

STATE OF NEW MEXICO
COUNTY OF OTERO
TWELFTH JUDICIAL DISTRICT

CASE # D-1215-CV-2008-00577
JUDGE: Reynolds

VIRGIL BEAGLES, et al.,
Plaintiffs,

-vs-

TIMBERON WATER & SANITATION
DISTRICT, et al.,
Defendants,

Motion for Court Review and Authorization

COMES NOW Receiver Dennis Karnes by undersigned counsel and requests this Honorable Court review authorize the Receiver to address forthwith the following pressing needs in the manner indicated.

- 1) Approval of the Receiver's February 19, 2011, acceptance of the resignations of certain Directors, either formally in writing, or by abandonment by conduct and refusal to participate as a Director—although physically present—in an apparent effort to prevent a quorum for the enactment of the statutorily annual resolution necessary for as a prerequisite to any form of legitimate Board action.
- 2) Order former Director Burt Rubinowitz to release and relinquish to the Receiver or his designee the TWSD website, [which, upon information and belief, was originated by former Director Rubinowitz while and as a Director of TWSD] in order for the Receivership to disseminate accurate factual information to the District's members.



- 3) Review and approve the application of stand-by fees in partial settlement of liquidated claims by litigants.
- 4) In order to protect and insure the rights and interests of all "sides"—the District's full-time resident members, part-time resident members and non-resident members—it is essential to specifically address each of the following very pressing needs of the district and to authorize Receiver to implement the indicated actions:
 - a) Amend the Articles and re-structure the Board of Directors to fairly elect District or Class positions on the Board and to require a majority vote for Board action that consists of votes in the affirmative by one or more members of each class of Directors.
 - b) Change the By-Laws to require a majority vote of each class for any amendments, in order to insure the permanence of the foregoing re-structure.
 - c) Appoint Directors to fill vacancies on the Board until fair and balanced elections can be held after the Reorganization.
 - d) Properly train and educate Board Members with regard to:
 - i) Their legal responsibilities and fiduciary obligations.
 - ii) Recognize what is, or may be perceived to be, a conflict of interest.
 - iii) Enable them to distinguish between the functions and areas of responsibility of the Board and not the functions of the Manager.
 - iv) How to obtain and recognize sound legal advice.
- 4.) Authorize the Receiver to reorganize Management and Office Staff by eliminating all current positions and creating and hiring new ones that will establish:
 - a. Management that will:
 1. be qualified, competent, professional and efficient.
 2. implement a clear and efficient chain of command.



3. hire and employ personnel with a demonstrably professional work attitude, who are will place the work-place agenda over and above any personal agendas during work hours.
 4. Able to distinguish between Manager and Director functions.
 5. Able to stand up to individual Directors when those functions are blended.
 6. Implement policies and procedures for full compliance with Federal and State Occupation, Safety, and Health regulations.
 7. Implement office systems that are will provide accurate and timely billing and tracking systems for all necessary data.
- b. Office and field staff positions and chain of command that will:
1. Be accountable for tasks described in job descriptions.
 2. Insure that the District will monitor and is in compliance with all State, and Federal, Statutory and Reporting Requirements, particularly Auditing, Bonding, and Insurance Regulations.
 3. Permit prompt and accurate location of documents in the office.
 4. Establish clear areas of responsibility.
 5. Eliminate present overlap and duplication of areas of responsibility.
 6. Establish job descriptions and responsibilities for efficient completion of assigned tasks.
- c. Standard office policies and procedures for all office personnel including, but not limited to, areas covering :
1. Professionalism.
 2. Gossip and Rumor Mongering.
 3. Computer usage.
 4. Cell phone, Office phone, and facilities and equipment usage.
 5. Insubordination.
 6. Dissemination of accurate information to all members of the District.
 7. Conflicts of interest.



5.) The District can improve its Economic Condition if the Court will allow it to:

- a. Implement a reduction in recurring expenditures without sacrificing the quality of operations.
- b. Improve the income and expenses involved in the swimming pool, golf course, and lounge to produce positive returns on these facilities by:
 - i. Exploring new lease possibilities for each of these facilities.
 - ii. Re-negotiation of the DTI Lounge lease investigation of compensation for damages from prior breaches by Lessees.
- c. Continued exploration of the following for presentation to the Court for specific review and prior approval:
 - i. Possible Remedies for the prior sale of the Liquor License to then and former Directors for less than 10% of market value.
 - ii. Sale of personal assets of the District that are of no current nor foreseeable economic benefit to the District, subject to prior and specific court approval.
 - iii. Settlement approaches with regard to the outstanding legal debts of the District, including the transfer of District owned real estate lots at fair market value to creditors, subject to prior and specific court approval.
 - iv. Solutions to existing problems with collection of delinquencies, particularly stand-by fees, because the current program used by the District is not accurate.
- d. File suit for damages for breach of contract against Lessee DTI if they will not reasonably negotiate their prior and current breaches of the existing agreements.
- e. Propose by July 15, 2011, the filing of specific lawsuits against past fiduciaries involving:
 - i. Misfeasance
 - ii. Malfeasance
 - iii. Nonfeasance
 - iv. Breach of fiduciary duty



- f. Propose by July 31, 2011, the filing of specific lawsuits against prior legal representatives involving:
- i. Breach of Fiduciary Duty
 - ii. Legal Malpractice
 - iii. Conflict Of Interest
 - iv. Breach Of Contract
 - v. Negligence
- g. Hire a replacement Manager.
- h. Appoint successor Directors to fill existing Director position vacancies until regularly scheduled elections are held.


WHEREFORE, Receiver Dennis Karnes respectfully asks this Honorable Court:

1. Specifically authorize and direct the TWSD Receiver to implement each of the foregoing goals and activities.
2. Grant such other and further relief in the premises as is consistent with principles of law, equity, and good conscience.

Respectfully Submitted,

Deschamps & Kortemeier Law Offices, P.C.

by:



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Certification: I hereby certify that I have caused to be delivered to all parties of record or their respective counsel of record a true and correct copy of the foregoing this 12th day of April, 2011.

