

**CORBETT WATER DISTRICT
REGULAR MEETING OF THE BOARD
Written Summary
December 17, 2013**

Board members present: Jeff Hargens, Robert Gaughan, Sonny Boyd, Robert Churnside, Kevin Wilhelm.

Staff present: James Jans, Shanti Burns.

Audience members present: Gordon Fulks, Dian Rubanoff, Carnetta Boyd, Randy Schaefer, David Shannon, Nicholas Ray, Linda Ray, Louis Chartrand, Patrick Oldright (arrived at 6:40 p.m.), Leann Hamilton (arrived at 6:40 p.m.), Leland King (arrived at 6:40 p.m.)

Chairman **Jeff Hargens** called the meeting to order at 6:30 p.m.

APPROVAL OF THE AGENDA

Sonny Boyd made a motion to approve the agenda, **Robert Gaughan** seconded, passed unanimously.

APPROVAL OF THE MINUTES

Robert Gaughan made a motion to approve the minutes of November 19, 2013, **Sonny Boyd** seconded, passed unanimously.

LEAK ADJUSTMENTS

7340-00: The owner of this property was left with a large water bill from his tenants. He said he had to spend a great deal of money to evict the tenants, clean the home and pay all the delinquent bills. He asked the Board of Commissioners if they could reduce a portion of his bill due to the hardship he has faced. **Sonny Boyd** made a motion to remove \$90 in late fees from the account, **Robert Churnside** seconded, passed unanimously.

7875-00: This customer is on a limited income and had a leak that occurred over the course of a year. They did not know that a leak was present because it began at the same time as other family members moved into the home. They realized that a leak was present when the additional family members moved out of the home and the bill remained the same. They promptly hired a leak detection company and paid to have the leak repaired. **Jeff Hargens** made a motion to adjust the January/February 2013 and March/April 2013 billing cycles to 8 units, the six month average after the leak was repaired, **Robert Gaughan** seconded, passed unanimously.

9765-01: This customer's case was viewed as a hardship due to the large amount of the bill caused by the leak. It was noted that the customer replaced their water line immediately after the leak was discovered. **Sonny Boyd** made a motion to adjust the September/October 2013 billing cycle to 11 units, the six month average prior to the leak, **Robert Gaughan** seconded, passed unanimously.

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SENATOR WYDEN / BARK: GORDON CREEK CONCERNS

James Jans said he was contacted by a member of BARK because they were concerned that the Bureau of Land Management (BLM) tree thinning project will affect Gordon Creek. **Sonny Boyd** said that he reviewed the tree thinning specifications and there were strict regulations in place. **James Jans** sent a response to the BARK member, however he has not received a reply back.

MONTHLY REPORTS

Secretary/Treasurer Financial Reports: **Sonny Boyd** inquired about the payment to the Department of Consumer & Business Services. **James Jans** said it was for OSHA violations. **Sonny Boyd** asked what the life ring cover is. **James Jans** informed him that it is a cover for our floating rescue device located near our filter ponds. He said OSHA requires the life ring to be covered. **Robert Gaughan** made a motion to accept the financial reports as presented, **Kevin Wilhelm** seconded, passed unanimously.

Manager's Report: District Manager **James Jans** read as follows:

Distribution: The BT samples from the Meyers Lane project were absent. We are now ready to tie over the three services.

The Littlepage project from Loudon to Hurlburt and Evans Road is now completed and the last section has been black topped.

The PRV station has been completed for the Evans Road project and is awaiting BT samples. We will then turn this station on and reduce the pressure that is dangerously high on Evans Road. This new PRV station will also record water usage for the Pounder and Evans area with flow meters that were installed during the project. The 4" turbo meter was donated by the City of Gresham, and the Cla-val along with a 4" gate valve was donated by JBT.

The old generator that was donated by the Fire Department has been installed and is capable of running the office with lights and heat during a power outage. During the installation we had to correct some of the existing wiring in the office and shop in order for it to meet code.

Office: Shanti is back to work and her daughter Hazel is going just great. Gail Griffith has replaced Pam who retired last month. Gail will be working part time, 10 to 15 hours per week, starting January 2, 2014.

Treatment Plant: Nothing new to report.

Hydro & FERC: We had applied for a FERC license which has taken over two years of paperwork and our time. During this past summer the Hydropower Regulatory Efficiency Act of 2013 (H.R. 267) is a bill that was introduced into the United States House of Representatives of the 113th United States Congress. It passed the House by a vote of 422-0. The Bill is intended to change some of the regulations in the United States surrounding hydropower by making it easier to develop smaller output hydropower stations. According to the bill's proponents, current

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MONTHLY REPORTS - Managers Report (Cont.)

regulations are unwieldy and represent a significant hurdle to creating more hydropower plants. The Bill would alter those regulations to make it easier for smaller plants to get approval quickly. The legislation also requires the Federal Energy Regulatory Commission (FERC) to study how to further improve the regulatory process. The Bill would amend the Public Utility Regulatory Policies Act of 1978 (PURPA) and the Federal Power Act. Currently, hydropower projects that produce 5,000 kilowatts or less of power do not require certain licenses. This new bill will help other small water systems turn to hydro in order to help cut cost on their water systems. Our final order approving the PC 894 existing water rights for hydroelectric purposes was signed on December 11, 2013 by the Administrator Water Rights Services Division of the Oregon Water Resources Department.

Sonny Boyd said he is concerned about the air quality created by the generator. **James Jans** informed him that a carbon monoxide detector will be installed in the office and the generator is in the garage with plenty of air flow.

PUBLIC COMMENTS ON ITEMS NOT LISTED ON THE AGENDA

Gordon Fulks said he supports **Sonny Boyd** reviewing inventory control.

UNFINISHED ITEMS FOR BOARD CONSIDERATION

Sonny Boyd would like to receive approval from the Board of Commissioners to evaluate inventory control and the process of disposing equipment and scrap. **Robert Gaughan** informed him that the District has a procedure for discarding surplus items. **Sonny Boyd** said the procedure is not clearly defined. **Jeff Hargens** would like to know what **Sonny Boyd** suggests. He asked if a committee should be formed. **Sonny Boyd** would like to know how inventory is being tracked. **Shanti Burns** said that we count inventory annually during the audit process. **James Jans** said the District has assigned numbers and labeled all the equipment. They are then recorded on an excel spreadsheet. **Sonny Boyd** would like to have access to view the inventory. He would like this discussion to be left open until after the executive session.

Jeff Hargens said a house burned down this week and a person was killed in the fire. The news reporters said the closest fire hydrant was two miles away, which is inaccurate. He said there was a fire hydrant across the street, and another half a mile away. He would like to discuss doubling the amount of fire hydrants in our system over a five year period with the fire chief. He would like this to be discussed further during our budget process. **Sonny Boyd** said the Fire Department probably has a survey revealing what locations are in the most need of fire hydrants. **Kevin Wilhelm** asked if there is any maintenance cost after the hydrants are installed. **James Jans** said they need to be flushed, however the Fire Department helps us with this.

Meeting adjourned to go into executive session at 7:10 p.m.

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Nicholas Ray (Nick) states he would like to have the executive session in open session.

Dian Reynolds (Dee) introduced herself, and states she is assisting the Special Districts Association of Oregon with this hearing. **David Shannon** introduced himself as the legal representative for Nicholas Ray. **Jeff Hargens** said this is Nicholas Ray's pre-discharge conference. He states the manager has requested a pre-discharge conference to be held in front of the Board of Commissioners to give Nick the opportunity to state his case regarding the allegations. He states there have been multiple safety violations, the more serious one is regarding entering a confined space without the proper safety equipment, resulting in a fine. **Nicholas Ray** states that he was given a direct order by Jeffrey Busto (Jeff) to enter the confined space. He states this order was given to Jeff by James Jans (Jim). He said that he asked for the proper safety equipment but was told that he was to just get in the hole. He states that he entered the confined space without the equipment in fear that if he did not it would lead to retaliation by the manager. **Jeff Hargens** asked Nick if he was told to enter the hole without the tripod and monitor. **Nicholas Ray** replied that he was not told to enter without the safety equipment, but he assumed that if Jim wanted it done this way he would have sent the equipment to the site with the person that came from the shop, as well as provide an attendee to monitor the entrance. **Jeff Hargens** said that he is confused, as Nick first said that he was told to enter without the equipment, but now he is saying that he was not told that. He asked Nick to clarify. **Nicholas Ray** replied that he asked if he would be provided with the equipment but was told by Jeff that Jim informed him that Nick was to just get in the hole, therefore that is what he did. **Sonny Boyd** said that only one incident that caused Nick to be written up out of four was before the confined space and OSHA incidence, however all the others were after. **Nicholas Ray** said that he was worried about getting into the vault due to atmospheric hazards but was concerned about retaliation if he did not do it. **Sonny Boyd** asked how Nick was supposed to get the safety equipment without bringing the entire project to a halt. **Robert Gaughan** said that he would have gone back to the shop to get the equipment before entering the hole. **James Jans** said the crew was told to tap the 6" main to connect a garden hose because they were running out of the hose that was connected to the meter box approximately 300-400 feet away. The crew was instructed to take the 6.10 tap saddle that was on Nick's desk and dig up the old main to tap it, however Nick grabbed the wrong tap saddle which did not fit. **James Jans** said Jeff would have never told Nick to go into the vault without safety equipment. **Jeff Hargens** asked Nick if he feels that he was properly trained to go into a vault. **Nicholas Ray** states that he was only properly trained as of November 5th when he took a confined space class. **James Jans** said that we have documentation of confined space training, showing that during the trainings one employee is at the top acting as the attendee who monitors while the other employee enters the vault. He said Nick was written up on November 28, 2011 for entering a confined space without the safety equipment, even though the equipment was in the truck at the time. The memo states that they had just discussed the training the week before and that they had violated the safety procedures for entering a confined space. He said there are also pictures documenting the crews

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training on entering the confined space at the Treatment Plant and Reservoir 4. **Jeff Hargens** said that OSHA dropped the charges of insufficient confined space training because they determined that there had been sufficient training. He pointed out that Nick stated he knew it was unsafe to enter the vault. He states that this is a very serious offense since it can lead to death. **Nicholas Ray** said he was trained on how to enter a confined space but not of the dangers that could occur. **Jeff Hargens** said this is not Nick's first offense with entering a confined space without the proper equipment. He said that if Nick has already been written up on multiple occasions, how many more times does it have to happen before we lose an employee. **James Jans** said that he never instructed anyone to enter the hole, he only told Nick to install the saddle. He said he only learned about Nick entering the vault when OSHA contacted him on August 19th. He states Jeff did not know someone was going to enter the vault when he left the shop. When Jeff got to the project he saw that Nick did not get the correct tap saddle, so he then told him to get in the hole while he went to Home Depot to get more garden hose. **David Shannon** said that the Board should get Jeff Busto's testimony since there seems to be a disagreement with what was said.

Jeff Hargens asked Nick to explain the time he was written up for failure to use barricades or other precautions to warn motorists while working in a ditch on the highway on October 2, 2012. **Nicholas Ray** said that Hans Rathjen left the project due to an emergency with one of his kids, and it left him in a position where he was by himself with an open hole. **Jeff Hargens** asked him why he did not use barricades or cones. **Nicholas Ray** said that the truck was being used as the barricade with the flashers on, however Hans took the truck when he left. **James Jans** said that when he arrived on the job site Nick was in an open hole without any barricades. If a vehicle was to drive by they would not have known someone was there, which is very dangerous, especially on the highway. He said Nick could have called him to come help. **Robert Churnside** said the cones should have been put out before the job even started. **David Shannon** said that the criticism was because Nick did not respond appropriately to the unforeseen circumstance of Hans being called away for an emergency. **James Jans** said that Nick could have used the backhoe as a barricade or he could have gotten out of the ditch.

Jeff Hargens questioned Nick about the memo for failure to follow instructions for flagging on Littlepage Road on August 8, 2013. **Nicholas Ray** said he informed Jim that they were short handed and needed a flagger, however they were not provided with one because Jeff got called to the Treatment Plant. He said Hans was the only one available to work in the ditch while he flagged. **James Jans** said when the Multnomah County inspector showed up at the job site he noticed that the ditch was not being compacted and there were no flaggers. He said the County could require the District to pay to have the compaction tested, which is very expensive, if they think the District is not compacting the ditches. He said the County allows one flagger on a straight away, two flaggers for higher speeds or curves, and OSHA requested three flaggers for intersections. **James Jans** said the County inspector informed him that there was no one flagging on the jobsite that day, even though it was Nick's job to be flagging. **Nicholas Ray** said that he was flagging for the entire duration of the project and that the County inspector was only upset

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about not having enough flaggers on the jobsite. **David Shannon** would like an investigation to be done to determine what actually happened. **Jeff Hargens** said that if it was Nick's job to flag that day and there were no flaggers when the County showed up, then Nick did not do his assigned duty.

Jeff Hargens questioned Nick about the memo for failure to place traffic cones on Meyers Lane on September 5, 2013 to warn motorist of a road hazard. **Nicholas Ray** said he looked for the hole that he was instructed to place cones around but he did not see it and was distracted by getting set up with the project so he later forgot about it. **Jeff Hargens** asked why Nick did not go into the office since they were very close to ask Jim where the hole was. **Nicholas Ray** said he was worried he would get in trouble for asking. **Dee Rubanoff** asked Nick if Jim has ever written him up for asking for clarification of what his task is. **Dee Rubanoff** asked if Nick could have used the other employee's cell phone to call Jim to get clarification. **Nicholas Ray** said yes, he could have. **Nicholas Ray** feels that he has been the subject of retaliation ever since he discussed the pH probes, as well as after he contacted OSHA. **Dee Rubanoff** said that other than the flagging issue, Nick admitted to committing the other safety violations. She asked if the Board is just supposed to ignore that because he says he is afraid of Jim. **David Shannon** states that Nick did not admit committing the safety violations and what Nick has said is that he did not have an opportunity to do anything differently.

Jeff Hargens questioned Nick about the memo for failure to set up signs regarding equipment in the right of way on Marok Road on October 7, 2013. **Nicholas Ray** said they were using the truck with the flashers on and had safety cones laid out. **James Jans** said the crew was working on the other side of a hill and there was nothing to warn motorists of their presence. He said a "Road work ahead" sign was required to warn traffic. He states he also reminded Nick to get the jumping jack to compact the ditch, which Nick failed to do. **Nicholas Ray** said that he did not put signs on the road. He states the work vehicle was $\frac{3}{4}$ of the way off the road. **Nicholas Ray** said he does have a flagging certification. **Robert Churnside** said that since Nick has his flagging certification he knows which signs are required for the job. **Nicholas Ray** agreed with this statement.

Nicholas Ray said that he was denied attending education classes and in order to keep his water distribution certification he had to pay for it himself. **James Jans** said that Nick signed up for a class in summer during the middle of a project before asking if he could attend. **James Jans** first verified that Nick could get a refund for the class before denying him the time off. Per policy, all arrangements for training and development on District time must be approved in advance by the Manager. He informed Nick that the District has paid for his certification in the past and would continue to pay for it. He allowed Nick to attend classes in the Fall to get the required CEU's.

Jeff Hargens said that the last time Nick was in front of the Board he was told it was his last chance.

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Jeff Hargens said he will interview both Jeff Busto and the County inspector. He will then contact each Board member with the assistance of SDAO. He said that James Jans has the authority to hire and terminate employees, however he came to the Board for their input.

Meeting reconvened at 8:30 p.m.

No decision was made in executive session.

Jeff Hargens said that Nick is currently on administrative leave with pay, however the Board can decide to change it to leave without pay, per policy, if they choose to. **Robert Churnside** does not feel that it is fair to pay someone if they are not working.

David Shannon said that he would caution the Board to review the hostile work environment that has been created. He said Nick has a good reputation in the community as a hard worker. There were also comments from the public about the manager yelling and being a tyrant. He told the Board to take both these into serious consideration before making their decision. He thinks there would be cause for a lawsuit if Nick was to lose his job since there is a lot of exposure.

Sonny Boyd made a motion to continue Nick on paid administrative leave until Jeff Hargens has interviewed Jeff Busto and the County inspector, after which Nick will be contacted with the decision if he is to remain on paid administrative leave or if he will begin unpaid administrative leave until the Board has a chance to meet for a final decision, **Robert Gaughan** seconded, passed unanimously.

Sonny Boyd would like permission to investigate employee misconduct and inventory control. **Jeff Hargens** suggested having Jason Green from the Oregon Association of Water Utilities (OAWU) perform the investigation. **Sonny Boyd** is fine with this but he would like to speak with the person prior to the investigation.

Jeff Hargens made a motion to adjourn the meeting, **Sonny Boyd** seconded, passed unanimously. Meeting adjourned at 9:10 p.m.