

In the Matter Of:
East Chicago Waterway Management

DISTRICT BOARD OF DIRECTORS - SPECIAL MEETING

March 07, 2023



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In the Matter Of:
East Chicago Waterway Management

DISTRICT BOARD OF DIRECTORS' - SPECIAL MEETING
March 7, 2023

1 EAST CHICAGO WATERWAY MANAGEMENT DISTRICT
2 BOARD OF DIRECTORS' SPECIAL PUBLIC MEETING

3
4 City of East Chicago, Engineering/Annex Building
5 4444 Railroad Avenue
6 East Chicago, Indiana

7
8 MARCH 7, 2023

9 Tuesday, 3:30 p.m.
10

11
12 Transcript of The East Chicago Waterway Management
13 District Board of Directors' Special Public Board
14 Meeting had in the above-entitled matter on the 7th day
15 of March, 2023, at 3:30 p.m., before Jennifer R.
16 Wheeler, CSR, and Notary Public, within and for the
17 County of Porter, State of Indiana.

A P P E A R A N C E S

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JOHN FEKETE, President

RAYMOND LOPEZ, SR., Treasurer and Fiscal Officer

HENRY RODRIGUEZ, Secretary

JOHN BAKOTA, Board Member

JAYLAN ROBINSON, Board Member

JIM WIESER, East Chicago Waterway District's Real Estate Attorney

FERNANDO TREVINO, FMT Consulting

**ELLEN D. GREGORY (Via Zoom)
Attorney for East Chicago Waterway District**

ALSO PRESENT:

TAMARA LIENHART, Director of External Affairs, BP

MICHAEL ELAM, Attorney for Atlantic Richfield Company

1 MR. FEKETE: I'd like to call to order
2 the East Chicago Waterway Management District's Special
3 Board of Directors' Meeting. Today's date is March 7th,
4 and the time is 3:45.

5 The first order of business is a roll call.
6 John Bakota?

7 MR. BAKOTA: Here.

8 MR. FEKETE: Henry Rodriguez?

9 MR. RODRIGUEZ: Here.

10 MR. FEKETE: Jaylan Robinson?

11 MR. ROBINSON: Here.

12 MR. FEKETE: Kevin Doyle?

13 (No response.)

14 MR. FEKETE: Ray Lopez?

15 MR. LOPEZ: Here.

16 MR. FEKETE: John Fekete? I'm here.

17 We have a quorum.

18 Next item is the Executive Director's
19 Report.

20 Mr. Trevino?

21 MR. TREVINO: Yes. Fernando Trevino with
22 FMT Consulting.

23 So we have two items on today's special
24 board meeting agenda. One is a settlement and dismissal
25 lawsuit with Harsco Corporation regarding the 2022 user

1 fees, and the second one is the settlement agreement
2 between the East Chicago Waterway Management District,
3 the City of East Chicago, and Atlantic Richfield. And
4 so those are the two items.

5 And the first one is the settlement
6 agreement, so if you're ready to jump in?

7 MR. WIESER: Yes, I am.

8 MR. TREVINO: Okay. Attorney Wieser,
9 would you like to give a quick summary of the settlement
10 and dismissal of the lawsuit with Harsco?

11 MR. WIESER: Yeah, sure. Harsco was the
12 one user that hadn't paid their user fees for the
13 calendar year 2022, and despite several notices sent to
14 them, they failed to pay. So we filed a lawsuit in the
15 county courts; that got their attention really quickly.
16 And we entered into a settlement agreement. The trial
17 was set for this coming Thursday. We entered into a
18 settlement agreement for the full amount, plus the late
19 fees, plus the court costs. We received their checks
20 for payment in full yesterday, and based on that, and
21 based on the settlement agreement that we had all
22 signed, as you're aware, John, that John had previously
23 signed, I filed a motion to dismiss the case with
24 prejudice today. It's been filed with the court, and I
25 filed a form of order, so I'm assuming in 24-48 hours

1 we'll get it back. So the entire matter has been
2 resolved and settled.

3 And my suggestion, if you were to entertain
4 a motion, that you approve that settlement, and then
5 also approve and ratify John's signature on it the other
6 day so we can get it done before that court hearing.

7 MR. FEKETE: Okay. I'll entertain a
8 motion to that extent.

9 MR. BAKOTA: I make a motion that we
10 approve and ratify the signature and agreement.

11 MR. LOPEZ: Second.

12 MR. FEKETE: And we have a second.

13 Okay, roll call vote.

14 John Bakota?

15 MR. BAKOTA: Yes.

16 MR. FEKETE: Henry Rodriguez?

17 MR. RODRIGUEZ: Yes.

18 MR. FEKETE: Jaylan Robinson?

19 MR. ROBINSON: Yes.

20 MR. FEKETE: Kevin Doyle?

21 (No response.)

22 MR. FEKETE: Ray Lopez?

23 MR. LOPEZ: Yes.

24 MR. FEKETE: John Fekete? I vote yes.

25 That motion is approved.

1 The next order of business is the East
2 Chicago Waterway Management District, City of East
3 Chicago, and Atlantic Richfield Settlement Agreement.

4 MR. TREVINO: Yes. You have in your Board
5 packet a settlement agreement that the three parties
6 have been working really hard at for the last two-plus
7 years. I think the agreement does a very good job of
8 resolving key issues that are important to all three
9 parties. It resolves the 1991 agreements between the
10 City, IDEM, and I think it was Atlantic Richfield, and
11 also the Two-Party Agreement. It also transfers the
12 obligations from the City to Atlantic Richfield, and
13 Atlantic Richfield agrees to release and defend and hold
14 harmless the District and the City from liabilities.

15 It also transfers obligations related to the
16 RCRA groundwater issues related to these properties.
17 And all the properties that are being transferred are
18 the former ECI refinery parcels, except for the parcels
19 that make up the Confined Disposal Facility, and also
20 the parcel near the MacArthur Golf Course/East Chicago
21 Central High School.

22 The District may choose to keep this
23 property after Atlantic Richfield has completed an
24 environmental investigation and, if necessary, remediate
25 that particular parcel at no cost to the District or

1 City, and the District agrees to cooperate with Atlantic
2 Richfield's access needs necessary to perform
3 investigation and remediation activities.

4 The District and the City may also negotiate
5 a stormwater easement for the City's existing concrete
6 culvert that runs through the South Tank Farm on the
7 condition that it does not impair or materially
8 interfere with Atlantic Richfield's South Tank Farm
9 environmental remedies.

10 The District is transferring all these
11 properties in an "as-is" condition, and there is a
12 Release, Indemnification, Defense and Hold Harmless
13 provision that protect both the District and the City.

14 Environmental obligations related to the
15 parcels are transferred to Atlantic Richfield.

16 Liability and obligations related to the
17 Confined Disposal Facility stay with the District and
18 the Army Corps.

19 The District's obligations under the Section
20 10 Permit Agreement shall cease and be transferred to
21 Atlantic Richfield.

22 And the District and Atlantic Richfield
23 agree to cooperate to modify all of the existing Great
24 Lakes Legacy Project Agreements with EPA so these
25 Project Agreements are consistent with the intent of the

1 Settlement Agreement.

2 The District's obligations related to the
3 Sheet Pile Wall O&M and providing property access shall
4 cease and become Atlantic Richfield's obligations.

5 The District and Atlantic Richfield agree to
6 cooperate to modify the GLLA Cost Share Agreements
7 between the District and Atlantic Richfield and BP.

8 The parties agree to cooperate to modify or
9 terminate any other existing agreements pertaining to
10 the properties being transferred as may be necessary to
11 accomplish the intent of the Settlement Agreement.

12 The \$4.5 million payment in the Settlement
13 Agreement is to be placed in escrow and delivered to the
14 District after the properties are conveyed/transferred.

15 And the Settlement Agreement is between
16 three parties: The District, the City, and Atlantic
17 Richfield.

18 I want to thank the Mayor and his team for
19 their cooperation on coming through with this final
20 agreement. I'd like to thank Atlantic Richfield and
21 their negotiation team. I'd like to thank the
22 District's negotiation team, which included Attorney
23 Ellen Gregory, Attorney Jim Wieser, and myself. I want
24 to thank the Board for their support and input for the
25 last couple of years as we were working on this

1 Settlement Agreement. I also want to thank the City for
2 entrusting the District to take the lead on the
3 negotiations of the Agreement. I think, as I mentioned,
4 that the final agreement is win/win situation for all
5 three parties.

6 Attorney Wieser, is there anything you want
7 to add?

8 MR. WIESER: I don't believe so. Maybe
9 that it's a win/win/win, since there are three parties.
10 I'll add that.

11 MR. FEKETE: Okay. At this point in
12 time, is there anything that the AR people, BP people
13 want to add?

14 MR. ELAM: No, we'd just like to thank
15 everyone, as Fernando said, for working together on
16 this.

17 MR. FEKETE: Well, thank you for
18 attending.

19 I'll entertain a motion to approve this
20 Settlement Agreement.

21 MR. BAKOTA: Motion to approve.

22 MR. RODRIGUEZ: Second.

23 MR. FEKETE: And a second.

24 We'll have a roll call vote.

25 John Bakota?

1 MR. BAKOTA: Yes.

2 MR. FEKETE: Henry Rodriguez?

3 MR. RODRIGUEZ: Yes.

4 MR. FEKETE: Jaylan Robinson?

5 MR. ROBINSON: Yes.

6 MR. FEKETE: Kevin Doyle?

7 (No response.)

8 MR. FEKETE: Ray Lopez?

9 MR. LOPEZ: Yes.

10 MR. FEKETE: John Fekete? I vote yes.

11 That motion is approved.

12 Is there any other new business to come
13 before the Board?

14 MR. TREVINO: No, but I did want to
15 report that now that Atlantic Richfield has approved and
16 signed the Settlement Agreement, and the District has
17 approved it, and after they sign, the Settlement
18 Agreement is scheduled to be presented at the City's
19 Board of Public Works Meeting this Thursday at 4:30.
20 And Attorney Wieser and I plan to attend that Board of
21 Public Works Meeting.

22 MR. FEKETE: Okay. Very good. Any
23 other comments?

24 MR. BAKOTA: I'd like to make it on the
25 record, and I think I can speak for the Board, everybody

1 involved did a good job. It took a long time, through
2 ups and downs, we were frustrated and all that. But it
3 finally came down and makes us feel like we're doing
4 something here after all these years. And you guys did
5 a good job and you did your professional best, and I
6 want to thank you. Make that a record, of all of this.

7 MR. FEKETE: Probably since I'm one of
8 the longest-serving members of the Board, I have to echo
9 your comments in saying that we've come a very long way
10 from where we were when I first got on the Board in
11 1991. And at this point, I don't want to revisit any of
12 that.

13 Any other new business? Any public
14 comments?

15 (No response.)

16 Hearing none, I'll entertain a motion for
17 adjournment.

18 MR. BAKOTA: Motion to adjourn.

19 MR. FEKETE: Do I have a second?

20 MR. ROBINSON: Second.

21 MR. FEKETE: And a second.

22 All in favor, signify by saying aye.

23 (All signify aye.)

24 Our next Board Meeting is March 16, at 5:30
25 at this facility.

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This meeting is adjourned. Thank you.

****** Meeting adjourned******

C E R T I F I C A T E

I, Jennifer R. Wheeler, Certified Shorthand Reporter (CSR), and Notary Public within and for the County of Porter, State of Indiana, do hereby certify that I appeared on the aforementioned date, time, and location, for the East Chicago Waterway Management District Board of Directors' Special Public Board Meeting.

I further certify that I then and there reported in machine shorthand the proceedings of said Special Meeting, and that the proceedings were then reduced to typewriting from my original shorthand notes, and the foregoing transcript is a true and accurate record of said proceedings.

I further certify that I am not related by blood or marriage to any of the parties, nor am I an employee of any of the parties or of their attorneys or agents, nor am I interested in any way, financially or otherwise, in the outcome of said litigation.

Dated this 15th day of March, 2023.

Jennifer R. Wheeler, CSR

Jennifer R. Wheeler, CSR
My Commission expires: 2/22/2024



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