



**LAKEWOOD WATER DISTRICT  
BOARD OF COMMISSIONERS  
Minutes of Special Meeting  
September 7, 2023  
Boardroom & Via Zoom**

**1. CALL MEETING TO ORDER**

President Korsmo called the Regular Meeting to order at 8:00 AM

**2. ATTENDANCE**

Present at the meeting: Commissioners J. Korsmo, G. Rediske (Zoom), and G. Barton (Zoom); General Manager R. Black, Engineering Manager M. Meyer (Zoom), Administrative Assistant J. Clark, Tom Pors (Zoom) and Curtis Chambers (Zoom).

**3. PUBLIC COMMENT**

None.

**4. POLICY 2030 REVIEW**

General Manager Black shared that Tom Pors, Water Rights Attorney for the District, will present information on how Policy 2030 affects the District. The municipal water law was approved in 2003, and DOE is revising the policy, and has several implications on water rights and water rights transfers and trust programs. Commissioner Barton has also worked on this issue with Judi Gladstone, WASWD.

Mr. Pors shared there are four specific and one general area of concern. **The first one is the concept of the original intent of the water application.** The Draft Policy's formulation and application of "original intent" exceeds Ecology's delegated authority from the Legislature. While the Draft Policy references "original intent" seven times, this term does not appear in the Water Code or the MWL. Ecology failed to cite a legal basis for its claimed authority to use "original intent" as (1) a litmus test for the "good standing" of MWSP water rights, (2) for the analysis of the scope and validity of MWSP water rights, (3) as a test for adding a new well that requires a change application, or (4) for case-by-case determinations about MWSP water rights proposed for use as mitigation. The Legislature did not include "original intent" as a statutory requirement for water rights changes or trust water rights. He shared the intent that worked in 1960 and 1980 might not work in 2023; they are going to be different to do an increase in water connections in communities.

**The second area of concern is the good standing of municipal water rights.** How they're protected from relinquishment and the concept of active compliance. We're taking the position and comment letters that ecology does not have the ad hoc authority that they're claiming to have to determine the group standing of a municipal water right outside of three very limited statutory exceptions, and that is the adjudication of water rights. On the occasion of an

application to change rights or if there's evidence of fraud or misrepresentation in the original application for a water right, none of those would apply.

**The third issue has to do with public interest and the subject of litigation.** We're relying on the use of existing water rights and even the rights of other municipalities to mitigate impacts. So, getting the most use out of flexible municipal water rights is really key to allowing communities like Lakewood Water District to continue serving growth in their service areas.

**The fourth item is the consolidation of municipal water systems.** We are concerned with the general statement that filing a water right change application under RCW 90.03.380 or 90.44.100 is required if a change or additional point of diversion and/or withdrawal is needed. Given the severity of PFAs and PFOs contamination, the high cost and uncertainty of treatment, and the impact of "forever pollutants" on public health, we would appreciate it if Ecology included examples of statutory exceptions to the change application requirements and abbreviated procedures relating to public health emergencies and water system consolidations resulting from failed water systems.

**The fifth item is the need for increased flexibility and use of existing MWSP water rights.** The problems identified above and in the WWUC and RWCPD comment letters make it harder for municipal suppliers to use existing MWSP water rights to serve growing communities and respond to climate change and environmental justice problems. This, in turn, forces municipal suppliers to file more water rights change applications and new applications despite the near impossibility of meeting the current and unsustainable "perfect mitigation" standard for impacts on instream flows due to the Foster decision. Thus, Ecology's Draft Policy is exerting more control over the use of municipal water rights and the development of growing communities than intended by the Legislature. Ecology can assist municipal water suppliers like LWD to comply with their public health and growth management obligations by eliminating the identified roadblocks and uncertainties and revising the Draft Policy to honor the legislative intent and purpose to provide certainty and flexibility to municipal water rights.

General Manager Black shared that the letter to comment on the EPA draft policy has been sent to the Commissioners. Staff would like to forward this letter to EPA by September 30, 2023. We will seek approval and signature at the September 28, 2023, board meeting if there are no changes.

Commissioner Rediske asked for clarification on what we are commenting on (legal or legislative). Mr. Pors shared that we are commenting on the DOE interpretation of the municipal water law and how it will be applied to specific events. We are responding to the DOE request for comments on municipal water law.

Commissioner Korsmo thanked Mr. Pors for his time and work on this subject.

**5. EXECUTIVE SESSION RCW 42.30.110(1)(I) TO DISCUSS WITH LEGAL COUNSEL REPRESENTING THE AGENCY MATTERS RELATING TO DISCUSSION WITH LEGAL COUNSEL REPRESENTING THE AGENCY LITIGATION OR POTENTIAL LITIGATION.**

Commissioner Korsmo called Executive Session to order at 8:35 AM, expected time 20 min. at 8:55 AM extended for 5 minutes. Commissioner Korsmo closed the Executive Session at 9:00 AM.

**6. PUBLIC COMMENT**

None.

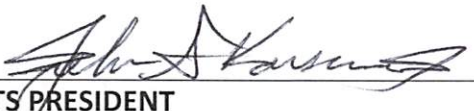
7. Next Commissioners Meeting Special Thursday, September 28, 2023, at 8:30 AM.

**8. ADJOURN**

President Korsmo adjourned the meeting at 9:01 AM.

**LAKWOOD WATER DISTRICT  
BOARD OF COMMISSIONERS**

BY:

  
ITS PRESIDENT

BY:

  
ITS VICE PRESIDENT

BY:

  
ITS SECRETARY

BY:

 9/28/23  
DISTRICT-SECRETARY (DATE)