

**MINUTES OF A SPECIAL MEETING  
OF THE BOARD OF DIRECTORS OF THE  
CHERRY CREEK VILLAGE WATER DISTRICT  
HELD  
May 12, 2011**

A special meeting of the Board of Directors of the Cherry Creek Village Water District was held on Thursday, May 12, 2011 at 9:00 a.m. at R. S. Wells LLC, 8390 E. Crescent Parkway, Suite 500, Greenwood Village, Colorado. The meeting was open to the public.

**Attendance**

**Directors in attendance were:**

John Forney  
Lou Schroeder  
Phil Viseur  
Joseph Ryan  
Roger Baer

**Also in attendance were:**

Dave Peak; R.S. Wells, L.L.C.  
Bob Blodgett; R.S. Wells, L.L.C.  
Janece Soendker; Clifton Gunderson, LLC  
Tim Flynn; Collins Cockrel & Cole, P.C.  
Greg Sekera; KennedyJenks Consultants  
Joel Meggers; CRS  
Kathy Noon; CRS

**Call to Order**

President Forney called the meeting to order at 9:00 a.m.

**Quorum/  
Qualifications/  
& Disclosures**

It was noted that a quorum was present. All of the Directors are qualified and there are no conflict of interest disclosures required.

**Agenda**

Upon review and discussion of the Agenda and a motion duly made, seconded and, upon vote, unanimously carried, the Board approved the Agenda as amended.

**Minutes**

The Board reviewed the Minutes of the April 12, 2011 Regular Meeting. Following review and discussion, upon a motion duly, seconded and, upon vote, unanimously carried, the Board approved the April 12,, 2011 Minutes as presented.

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### Community Items

Mr. Meggers introduced Ms. Noon to the Board and stated they were at the meeting as observers and to answer any questions concerning the Community Resource Services proposal previously submitted to the Board. Bob Blodgett stated that he was present at the meeting for the same purpose with respect to the R.S. Wells proposal that was previously submitted to the Board. Both proposals were for management and billing services.

### Financial Matters

Review the District's Cash Position as of May 10, 2011: Mr. Peak reviewed the cash position as of May 10, 2011 with the Board. Following review and discussion, the Board accepted the cash position as presented.

Review the Operating Statement: Mr. Peak reviewed the Operating Statement. Following review and discussion, upon a motion duly made, seconded and, upon vote, unanimously carried, the Board accepted the Operating Statement as presented.

Review the Financial Statements: Mr. Peak reviewed the Financial Statements with the Board. The Board inquired as to the difference between the Financials and the Operating Statement for Denver Water. Mr. Peak believes it to be a timing issue. Ms. Soendker will verify and report back to the Board.

Review and Consider Approval of Claims: Mr. Peak reviewed the May, 2011 claims totaling \$41,038.39, represented by check numbers 4353 through 4366. Following review and discussion, upon a motion duly made, seconded and, upon vote, unanimously carried, the Board approved the May, 2011 claims as presented.

Review Delinquent Account Report: Director Ryan reviewed the Delinquent Account Report with the Board. He reported that there were four delinquent accounts, which is less than the previous month.

### Administrative Matters

Review Consumption Report: Mr. Peak reviewed the Consumption Report with the Board. The Board accepted the Consumption Report as presented.

### Engineer's Report

Mr. Sekera reviewed Kennedy/Jenks engineering memorandum dated April 4, 2011. As part of this review, he highlighted the following matters:

Cherry Creek School Campus – The plans are currently being reviewed by Denver Water. Kennedy/Jenks met with Denver Water in the field to review the alignment and answer questions regarding the easements. The engineer is addressing final

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comments and Denver has indicated that they will approve the plans. The schedule for the project is to complete construction this summer. There was a brief discussion concerning the adequacy of fire flows on the Cherry Creek School Campus. In response to a question from Director Baer, Mr. Sekera stated that the District's current water distribution system is in compliance with and meets South Metro Fire Protection District's fire flow requirements with regard to the Cherry Creek School Campus.

System Maintenance - Mr. Sekera noted that no work was performed on the fire hydrant and valve this past month.

There is no update on the cross-connection Control Program for this month.

No waterline breaks service interruptions occurred during the month.

Mr. Sekera noted that his office reviewed various locate requests for miscellaneous construction that is ongoing within the District.

Finally, he briefly reviewed the maintenance tracking chart which is attached to Kennedy/Jenks engineering memorandum.

After discussion, the Board accepted the Engineering Report as presented.

### Legal

Denver Water Contract Service Area Discussion – Mr. Flynn reported that the combined water service area boundary for Denver Water is being reviewed by Denver Water staff. This review was necessitated by various provisions that are being inserted into Denver Water's global settlement with Western Slope interests. He noted that any property located outside the combined service area boundary as it is currently being finalized may not be entitled to water service in the future.

Denver Water has made a request to delete from the District's contract service area boundary two areas believed to be located east of and outside of the District's territorial boundaries. In addition, there are two areas located generally adjacent to the Greenwood Village Community Park that receive water service from the District but, which at the present time, are outside the District's contract service area boundary. Denver Water proposes to include these two areas into the District's contract service area.

Following a discussion the Board authorized deletion of the two parcels east of the District's territorial boundaries upon verification by legal counsel and the engineer that these properties are not within the District's territorial boundaries.

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Attorney's Report – Mr. Flynn reviewed with the Board Resolution No. 2011-5- Indemnification 1. Following review and discussion, upon a motion duly made, seconded and, upon vote, unanimously carried, the Board approved the Resolution No. 2011-5-1 Indemnification as presented.

### Directors Items

Executive Session - Upon a motion duly made, seconded and, upon vote, unanimously carried, the Board went into Executive Session pursuant to Section 24-6-402(4)(b), C.R.S. for the purposes of receiving legal advice. The Executive Session commenced at approximately 10:20 a.m. and lasted until approximately 10:37 a.m. when the Board returned to open public meeting. Although not required by law, the Executive Session was recorded.

Assessed Valuations – Ms. Soendker reviewed the assessed valuations with the Board. She informed the Board as to how the assessed valuations will impact the District's budget next year.

### Other Business

The Board asked Mr. Meggers, C.R.S., what was the final offer for providing management and accounting services to the District. Mr. Meggers said \$42,000 annually for five years. The Board then asked the same question to Mr. Blodgett of R.S. Wells. Mr. Blodgett informed the Board that R.S. Wells would match C.R.S.'s quote of \$42,000 per year for five years.

The Board deferred making a decision until the next Board meeting, when the item will be scheduled on the Agenda for action.

The Board inquired as to whether the Special Meeting Notice had been posted, as Director Schroeder stated he did not see one on the utility box when he was walking his dog. Mr. Peak assured the Board that Mr. Mendisco has posted the Notice. Director Viseur later verified that the Notice was posted at King Soopers.

### Adjournment

With no further business to come before the Board at this time, the meeting was adjourned.

Respectfully submitted,



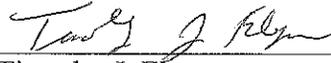
Secretary for the Meeting

RECORD OF PROCEEDINGS

ATTORNEY STATEMENT

Pursuant to Section 24-6-402(2)(d.5)(I)(B), C.R.S., I, Timothy J. Flynn, state that I am general counsel for the Cherry Creek Village Water District and that I was present at the time the Board convened in Executive Session on Thursday, May 12, 2011 at approximately 10:00 a.m. I further state that the Executive Session was recorded even though it was not required by law to be recorded because it constituted an attorney/client privileged communication. The Board did not adopt any proposed policy, position, rule, regulation or take any formal action during the Executive Session.

Date: June 14, 2011

Signature:   
Timothy J. Flynn

RESOLUTION NO. 2011-5-1

CHERRY CREEK VILLAGE WATER DISTRICT

ARAPAHOE COUNTY, COLORADO

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**A RESOLUTION PROVIDING FOR THE INDEMNIFICATION OF DIRECTORS, OFFICERS AND THE EMPLOYEES OF THE DISTRICT**

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**WHEREAS**, the Cherry Creek Village Water District (“District”) owns and operates a public potable water collection distribution system for the benefit of persons and property located within its boundaries; and

**WHEREAS**, the District is a quasi municipal corporation and political subdivision of the State of Colorado, operating pursuant to the provisions of Title 32, Article 1 of the Colorado Revised Statutes (the “Special District Act”); and

**WHEREAS**, as more particularly set forth in the Colorado Governmental Immunity Act, Section 24-10-101, C.R.S., *et. seq.*, and in particular the provisions and limitations set forth in Section 24-10-110, C.R.S., the District is obligated to provide a defense for, and pay any judgment, compromise or settlement of any tort claim brought against any District employee that arises out of the employee’s performance of his/her duties and is within the scope of his/her employment, except where the employees act or omission is willful and wanton; and

**WHEREAS**, the District’s Board of Directors recognizes that it is desirable and in the best interest of the District and its inhabitants to protect District employees who in the performance of their duties act in good faith and within the scope of their employment, from personal financial loss arising from all types of claims and to not limit that protection solely to tort claims.

**NOW THEREFORE**, be it resolved by the Board of Directors of the Cherry Creek Village Water District as follows:

1. Definitions. For purposes of this Resolution, the terms below shall be defined as follows:
  - a) Director: Includes current and former directors of the District who are sued for acts or omissions occurring during their terms as directors of the District.
  - b) Employee: Includes a director, officer, employee, authorized volunteer, or servant (hereinafter collectively referred to as “Employee”) of the District,

whether or not compensated, elected, or appointed. The term "Employee" specifically excludes any person or organization contracting to perform services or acting for the District as an independent contractor.

c) Scope of Employment: An act or omission of an Employee of the District is within the "scope of employment" if it reasonably relates to the business or affairs of the District, and the Employee acted in good faith and in a manner which a reasonable person would have believed to be in, and not opposed to, the best interests of the District.

d) Act: Means the Colorado Governmental Immunity Act set forth in Article 10, Title 24, C.R.S., as amended from time to time.

2. The Act Controls as to Tort Claims. As to all claims that lie in tort or could lie in tort against an Employee, the Act controls the District's obligation to defend and indemnify Employees, and nothing herein contained shall be deemed to abridge or modify in anyway any of the terms and provisions of the Act as it now exists or hereafter maybe amended from time to time. In accordance with and subject to certain exceptions, limitations, and conditions as set forth in the Act, the District shall provide a defense for and pay any judgment, compromise or settle any claim where the action lies or could lie in tort when the claim arises out of injury sustained from an act or omission of the Employee occurring during the performance of his duties and within the scope of his employment, except where it is determined by a court that the injury did not arise out of an act or omission occurring during the Employee's performance of his/her duties and within the scope of his/her employment or that the Employee's act or omission was willful and wanton, or the Employee compromised or settled the claim without the consent of the District.

3. Purpose of this Resolution. This Resolution is intended to impose upon the District, subject to the exceptions, limitations and conditions set forth herein, a duty to defend and indemnify Employees for certain claims that are not covered by the Act, including but not limited to contract claims, federal claims, certain limited criminal proceedings (hereinafter collectively referred to as "Other Claims").

4. Other Claims. In addition to the District's defense and indemnification obligations under the Act, the District shall, subject to the exceptions, limitations and conditions contained herein, provide a defense for and pay any judgment, compromise or settlement of any claim against an Employee of the District that is not subject to the Act, including any claim brought under federal law such as the Federal Civil Rights Act (42 U.S.C. 1983), contract claims or certain criminal proceedings; provided, however, that any such Other Claim must arise out of the good faith performance of the Employee's duties and must have occurred within the scope of the Employee's employment and such other limitations and exceptions as set forth herein.

5. Defense and Indemnification Obligations. To the extent permitted by law, the District shall defend and indemnify District Employees, including Directors, from and against such Other Claims, except that the District may refuse to provide a defense and indemnify any Employee where the District determines that the Other Claim:

a) Did not occur within the performance of the Employee's duties or was not within the scope of the Employee's employment; or

b) The Employee acted or failed to act because of actual fraud, corruption or malice; or

c) The defense and indemnification of the Other Claim would create a specific conflict of interest between the District and the Employee.

d) The District's indemnification obligation shall at all times be subject to the same limitations as would apply to the indemnification of a tort action under the act.

6. Insurance Coverage. The District's defense and indemnification obligations arising under the Act and this Resolution shall, to the extent possible, be covered by whatever insurance coverage the District may have in effect and for which there is coverage up to the limits set forth in the Act.

7. Notice of Claim or Other Potential Claim. The District hereby incorporates the notice provisions with respect to the defense and indemnification of tort claims as set forth in the Act and specifically states that those notice provisions shall be applicable to all Other Claims covered by this Resolution. Such notice must be given to the District by the Employee in writing within 15 days after commencement of the action or the District's defense and/or indemnification obligations maybe terminated by the District.

8. No Indemnification. In no event will the District indemnify or pay the defense cost of an Employee if it is adjudged that the Employee's actions were primarily for personal benefit or were caused by improper motives or improper benefit, whether or not the Employee is acting in his official capacity and within the scope of his/her employment. Such defense and indemnification shall not be available to a former Employee in the event that the tort or Other Claim against the former Employee is asserted as a counterclaim or setoff in any suit brought by the Employee or former Employee, except to the extent that the liability of such Employee may exceed the amount of his own claim or suit.

9. Settlement. The District, acting through its Board of Directors, shall approve in writing any settlement of claims and stipulated judgments against its Employees. The District shall not be liable for any compromise or settlement given without its written consent.

10. Legal Counsel. The District shall obtain legal counsel to serve as counsel to the Employee unless it appears to such counsel that the interests of the District and the Employee may be adverse. In the latter event, the Employee may select independent legal counsel, who shall first be approved by the District. The Employee shall cooperate in all respects with the District and its legal counsel in the Employee's defense. If the Employee does not cooperate with the District for any reason, and such action results in a judgment against the District or the Employee, the District may elect not to indemnify the Employee or to pay defense costs.

11. Employee Costs. The District shall not be responsible for Employee costs associated with time spent in giving depositions, testifying, or otherwise cooperating in the Employee's defense.

12. Liability Limitations. The District shall indemnify any Employee up to, but only up to, the applicable limitations set forth in the Act for tort claims. The District specifically reserves any defenses which are available to Employees under the Act or by common law.

13. Effect of Other Insurance, Bond, or Indemnification Plan. If the District has insurance coverage for any act for which indemnification is provided by this Resolution, its coverage shall be primary. If an Employee has any other valid insurance bond or indemnification plan available covering the loss or damage alleged against him/her, and the District does not have adequate insurance coverage, and the act for which indemnification is sought is one that is subject to the terms and provisions of this Resolution, the Employee's insurance bond or other plan will be applied first to the payment of any defense costs, attorneys' fees, or claim/judgment before the District resorts to obtaining funds for indemnification from sources other than insurance. The obligation of the District to indemnify and save harmless the Employee shall, in all events, exist only to the extent permitted by this Resolution and by law.

14. Subrogation Rights of the District. With respect to all payments made pursuant to this Resolution, the District or its assigns shall be subrogated to all of the Employee's rights of recovery therefor against any person or entity. The Employee shall execute and deliver instruments and papers and do whatever else is reasonably necessary to secure such rights, including cooperating with the District in pursuing collection of those rights against third parties. The Employee shall do nothing to prejudice any such rights.

15. Interpretation. The purpose of this Resolution is to protect Employees of the District against personal liability for their actions taken on behalf of the District in the course of the performance of their duties and within the scope of their employment. It is the intent of the District that this Resolution be liberally construed in favor of the protection of such Employees. By the adoption of this Resolution, the District, however,

does not waive its rights to claim governmental immunity as a defense to any action or any other defense under the Act or provided by law.

16. Severability. If any provision of this Resolution is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of the remainder of the Resolution.

17. Term. The indemnifications obligations described in this Resolution shall be valid during the current calendar year and shall be considered automatically renewed on January 1 of each year thereafter unless repealed by a specific resolution of the Board of Directors of the District within sixty (60) days prior to the renewal date.

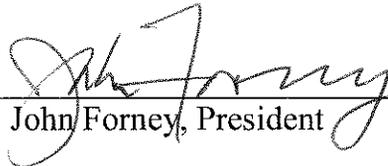
18. Repeal of Previous Indemnification Provisions. This Resolution shall supersede any and all previous Indemnification Resolutions adopted by the Board and shall amend the District's By Laws, to the extent of any inconsistency between such indemnification provisions.

19. Statute Controls. Notwithstanding any other provision contained in this Resolution to the contrary, this Resolution shall be subject to, and, to the extent of any inconsistency therewith, shall be modified by the Colorado Governmental Immunity Act as the same now exists or may hereafter be amended from time to time.

Adopted on this 12<sup>th</sup> day of May, 2011.

CHERRY CREEK VILLAGE WATER  
DISTRICT

By:

  
John Forney, President

Attest:

  
Philip E. Viseur, Secretary