

JACKSON TWP WATER AUTHORITY

May 13, 2011

WALTER DITCHCREEK, CHAIRMAN OPENED THE SPECIAL MEETING at 7:00 p.m. Other board members in attendance were Robb Piper, Vice Chairman; Ray Dodson, Treasurer, John Wallet, Secretary, and Don Hrapchak. CJ Webb, JTWA Solicitor and Steve Sewalk, Engineer representing EADS, were also present.

NEW BUSINESS:

The Solicitor and Engineer explained that an informal conference took place on Wednesday, May 11, 2011, at Special Counsel Michael Parrish's office in Johnstown involving the Solicitor, the Engineer, and special Counsel on behalf of JTWA and the attorney for DT Construction and a representative of DT Construction. The informal conference was requested by DT Construction's legal counsel. At the conference, the participants explored possible resolution of the May 17, 2011, hearing issues and possible settlement of all outstanding litigation. At this conference, it was DT Construction's position that any problems on the Swigle Mountain waterline project were caused by the actions and/or inactions of the prior engineer.

Mr. Sewalk and the Solicitor updated the board on the various requests for change orders which were previously submitted by DT Construction and discussed a possible settlement of all outstanding change orders, claims and litigation. Under the proposal, the Petition for Injunctive Relief currently pending in the Court of Common Pleas of Cambria County, Pennsylvania and scheduled for a hearing on Tuesday, May 17, 2011 before Judge Kiniry, will be resolved pursuant to a Consent Order. The Consent Order will provide, as follows:

- Jackson Township Water Authority will approve the Change Order for the Telemetry modifications on the Water System Improvement Project identified in the Complaint of the Jackson Township Water Authority (hereinafter referred to as the "Project");
- DT Construction, Inc. will complete all work associated with the Telemetry modifications and bring the pump station online on or before June 15, 2011;
- DT Construction, Inc. will pay, in full, all subcontractors for work completed and all materials and equipment used on the Project and/or will otherwise resolve the claims of any subcontractor related to the Project on or before June 15, 2011;
- DT Construction, Inc. will defend and/or indemnify JTWA for claims made by any subcontractor related to the Project; and
- DT Construction, Inc. will complete all work to satisfy any outstanding punchlist items and/or remediation work necessary for final completion of the Project on or before June 15, 2011.

- The Court will retain jurisdiction of this matter for the purposes of enforcing any of the provisions of this Order as set forth above.

The additional claims of the Parties, as more fully set forth in the Complaint of DT Construction, Inc. filed at No. 2011-467 in the Court of Common Pleas of Cambria County, Pennsylvania and of the Complaint of the JTWA filed at No. 2011-1609 in the Court of Common Pleas of Cambria County, Pennsylvania, shall be resolved pursuant to a Mutual Settlement Agreement and General Release executed by the Parties. In addition to the Court Order, the terms and conditions of the Settlement Agreement shall include that:

- Upon completion of the Project, JTWA shall issue a final payment to DT Construction, Inc. in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) representing payment for and full satisfaction of any and all claims for work on the Project including, but not limited to, all Change Orders, retainage, and any other sums due and owing to DT Construction, Inc. for work on the Project;
- In consideration of the payment set forth above, DT Construction, Inc. will waive any and all claims related to its work on the Project including, but not limited to, those claims set forth in Civil Action No. 2011-467;
- JTWA, in consideration for the mutual covenants set forth above, will waive any and all claims against DT Construction, Inc. as set forth in Civil Action No. 2011-1609. Said waiver shall not include claims currently unknown or those which may hereafter arise, including, but not limited to, those which may be the subject of any warranty claim for the work performed by DT Construction, Inc. on the Project; and
- DT Construction, Inc. will fully cooperate with the JTWA in its efforts to seek reimbursement for the funds paid to DT Construction, Inc. related to its work on the Project.

A discussion occurred regarding the unpaid subcontractors, including USEMCO in the amount of \$78,255.00, AC Miller, and New Enterprise. The status of any claim with DT Construction's bonding company, and the Pennsylvania Department of Transportation invoices in the amount of \$1,646.31 and \$395.84, which were paid directly by JTWA, were also discussed.

A lengthy discussion occurred regarding JTWA options related to this proposal. This discussion included a historical review and consideration of the need to get the new waterline and system operational in the area. Positive and negative considerations were discussed and reviewed, including the review of various questions that the proposal raised. Various board members presented opposing views and raised concerns regarding the options presented, including the likelihood of success and the cost of continued litigation. A lengthy discussion took place regarding the positive and negative aspects of each option and the specifics of the proposal.

The Board went into executive session at approximately 7:45 p.m., to discuss the litigation in the Court of Common Pleas of Cambria County related to DT Construction failing to perform on the contract and failing to make payment to subcontractors. The Board reconvened at approximately 8:25 p.m., and indicated that no action was taken or decisions made, during the executive session.

There being no further questions, the Solicitor inquired how the Board would like to proceed. MOTION BY DON, SECOND BY ROBB, AND APPROVED BY ALL, TO ACCEPT THE PROPOSED SETTLEMENT CONDITIONED UPON THE ENTRY OF THE COURT ORDER AND THE COMPLETION OF ALL WORK BY DT CONSTRUCTION BY JUNE 15, 2011.

A discussion occurred regarding the status of any unresolved easements related to this project.

OLD BUSINESS:

A discussion occurred regarding the possibility of supplying water to Croyle Township and a water service line which may be used to provide water service to Croyle Township. It was decided that it was premature to discuss this possibility until the Swigle Mountain waterline project is complete and operational.

MOTION BY ROBB, SECOND BY DON, AND APPROVED BY ALL, TO ADJOURN THE MEETING AT 8:35 p.m.