

MINUTES OF REGULAR MEETING
BOARD OF DIRECTORS, ORANGE COUNTY WATER DISTRICT
November 15, 2017, 5:30 p.m.

President Bilodeau called to order the November 15, 2017 regular meeting of the Orange County Water District Board of Directors at 5:30 p.m. in the Boardroom at the District office. Following the Pledge of Allegiance to the Flag, the District Secretary called the roll and reported a quorum as follows.

Directors

Philip Anthony
Denis Bilodeau
Shawn Dewane
Cathy Green
Dina Nguyen
Vicente Sarmiento
Stephen Sheldon (absent)
James Vanderbilt (absent)
Bruce Whitaker
Roger Yoh

Staff

Mike Markus, General Manager
Joel Kuperberg, General Counsel
Janice Durant, District Secretary

VISITOR PARTICIPATION

There were no persons wishing to address the Board on items not listed on the agenda at tonight's meeting.

CONSENT CALENDAR

The Consent Calendar was approved upon motion by Director Green, seconded by Director Dewane and carried [8-0] follows:

Ayes: Anthony, Bilodeau, Dewane, Green, Nguyen, Sarmiento, Whitaker, Yoh
Absent: Vanderbilt, Sheldon

1. Approval of Cash Disbursements

MOTION NO. 17-155
APPROVING CASH DISBURSEMENTS

Payment of bills for the period October 26, 2017 through November 8, 2017 in the total amount of \$4,141,737.08 is ratified and approved.

2. Approval of Minutes of Board Meeting

MOTION NO. 17-156
APPROVING MINUTES OF BOARD MEETING

The minutes of the Board of Directors meeting held October 18, 2017 are approved as presented.

3. Designate Director Cathy Green as Voting Delegate at ACWA Fall Conference

MOTION NO. 17-157
DESIGNATING CATHY GREEN AS VOTING DELEGATE AT ACWA FALL CONFERENCE

Director Cathy Green is hereby appointed to cast the OCWD vote for the Association of California Water Agencies (ACWA) recommended slate of candidates (President Brent Hastey and Vice President Steve LaMar) at the upcoming election on November 29, 2017.

ITEMS RECOMMENDED FOR APPROVAL AT WATER ISSUES COMMITTEE MEETING
HELD NOVEMBER 8, 2017

4. Amendment to Agreement with W.A. Rasic Construction for Green Acres Project Blow-Off
Box Replacement

RESOLUTION NO. 17-11-143
APPROVING AMENDMENT TO AGREEMENT WITH W.A. RASIC CONSTRUCTION FOR
GREEN ACRES PROJECT BLOW-OFF BOX REPLACEMENT

WHEREAS, pursuant to Resolution No. 17-5-76 adopted May 24, 2017, OCWD authorized Agreement No. 1243 to W.A. Rasic Construction for Replacement of six of the Green Acres Project (GAP) Blow-Off Enclosure Boxes; and

WHEREAS, the Water Issues Committee has recommended issuance of Amendment No. 1 to such Agreement for Replacement of eight additional GAP Blow-Off Enclosure Boxes for an amount not to exceed \$48,800;

NOW, THEREFORE, the Board of Directors of the Orange County Water District does hereby approve issuance of the aforementioned Amendment as described herein; and, upon approval as to form by District General Counsel, it's execution by the District officers is authorized.

- 5 Agreement with DDB Engineering for Permitting and Regulatory Support Services for the GWRS Final Expansion Project

RESOLUTION NO. 17-11-144
AUTHORIZING AGREEMENT WITH DDB ENGINEERING FOR PERMITTING AND
REGULATORY SUPPORT SERVICES FOR THE GWRS FINAL EXPANSION PROJECT

RESOLVED, that issuance of an Agreement is authorized with DDB Engineering for an amount not to exceed \$198,000 for permitting and regulatory support services for the GWRS Final Expansion Project.

6. Annual Santa Ana River Stream Gauging Joint Funding Agreement with USGS

RESOLUTION NO. 17-11-145
APPROVING CONTINUED JOINT FUNDING AGREEMENT
WITH USGS FOR SANTA ANA RIVER WATER STREAM GAUGING

WHEREAS, pursuant to Resolution No. 799 adopted November 20, 1963, OCWD entered into a Cooperative Program Agreement with the U.S. Department of the Interior Geological Survey (USGS) to conduct stream gauging services along the Santa Ana River; and

WHEREAS, such program has remained in force, with modifications, since its inception pursuant to actions taken by this Board; and

WHEREAS, the District staff has recommended approval of continuance of such cooperative program under the USGS Joint Funding Agreement for Water Resources Investigations to conduct stream gauging of the Santa Ana River below Prado Dam and Santiago Creek at Santa Ana for the period November 1, 2017 to October 31, 2018, at a total cost of \$72,658, to be funded jointly as follows: \$18,050 by USGS and \$54,608 by OCWD;

NOW, THEREFORE, the Board of Directors of the Orange County Water District does hereby approve the aforementioned Joint Funding Agreement with USGS as described herein; and, upon approval as to form by District General Counsel, its execution by the District officers is authorized.

7. La Palma Recharge Basin Sluice Gate Modification Agreement to Doty Bros. Equipment Co.

RESOLUTION NO. 17-11-146
AUTHORIZING ISSUANCE OF AGREEMENT TO DOTY BROS. EQUIPMENT CO. FOR
LA PALMA SLUICE GATE MODIFICATION

RESOLVED, that issuance of an Agreement to Doty Bros. Equipment Co. is authorized for the La Palma Sluice Gate Modification for an amount not to exceed \$40,416; and, upon approval as to form by District General Counsel, its execution by the District officers is authorized.

8. Amendment to Agreement with Stantec Consulting Services, Inc. for Upper and Lower Five Coves Rehabilitation Project

RESOLUTION NO. 17-11-147
AUTHORIZING AMENDMENT TO STANTEC FOR ADDITIONAL DESIGN SERVICES FOR
CONTRACT NO. SAR-2013-2 UPPER AND
LOWER FIVE COVES REHABILITATION PROJECT

WHEREAS, pursuant to Resolution No. 09-9-148 adopted September 16, 2009, OCWD authorized Agreement No. 0595 with Stantec Consulting, Inc. for engineering services for the design of the Five Coves and Lincoln Basin Bypass Pipeline Project; and

WHEREAS, the Water Issues Committee of this Board has recommended issuance of Amendment No. 3 to such Agreement with Stantec for an amount not to exceed \$29,423 for additional design services for the Upper and Lower Five Coves Rehabilitation Project, Contract No. SAR-2013-2;

NOW, THEREFORE, the Board of Directors of the Orange County Water District does hereby approve the aforementioned Amendment to Stantec as described herein; and, upon approval as to form by District General Counsel, its execution by the District officers is authorized.

ITEMS RECOMMENDED FOR APPROVAL AT ADMINISTRATION AND FINANCE ISSUES COMMITTEE MEETING HELD NOVEMBER 9, 2017

9. Monthly Cash Control Report

MOTION NO. 17-158
RECEIVING AND FILING SUMMARY CASH AND
CASH EQUIVALENT CONTROL REPORTS

The Summary Cash and Cash Equivalents Control Reports dated October 30, 2017 are hereby received and filed.

10. Investment Portfolio Holdings Reports

MOTION NO. 17-159
RECEIVING AND FILING INVESTMENT PORTFOLIO HOLDINGS REPORTS

The Investment Portfolio Holdings Reports dated October 30, 2017 are hereby received and filed.

11. District Travel / Expense Reports – FY 2016–17

MOTION NO. 17-160
RECEIVING AND FILING DISTRICT TRAVEL / EXPENSE REPORTS – FY 2016–17

The District Travel and Expense reports for FY 2016-17 are hereby received and filed.

12. Statement of Investment Policy FY 2017-18

RESOLUTION NO. 17-11-148
ADOPTING STATEMENT OF INVESTMENT POLICY FY 2017-18

The Statement of Investment Policy for Fiscal Year 2017-2018, on file at the District office, is hereby adopted as presented.

13. Approving Agreement to Anaheim Hills Patrol for Protective Guard Services

RESOLUTION NO. 17-11-149
APPROVING AGREEMENT TO ANAHEIM HILLS PATROL
FOR PROTECTIVE GUARD SERVICES FOR RECHARGE OPERATIONS

RESOLVED, that issuance of an 18-month Agreement to Anaheim Hills Patrol is authorized for an amount not to exceed \$379,484 to provide around-the-clock security services for recharge operations from January 1, 2018 to June 30, 2019; and, upon approval as to form by District General Counsel, its execution by the District officers is authorized.

14. Budget to Actual Report for First Quarter FY 2017-18

MOTION NO. 17-161
RECEIVING AND FILING BUDGET TO ACTUAL REPORT FOR
FIRST QUARTER OF FISCAL YEAR 2017-18

The Budget to Actual Report for the First Quarter of Fiscal Year 2017-18 ending September 30, 2017 is hereby received and filed.

15. Extension of Commercial Paper Letter of Credit

RESOLUTION NO. 17-11-150
AUTHORIZING PREPARATION AND EXECUTION OF DOCUMENTS NECESSARY TO
EXTEND THE CURRENT LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT
WITH SUMITOMO MITSUI BANKING CORPORATION
FOR THE COMMERCIAL PAPER PROGRAM

WHEREAS, pursuant to Resolution No. 15-9-134 adopted September 16, 2015, OCWD authorized a Direct Pay Letter of Credit with Sumitomo Mitsui Banking Corp. for the Commercial Paper Program for a term of three years consistent with the term sheet provided by Sumitomo Mitsui Banking Corp.; and

WHEREAS, the Administration and Finance Issues Committee has recommended extension of the Letter of Credit and Reimbursement Agreement with Sumitomo Mitsui Banking Corporation for the commercial paper program for a term of 3 years consistent with the offer provided by Sumitomo Mitsui Banking Corporation;

NOW, THEREFORE, the Board of Directors of the Orange County Water District does hereby resolve as follows:

Section 1: The preparation and execution of documents necessary to extend the current Letter of Credit and Reimbursement Agreement with Sumitomo Mitsui Banking Corporation for the commercial paper program for a term of 3 years consistent with the offer provided by Sumitomo Mitsui Banking Corporation and authorize the General Manager to execute such documents including minor changes requested by rating agencies or other participants in the transaction.

Section 2: Payment for costs of issuance not to exceed \$35,000 is authorized.

16. Declaration of Qualification to Vote in Orange County Special District Committee Election

MOTION NO. 17-162

RATIFYING EXECUTION OF DECLARATION OF QUALIFICATION TO VOTE IN ORANGE COUNTY SPECIAL DISTRICT SELECTION COMMITTEE

Execution of the *Declaration of Qualification to Vote* designating the Board President as the authorized voter on behalf of OCWD in the Orange County Special District Selection Committee election is hereby ratified and confirmed.

MATTERS FOR CONSIDERATION

17. Irvine Ranch Water District October 18, 2017 Request

General Counsel Joel Kuperberg recalled that the Irvine Ranch Water District (IRWD) initiated litigation against the District in 2016, contending that the District is required to classify reclaimed water delivered by IRWD as supplemental-source water when calculating the annual Basin Production Percentage (BPP), which he stated is contrary to the District's longstanding interpretation of the Orange County Water District Act. He stated that, in the course of the lawsuit, in reviewing the April 19, 2017 Resolution establishing the FY 2017-18 BPP and Basin Equity Assessment (BEA), IRWD uncovered a numerical error in one of the findings, under which reclaimed water appears to be included in a supplemental-source calculation. On that basis, Mr. Kuperberg stated that IRWD has sent a letter to the District demanding that it classify IRWD's reclaimed water as supplemental-source water, and that the District credit IRWD in the BPP calculation for its reclaimed water deliveries. Mr. Kuperberg reported that staff has reviewed the IRWD letter and the numerical finding noted by IRWD, and has determined that the number results from a clerical error in transposing information from the 2015-16 Engineer's Report to the Resolution establishing the BPP and BEA. He also reported that staff had confirmed that the actual BPP was correctly calculated. Mr. Kuperberg summarized documents included in the agenda report that demonstrated both that IRWD's reclaimed water was produced within the Santa Ana River watershed and that the District has consistently interpreted the OCWD Act as excluding locally produced reclaimed water. He then recommended the Board acknowledge the numerical error uncovered by IRWD and confirm the Board's interpretation of the OCWD Act as excluding reclaimed water produced and delivered within the Santa Ana River watershed from the definition of supplemental sources.

IRWD legal counsel Ed Casey of Alston & Bird provided the Board with a nine-page letter and exhibits for inclusion in the record of tonight's meeting. He explained IRWD's position and expressed opposition to General Counsel Kuperberg's recommendation.

Mesa Water District General Manager Paul Shoenberger thanked the Board for defending the IRWD lawsuit, noting that should the IRWD lawsuit prevail, it would result in a \$4.6 million cost shift that would directly impact the Groundwater Producers.

The Board asked Mr. Kuperberg if any of the information presented tonight might have changed his recommendation. Mr. Kuperberg indicated that the information did not change the recommendation, and the Board then took the following action.

Upon motion by Director Anthony, seconded by Director Dewane, the following resolution was unanimously carried [8-0].

Ayes: Anthony, Bilodeau, Dewane, Green, Nguyen, Sarmiento, Whitaker, Yoh

Absent: Vanderbilt, Sheldon

RESOLUTION NO. 17-11-151

ACKNOWLEDGING CLERICAL ERRORS IN THE NUMERICAL CALCULATIONS OF TOTAL GROUNDWATER AND SUPPLEMENTAL WATER IN THE FISCAL YEAR 2016-2017 AND 2017-2018 BASIN PRODUCTION PERCENTAGE RESOLUTIONS, CONFIRMING THE BASIN PRODUCTION PERCENTAGE CALCULATIONS FOR FISCAL YEARS 2016-2017 AND 2017-2018, AND REAFFIRMING THE DISTRICT'S LONG-STANDING INTERPRETATION OF THE OCWD ACT TO EXCLUDE LOCALLY PRODUCED RECLAIMED WATER FROM THE DEFINITION OF SUPPLEMENTAL SOURCES OF WATER

WHEREAS, Section 31.5(c) of the OCWD Act defines the "basin production percentage" to mean the ratio of groundwater to the sum of supplemental sources of water and groundwater, and Section 31.5(c) further defines "supplemental sources" to mean, essentially, sources of water outside the Santa Ana River watershed, such as but not limited to imported MWD water; and

WHEREAS, with the exception of the period from 1992 through 1995, when the OCWD Act was amended to expressly include reclaimed water in the definition of the term "supplemental sources," the District has consistently and continually interpreted the OCWD Act to exclude reclaimed water produced within the Santa Ana River watershed from the definition of supplemental sources. This interpretation is reflected in policies adopted by the Board for establishing the basin production percentage, groundwater management plans and updates adopted by the Board, and provisions in contracts between the District and producers for the sale of water from the Green Acres Project and GWRS; and

WHEREAS, Section 31.5 of the OCWD Act requires the District annually to prepare an Engineer's Report setting forth, among other information, projections of the amount of groundwater produced within the District, the amount of water produced by persons and operators within the District from supplemental sources, and the amount of water produced by persons and operators within the District from all other sources; and

WHEREAS, Section 31.5 of the OCWD Act authorizes the District, utilizing the information in the Engineer's Report, to establish an annual basin production percentage, and to set an annual basin equity assessment; and

WHEREAS, the Engineer's Report for fiscal year 2014-2015, received and filed by the District in February 2016, estimated for fiscal year 2016-2017 that groundwater production would be 294,000 acre-feet, production of water from supplemental sources (imported water and water from a specified portion of Santiago Creek) would be 46,000 acre-feet, and the production of reclaimed water would be 20,000 acre-feet; and

WHEREAS, Resolution No. 16-4-37, adopted by the Board of Directors on April 20, 2016 to establish the basin production percentage and basin equity assessment for fiscal year 2016-2017, included a finding in Section 1(b) that the estimated total amount to be produced by all producers and operators within the District from groundwater and supplemental sources would be 380,000 acre-feet, although the correct calculation of the projected sum of groundwater and supplemental source water for fiscal year 2016-2017 in the Engineer's Report is 340,000 acre-feet; and

WHEREAS, the Engineer's Report for fiscal year 2015-2016, received and filed by the District in February 2017, estimated for fiscal year 2017-2018 that groundwater production would be 303,000 acre-feet, production of water from supplemental sources (imported water and water from a specified portion of Santiago Creek) would be 72,000 acre-feet, and the production of reclaimed water would be 20,000 acre-feet; and

WHEREAS, Resolution No. 14-4-45, adopted by the Board of Directors on April 19, 2017 to establish the basin production percentage and basin equity assessment for fiscal year 2017-2018, included a finding in Section 1(b) that the estimated total amount to be produced by all producers and operators within the District from groundwater and supplemental sources would be 395,000 acre-feet, although the correct calculation of the projected sum of groundwater and supplemental source water for fiscal year 2017-2018 in the Engineer's Report is 375,000 acre-feet; and

WHEREAS, the foregoing discrepancy in Resolution No. 14-4-45 was brought to the District's attention by a letter from the Irvine Ranch Water District, dated October 18, 2017, which also claimed that the miscalculation in Section 1(b) of the Resolution reflected the intention of the Board of Directors to include reclaimed water in the definition of "supplemental sources" of water; and

WHEREAS, upon receipt of the IRWD letter, District staff undertook a review and investigation of the fiscal year 2016-2017 and 2017-2018 water findings and basin production percentage calculations. This review and investigation determined that District staff had made clerical errors in stating the "estimated total amount to be produced by such persons and operators from groundwater and supplemental sources" in Section 1(b) of the Resolution Nos. 16-4-37 and 14-4-45, by inadvertently and incorrectly including reclaimed water in such calculations—specifically, by incorrectly using the "total" water demands from the pertinent "Table 5" in each year's Engineer's Report. This review and investigation also revealed that similar clerical errors have occurred with respect to the District's BPP resolutions adopted in certain prior years. Nevertheless, the review and investigation also concluded that the basin production percentages established for fiscal years 2016-2017 and 2017-2018 were accurately and correctly calculated at 75%, based upon the projections in

the Engineer's Reports relating to such fiscal years for projected groundwater production and the production of water from supplemental sources, and without including reclaimed water as a "supplemental source" in such calculations of the basin production percentage.

NOW, THEREFORE, the Board of Directors of the Orange County Water District does hereby resolve as follows:

Section 1: The Board of Directors acknowledges the clerical error in Section 1(b) of Resolution Nos. 16-4-37 and 14-4-45, and finds that the sum of the numerical projections for groundwater and supplemental source water in that section of those resolutions incorrectly included projected reclaimed water deliveries for those fiscal years. The finding in Section 1(b) of Resolution No. 16-4-37 for "the estimated total amount to be produced by such persons and operators from groundwater and supplemental sources" should have been 340,000 acre-feet rather than 380,000 acre-feet, and the equivalent finding in Section 1(b) of the Resolution No. 14-4-45 should have been 375,000 acre-feet rather than 395,000 acre-feet.

Section 2: The Board of Directors confirms that the 75% basin production percentage established for fiscal year 2016-2017 in Resolution No. 16-4-37, and the 75% basin production percentage established for fiscal year 2017-2018 in Resolution No. 14-4-45, were accurately and correctly calculated based upon the projections of groundwater and supplemental sources as set forth in the Engineer's Report relating to such resolutions, and that such calculations properly did not include projected reclaimed water deliveries as a "supplemental source" of water.

Section 3: The Board of Directors hereby reaffirms the District's consistent, long-standing interpretation of Section 31.5 of the OCWD Act that the term "supplemental sources" does not include reclaimed water that is produced within the Santa Ana River watershed. This consistent, long-standing interpretation of the OCWD Act to exclude locally produced reclaimed water from the definition of supplemental sources of water is supported by the legislative history of Section 31.5 of the OCWD Act, Board-adopted policies on the calculation of the basin production percentage, Board-adopted groundwater management plans and their updates, and restrictions included in contracts entered into by the District with Groundwater Producers for the sale of water from the Green Acres Project and GWRS.

Section 4: The District Secretary is hereby authorized and directed to transmit a copy of this Resolution to the Irvine Ranch Water District as the District's official response to IRWD's October 18, 2017 letter to the District.

INFORMATIONAL ITEMS

18. Groundwater Producer Participation in FY 2017-18 In-Lieu Program

Mr. Markus updated the Board on Groundwater Producer Participation in the FY 2017-18 In-Lieu Program, noting that the District is currently exceeding its goal.

19. Santa Ana Watershed Project Authority Activities

Director Anthony gave a brief update on SAWPA and OWOW activities.

20. Water Resources Summary

There was no discussion of this item.

21. Committee/Conference/Meeting Reports

The Board reported on the following Committee meetings and noted the Minutes/Action Agendas were included in tonight's Board packet.

- Oct 27 - Property Management Committee
- Nov 05 - Communication and Legislative Liaison Committee
- Nov 08 - Water Issues Committee
- Nov 09 - Administration and Finance Issues Committee

22. Verbal Reports

Director Bilodeau stated that he attended the World Water Technology Conference in Toronto on November 2 and 3.

23. ADJOURNMENT TO CLOSED SESSION

General Counsel Joel Kuperberg advised that there was no need to adjourn to Closed Session to confer with counsel regarding the South Basin litigation. The Board then adjourned to Closed Session at 6:05 p.m. as follows:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR
[Government Code Section 54956.8]
Real property located at: Parcels (3)
253-473-01 - 1200 S. Phoenix Club Drive, Anaheim, CA 92806
253-631-32 - 1200 S. Phoenix Club Drive, Anaheim, CA 92806
253-631-39 - 1200 S. Phoenix Club Drive, Anaheim, CA 92806
OCWD negotiator: Michael Markus
Negotiating party: Various Parties
Under negotiation: Price and Terms


RECONVENE IN OPEN SESSION

The Board reconvened in Open Session at 6:50 p.m. whereupon General Counsel Kuperberg announced that no reportable action took place in Closed Session.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 6:36 p.m.


Denis Bilodeau, President


Janice Durant, District Secretary