



KERN BOARD REGULAR MEETING

May 9, 2016 – 6:30 p.m. or immediately following the regular meeting
Town Board Chambers
301 Walnut Street, Windsor, CO 8055

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.

MINUTES

1. Call to Order

Ms. Melendez called the meeting to order at 6:31 p.m.

2. Roll Call of Directors Present

Kristie Melendez
Myles Baker
Christian Morgan
Ken Bennett
Brenden Boudreau
Ivan Adams

Also Present:

Town Manager	Kelly Arnold
Town Attorney	Ian McCargar
Town Clerk/Assistant to Town Manager	Patti Garcia
Communications/Assistant to Town Manager	Kelly Unger
Chief of Police	John Michaels
Director of Engineering	Dennis Wagner
Director of Public Works	Terry Walker
Director of Planning	Scott Ballstadt
Director of Parks, Recreation and Culture	Eric Lucas
Manager of Communications	Katie VanMeter
Deputy Town Clerk	Krystal Eucker

3. Approval of Minutes of September 28, 2015 Board of Directors Meeting – K. Eucker
Board Member Baker motioned to approve the minutes as presented; Board Member Morgan seconded the motion. Roll call on the vote resulted as follows: Yeas-Baker, Morgan, Bennett, Boudreau, Adams, Melendez; Nays – None. Motion passed.

4. Approval of Bills

Mr. Arnold stated when the Board meets an accumulation of the last 60 days is presented in bill form that have already been paid for by the Town; the Board is ratifying the bills.

Mr. McCargar stated there are two primary supports of Kern. The first being Clearwater Solutions and that firm provides engineering support for the Kern's operations. The second primary supporter is Lawrence, Jones, Custer & Grasmick which is the Kern Board's legal counsel.

Board Member Morgan motioned to approve the bills as presented; Board Member Adams seconded the motion. Roll call on the vote resulted as follows: Yeas-Baker, Morgan, Bennett, Boudreau, Adams, Melendez; Nays – None. Motion passed.

5. Discussion of New Cache la Poudre Irrigating Company Operating Agreement

- Staff presentation: Ian McCargar & Brad Grasmick

Per Mr. McCargar since 1934, the Kern and New Cache la Poudre Irrigating Ditch Company (“New Cache”) have entered into agreements to assure that the No. 2 Canal and Windsor Lake work in harmony. We are negotiating an updated agreement on the Kern’s behalf which, if approved by the Kern Board, will assure the continuation of this cooperative relationship.

Beginning in 1934, the Kern and New Cache entered into agreements for combined operations of the No. 2 Canal and Windsor Lake. The 1934 agreement was updated in 1984, and again in 2002. In each of these cases, the parties recognized that New Cache needs the Kern’s lake as an “equalizer” for its irrigation customers, and Kern needs New Cache to carry water into and out of Windsor Lake. As an “equalizer”, Windsor Lake allows New Cache to better-serve its customers through increased irrigation water availability.

The 2002 agreement contemplated the installation of a Rubicon gate structure downstream in the outlet channel. The Rubicon gate is the mechanical device by which water is both held back and released downstream to New Cache customers. The Town of Windsor paid the cost for installation of the Rubicon gate structure, but New Cache is largely responsible for its day-to-day operations. The Town invested in the Rubicon gate structure primarily to assure Windsor Lake’s role in stormwater management. Windsor Lake is included as a stormwater detention vessel in the Town’s Stormwater Management Plan, and the operation of the Rubicon gate structure is crucial to the lake’s flood prevention function under the Plan.

The proposed 2016 Operating Agreement accomplishes three basic objectives:

1. Expressly grants the Kern “carriage rights” in the No. 2 Canal.
2. Expressly allocates ownership and operational control of the Rubicon gate to New Cache, subject to conditions.
3. Expressly sets up cost-sharing for repair and replacement of the Rubicon gate.

“Carriage rights” are the privileges given by the No. 2 Canal when water not owned by New Cache customers is carried down the Canal. The agreement under negotiation provides that the Kern’s senior water right will travel into Windsor Lake through the No. 2 Canal at no cost to the Kern. The Kern’s junior water right will be assessed a fee in accordance with an agreed protocol. The carriage rights granted under this agreement recognize that the Kern is a shareholder of New Cache water rights, and that Kern is providing New Cache the benefits of “equalization” in Windsor Lake.

Although the 2002 agreement stated that the Town would pay the cost of the Rubicon gate structure, it did not expressly say the Town owned it and did not expressly state which party would have control over it. The agreement under negotiation states that New Cache owns and operates the Rubicon gate, in recognition that on a day-to-day

basis, New Cache should have control over how much water leaves Windsor Lake. This authority is subject to constraints to assure certain lake levels.

The agreement under negotiation establishes a minimum level at which the Windsor Lake will be maintained. There is a natural tension between the lake levels preferred by New Cache and the lake levels preferred by the Kern. New Cache prefers a higher lake level, which translates to greater availability of irrigation water to its customers. Kern prefers a level that recognizes the aesthetic value of the lake as an amenity to the Town's Boardwalk Park, but that does not result in excessive damage to the shoreline or related facilities. Additionally, the Kern prefers a lake level that will accommodate stormwater flows in the event of a heavy rain event. If the lake is kept at too high a level, the lake loses its ability to absorb and later release stormwater flows.

The agreement under negotiation allows for an equal sharing of costs associated with Rubicon gate maintenance and repairs. This cost-sharing recognizes the shared purpose of the Rubicon gate. For New Cache, the Rubicon gate is the tool by which its customers receive water from the lake. For Kern, the Rubicon keeps the lake at an appealing level for recreation and also enables the lake to absorb stormwater in a heavy rain event.

Assuming the Kern Board so instructs, staff will finalize the 2016 agreement for formal adoption at an upcoming Kern Board meeting. The New Cache Board of Directors is on a similar time table. Staff will continue working with New Cache representatives to ready the agreement for formal approval.

Ms. Melendez inquired as to who New Cache is.

Mr. McCargar stated New Cache is a mutual ditch company that owns the canal.

Ms. Melendez inquired if it is a board of individuals or a particular individual that represents New Cache.

Mr. McCargar stated New Cache Irrigating Ditch Company is run by a board of directors and serves primarily irrigation customers as it is not set up to serve the development community.

Ms. Melendez inquired as to the cost share ratio.

Mr. McCargar stated if it is a maintenance item for the Rubicon Gate the Kern and New Cache share equally in the cost.

Ms. Melendez inquired about the lake levels in the agreement.

Mr. McCargar stated in a matter of practice have been able to find a satisfactory answer. Lake levels really relate to overabundance or under abundance that there would be a problem.

Ms. Melendez inquired about Windsor funding the Rubicon Gate but New Cache dictates the operations.

Mr. McCargar stated the agreement from 2002 stated the Town of Windsor would pay for the Rubicon Gate and the Town's accounting system shows the Rubicon

Gate as being owned by the Town. Historically the decision of whether to open that gate or close it has been the decision of New Cache is because it serves their customers.

Ms. Melendez inquired if the Town would want to have a say for whatever purposes.

Mr. McCargar stated that is what the agreement is trying to work out.

6. Election of Officers

- Staff presentation: Ian D. McCargar, Town Attorney

Mr. McCargar stated the bylaws of the Kern Reservoir and Ditch Company say that to be eligible to serve on the Kern Board of Directors, an individual must also be a sitting member of the Windsor Town Board. The reason being the Town of Windsor owns 100% of the stock in the Kern Reservoir and Ditch Company. Each time there is turn over on the Windsor Town Board there is also turn over on the Kern Board of Directors. Everyone that is a member of the Windsor Town Board is eligible to be a member of the Kern Reservoir and Ditch Company Board. Three offices need to be filled on the Kern Reservoir and Ditch Company; President; Vice President and Secretary/Treasurer. Historically the Mayor has served as President, Mayor Pro Tem serves as Vice President and the newest seated Town Board member serves as Secretary/Treasurer.

Board Member Adams motioned to nominate Mayor Melendez as President, Mayor Pro Tem Baker as Vice President and Paul Rennemeyer as Secretary/Treasurer upon seated on the Town Board; Board Member Morgan seconded the motion. Roll call on the vote resulted as follows: Yeas-Baker, Morgan, Bennett, Boudreau, Adams, Melendez; Nays – None. Motion passed.

7. Communications

None

8. Adjourn

Vice President Baker motioned to adjourn; Board Member Bennett seconded the motion. Roll call on the vote resulted as follows: Yeas-Baker, Morgan, Bennett, Boudreau, Adams, Melendez; Nays – None. Motion passed.

The meeting was adjourned at 6:51 p.m.



Deputy Town Clerk, Krystal Eucker