



COUNTY WATER DISTRICT OF BILLINGS HEIGHTS

Board of Directors Meeting Minutes

October 18th, 2023 at 6:02 PM

County Water District of Billings Heights 1540 Popelka Dr., Board room

The meeting is open to any interested member of the public. Agendas are prepared for the meetings; agendas may be requested from the General Manager Peyton Brookshire, peyton@heightswaterdistrict.com and are available at <https://heightswaterdistrict.com/agendas-and-minutes>. Agenda packets, due to their size, will not be printed off for the meetings or at the public's request. The public can access and view the agenda packet on line and can download them or print them at their own expense.

CALL MEETING TO ORDER: President Doug Kary called the meeting to order at 6:00 PM

WELCOME AND INTRODUCTIONS

Board Members present: Laura Drager, Doug Kary, Frank Ewalt, Tom Zurbuchen, Ming Caberera, Jeff Essmann

Staff Members present: Josh Simpson, and Jenn Burnside

Also present: Mike Macki, Butch Bailey, David Graves, Dianne mar, Pam Ellis, and Evelyn Pyburn (YCN)

PRESIDENT'S REMARKS: Read by Doug Kary

During the course of the meeting, the Public may be heard before a vote is cast by the Board. The President will acknowledge the Public once the motion has been made and discussed by the Board for their input. The President will recognize speakers who raise their hands. Once recognized, the speaker should move to the side of the board table so comments can be heard, identify themselves by name, and limit their comments to two minutes. Each speaker will have one opportunity to speak on any agenda item. Once the public comment period is over the public may not provide further comment or ask additional questions during the remainder of the agenda item discussion, unless specifically requested by the chair or presiding officer of the meeting.

PUBLIC COMMENT on Non-Public Hearing Agenda Items: Read by Doug Kary

- A. Any member of the public may be heard on any subject that is not on the agenda;
- B. The board will not take action on these items at this time but may choose to add the item to the agenda for the next scheduled board meeting.

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The letter of resignation of Peyton Brookshire was read by Doug Kary. Attachment #1

PUBLIC COMMENT:

Dianne says she had worked here for 30 years, she had the privilege of working under two outstanding managers who had years of experience in education and training, they had much knowledge of the district and they truly cared about the district and its employees. She goes on to say that this board through arrogance and self-importance has made it impossible for them to serve, it has beaten them down so much that they don't even feel they can come to work and do their jobs. She says shame on the board.

Mike says that he can attest to what Diane said.

CONSENT AGENDA:

Item #1 Minutes from the previous board meeting.

Jeff asked to separate the minutes from the rest of the consent agenda. He says he is bringing forward a number of corrections to the minutes.

1. On page 2, second paragraph first sentence correct to read "Tom Zurbuchen makes a motion to seat Jeff Essmann." After that sentence add the following, "Motion was seconded by Frank Ewalt and passed on a vote of 4 in favor 1 opposed, Ming Cabrera being in opposition."

Jeff moves to approve this correction. Laura Seconds. Frank, Jeff, Tom, Doug, and Laura approve. Ming against.

2. On page 3, fourth paragraph should be corrected by Secretary to indicate what motion was on the floor that Jeff Essmann moved to call the question on after reviewing the video and audio of the meeting.

Jeff moves to approve this correction. Tom Seconds. Frank, Jeff, Tom, and Doug approve. Ming and Laura against.

3. On Page 3, the discussion of the Motion to adopt a policy on providing emails to the board members, should be changed to delete all language in the second paragraph under New Business appearing after the sentences, "Jeff moves to pass the resolution on Email policy. Frank seconds."

Jeff moves to approve this correction. Laura Seconds. Frank, Jeff, Tom, Doug, and Laura approve. Ming against.

4. On Page 3, under New Business, fifth paragraph, after the sentence, "Jeff said it is our legal duty." Add the following, "Following discussion the motion was brought to a vote and passed 4-1 with Ming Cabrera voting No." This adopted Resolution can be found at pages 68 and 69 of the September 20, 2023 Agenda packets.

Jeff moves to approve this correction. Laura Seconds. Frank, Jeff, Tom, Doug, and Laura approve. Ming against.

5. On Page 3, under New Business, in the discussion of the motion on the Resolution directing the Manager to produce all contracts currently in force with the district to the Board by October 7, 2023 strike the language "All approved" after the sentence, "Tom seconds" from the second paragraph on that topic and add the following to the paragraph starting, "Public Comment", "Following discussion and public comment on the resolution, the motion was brought to a vote and passed unanimously." This resolution can be found at pages 66 and 67 of the September 20, Agenda packet.

Jeff moves to approve this correction. Tom Seconds. Frank, Jeff, Tom, Doug, and Laura approve. Ming against.

6. On page 4, under the discussion of the Motion to Pass a Resolution concerning low water pressure issues in Lake Hills Subdivision the Secretary after a review of the video or audio to determine who made the second shall add the name of the person who seconded the motion of the Chairman to approve the Resolution. In the same discussion following the sentence, "Jennifer says yes this is for today, not for future growth" add the following, "Following discussion by the Board and public comment, the Motion to pass the Resolution as amended passed by a vote of 4 in favor, one against, the director being opposed being Ming Cabrera." This resolution can be found at page 70 of the September Agenda packet.

Jeff moves to approve this correction. Tom Seconds. Frank, Jeff, Tom, Doug, and Laura approve. Ming against.

7. On page 5 under the minutes on the Managers Report, strike the first three paragraphs as they expand upon the remarks made by the General Manager at the meeting. The Secretary is directed to review her notes from the meeting and the video and audio of the meeting and redo this section with minutes that accurately reflect what was stated at the meeting rather than this expanded version.

Jeff moves to approve this correction. Tom Seconds. Frank, Jeff, Tom, and Doug approve. Ming and Laura against.

8. A set of corrected minutes with the foregoing changes shall be brought back to the Board for review and approval or review and further correction at a special meeting of the Board or the next regular meeting of the Board. All resolutions passed at the September meeting of the Board as noted in the changes above which are approved by the Board at the October 18, 2023 meeting shall be posted on the website by 5:00 pm on Thursday, October 19, 2023.

Jeff moves to approve number 8 Frank seconds.

Laura would like to amend the motion to separate the two action items and approve the minutes portion. Section 8A: A set of corrected minutes with the foregoing changes shall be brought back to the Board for review and approval or review and further correction at

the next regular meeting of the Board. Section 8B: All resolutions passed at the September meeting of the Board as noted in the changes above which are approved by the Board at the October 18, 2023 meeting shall be posted on the website by 500 p.m. on Thursday, October 19, 2023. Jeff seconds. Frank, Jeff, Tom, Doug, and Laura approve. Ming against.

Jeff withdraws his motion.

Jeff moves to approve section 8A. Laura seconds. Frank, Jeff, Tom, Doug, and Laura approve. Ming against.

Jeff moves to strike “a special meeting of the Board or” from number, 8. Frank seconds. Frank, Jeff, Tom, Doug, and Laura approve. Ming against.

Jeff moves to adopt section 8B. Tom seconds.

Discussion was had regarding section 8B.

Frank, Jeff, Tom, Doug, and Laura approve. Ming against. Jeff’s motion passed.

Item #2 MONTHLY PREPAID BILLS FOR APPROVAL

Tom moves to deny the prepaid bills. Jeff seconds.

Tom: prepaid bills contain Master card payments. He wants to see the bills that are being paid by the Master cards.

Public comment: Pam says the board directed the staff to put the bills in the agenda packet and that is what needs to be done.

More discussion was had from the board regarding going forward with the monthly prepaid bills.

Jeff asks to add item 2 to Old Business and recess for 10 minutes while the information is found for the master card report. Laura seconds. Frank, Jeff, Tom, Doug, and Laura approve. Ming against.

Ten-Minute Recess.

Tom withdraws his motion to deny the prepaid bills.

Tom moves to approve Consent Agenda Items 2. Monthly prepaid bills for approval 3. Bank Balances 4. FIB Payroll Statement 5. FIB Savings Statement 6. FIB Gross Income Statement. Laura seconds. All approved.

TREASURES REPORT:

Laura explained the offer sheet we received from Stifel. Gross Income account \$1. Service charge \$722.03. Sweep account \$563,251.48. Payroll account. \$98,727.69 First Interstate Savings account \$255,255.84. Yellowstone Bank Savings account \$219,584.53. Stifel investments \$6,427,404.49. Total cash position \$7,564,225.03. Change to cash position \$16,700.15

Jeff asks about the Stifel CD's and the length of the CD's

Laura says we fill in gaps for the mature dates/years.

Jeff asks if we have access to the CDs if needed. Laura says yes.

Jeff also asked about the income and expense sheet which he did not see in the agenda packet. Laura said it was in the packet that was posted on Monday.

Laura then goes on to explain the offer sheet of the investments and the mature dates. The total for the new recommendations is a total of 1 million.

The first recommendation is to invest \$250,000 with First FNDT Bank with an interest rate of 5.25% which would mature in 2025.

The second recommendation is to invest \$250,375 in Golden Bank National Association with an interest rate of 5.2% which would mature in April of 2026.

The third recommendation is to invest \$250,532.33 in Morgan Stanley Private Bank with an interest rate of 4.85% which would mature in March 2027.

The final recommendation is to invest \$250,000 in Avila Bank with an interest rate of 4.95% which would mature in April of 2027.

Tom makes a motion to accept the Stifel offer. Ming Seconds.

Jeff thinks that this board has a lot of work on its plates right now but when it calms down, he feels we should look at other options regarding the investment.

Ming says we have already looked at other options in the past to no avail.

Laura clarified that some of this money will be moved out of our smart balance account.

Public Comment: Pam says that the board is supposed to act by resolution. So, wouldn't the board be required to have a resolution to do that?

Doug says just a motion to do it and that we could make a resolution but he doesn't feel it's necessary.

Tom moves to make a resolution for the Stifel investments be approved. Laura seconds. Frank, Jeff, Tom, Doug, and Laura approve. Ming against.

MANAGERS REPORT: presented by Josh (Assistant Manager)

A meeting was had with the health insurance people where we were told that our Blue Cross Blue Shield is going up 4.8% with no changes in our coverage. No word on Guardian yet but they are not expecting an increase. That 4.8% increase is equal to \$8400 for the year.

Liquid Engineering was on site at the three tank locations doing the cleaning and inspections. They just wrapped up today with no major problems we are just waiting on their final report.

The meeting with the City was postponed again due to scheduling conflicts. Will probably be rescheduled for the November meeting.

The two new employees went to the fall water school for their review and to take their certification exam. We are expecting results in three to four weeks.

Tom asks about the insurance renewal times and documents to look at.

Laura said we should have them next month.

Jeff wants a report on the progress of the resolutions that we passed in the September meeting.

Josh, said those were sent out to the board and pending their review. As far as the Northwest Transmission Main has all been studied since 2014 when it started. That is the route that was decided and that is what needs to happen. Then the emails there is a quote included in the agenda packet. They went with the same IT people we use now.

Jeff asks if we stick with Morrison and Maierle for the email, will that double our monthly bill with them? Josh says yes.

Jeff recommends looking for another alternative for the emails.

Tom asks about contracts with Morrison and Maierle Maierle if we have a contract with them. He also asks about some missing contracts.

Josh said he will see if we have a contract with Morrison and Maierle. He said he would look into it and get back to them.

OLD BUSINESS:

None

NEW BUSINESS:

Item#7 Resolution for RFQ and vetting for new RFQ for new Board Attorney

With the resignation of Susan Swimley Jeff thinks the Board needs to find a new attorney for the Board. He feels that we need to look for new representation.

Public Comment: David Graves asks why Susan Swimley resign?

Doug said he thinks it was posted online and it is in the agenda packet.

David also asks if they are hiring an attorney for the Board or for the Water District?

Doug says the attorney will be for the Board.

Dianne asks why they accepting the resignation before we hire a new attorney?

Doug says there's she still has contracts to follow through with before we can accept her resignation. If we accept her resignation it could void the current litigations.

Ming says we are not protecting the people of the District we are protecting the majority of the Board who is not looking out for the people. Ming says that Susan is leaving because of the ineptness of this Board.

Doug says that the GM needs to consult with the Board before doing anything with legal counsel.

Jeff says that this is a local government and its actions are governed by the Board. The GM is hired by the board and is to serve the Board.

Tom quotes state law 713-2217 which says any district incorporated as provided in this part and part 23 shall have power to: have perpetual succession; sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction; adopt a seal and alter it at pleasure; take by grant, purchase, gift, devise, or lease and to hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the district, necessary to the full exercise of its powers; and make contracts, employ labor, and do all acts necessary for the full exercise of the foregoing powers. The powers enumerated in this part and part 23 shall, except as otherwise provided in this part and part 23, be exercised by the board of directors.

Ming objects to the state law quote.

Another recess for 5 minutes.

Tom asks about a time frame of when these need to be on the Board.

Jeff moves to adopt Item #7 the resolution for RFQ and vetting for new RFQ for new Board attorney. Frank seconds.

Jeff explains that this option will be brought to the Board no later than 5:00 pm on November 15th in a sealed envelope.

Ming would like to amend the motion to say the attorney will represent the district and not the Board. No second.

Jeff says that Susan will continue to represent us on the open matter.

Ming asks why four of the Board members here are so adamant about protecting themselves and not the District.

Jeff says the Board is the acting presence of the District.

Laura asks about only publishing in Yellowstone County News.

Jeff says that is the most efficient way yes.

Motion and Vote:

Jeff moves to adopt Item #7 the resolution for RFQ and vetting for new RFQ for new Board attorney. Frank seconds. Frank, Jeff, Tom, Doug, and Laura approve. Ming against.

Item #1 Right of Entry Agreement

Josh says it is for us to start moving forward and do our due diligence for the Northwest Transmission Main.

Jeff asks if this is for surveying only and how much will it cost.

Josh says there are many things that need to be done including the soil sample and topography. He also says the cost is all part of the Task Order.

Laura asked who drafted the resolution.

Josh says that Peyton and Susan Swimley drafted it.

Tom asks if Susan reviewed it.

Josh said she did.

Public Comment: Pam said she thought the resolution last month suspended all contracts until the Board had reviewed them. The public hasn't seen the contracts. \$600,000.00 is a lot of money to not have all of the information needed.

David said we need to finish this project and get it underway. We have been working on it for 9 years.

Tom moves that we approve the resolution for the Right of Entry Agreement. Laura Seconds.

Jeff moves to table this to the next meeting so that the Board can gain more information. Frank seconds.

Jeff withdraws his motion and Frank withdraws his second.

Tom says he doesn't want to see this Northwest Transmission main delayed any longer.

Laura and Ming both agree with Tom.

Motion and Vote:

Tom moves that we approve the resolution for the Right of Entry Agreement. Laura Seconds. All approved.

Item #2 Blue Cross Blue Shield Renewal

Ming makes a motion to accept the Blue Cross Blue Shield insurance renewal. Laura seconds.

Public Comment: Pam says that this staff has more insurance than any other government employee in Yellowstone County. She thinks that the insurance and raises should be reviewed as a total package at the end of the year.

David said that an \$ 8,000 increase in the budget to take care of your employees is not that big of a deal with the price of inflation. This shows that you care for the employees here at this Water District.

Laura said when she was reviewing the renewals last year, she polled other county water districts around the state and found that the majority of them pay for the employee's insurance. These are similar packages to what we have and the only benefit that was missing we have since added.

Frank asked about single-provided insurance.

Laura says that moving them to a single provider it exposed our staff to the opportunities that they would not be able to have their children seen by physicians because the medical community is so full and many of them are not accepting new patients.

Tom agrees with Laura, but he couldn't offer this to his employees. He found that when his employees understood what was being paid by having a little skin in the game it made things a lot easier.

Tom would like to propose an amendment that the district pay 3% of the 4.8% increase and any amount above the 3% be split evenly between the District and its employees. This way the employees have a stake in keeping the premium down.

Laura says there is a defined benefit plan that lays out the plans that would require a change and requote of benefits.

Doug asked for clarification

Laura says that their insurance has different things that cover the rates. There is the single-rate payer. There would be additional administration done on the part of the District as well as the part of the insurance company. She says it has to do with the rates. This rate for it what we agree on with the District paying 100% of the insurance.

Jeff said he would like to support the motion as it was originally presented to the Board. The employees are probably undergoing a lot of stress due to the many changes happening. He believes the employees need some stability and support through these changes.

Motion and Vote:

Ming makes a motion to accept the Blue Cross Blue Shield insurance renewal. Laura seconds. All Approved

Jeff asks if Josh has time to redo the signature on the Blue Cross Blue Shield renewal documents and what is the renewal date.

Josh said yes, I can contact those he needs to the day after the meeting.

Item #3 System Email quote

Jeff called an IT guy he knows and he said he thought we could purchase an email package directly from Microsoft that would handle 20 emails for about \$200 a month.

Josh said that we didn't go with Morrison and Maierle when our contract ran out with Zcreative. We stuck with Rackspace which is what Zcreative used.

Doug asks Josh to investigate this issue and cost further.

Laura makes a motion to table the System Email quote. Ming seconds All Approved

Item #4 Director and Manager Policies

Jeff explains the need for the new policy changes presented.

Jeff moves to adopt the proposed Director and Manager Policies. Laura seconds.

Tom mentions that a few items are covered by state law. His concerns are because state law changes all the time.

Jeff explains why he included those items from state law. He says it is an easier document to resource than to have to find the items in state law text.

Motion and Vote:

Jeff moves to adopt the proposed Director and Manager Policies. Laura seconds. Frank, Jeff, Tom, Doug, and Laura Approve. Ming Against.

Item #5 Water Rate Resolution

Frank explains the new rate changes that came up with for the District. He also explains that he left out the fire lines and water special fees. These charges will remain the same with the exception of the annexation fees.

Public Comment: Pam asked about Andrew Rheem's numbers. She feels that there needs to be a way for the public to see what their rates will increase to.

Frank makes a motion to accept the new water rates. Laura seconds.

Jeff amends that motion to indicate that these rates are going to go forward to a public hearing prior to adoption. Laura seconds.

Ming says that we are putting the Board at risk.

Tom said that he had an eye-opener because there is more than one way to make legal rates and these rates are defensible.

Motion and Vote:

Frank makes a motion to accept the new water rates. Laura seconds.

Jeff amends that motion to indicate that these rates are going to go forward to a public hearing prior to adoption. Laura seconds. All approved

Item#8 Resolution to commence work on HB#675.

Tom explains House Bill 675 which is a means of the City absorbing the Heights Water District.

Public Comment: Mike asks if this is going to be put up for a vote with the public. This should not be just a Board vote this needs to be put out to the public for them to vote.

Dianne said the City has been trying to take over Heights Water since before she started here 30 years ago and now you are wrapping it in a bow and giving it to them. She also agrees with Mike that there should be a vote with the whole District and that it shouldn't be just the Board that is going to do this.

David says that the board represents all of the ratepayers in the Billings Heights Water District and not the City of Billings. The Board's job is to protect the residents of the Heights Water District.

Tom makes a motion to accept and go forward with this resolution to explore HB 675. Frank seconds.

Jeff says he thinks he will be opposing this motion tonight. We have a lot of organization that needs to be done. We took the first step tonight with the policies. We have a resolution for alternative approaches to deal with. He thinks moving forward with this now would do two things that could impact our staff and our ratepayers. He thinks it is important to get our house in order first. He said he is not 100% sure that the City is eager to take over the Height Water District. He thinks there may be a time for this but doesn't think today is the day.

Laura agrees with many things that Jeff said. She doesn't think it is the right time. We are in a state of chaos having lost our GM. She's not sure that the City would have our rate payer's best interest.

Ming says he agrees with Laura and he said he will oppose this until the day he dies.

Motion and Vote:

Tom makes a motion to accept and go forward with this resolution to explore HB 675. Frank seconds. Frank, Tom, and Doug approve. Jeff, Ming, Laura Against. Motion failed on a tie.

Jeff moves to table Item #6 Resolution to accept resignation of attorney. Frank seconds. All Approved

Work session Wednesday, November 1st @ 9:30 AM for Bylaws and Contract review. Also, we will be talking about an RFQ about replacing the GM at that time.

Next Board meeting Wednesday, November 15th @6:00PM

Meeting adjourned @ 9:11 pm

Board Secretary, Jennifer Burnside

Board President, Doug Kary