

**BOARD OF TRUSTEES
AND LOCAL MANAGING BOARD
SOUTH TRUCKEE MEADOWS GENERAL IMPROVEMENT DISTRICT
WASHOE COUNTY, NEVADA**

TUESDAY

8:30 A.M.
SPECIAL JOINT MEETING

MARCH 13, 2012

PRESENT:

Robert Larkin, Chairman
Bonnie Weber, Vice Chairperson*
John Breternitz, Trustee
Kitty Jung, Trustee
David Humke, Trustee*

Steve Cohen, Local Managing Board, Chairman
E. Sue Sanders, Local Managing Board, Vice Chairperson
Gerald Schumacher, Local Managing Board, Member
Gary Tavernetti, Local Managing Board, Member
Ellen Allman, Local Managing Board, Secretary

The Board of Trustees and the Local Managing Board convened at 8:42 a.m. in a joint special session in the Commission Caucus Room of the Washoe County Administration Complex, 1001 East Ninth Street, Reno, Nevada, with Chairman Larkin presiding. Also present were Washoe County Chief Deputy Clerk Nancy Parent; Washoe County Manager Katy Simon; Board of Trustees Legal Counsel Rew Goodenow; Pete Simeoni, Legal Counsel; Rosemary Menard, Community Services Director; and Dwayne Smith Water Resources Acting Sr. Licensed Engineer. The Clerk called the roll and the Board conducted the following business:

12-01STM AGENDA ITEM 2

Agenda Subject: “Public Comment. Comment heard under this item will be limited to two minutes per person and may pertain to matters both on and off the STMGID Board of Trustees agenda. The Trustees will also hear public comment during individual action items, with comment limited to two minutes per person. Comments are to be made to the Trustees as a whole.”

There was no response to the call for public comment.

12-02STM AGENDA ITEM 3

Agenda Subject: “Approve minutes for the Board of Trustees regular meeting of November 8, 2011.”

There was no public comment on this item.

On motion by Trustee Jung, seconded by Trustee Breternitz, which motion duly carried with Trustees Humke and Weber absent, it was ordered that Agenda Item 3 be approved.

12-03STM AGENDA ITEM 4

Agenda Subject: “Discussion and possible direction regarding proposed terms and conditions for an agreement that will guide the merger of the STMGID with the Washoe County Department of Water Resources.”

***8:46 a.m.** Trustee Weber arrived.

Rosemary Menard, Community Services Director, distributed and reviewed the Proposed Term Sheet for the merger of the South Truckee Meadows General Improvement District (STMGID) into the Department of Water Resources (DWR), and the Working Draft – Proposed Schedule for the merger of DWR/STMGID, which were placed on file with the Clerk. Previously, it had been determined that the Board of Trustees would hire an attorney to represent the Board during this process and she reported that attorney Rew Goodenow had been hired. Chairman Larkin clarified that Mr. Goodenow represented the STMGID Board of Trustees and Deputy District Attorney Pete Simeoni represented DWR. Ms. Menard indicated that staff from DWR and STMGID had worked together to create the following action plan:

- Interlocal Agreement
- Merger Initiating Ordinance
- Initiating Ordinance Public Notice
- Merger Final Ordinance
- DWR Water Rate Ordinance

Ms. Menard also explained that implementing certain pieces to the merger would create some changes to DWR’s rate structure.

Mr. Goodenow remarked that he was hired on January 27, 2012 to represent the STMGID Board of Trustees. He examined documents to review the history and the current financial position, including agreements with other entities. He also conducted interviews with staff and the Local Managing Board (LMB) who noted a number of concerns. Mr. Goodenow said LMB concerns included: a rate-shock to customers; STMGID’s cash assets; how their assets would be treated in the future; real property and infrastructure including water rights; would existing water quality be preserved; how the public would be noticed and would they have an opportunity to comment; and, how would records be reviewed related to payments made by developers.

Chairman Larkin asked if the LMB arrived at a conclusion for the Interlocal Agreement. Steve Cohen, LMB Chairman, indicated no conclusion was reached because the LMB was informed they could not take any action.

Mr. Simeoni reviewed the general terms and highlighted specific issues. He said thorough discussions had commenced with all the involved parties about many of the issues. The proposed term sheet identified the parties, the key definitions and indicated that it was a broad conceptual outline of what was intended for a final agreement. The authority under NRS Chapter 277 covered interlocal agreements and transferring functions of political subdivisions. He said that NRS Chapter 354 referenced an intergovernmental transfer plan for the assets and the function that would be transferred to Washoe County. Mr. Simeoni said there was a statutory process in Chapter 318 that laid out what needed to occur. He said the agreement being contemplated would be an attachment to the initiating ordinance, and sent to the public indicating the terms and conditions of the agreement.

Mr. Simeoni commented that a purpose and intent was established in the Agreement stating that Washoe County would assume all the obligations of STMGID, accept STMGID's assets, and assume the improvements of the facility. Washoe County shall pay STMGID's liabilities and shall ensure that STMGID ratepayers receive the benefit of the STMGID assets which was a critical feature of the proposed term sheet and with the agreement moving forward. He explained that an equitable rate structure was critical for STMGID ratepayers and Washoe County ratepayers, and would focus on the STMGID ratepayers, but he did not want to be discriminatory against Washoe County ratepayers. He stated that he would provide a legal memorandum to the County Commissioners on that subject. He said the effective date of the Agreement would be the date the County Commissioners and the STMGID Board of Trustees executed the Agreement. He explained that the proposed term was 10 years, unless terminated sooner by full performance of all duties, covenants and obligations under the Agreement. The merger of service areas, customers, and STMGID governmental functions were all routine provisions related to consolidating STMGID into DWR whereby the STMGID customers would all be County customers with one service area and the rates would be the same for all ratepayers. Mr. Simeoni said delegation and assumption of STMGID obligations provided for Washoe County to assume all of those obligations. He explained that the termination of STMGID/Washoe County contracts would be effective the date the Agreement was executed.

Mr. Simeoni said the possession and transfer of title of STMGID assets was being proposed on the closing date and would be transferred to Washoe County to include: real property; water rights; and, the financial assets of STMGID from all their accounts. He reported that Mr. Goodenow wanted to include in all documents transferring title to real property a deed restriction or covenant running with the land. It was hoped that STMGID ratepayers would receive the benefit of the terms of this Agreement as well as Washoe County and the Truckee Meadows Water Authority (TMWA). Also, it was hoped that any successor in interest would honor the obligations of this Agreement. He said it was being proposed to include a covenant running with the land that would force

transferees of the property to honor the obligations. Mr. Goodenow stated that was correct.

Chairman Larkin said the LMB had concerns about the cash reserves and how those reserves would be utilized and in what capacity. He asked how that would be preserved and in what manner was the preservation specified. Mr. Simeoni replied that it was proposed to include a covenant running with the land in any document or instrument transferring title to the real property. He stated that the County disagreed with that approach and proposed an alternative, which was placed within the document identifying that the STMGID ratepayers were third party beneficiaries of the Agreement; therefore, it was expressly stating that the County intended to honor the obligations for the benefit of the STMGID ratepayers and that the Agreement was binding upon Washoe County. Chairman Larkin inquired about the successors. Mr. Simeoni explained that the successors were not bound unless the County placed in the Agreement a representation and warranty stating that the County would attempt to include in any merger agreement between the County and any successor that the obligation under this Agreement would be honored and the benefit of the assets would be received by STMGID ratepayers.

Mr. Goodenow stated that he did not view the approaches as alternatives, but viewed them as necessary and proper mechanisms ensuring the terms of the Agreement were performed. It was agreed to present the materials and highlight them so the Board of Trustees could make a judgment call.

Chairman Larkin inquired upon the consequences of future actions of successors, potential liabilities or issues created by a successor. Ms. Menard remarked the concern from County staff was that the deed restrictions created more work or potential confusion and they were unsure the deed restrictions were effective in making STMGID ratepayers a third party beneficiary. The general outline of the terms and conditions had been discussed with TMWA staff who understood and expressed a willingness to implement the terms of the Agreement and their expectation was it would be an attached term. The main concern was if the deed restrictions were effective mechanisms.

Trustee Breternitz said the methodology of including this Agreement within future agreements allowed for an opportunity for the intent to not follow through so the ratepayers would not receive the benefits. He thought the method of transferring the rights with the property and the intent of this Agreement was complex. He asked what methodology ensured that the Board of Trustees intent would be carried out. Mr. Simeoni replied that staff believed the third party beneficiary provision would create a contractual right for ratepayers to create a cause of action against the County if obligations under the Agreement failed to be fulfilled or honored. The fact that a covenant running with the land was included signified a contractual right under an agreement that had nothing to do with the use, repair and maintenance of the land itself. He explained there would be nobody with a right to enforce that under the covenant running with the land because STMGID would cease to exist and the ratepayers did not own the real property or facilities. Currently, STMGID provided water service through those facilities and, through those assets, were obligated under certain terms and conditions. The real property

had nothing to do with the obligations under the Agreement or the critical feature of providing the financial assets and benefits to the STMGID ratepayers. Mr. Simeoni stated that could cause a problem for Washoe County and any transferee to use that property in anyway or to transfer that property since it may no longer be needed and could become an administrative and/or operational obstacle down the line.

Trustee Breternitz questioned what approach would ensure Washoe County and their potential successors would honor the commitment intended to be made to the current STMGID ratepayers. He was concerned that the intent could disappear in a deal made with a successor. Mr. Goodenow replied if this proposed action was approved, STMGID would merge out of existence and into Washoe County. The concern was if after the proposal was approved there would be no one left to enforce the Agreement. Through various proposed mechanisms, he said it was being attempted to preserve the right for someone to enforce those terms. He next viewed each of the highlighted proposals that would be necessary and appropriate to accomplish that purpose. In naming STMGID ratepayers as third party beneficiaries it was appropriate and necessary to create a right of action to enforce the Agreement. In addition, it was appropriate to include within the Agreement a promise on the part of the County that when transferred to TMWA or anyone else in the future adherence to the terms of the Interlocal Agreement described in the term sheet must be required by the County as a condition of that transfer. A third and necessary component was that anyone who took the transferred property presently belonging to STMGID must adhere to the terms of the Interlocal Agreement, which would govern how those funds would be spent and how those water rights would be administered. Presently, the water rights owned by STMGID that were leased and the Agreement would govern how those water rights would be administered. Mr. Goodenow explained that the aforementioned conditions were necessary and appropriate to complete the Trustee's intent to preserve this Agreement for at least the 10-year period required to gain the benefit of a step-wise increase in the rate structure for the current STMGID customers.

Trustee Breternitz questioned the true negative impact for the County. Ms. Menard acknowledged that County and STMGID staff felt strongly that assurances were appropriate in the Agreement. She said the best way to ensure that the ratepayers would receive the benefit of the bargain, which was the funding mechanism by which they received their rate offset, was basically self-funded. She said the best way to achieve the outcomes for the ratepayers was to have the funding mechanism in place as the transfer proceeded. Chairman Larkin suggested that language be placed within the Agreement.

LMB Chairman Cohen indicated that the LMB had not met nor had discussed the deed restriction. He said when the deed restriction was brought forward the main concern was what would happen when DWR no longer existed. He was concerned because STMGID customers did not know what was occurring and had not been notified of a potential rate increase. He said the LMB wanted to protect what was right for their customers.

LMB Member Sanders said another concern was that the County had debts and that the County could use STMGID assets to pay off those debts.

LMB Member Schumacher felt that all the concerns could not be fully vetted at this meeting. In reading the proposed schedule, he said STMGID would not exist after April 10, 2012. Mr. Simeoni stated that was not an accurate statement. The ordinance process had to be completed, including the final adoption of the ordinance and an effective date of that ordinance before STMGID ceased to exist. LMB Member Schumacher asked when another joint meeting would be scheduled between the LMB and STMGID Trustees. Ms. Menard stated that April 10, 2012 was the proposed date for another meeting.

Trustee Jung suggested the LMB hold a meeting to take action and then return with recommendations during a joint meeting. LMB Member Allman replied that the LMB was not represented by Mr. Goodenow and were not legally permitted to take action.

Mr. Goodenow clarified that the Board of Trustees were the governing body of STMGID, not the LMB, and noted that the LMB did not have the authority to make this decision, but could make recommendations. Trustee Jung agreed and suggested meeting at a time when all the issues could be flushed out. She requested that the legal jargon cease and discuss how it really was, which was that the LMB did not want the County to use STMGID assets to pay County debts.

Mr. Goodenow stated that the LMB could make recommendations; however, they did not have the authority to make recommendations since that was not in their charge. Their charge was management and operations of the system while the Board of Trustees' role and responsibility was as "trustees" of the system. He indicated that a recommendation would be non-binding. Trustee Jung stated the recommendations would be similar to an advisory board. Mr. Goodenow agreed. Trustee Jung said the LMB was elected by their ratepayers and because of that she wanted their advice.

Trustee Weber agreed. She said there was a moral obligation to respect what the LMB had been dealt.

Mr. Simeoni explained all assets would be transferred under the Schedule of Transferred Assets to the County. He said the Agreement related to the County's Schedule of Rates and Charges for Water Service within the former boundaries of STMGID. Proposed was a modified rate system where STMGID ratepayers would continue to pay their rates with increases for a 10-year period. He said that would be compared to County ratepayers who paid their rates. The difference between those two rates would be drawn from the financial assets that were transferred to the County and set aside exclusively for a few purposes, one of which was for the off-set between the two sets of rates. Another purpose could be liabilities arising from the operation of STMGID's assets that would have been attached to those assets. Mr. Simeoni said it could also be costs associated with the County providing services up to the closing date

of the merger or the fees associated with Mr. Goodenow providing legal services to the Trustees during the course of the merger. Chairman Larkin stated it would be for all fees and costs associated directly with STMGID, and could be written “no options for bonding against that for any cash flow reason or any general use for DWR.” Mr. Simeoni clarified that the financial assets would be protected for the benefit of STMGID ratepayers.

Trustee Jung asked if it had been considered to take the reserves that STMGID had, because of their good management, and apply that to the 10-year increment of rates. Mr. Simeoni stated that was what would occur.

Mr. Simeoni referred to page 6 of the term sheet, which covered the disposition of STMGID’s financial assets. He said there would be one portion that would be considered restricted and designated cash assets put into DWR, but would benefit only the South Truckee Meadows water system that provided service to STMGID ratepayers. There was another portion that was designated as unrestricted cash assets, which would go to serve various functions such as, a rate stabilization reserve that County ratepayers paid, and would equalize where STMGID ratepayers would have to contribute their portion. He said there was the operating cash reserve and the five-year capital improvement program that all County ratepayers were required to pay into. Mr. Simeoni said there was the critical feature that the remaining unrestricted cash would be placed in a separate account *only* for STMGID ratepayers to pay down for the rate off-set account and various other liabilities previously mentioned. The concern of having some assurance of TMWA or any other transferee of Washoe County was contained in this portion and the County agreed this would be held exclusively for the benefit of STMGID and their ratepayers. He explained that the County could hold this account and not transfer it to TMWA or the need to have the belt and suspenders approach by having a deed restriction or covenant running with the land.

Mr. Goodenow explained that he gave advice to the Trustees. He reiterated that all three methods of preserving the effectiveness of the Agreement highlighted in the term sheet should be employed to ensure it was performed in the future, including the creation of third party beneficiaries of STMGID ratepayers and the deed restriction. He did not think there was a downside or that the 10-year lifespan of the operating term of the Agreement would create any impediment. He indicated that he drafted a covenant with a quitclaim deed of the assets that was the same term length as the agreement.

As a Trustee, Chairman Larkin agreed with Mr. Goodenow, but asked about any downside of the covenant. Ms. Menard said there were concerns because DWR had done the due diligence work with TMWA on all the assets that would be transferred from the County. She said issues had been raised about the status of the property such as, were the easements in place, were they clear and was there proper change of title. As the next steps moved forward with the TMWA merge, Ms. Menard was concerned this could become an obstacle and said she had that dialogue with TMWA. It was thought it would not be necessary and, on a staff level, was willing to accept the terms of the deal and make that recommendation to the TMWA Board. She felt with the ratepayers being made

third party beneficiaries or proposed as an alternative, would create assurances that the program being self-funded was the best way to assure any water agency would perform the Agreement.

In response to the call for public comment, Jerry Gamroth said there had been no transparency for STMGID customers and felt that was inconceivable. He said the GID was formed in the 1980's and, until the bond debt was retired, they paid the highest taxes in Washoe County. He said STMGID provided water for over 3,000 homes in the South Meadows which enhanced the revenue of Washoe County and now he learned that he was being considered a third party. He requested the Trustees act as fiduciaries for the STMGID ratepayers and table this proposal until all the information was given to the STMGID customers.

***9:40 a.m.** Trustee Humke arrived.

Trustee Jung inquired about the public notification from the LMB to their constituents. LMB Chairman Cohen stated the last LMB/STMGID meeting occurred in December 2011. He said the LMB was informed that STMGID could not have a meeting when DWR was directed to reduce their budget, which was why the information was not given to their customers. Chairman Larkin asked if STMGID was willing to pay for an additional meeting. LMB Chairman Cohen explained that STMGID paid DWR by contract. Chairman Larkin said STMGID was not paying the full rate. LMB Chairman Cohen stated that Washoe County wrote the contract. He had always declared that STMGID would pay 100 percent of their operation, which was the whole basis of the Division of Service Agreement.

Trustee Humke reported that he met with LMB Chairman Cohen and other LMB members. He said there was work that needed to be completed and confirmed that he would help the ratepayers understand the options.

Trustee Weber felt a disservice was done by not noticing STMGID customers in order for them to understand or be walked through the process. LMB Member Schumacher stated that the LMB had a fund of approximately \$50,000 to send out notices and hoped there would be direction to move forward.

Ms. Menard explained that the County Commission had acted in September 2011 to reduce funding and DWR had an element in their 10 percent reduction plan to merge STMGID into DWR and stop supporting them as a separate entity. She said staff had been attempting to implement that direction and a major element of the cost and the efforts had been in supporting the LMB process. She stated if additional LMB meetings were needed, direction could be given to move forward.

Trustee Jung indicated there was a revenue stream that had nothing to do with the Commissions reductions and stated that the LMB was willing to pay DWR. Ms. Menard said there was money and there was capacity, but because of other reductions in DWR, the capacity to maintain the level of service was not there. Trustee Jung suggested

one more public meeting to allow the LMB to take action, which could be an advisory action. Trustee Weber agreed.

Chairman Larkin explained if action to direct another meeting occurred that direction would need to come from the Board of County Commissioners because the Board of Trustees could not direct the County Manager to arrange that meeting.

Trustee Humke said he did not want his remarks to show that Ms. Menard had done anything other than the best possible job.

Mr. Goodenow said there was a provision in the proposed schedule for a public notice which was a requirement in Chapter 318; however, that arrived at a different time than what was being contemplated by the Trustees. Chairman Larkin explained that a pre-Chapter 318 meeting was being contemplated.

Chairman Larkin suggested directing the LMB to conduct a public hearing, at the LMB's expense, solely for the purpose related to the terms and the conditions and the LMB work with Ms. Menard on the cost associated with that meeting.

Trustee Jung agreed. She moved to conduct a public hearing, at the LMB's expense, solely for the purpose related to the terms and the conditions of the Agreement and that the LMB work with Ms. Menard on the cost associated with that meeting. Trustee Breternitz seconded the motion.

Chairman Larkin stated that meeting would occur as soon as possible and that everything discussed here would go to the next meeting for full public disclosure.

Mr. Goodenow said the action was legally fine and was the consensus of the Board of Trustees.

LMB Chairman Cohen commented on the general frustration that was felt from the LMB.

On call for the question, the motion passed on a 5 to 0 vote.

12-04STM AGENDA ITEM 5

Agenda Subject: "Trustees, LMB, and Staff Comments (limited to announcements, requests for information, statements relating to items not on the agenda or issues for future agendas. (No discussion among Trustees or LMB will take place on this item.)"

There were no Board member comments.

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9:55 a.m. There being no further business to come before the Board, on motion by Trustee Jung, seconded by Trustee Humke, which motion duly carried, the meeting was adjourned.

ATTEST:

ROBERT M. LARKIN, Chairman
South Truckee Meadows General
Improvement District

AMY HARVEY, County Clerk and
Ex-Officio Secretary, South Truckee
Meadows General Improvement District

ATTEST:

STEVE COHEN, Chairman
Local Managing Board
South Truckee Meadows General
Improvement District

ELLEN ALLMAN, Secretary
Local Managing Board
South Truckee Meadows General
Improvement District

*Minutes Prepared by:
Stacy Gonzales, Deputy Clerk*