



**STANDING ADVISORY COMMITTEE  
MINUTES  
JULY 5, 2011**

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The Standing Advisory Committee met at Truckee Meadows Water Authority in the Independence Room, 1355 Capital Blvd., Reno, Nevada. Vice-Chairman Schmidt called the meeting to order at 3:06 p.m.

**1. ROLL CALL**

Members Present: Ernest Buchner, Colin Hayes, Neil McGuire, Susan Ralphe, Pat Martinez, Ron Turner, Fred Schmidt and Barry Winzeler.

Alternates Present: Harry Culbert (voting), Bruce Gescheider (voting), and Mike Heffner.

Staff Present: John Erwin, Scott Estes, Mark Foree, Anne Hanson, Bill Hauck, Kim Mazerres, Lora Richards, Shawn Stoddard and Debbie Leonard, Legal Counsel.

A quorum was present.

**2. PUBLIC COMMENT**

Bill Hauck, Senior Water Supply Coordinator, reported that this year's water news was very good. Lake Tahoe had gained 4.7 feet from runoff and is about 8/10 of a foot from filling. Independence Lake, Boca, Stampede and Prosser Reservoirs will also fill to capacity this year. Lahontan Reservoir is about a week from filling. However, water usage this spring was down 6% from last year and last year's usage was low.

**3. APPROVAL OF THE AGENDA**

**Upon motion duly made and seconded, and carried by unanimous consent of the members present, the Committee approved the agenda.**

**4. APPROVAL OF THE MINUTES OF THE MAY 3, 2011 MEETING**

**Upon motion duly made and seconded, and carried by unanimous consent of the members present, the Committee approved the minutes of the May 3, 2011 meeting.**

## 5. STATUS REPORT ON THE 2011 NEVADA LEGISLATIVE SESSION

Steve Walker reported on the bills of significance to TMWA that were heard during the 2011 Legislative Session.

AB59 Revises Open Meeting Law. It requires a public body to take certain actions if the Attorney General finds that the public body has violated the Open Meeting Law; requires the public body to include an item on the next agenda posted for a meeting of the public body acknowledging the finding of the Attorney General regarding such a violation; and makes members of a public body subject to a civil penalty or \$500 for violations. This act does not apply to the Legislature.

AB73 and AB115 revise noticing practices. These were the most significant of the water bills. These bills increase the period in which the State Engineer is required to approve or reject an application within 2 years, but expands the list of exceptions for acting upon the applications - all applications must be re-noticed if no action has occurred after 7 years.

AB238 expands the type of infrastructure projects the County Bond Bank may provide funding for to include water agencies within the County formed after 1999. The act will only allow water agencies in Washoe County to be the exception for using the County Bond Bank. Mr. Foree said this bill is important as it will allow TMWA and the Washoe County Department of Water Resources to refinance debt not issued by the Bond Bank.

## 6. STATUS REPORT AND REVIEW OF FINANCIAL INFORMATION ON THE MERGER OF THE WASHOE COUNTY DEPARTMENT OF WATER RESOURCES (DWR) WATER UTILITY FUNCTIONS INTO TMWA

Mr. Foree reported that the joint meeting scheduled for July 7 had been delayed as DWR continues to work on their *financial* analyses. Until Public Financial Management (PFM) has the DWR information and the time to review the financial information from DWR, there can be no meeting. PFM had reviewed TMWA's information and was comfortable with what was presented. A tentative date of August 17 has been suggested but not scheduled as yet.

Mr. Gescheider brought up the issue of the settlement DWR made with the owners of wells in the Galena area and asked if there were any more of these types of issues. Mr. Foree said that this is being reviewed very closely in order to obtain a finite cost for the problem. The SAC wanted to know why a joint meeting is necessary now if the merger might not actually happen for a few years. Mr. Foree said it is imperative to get a commitment to move to revenue sufficiency, to begin labor negotiations and create and implement a communications plan.

Mr. Erwin said that all financial issues will be considered for the stand alone entities and then these issues will be considered for a combined entity.

## 7. DISCUSSION OF ESTIMATED FINANCIAL RESULTS FOR YEAR-END FY2011

Mr. Foree reported that Water Sales are estimated at \$71.8 million; Hydroelectric Sales at \$3.2 million and Other Operating Sales at 1.7 million. There was a shortfall in revenue from budget due to cool weather, the number of vacant buildings and lower than expected water usage. Operating Expenses are estimated at \$34.4 million which is \$2.4 million under budget. Spending was at FY2006 levels mostly due to reductions in power costs as well as other expenses. He said TMWA is better than carbon neutral having generated more power than it used.

Fifteen people took advantage of the Voluntary Separation Program which will save TMWA approximately \$1.5 million annually.

Mr. Foree stated that the majority of the original acquisition bonds that were issued in 2001 had a 10 year call date. TMWA had done three previous advanced refunding issues in the last five years in addition to the recently completed tax-exempt commercial paper redemption. Together, these re-financings will save TMWA customers more than \$31 million over the life of the bonds. As of July 1, 2011, \$390 million in cash had been given back to the 2001A bond holders based on the full call and defeasance of those bonds.

## 8. PRESENTATION OF FINAL FY2012 BUDGET AND 2012-2016 CAPITAL IMPROVEMENT PLAN

Ms. Hanson said the final FY2012 budget remained unchanged since presented to the SAC on May 3 and the TMWA Board on May 19. There was no discussion.

## 9. PRESENTATION ON TMWA CONSERVATION PROGRAMS

Lora Richards gave a presentation on TMWA's conservation programs. TMWA has a conservation program because it is required by the Truckee River Operating Agreement (TROA) Water Conservation Agreement and the Regional Water Management Plan; it is the right thing to do and stimulates responsible water use. Among the benefits of conservation are the delay of investments and timing in new treatment capacity and drought protection for the community. Methods used include public education, a fully-metered water system, leak detection and system repairs, correcting unauthorized use and tiered water rates. Some of the programs are: water usage review program, assigned-day watering, water watcher program, landscape awards and tour, landscape retrofit program, and programs for kids and schools such as the annual poster art contest. To ensure effective outreach to the community, TMWA consistently uses radio, print and television media, World Wide Web, social media and meeting with customers at their homes and businesses. The main message is "Pay for what you use, and use it responsibly".

Ms. Richards elaborated on the Landscape Awards Program and Tour. The group toured the yards of previous winners of the Landscape Awards. The day was kicked off at Hug High School where the group viewed one of TMWA's landscape retrofit projects. Over 23,000 square feet of turf had been removed and a bio-regional garden installed. Mr. Culbert attended the tour and complimented Ms. Richards and her staff on the exemplary job they did organizing the tour stating it was well worth the time spent. Ms. Richards said for this year's program, applicants

are being asked to provide a landscape plan and explain how the plan addresses the seven xeriscaping principles. Mr. Gescheider said this is significantly better and an improvement over the previous year's concept.

Ms. Richards said that although twice-per-week watering is no longer a requirement of TROA, TMWA has kept the Assigned-day Watering program with a three-times-per week watering schedule. There has been much positive feedback with many customers grateful for the enhanced flexibility of a third day to water, although there were still those who remained on a twice-per-week watering regime. Numerous customers who embraced the new watering schedule reported they were able to conserve more water than under the previous schedule. Shawn Stoddard said a full analysis is complete on the transition to three day a week watering and how it affected water use patterns and consumption. The results of the study were presented in June.

Ms. Richards explained that the Water Usage Review Program is TMWA's biggest and busiest program. TMWA, in cooperation with the Northern Nevada Water Planning Commission (NNWPC) and the Western Regional Water Commission (WRWC), continues to fund the program, which includes audits of residential as well as commercial services. Working with customers one-on-one at their homes and businesses where auditors can advise them of ways to better manage their on-site water use is highly effective.

#### 10. FOLLOW UP ON ERRONEOUS WATER QUALITY REPORTS BY THE ENVIRONMENTAL WORKING GROUP

Ms. Leonard, Legal Counsel, presented this item in response to an earlier request from the SAC for an explanation of the legal basis for TMWA's response to inaccurate water quality information on the Environmental Working Group's ("EWG") website. Ms. Leonard explained the elements of defamation as it relates to a public entity such as TMWA. With a public entity, the law recognizes the overarching public interest in encouraging public participation in government and ensuring that citizens can express their opinions on the performance of public entities. The law has developed so as not to stymie public participation in government and ensure citizens have their first amendment rights protected. As a result, the standard to prove defamation is higher for a public entity as opposed to a private individual.

Ms. Leonard described Mr. Foree's earlier communications with EWG regarding the inaccuracies in the information on the EWG website. Although EWG's representative said they would address the inaccuracies, the information has not been removed from the website. So in that situation, the question is can TMWA bring a cause of action and prevail on defamation or some other cause of action. Mr. Schmidt said that he thought the question was not can you litigate against them but why can't legal counsel send a threatening letter putting them on notice that their information is erroneous and TMWA is demanding through its legal counsel for them to remove the information because it would be a "reckless disregard for the truth" for them to keep the information on their website.

Ms. Leonard said that TMWA would have to prove there was reckless disregard for the truth and to prove that what was published was a defamatory or false statement in order to prevail on a defamation action. If the statement was opinion or was true, there is no defamation. As a public

entity, TMWA would have to prove that there was actual malice which means the defendant must either know it is false or have reckless disregard for the truth. Mr. Schmidt is correct that a threatening letter could be sent, particularly based on the fact that EWG did not rectify the matter after informing Mr. Foree that it would, but the TMWA board determined that it was not willing to engage in litigation, which is the natural follow-up to a threatening letter. Also, in a defamation lawsuit, TMWA would have to prove that it incurred actual damages. This would be difficult as TMWA is in the unique position of being the only water purveyor for customers in its service territory. No matter what EWG's website says, TMWA would not lose its customers because those customers cannot be served by any other water purveyor. When all of these things were taken into consideration, the TMWA board determined that the time and expense of litigation was not worthwhile. Litigation would only continue the bad publicity and in the end it would have been very hard for TMWA to prevail in proving either reckless disregard or malice.

Mr. Gescheider commented that it is a problem because although it doesn't impact TMWA customers directly, it does impact the way people view our community from an economic development standpoint. As a community, we must be much more aggressive in getting the right information out there. Mr. Foree agreed with Mr. Gescheider's comment although when the issue surfaced the second time, TMWA customers and even the fourth grade at Bailey Charter School rallied around in refuting the allegations. At this point, anybody who does a Google search will find the accurate information as well as the erroneous information.

Mr. Schmidt commented that although everyone wants our community to economically succeed, we're all sitting here waiting for the casino industry to make a comeback. As a community, we've got to take a lot more responsibility for not just satisfying everyone who lives here at this point or is willing to stay here which is the way it's become. We've got to come up with ideas and be proactive about how to make our community attractive, and we all share a responsibility for that in different ways.

## 9. FUTURE SAC AGENDA ITEMS

The committee discussed the probability that information for the joint meeting of the TMWA Board and the Board of County Commissioners would not be ready until at least August 12. Therefore, by changing the date of the SAC meeting to closer to the meeting date of August 17, the SAC would have the opportunity to review the reports prior to the joint meeting. They also discussed the best dates and times for rate training.

**Upon motion duly made and seconded, and carried by unanimous consent of the members present, the Committee changed the date of the next meeting from August 2 to August 15, 2011 at 3 p.m. and requested the following items be placed on future agendas:**

- 1. Continuation of the merger update including a 5-year financial update and revenue sufficiency report**
- 2. Rate-setting training part 1**

**3. Report on the transition to three-day per-week watering and how it affected water use patterns and consumption**

12. COMMITTEE ITEMS

There were no committee items.

13. STAFF ITEMS

Lora Richards said the Appreciation Barbeque for the SAC and the Truckee River Fund Advisory Committee (TRFAC) would be held on August 19, 2011 from 4 to 7 p.m. at the Verdi Hydroelectric Plant. Invitations would be sent soon.

14. PUBLIC COMMENTS

There were no public comments.

15. ADJOURNMENT

With no further items for discussion, Vice-Chairman Schmidt adjourned the meeting at 5:14 p.m.

Approved by the Standing Advisory Commission in session on October 4, 2011.

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Corinne Cassell, Recording Secretary