

TIMPANOGOS SPECIAL SERVICE DISTRICT  
ADMINISTRATIVE BOARD MEETING MINUTES

APPROVED

March 16, 2017                      6:00 p.m.                      Conference Room

Board Members

Present:                      Mark Johnson                      David Bunker                      Spencer Kyle                      Chris Condie  
   Brian Braithwaite                      Dale Ihrke                      Craig White                      Lynn Walker  
   Commissioner Lee

Excused:                      Tracy Wallace                      Mack Straw

District Staff:                      Jon Adams, District Manager,                      Shannon Hansen, Human Resource  
   David Barlow, District Engineer                      Joe Martin, CPA  
   Danette Smith, Board Secretary

Others:                      Ken Spiers, Bowen Collins & Associates  
   Craig Carlile, Ray, Quinney & Nebeker  
   Brandon Wyatt, Bowen Collins & Associates  
   Brandon Heidelberger, Brown & Caldwell  
   Todd Godfrey, Hayes, Godfrey, Bell

**Call to Order**

Mark Johnson, Board Chair, called the meeting to order. 6:02 p.m.

**Public Comment**

There was no public comment.

**Approval of Minutes**

**1. Approval of the February 16, 2017 Administrative Board Meeting Minutes**

**Craig White made a motion to approve the minutes from the, February 16, 2017 Administrative Board Meeting. Dale Ihrke seconded the motion. Those voting “Aye” – Mark Johnson, David Bunker, Commissioner Bill Lee, Spencer Kyle, Brian Braithwaite, Chris Condie, Craig White, Dale Ihrke and Lynn Walker. The motion passed with a unanimous vote.**

**Consent Calendar**

There were no items on the consent calendar.

**Finance**

Joe Martin said he just put a new financial report on dropbox before board meeting. Every month we book an interest payable, but we only pay the debt payment twice a year. We want to reflect those accurately on our financial statements. We had to back out that payable and call it interest expense because the payment was made. That was the only change made to the most recent financials. Commissioner Bill Lee asked if the interest expense is related to capital projects. Joe said it is related to the BAB Bonds we have. We pay interest on that twice a year, but we book an entry every month to record that interest.

Joe said impact fees are double what they were last year at this time. Commissioner Lee said when we talk about cash flow, he understands we receive cash from customers, cash paid to suppliers, cash paid to employees, and employee benefits; why is it paid in cash. Joe said the employees are paid via direct deposit, these are the actual cash outflows for salaries. When we pay URS, and health insurance companies, these are the actual cash flows out

1 the bank, not actual cash. Joe said if you look at the interest expense line on the statement of changes, \$779,000 in  
2 interest expense is how much we have accrued in expense this year; if you look at the cash flow statement, the line  
3 for interest paid is over \$1 million. The difference is that we paid our payment a couple of months early. Even  
4 though the cash went out, we show that as interest paid, but because we paid it early it is not yet an expense to us.  
5 Joe said we have not really spent much on capital this year. There is a negative amount showing up, which was a  
6 refund from Bowen and Collins that was deposited into that project account. It will go away as we spend money on  
7 that project.

## 8 9 **Action Item**

### 10 **1. Asset Management – Award of Contract**

11 Mark asked Jon to give a report and thanked those who were involved in the asset management review process.  
12 Mark asked Jon why this wasn't included in the board packet. Jon said there was an evaluation done, and in order to  
13 get everything ready and make the notice of award tonight, we didn't get the paperwork until now. That is why it  
14 was put under an action item. Jon said the first page is the notice of award, and gives the successful firm that rated at  
15 the highest point level. We will also notify the other firms. Jon said also included is a justification statement, based  
16 on the evaluation committee's rating.

17 The evaluation committee is dictated by state statute. The members of the evaluation committee are Mark  
18 Johnson, Craig White, Dale Ihrke, Jon Adams and David Barlow. The three firms came in, gave their presentations,  
19 the committee reviewed the submittals, and ranked the presentations. Each committee member did that  
20 independently, then discussed before coming up with a final ranking. Cost has to be a consideration and gets a point  
21 value, but is not a determining factor. You still get the highest quality proposal, the one that best meets your needs,  
22 but you do not have to go with the lowest cost.

23 Jon said the firm selected with the highest point ranking was Brown and Caldwell. We are asking the board to  
24 approve the notice of award so we can get the clock going on the asset management effort. The attached  
25 justification, tells the process that was gone through to rate them. There is also an explanation of best value, that tells  
26 the points that were awarded on each rating. We looked at the overall cost, the hours submitted, and the cost per  
27 hour. In the case of Brown and Caldwell their cost per hour was about in the middle. Jon said we ranked them  
28 according to the proposal, the scope that we felt best fit the district's needs. The process went well and there were  
29 good discussions.

30 Chris Condie said he was hoping for a spreadsheet to show each bid and different criteria. Chris said he does not  
31 even see what the bid amount is. Jon said we select a firm, and the board gives a notice of award so we can go and  
32 negotiate the contract. If we want to keep on the time frame that we talked about in our retreat, it would be not to  
33 exceed a certain amount. The amounts that were submitted were all less than the budgeted amount of \$600 thousand.  
34 Craig Carlile said there are aspects of the RFP that are required by law to be kept confidential, which is different than  
35 when you are bidding for construction. Chris asked how the committee was formed, and why those members were  
36 chosen. Jon said the committee was discussed prior; Jon called Mark when there was the change in the Board Chair  
37 and Vice Chair. It was going to be Craig White, board treasurer, the board chair, Mark Johnson, District Manager  
38 and District Engineer and Dale Ihrke who originally brought up this effort. Jon said he asked Mark if he agreed with  
39 those committee members and Mark confirmed he did.

40 David Bunker said when we asked for these RFP's, you received those back and evaluated based on these three  
41 criteria, the technical and management section, the oral presentation and interview, then a financial section. All that  
42 was submitted from each of the firms. It may be disingenuous to explain prices if we didn't have their prices, but we  
43 do. It feels a little cart before the horse to do a notice of award before we have a contract. In this it says we will give  
44 a notice of award first and then try to negotiate a contract, but the prices have already been submitted. We could  
45 develop the contract right now. Jon said it depends on what you want to negotiate, he has always done it this way.  
46 There are some differences, and we are also a district and not a city. Jon said we can give you a spreadsheet, we have  
47 not signed a contract yet. We are asking to award to the firm that we feel is going to give us the most thorough job  
48 and then we will negotiate a contract that is within the amount we budgeted. David Bunker asked that after this  
49 notice of award, if Jon will be coming back to the board with a contract to approve. Jon said yes, we can come back  
50 to the board with a contract to approve, or you can approve us not to exceed. Jon said the only reason he is

1 suggesting that is because the timeframe discussed at the retreat was about meeting the August deadline. This does  
2 not include waiting another month to approve the contract.

3 Commissioner Lee said the sticking issue is notice of award means something versus notice to negotiate, if we  
4 gave a notice to negotiate the contract, that would give us an opportunity to come back as a board and say, here is the  
5 contract in place to run through numbers and award the contract. Mark said in this case, it is similar to the QBS  
6 (qualifications based selection) process in the fact that a notice of award does not necessarily mean that they are  
7 going to be given the contract to sign. A notice of award means they have been awarded it by points, but if in the  
8 negotiations there cannot be an agreement to cost then the district can pull out. Then you drop to the number two  
9 scoring company, that is pretty typical for a design professional firm. You really do not want that cost to be a  
10 deciding factor.

11 Mark said all three firms gave excellent presentations, they delivered excellent portfolios and information for this  
12 bid, but their final product was different. It is important to negotiate that cost, to make sure we understand we are  
13 getting the final product that we want. It doesn't matter which one we selected here, we would have brought them to  
14 the negotiating table and said these are the extra products we want or these are the things we do not believe we need.  
15 Mark said that is what he understands about a notice of award, it is an opportunity to sit down at the table with one  
16 firm first. Jon said the notice of award tells you, this notice of award is subject to execution of a written contract in  
17 form acceptable to TSSD; this award does not constitute the formation of a contract between TSSD and Brown and  
18 Caldwell as the apparent successful proponent. Jon said that is what we are saying, we are going to contact Brown  
19 and Caldwell to negotiate a contract consistent with the terms and conditions set forth in the RFP. Brown and  
20 Caldwell shall not acquire any legal or equitable rights under a contract containing terms and conditions acceptable to  
21 TSSD until it is executed. If Brown and Caldwell fails to negotiate and execute a contract TSSD will move on to the  
22 next firm.

23 Chris Condie said looking at the justification statement there is nothing that tells him what points were awarded  
24 other than the total points that were given to the top contender. Chris said if it is truly just an award, it is hard for  
25 him to justify a vote, when he does not even know how the decision was made. Chris asked who was going to be  
26 involved in negotiating the contract. Jon said typically the way it goes for a District, is the Board or council does not  
27 negotiate, they approve but they do not negotiate. Chris said as a city council member, they give terms to staff. Jon  
28 said the Board reviewed the RFP for this, that is where we get the board input. We sent it out and they submitted  
29 based on that. Chris said his point is this justification letter tells him nothing other than they can get so many points  
30 for each category. Jon said we can give that information and costs, we were going to say not to exceed a certain  
31 amount to give us the ability to negotiate. We can tell you what Brown and Caldwell's price was and we can tell you  
32 what their hourly rates were and how many hours they submitted. That is not a problem, it goes into the ranking by  
33 each member. Typically, those rankings and how we do that, are not given out as a matter of propriety.

34 David Bunker said based on the language in the award he is more comfortable with the notice of award because it  
35 is not guaranteeing a contract. How long is it going to take to negotiate a contract. Jon said it could be easily be  
36 within the week. David is comfortable with Jon negotiating as long as the ultimate contract and the terms of that  
37 contract come back to the board where they can see and ask questions on why that was the best firm to select, it may  
38 not just be price based it can be quality or process based. Jon said in this case it is mostly quality based. There was a  
39 discussion with this board if price would even be a factor. Jon apologized, and said we are trying to get this together  
40 in the time frame, and we did not want to push past the August date. If you want to come back and discuss this and  
41 you do not want to meet in between meeting it will not be August it will be September. David Bunker said if we  
42 move forward with the notice of award that will give Jon the direction he needs to go negotiate and maybe that  
43 negotiation takes a week or two, but then if there is a successful point that firm will know they have a contract on the  
44 table, which gives them time to start preparing.

45 Brian Braithwaite asked if we do not award this and execute it before our next meeting how will that ripple effect  
46 impact it. We as a board can look at it and say we are going to have an extra meeting, or it is ok to hold it off. Jon  
47 said if the board is comfortable, because this is not price based, it is who best meet the needs, who best had the  
48 experience and get the biggest bang for the buck. To keep us on track for August 11<sup>th</sup> so the draft report could be  
49 met, Jon suggested doing the notice of award. If the board is comfortable allowing Jon to negotiate a dollar amount  
50 under budget, then we would proceed and get the draft report by August 11<sup>th</sup>. If we push it to next month it will not

1 be done by August 11<sup>th</sup>, it might be a month later, then you are pushing the envelope on having the information you  
2 would like for the budget preparation. Brian asked Jon what is the deadline he believes the contract has to be signed  
3 with the company to engage them so we can hit the August 11<sup>th</sup> date. Jon said in his opinion if it is not signed before  
4 our April board meeting we will not make the August date. Jon said the contract can be negotiated within a week and  
5 if we sign it we can meet those deadlines, if we go two or three weeks you are looking at it being pushed out past that  
6 August date.

7 Jon said part of the sensitivity when you are negotiating is there wiggle room on the rate. As we do the best to  
8 come up with an RFP, we try to encompass everything; if we hear something we really should be doing for the  
9 district that we may want to include, then they have the opportunity to adjust their cost based on the hours we have  
10 agreed upon. One of the big concerns we had was there was such a variance on the hours proposed to do this; it was  
11 from 1200 to 2200 hours. David Bunker said he felt comfortable going forward with the notice of award and let Jon  
12 proceed with the negotiations; when the negotiation is done, Jon can notify board members and if any want to discuss  
13 and get the details. Jon said yes, we were not comfortable with discussing some of that now because we have not  
14 completed the process. Jon said this is fairly typical of what he has been involved with. Craig White said his district  
15 is operating under the new procurement code just as TSSD is. It is completely different, it does not follow  
16 municipalities, we are following state statute. Craig said in this particular case, what his district would do, because  
17 they just did it, the General manager has the authority to award the notice of award, he then brought the final contract  
18 before the board. Craig said we are putting an extra step in here, where we are giving Jon the authority, in Craig's  
19 District, he had the authority. David Bunker said you did this administratively and the board looked at the contract,  
20 we are doing it opposite. Craig White said the problem we are dealing with here is that we do not have the time.  
21 David Bunker said the timing is a self-imposed issue.

22 Brian Braithwaite said he suggests we do as David has proposed and give Jon the authority to negotiate it, open  
23 up to the board as soon as Jon has what he believes to be the contract, let the board know, if three or more members  
24 feel it should be brought back then there can be an emergency meeting to discuss and approve as a board. Craig  
25 White said instead of doing a straw poll by email, he would prefer to schedule a special meeting for next week. Jon  
26 said he would be out of town next week at the policy meeting to lobby congress. Mark said he is comfortable with  
27 Brian and David's suggestion. Chris Condie said he agreed with Craig and would like to set a time for a special  
28 meeting. Jon said he would negotiate the contract, David Barlow can update the spreadsheet, and get that out; if  
29 everyone is comfortable that vote could take place and award it, if not you can wait. Next week happens to be the  
30 NACWA Board meetings for the policy week, Jon needs to be there, to meet with our congressional representatives,  
31 as the infrastructure and nutrient issues are key right now. It is a fairly important meeting for us and we have made a  
32 lot of headway.

33  
34 **David Bunker made a motion to approve the notice of award to Brown & Caldwell, and authorize the**  
35 **District Manager, Jon Adams, to negotiate contract, upon successful negotiation, Jon will give the board 3**  
36 **working days notification, at which time the board can call, ask questions or meet with Jon to clarify any part**  
37 **of the agreement, if 3 or more board members oppose the approval of that then the Board Chair will be**  
38 **notified to set special meeting where the entire board can convene to discuss that. At the end of those 3 days,**  
39 **there are not 3 board members who oppose then the contract shall be signed by the District Manager. Brian**  
40 **Braithwaite seconded the motion.**

41 Dale Ihrke suggested including a not to exceed amount in the motion. Commissioner Lee commented that if the  
42 contract does go through this process clean and Jon signs it, that it come back before the board for ratification.

43 **David Bunker amended his motion to include not to exceed \$600,000 per the budget, and that it is ratified**  
44 **at the next regular schedule board meeting. Brian Braithwaite seconded the amended motion. Those voting**  
45 **“Aye” – Mark Johnson, David Bunker, Commissioner Bill Lee, Spencer Kyle, Brian Braithwaite, Craig**  
46 **White, Dale Ihrke and Lynn Walker. Those voting “Nay” - Chris Condie. The motion passed with a**  
47 **majority vote.**

## 48 49 **Communication**

### 50 **1. Manager's Report**

1 Jon said he appreciated those cities that made comments relative to the Utah Lake issues. Jon said Dale Ihrke  
2 wrote a great letter, which even brought calls to him from the state. Jon said Saratoga Springs wrote in a comment  
3 that said they think the POTW representative should be TSSD. Jon said he went to the Alpine City Council meeting;  
4 they were very supportive and Mayor Wimmer went to the Utah Lake Technical Committee meeting and voiced his  
5 concern. We had quite a bit of support from other agencies that wondered why we weren't at the table. We have  
6 schedule an education workshop on March 30, here at the District. Provo and Orem are participating and we have  
7 invited representatives from DWQ, and some of the researchers to try to help educate people on the lake issues on  
8 both sides.

9 Brian Braithwaite asked if these commission meetings are open. Jon said yes. Brian asked if there were any  
10 reason why we wouldn't ask Orem and Provo to be there even though TSSD is the identified organization. Jon said  
11 they already have representatives as municipalities. They city's mayors usually sit on the Utah Lake Commission  
12 and then each city has the right to appoint a technical committee member. We are saying we need a voice on this  
13 steering committee which will be directing the science. Spencer said Saratoga Springs has requested to be one of the  
14 three municipalities represented on the Steering Committee. Their position is that no other city in Utah County has  
15 as much lake shore frontage as Saratoga Springs and they are deeply affected by it. Spencer said however, they have  
16 been told, off the record, that those spots will be going to Orem, Provo, and a city south of Provo. Maybe it will,  
17 maybe it won't. That is also one of the reasons why Spencer suggested his city make the comment that TSSD be  
18 represented in that Provo and Orem, who operate their own treatment facilities, most likely will already have a seat  
19 on this steering committee. Jon said those three municipal positions, can put a POTW on there as well. It will be  
20 interesting to see how that goes. Brian said he brought that up because you can be a politician and not understand  
21 what the impact is on the technical side, so having their people there so they can have that discussion with them  
22 afterwards is valuable. Jon said Provo and Orem's people are very active on the technical committee right now.

23 Jon said originally, the limit has to be met by 2020 is 1mg/L phosphorus, and there has been talk of dropping  
24 the limit below that. The good news is that as we have pressed the legislature and lobbied to make people aware of  
25 the costs of meeting a lower limit, so there has been new language added "notwithstanding the development of water  
26 quality criteria for Utah Lake, in particular Nitrogen and/or Phosphorus, DWQ assures that these criteria will not be  
27 implemented before January 1, 2030." Jon said that is a big deal. Jon said he has spoken with Walt Baker, DWQ.  
28 Right now, the trust level is really low and we know of some ways that a stricter limit can come in through the back  
29 door. For example, if a TMDL is performed on the lake that says it is required to impose more stringent steps. Walt  
30 is saying that will not happen and no limits from the 1mg/L phosphorus will be implemented in practice or permit  
31 before 2030. That gives us the ability to determine what we are doing to design, build the best we can, set the money  
32 aside and explore our options. That is a direct result of the effort.

33 Jon said DWQ is saying this is their project, they own it, and they are going to make sure everything is  
34 balanced. DWQ is saying they are going to seek nominations for, and finalize the composition for the steering  
35 committee. Before they were just going to finalize it. Now there is a science panel as well, so we can have more  
36 input. This will be taken to the Utah Lake Commission and they will give their approval. The committees will come  
37 up with a charter for what they are going to do. The other thing was they were excluding the people who had worked  
38 on the lake, and they have now changed that. Researchers like Dr. Miller and Dr. Richards who have come and  
39 reported here can be on the science panel. POTWs were added back in, there are three municipal positions, and there  
40 is interest from probably 8 or 9 of the 15 municipalities. Jon said he has heard the same rumor that it will probably  
41 be Provo, Orem and someone from the south end of the county. We will see how that falls out.

42 Chris Condie said he agreed with Spencer that we want someone like Saratoga Springs, but if it ended up  
43 being Provo, Orem and a city south of them, would that be a detriment to us. Jon said no, not necessarily, because  
44 they share very similar interests. Jon said it is dependent on who they put on and how active they are. Jon said there  
45 were no less than 300 recreational clubs that all wanted to be on the committee. So DWQ added in anglers and  
46 hunters. Utah Lake Commissioner, Eric Ellis, will be on there, and the deputy director of DWQ. A comment was  
47 made, why wasn't it just a DWQ representative. Walt Baker, DWQ Director announced that his retirement will be in  
48 May. The deputy director was Erica Gaddis, who DWQ hopes becomes the director. So DWQ agreed to change that  
49 to a DWQ representative. You have until April 7<sup>th</sup> to make comments. DWQ will provide final approval, science  
50 panel composition membership and charter. We have added language and got it to where we can get the people on

1 the committee we need. That is a big deal. Jon said Eric Ellis emailed him and asked him if he was interested in  
2 being on the committee. Jon said we need to keep up our efforts, follow through and get the representation we need.  
3 We do not want to wait and have the 2030 date be a sucker punch, the science will tell us if we need to do anything.  
4 The outcome should be what is good for the lake. We got into this fight because we had some real concerns that if  
5 we just targeted a few nutrients and didn't look at this holistically, we could harm the ecosystem. Another important  
6 issue is people do not understand the cost implications tied to this and doesn't guarantee you are turning Utah Lake  
7 into Bear Lake or the like. Brian Braithwaite said that is the perception. The editorial in the Daily Herald made that  
8 clear when they were congratulating what passed and didn't pass. They expressed their appreciation that this joint  
9 resolution was passed because then it could return the quality to the lake. Jon said that was HCR 26, which we didn't  
10 have time to fight. It was really a feel-good resolution.

11 Jon said Dale Ihrke wrote an exceptional letter and it caught the attention of the state DWQ. Dale said it  
12 wasn't a long letter, it was just an email in response to Jon's request that the municipalities send something in and try  
13 to get those POTW slots back on. Dale sent an email to Eric Ellis and he forwarded it to DWQ. Dale spoke with  
14 Erica Gaddis on the phone that morning. Basically, she wanted to reassure Dale. She said it was a mistake pulling  
15 the POTW slots, and they understood that now, so they put the one back on. She mentioned the three municipal  
16 slots, and hopefully one will be another POTW. She told him of the 2030 date and they got talking about Utah Lake  
17 and the algae, and she said they may have over pushed the 2016 algae bloom. They really pushed it as a driver for  
18 getting this TMDL going quicker. She said they always intended to do a TMDL on the lake; they were using the  
19 algae as an example of what can happen if we do not get on top of the water quality issues in Utah Lake and it kind  
20 of took on a life of its own. Dale said he told her he is not a representative of TSSD, although on the board, he has  
21 been in a few meetings, presentations, and told her they have a trust problem with POTWs. Dale suggested that they  
22 have a special meeting with the POTW group, listen to them, she mentioned coming here and Dale said he didn't  
23 make that meeting, but he understood it was so short they came and presented but didn't get any feedback from us.  
24 She offered to come back to TSSD Board.

25 Jon said the Utah Lake Commission meets on March 23<sup>rd</sup>. There will be time to comment before it goes  
26 back for finalization. Letting them know that you were interested and there were concerns definitely made a  
27 difference and Jon would suggest continuing that until this is finalized and then we must keep on top of it.

28 The plant was in compliance for the month of February. There were not minutes ready from the retreat.  
29 They will be sent out to the board for comment. Jon said he also has the facilitator's summarization, and he will  
30 include those. Spencer said it seems each comment is less important than the consensus that were drawn, the  
31 direction we agreed to go, nothing is official that comes out of there anyways. Jon said Danette will capture the key  
32 points, and will include the summarizations.

33

34 **Chris Condie made a motion to go into closed session for the purpose of pending litigation. David Bunker**  
35 **seconded the motion. Mark Johnson took a roll call vote. Those voting "Aye" – Mark Johnson, David**  
36 **Bunker, Commissioner Bill Lee, Spencer Kyle, Brian Braithwaite, Chris Condie, Craig White, Dale Ihrke and**  
37 **Lynn Walker. Those voting "Nay" – None. The motion passed with a unanimous vote. 7:17 p.m.**

38

39 **Closed Meeting**

40

41 **David Bunker made a motion to go back into regular session. Lynn Walker seconded the motion. Those**  
42 **voting "Aye" - Mark Johnson, David Bunker, Commissioner Bill Lee, Spencer Kyle, Brian Braithwaite, Chris**  
43 **Condie, Craig White, Dale Ihrke and Lynn Walker. Those voting "Nay" – None. The motion passed with a**  
44 **unanimous vote.**

45

46 **Adjourn: David Bunker made a motion to adjourn. Lynn Walker seconded the motion. All present**  
47 **"Aye". Meeting adjourned. 8:12 p.m.**

48