

**MINUTES OF A MEETING OF THE
DuPAGE WATER COMMISSION
HELD ON THURSDAY, JUNE 10, 2010
600 E. BUTTERFIELD ROAD
ELMHURST, ILLINOIS**

The meeting was called to order by Vice Chairman Mueller at 7:59 P.M.

Commissioners in attendance: T. Bennington, E. Chaplin, T. Elliott, R. Furstenau, L. Hartwig, W. Maio, G. Mathews, W. Mueller, W. Murphy, F. Saverino, and D. Zeilenga

Commissioners Absent: J. Zay and L. Rathje

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

PUBLIC COMMENTS

None

APPROVAL OF MINUTES

After Commissioner Elliott noted a correction to the May 13, 2010 Regular Meeting minutes to reflect that he and Staff Attorney Crowley entered the meeting at 7:20 P.M. having been otherwise engaged on a conference call with the Commission's outside counsel after arriving on time for the meeting, Commissioner Hartwig moved to approve the Minutes of the May 13, 2010 Regular Meeting of the DuPage Water Commission as amended. Seconded by Commissioner Furstenau and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Furstenau moved to approve the Minutes of the May 13, 2010 Executive Session Meeting of the DuPage Water Commission. Seconded by Commissioner Elliott and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

TREASURER'S REPORT

Treasurer/Commissioner Zeilenga reported on the May 2010 Treasurer's Report, which consisted of three pages designated Reports A, B, and C. With respect to Report A, Treasurer/Commissioner Zeilenga highlighted a Monthly Net Operating Cash Flow of about \$700,000. With respect to Report B, the DPWC Monthly Cash/Operating Report, Treasurer/Commissioner Zeilenga highlighted the following:

- Report B, Line A: Operating Cash Contingency reflects the three months of reserve funds.
- Report B, Line B shows funds available for general Commission use which includes the remaining proceeds of the recently issued \$40MM Debt Certificate.

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- Report B, Lines C, D, and E are the reserve requirement of the Revenue Bond Ordinance.
- Report B, Line F shows the remaining construction project commitments.
- Report B, Lines G, H, and I show cash restricted to bond payments or construction escrows only.
- Report B, Lines J, K, and L show the outstanding bonds and debt certificates of the Commission.

With respect to Report C, Treasurer/Commissioner Zeilenga noted that Report C ties in with other reports and is constantly being tweaked. Treasurer/Commissioner Zeilenga further noted that the Commission will need to develop a long-term plan regarding payback for both short term loans, adding that West Suburban Bank had already preliminarily agreed to a one-year extension at the then current interest rate.

Next, Treasurer/Commissioner Zeilenga referred to a statement he prepared entitled "*Actions Taken by the Board of Commissioners of the DuPage Water Commission Since November 2009 Announcement of Cash Crisis*" and asked the Commissioners to review and submit any changes to either Acting General Manager McGhee or Executive Assistant Johnson.

Commissioner Maio moved to release the prepared statement entitled "*Actions Taken by the Board of Commissioners of the DuPage Water Commission Since November 2009 Announcement of Cash Crisis*" as presented. Seconded by Commissioner Bennington.

Commissioner Chaplin disagreed with Treasurer/Commissioner Zeilenga's prepared statement and, specifically, bullet point eight which stated "Independent forensic audit report was released and the report indicated the audit indicated they found no evidence that Water Commission funds were missing or spent on improper purposes," stating that Jenner & Block was not hired to investigate whether money went missing but, rather, to find out the events leading up to the Commission's financial shortfall. Commissioner Chaplin then moved to amend Commissioner Maio's motion by eliminating the words "as presented" and adding in their place the words "as amended to eliminate the eighth bullet point". Seconded by Commissioner Furstenau.

Commissioner Hartwig disagreed with the amendment, noting that he was under the impression that the use of the word "improper" in the Jenner & Block meant something illegal and that, according to the forensic audit report, Commission funds were not illegally spent but, rather, without complete financial analysis. Commissioner Elliott echoed Commissioner Hartwig's comments, stating that the language suggested by Treasurer/Commissioner Zeilenga was accurate.

After Treasurer/Commissioner Zeilenga agreed that the statement read correctly, the motion to amend the main motion failed by a Voice Vote for lack of an approving majority.

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Commissioner Chaplin voted aye with the remaining Commissioners voting nay. Motion failed.

Vice Chairman Mueller then called for a vote on the main motion to release the prepared statement entitled "Actions Taken by the Board of Commissioners of the DuPage Water Commissioned Since November 2009 Announcement of Cash Crisis" as presented which was approved by a Voice Vote.

All voted aye except Commissioner Chaplin voted nay. Motion carried.

Vice Chairman Mueller directed staff to release the prepared statement immediately and to post it on the Commission's website. Commissioner Maio also suggested sending a copy of the statement to all customers and Commissioner Furstenau added that all Illinois State Representatives and Senators should receive a copy as well.

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

With respect to Ordinance No. O-9-10: An Ordinance Determining the Prevailing Rate of Wages in DuPage County and Cook County, Acting General Manager McGhee explained that this is the annual ordinance that establishes the prevailing rate of wages for various construction trades working on Commission public works construction projects.

With respect to Resolution No. R-25-10: A Resolution Amending a Contract for Soils and Materials Testing Services, Acting General Manager McGhee explained that this is an existing contract which expires at the end of July and the contractor has offered to extend the contract for a one-year period to allow the Commission to complete materials testing services for its current construction projects at the competitively bid 2007 fee schedule.

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With respect to Resolution No. R-28-10: A Resolution Approving and Authorizing the Execution of a Master Services Agreement with Elijah Ltd. for Computer Forensics, E-Discovery, and Litigation Support Services, Acting General Manager McGhee explained that approval of this resolution would allow staff to request, at a total cost not-to-exceed \$20,000.00, computer forensics, e-discovery and litigation support services on an as needed basis in connection with Commission operations in Fiscal Year 2010-2011.

Commissioner Hartwig moved to adopt the items listed on the Majority Omnibus Vote Agenda in a single group pursuant to the Omnibus Vote Procedures. Seconded by Commissioner Elliott and unanimously approved by a Roll Call Vote:

Majority Omnibus Vote

Ayes: T. Bennington, E. Chaplin, T. Elliott, R. Furstenau, L. Hartwig, W. Maio, G. Mathews, W. Murphy, F. Saverino, D. Zeilenga, and W. Mueller

Nays: None

Absent: J. Zay and L. Rathje

Item 1: Ordinance No. O-9-10: An Ordinance Determining the Prevailing Rate of Wages in DuPage County and Cook County—"Majority Omnibus Vote"

Item 2: Resolution No. R-25-10: A Resolution Amending a Contract for Soils and Materials Testing Services—"Majority Omnibus Vote"

Item 3: No. R-28-10: A Resolution Approving and Authorizing the Execution of a Master Services Agreement with Elijah Ltd. for Computer Forensics, E-Discovery, and Litigation Support Services—"Majority Omnibus Vote"

With respect to Resolution No. R-25-10, several Commissioners noted their concerns with using the same service provider for the past six years and suggested changing the process as needed to obtain other bidders in the future.

SUPER/SPECIAL MAJORITY OMNIBUS VOTE AGENDA

With respect to Resolution No. R-26-10: A Resolution Approving and Accepting the Proposals of Sikich LLP for Audit Services, Acting General Manager McGhee reported that Treasurer/Commissioner Zeilenga and staff met with representatives from Sikich LLP, Crowe Horwath, and Wolf & Company and all agreed to recommend retaining the services of Sikich LLP to redo the annual financial audit of the Commission's financial statements for the fiscal year ending April 30, 2009, and to conduct the Commission's 2010 and 2011 annual financial audits.

With respect to Resolution No. R-27-10: A Resolution Approving and Ratifying Certain Contract Change Orders at the June 10, 2010, DuPage Water Commission Meeting, Acting General Manager McGhee explained that approval of Resolution No. R-27-10 would authorize Change Order No. 2 to Contract MS-18/09 (Contract for the

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Construction of DuPage County Meter/Pressure Adjusting Stations 9A and 9B) to (i) correct certain errors concerning the type of pipe to be installed to connect to the Commission's existing facilities, (ii) repair a 2" DuPage County Glen Ellyn Heights system water service, and (iii) repair an existing non-operational blow-off valve. Acting General Manager McGhee added that approval of Resolution No. R-27-10 would also authorize and approve Change Order No. 6 to Contract PSC-4/08 (Electrical Generation Facilities, Photovoltaic System, and Other Improvements at the Lexington Pumping Station) for additional work required by the City of Chicago Department of Water relating to the construction of the Electrical Generation Facilities.

Commissioner Murphy moved to adopt the items listed on the Super/Special Majority Omnibus Vote Agenda in a single group pursuant to the Omnibus Vote Procedures.
Seconded by Commissioner Furstenau.

With respect to retaining the auditing services of Sikich LLP, and to protect the Commission from a reoccurring financial problem, Commissioner Maio suggested changing the scope of services from those used in the past, specifically noting that the auditors should bring any questions to the Board's attention that cannot otherwise be answered or resolved. Acting General Manager McGhee informed the Board that a representative from Sikich LLP was present and could provide a brief summary of their approach to and scope of services.

Louis Karrison, Partner with Sikich LLP, advised that even though the scope of services is standardized in the industry, he had been a Partner with Sikich LLP for nine years and assured the Commissioners that the actual audit procedures of the firm go above and beyond the standard auditing services, beginning with an extensive evaluation and discussion of all concerns before the auditing process even begins.

With respect to Resolution No. R-27-10, Commissioner Mathews questioned why multiple change orders involving different contractors were being grouped together on one Resolution and suggested that, in the future, change orders for each contract be the subject of separate Resolutions for Board consideration.

Commissioner Bennington questioned the PSC-4/08 Progress Report and asked for an explanation as to why the contractor had been paid only 50% of the project work when the Progress Report states that 80% of the project is completed. Facilities Construction Supervisor/Safety Coordinator Bostick explained that the construction progress report is split into two sections: a time element and a payment element which is the true measure of a contractor's completed work. Facilities Construction Supervisor/Safety Coordinator Bostick noted that J.J. Henderson is currently behind schedule, having completed approximately 50% of the work in 80% of the time allowed for completion. Facilities Construction Supervisor/Safety Coordinator Bostick concluded his response by noting that even if the contractor had asked for a time extension, Facilities Construction Supervisor/Safety Coordinator Bostick would not recommend approval because the delays experienced by the contractor were his own (the contractor failed to submit necessary shop drawings on time).

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Former Financial Administrator Skiba noted that staff expects to be able to pay over \$450,000 to J.J. Henderson in the month of June after holding back \$293,000 for the lien claim. Former Financial Administrator Skiba also noted that once the lien claim has been released, the amount withheld can be immediately paid to J.J. Henderson.

Without further discussion, the motion was unanimously approved by a Roll Call Vote:

Super/Special Majority Omnibus Vote

Ayes: T. Bennington, E. Chaplin, T. Elliott, R. Furstenau, L. Hartwig, W. Maio, G. Mathews, W. Murphy, F. Saverino, D. Zeilenga, and W. Mueller

Nays: None

Absent: J. Zay and L. Rathje

Item 1: Resolution No. R-26-10: A Resolution Approving and Accepting the Proposals of Sikich LLP for Audit Services—"Super/Special Majority Omnibus Vote"

Item 2: Resolution No. R-27-10: A Resolution Approving and Ratifying Certain Contract Change Orders at the June 10, 2010, DuPage Water Commission Meeting —"Super/Special Majority Omnibus Vote"

OLD BUSINESS

Recommendations From Ad Hoc Committee

After Commissioner Murphy briefly recapped on the discussion during Committee of the Whole meeting regarding the selection process for a new General Manager, Commissioner Murphy moved to direct staff to update the recruitment profile and professional announcement originally prepared by The Par Group, including a salary range of \$140,000.00- \$160,000.00 depending on qualifications and experience, and to place the updated announcement in appropriate publications with a "desired" application deadline of July 30, 2010. Seconded by Commissioner Bennington and approved by a Roll Call Vote.

Ayes: T. Bennington, T. Elliott, R. Furstenau, L. Hartwig, W. Maio, G. Mathews, W. Murphy, F. Saverino, D. Zeilenga, and W. Mueller

Nays: E. Chaplin

Absent: J. Zay and L. Rathje

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Resolution No. R-20-10

Commissioner Bennington moved to table to the next meeting Resolution No. R-20-10: A Resolution Establishing the Policy of DuPage Water Commission with Respect to a Target Fund Balance in the Water Fund for Emergency Repairs and Other Contingencies. Seconded by Commissioner Maio and unanimously approved by a Roll Call Vote.

Ayes: T. Bennington, E. Chaplin, T. Elliott, R. Furstenau, L. Hartwig, W. Maio, G. Mathews, W. Murphy, F. Saverino, D. Zeilenga, and W. Mueller

Nays: None

Absent: J. Zay and L. Rathje

Purchasing Policy

Commissioner Elliott reported that he had reviewed the Commission's purchasing policy and is satisfied with the policy and, as such, is recommending that no further action be taken and that the item be removed from future agendas.

NEW BUSINESS

Continuing Disclosure Material Event Notices

Commissioner Mathews moved to direct staff to file the Continuing Disclosure Material Event Notices as presented. Seconded by Commissioner Murphy and approved by a Roll Call Vote.

Ayes: T. Bennington, T. Elliott, R. Furstenau, L. Hartwig, W. Maio, G. Mathews, W. Murphy, F. Saverino, D. Zeilenga, and W. Mueller

Nays: E. Chaplin

Absent: J. Zay and L. Rathje

Additional Compensation for Public Sector Group Inc.

With regard to services provided by Phillip Peloquin of Public Sector Group relating to the \$40MM Debt Certificate with Northern Trust Bank, Treasurer/Commissioner Zeilenga explained various reasons for Mr. Peloquin's request for additional compensation for services rendered, highlighting the following differences from the West Suburban Bank transaction upon which the Public Sector Group's fee was based:

- Second loan was considerably larger
- Second loan was complicated by the release of the Forensic Audit Report, requiring detailed review and analysis

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- Northern Trust Bank had stricter guidelines

For these reasons, Treasurer/Commissioner Zeilenga stated that the request seemed fair, adding that Mr. Peloquin worked more hours than originally anticipated and had offered to provide a detailed log of hours worked and additional expenses incurred. At which point, Treasurer/Commissioner Zeilenga moved to approve a \$22,000.00 increase in the total amount to be paid to Public Sector Group relating to the \$40MM Debt Certificate with Northern Trust Bank. Seconded by Commissioner Furstenau.

Commissioners Mathews and Elliott expressed difficulty supporting Mr. Peloquin's request in that according to their calculations, Mr. Peloquin's work schedule equated to 48 hours a week for a 7 week period. Commissioner Mathews stated that he would like to take Mr. Peloquin up on his offer to provide additional data supporting the request. Commissioner Elliott echoed Commissioner Mathews' comments, adding that a detailed log would be helpful to better understand and justify Mr. Peloquin's request.

Commissioner Bennington moved to table to the next meeting Treasurer/Commissioner Zeilenga's motion to approve the additional compensation for Public Sector Group Inc. in order to allow for review of more detailed documentation justifying the hours worked. Seconded by Commissioner Mathews.

Treasurer/Commissioner Zeilenga asked Commissioner Mathews to specify what type of documentation would be acceptable. Commissioner Mathews stated that during Treasurer/Commissioner Zeilenga's presentation of Mr. Peloquin's request, it was mentioned that Mr. Peloquin offered to provide a detailed log of hours worked and additional expenses incurred and that that documentation was all that Commissioner Mathews was currently requesting to review. Commissioner Mathews added that he hoped that documentation would be sufficient but that he would not know for sure until he had a chance to review the additional documentation.

Vice Chairman Mueller suggested withdrawing the pending motion and starting over, as a result of which Commissioner Bennington as the maker, and Commissioner Mathews as the second, agreed to withdraw the pending motion to table.

Commissioner Maio then reminded the Commissioners that Mr. Peloquin's efforts saved the Commission around \$124,000 in addition to working with the rating agencies to achieve a positive outcome. Commissioner Furstenau stated that even though he understood that circumstances change, all relevant information needs to be presented. In response to a question by Commissioner Furstenau, Staff Attorney Crowley advised that the Board approved a flat rate of \$5,000 for all services to be rendered in connection with the \$40MM Debt Certificate.

Commissioner Maio moved to call the question on the motion to approve the additional compensation for Public Sector Group Inc. Seconded by Commissioner Hartwig and failed by a Roll Call Vote for lack of an approving two-thirds super-majority:

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Ayes: E. Chaplin, L. Hartwig, W. Maio, W. Murphy, D. Zeilenga, and W. Mueller

Nays: T. Bennington, T. Elliott, R. Furstenau, G. Mathews, and F. Saverino

Absent: J. Zay and L. Rathje

Commissioner Mathews reminded the Board that for the past seven months, the Board has been questioning and reviewing all documentation relating to the Commission's finances for better monitoring and protection of its financial position.

After Commissioner Murphy pointed out that five Commissioners just voted against calling the question on the motion to approve the additional compensation requested by Mr. Peloquin, Commissioner Murphy moved to table Treasurer/Commissioner Zeilenga's motion to approve the additional compensation for Public Sector Group Inc. Seconded by Commissioner Hartwig and approved by a Roll Call Vote.

Ayes: T. Bennington, T. Elliott, L. Hartwig, W. Maio, G. Mathews, and W. Murphy

Nays: E. Chaplin, R. Furstenau, F. Saverino, D. Zeilenga, and W. Mueller

Absent: J. Zay and L. Rathje

ACCOUNTS PAYABLE

Commissioner Mathews moved to approve the Accounts Payable in the amount of \$5,615,954.67, subject to submission of all contractually required documentation, for invoices that have been received. Seconded by Commissioner Elliott and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, R. Furstenau, L. Hartwig, W. Maio, G. Mathews, W. Murphy, F. Saverino, D. Zeilenga, and W. Mueller

Nays: None

Absent: J. Zay and L. Rathje

After Acting General Manager McGhee noted a revision to the accounts payable for estimated invoices, stating that the accounts payable for estimated invoices should have included a \$187,500.00 six-month interest payment to West Suburban Bank relating to the \$30MM Certificate of Debt, Commissioner Zeilenga moved to approve the Accounts Payable in the revised amount of \$821,100.00, subject to submission of all contractually required documentation, for invoices that have not yet been received but have been estimated, including the \$187,500.00 payment to West Suburban Bank. Seconded by Commissioner Saverino and unanimously approved by a Roll Call Vote:

Ayes: T. Bennington, E. Chaplin, T. Elliott, R. Furstenau, L. Hartwig, W. Maio, G. Mathews, W. Murphy, F. Saverino, D. Zeilenga, and W. Mueller

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Nays: None

Absent: J. Zay and L. Rathje

Vice Chairman Mueller reminded the Commissioners that it was the consensus of the Board to continue holding Committee of the Whole meetings prior to the regular Commission meeting with a time designated by staff based on the Agenda items.

Commissioner Chaplin announced that it was her last meeting as her letter of resignation had been submitted to Chairman Schillerstrom several months ago.

Commissioners Hartwig, Maio, and Mathews left the meeting at 9:32 P.M.

EXECUTIVE SESSION

Commissioner Elliott moved to go into Executive Session to discuss matters related to personnel pursuant to 5 ILCS 120/2(c)(1) and (2) and 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 T. Bennington, E. Chaplin, T. Elliott, R. Furstenau, W. Murphy, F. Saverino, D. Zeilenga, and W. Mueller

Nays: None

Absent: L. Hartwig, W. Maio, G. Mathews, J. Zay, and L. Rathje

The Board went into Executive Session at 9:35 P.M.

Commissioner Bennington moved to come out of Executive Session at 10:07 P.M. Seconded by Commissioner Saverino and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Murphy moved to go into Executive Session to discuss security procedures pursuant to 5 ILCS 120/2(c)(8). Seconded by Commissioner Furstenau and unanimously approved by a Roll Call Vote:

Ayes T. Bennington, E. Chaplin, T. Elliott, R. Furstenau, W. Murphy, F. Saverino, D. Zeilenga, and W. Mueller

Nays: None

Absent: L. Hartwig, W. Maio, G. Mathews, J. Zay, and L. Rathje

The Board went into Executive Session at 10:08 P.M.

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Commissioner Zeilenga moved to come out of Executive Session at 10:15 P.M.
Seconded by Commissioner Bennington and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Elliott moved to adjourn the meeting at 10:16 P.M. Seconded by
Commissioner Chaplin and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

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