr requested that the Board see a comparison of the projections to actual over the last several years to better determine the accuracy of projections. Ms. Sullivan said she showed projections with comparisons dating back to 2017 at the October 2019 meeting and can do that again. Member Duerr also requested considering a postponement of the rate increase until fall, after the irrigation season. Ms. Sullivan responded that customers understand their bills increase in the spring when the irrigation season

begins, and since there has not been an increase in two years, and there is a significant funding gap she recommended not delaying the increase.

At this time Board Members thanked staff for their clear and simple explanation, and expressed approval and support of the 2.5% rate increase, the equivalent of cost of living increase, a merited step to maintain stability and protect our water resource.

Michael Pagni, TMWA General Counsel, explained no Board action was needed today to implement the 2.5% increase as the three remaining increases, approved by the Board under Resolution 269, will continue to be implemented in the manner and at the time previously approved without any further Board action. The Board may evaluate the financial position before implementation of these future increases and consider to defer or cancel at that time. Ms. Sullivan added she will return with a funding plan in October and can discuss the rate increase for the following May at that time.

No action taken. The previously approved rate adjustment will be implemented in the May 2020 billing cycle.

10. DISCUSSION AND ACTION, AND POSSIBLE DIRECTION TO STAFF REGARDING REVIEW OF AND POSSIBLE AMENDMENTS TO THE RULES AND REGULATIONS OF THE TMWA BOARD OF DIRECTORS ORIGINALLY ADOPTED MARCH 16, 2001 AND AMENDED MAY 8, 2002

Mr. Zimmerman stated at last month's Board meeting, Board Members expressed concerns about a letter written from Member Brekhus to Mr. Pagni requesting him to step down from representing either Stonegate or TMWA. Board Members also requested staff to look into bylaws, rules and regulations and consider language that would set parameters for how to properly request an agenda item on matters regarding appointment, suspension or removal of contractors approved by the Board and communications with the media. Staff has looked at TMWA's bylaws, the Cities of Reno & Sparks, and Washoe County for suggested language. Since the letter was directed to Mr. Pagni, staff obtained independent legal counsel from Gordon DePaoli, Woodburn & Wedge.

Vice Chair Dahir specified the proposed amendments to Board rules did not have to do with the conflict of interest issue or the request made to Mr. Pagni, rather the method in which the Board Member went about making it public and how it was perceived as representing the TMWA Board (which was not the case). Any decision made by the Board should be brought back to the Board to discuss questions, concerns or issues, and parameters should be established to ensure this does not happen again. As members of the TMWA Board we should function together and respect each other.

Member Brekhus explained her letter addressed to Mr. Pagni regarding her concerns of conflict of interest in his representing both TMWA and Stonegate, did not violate any rules and regulations as written, nor the proposed amendments. She stated it is important to revisit the rules especially with new Board Members, but expressed concerns about the new "Media Communications" section and the possibility of compelled, or restricted, speech and infringing on the First Amendment rights, potentially limiting how the press operates (thereby restricting access to public representatives), and requested to change the amendment language to be more accepting. Mr. Zimmerman replied the language used for the media

communications section was borrowed from Washoe County Rules & Regulations. Mr. DePaoli added the new section does not compel or restrict speech, and there are no penalties with not following the rule, but it is a provision that states Board Members be clear when they are expressing their individual views versus a Board position.

Chair Hartung stated that there is a procedure that should be employed for any Board action as a whole, agreed Member Brekhus writing a letter to Mr. Pagni was appropriate, but she could have shared the letter with Mr. Foree and brought it to the Board's attention in a different way. Instead, Member Brekhus ambushed Mr. Pagni through the press, as such some members of the public believed she was acting on behalf of the TMWA Board which did not serve the Board well. Chair Hartung believes if any Board Member has an issue with a contractor, then it should be brought to the Board to determine whether there is any type of conflict.

Board Members discussed the appearance that the letter, since it was written on City of Reno letterhead, represented the two governing bodies; the proposed language was acceptable and it is not taking away anyone's right to speak nor taking away of any First Amendment rights; they have to be careful when providing comments in public to be clear whether they are personal or official; and no one has the right to speak for another person or entity.

Member Brekhus stated it is problematic for one Board Member to tell another that they are not doing their job correctly, since all Board Members are independent. She continued that she would like to table this and propose a new section regarding the rotation of chairs through the jurisdictions (sharing of responsibility should be uniform on a regional cooperative basis) on annual basis such as is done at the Truckee Meadows Regional Planning Governing Board (TMRPGB).

At this time the Board discussed that it has discretion of who they vote in as chair and vice chair (from any jurisdiction), thereby giving them the flexibility to choose the right person; TMWA is not obligated by statute as is the TMRPGB; and they don't see the need to mandate rotation of chair and vice chair. Also, Member Duerr expressed concerns about the amendment to how an agenda item is requested and if it is detrimental to sharing of ideas to be discussed. Mr. DePaoli responded the intent is to not let that happen, there is no change in how the Board requests agenda items, rather any member can request an agenda item, but if there is an objection, then it becomes a two-step process: request to put it on the agenda to be noticed in accordance with Open Meeting Law, and on the next agenda, if the Board votes in favor of the agenda item, it will be put on the next agenda. If the Board votes to not put it on the agenda, that will be the end of the discussion.

Vice Chair Dahir stated for the record that no one is trying to stifle the media's voice or access to public representatives. Rather, it is a measure to prevent an individual on this Board misrepresenting their personal opinion as that of the entire Board, and to not learn about it in the paper prior to discussing it at a Board meeting.

Member Jardon added the intent of the proposed amendments are fully transparent and are being discussed in an open meeting; the action the Board Member took was non-transparent.

Member Brekhus made a motion, second by Member Duerr, to approve returning the Board Rules & Regulations at a future meeting to include the

new section of the chair rotation of home jurisdictions. The motion failed to pass by a vote of three in favor (Brekhus, Duerr and Herman) and four opposed (Anderson, Dahir, Hartung and Jardon).

Upon motion by Member Anderson, second by Member Dahir, which motion duly carried by six to one with Member Brekhus dissenting, the Board approved the proposed amendments.

11. GENERAL MANAGER'S REPORT

Mr. Foree noted that Member Herman requested staff review the Sun Valley General Improvement District (SVGID) wholesale agreement, and that staff has been working with SVGID on a proposed amendment to the agreement that will allow SVGID to expand its service area to include a new development and that such expansion will necessarily require expansion of TMWA's wholesale service area. Staff is also working on changes to the tier 1 water usage level with SVGID and will bring the proposed modifications to the contract to the Board next month for review.

12. PUBLIC COMMENT

There was no public comment.

13. BOARD COMMENTS AND REQUESTS FOR FUTURE AGENDA ITEMS

There was no Board comment.

14. ADJOURNMENT

With no further discussion, Chair Hartung adjourned the meeting at 11:41 a.m.

Approved by the TMWA Board of Directors in session on February 19, 2020.

Sonia Folsom, Board Clerk.