

PUBLIC UTILITY DISTRICT NO. 1  
OF ASOTIN COUNTY, WASHINGTON  
MEETING MINUTES  
March 26, 2013

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President Judy Ridge presiding, the Public Utility District No. 1 of Asotin County Meeting was called to order at 5:30 p.m. at the PUD Office at 1500 Scenic Way.

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ROLL CALL: PRESENT      Commissioners: Judy Ridge, Gary Hicks and Don Nuxoll.

PUD Staff: General Manager Tim Simpson, Treasurer Bob Sischo and Counsel Scott Broyles.

Members of the public were present.

MINUTES OF MEETING AND VOUCHER APPROVAL:

**MOTION** by Commissioner Gary Hicks and seconded by Commissioner Don Nuxoll to approve the consent agenda approving the minutes of the March 9, 2013 Regular Meeting and payment of the Transaction Vouchers covering vouchers #2679EFT through #2693EFT in the amount of \$25,930.80 and Blanket Transaction Voucher Approval Document covering vouchers #31243 through #31278, and Electronic Transaction Vouchers #13032001, #13032202 #13032501 and #13040201 in the amount of \$41,679.16. The question was called for on the motion. The motion passed 3-0.

OLD BUSINESS

Port of Wilma Progress Report for Water System Transfer and Sewer System Upgrades

The manager stated at the last meeting he reported about the Port of Whitman County's (Port) plan to correct and rehabilitate the current septic system and drainfield and that the Port was awaiting the Whitman County Health Department plan review and approval. He stated that today he received a copy of a letter from the Health Department to the Port stating that if the Port of Wilma with Munir Daud and Associates would like to repair and reuse the existing failed and incorrectly installed system, the project will have to progress in phases in accordance with state regulations. They go on to state that this system will be an experimental system and the longevity of a system installed in this manner has not been tested before. Any concerns, current or future, related to public health and state regulations will require a new system to be installed. To progress with this option the Port of Wilma understands the risks involved with using an experimental system. After further discussion of the issues surrounding the Port's sewer system and expressions of concern about the systems viability, the Board of Commissioners directed the manager to write a letter to the Port stating that they have no desire in owning or operating an experimental sewage system and that the system would not meet PUD standards.

That manager stated that at the last meeting he reported he and Counsel Scott Broyles had been in discussions with Foster Pepper Attorney Joe Brogan regarding the transfer of the Port of Whitman County's water rights for the Port of Wilma to the PUD as part of the water system ownership transfer. It was reported at the last meeting that Mr. Brogan would continue research into utilizing the Conforming Document process for the water rights transfer and then provide a write-up on the Port municipal supply definition that the manager would submit to The Department of Ecology (Ecology).

The manager reported that he received an email from Mr. Brogan stating that under Ecology's Municipal Law Policy 2030 and Revised Code of Washington (RCW) 90.03 he was initially hopeful that the Port of Whitman County's water rights could have been linked under the broader "municipal supply purpose" language but he found that Ecology's Policy specifically prohibits this. The language clearly states that Port Districts are not municipal water suppliers unless they serve 15 or more residential connections. The manager stated that the Port of Wilma does not serve 15 or more residential connections even though the majority of their water rights are defined as "domestic" supply. Mr. Brogan stated that the definitions and Policy exclude the Port's water rights from the definition and the protection afforded municipal water rights. Mr. Brogan also stated that to present a simplified version of these facts to Ecology's Attorney General for his opinion would be futile because the Policy is clear.

The manager stated that after further discussion about water use in the Port of Wilma, Mr. Brogan wants to investigate another option to move water rights to the PUD with the water system transfer. He stated that one option for transferring water rights is called Determined Future Development. If plans were in place to acquire or transfer the water to the PUD before 2012, water rights used 5 years prior to this date could be transferred. The manager stated that at its peak between 2005 and 2008 the Port was using approximately 600 to 700 acre feet. The manager stated that he is seeking more definitive water use records from the Port. He stated that Mr. Brogan requested more time to investigate the issue. The Commission stated their acceptance of this request.

#### NEW BUSINESS

##### Resolution 13-398 – Rescinding Resolution 12-395

The manager presented Resolution 13-398 which provides for the rescission of the purchase offer, the Purchase and Sale Agreement and Resolution No. 12-395. He stated that at the December 11, 2012 Commissioners meeting the Board approved a Real Estate Purchase and Sale Agreement with Robert Wissenbach for the sale of .50 +/- acres of property and a shop building located on Critchfield Road commonly known to the PUD as the Critchfield Booster Station. Also approved at that December meeting was Resolution No. 12-395 which identified the steps taken regarding the property and providing authorization for the manager to execute closing documents, including the

statutory warranty deed on behalf of the PUD. Mr. Wissenbach's offer on the property of \$35,000.00 was accepted by the Board at the meeting held on September 25, 2012.

The manager stated that since approval of these documents he has been trying to work with Mr. Wissenbach to close the sale of the property. Receiving contact from Mr. Wissenbach was delayed for several weeks upon contacting him after the December 12th meeting. Once contacted, the manager stated that a closing date was set for February 7, 2013. The closing date was then moved to February 11th due to the availability of title company staff. When that day approached Mr. Wissenbach delayed closing stating that he now had to have the property appraised in order to receive financing for the purchase of the property. The manager offered the PUD's property appraisal to Mr. Wissenbach for use by the financial institution.

An email to Mr. Wissenbach on February 15th regarding the status of the property appraisal went unanswered and a follow up email on February 26th also went unanswered. Due to the lack of communication the manager stated that it is his position that Mr. Wissenbach is no longer interested in purchasing the property. Because of the lack of communication and multiple delays by Mr. Wissenbach in closing the sale of the property, the manager stated that he is recommending that approval of the offer received from Mr. Wissenbach be rescinded along with rescission of Board approval of the Real Estate Purchase and Sale Agreement and Resolution No. 12-395. He stated that approved documents have not been executed between the PUD and Mr. Wissenbach.

**MOTION** by Commissioner Gary Hicks and seconded by Commissioner Don Nuxoll to approve Resolution 13-398 rescinding the purchase offer from and the Real Estate Purchase and Sale Agreement with Robert Wissenbach and rescinding Resolution No. 12-395 which provided for the sale of surplus property known as the Critchfield Road Booster Station. The motion passed 3-0.

### MANAGER'S REPORT

Annual Audit – the manager stated that the State Auditor's Office has contacted the PUD regarding the scheduling of this year's audit. The tentative start date of the 2012 Fiscal Year is the second week of April.

Operations and Projects Update – the manager stated that operations staff has been working on a number of small projects. They have cut asphalt where water service laterals are located on 12<sup>th</sup> Street in preparation of service replacements prior to the City of Clarkston paving project this summer. The manager provided an update to the Commission on a number of projects in the design phase and those projects currently underway. Projects discussed included the Cherry Street redundant feed intertie with Clemans Road water line, the Well 6 chlorinator upgrade, the proposed 8<sup>th</sup> Avenue to Cascade Street sewer project and the current 8<sup>th</sup> avenue 25<sup>th</sup> and 26<sup>th</sup> Street sewer project.

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COMMISSIONER'S REPORT

There were no Commissioner report's presented.

ADJOURNMENT

There being no further business the meeting was adjourned at 6:05 p.m.