

MINUTES OF BOARD OF DIRECTORS MEETING
WATER ISSUES COMMITTEE
ORANGE COUNTY WATER DISTRICT
July 13, 2016 @ 8:00 a.m.

The Water Issues Committee meeting Chair Director Bilodeau called the meeting to order in the District Boardroom. The Secretary reported a quorum of the Committee as follows.

Committee Members

Denis Bilodeau
Phil Anthony
Shawn Dewane
Dina Nguyen
Roman Reyna (arrived 8:07 a.m.)

OCWD staff

Mike Markus - General Manager
Mike Wehner - Assistant General Manager
John Kennedy - Executive Director
Greg Woodside - Executive Director
Joel Kuperberg - General Counsel
Janice Durant - District Secretary

Alternates

Steve Sheldon (arrived 8:24 a.m.)
Jan Flory
Jordan Brandman (not present)
Roger Yoh
Cathy Green

Others

Marc Marcantonio, Steve Conklin - Yorba Linda Water District
Howard Johnson – Brady
Nabil Saba - City of Santa Ana
Paul Cook, Peer Swan - Irvine Ranch Water District
Ken Vecchiarelli – Golden State Water Company
Tom McCarthy - City of Anaheim
Paul Shoenberger, Phil Lauri - Mesa Water District
Dean Chambers - City of La Palma
Keith Lyon - Municipal Water District of Orange County
Jose Diaz – City of Orange
Kelly Rowe
Ed Connor – Connor Fletcher & Hedenkamp LLP

CONSENT CALENDAR

The Consent Calendar was then approved upon motion by Director Anthony, seconded by Director Dewane and carried [5-0].

[Yes- Bilodeau, Anthony, Nguyen, Dewane, Flory / No – 0]

1. Minutes of Meeting

The Minutes of the Administration and Finance Issues Committee meeting held June 8, 2016 were approved as presented.

2. Resolution of Support for La Habra's Jurisdictional Modification to Bulletin 118 Basin Boundary

Recommended by Committee for approval at July 20 Board meeting: Adopt a resolution of support for the City of La Habra's Jurisdictional Modification to the Boundaries of Basin 8-1.

3. Notice Inviting Bids For Contract No. Sar-2017-2, Center Levee Corrugated Metal Pipe Transfer Pipes Repair Project

Recommended by Committee for approval at July 20 Board meeting: Authorize publication of Notice Inviting Bids for Contract No. SAR-2017-2, Center Levee Corrugated Metal Pipe (CMP) Transfer Pipes Repair Project.

4. Notice Inviting Bids for Contract No. SAR-2017-1, Five Coves Rubber Dam Replacement

Recommended by Committee for approval at July 20 Board meeting: Authorize publication of Notice Inviting Bids for Contract No. SAR-2017-1, Five Coves Rubber Dam Replacement Project.

5. Notice of Completion for Contract No. GA-2015-1, Perimeter Site Improvement of Green Acres Project and City of Santa Ana Reservoirs (Parsam Construction, Inc.)

Recommended by Committee for approval at July 20 Board meeting: Accept completion of work and authorize filing of Notice of Completion for Contract No. GA-2015-1, Perimeter Site Improvement of the Green Acres Project and City of Santa Ana Reservoirs (Parsam Construction, Inc.).

6. Resolution Establishing a Revised Retention Time Buffer Area Around Kraemer, Miller, Miraloma, and La Palma Basins

Recommended by Committee for approval at July 20 Board meeting: Adopt resolution establishing a new, modified buffer area excluding new drinking water wells near Kraemer, Miller, Miraloma, and La Palma Basins, for transmittal to the Orange County Health Care Agency and City of Anaheim well permitting authorities.

7. La Palma Recharge Basin Project: Amendment to Agreement No. 1110 with American Geotechnical, Inc. for Additional Testing Services

Recommended by Committee for approval at July 20 Board meeting:

- 1) **Ratify Amendment No. 1 to Agreement No. 1110 with American Geotechnical, Inc. in the amount of \$7,400 for additional geotechnical and material testing services; and**
- 2) **Authorize Amendment No. 2 to Agreement No. 1110 with American Geotechnical, Inc. in the amount of \$7,001.50 for additional geotechnical and material testing services of the La Palma Recharge Basin Project.**

8. Contract No. SAR-2014-1, Imperial Headgates and Weir Pond Rehabilitation: Change Orders to Pacific Hydrotech Corporation and Amendments to Agreements with AKM Consulting Engineers and Carollo Engineers

Recommended by Committee for approval at July 20 Board meeting:

- 1) **Ratify issuance of Change Order Nos. 1-10 to Pacific Hydrotech Corporation in the amount of \$256,651;**
- 2) **Authorize issuance of Amendment No. 2 to AKM Consulting Engineers for an amount not to exceed \$169,574 for additional construction management and inspection services for the Imperial Headgates and Weir Pond Rehabilitation Project, Contract SAR-2014-1; and**
- 3) **Authorize issuance of Amendment No. 4 to Carollo Engineers for an amount not to exceed \$26,171 for additional construction management and design services for the Imperial Headgates and Weir Pond Rehabilitation Project, Contract SAR-2014-1;**

9. Confidentiality Agreement with Dow Chemical Company Relating to Testing of Reverse Osmosis Membranes

Recommended by Committee for approval at July 20 Board meeting: Approve and authorize execution of Confidentiality Agreement between OCWD and Dow Chemical Company relating to testing of Dow's reverse osmosis membrane modules.

10. Agreement to Intera to Extend Alamitos Groundwater Model for Sunset Gap Seawater Intrusion Analysis

Recommended by Committee for approval at July 20 Board meeting: Authorize issuance of Agreement to Intera, Inc., in an amount not to exceed \$135,032, to expand and recalibrate the Alamitos Gap groundwater model into the Sunset Gap.

Director Reyna arrived at 8:09 a.m. during discussion of the following item.

MATTERS FOR CONSIDERATION

11. FY 2016-17 Coastal Pumping Transfer Program

Executive Director John Kennedy recalled that the District has periodically implemented a Coastal Pumping Transfer Program (CPTP) which reduces groundwater pumping along the coast and increases pumping by inland Producers. He stated the CPTP would assist in reducing the potential for seawater intrusion, and stated that staff recommends a program to reduce pumping by the City of Huntington Beach and Mesa Water District. He stated staff would manage the program to ensure that all producers (inland or coastal) suffer no financial burden as part of the CPTP by encouraging the inland producers to pump above the Basin Pumping Percentage (BPP) and pay OCWD a modified Basin Equity Assessment (BEA). Mr. Kennedy stated the modification to the BEA for the overproducers would include a small incentive to encourage additional pumping and that, in turn, the City of Huntington Beach and Mesa Water would pump below the BPP and receive a BEA payment from OCWD to make up for the additional imported water they will be required to purchase. He stated staff would discuss this program with the Groundwater Producers at its meeting today, and requested approval to schedule a Public Hearing for this program on August 3.

Upon motion by Director Anthony, seconded by Director Dewane and carried [5-0], the Committee recommended that the Board at its July 20 Board meeting: Direct staff to schedule a Public Hearing on August 3, 2016 to consider modifying the Basin Equity Assessment (BEA) for selected Groundwater Producers to participate in the FY16-17 Coastal Pumping Transfer Program.

[Yes- Bilodeau, Anthony, Nguyen, Dewane, Reyna / No – 0]

Director Sheldon arrived at 8:24 a.m. during discussion of the following item.

12. Legal & Regulatory Support Expenditures North Basin & South Basin – FY 2016/17

Director of Special Projects William Hunt presented staff's recommended agreements for legal services for Fiscal Year 2016-17. He reviewed each of the agreements, with the exception of Miller & Axline's, and recommended that the Board cancel its agreement with Arent Fox and allow the General Manager to negotiate a similar agreement with the firm of Larson O'Brien.

Mr. Hunt anticipated total legal expenses of \$320,000 over the next 12 months. Director Dewane requested assurances that the proposed agreements would supersede all previous Board authorizations, and suggested the Board review the expenditures on a quarterly basis. It was noted that these expenditures are part of the warrant review process included and approved at each Board meeting. The Board agreed that Mr. Hunt should provide quarterly updates as necessary and the following action was taken.

Upon motion by Director Anthony, seconded by Director Dewane and carried [5-0], the Committee recommended that the Board at its July 20 Board meeting: Authorize expenditures for FY 2016/17 for legal and regulatory support services for the NB and SB cases with a breakdown as follows:

- 1) **Authorize time and materials (T&M) expenditures of up to \$280,000 for the Law Offices of Scott A. Sommer for regulatory and legal support, including T&M expenditures of consultant Keith Takata;**
- 2) **Authorize T&M expenditures of up to \$525,000 for Connor Fletcher and Hedenkamp for oversight counsel and appellate services;**
- 3) **Approve the cancellation of the Arent Fox legal services agreement; and**
- 4) **Authorize the General Manager to negotiate and enter into a similar T&M agreement with the firm Larson O'Brien for legal advisory and support services, including transfer of existing FY 2015/16 Arent Fox expenditure approvals to Larson OBrien, and authorize expenditures of up to \$40,000 for FY 2016/17.**

[Yes- Bilodeau, Anthony, Nguyen, Dewane, Reyna / No – 0]

INFORMATIONAL ITEMS

13. Update on Alternative Approaches for Integrated Regional Water Management in Orange County

Executive Director Greg Woodside provided an update on alternative approaches for Integrated Regional Water Management (IRWM) in Orange County. He noted that OCWD has an issue with SAWPA's IRWM Program, also called One Water One Watershed (OWOW) using bond funds to construct projects in the upper watershed that reduce flows in the Santa Ana River coming to Orange County. Mr. Woodside reviewed recent meetings among Orange County stakeholders and SAWPA. He stated that SAWPA General Manager Celeste Cantu sent an email suggesting that language be added stating that a project should not provide improvements or benefits in one area of the watershed at the expense or detriment of another area. A discussion ensued regarding the role of the Newport Bay Watershed Executive Committee, requesting that SAWPA identify a gate for Prop 1 IRWM project eligibility criteria that a project cannot harm or be detrimental to another area, and also steps to be taken to form a new IRWM Region in north/central Orange County. The Board gave direction to staff as follows:

Direction to staff:

- 1) **Agendize roles & responsibilities of Newport Bay Watershed Executive Committee for upcoming Board meeting and include a calendar of its meetings;**
- 2) **Staff to advise SAWPA General Manager Cantu that Proposition 1 IRWM grant eligibility criteria should be amended by adding the "gate" that a project should not provide improvements or benefits in one area at the expense or detriment of another area; and**
- 3) **Provide a detailed step-by-step process of the area within the County of Orange or a portion thereof becoming its own region.**

14. Orange County Water District Classification of Reclaimed Water

Executive Director John Kennedy reported that Irvine Ranch Water District (IRWD) filed a Complaint against OCWD claiming that reclaimed water should be considered as supplemental water for purposes of establishing the Basin Production Percentage. He provided a history of how OCWD classifies reclaimed water for purposes of calculating how much groundwater a Producer can annually pump up to the Basin Production Percentage. Mr. Kennedy stated that reclaimed water is neither groundwater nor supplemental (imported) water with respect to calculating a Groundwater Producers annual Basin Production Percentage (BPP) as defined by the District Act, noting that supplemental water is defined in the Act as water whose source is outside of the watershed of the

Santa Ana River. Mr. Kennedy stated that because reclaimed water is “created” within the District’s boundaries, has its source at a reclamation plant within the watershed, and is comprised of wastewater that was generated from within the watershed, reclaimed water is not a “source of water outside the watershed of the Santa Ana River,” therefore, reclaimed water is not covered by the definition of “supplemental sources” in Section 31.5 of the District Act, and accordingly cannot be used in this annual calculation. He explained the net effect is that the Producer pumps less groundwater paying the Replenishment Assessment (RA) when using reclaimed water supplies to meet its water demands.

Mr. Kennedy recalled that in 1991 the District formally changed the District Act to define “supplemental supplies” to include both reclaimed water and sources of water outside the Santa Ana River watershed. He stated this legislative change had the effect of classifying reclaimed water as supplemental water for purposes of calculating a Producer’s annual BPP, noting this change increased the value of reclaimed water, making it similar in value to imported water. Mr. Kennedy stated this gave the District the option to charge a higher rate for Green Acres Project reclaimed water but no action was taken. Further, he stated in 1995 the District reversed the 1991 change in the definition of “supplemental sources,” and amended the District Act to its original and current definition of supplemental water. Mr. Kennedy reviewed the policy issues associated with changing the definition of supplemental water through a legislative change of the District Act.

IRWD General Manager Paul Cook stated it is good policy to encourage the use of recycled water and that the Groundwater Producers (GWP) should not be penalized for using recycled water by reducing their access to groundwater. He stressed that the GWP are in business to pump water to meet customer demands, both potable and unpotable. Mr. Cook stated that imported water is considered a supplemental source; therefore, new supplies established specifically to offset imported water should be treated the same way as a supplemental source. He stated that MWD through its LRP program clearly acknowledges that recycled water was meant to offset imported water supplies but it is treated differently by OCWD.

Mesa Water District General Manager Paul Shoenberger stated there is a broader perspective in which recycled water can be viewed where the users would not be seen as being penalized, but rather overly advantaged. He stressed that the most significant part of the IRWD lawsuit challenges OCWD’s authority to limit exportation of groundwater out of the basin. Mr. Shoenberger read out of Page 19 of the Complaint which states that “OCWD improperly asserts that it has the authority to prohibit groundwater exports.” He urged the Board and staff to think about the implications of this statement.

Staff was directed to agendaize this issue for Closed Session for discussion at the July 20 Board meeting.

CHAIR DIRECTION AS TO ITEMS IF ANY TO BE AGENDIZED AS A MATTER FOR CONSIDERATION AT THE JULY 20 BOARD MEETING

All items were placed on the Consent Calendar for the July 20 Board meeting.

ADJOURNMENT

There being no further business, the meeting was adjourned at 9:12 a.m.



Denis Bilodeau, Chairman