

ARCH CAPE DOMESTIC WATER SUPPLY DISTRICT MINUTES

15 February 2019

A quorum was present.

Water Board: Ron Schiffman, President
 Debra Birkby, Vice-President & Treasurer
 Virginia Birkby
 Dan Seifer
 Linda Murray

Sanitary Board: Darr Tindall (non-voting)

Public: Jon Wickersham, North Coast Land Conservancy (NCLC)
 Mary Olson, Community Forest Outreach Coordinator
 Dale Mosby
 David & Jeannie Stockton

Staff: Phil Chick, District Manager
 Steve Hill, Secretary

Mr. Ron Schiffman opened the meeting at 6:45pm.

Public Comments: Mr. David Stockton said he felt too much time was being devoted to billing appeals and that a uniform system might be considered for perhaps two times a year for all requests.

Agenda: Add generic billing appeal process to new business. Mr. Seifer moved acceptance of the agenda as amended which was seconded by Ms. Virginia Birkby. All in favor. Motion carried.

Consent Agenda: Pull January 18, 2019 minutes. Ms. Virginia Birkby moved acceptance of the consent agenda as amended which was seconded by Mr. Seifer. All in favor. Motion carried.

January 18, 2019 Minutes: (Action) Mr. Seifer moved approval of the January 18th minutes which was seconded by Ms. Virginia Birkby. Mr. Schiffman, Ms. Debra Birkby, Ms. Virginia Birkby and Mr. Seifer voted yes. Ms. Murray abstained. Motion carried.

Old Business:

Watershed Update:

Memo of Understanding (MOU) for the Arch Cape Community Forest with the North Coast Land Conservancy (NCLC): (Information) Mr. Jon Wickersham of NCLC indicated that the proposed MOU regarding the 600 hundred acres under consideration for district acquisition was close to completion. He indicated that it needed language to formulate a perpetual management plan and that it should not ‘sunset’ beyond a specific date.

A suggested addition of ‘and the Arch Cape Community Forest’ was put forth for paragraph one of the MOU immediately after, “ contained within NCLC’s proposed Rainforest Reserve...”.

Mr. Wickersham recommended that the board consider the MOU after the NCLC board had an opportunity to review the draft document themselves.

Outreach Coordinator Report: (Information) Ms. Mary Olson said that a newsletter would be coming out soon and that a scotch broom work party was being organized for Saturday April 6th in our watershed.

It was suggested that the Saturday March 16th 11:00am meeting agenda focus upon the funding for the acquisition as well as hearing questions from the public. It was recommended that the outreach effort communicate what the community forest project is, its purpose and our grant application. It was additionally recommended that the agenda include a direct reference to the Arch Cape Community Forest.

Ms. Olson shared a draft meeting agenda (attached) and said she would revise it to reflect the input shared by the board. Mr. Schiffman said he would inform the community club of the upcoming meeting.

A banner announcing the community forest project was recommended for installation on the board immediately in back of the mail boxes and page 18 of the newly released Community Forest Handbook was referenced as a good place in citing potential community forest partners including local schools. It was felt that everyone with an interest in our forest should be identified and contacted.

Ms. Olson announced a free workshop (attached) concerning local water quality to be held on Wednesday February 27th from 10:00 – 2:30pm at the Mary Blake Playhouse on 1215 Broadway in Seaside Oregon. Registration is required.

IFA Source Water Protection Contract – HP 19G Project: (Information) Mr. Chick said that the Road Project is back on track. We have confirmation from the grant funding agencies that a road de-commission, rather than road re-route is acceptable. The change in scope of work still meets the intent of drinking water protection. EFM has confirmation from the two other timber companies that have a reciprocal road use agreement that they no longer have interest in use of this road. The District is currently working with Brooke Stanley of North Coast Watershed Association to examine the possibility of obtaining grant funds to construct a pedestrian bridge over the creek, which would prevent degradation of plant and aquatic life by hikers through the creek.

Mr. Chick said he felt the watershed project was moving in the right direction at this time. We had a timber cruise completed in December, and have recently formally engaged with the property owner to establish the terms of the appraisal process and potential purchase.

Natural Hazard Mitigation Plan (NHMP): (Information) It was expressed that we would need two public meetings on the NHMP to include invitations to those both to the south of the district in Falcon Cove Beach and to the north towards Arcadia Beach State Recreation Site. These could be done in regular meetings with June targeted for a meeting with the public.

Proposed T-Mobile Cell Tower at Water Treatment Plant: (Information) Jeff Colantino of Centerline Solutions looked at the Sanitary District irrigation site as an alternative to the water treatment plant. Initial thoughts from Mr. Colantino were that due to the lower elevation and intervening hills, the site would likely be unsuitable. Easement access and available power were cited as issues for potential installation. The present plan for a tower would not include a light and it was anticipated that a draft contract agreement would be made available at the next meeting and that Centerline Solutions would be invited to attend.

There was a general agreement that issues of access and suitability were to be resolved by T-Mobile and relevant land owners before a proposal could be reasonably considered by the board.

Billing Appeal : 80046 Pacific Ave: (Action) Billing appeal Policy 17-01 and the leak Policy 17-02 were referenced in the general discussion which ensued. It was pointed out that the leak policy providing billing relief was meant for unintended water consumption due to plumbing failure.

Mr. Seifer moved to reject the appeal in its entirety due to the lack of evidence of a water leak and timely repair which was seconded by Ms. Debra Birkby. All in favor. Motion carried. Mr. Chick was directed to write a letter to the applicants.

Board Position Filing – Positions 1, 2 and 5: (Information) Mr. Schiffman would be filing for position 1. Ms. Murray intends to file for position 2, and Mr. Seifer intends to file for Position 5.

Budget Committee Opening: (Information) Mr. Carl Matson will be joining the budget committee.

New Business:

Staff Evaluations: (Information) Mr. Chick will have evaluations ready for board review on March 15th.

Ms. Virginia Birkby expressed her preference for considering performance evaluations separately from potential pay increases.

Mr. Chick said he would be including a salary recommendation section to the reviews provided to the board.

Reports:

Accounts Receivable: Water district receivables were reported to be in excellent condition.

District Managers Report: (attached)

Treasurer's Report: None.

Board of Directors' Comments and Reports:

Ms. Debra Birkby said that she would be traveling but would try to attend the March 15th meetings as long as possible. It was also suggested that meeting order be determined by agenda content.

March Agenda Items: (Information) Possible cell tower, board positions, watershed update, budget committee appointment.

Public Comment: Mr. Dale Mosby suggested that to ask for an appeal fee would be adding insult to injury given the size of some excess usage charges. The board was reminded that appeals were reserved for situations involving leaks. Mr. Seifer volunteered to revise the present claim form to emphasize the requirement that it be linked to a plumbing failure and subsequent repair.

Mr. Chick indicated that he would attempt to provide Mr. Seifer with the current appeal form document file.

The meeting was adjourned by Mr. Ron Schiffman at 8:08pm.

Respectfully submitted,



Steve Hill

Attest


Mr. Ron Schiffman, President



Arch Cape Water and Sanitary Districts

32065 East Shingle Mill Lane
Arch Cape, OR 97102 • 503.436.2790

January 22, 2019

Carl Binkley and Gail Nueberg
PO Box 4001
Portland, OR 97208

Dear Clark and Gail,

The Board of Directors for the respective utility districts received your correspondence relating to your excess water and sanitary bill charges at the January 19, 2019 Board Meetings.

The Sanitary District Board of Directors voted unanimously to not give reconsideration to the ruling that was made regarding your account's excess sanitary usage charges at the November 16, 2018 Board Meeting. The charges must be paid in full, as invoiced.

Your request for billing relief for excess water use charges associated with your invoice from 9/10/18 will be placed on the Water Board Agenda at the meeting held on February 15, 2019.

As always, the public is welcomed at these meetings and there is opportunity for public comment.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Phil Chick".

Phil Chick
District Manager
Arch Cape Water and Sanitary Districts

Attachments

Jan 5, 2019, 8:13 AM (6 days ago)

to me, Gail

Phil,

I hope your holidays were pleasant and that the New Year is starting well for you.

Larry Thompson of Edgewater Landscaping FINALLY responded to my request for a copy of the report he did last year certifying our irrigation system at 80046 Pacific Rd in Arch Cape. I know that the lack of this report was an important consideration in the Board's rejection of our appeal of the excess water use charges of last summer. I wonder if we can re-submit the appeal along with this report.

Thanks in advance for your advice on this matter.

With best regards,

Clark

Clark S. Binkley

Gail Neuburg

80046 Pacific

9 Years Water Usage : Gallons

Sanitary District

Inv#	Date	Invoiced	Excess	Excess Amount	Tier	Incremental Additional Gal	Act Excess Gal Used	Excess Billed
Inv# 22842	9/10/2018	\$ 5,453.50	Excess	\$ 5,293.50	Tier 1	3,000	9,000	\$ 22.50
Inv# 21517	9/10/2017	\$ 3,713.55	Excess	\$ 3,573.55	Tier 2	4,000	12,000	\$ 90.00
Inv# 20217	9/10/2016	\$ 4,341.20	Excess	\$ 4,201.20	Tier 3	4,000	12,000	\$ 600.00
					Tier 4	9,000	27,000	\$ 2,430.00
					Tier 5	above 25K	14,340	\$ 2,151.00
						74,340	\$ 5,293.50	

2017 Oct	2017 Nov	2017 Dec	2018 Jan	2018 Feb	2018 Mar	2018 Apr	2018 May	2018 Jun	2018 Jul	2018 Aug	2018 Sep
6,320	20	860	3,070	4,390	5,060	10	520	27,610	30,290	31,440	14,480
2016 Oct	2016 Nov	2016 Dec	2017 Jan	2017 Feb	2017 Mar	2017 Apr	2017 May	2017 Jun	2017 Jul	2017 Aug	2017 Sep
1,850	3,100	20	1,800	400	250	220	180	8,340	27,340	32,450	22,490
2015 Oct	2015 Nov	2015 Dec	2016 Jan	2016 Feb	2016 Mar	2016 Apr	2016 May	2016 Jun	2016 Jul	2016 Aug	2016 Sep
3,320	2,530	140	1,220	1,070	3,410	2,510	8,150	22,630	29,780	28,700	20,210
2014 Oct	2014 Nov	2014 Dec	2015 Jan	2015 Feb	2015 Mar	2015 Apr	2015 May	2015 Jun	2015 Jul	2015 Aug	2015 Sep
7,840	3,510	480	1,350	870	350	910	3,060	14,430	21,450	17,120	31,690
2013 Oct	2013 Nov	2013 Dec	2014 Jan	2014 Feb	2014 Mar	2014 Apr	2014 May	2014 Jun	2014 Jul	2014 Aug	2014 Sep
2,520	4,450	3,400	1,550	1,380	3,230	640	1,770	3,360	20,060	11,620	7,830
2012 Oct	2012 Nov	2012 Dec	2013 Jan	2013 Feb	2013 Mar	2013 Apr	2013 May	2013 Jun	2013 Jul	2013 Aug	2013 Sep
19,950	15,310	940	1,050	450	1,720	1,690	1,350	14,370	32,920	42,640	23,440
2011 Oct	2011 Nov	2011 Dec	2012 Jan	2012 Feb	2012 Mar	2012 Apr	2012 May	2012 Jun	2012 Jul	2012 Aug	2012 Sep
10,810	750	510	1,050	1,820	2,640	10	2,590	6,960	10,130	24,910	20,040
2010 Oct	2010 Nov	2010 Dec	2011 Jan	2011 Feb	2011 Mar	2011 Apr	2011 May	2011 Jun	2011 Jul	2011 Aug	2011 Sep
1,020	1,570	50	1,360	80	210	1,290	1,330	7,390	14,850	13,880	13,960

MUTUAL AGREEMENT

This Mutual Agreement (the “**Agreement**”) is made and entered into on this __ day of _____, 2019 (the “**Effective Date**”), by and between NORTH COAST LAND CONSERVANCY, an Oregon public benefit 501(c)(3) nonprofit corporation (“**NCLC**”), and Arch Cape Domestic Water Supply District, an Oregon Special District (the “**District**”). NCLC and the District are each sometimes individually referred to herein as a “**Party**,” and each sometimes collectively referred to herein as the “**Parties.**”

1. **Purpose.** The Purpose of this Agreement is to establish the operating framework necessary for the District to acquire and NCLC to manage a certain 600-acre tract (the “**Property**”) contained within NCLC’s proposed Rainforest Reserve, which Property is legally described on Exhibit A attached hereto and incorporated herein, and more particularly depicted on Exhibit A-1 attached hereto and incorporated herein. NCLC and the District agree and acknowledge that the Property is being acquired from Onion Peak, LLC, an Oregon limited liability company, by and through its manager, Ecotrust Forest Management, Inc., an Oregon corporation (“**Seller**”), to protect and enhance the forest and all plant and animal species located upon the Property and the quantity and quality of drinking water emanating from the Property for the City of Arch Cape. NCLC paid a hold fee to Seller for the right to acquire the Property and has a current Purchase and Sales Agreement with Seller that includes the Property. NCLC and the District are working collaboratively on a Forest Legacy Program (“**FLP**”) grant through the U.S. Forest Service to acquire from Seller the Property and other nearby forestland tracts. NCLC and Seller have granted the District the right to apply for FLP funds to be used for the acquisition of 600 acres located within NCLC’s proposed Rainforest Reserve. NCLC granted the District the right to apply for these FLP funds for the acquisition of the Property because the District and NCLC believe this gives the District’s FLP application the highest likelihood of success.

2. **Duration; Consideration.** This Agreement is effective upon the Effective Date and shall be in full force and effect through completion of all tasks (collectively, the “**Scope of Work**”) listed in Exhibit B attached hereto and incorporated herein, with the completion date projected to be on or before _____, 20___. By their execution hereof, the Parties agree and acknowledge that there is good and valuable consideration for the performance of their respective duties and obligations hereunder, including (without limitation) the items described in the Scope of Work.

3. **Tasks.** The District and NCLC will be responsible for completion of certain tasks as more specifically provided for in the Scope of Work. Unless otherwise agreed in writing between the Parties, NCLC shall be primarily responsible for the management decisions and long-term stewardship of the Property after this Agreement has terminated; provided, however, that (a) the District shall have the right to reasonably approve all material decisions regarding the management and long-term stewardship of the Property in accordance with the terms of the Management Agreement (defined below), and (b) the Property shall at all times be held in fee title by the District following the disposition by Seller, and the District shall not have any rights, per the applicable FLP funding requirements (the “**FLP Requirements**”), to sell, transfer or otherwise alienate the Property to NCLC. Notwithstanding the

foregoing, the Parties agree to negotiate in good faith with regard to a property management agreement, restrictive covenant, equitable servitude or other long-term agreement to be executed between NCLC and the District at the closing of the District's acquisition of the Property (as applicable, the "**Management Agreement**") that will provide for a mutually agreeable management and stewardship arrangement between the Parties that is not in violation of the FLP Requirements. The District will maintain the culverts and roads on the Property in consultation with NCLC. NCLC will provide long-term management of the Property pursuant to the Management Agreement.

4. **Ownership of Product.** NCLC and the District shall own and retain all rights, including copyrights, patents, trade secrets, trademarks, and other intellectual property and proprietary rights in any and all products that are produced by that Party.

5. **Non-Disclosure.** NCLC and the District covenant that during and after the term of this Agreement, the Parties shall not disclose to anyone except their employees, officers, advisors, consultants, attorneys, investors, grant funders or lenders (or except to the extent otherwise necessary for the Parties to perform duties hereunder or as required by law) any confidential or proprietary information concerning the business or affairs of the other Party which they may acquire in the course of or incident to their engagement in this Agreement. This covenant shall survive the expiration or earlier termination of this Agreement.

6. **Termination.** If the District fails to acquire the Property using funds from FLP, this Agreement will automatically terminate, with the Parties to have no further obligation to one another after said termination. Otherwise, this Agreement will terminate in accordance with Section 2 herein. The Parties will be fully responsible for removing personal property, if any, from the Property prior to the time that the Agreement terminates.

7. **Assignment.** Neither Party can assign this Agreement without the other Party's prior written consent, which may be withheld, conditioned or delayed in the sole discretion of such other Party.

8. **Entire Agreement.** This Agreement, including all Exhibits, supersedes and replaces in the entirety any and all agreements, either oral or in writing, between the Parties and contains all of the covenants and agreements between the Parties regarding the Property and the other matters specifically set forth herein. Each Party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, with regard to this Agreement have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein.

9. **Modification.** This Agreement may be reviewed and modified as needed to complete the work intended by the Parties. No modification or waiver of this Agreement will be binding unless in writing and signed by both Parties.

10. **Attorneys' Fees.** Attorneys' fees, costs and disbursements necessary to enforce this Agreement through mediation, arbitration and/or litigation, including appeals, will be awarded to the prevailing Party.

11. **Waiver.** Failure by either Party to enforce any provision of this Agreement does not constitute a continuing waiver of that provision or any other provision of the Agreement.

12. **Indemnification.** Each Party will indemnify the other Party, its directors, officers, agents and employees, from any claims, liabilities, demands, damages, actions or proceedings arising from or relating to the activities or omissions of its officers, employees, contractors, agents or representatives in carrying out this Agreement.

13. **Severability.** The Parties agree that if any term or provision of this Agreement is declared by a court and / or arbitrator of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

14. **Notices.** Any notice under this Agreement shall be in writing and delivered in person or mailed, properly addressed and postage prepaid, to a Party at the Party's main office and to the attention of the persons specified below. Notices are deemed to have been given upon personal delivery or, if mailed, at the expiration of the 3rd (third) day after date of deposit in the U.S. mail.

NORTH COAST LAND CONSERVANCY

_____ Dated: _____, 2019
John Mersereau, its President

ARCH CAPE DOMESTIC WATER SUPPLY DISTRICT

_____ Dated: _____, 2019
_____, its President

EXHIBIT A

Legal Description of Property

DRAFT

EXHIBIT B

Map of Property

DRAFT

EXHIBIT B
SCOPE OF WORK

Responsibilities of NCLC:

1. Work with District to create a management plan for the Property.
2. Work to develop and implement a cooperative management strategy that protects the health of the forest, endemic species, and quantity and quality of drinking water on the Property.
3. Accept and hold donations (for the benefit of the District) to be reserved specifically for the purchase of the Property by the District.
4. Help the District develop acquisition funding requests and/or grants.
5. Negotiate in good faith with the District regarding the form and content of the Management Agreement.

Responsibilities of Water District:

1. Work to develop and implement a cooperative management strategy that protects the health of the forest, endemic species, and quantity and quality of drinking water on the Property.
2. Work with NCLC to develop a management plan for the property, and negotiate in good faith with NCLC regarding the form and content of the Management Agreement.
3. Consult NCLC on management decisions.
4. Allow NCLC access through and across the Property.
5. Work with NCLC to help fund stewardship actions that support clean and abundant drinking water.

Manager Report February 15, 2019

WATER:

The water plant treated 613,900 gallons in January

Staff has begun exercising distribution valves within the district.

Meter accuracy testing is completed. All meters that were tested, accurately measured water consumption.

MONTHLY LOG : ARCH CAPE WATER & SANITARY DISTRICTS

January 2019

Total Hours	368.00	153.00	215.00
Percentage Split		42%	58%
Total Accounts	632	290	342
Percentage Split		46%	54%