

**CASTLE PINES NORTH METROPOLITAN DISTRICT  
REGULAR MEETING MINUTES  
February 28, 2022 – 6:00 p.m.**

**HELD:** Monday, February 28, 2022 at 6:00 p.m. at the Castle Pines North Community Center, 7404 Yorkshire Drive, Castle Pines, Colorado.

**ATTENDEES:** Directors David McEntire, Robert Merritt, Denise Crew, Chris Lewis, and Chuck Lowen were physically present. District Manager, Jim Worley; Kim Seter, Legal Counsel, Nathan Travis, Distribution & Collections Systems Foreman, and Ken Smith, Corby Wise and Terrence Lovett of the Communications Team were present physically. Craig Miller, District open space manager and Amanda Castle, District Finance Director were present virtually. Approximately ten members of the public were present.

**CONFLICTS:** None.

**QUORUM:** Present.

**CONSIDERATION OF AGENDA OF THE FEBRUARY 28, 2022 MEETING OF THE BOARD OF DIRECTORS AND THE MINUTES OF THE JANUARY 24, 2022**

**MEETING:** Upon motion by Director Lowen and second by Director Lewis, the agenda of the February 28, 2022 meeting and the minutes of the January 24, 2022 meeting were approved as presented.

**TERMINATION OF INCLUSION WITH PARKER WATER & SANITATION DISTRICT:**

Director McEntire, finance director, Amanda Castle, legal counsel, Kim Seter, District Manager, Jim Worley, and Distribution & Collections Systems Foreman, Nathan Travis discussed the termination of the inclusion agreement with Parker Water & Sanitation District. They discussed the negotiations and reasons why the proposed inclusion will not proceed at this time. They also discussed PWSD's inclusion demands. The PWSD/CPNMD Inclusion-Termination Update memo (see attached) was distributed at the meeting to explain what happened in great detail.

**PUBLIC COMMENT:** District resident, Lorrie Ball, inquired about the schedule of the repairs to the water treatment plant. She encouraged the Board to revisit the determination to temporarily suspend the renewable water fee. She inquired why the mill levy would be reduced in light of the outstanding repairs to the District's infrastructure. Amanda Castle explained that the money for the repairs will generate from the enterprise fund, which is not funded through the general operations mill levy. Finally, Ms. Ball requested the inclusion of the parks and trails to proceed immediately.

District resident, Kris Simms, commented that the District should remain forward focused. District resident, Christina Morley, inquired whether there is interest on the part of PWSD to proceed with the inclusion if there is new leadership in CPNMD. Director

Lewis noted that the Board has been acting in the best interest of the community and that the inclusion will still be pursued. Director Merritt noted that the Board was disappointed, but not angry, when the agreement with Parker was terminated.

**OPEN SPACE MANAGER'S REPORT:** Open space manager, Craig Miller, presented his report. He noted he will be retiring on March 18<sup>th</sup>, and David Anderson will be promoted to the role. He discussed fire mitigation, noting that wildfire mitigation is most effective when it begins at home.

**DISTRIBUTION & COLLECTIONS SYSTEMS FOREMAN REPORT:** Nathan Travis presented his report. He discussed the odor resolution in Forest Park. He explained that the ozone injection project has been running for the past 3-4 weeks. So far, the initial readings have been 40%, 50%, 60% reductions.

**FINANCE DIRECTOR'S REPORT:** District Finance Director, Amanda Castle, presented the financial report through January 31, 2022. She noted that specific ownership tax collection has continued to increase, although this trend may decline throughout the year. She noted that water usage in January has been the highest of any January in the past ten years. She explained that a budget amendment is anticipated at the March meeting due to the termination of the inclusion. Upon discussion, a motion was made by Director McEntire to accept the financial report as presented. The motion was seconded by Director Crew and was approved 5-0.

The Board considered checks numbered 26681-26744 for approval/ratification. Pursuant to discussion amongst the Board, a motion was made by Director McEntire to approve/ratify the current payables through the month of January 2022 as presented. The motion was seconded by Director Crew and was approved 5-0.

**LEGAL COUNSEL'S REPORT:** Legal Counsel, Kim Seter, presented the legal status report. Mr. Seter noted that he has drafted a demand letter concerning the non-payment of funds in the Lagae project. He anticipates delivery of the letter shortly.

Mr. Seter also discussed the water sales lawsuit with Brighton. He inquired whether the Board intends to terminate the sale of the water shares in light of the termination of the Parker Water & Sanitation District inclusion. Upon discussion, council will discuss the termination of the sale to determine Aurora Water and Brighton's position regarding same.

Mr. Seter also noted that he will proceed with trying to determine the source of incorrect and inflammatory language concerning the termination of the inclusion agreement. Director Lewis noted that a correction of the incorrect information should be published in the Castle Pines Connection.

**DISTRICT MANAGER'S REPORT:** The District Manager, Jim Worley, presented his report. He discussed removing the skate park and replacing that amenity with pickleball

courts. He noted that the City's approval process for the pickleball court is complete and the District will be going out to bid for the project soon.

**DIRECTORS' MATTERS:** Director McEntire discussed the potential inclusion with the City of Castle Pines for the storm drainage services. The Board concurred in continuing the conversation regarding same, recognizing that the effort will be to achieve economies and efficiencies of scale.

**CLOSING PUBLIC COMMENT:** There was no public comment at this time.

**ADJOURN:** With all other business to come before the Board having been addressed, Director Merritt moved that the meeting be adjourned at 8:31 p.m. The motion was seconded by Director Lewis and was approved 5-0.

## PWSD/CPNMD Inclusion-Termination Update

(February 25, 2022)

### What happened?

Folks, from CPNMD's perspective, PWSD's Inclusion termination is primarily about PWSD's demand for more money. What follows is the backstory:

- After three years of Inclusion-related work and due diligence, PWSD and CPNMD staff/consultant teams and boards approved the proposed Inclusion of CPNMD's water and wastewater utilities with PWSD.
- On May 4, 2021, CPNMD voters approved the Inclusion.
- CPNMD owns water rights in northern Colorado, for which PWSD had no use or desire. Inclusion Agreement Exhibit E specifically provides CPNMD's assets will be sold to **assist** in paying off CPNMD's debt, including CPNMD's \$34.8 million Inclusion payment. Consequently, CPNMD put its northern Colorado water rights out for bid.
- On August 5, 2021, CPNMD hosted a bid opening to sell its northern Colorado water rights. Among the bidders were the cities of Aurora and Brighton. The bids came in higher than expected.
- When PWSD realized the sale of CPNMD's northern Colorado water rights would result in unexpected revenue for CPNMD customers, its finance director unilaterally attempted to justify demanding an extra \$11,032,778 'for unforeseen expenses' from CPNMD customers. How?
- Immediately following the August 5, 2021 bid opening, PWSD set aside its own engineering firm's (Jacobs) condition-assessment report on CPNMD's water and wastewater utility infrastructure and systems, which was the basis for CPNMD's May 4, 2021, voter-approved Inclusion. PWSD unilaterally commissioned a *different*

engineering firm (Hazen) to prepare another condition-assessment report to justify PWSD's claim for millions of dollars in additional cash (non-voter-approved) from CPNMD's residents.

- PWSD used its Hazen report as a pretext for eight demands with which CPNMD must comply before consummating the Inclusion.
- PWSD first emailed Hazen's condition-assessment report to CPNMD on February 18, 2022 — well *after* PWSD's notice of termination.
- In a mutually signed December 13, 2021, amendment to the Inclusion Agreement, PWSD and CPNMD specifically '*pledged their commitment to work together to resolve the conditions and additional concerns and to complete the Inclusion and transfer of water and wastewater responsibilities as quickly as possible; but recognize additional time is needed.*' Inclusion termination was never contemplated or discussed.
- CPNMD offered PWSD, pending board approval, an additional \$5 million in cash.
- PWSD continues demanding CPNMD residents pay an additional \$6,032,778 in cash.
- To date, PWSD wants stakeholders and observers of the Inclusion process to believe its decision to terminate the voter-approved Inclusion is based on CPNMD's inability to deliver fully functional water and wastewater systems, failure to obtain funds to pay the agreed-upon Inclusion fee, and failure to correct eight outstanding issues. PWSD's assertion is patently false.
  - ✓ First, as evidenced by CPNMD's on-demand utility services delivery, CPNMD's water and wastewater systems are safe and reliable.
  - ✓ Second, CPNMD's recent water and wastewater infrastructure investments strengthen CPNMD's utility systems, service reliability, and value.
  - ✓ Third, PWSD was fully aware of CPNMD's intent to pay PWSD the \$34.8 million Inclusion fee, **plus an additional \$5 million for unforeseen expenses**, at the conclusion of the City of Brighton's lawsuit, most likely this June 2022.

- ✓ Fourth, though PWSD delivered its eight outstanding issues (demands) to CPNMD months after CPNMD voters approved the Inclusion and months after the bid opening on the sale of CPNMD's northern Colorado water rights, PWSD is aware CPNMD is working diligently and in good faith to address PWSD's eight *post facto* demands.
- PWSD refuses to acknowledge its own internal problems that substantially contribute to its Inclusion-termination decision. Those PWSD challenges include, but are not limited to PWSD's internal staffing shortages, billing software issues, and supply chain issues resulting in the substantial delay of AMI water meters for customers of both jurisdictions.
- Senior PWSD officials recently signaled PWSD's intent to *temporarily pause* the Inclusion until after the May 2022 board elections in both jurisdictions and until after it secures financing for the construction of its new headquarters on Hess Road.

### **What is CPNMD doing to secure our community's renewable water future wisely and at less cost?**

- CPNMD remains steadfastly committed to securing the community's water future wisely and at less cost than the voter-rejected plans of 2016 and 2018.
- Four years ago, CPNMD embarked on a mission to secure our community's renewable water future wisely and at less cost. With renewed vigor, we will continue pursuing that objective with other potential Inclusion partners.
- CPNMD is reviewing next steps with PWSD, Douglas County, Aurora Water, Denver Water, The Village, Centennial Water & Sanitation District, and other potential water and wastewater utility Inclusion partners.
- If and when PWSD wishes to revisit the Inclusion, CPNMD stands ready and willing to work, in good faith, toward an expedited Inclusion.
- Given the reliability of CPNMD's water wells, InterConnect pipeline, and relationship with Centennial Water & Sanitation District, CPNMD will continue serving as our community's water and wastewater utility provider and fulfilling its fiduciary and stewardship responsibilities to its residents, property owners, and customers.

- By any objective standard, CPNMD's water and wastewater distribution systems are in far better condition today than those it inherited four years ago from previous administrations. CPNMD is now the beneficiary of two pre-Inclusion due diligence reports (Jacobs and Hazen), both of which reveal a punch list of infrastructure investments and operational enhancements, each of which CPNMD's staff/consultant team is diligently working to complete or already has. That translates into better, more reliable service for CPNMD customers and makes CPNMD's customers even more desirable Inclusion partners for the right district.

### **What can customers reasonably expect moving forward?**

Until we find — and voters approve — the right Inclusion partner, CPNMD will continue fulfilling its fiduciary and stewardship responsibilities to its residents, property owners, and customers. In the meantime:

- CPNMD is diligently reviewing its Inclusion options and will notify customers when it better understands options, details, and timing.
- CPNMD welcomes PWSD back to the negotiating table if and when PWSD:
  - ✓ is ready, willing, and able to work with CPNMD in good faith; **and**
  - ✓ when its negotiating posture acknowledges CPNMD's cash offer and customer base constitute a community most districts would be pleased to acquire.
- In addition to enhanced infrastructure and service reliability, CPNMD customers will continue, for the duration of 2022, benefiting from the lowest property tax rates CPNMD has had in decades (17% property tax-rate reduction from 19 mils down to 15.79 mils) **and** no cost-of-service rate increases from 2021, **and** the at least temporary elimination of the CPNMD's \$15 Renewable Water Investment fee from each monthly water bill.
- Consistent with its fiduciary and stewardship responsibilities, CPNMD annually considers cost-of-service rate and fee adjustments and will do so for fiscal year 2023 beginning this fall.

## PWSD's Eight Inclusion Demands

The following eight PWSD Inclusion demands of CPNMD are based on PWSD staff's Inclusion update at the December 9, 2021 PWSD board meeting — *six months after the voter-approved Inclusion and 25 days before the voter-approved Inclusion date of Monday, January 3, 2022.*

1. PWSD's surprise demand that CPNMD pay an additional \$11,032,778 (Hazen) more than the mutually agreed upon, voter-approved \$34.8 million Inclusion fee (Jacobs).

[See explanation above.](#)

2. Negotiating consent decree with the Colorado Department of Public Health & Environment.

[Final draft distributed. Awaiting final PWSD Inclusion date.](#)

3. City of Brighton's water rights lawsuit.

- CPNMD owns water rights in northern Colorado. ***The City of Aurora submitted a bid package of \$865,500 higher than the City of Brighton's bid.*** The City of Aurora's high-bid package, combined with fiduciary and stewardship responsibilities CPNMD has to its in-district customers, prompted the CPNMD board to award its water rights to the City of Aurora, thereby providing CPNMD's property owners and residents with the highest possible return on investment and an additional \$865,500 to CPNMD's coffers. The City of Brighton was unhappy with the outcome and filed a lawsuit contesting CPNMD's decision.
- Counsel and other knowledgeable water law and litigation observers are confident CPNMD and the City of Aurora (CPNMD's co-litigant) will prevail in court. However, the lawsuit may drag on until June, thereby tying up water-right proceeds CPNMD needs to ***assist*** in paying off its debt, including the \$39.4 million Inclusion fee. Counsel expects a final resolution of the City of Brighton's lawsuit in June 2022.
- Because PWSD chose to terminate the Inclusion, CPNMD may exercise its right to terminate the sale of its northern Colorado water rights, thereby allowing those water rights to continue increasing in value.

4. Separating jointly-owned, 1980s-era groundwater rights between CPNMD and its southern neighbor, Castle Pines Metro District in The Village.

An agreement between CPNMD and CPMD (The Village) is necessary concerning the use of the jointly owned water to resolve PWSD's concern. While CPNMD and CPMD (The Village) legally own the water rights on a 50/50 basis, the parameters for using said water rights were undefined in the original acquisition and ownership documents. Counsel is confident of final resolution within 90 days.

5. Renewing water wheeling agreement with Centennial Water & Sanitation District.

The agreement has been drafted and awaits the final PWSD's Inclusion date. The Centennial Water & Sanitation District board was scheduled to consider the agreement in December 2021, but because of PWSD's Inclusion delay, Centennial Water & Sanitation District intends to reschedule the agreement for consideration upon receiving a final PWSD Inclusion date.

6. Securing Chatfield Reservoir storage-fee waivers.

Five of nine owners have signed the waiver. The remaining four are on hold, awaiting a final PWSD Inclusion date.

7. Recording decades-old water & wastewater infrastructure easements and property rights conveyances CPNMD inherited from previous administrations.

Counsel has developed a process for determining easements and other rights previous administrations failed to record and including them in CPNMD's mapping system. Though the process is labor-intensive and time-consuming, nothing is difficult about it. In no way does the process affect CPNMD's use or ownership of any of its infrastructure, facilities, equipment, or legal rights. Counsel anticipates completing this process in June 2022.

8. Rehabbing CPNMD's water wells and water treatment plant

- Eight of CPNMD's ten water wells have been recently rehabbed. Rehab on the remaining two will be finished in March 2022.
- CPNMD's water treatment plant upgrades are well underway and will be finished in April 2022.