

TRUCKEE MEADOWS WATER AUTHORITY
MINUTES OF THE JANUARY 18, 2023
MEETING OF THE BOARD OF DIRECTORS

The Board of Directors met on Wednesday, January 18, 2023 at Sparks Council Chambers. Chair Hartung called the meeting to order at 10:00 a.m.

1. ROLL CALL

Directors Present: Paul Anderson, Jenny Brekhus, *Naomi Duerr, Vaughn Hartung, Alexis Hill, Devon Reese, and Alternate Ed Lawson.

Directors Absent: Kristopher Dahir

**Director Duerr attended virtually via Zoom.*

A quorum was present.

2. PLEDGE OF ALLEGIANCE

The pledge of allegiance was led by Alternate Lawson.

3. PUBLIC COMMENT

There was no public comment.

4. POSSIBLE BOARD COMMENTS OR ACKNOWLEDGEMENTS

There were no Board comments.

5. APPROVAL OF THE AGENDA

Upon motion by Director Anderson, second by Director Hill, which motion duly carried by unanimous consent of the Directors present, the Board approved the agenda.

6. APPROVAL OF THE MINUTES OF THE DECEMBER 8, 2022 MEETING

Upon motion by Director Brekhus, second by Director Hill, which motion duly carried by unanimous consent of the Directors present, the Board approved the December 8, 2022 minutes.

7. RECOGNITION OF TAHOE-PYRAMID TRAIL FOUNDER, JANET PHILLIPS

John Zimmerman, TMWA General Manager, commended Ms. Phillips for spearheading water resources in the Truckee Meadows and beginning negotiations for the Truckee River Operating Agreement (TROA). She was a fierce advocate for water resources in the community and wanted to recognize her.

Chair Hartung asked for a moment of silence.

Chair Hartung stated he first knew Ms. Phillips husband, Mike, but after meeting Ms. Phillips, there was no one more passionate about the river and the Tahoe-Pyramid Trail (TPT) is a true legacy. He requested staff to look into a dedication to her along the trail.

Director Hill requested staff to notify the Board if they can assist with the section in Storey County along the railroad, which is an extremely dangerous section along the river, to complete the trail.

Director Duerr commented on Ms. Phillips' incredible commitment to the community and results oriented nature going back to her Sierra Pacific Power Company tenure and how she led tours along the river to educate the public.

Stefanie Morris, TMWA Director of Legal & Regulatory Affairs, stated that she worked with Ms. Phillips on TROA and noted how fun Janet was to be around. She was also the Chair of the Truckee River Fund Advisory Committee and instrumental in selecting projects that benefited the Truckee River and the community.

Kim Mazeres, former TMWA Community Relations Director, said she worked with Ms. Phillips for almost thirty years. Ms. Mazeres described her as persistent who left a great Tahoe Pyramid Trail Board to complete the trail; she will miss her greatly.

Terri Svetich, Truckee River Fund Advisory Committee Member, spoke of Ms. Phillips being a great facilitator when she presented before the Truckee River Fund on behalf of City of Reno, and appreciated the TMWA Board for recognizing Ms. Phillips.

8. WATER SUPPLY UPDATE

Bill Hauck, TMWA Water Supply Supervisor, presented an update on TMWA's water supply: the snowpack in the Tahoe and Truckee Basins is about 250% of normal as of this past Monday, which is the water equivalent compared to 2017; Lake Tahoe water levels increased about 1.8 feet since December 1, 2022; all reservoirs in the system will see a full recovery with the exception of Stampede Reservoir (about 90%); river flows will be stable through 2023 and most likely 2024; and Verdi and Fleish hydroelectric plants are currently back online.

Chair Hartung requested for Mr. Hauck to add the total capacity for reservoir and lake in TMWA's system.

9. DISCUSSION AND ACTION ON ADOPTION OF RESOLUTION NO. 313: A RESOLUTION TO APPROVE THE ANNUAL COMPREHENSIVE FINANCIAL REPORT (ACFR) FOR FISCAL YEAR ENDED JUNE 30, 2022

Sophie Cardinal, TMWA financial controller, presented the ACFR for fiscal year ended June 30, 2022.

Director Brekhus stated she liked the Popular Annual Financial Report (PAFR).

Chair Hartung commended staff in a great job and noted how TMWA is a model in our region and how well it is managed.

Upon motion by Director Reese, second by Director Duerr, which motion duly carried by unanimous consent of the Directors present, the Board adoption Resolution No. 313: A resolution to approve the Annual Comprehensive Financial Report for Fiscal Year ended June 30, 2022.

10. APPOINTMENT OF TRUSTEE TO THE WESTERN REGIONAL WATER COMMISSION (WRWC) PURSUANT TO SEC.25(4) OF THE WRWC ACT REPRESENTING TMWA AS SUCCESSOR TO SOUTH TRUCKEE MEADOWS GENERAL IMPROVEMENT DISTRICT (STMGID) FROM THE FOLLOWING LIST OF QUALIFIED PERSONS TO FILL THE REMAINING TERM ENDING MARCH 31, 2023 VACATED BY MEMBER BOB LUCEY: MEGHAN EBERT, MIGUEL MARTINEZ, DEVON REESE, HILLARY SCHIEVE, KATHLEEN TAYLOR, MICHAEL CLARK, JEANNE HERMAN, MARILUZ GARCIA, CHARLENE BYBEE, ED LAWSON, AND DIAN VANDERWELL

Sonia Folsom, TMWA Executive Assistant, presented the staff report.

Director Brekhus stated she heard from former STMGID residents about how much they liked having their own water utility and because of that she feels it would be valuable to have someone who lives in their area represent them and suggested that Michael Clark be appointed.

Upon motion by Director Hill, second by Director Reese, which motion duly carried six to one with Director Brekhus dissenting, the Board approved to appoint Mariluz Garcia to WRWC representing TMWA as successor to STMGID to fill the remaining term ending March 31, 2023 vacated by Member Bob Lucey.

11. UPDATE ON 2022 INTERIM SESSION AND DISCUSSION AND ACTION ON ESTABLISHING A LEGISLATIVE SUBCOMMITTEE FOR THE 2023 LEGISLATIVE SESSION AND APPOINTMENT OF BOARD MEMBERS TO SUBCOMMITTEE

Ms. Morris informed the Board that the interim legislative subcommittee met recently and were updated on interim committee meetings, as well as the status of Bill Draft Requests (BDR's) and Bills. As of mid-January, TMWA is tracking 299 of over 900 BDR's (60 are human resources related, 20 pertain to water issues and three are related to water quality), and 18 of 138 Bills. The two bills of note are: AB19 (Tribal member working without a license) and AB34 (State Engineer noticing requirements). The 2023 Legislative Session begins on February 6th and staff is requesting the Board appoint three Board Members

and alternates, at the Board's discretion, to the legislative subcommittee. Once the session begins, the subcommittee will provide updates to the Board on the status of tracked legislation.

Upon motion by Director Anderson, second by Director Hill, which motion duly carried by unanimous consent of the Directors present, the Board approved the appointments of Dahir, Duerr and Hill and alternates, Anderson and Brekhus, to TMWA's Legislative Subcommittee for the 2023 Legislative Session.

12. PUBLIC HEARING, CONSIDERATION OF WRITTEN BIDS AND CONSIDERATION OF POSSIBLE ORAL BIDS FOR SALE OF SURPLUS PROPERTIES AND DISCUSSION AND POSSIBLE ACTION REGARDING APPROVAL OF SALE OR OTHER DISPOSITION OF SURPLUS PROPERTIES CONSISTING OF APPROXIMATELY 4.2917 ACRES IN WASHOE COUNTY, NEVADA GENERALLY REFERRED TO AS ASSESSOR'S PARCELS 016-490-27 AND 016-490-32; 016-490-50; AND 038-730-37

Heather Edmunson, TMWA Lands Administrator, and Ms. Morris reported that TMWA staff did not received any written bids. As such they advised the Board that the minimum oral bid should be the minimum written bid and not require a 5 percent increase, and the awarded bidder must provide a check to the board clerk, Sonia Folsom, made out to Stuart Title within 24 hours.

Chair Hartung stated Ms. Folsom received an oral bid card from Earlene and Fabian Gorzell for the properties included in Sale No. 1: APN: 016-490-27 and 016-490-32).

Ms. Gorzell stated they would like to offer the minimum bid of \$75,000.

Chair Hartung inquired if there was anyone in the public wishing to bid. There were none.

Ms. Morris informed the Board staff did not receive any written bids for the other two properties. Chair Hartung inquired if there were any oral bids for the properties. There were none. Staff recommended that the notice of sale be republished t and this item be brought back at the February Board meeting.

Upon motion by Director Hill, second by Director Brekhus, which motion duly carried by unanimous consent of the Directors present, the Board approved the sale of surplus properties referred to as Assessor's Parcels 016-490-27 and 016-490-32 to Earlene and Fabian Gorzell for the awarded bid of \$75,000.

Upon motion by Director Hill, second by Director Brekhus, which motion duly carried by unanimous consent of the Directors present, the Board approved staff recommendation to republish the sale of notice for APNs: 016-490-50; and 038-730-37 for consideration at the February Board meeting.

13. DISCUSSION ON BOARD MEETING LEGAL REPRESENTATION AND POSSIBLE DIRECTION TO STAFF REGARDING SAME

Mr. Zimmerman reminded the Board that there was discussion in May 2022 regarding options for legal representation for Board, Legislative Subcommittee and Standing Advisory Committee meetings due to Michael Pagni leaving McDonald Carano law firm. Presented today are three options for Board consideration: 1. Continue with representation from McDonald Carano; 2. Use internal legal counsel; or 3. Advertise for Request for Proposals (RFP) for other legal representation. Mr. Zimmerman continued that TMWA uses other attorneys and law firms whenever there is a conflict and where specific legal expertise in a certain area of law is needed.

Director Brekhus recommended, after more than 20 years with the same law firm, staff go out for an RFP due to the conflicts of interest (McDonald Carano representing other agencies that may have adverse interests to TMWA) or bring on a junior attorney to protect TMWA and improve transparency.

Ms. Morris outlined, as the Director of Legal & Regulatory Affairs, how legal conflicts are addressed, which, are different from general conflict of interest. Specifically, conflicts of interests versus legal conflicts are two different concepts. She also noted that if the standard was a conflict existed if you do business with any of the stakeholders, then there would not be any outside counsel that could represent TMWA. Ms. Morris continued that she has worked for 18 years for public agencies as both in house general counsel and as general counsel by contract, in both California and Nevada, and legal conflicts are strenuous. Staff is careful in evaluating legal conflicts; it is not based on engaging with a specific stakeholder, it is a matter-by-matter issue, considering what confidential information is being shared with the attorney, and if there is a conflict between the two entities. If there was the potential for confidential information of TMWA that would conflict with another entity, then they have not engaged with any firm who represents the other entity.

Chair Hartung noted that he is lived in the area for over 40 years and Reno is a small city where it is difficult to not encounter people you have done business with and does not know if they can find another qualified person to legally represent TMWA.

Director Reese appreciated Ms. Morris' explanation. He noted Director Brekhus was correct about needing to routinely go out for bids, every three to five years, to analyze any of the services taken in by TMWA, which is important both from a public process standpoint and organization to ensure the best value for the services obtained. He added that it is important to consider the individual conducting the work and rate structure; the 2016 letter included in the staff report is outdated. He continued that the Board could discuss conflicts without saying that anyone has committed an ethics violation. Lawyers are required to abide by the American Barr Association of Ethics and the State of Nevada Code of Ethics when forming relationships with clients and other entities. Yes, Nevada is a small place, and requires specialized knowledge in relation to complexities of water law and administrative processes, it is possible to find good lawyers. When conflict issues arise, to seek waivers or acknowledgements, and if needed, go to the State Bar or Ethics Commission to seek opinion or guidance.

Director Duerr agreed, and the best practice is to periodically to review all types of outside services and ask for a rebid to look for qualified submissions. Also, that it may be important to strengthen the internal legal team. Ms. Morris is remarkably busy, and the issues are complex to have services in house only.

Director Hill stated there is an opportunity to review this issue in detail and likes having this agenda to review policies and would like to have more information on the current contract to better understand the need to hire another lawyer full-time.

Mr. Zimmerman noted his appreciation of the discussion and points made. Regarding the rates for Board representation, it goes back to Mr. Pagni's 2016 letter of \$275/hour. Internally, he and Ms. Morris have considered the best route when a legal matter comes before them and when to reach out to an outside firm, many times it is not McDonald Carano. Adding, that as part of the succession planning process, they are looking to add another lawyer in-house in the near future.

Lucas Foletta, TMWA General Counsel, stated his personal client roster does not include any builders or developers, the lobbying disclosure Director Brekhus showed is applied to all lawyers at McDonald Carano. He is a member of Northern Nevada Disciplinary Panel for the State Bar; they deal with questions that arise and members of the public submit their complaints to that panel where they resolve them and propose discipline according to those rules.

Discussion continued that it is time to go out to bid and there was a need to define the scope of legal services for Board General Counsel to ensure open meeting law compliance, but General Counsel also advises the Board on important issues, and in-house counsel being tasked with outside work is not easy, especially if they are potentially a witness, but also to differentiate between representing staff interests and Board interests, which may not align at times.

Director Duerr confirmed she was not advocating changing the process of using outside counsel with the current issue under consideration.

Chair Hartung state he was not supportive of making a change right now with general counsel, but supportive of a policy change that discusses how often they go out for RFP unless there is an extenuating circumstance to look for new general counsel.

Upon motion by Director Brekhus, second by Director Reese, which motion duly carried four to three with Chair Hartung and Directors Anderson and Lawson dissenting, the Board directed the General Manager to return with a sample scope request for proposal, similar to the process used by the Western Regional Water Commission to rebid outside general counsel, organization chart for internal legal, other active legal contracts, and legal expenses.

14. REQUEST FOR BOARD ADOPTION OF UPDATED ADMINISTRATIVE POLICIES AND ACKNOWLEDGE CHANGES TO THE ADMINISTRATIVE DIRECTIVES

Jessica Atkinson, TMWA Director of Human Resources, presented the updated Administrative Instructions (AI's), employee handbook. Over the last two years, human resources worked with department leaders and the IBEW Local #1245, as well as internal and external legal experts to update the policies and procedures. The updated AI's make a distinction between administrative policies (Board-adopted policies) and administrative directives (rules and procedures authorized by the General Manager); the Board will receive notification of future changes to the administrative directives.

Director Brekhus congratulated Ms. Atkinson on completing such a huge task. Suggested think about adding "these do not apply to the governing board unless otherwise stated," A-41 "at-will" is not a defined term and would like to see a definition, and regarding the nepotism policy, she would like to see an obligation or directive to see a nepotism report annually. Ms. Atkinson explained there is a nepotism policy in place.

Director Reese asked about outside expertise and continue to focus looking at Diversity, Inclusion and Equity issues in policy making to ensure TMWA is leading efforts in that regard. Ms. Atkinson said they partnered with the Nevada Associations of Employers regularly and reach out to them when have questions. Staff worked with Holland & Hart, Dora Lane, and of course Ms. Morris and Mr. Zimmerman.

Director Duerr stated that she was glad to see this come before the board and appreciates that the general manager revises the policies and provide updates to the Board. She also asked if Ms. Atkinson had an opportunity to look at what other agencies have done with regards to their harassment policy. Ms. Atkinson replied no, they did not look at other agencies, but with regards to the harassment policy there are prescribed best practices to be followed and noted that most agencies would align and last year staff created a legal channel if staff did not feel comfortable going to internal designated individual.

Director Brekhus asked if there was a remote work policy. Ms. Atkinson replied they do not have a policy or directive, but have language that addresses it and have a separate SOP that provides guidelines for up to two days remote; when the performance and position makes sense.

Upon motion by Director Duerr, second by Director Reese, which motion duly carried by unanimous consent of the Directors present, the Board adopted the updated Administrative Policies and acknowledge changes to the Administrative Directives.

15. GENERAL MANAGER'S REPORT

Mr. Zimmerman thanked Mayor Lawson for filling in for Director Dahir, who is recovering well from surgery; we all wish him a speedy recovery.

16. PUBLIC COMMENT

There was no public comment.

17. BOARD COMMENTS AND REQUESTS FOR FUTURE AGENDA ITEMS

There were no Board comments.

18. ADJOURNMENT

With no further discussion, Chair Hartung adjourned the meeting at 12:04 p.m.

Approved by the TMWA Board of Directors in session on February 15, 2023.

Sonia Folsom, Board Clerk.