

**Yosemite Alpine Community Services District
Board Minutes of May 9, 2020**

CALL TO ORDER. Chair Karen Green called the online ZOOM meeting to order at 10:03 am. She welcomed all in virtual attendance and gave an overview of the procedures that will be followed during the online ZOOM meeting. Instructions for accessing ZOOM were sent to all property owners, included on the Agenda posted on the district's website and at the Fish Camp Post Office.

INTRODUCTIONS. Karen Glendenning did a roll call to determine a quorum: Karen Green – here, Patti Frey – here, Dick Ryon – here, Tim McGinty – here, Karen Glendenning – here. A quorum was established. The public in attendance online today are: Ron and Rosemary Plue, Barry Green, Robert and Ann Flaherty, Erin Sahlstrom, Dale Wohlgemuth, Doris Ryon, Brenda McGinty and Jeff Boswell. Karen Green announced that items #8 and #9 will be switched in order. She stated that Governor Newsom removed restrictions on the teleconference meetings and that YACSD will be following his directions.

MINUTES FOR MARCH 1, 2020 MEETING. Draft minutes were posted to district website and had been distributed electronically via email. **Motion:** To approve the Minutes of March 1. Motion: McGinty, 2nd: Ryon. Roll call: Green – yes, Ryon – yes, McGinty – yes, Frey – abstain, Glendenning – yes. Approved 4-0, with 1 abstention Frey.

PUBLIC FORUM. Karen Green said she received 2 emails about a topic on today's Agenda. She will read those emails at that time. She asked if any other Board members had received any emails, none were received. Karen Glendenning reported that Cal FIRE burn permits are now required for all residential burning. You can go online at burnpermit@calfire.ca.gov to fill out the form and then print it off. Please call **888.440.2876** after you get your permit to find out if it is a Permissive Burn Day in Mariposa County. Tim McGinty asked if meter reading was going to be noticed. Karen Glendenning said she put the first notice in the April 2020 *Communication*. Meters will be read on June 27 & 28. Karen asked Tim to put the meter reading dates on the district's website.

TREASURER'S REPORT. Karen Green reported that there are concerns in the use of resident's names on the Treasurer's Report showing expenses incurred by their actions. Dale Wohlgemuth commented that YACSD is risking a Brown Act violation lawsuit and has discussed this matter with a former Federal judge. Dale questioned the veracity of what is legal about not paying bills. He will follow the direction of his legal advisor. Dale would like the Treasurer's Report reissued with the removal of his name from the report. Karen Green suggested replacing his name with the phrase "Potential Litigation." Discussion was held. **Motion:** To change the wording from Wohlgemuth issues/threats to "Potential Litigation"; further move to strike final section on Treasurer's Report. Motion: Frey, 2nd: McGinty. Vote: Green – aye, McGinty – yes, Ryon – yes, Frey – yes, Glendenning – yes, deferring to board members. 5-0, Passed. Patti Frey asked why insurance went up about \$700. Karen Glendenning replied that the budget was set 2 years ago. Since that time there have been numerous fires in the state of California. **Motion:** To approve the Treasurer's Report as amended. Motion: Frey, 2nd: Ryon. Vote: Green – yes, Ryon – yes, McGinty – yes, Frey – yes, Glendenning-yes. 5-0, Passed.

WATER MASTER'S REPORT. Tim McGinty reported that he will be marking the meters with PVC pipe in June. The creek has moved away from Well #2, about 3' away from the casing. He is looking at replacing the meter on Well #1. Tim is also planning on building boxes to go around the valves in the ground by the tanks. He asked Karen Green when the repairs will be done on Well #2. Karen Green said she will

email to Tim all the paperwork necessary to complete the repairs permitted from the California Department of Fish and Wildlife. It was suggested that Tim contact David Giuntini to determine the Silvertip work schedule to avoid conflicts. The budget and scope of work is spelled out in the Lake and Streambed Alteration Agreement with the Department of Fish and Wildlife. Tim reported that he is pumping Well #1 primarily, with some pumping at Well #2. He runs the pumps when the tank level gets to 16 ½'. It takes 4 days to fill to 20-21'. Karen Glendenning asked him to run the pumps on the weekend when the rates are lower.

BUDGET for FY 2020-21 and 2021-22. Karen Green announced she received 2 emails regarding the budget proposals. She asked if any other Board members had received comments. None were received by Board members. Karen Green read aloud the comments submitted by Dale Wohlgemuth, 9 minutes in length. He had asked to have them read out loud at the meeting and included in the Board minutes. His comments are in Appendix A of these Minutes. Chair Green asked if anyone had any comments. Ann Gunny stated she thinks the Board is working in the best interest of the district and has no similar concerns. Chair Green read the comments submitted by Jeff and Shirley Boswell, 6 minutes in length, who also asked that their comments be read aloud at the meeting and included in the Board minutes. Their submitted comments are in Appendix B of these Minutes.

In response, Chair Green explained that many of the concerns expressed in these two emails had already been addressed in an email sent to all property owners in the district in November of last year. She then responded to the similar points raised in both emails. A brief recap of her comments follows:

- The District can recover the cost of providing the water service. The charges are based on all costs of operating the utility.
- The Administration and Overhead expenses are listed in detail in that section of the budget.
- The Conveyance Agreement and the Installment Purchase Contract have been publicly available at all times during the approval process.
- Umpqua Bank loaned the District money to finance costs to secure the District's supply of water. The bank does not and never had control of the District's water utility assets. The district is complying with all state laws and Prop 218 requirements and is acting under the direction of our attorney.
- Interest income is estimated to be \$45, not \$9000 as suggested in the email from Mr. and Mrs. Boswell. The reserve totals on the budget are the only source of interest income.

Dick Ryon commented that most people have received a loan or mortgage over the years and the loan is backed by collateral. This is what YACSD did. The district sued, reached an out-of-court settlement and ensured the district's continued access to water. He asked people to consider what their home would be worth if there was no access to water. Patti Frey commented on the reference made to have the bank run the water system. She asked is that what the bank is in the business of doing. Chair Green called for more comments and none were presented.

Chair Green stated that she has had the budget proposals and wording reviewed by counsel. There will be no separate charge for snow removal and road maintenance. That funding will come from the property tax disbursements from Mariposa County. In the March meeting Brenda McGinty questioned the charge to empty lots and if they were allowed under Prop 218. Chair Green stated that counsel said they are permitted under Prop 218 because they are water service fees, not stand-by charges.

Patti Frey stated that the 2 budget proposals mainly have a difference in the terminology used. Dick Ryon said the fixed fees are higher in Proposal B as they were tied to the Consumer Price Index to develop reserves for the replacement of pipes in the future. Chair Green said the wording used in Proposal A wording was developed by the district's attorney. Patti agrees with conferring with legal counsel and it is wise to stick with the terminology and breakdown that was developed. Chair Green asked other Board members their thoughts. McGinty – use the wording developed with conferring with legal counsel. Glendenning – says in today's world of litigation, to go with advice of legal counsel.

Chair Green brought up removing exercising valves from the budget, combine Repairs and Maintenance into one category and raise the amount to \$1000.00. Ryon and McGinty agreed with this proposal. Chair Green wanted to set the PG&E amount at \$1000.00. Frey, McGinty and Ryon agreed. Chair Green suggested considering Automatic Controls as a part of Repairs and Maintenance rather than a separate category. It may be a better time to install new controls when the control house and pipes are relocated during construction of the Silvertip development. She continued with suggesting that Drilling New Well also be removed from the budget for the time being. Currently YACSD needs to do repairs on Well #2 and that should take priority. She suggested that YACSD continue to explore grants to help pay for a new well.

Concerning budget income, Proposal A slightly reduces the water service charge while Proposal B keeps the charge the same as the last two fiscal years. Dick Ryon discussed the hidden cost of depreciation of the district's infrastructure. The lifetime of assets and the cost of replacing the assets need to be considered. YACSD received a windfall from Fish Camp Fire Rescue Association with the 2 replacement tanks at a value of about \$170,000.

Chair Green asked for Public Comments on the budget proposals. Rob Flaherty said proposals were okay. Tim McGinty said we should be fiscally responsible to cover all bills, fees may have to go up, and that he doesn't agree with road and snow expense to property owners. He wants the County Property Tax to pay for the roads and snow removal. Tim asked if there is a CIP plan for district. Dick said his budget uses an asset chart with a depreciation schedule developed by the auditor. Patti commented that building a reserve should be listed as an expense because that is where the money is going.

Motion: To approve the Budget Proposal A with expense changes as discussed. The charge for a house is: Administration and Overhead being \$287.00, the Water Supply Charge set as \$280.00 and the Fixed Charge of \$598.00, for a total of \$1145.00 per year. The charge for a vacant lot is: Administration and Overhead set at \$89.00, Water Supply Charge at \$93.00, and Fixed Charge set at \$199.00, for a total of \$382.00 per year. Motion: Frey, 2nd: Ryon. Vote: Green – aye, McGinty – aye, Ryon – aye, Frey – aye, Glendenning – aye. 5-0, Passed. The budget motion showing the breakdown of the charges was passed and will be the subject of a public hearing to consider written protests at the next meeting.

Dale Wohlgemuth – PUBLIC RECORDS ACT REQUEST. Chair Green announced that on March 11 a Public Records Act request was filed by Dale Wohlgemuth for all checks and invoices for legal expenses in the last 7 years. He said YACSD had 10 days to fulfil the request. The information requested was sent to the YACSD attorney for review, recommendations and redactions. The district's attorney said it would take about 3 weeks to complete the request. On April 7, 2020 Chair Green emailed Mr. Wohlgemuth stating that the stay at home orders due to the global pandemic would delay our legal firm's response to his PRA request. In the email from Mr. Wohlgemuth read earlier in the meeting he complains that the district was "stalling" in completing the request. Chair Green said she took offense to this lack of compassion and understanding as to what the world is going through during these uncertain times. She

continued to say that she is sure they are working on the files as often as they can and that the District is not trying to avoid compliance. Patti Frey suggested including the email communication concerning the delay with the Minutes. Appendix C of these Minutes will contain the email exchange between Chair Green and Mr. Wohlgemuth.

NEW ITEMS BY DIRECTORS. Patti Frey invited all to participate at 8:00 pm each night with “a support the front line workers and medical personnel pot banging.” Just step outside your home and bang some pots together to support those who are doing very important work.

NEXT MEETING DATE. Tentatively, 10:00 am on Saturday, June 27, 2020 has been established. We’re not sure if it will be at the Tenaya Lodge or another online ZOOM meeting. Please check the district’s website. Notice will be posted 1 week prior to the meeting date. This meeting will include a public hearing to read letters received protesting the budget. The protest letters must be in writing, signed, with YACSD address noted. One protest letter per property shall be accepted. They must be mailed either prior to the meeting or they may be submitted at the meeting prior to the start of the hearing. If the meeting is online, scanned and signed letters may be emailed up until the end of the hearing.

ADJOURN. Motion: to end the meeting. Motion: McGinty, 2nd: Frey. Vote: Green – yes, Ryon – yes, Frey – yes, McGinty – yes, Glendenning – yes, 5-0, Passed. Meeting was adjourned at 12:33 pm.

Respectfully submitted,

Karen Glendenning
YACSD Secretary

Attachments:

Appendix A – Wohlgemuth email of May 8, 2020

Appendix B – Boswell email of May 7, 2020

Appendix C – Wohlgemuth / Green emails of April 7, 2020

Appendix A of May 8, 2020 mtg.

Letter RE: Budget Proposal

Dale Wohlgermuth <dwesleyw@sti.net>

Fri 5/8/2020 3:35 PM

To: Karen Green <greenbeans5@comcast.net>; Karen Glendenning <yacsd@hotmail.com>; Patti Frey <1slonative@gmail.com>; Richard Ryon <dickryon@comcast.net>; Tim McGinty <mcginty7691@gmail.com>

TO: The Board of The YACSD

May 8, 2020

(to be read at the May 9 meeting and attached to board minutes)

As I have been reviewing the proposed budgets for the next two years, and having come from a family of several businesses and CPAs, can I tell you that these are the most confusing budget proposals I have ever seen. Even the large church with which I was associated develops budgets consisting of many pages of detailed information, carefully organized by line items and definitions for millions of dollars. The reason for those detailed budgets for each year unlike the YACSD is that all of the money was derived from free donations. People have a right to know how their funds are being spent and be able to decide if those expenditures are being properly accounted for. You have a **fiduciary** * duty to the district's rate payers to be even more diligent and forthcoming in the detail of your budget proposals.

Quite frankly, I don't even know where to begin in evaluating what you are proposing here, a lot of this makes absolutely no sense from a business perspective. What I am certain of, buried and mis-labeled in this mess are proposed funds for a conveyance/sales agreement that was NEVER APPROVED by the homeowners and required by law, a clear 2/3 vote of all the homeowners for its approval. State law has placed the over-sight of these small districts into the hands of the constituents of these districts. Herein lies the enigma. Most constituents are not that knowledgeable of the many details contained in our State laws regarding for instance the governance of a small independent water district such as ours. Most of us were never provided the document upon which you are basing obligations attributable to the district. You have a duty to inform us. Unfortunately because most of the district's customers don't know what you have done with the districts assets, the homeowners typically will oblige the governing board's interests not truly knowing if these things are even permissible or legal. One hopes that the governing directors have done due diligence in coming to terms with the mandates of the law and truly have the best

interests of their district at heart. In our situation, that certainly has become questionable due to the actions of this board and their personal agendas that were not disclosed to homeowners who are now being asked to shoulder huge annual payments they had no voice in approving.

For reference: well over 15 different attorneys, some on our district, some from other districts and others have weighed in on the actions of this board surrounding the conveyance issue, a Superior Court judge and his staff, a former Federal Judge and his attorneys who are of the opinion that we need to by-pass a civil action and bring criminal charges in Federal Court, a half dozen State agencies, the Howard Jarvis Organization which who wrote Prop 218, 13 and others, received numerous file folders on court actions further defining the application of the law governing these boards, a church congregation that stretches from Fresno to Mariposa, Madera to the Yosemite Valley floor where there are a number of districts represented - some independent such as ours and other dependent on county. This have given me, personally, a comparative advantage to see how our neighboring districts govern themselves as compared to our district and have been introduced to some of their legal counsel and more. Never mind the fact I have personally spent countless hours reading through California State law on these matters with the help of my own personal attorneys. I say all of this to emphasize that any criticism of the actions of this board was not arrived by whim but hours of researching applicable legal issues. As I have indicated before, I am not an attorney nor do I represent myself as such. I have to rely on individuals far more educated in such matters.

It has been proposed to this board on several occasions that the board's legal counsel produce the citation and explanation of the board's actions regarding the conveyance personally on his letterhead. Either the board and counsel is unwilling or incapable of producing any such document that could possible settle this issue once and for all. I have also heard from a couple of attorneys who have suggested that the counsel for our district is probably acting more as a *defense* attorney for the four board members who pushed through the conveyance agreement despite the lack of approval from the homeowners under 218. I would think that legal counsel for the district would be looking at the over all interests of our district to make sure we are working within the confines of the law and not maneuvering to protect the personal assets of individual board members whose conduct has been called into question. If it is true that the attorney is working in the defense of the board members and at our expense, then we have a serious problem on our hands. Perhaps there is no real way to know for sure unless you disclose copies of all of his bills paid by the district which I have requested be universally shared with all homeowners.

The other thing that has been brought up by another attorney is that there may be a serious violation of state law as Mr. Ryon has so admittedly stated for the record, that their attorney was actively engaged in the contractual agreement of the conveyance of our assets with the bank in the sale and re-purchase of our entire Enterprise for the sole purpose as stated in YACSD documents; **"this agreement was for the sole purpose of legal fees"** to cover their legal counsel's bills. *IF TRUE*, then the attorney has clearly stated (and this is his specialty) there is a CA 1090 violation which the California State Legislature has doubled down on. With that, I must leave that for the legal experts to hammer out in court.

I am sure that this board has supposed a court summons in the way of a law suit for some time, and have probably been advised to wait and see if something develops. So not hearing or seeing such, I can assume you may think 'nothing' is happening, think again. **ACTIONS** have **CONSEQUENCES** and **IMPLICATIONS**. It is clear that this board has never really considered the consequences of their action in the context of the conveyance agreement. It is true we could create a suit against the board, but that would entail us raising tens of thousands of dollars to cover our legal expenses and there is no shadow of doubt where we stand legally on the issues. To do that is self defeating due to costs until we find contingency counsel who will pursue individual assets and the districts insurance policies and that of its attorneys. However, we have other options better suited to our goals in dealing with this issue and others. There is no doubt at the proper time this will definitely need to be resolved in court, but not just yet!

My main purpose in writing is to request a serious explanation as to why the board has been stalling to fulfill a public records request for all legal invoices incurred by this district for the past seven years? The attorney requesting the info also gave me a 73 page book for reference called, "The People's Business" - it is a guide to the California Public Records Act. It clearly states that the California Public Records Act was enacted to:

- 1. safeguard the accountability of government to the public;**
- 2. promote maximum disclosure of the conduct of government operations, and**
- 3. explicitly acknowledge the principal that secrecy is 'antithetical' to a democratic system of government of the people, by the people and**

for the people.

According to the mandates stipulated within its pages, we have a right to see the operations of this governing body since this governing body is 100% accountable to us as homeowners according to the law. Still waiting?

A FINAL NOTE: This whole Enterprise conveyance buy-back plan has to rank high as one of the **DUMBEST** actions taken by this board. Consider that you sold the entire Enterprise to a bank that was completely bought and paid for. So now we not only have to buy the whole Enterprise back with interest; we have to raise on top of this, extra funds for repairs, new wells ... whatever. Talk about a complete waste of homeowner's funds! Does this sound a bit crazy to you? It certainly does to me from a business perspective. None of this was necessary or warranted! Yes, actions have consequences!

Consider this letter not as a protest of the board's actions but a vote of **"NO CONFIDENCE"** in the management capabilities of this board.

Dale Wohlgemuth

(*)The highest legal duty of one party to another, being a **fiduciary** requires being bound ethically to act in the other's best interests. A **fiduciary** might be responsible for general well-being, but often the task involves finances—managing the assets of another person, or of a group of people!

This letter was reviewed by legal counsel

Appendix B of May 9, 2020 mtg.

YACSD may 9 board meeting —public comments to be read and entered into the board minutes

Jeffrey Boswell <jeffreygboswell@gmail.com>

Wed 5/6/2020 4:57 PM

To: greenbeans5@comcast.net <greenbeans5@comcast.net>

Cc: Karen Glendenning <yacsd@hotmail.com>

Please read at the meeting and put a copy in the minutes

The Brown act governs the boards actions. The legislation under which the board operates in its introduction states: "the people of this State do not yield their sovereignty to the agencies which serve them. The people in delegating authority , do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." With that cry for transparency and the right of the people to be fully informed we make the following comments and suggestions.

1. The YACSD is a special California district that is statutorily mandated to provide services at actual cost, which in this case is the pumping, treating, storage and distribution of potable water to its customers at cost. The stated purposes of special districts is to provide taxpayers public services efficiently and at cost.
2. The budget's income categories on the boards agenda includes an administration and overhead charge that is not justified or explained. To the extent that it reflects actual costs other than for the pumping, treatment, storage and distribution of water, those charges may not be charged to customers. There is insufficient information in the budget to justify the \$8,775 administration and overhead charge when there are no such administrative or overhead charges identified or presented. Transparency as to what is included mandates full and itemized disclosure of the items included in this line item.
3. In the Water Supply category, the district lists a Water Supply Acquisition -Debt service charge. This is an inaccurate statement. There is no debt service facing the district. The district sold its assets to a bank in Oregon without any approval of or vote by the district's owners/customers. As such, it is an impermissible sale of assets. Now, that bank is purporting to sell back those assets to the district on an installment sale basis and the District is incorrectly identifying these costs as debt service when they are in fact, the repurchase price charged the district by the bank. There is no loan between the bank and the district. It is a purchase and sale agreement that was not properly approved under California law. The board might want to Share a copy of assert purchase sale agreement so that people can read and understand it for themselves.
4. The Fixed Service Charge in the Income side of the budget ledger also purports to

be a debt service charge for the water supply acquisition. There is no debt service obligation. There is no loan between the bank and the district. There is a sale and buy-back agreement and it is impermissible for the district to charge the owners/customers of the district for assets that were sold out from under them and which the board of directors is now asking them to repurchase from the bank in Oregon. Taxpayers are not obligated to have their assets sold out from under them and without a vote to do so and then be obligated to pay to repurchase assets which had no business being sold to the bank in the first place, in violation of the California Constitution. A "second" line item of income from what is impermissibly called "debt service" that is to be charged to and collected from the district's tax payers to repurchase what was already theirs violates the California Constitution.

5. There is a line item in the Income ledger that is entitled "interest earned on deposits". Please make a statement in the minutes quantifying the cash or securities held by the district that generates almost \$9,000 of interest annually, so that the rate-payers and owners of the district can petition that such funds be disclosed and considered available for the rate-payers to suggest being used either fund litigation against the bank or to repurchase the assets of the district that were impermissibly sold to the bank without proper disclosing to and voting by the rate-paying owners of the district.

6. On the Expense side of the ledger, the Water Supply category calls for debt service payments of \$11,200/year and Fixed Service Charges/Debt Service of almost \$24,000 annually when there is no loan creating such debt service. As noted above, the Board sold all of the assets of the District to a bank in Oregon and now wants to repurchase those assets, characterizing the repurchase payment as debt, which is it not. Why not just have the bank operate the wells, storage and distribution system that they own "at cost" and eliminate over \$35,000 in annual payments charged to the rate-payers of the district?

If the bank bought the assets of the district, let the bank operate the water system at cost, as required by California law, and we can avoid \$35,000 in annual repurchase payments. We ought to get the benefit of the bargain struck by our board of directors when they sold the wells, tanks and pipelines of the district to the bank and now just let the bank operate the water system for all of us, at cost. I move the board to cease making payments to the bank for the \$35,000 annually and to let the bank provide district customers with water at cost without overhead or administrative costs added. Why should tax payers pay twice for district infrastructure that the district built and then sold to the bank when the board is now asking that we pay again for something already paid for initially. Taxpayers are being charged twice for the same assets which is impermissible and ought to be eliminated from the budget if the board wants to avoid a challenge to such a questionable arrangement.

Respectfully submitted. Jeff and Shirley Boswell 7726 Fishcamp Lane

Appendix C of Minutes of May 9, 2020 YACSD board meeting.

----- Original Message -----

From: Karen Green <greenbeans5@comcast.net>
To: Dale Wohlgermuth <dwesleyw@sti.net>
Cc: Karen Glendenning <yacsd@hotmail.com>
Date: April 7, 2020 at 10:56 AM
Subject: PRA Request Update

Mr. Wohlgermuth,

Due to the business disruptions related to the public health emergency, our attorneys will need additional time to complete their review and redaction of the invoices you have asked for in your PRA request dated March 11, 2020.

Sincerely,
Karen Green

----- Original Message -----

From: Dale Wohlgermuth <dwesleyw@sti.net>
To: Karen Green <greenbeans5@comcast.net>
Date: April 7, 2020 at 11:21 AM
Subject: Re: PRA Request Update

Understood

On Apr 7, 2020, at 10:56 AM, Karen Green <greenbeans5@comcast.net> wrote:

Mr. Wohlgermuth,

Due to the business disruptions related to the public health emergency, our attorneys will need additional time to complete their review and redaction of the invoices you have asked for in your PRA request dated March 11, 2020.

Sincerely,
Karen Green