

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE
BACA GRANDE WATER AND SANITATION DISTRICT

November 15, 2023- 9:00 A.M.

District Office – 57 Baca Grant Way South

Crestone, Colorado 81131

Meeting held via Zoom

ATTENDANCE

Directors in Attendance:

Vivia Lawson

John Loll

Mike Smith

Rick Hart

David Karas

Also in Attendance:

Marcus Lock, District Legal Counsel

Diego Martinez, District Manager

Gary Potter, District Director of Utilities

Natalie DeBon, District Administrative Manager

Cathy Fromm, District Accountant (for a portion of the meeting)

Nicholaus Marcotte, Element Engineering

(for a portion of the meeting)

Community Members and Guests:

William Folk

Alba Martinez

Matthew Eric Lit

Josh Levine

CALL TO ORDER

President Lawson opened the meeting at 9:09 A.M.

Board Roll Call: Directors Lawson, Loll, Smith, Hart and Karas were present.

DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

Attorney Lock has discussed with the Board the requirements pursuant to Colorado law to disclose any potential conflicts of interest to the Baca Grande Water and Sanitation District Board of Directors and to the Secretary of State. It was noted that a quorum was present and members of the Board were requested to disclose any potential conflicts of interest with regard to any matters scheduled for discussion at this meeting.

Director Rick Hart notified the Board about a potential conflict of interest related to today's Agenda item V. The item involves conducting a public hearing for the Petition for Exclusion and contemplating the adoption of Resolution No. 2023-11-01, which pertains to the exclusion of real property. Rick clarified that he was not directly involved as a broker in this transaction but was part of the team. In an abundance of caution, he voluntarily recused himself and was not present during the ensuing discussion and decision.

AGENDA

MOTION: FOLLOWING DISCUSSION, UPON MOTION DULY MADE BY DIRECTOR LOLL,

SECONDED BY DIRECTOR SMITH AND UPON VOTE, UNANIMOUSLY CARRIED, THE BOARD APPROVED THE

AGENDA.

CONSENT AGENDA

The board considered the following consent agenda items:

- Approve Minutes from the October 18, 2023 Regular Meeting.

MOTION: FOLLOWING DISCUSSION, UPON MOTION DULY MADE BY DIRECTOR LOLL, SECONDED BY DIRECTOR SMITH AND UPON VOTE, DIRECTOR HART ABSTAINED FROM THE VOTE SINCE HE WAS NOT PRESENT DURING OCTOBER'S MEETING, THE REMAINDER OF THE BOARD UNANIMOUSLY APPROVED THE CONSENT AGENDA.

PUBLIC COMMENT (ITEMS NOT ON THE AGENDA ONLY. NO ACTION MAY BE TAKEN).

The district is subject to the Colorado Open Meetings Law, which states that no Board discussion or action will take place until a later date, if necessary. Please limit your comments to three minutes or less.

No public comments.

LEGAL MATTERS

Mr. Lock outlined the procedures for the public hearing, after which he presented a map to the Board, pinpointing the location of a 30-acre property seeking exclusion from the District. Mr. Lock provided the Board with details regarding the exclusion and then deferred to Mr. Levine the representative from MBS Sports & Leisure Inc.

Mr. Levine shared the property's purchase background, noting that he was aware of potential water-related challenges at the time of purchase. Despite anticipating difficulties, he proceeded with the purchase. He received an estimated line extensions cost ranging from \$400,000 to \$500,000 for addressing the water issue. However, he found that drilling a well approximately 200 feet deep would be a more cost-effective solution.

No comments from Staff. Mr. Lock asked District Staff to confirm the accuracy of the estimated line extension costs. District Manager Mr. Martinez responded that the cost is estimated based on a recent line extension done in the District.

Director Lawson raised crucial inquiries, starting with the property's current zoning, identified as institutional. She inquired about potential group meetings by MBS Leisure and Sports Inc. on the property. Mr. Levine responded there will be occasional visits for hiking.

President Lawson queried the adequacy of the well rights to meet the needs of the property. Mr. Levine clarified that the permit will be for residential well use. Ms. Lawson emphasized that if the property were excluded, water would not be supplied by the District, and Ms. Lawson expressed concern about zoning and the potential for development on the site. Mr. Levine highlighted an agreement between MBS Leisure Sport and Manitou, imposing square footage restrictions on building and limitations on tree removal in the upper part of the property, which is already excluded from the District. There is a limit of 3,000 square feet for a residence on the property.

Mr. Lock discussed well permits, emphasizing a cautionary note that the District will rely on Mr. Levine's word regarding well availability. Once the property is excluded, it is permanently excluded.

President Lawson suggested and discussed an alternative approach involving a cistern, which would not require exclusion from the District, and the customer could purchase water from the District. Mr. Levine expressed his preference for exclusion, since his upper parcel is already excluded and cannot be supplied by the District. President Lawson inquired whether any easements or deed restrictions memorialize the agreement with Manitou. Mr. Levine believes there are restrictions on the deed.

During the Public Hearing, Matt Eric Litt asked if there are any questions regarding the water rights for that property. Mr. Lock expressed doubt that there are water rights, as most properties within the District typically lack them. Exempt wells permitting limited residential uses are not administered by the Division of Water Resources.

President Lawson also commented that the property, when combined with the additional parcel outside of the District, would qualify for a domestic use well permit. It's considered an exempt well. People are granted domestic use permits regularly, but this permit is not a water right.

No further public comments were made.

No additional comments were made by other board members.

MOTION: FOLLOWING DISCUSSION, UPON MOTION DULY MADE BY DIRECTOR LOLL,
SECONDED BY DIRECTOR SMITH AND UPON VOTE, BY THE QUORUM OF THE BOARD, THE BOARD CLOSED THE
PUBLIC HEARING.

President Lawson expressed concerns regarding the board's decision, emphasizing the critical aspect of the development pattern in the area, and the substantial population growth within the subdivision. While acknowledging the need to encourage growth in the number of district subscribers, President Lawson noted the positive aspect of exclusion would be limited development in this location, a sensitive natural area.

Director Loll posed a question to Mr. Lock regarding whether the exclusion would set a precedent for other properties. Mr. Lock clarified that each property is unique, and while the decision is specific to the property in question, exclusion here aligns with the district's best interests.

Directors were given the option to accept or propose modifications, with a focus on incorporating relevant details into the resolution.

The resolution draft in the packet was presented. The options presented were to continue the discussion, move to accept, or deny the resolution. Lawson opened the floor to board members, welcoming any preferences they might have.

Director Loll expressed a dilemma, acknowledging the potential benefits of exclusion for smaller properties but expressing uncertainty about the criteria. He hesitated in making decisions for the current property and future ones, emphasizing the need to consider the long-term implications.

Mr. Lock introduced a hypothetical scenario for consideration, suggesting that properties surrounded by others might present challenges for exclusion. He urged the board to focus on the uniqueness of the current property rather than projecting potential scenarios for the future.

Director Loll echoed Mr. Lock’s sentiments, understanding the concerns but encouraging the board to assess the current property independently.

MOTION: FOLLOWING DISCUSSION, UPON MOTION DULY MADE BY DIRECTOR LOLL, SECONDED BY DIRECTOR KARAS AND UPON VOTE, BY THE QUORUM OF THE BOARD, THE BOARD APPROVED AND ADOPTED RESOLUTION 2023-11-01 GRANTING THE EXCLUSION PETITION OF MBS SPORTS & LEISURE INC.

Director Hart re-joined the meeting.

FINANCIAL MATTERS

Check Register: The board considered approval of the check register through the period ending November 15, 2023 as follows:

| | | |
|-------------------|----|-------------------|
| General | \$ | 20,811.70 |
| Capital | \$ | 1,377.50 |
| <u>Enterprise</u> | \$ | <u>131,250.61</u> |
| | \$ | 153,439.81 |

MOTION: FOLLOWING DISCUSSION, UPON MOTION DULY MADE BY DIRECTOR HART, SECONDED BY DIRECTOR SMITH AND, UPON VOTE, UNANIMOUSLY CARRIED, THE BOARD APPROVED THE CHECK REGISTER FOR THE PERIOD ENDING NOVEMBER 15, 2023.

Public Hearing to Consider Adoption of the 2024 Budget

MOTION: DIRECTOR LAWSON MOTIONED TO OPEN THE PUBLIC HEARING AND TO WELCOME PUBLIC COMMENTS AT 10:02A.M., SECONDED BY DIRECTOR LOLL AND, UPON VOTE, UNANIMOUSLY CARRIED.

Public Comments Received: None.

MOTION: THERE BEING NO PUBLIC COMMENTS, DIRECTOR LOLL MOTIONED TO CLOSE THE PUBLIC HEARING AT 10:02A.M., SECONDED BY DIRECTOR LAWSON AND, UPON VOTE, UNANIMOUSLY CARRIED.

Ms. Fromm, District Accountant, guided the discussion on the proposed 2024 Budget during the meeting with the Board. She thoroughly examined the various District Funds.

President Lawson noted that Colorado Proposition HH did not pass and the District will be getting more tax money this year. She also noticed the rise in property values since the beginning of 2020, resulting in increased revenue over the past 2-3 years for the District. President Lawson noted the fund have shown consistent improvement.

Emphasizing the District's enterprise status, Ms. Fromm highlighted the positive impact of numerous transfers and the accumulation of substantial revenue from fees and consolidations. She mentioned the importance of setting aside funds for significant future improvements.

President Lawson expressed satisfaction that the District is finally becoming financially stable. She emphasized the need to focus on making good use of stability to improve the system, move forward with planned projects, and continue to update and advance the master plan.

Ms. Fromm acknowledged that the District is in a strong financial position, with more than 6-months operating reserve, when only 3-month reserve is required. Ms. Fromm spoke of the importance of demonstrating financial readiness for major projects since most grants require a 20% match.

Director Loll reminded the Board about the financial commitment required for a future waste water treatment plant and the necessity to secure matching funds for grants.

President Lawson expressed that we are transitioning away from the era where the District constantly wondered how to cover expenses, and now the District is progressing forward, transitioning from a reactive to a proactive approach.

President Lawson proposed potential changes to the budget to ensure funds are available for the master plan's continuation, extending beyond five years. She emphasized the shift from a poverty mentality to a more professional approach.

District Manager Martinez commented on the long-term fees, their increase, and their role in covering planning expenses. The replacement of portions of the system was discussed, with an emphasis on expedited leak detection. Looking ahead, the district will be seeking a high-level waste water operator to manage the plant and oversee future developments.

The 2024 Fee resolution will be presented to the Board during the December Board meeting.

Directors acknowledged the importance of avoiding fee increases to ease potential hardships with taxes for constituents.

MOTION: FOLLOWING DISCUSSION, UPON MOTION DULY MADE BY DIRECTOR LOLL, SECONDED BY DIRECTOR HART AND, UPON VOTE, UNANIMOUSLY CARRIED, THE BOARD ADOPTED THE 2024 BUDGET AND APPROVED RESOLUTION 2023-11-02

A COPY OF THE ADOPTED RESOLUTION IS ATTACHED TO THESE MINUTES AND INCORPORATED HEREIN BY THIS REFERENCE.

BOARD AND STAFF REPORTS

The board reviewed and discussed the reports incorporated into the board packets.

Engineer's Report

Water Loss Prevention Project: Mr. Marcotte provided the board with an update on the water loss prevention project. They received a survey and they are finalizing design documents and will transmit to District staff for review.

Wastewater Treatment Plant:

Mr. Marcotte informed that USDA provided comments on the Environmental Report (ER) and Preliminary Engineering Report (PER). Element provided their comments and responses and resubmitted the reports.

Water Treatment System Improvements:

Currently awaiting CDPHE review of the document. Element will respond to any questions or CDPHE comments.

590 CR Line Extension:

Element received the request for the final pay application and as-built drawings. Notice for final pay advertisement was sent to District staff and will be published in legal and local newspapers during the weeks of November 27th and December 4th.

District Manager Report

In addition to his written report Mr. Martinez reported on the following to the Board:

Lead and Copper Rules Revisions (LCRR): Mr. Martinez updated the board on revisions to the LCRR mandate that the District undertake an "Inventory" of materials employed in service lines linked to the distribution system. The deadline for submitting the inventory list is 10/16/2024. The current phase involves a thorough examination of records to ascertain the number of homes constructed prior to 1988. District staff took training on this matter.

Personnel: Mr. Martinez also briefed the Board on the challenges posed by COVID-19. One employee tested positive, took necessary leave, and returned to work only after testing negative and being symptom-free. Comprehensive sanitation measures were implemented, and the wearing of masks was advised.

Employee Manual: Mr. Martinez updated the Board on the Employee Manual, mentioning that a draft has been received from legal counsel, and efforts are being made to compile a list of edits. Presenting for board review and approval is expected in December or January.

Administrative Manager Report

Ms. DeBon reviewed the administrative report with the Directors and noted a few highlights from the report.

Annual Certification of Delinquent accounts: Ms. DeBon updated the board on the Annual Certification, indicating that on November 7th, the Certification Resolution, along with the

Recipient list for the 2023 Certification, was sent via USPS and emailed to Regina Swartz, Saguache County Treasurer.

Colorado Special District Property and Liability Pool (CSDPLP) Ms. DeBon informed the Board of the CSDPLP update, highlighting the receipt of a \$900.00 scholarship reimbursement for SDA conference on October 16th. Additionally, she noted that as part of the liability insurance plan, all District employees completed at least one qualifying course on the online Vector Solutions Platform in 2023. On October 9th, the District achieved 100% compliance, resulting in a 10% discount on the 2024 liability contribution.

Operations Manager Report:

Mr. Potter discussed the operational report with the Directors, highlighting key points. Among them were images illustrating operational improvements. The first photo depicted the elevation of a manhole lid on Lone Pine Way, facilitating easier access and reducing the risk of contact with road maintenance equipment. The second image showcased a flushing hydrant replacement during an excavation project on Rockaway Overlook.

Equipment: Mr. Potter briefed the Board on recent additions to District equipment. A new skid steer has been acquired from Bobcat of the Rockies under our municipal lease program. Also, a new trailer, sourced from Texas Pride Trailers, has been received.

Incubator Fridge: Mr. Potter updated the Board on the Aspen Wastewater Treatment Plant Incubator fridge, noting that the shipping date was further delayed. The decision was made to cancel the existing order and instead, place an order for the incubator from a different manufacturer with available inventory. New incubator arrived on November 7th.

President Lawson expressed a high appreciation, and thanked Mr. Potter for his efforts.

EXECUTIVE SESSION

Motion: Upon motion duly made by Director Hart, seconded by Director Smith and, upon an affirmative vote of at least two-thirds of the quorum present, the Board entered executive session at 11:15 A.M. pursuant to C.R.S. § 24-6-402(4) (a), (b), and (c), which respectively concern the purchase or lease of real property, specific legal advice from counsel, and determining positions relative to matters subject to negotiation to discuss the lease rate for the next 20-year term of the Water Service Agreement and the terms and conditions for continued provision of sewer service to the Town of Crestone as well as negotiations related thereto.

MOTION: DIRECTOR HART MOVED; DIRECTOR SMITH SECONDED, AND UPON VOTE, UNANIMOUSLY CARRIED, TO RECONVENE TO REGULAR SESSION AT 11:48 A.M.

MOTION: DIRECTOR HART MOVED; DIRECTOR SMITH SECONDED, AND UPON VOTE, UNANIMOUSLY CARRIED, TO SCHEDULE THE NEXT REGULAR BOARD MEETING ON DECEMBER 13TH, 2023 AT 9:00 A.M.

ADJOURNMENT:

THERE BEING NO FURTHER BUSINESS TO DISCUSS, UPON MOTION DULY MADE DIRECTOR HART , SECONDED BY DIRECTOR SMITH AND UPON VOTE, UNANIMOUSLY CARRIED, THE MEETING WAS ADJOURNED AT 11:50 A.M.

**THE NEXT REGULAR MEETING IS SCHEDULED FOR
December 13, 2023**

Drafted by Natalie DeBon



Respectfully submitted,



Diego Martinez

THESE MINUTES ARE APPROVED AS THE OFFICIAL November 15, 2023 MINUTES OF THE BACA GRANDE WATER AND SANITATION DISTRICT BY THE BOARD OF DIRECTORS SIGNING BELOW:

Vivia Lawson

Vivia Lawson

John Loll

John Loll

Mike Smith

Mike Smith

Rick Hart

Rick Hart

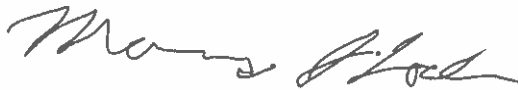
David Karas

David Karas

ATTORNEY STATEMENT

Regarding Privileged Attorney-Client Communication

Pursuant to §24-6-402(2) (d.5) (II)(B), C.R.S., I attest that, in my capacity as the attorney representing the Baca Grande Water and Sanitation District, I attended the executive sessions on November 15, 2023, and it is my opinion that the portion of the executive session that was not recorded constituted attorney-client privileged communications.



Marcus J. Lock

General Counsel

Baca Grande Water and Sanitation District

RESOLUTION NO. 2023-11-01

**RESOLUTION OF THE BOARD OF DIRECTORS OF
BACA GRANDE WATER AND SANITATION DISTRICT**

RESOLUTION FOR EXCLUSION OF REAL PROPERTY

WHEREAS:

- A. MBS Sports & Leisure, Inc., a Texas corporation (the “Petitioner”), the 100% fee owner of the real property (defined more specifically in paragraph 6 below and referred to herein as the “Property”), has petitioned the Baca Grande Water and Sanitation District (the “District”) for the exclusion of the Property from the boundaries of said District.
- B. Public notice has been published in accordance with C.R.S. § 32-1-501(2), calling for a public hearing on the request for approval of the petition for exclusion of the Property from the District as filed by Petitioner (the “Petition”).
- C. No written objection to the Petition was filed by any person in the District.
- D. The Board of Directors has taken into consideration all of the factors set forth in C.R.S. § 32-1-501(3).

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF BACA
GRANDE WATER AND SANITATION DISTRICT, SAGUACHE COUNTY, COLORADO:**

1. The Board of Directors finds that:
 - a. Exclusion of the Property is in the best interest of the Property to be excluded;
 - b. Exclusion of the Property is in the best interests of the District;
 - c. Exclusion of the Property is in the best interests of the county or counties in which the District is located;
 - d. The relative costs to the Property to be excluded from the provision of the District’s services exceed the benefits of the Property remaining within the District’s boundaries; specifically, it would cost in excess of \$250,000.00 to extend District water and sewer lines to the Property;
 - e. Under its current service plan the District does not have the ability to provide economical and sufficient service to both the Property seeking exclusion and all of the properties located within the District boundaries;
 - f. The District does not have the ability to provides services to the Property to be exclude at a reasonable cost compared with the cost which would be incurred in Petitioner performing these services itself as there are no other available service providers in the surrounding area;
 - g. Denying the Petition may have a negative impact on employment and other economic conditions in the District and surrounding areas;
 - h. Denying the Petition may have a negative economic impact on the region and on the District, surrounding area, and State as a whole;
 - i. An economically feasible alternative service may be available. Specifically, water may be able to be provided to the Property via an onsite groundwater well, and wastewater from the Property may be able to be treated via an onsite wastewater treatment system; and

- j. It should not be necessary for the District to levy any additional costs on other property within the District if the Petition is granted.
2. The Board of Directors of the District shall and hereby does, order that the Petition be granted, and the Property be excluded from the boundaries of the District, subject to Petitioner paying the costs associated with processing the Petition and requesting the Court enter the Order for Exclusion, and recording thereof and subject to the other terms and provisions of this resolution.
 3. The Board of Directors shall and hereby does further acknowledge and resolve that in accordance with C.R.S. § 32-1-503, the Property herein shall be obligated, even following exclusion from the District, to the same extent as all other property within the District with respect to and shall be subject to the levy of taxes for the payment of that proportion of the outstanding indebtedness of the District and interest thereon existing immediately prior to the effective date of the Order for Exclusion (the "Outstanding Indebtedness").
 4. The Board of Directors of the District shall and hereby does further order that, in accordance with C.R.S. § 32-1-503(1), upon the effective date of the Order excluding the Property, the Property shall not be subject to any property tax levied by the Board of Directors of the District for the operating costs of the District.
 5. The Board of Directors of the District shall and hereby does further resolve that in its discretion it may establish, maintain, enforce and, from time to time, modify service charges, tap fees, and other rates, fees, tolls and charges, upon residents or users in the area of the District as it existed prior to the exclusion, including the Property, to supplement the proceeds of tax levies in the payment of the Outstanding Indebtedness and interest thereon.
 6. The name and address of the Petitioner and the legal description of said Property are as follows:

Petitioner: MBS Sports & Leisure, Inc., a Texas corporation
Address of Petitioner: 5025 Broadway 2nd Floor, San Antonio, TX, 78209

Legal description of the Property: General Development Area as shown and described on the plat of Dharma Ocean Tract survey, the plat of which was filed September 7, 2007 under Reception No. 359859 in the office of the Clerk and Recorder of Saguache County, Colorado,

Acreage: Approximately 30.00 acres

APPROVED AND ADOPTED this 15th day of November, 2023.

BACA GRANDE WATER AND SANITATION
DISTRICT

By: Vivia Lawson
President

Attest:

Secretary

