

**MINUTES OF A MEETING OF THE  
DuPAGE WATER COMMISSION  
HELD ON THURSDAY, APRIL 15, 2010  
600 E. BUTTERFIELD ROAD  
ELMHURST, ILLINOIS**

The meeting was called to order by Chairman S. Louis Rathje at 6:02 P.M.

Commissioners in attendance: T. Bennington (arrived at 7:15 P.M.), E. Chaplin, T. Elliott, R. Furstenau, G. Mathews (until 8:43 P.M.), W. Murphy, J. Zay, D. Zeilenga, and L. Rathje

Commissioners Absent: L. Hartwig, W. Maio, W. Mueller, and F. Saverino

Also in attendance: T. McGhee, R. Skiba, M. Crowley, C. Johnson, J. Nesbitt, R. C. Bostick, J. Schori, M. Weed, E. Kazmierczak, and F. Freika

Commissioner Richard Furstenau took his Oath of Office.

**PUBLIC COMMENTS**

None

Chairman Rathje changed the order of business at the meeting to hold an Executive Session before the approval of the minutes.

**EXECUTIVE SESSION**

Commissioner Murphy moved to go into Executive Session to discuss matters related to personnel pursuant to 5 ILCS 120/2(c)(1) and (2) and to discuss pending, probable, or imminent litigation pursuant to 5 ILCS 120/2(c)(11). Seconded by Commissioner Furstenau and unanimously approved by a Roll Call Vote:

Ayes: E. Chaplin, T. Elliott, R. Furstenau, G. Mathews, W. Murphy, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: T. Bennington, L. Hartwig, W. Maio, W. Mueller, and F. Saverino

The Board went into Executive Session at 6:08 P.M., and Staff left the Executive Session at 6:50 P.M.

Commissioner Furstenau moved to come out of Executive Session at 7:07 P.M. Seconded by Commissioner Zeilenga and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

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### **APPROVAL OF MINUTES**

Commissioner Zay moved to approve the Minutes of the March 11, 2010 Regular Meeting of the DuPage Water Commission. Seconded by Commissioner Mathews and approved by a Voice Vote.

All voted aye except Commissioner Furstenau abstained. Motion carried.

Commissioner Zay moved to table approval of the Minutes of the First Executive Session of the March 11, 2010 Regular Meeting, the Minutes of the Second Executive Session of the March 11, 2010 Regular Meeting, and the Executive Session Minutes of the March 25, 2010 Special Meeting. Seconded by Commissioner Murphy and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Zay moved to approve the Minutes of the March 25, 2010 Special Meeting of the DuPage Water Commission. Seconded by Commissioner Mathews and approved by a Voice Vote.

All voted aye except Commissioner Furstenau abstained. Motion carried.

### **TREASURER'S REPORT**

Treasurer Zeilenga reported that the final general obligation bond payments due in September of 2010 and March of 2011 have been fully funded with no additional sales tax funds required to make these payments.

Treasurer Zeilenga further reported that the \$53MM on the Treasurer's Report agrees with the total cash amount on the monthly cash operating report, however, that report still indicates the need for an additional \$40MM of funding. Treasurer Zeilenga stated that this funding is being pursued via a Debt Certificate through the Northern Trust Bank and that Chapman and Cutler and Public Sector Group are working on this taxable financing.

Commissioner Bennington arrived at 7:15 P.M.

With regards to the second Certificate of Debt in the amount of \$40MM, Treasurer Zeilenga noted that Northern Trust Bank is committed and ready to fund following approval at the regular May Commission meeting. Treasurer Zeilenga explained that by approving a second short term loan, it will allow for the Commission to free up cash to build up the reserve accounts and pay construction costs, which should allow the reserve accounts to be balanced by the end of summer. As far as repayment of the loans, Treasurer Zeilenga noted that both West Suburban Bank and Northern Trust Bank have indicated that a 1-year extension, if needed, at the then current interest rate might be possible.

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Commissioner Zay referred to the second page of the Treasurer's Report, entitled "DPWC Monthly Cash/Operating Report," and, specifically, Table 1 Item A. Cash Reserve, and noted that the amount of \$20,000,000 is too high and requested that staff prepare a resolution for approval at the May meeting to decrease the total cash reserve to a lesser amount to be determined by the Board.

Commissioner Zay then moved to accept the March 2010 Treasurer's Report.  
Seconded by Commissioner Murphy.

Commissioner Furstenau inquired as to the interest rate for the \$30MM short term loan with West Suburban Bank and the proposed interest rate for the \$40MM short term loan with Northern Trust. Treasurer Zeilenga responded that the \$30MM short term loan with West Suburban Bank bears interest at a rate of 1.25% and Northern Trust Bank is closer to 2.00%, cautioning that negotiations with Northern Trust Bank were ongoing.

After Commissioner Furstenau questioned, and Former Financial Administrator Skiba confirmed, the accuracy of the money market account information, the motion to accept the Treasurer's Report was unanimously approved by a Voice Vote.

All voted aye. Motion carried.

### COMMITTEE REPORTS

#### **Administration Committee**

Meeting Canceled

#### **Engineering & Construction Committee**

Meeting Canceled

#### **Finance Committee – Reported by Commissioner Mathews**

Meeting Canceled

### CHAIRMAN'S REPORT

None

### MAJORITY OMNIBUS VOTE AGENDA

Commissioner Zay requested that Resolution No. R-17-10 be removed from the Majority Omnibus Vote Agenda for separate consideration.

Commissioner Elliott requested that Resolution No. R-18-10 be removed from the Majority Omnibus Vote Agenda for separate consideration.

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Commissioner Murphy moved to approve Ordinance No. O-4-10: Second Transfer of Appropriations Ordinance for the Fiscal Year Commencing May 1, 2009 and Ending April 30, 2010. Seconded by Commissioner Zay and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, R. Furstenau, G. Mathews, W. Murphy, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: L. Hartwig, W. Maio, W. Mueller, and F. Saverino

Commissioner Zay moved to table Resolution No. R-17-10: A Resolution Releasing Certain Executive Session Meeting Minutes at the April 15, 2010, DuPage Water Commission Meeting. Seconded by Commissioner Elliott and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, R. Furstenau, G. Mathews, W. Murphy, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: L. Hartwig, W. Maio, W. Mueller, and F. Saverino

Commissioner Elliott moved to adopt Resolution No. R-18-10: A Resolution Adopting Harris Corporate Resolutions for Deposit Accounts and Other Financial Services and Approving and Accepting the Terms and Conditions in the Harris Handbook for Personal and Business Deposit Accounts. Seconded by Commissioner Zay.

Commissioner Elliott questioned the designated signatories, noting his recollection that the Board previously directed staff that two signatures were required for all wire transfers and that the signatures required for wire transfers as well as for checks should be restricted to one of the following staff members—the General Manager, the Financial Administrator, or the Staff Attorney—and one of the following Board officers—the Chairman, the Treasurer, or the Finance Committee Chairman—instead of two signatures from among any of those officers and employees.

Staff Attorney Crowley agreed that the two issues were discussed in great detail but noted her recollection was that the Board decided not to make any changes until Jenner & Block had made its recommendations concerning restructuring changes.

After Commissioner Elliott asked whether, and Former Financial Skiba confirmed that, the only wire transfers with Harris Bank are for payroll and payroll related taxes and contributions, the motion was unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, R. Furstenau, G. Mathews, W. Murphy, J. Zay, D. Zeilenga, and L. Rathje

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Nays: None

Absent: L. Hartwig, W. Maio, W. Mueller, and F. Saverino

Commissioner Elliott then requested that staff provide to the Board, within one or two days, copies of the relevant meeting minutes and policies, including those relating to staff's disbursement authority, as well as copies of all wire transfers made since December 2009. In response to Staff Attorney Crowley's question, Commissioner Elliott advised that staff should not change the current procedures for wire transfers and check signing until the Board reviews the relevant meeting minutes and policies.

Commissioner Furstenau suggested having the meetings tape recorded for clarification purposes. Commissioner Zeilenga respectfully disagreed, stating that the meeting minutes are accurate and work fine.

### **SUPER/SPECIAL MAJORITY OMNIBUS VOTE AGENDA**

It was the consensus of the Commissioners to remove all items listed on the Super/Special Majority Omnibus Vote Agenda for separate consideration.

Commissioner Zay moved to adopt Ordinance No. O-5-10: An Ordinance Approving and Adopting an Annual Management Budget for the Fiscal Year Commencing May 1, 2010 and Ending April 30, 2011. Seconded by Commissioner Murphy.

Commissioner Furstenau asked whether, and Commissioner Zeilenga confirmed that, the revised draft of the Annual Management Budget for FY 2010-2011 included the \$3 million in reductions recommended by staff.

Commissioner Zay noted that the \$1.1MM voluntary payment to Illinois Municipal Retirement Fund had not been removed from the budget. Acting General Manager McGhee confirmed that this amount remains in the Budget as the Commission can gain an economic benefit by receiving a 7.5% credit if the amount is paid by December 31<sup>st</sup>. Commissioner Zeilenga noted that it's the Board's decision whether they want to cut the voluntary payment in half and, therefore, he was inclined to leave the full amount in the budget so long as it was not disbursed without Board approval.

Commissioner Mathews mentioned that Super/Special Majority Omnibus Vote Agenda Items B and C are tied in with Agenda Item A and, therefore, suggested a full discussion should encompass all items before any voting takes place. At which point, Commissioner Zay as the maker of the motion to adopt Ordinance No. O-5-10, and Commissioner Murphy, as the second, agreed to withdraw the motion and the second.

Commissioner Zeilenga began the budget and rate discussion by noting that a second Certificate of Debt short term loan for \$40MM is necessary to finish plugging the holes and not to balance the budget.

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Commissioner Furstenau referred to past water sales, noting that the Commission has been losing money for the past 4 -5 years due to subsidizing the water rate and that the Commission cannot continue losing money on a monthly basis. Commissioner Zeilenga responded that by raising the water rate to \$2.08/1,000 gallons, the Commission will be charging more for water than what the City of Chicago is charging the Commission for water. Commissioner Zeilenga added that to eliminate the rate subsidy would require the Commission to raise the water rate to \$3.08/1,000 gallons.

Commissioner Mathews expressed his confusion that the FY 08-09 actual water cost was \$48MM and the FY 09-10 budget was \$61MM, but the actual water purchases from the City of Chicago for FY 09-10 were projected to be only \$52MM. Acting General Manager McGhee explained that because it was a wet year, water sales were down, noting that the amount of money not spent on buying water from the City of Chicago is reflected in the water O&M payments which were budgeted to be \$49MM for FY 09-10 and are now being projected at only \$41MM.

In confirming his support of the \$2.08 water rate increase as a step in the right direction, Commissioner Elliott noted that the Commission had at one time charged a market rate for water which was more than what the City of Chicago charged the Commission.

Commissioner Chaplin stated that the FY 2010-2011 Annual Management Budget goes hand in hand with the water rate and, therefore, the more items that can be eliminated from the Budget will improve the Commission's financial position.

Commissioner Zay noted that he is in favor of the \$2.08 water rate and also with raising the Commission's water rate as and when the City of Chicago raises its rate. Commissioner Zay then thanked staff for revising the budget to reflect \$3 million dollars in cutbacks, noting it's nice to see staff listening to the Board's concerns and taking the initiative.

Commissioner Bennington inquired whether, and Commissioner Zeilenga clarified that, the proposed \$40MM short term loan is not included in the budget except for the interest payment.

Commissioner Bennington voiced his concerns with the Budget as presented and with taking out another short term loan in the amount of \$40MM, noting he was not totally convinced the increase to \$2.08 will be enough to recoup the time lag loss in revenue by the end of the year, that he was not totally convinced that the proposed \$40MM short term loan will come through, especially for an entity that the state legislature is attempting to dissolve by the end of year, or that either of the short term loans will be rolled over when they become due. Commissioner Bennington also questioned why the Board has not directed staff to terminate or temporarily suspend the existing construction projects until the Commission's finances were back in order.

Commissioner Chaplin stated that the \$2.08 rate does not meet the Commission's rate covenant and, therefore, the Commission is not in compliance with its Revenue Bond

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Ordinance and recommended that the water rate be increased as needed to be compliant.

Commissioner Zeilenga responded that the Board voted in March 2010 to commit to the \$40MM short term Certificate of Debt by retaining Bond Counsel and a Financial Advisor for the transaction, and that terminating or suspending the existing construction contracts could create a whole new set of problems, including possible lawsuits from the contractors. Commissioner Zeilenga stated that if the Board decided not to approve the \$40MM Certificate of Debt, or if the Commission could not obtain the loan by the end of May, then he agreed the only alternative would be to increase the water rate significantly higher.

Commissioner Chaplin reiterated that the Commission is in violation with the bond ordinance by not charging a water rate that covers all costs and further stated that sales taxes should not be used to cover the Commission's financial shortfall.

Commissioner Zay suggested the Board move forward as the water rate has already been set at \$2.08 and cannot be changed at this point. Commissioner Furstenau agreed, stating that if the Board wanted to change the water rate, then another Charter Customer hearing would be required. Staff Attorney Crowley clarified that if the Board wanted to change the fixed cost portion of the rate (\$0.24/1,000 on average) then no hearing would be needed, but if the Board wanted to change the O&M portion of the rate (\$1.84/1,000), then another hearing for the Charter Customers would be required after a 21 day notice.

Commissioner Murphy agreed with Commissioner Zay that the Board needs to move forward, adding that increasing the water rate is a great start. Commissioner Elliott echoed the comments of Commissioners Murphy and Zay, noting that he believes everyone is committed to getting the Commission back on track.

Commissioner Zay moved to adopt Ordinance No. O-6-10: An Ordinance Establishing a Rate for Operations and Maintenance Costs for the Fiscal Year Commencing May 1, 2010 and Ending April 30, 2011. Seconded by Commissioner Murphy.

After Commissioner Furstenau asked Commissioner Zay to amend the motion to include revisiting the discussion of increasing the water rate in November and Commissioner Zay respectfully declined, explaining that the Board can change the water rate at any time, the motion was approved by a Roll Call Vote:

Ayes: T. Bennington, T. Elliott, R. Furstenau, G. Mathews, W. Murphy, J. Zay, D. Zeilenga, and L. Rathje

Nays: E. Chaplin

Absent: L. Hartwig, W. Maio, W. Mueller, and F. Saverino

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Commissioner Zay moved to adopt Ordinance No. O-7-10: An Ordinance Establishing Fixed Costs to be Payable by Each Contract Customer for the Fiscal Year Commencing May 1, 2010 and Ending April 30, 2011. Seconded by Commissioner Mathews.

Commissioner Bennington moved to amend Commissioner Zay's motion to establish a rate for Fixed Costs for FY 2010/2011 that eliminates the sales tax subsidy and approximates an average rate of \$0.48 per 1,000 gallons instead of \$0.24 per 1,000 gallons. Seconded by Commissioner Chaplin and failed for lack of an approving majority.

Ayes: T. Bennington, E. Chaplin, and R. Furstenau

Nays: T. Elliott, G. Mathews, W. Murphy, J. Zay, D. Zeilenga, and L. Rathje

Absent: L. Hartwig, W. Maio, W. Mueller, and F. Saverino

At which point, Commissioner Zay's original motion to adopt Ordinance No. O-7-10 as presented was approved by a Roll Call Vote:

Ayes: T. Bennington, T. Elliott, R. Furstenau, G. Mathews, W. Murphy, J. Zay, D. Zeilenga, and L. Rathje

Nays: E. Chaplin

Absent: L. Hartwig, W. Maio, W. Mueller, and F. Saverino

Commissioner Zay then moved to adopt Ordinance No. O-5-10: An Ordinance Approving and Adopting an Annual Management Budget for the Fiscal Year Commencing May 1, 2010 and Ending April 30, 2011. Seconded by Commissioner Furstenau and approved by a Roll Call Vote:

Ayes: T. Bennington, T. Elliott, R. Furstenau, G. Mathews, W. Murphy, J. Zay, D. Zeilenga, and L. Rathje

Nays: E. Chaplin

Absent: L. Hartwig, W. Maio, W. Mueller, and F. Saverino

Commissioner Zay moved to adopt Resolution No. R-16-10: A Resolution Approving and Ratifying Certain Contract Change Orders at the April 15, 2010, DuPage Water Commission Meeting. Seconded by Commissioner Murphy and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, R. Furstenau, G. Mathews, W. Murphy, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

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Absent: L. Hartwig, W. Maio, W. Mueller, and F. Saverino

### OLD BUSINESS

At the request of Commissioner Murphy, Chairman Rathje changed the order of business at the meeting to defer the report and discussion on the Ad Hoc Committee Recommendations until the end of the meeting.

Before moving on, Commissioner Zay again thanked staff for their hard work and for taking the initiative to offer numerous Budget cutbacks. Commissioner Zeilenga echoed Commissioner Zay's comments, adding that staff has been very helpful, professional, and accommodating during the transition.

Commissioner Bennington expressed concerned that the FY 08-09 audit was not going to be presented to the Surety Bond Company by April 15<sup>th</sup>. Acting General Manager McGhee stated that the Surety Company had extended the deadline.

Due to a prior commitment of Commissioner Mathews, Acting General Manager McGhee asked Chairman Rathje to change the order of business at the meeting to hold approval of Accounts Payable before New Business.

### ACCOUNTS PAYABLE

In referring to an error on the accounts payable for invoices that have been received, Acting General Manager McGhee noted that the corrected amount to be approved was \$5,531,409.45. Commissioner Elliott also requested that the accounts payables for invoices that have not yet been received but have been estimated be revised to defer \$50,000 of the payment to Jenner & Block and to defer the \$50,042.50 payment to Crowe Horwath.

Commissioner Elliott moved to approve the revised Accounts Payable in the combined total amount of \$6,102,629.94 subject to submission of all contractually required documentation. Seconded by Commissioner Zay and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, R. Furstenau, G. Mathews, W. Murphy, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: L. Hartwig, W. Maio, W. Mueller, and F. Saverino

The Board recessed at 8:42 P.M.

Commissioner Mathews left at 8:43 P.M.

**NEW BUSINESS**

The Board reconvened at 8:50 P.M.

**Directing Use of Contingency Funds for Water Fund Operations**

Former Financial Administrator Skiba reported that the Operations and Maintenance Account was below requirements at March 31<sup>st</sup> and during discussions with the Treasurer, it was recommended that the Commission use the contingency reserve balance to bring this amount up to the requirement as of March 31. Former Financial Administrator Skiba further reported that the proposed motion to use contingency and sales tax funds to support operations is expected to keep the Operations and Maintenance Account at the required level through April 30<sup>th</sup>. Former Financial Administrator Skiba concluded his report by stating that when the new water rates take effect, the first \$23MM of sales tax receipts will be committed to water operations and this contingency funding should no longer be necessary.

Commissioner Zeilenga moved to direct Commission staff to use funds on deposit in the Contingency Reserve Fund established by Resolution No. R-1-10 to support water operations until an additional debt certificate is issued or higher cash receipts from new water rates begin to be collected in July 2010. Seconded by Commissioner Furstenau and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, R. Furstenau, W. Murphy, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Absent: L. Hartwig, W. Maio, G. Mathews, W. Mueller, and F. Saverino

**FYE 2010 Audit**

With regards to the 2010 audit, Acting General Manager McGhee stated that in August of 2009, the Commission solicited proposals for new auditors and six proposals were received but no action was taken. Acting General Manager McGhee added that he and Commissioner Zeilenga discussed whether new proposals should be solicited and it was decided to have staff contact each firm that submitted a proposal in 2009 to see if they would like or need to make any changes and that if no changes were requested, then the three most qualified firms out of the six who had submitted proposals in 2009 would be selected for a more detailed review and cost negotiations.

**Purchasing Policy**

Commissioner Elliott requested that the discussion of the purchasing policy be deferred to the next Commission meeting.

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### **Personnel Compensation Adjustment**

Commissioner Zay moved to approve the base salary increase for certain personnel in accordance with the discussion in Executive Session. Seconded by Commissioner Murphy and approved by a Roll Call Vote:

Ayes: E. Chaplin, T. Elliott, R. Furstenau, W. Murphy, J. Zay, D. Zeilenga, and L. Rathje

Nays: None

Pass: T. Bennington

Absent: L. Hartwig, W. Maio, G. Mathews, W. Mueller, and F. Saverino

### **Recommendations from Ad Hoc Committee**

Commissioner Murphy referred to a handout that was distributed regarding recommendation from Jenner & Block and reported that the Ad Hoc Committee and staff reviewed the recommendations, which were grouped into three categories:

- 1) Control and Oversight,
- 2) Monthly Financial Reporting to the Board, and
- 3) Accounting and Reporting

Commissioner Murphy further reported that the assistance of an interim Financial Administrator with a strong governmental background is greatly needed to help Former Financial Administrator Skiba with day to day functions until a permanent Financial Administrator is selected.

After Commissioner Zeilenga inquired whether, and Acting General Manager McGhee confirmed that, there is only one Commission employee helping Former Financial Administrator Skiba, Commissioner Zeilenga suggested staff begin the process of recruiting a senior level second accountant to help with the day to day functions.

Commissioner Murphy stated that the Board needs to clearly define the job descriptions for both the General Manager and Financial Administrator positions and suggested holding the regular May Board meeting at 6:00 P.M., cancel the Committee meetings, and start with the Ad Hoc Committee as the first item on the Agenda.

Commissioner Chaplin noted that the Board needs to take a more serious look at the recommendations made by Jenner & Block, which includes not eliminating the Committee meetings, and reminded the Board that the committees were eliminated back in late 2007 or early 2008 and that it was at the suggestion of Commissioner Maio that Committee meetings were reinstated.

Commissioner Murphy understood Commissioner Chaplin's concern, but stressed the importance of the Board working as a whole on all financial matters at this time and

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requested that staff provide copies of all minutes regarding the discussion of eliminating/reinstating Committee meetings.

After Commissioner Bennington suggested an early start time for the next regular Board meeting, it was the consensus of the Commissioners to hold a Committee of the Whole Meeting at 6:00 P.M. and the regular Board meeting at 6:30 P.M.

Commissioner Zay moved to adjourn the meeting at 9:16 P.M. Seconded by Commissioner Chaplin and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

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