

MINUTES OF MEETING
BOARD OF DIRECTORS, ORANGE COUNTY WATER DISTRICT
January 7, 2015, 5:30 p.m.

President Green called to order the January 7, 2015 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 Secretary called the roll and reported a quorum as follows.

Directors

Philip Anthony
Denis Bilodeau (arrived at 5:48 p.m.)
Shawn Dewane
Jan Flory
Cathy Green
Dina Nguyen
Vincent Sarmiento
Stephen Sheldon
Harry Sidhu
Roger Yoh (arrived 5:35 p.m.)

Staff

Michael Markus, General Manager
Joel Kuperberg, General Counsel
Janice Durant District Secretary
Gina Ayala, Stephanie Dosier, Randy Fick,
Roy Herndon, John Kennedy, Eleanor Torres,
Nira Yamachika

Others:

Travis Allen – Assembly Member
Patrick Mahoney -- Huntington Beach
Lori Ann Robeson -- Huntington Beach
Steve West – Huntington Beach
Gloria Andrew -- Huntington Beach
Ernesto Medrano – Building Trades
Don Calkins -- City of Anaheim
Norma Lopez -- IBT
Wendy Leece -- Costa Mesa resident
Betsy Eglash -- Brady
Amy Von Freymann -- resident
Susan Hinman - MWDOC Director
Andy Kingman -- Poseidon
Scott Maloni -- Poseidon
Shane Ceons -- Surfrider HB/SB Chapter
Alexandra Nagy – F&WW
Von Freymann – resident
Ernst Ghermann – Huntington Beach
Paul Bott – OC Resident
Mark W. Dixon
Lou Penrose – AHOC
Bruce Wareh - Huntington Beach
Marinaka Horack -- R4RD
Nancy Durand - Huntington Beach
Jack Kirkorn – Community member
Mike Balsamo – BIA Orange County
Steve Conklin – Yorba Linda Water District
Janet Vochelli – R4RD
Art Valenzuela – City of Tustin
Mike Mesrie -- Resident
James and Mary Parkinson -- R4RD

Arturo Garcia - Senator Huff's office
Paula Hulse – Citizen
Anthony Clark Carpio – HB Independent
Paul Shoenberger – Mesa Water District
Merle Moshieri – R4RD
Milt Dardis – R4RD
Laura Holdenwhite – R4RD – homeowner
Mary Jo Baretich – R4RD/Cabrillo Wetlands
Nancy Buchuz – R4RD
John Scott – R4RD
Paul Weghorst – Irvine Ranch Water Dist
Bill Robeson
Ric Collette – Yorba Linda Water District
Bill Cuppy – HB resident
Ethan Temianka – Mesa Water District
Nathan Getz – Godwin Pumps
Kelly Rowe – Water Resources Consultant
Joe Geever – Surfrider Foundation
Andrew & Suzanne Dehritz – Concerned Citizens
George Mason -- self
Jose Diaz -- City of Orange
Keith Lyon – MWDOC
John O'Neill – Garden Grove Resident
John Earl -- Surf City Voice
Sue Walls – Neighbor of site
Betty Angel – R4RD
MaryAnn Gordon -- R4RD
Pat Foster – R4RD
Ursula Hartunian – R4RD
Jeff Coffman – BWS
Mark Abrams – resident

Mike Mocu – City of Anaheim
Diane Gatza – West Basin MWD
Dave Hamilton – R4RD
Billy O. Conner
Jim Atkinson – Mesa Water District

Bernadeen Scholl – R4RD
Patrick Brenden – HB Chamber of Commerce
Ken Vecchiarelli – Golden State Water Company
Patrick Kelly
Lyn Semeta – HB Planning Commission

Director Yoh arrived at 5:35 p.m. during the following comments and was present for the vote on the Consent Calendar.

VISITOR PARTICIPATION

Mark Abrams commented on Item No. 1, *Cash Disbursements*. He questioned expenditures for t-shirts, Corner Bakery, Lucci’s Bakery, calendars from Office Max and Staples, Sierra Springs Bottled water, and a credit card authorization to US Bank.

Orange County Business Council (OCBC) representative Brian Starr requested to comment on Item No. 6, *Amendments to Legal Services Agreements*, and Director Dewane removed this Item from the consent Calendar for discussion.

CONSENT CALENDAR

Items No. 3, *Board Committee and Outside Agency Assignments*, and 6, *Amendments to Legal Services Agreements*, were removed from the Consent Calendar for consideration. The balance of the Consent Calendar was then approved upon motion by Director Anthony, seconded by Director Sarmiento and carried [9-0] as follows, with Director Nguyen abstaining on Item No. 2, Minutes.

Ayes: Anthony, Green, Flory, Nguyen, Sarmiento, Sheldon, Sidhu, Dewane, Yoh
Absent: Bilodeau
Abstain: Nguyen (Item No. 2)

1. Approval of Cash Disbursements

MOTION NO. 15-1
APPROVING CASH DISBURSEMENTS

Payment of bills for the period December 11, 2014 through December 31, 2014 in the total amount of \$13,380,072.48 is ratified and approved.

2. Approval of Minutes of Board Meeting

MOTION NO. 15-2
APPROVING MINUTES OF BOARD MEETINGS

The minutes of the Board of Directors meeting held December 3, 2014 are approved as presented.

3. 2015 Board Committee and Outside Agency Assignments

This item was removed from the Consent Calendar for consideration.

- 4. Agreement to Cascade Drilling L.P. for Destruction and Replacement of Monitoring Well OCWD-BS02

RESOLUTION NO. 15-1-1
 AGREEMENT TO CASCADE DRILLING, L.P. FOR DESTRUCTION AND REPLACEMENT OF
 MONITORING WELL OCWD-BS02

RESOLVED, that issuance of an Agreement is authorized to Cascade Drilling, L.P. for an amount not to exceed \$20,521 for the destruction of monitoring well OCWD-BS02 and construction of replacement monitoring well OCWD-BS18B; and, upon approval as to form by District General Counsel, its execution by the District staff is authorized.

- 5. Cost Share with City of Anaheim for Grant Application Expenses for Drought Response Outreach Program for Schools (DROPS)

MOTION NO. 15-3
 AUTHORIZING REIMBURSEMENT TO CITY OF ANAHEIM FOR ONE-HALF OF COSTS
 FOR PREPARATION OF DROUGHT RESPONSE OUTREACH PROGRAM (DROPS) GRANT
 APPLICATION FOR RIO VISTA ELEMENTARY SCHOOL

Reimbursement is hereby authorized to the City of Anaheim for one-half of the cost for the preparation of the DROPS grant application for Rio Vista Elementary School for an amount not to exceed \$4,500, and the General Manager is authorized to submit letters of support for DROPS grant applications for Rio Vista Elementary and Katella High School to the State Water Resources Control Board.

- 6. Amendments to Legal Services Agreements with Scott Sommer and Arent Fox Regarding the OCWD v. Sabic et al. (South Basin) Case and Groundwater Contamination

This item was removed from the Consent Calendar for consideration.

ITEMS REMOVED FROM CONSENT CALENDAR FOR CONSIDERATION

- 3. 2015 Board Committee and Outside Agency Assignments

President Green advised that she would not serve as an *Ex Officio* member of the Board Committees, opting instead to serve as an alternate member. She further advised that she Director Anthony would be reappointed as a Director of the National Water Research Institute. Director Anthony noted that the GWRS Joint Steering Committee would vote next Monday for a new Committee Chair and Vice Chair, with the OCWD member serving as a Vice Chair.

MOTION NO. 15-4
 RATIFYING BOARD COMMITTEE AND OUTSIDE AGENCY ASSIGNMENTS

Upon motion by Director Flory, seconded by Director Anthony and carried [9-0], the 2015 Committee and Outside Agency assignments as recommended by the Board President are hereby ratified as modified.

Ayes: Anthony, Dewane, Green, Flory, Nguyen, Sarmiento, Sheldon, Sidhu, Yoh
 Absent: Bilodeau

Director Bilodeau arrived at 5:48 p.m. during discussion of the following item.

6. Amendments to Legal Services Agreements with Scott Sommer and Arent Fox LLP Regarding the OCWD v. Sabic et al (South Basin) Case and Groundwater Contamination

Orange County Business Council representative Brian Starr stated that OCBC opposes spending ratepayer's dollars or litigation settlements on more lawyers, and opposes any process for further expenditure of OCWD funds that would result in the determination of a superfund site designation anywhere in Orange County. He urged the Board to use a "three-legged stool" approach for cooperative cleanup of contamination sites: 1) working with the legislature and the governor to secure bond funds for cleanup; 2) contributions from responsible parties; and 3) working with water producers and MWD to secure resources for long-term cleanup. Director Dewane agreed and encouraged the Board to use alternative means for resolving this matter rather than continued litigation. He suggested that the business community, the state legislature, and the responsible parties work side by side with OCWD to implement a cleanup plan for the groundwater pollution cases rather than continue litigation, and suggested the Board reserve issuing new funds for the pursuit of the NCP in the South Basin case. He moved to direct staff to pursue the "three-legged stool" approach. Director Sheldon objected to stopping all work on the NCP process and urged the Board to continue using the services of Scott Sommer. Director Sheldon then made a substitute motion to approve Item No. 6 as presented and also to direct staff to look into the proposal that has been presented tonight by the OCBC. Director Flory noted that nothing precludes OCWD from doing the three-legged approach, and stated that tonight's action simply expands the scope of the legal team's services from the North Basin to the South Basin. Director Sidhu cautioned that an amendment to the legal services agreement is the start of finding ways to appeal cases that OCWD has already lost, and urged the Board to find other avenues for dealing with these issues. The Board then voted on Director Sheldon's substitute motion as follows.

Upon motion by Director Sheldon, seconded by Director Anthony the following resolution was adopted [8-2], with Directors Dewane and Sidhu voting "No."

RESOLUTION NO. 15-1-2
AUTHORIZING AMENDMENTS TO LEGAL SERVICES AGREEMENTS WITH SCOTT
SOMMER AND ARENT FOX LLP REGARDING OCWD V. SABIC ET AL. (SOUTH BASIN)
CASE AND GROUNDWATER CONTAMINATION AND
DIRECTING STAFF TO PURSUE THE THREE-LEGGED APPROACH SUGGESTED BY THE
ORANGE COUNTY BUSINESS COUNCIL

WHEREAS, the District has entered into a legal services agreement with Scott A. Sommer and Arent Fox LLP for legal and related services associated with the North Basin groundwater contamination; and

WHEREAS, the District staff has recommended issuance of Amendment No. 1 to Legal Services Agreements with the Scott Sommer and Arent Fox LLP to expand their scopes of work to include providing legal support, regulatory agency coordination, and technical forensic services regarding the OCWD v. Sabic et al. ("South Basin") litigation and groundwater contamination with no changes to the firms' respective budgets;

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

Section 1: Issuance of Amendment No. 1 to the Legal Services Agreement with the offices of Scott Sommer and Arent Fox LLP is approved as outlined herein; and upon approval as to form by District General Counsel, its execution by the District officers is authorized.

Section 2: Staff is directed to continue discussions with the Orange County Business Council regarding their “three-legged stool” concept to have OCWD work with the legislature and the governor to secure bond funds for cleanup, use contributions from responsible parties, and work with the groundwater producers and Metropolitan Water District to secure resources for long-term cleanup.

Ayes: Anthony, Bilodeau, Green, Flory, Nguyen, Sarmiento, Sheldon, Yoh

Noes: Dewane, Sidhu

MATTER FOR CONSIDERATION

7. Proposed Poseidon Resources City of Huntington Beach Ocean Desalination Project

Executive Director John Kennedy recalled that much work has been done over the past 18 months studying the potential range of costs and the different options surrounding the proposed Poseidon Resources Huntington Beach Ocean Desalination project, he stated that staff believes the best way to resolve these issues is to initiate negotiations to develop a non-binding term sheet with Poseidon Resources. He further stated that staff is also bringing back the issue of the Citizens Advisory Committee as directed by the Board.

Mr. Kennedy discussed the value of moving forward with negotiation of a term sheet to provide the overall business terms and structure of a partnership with Poseidon. He stated the term sheet would provide more details and clarity on how the District and Poseidon Resources could work together to potentially construct the project. Mr. Kennedy noted a term sheet would provide the estimated cost of the water, delineate responsibilities for constructing, owning and operating the plant and the distribution system, and financing options. Mr. Kennedy stated the Board had previously deferred consideration of establishing a Citizens’ Advisory Committee. He recommended formation of the Committee at this time. He stated that if a term sheet is negotiated, it would be provided to the local community, and to the recommended Citizens Advisory Committee and Groundwater Producers for comments and would be used as the basis for negotiating and considering a final agreement with Poseidon if the Board so chooses.

President Green announced that OCWD had received letters of support for the project from: Apartment Association of Orange County, Assembly Member Donald Wagner, Association of California Cities Orange County, CalDesal, Huntington Beach Chamber of Commerce, Building Industry Association, Assembly Member Matthew Harper, and OC Taxpayer Association. She then opened the meeting for public comment on this item.

Public Participation

Several individuals spoke in favor of moving forward with the term sheet for the following reasons: new locally-controlled, drought-proof water supply that will protect the County from the drought and offer an enhanced level of reliability and certainty; reduction in the need for imported water; meeting the demands of a growing Orange County population; jobs creation; tax revenue; and alleviation of challenges in receiving State Water Project and Colorado River water.

Speakers in favor:

Travis Allen - Assemblymember
 Carolyn Cavecche OC Taxpayers Association
 Jerry Wheeler – Huntington Beach Chamber of Commerce
 Ethan Tamianka – Mesa Water District
 Lisa Ohland – East Orange County Water District
 Sam Han – representing Assemblyman Don Wagner
 Ernesto Madrano –Orange County and Los Angeles Building Trades Council -
 Ron Miller – Executive Secretary of the LA/Orange County Building Trades
 Arturo Garcia – Representing Senator Bob Huff
 Tyler Diep – Westminster City Council member
 Barbara Delgleize – Huntington Beach City Council member
 Steve Grayshock – Association of California Cities – Orange County
 Wayne Brown – South Orange County Economic Coalition
 Lou Penrose – Apartment Association of Orange County
 Jonathan Volzke –Santa Margarita Water District Public Information Officer
 Bryan Starr – Orange County Business Council
 Sean Ostriker – Huntington Beach resident and UCI student
 Aashik Chela – Huntington Beach resident
 Sigfried Calaquian – UCI Student
 Kevin Wen – Orange County resident
 Mike Balsamo – Building Industry Association
 Patrick Kelly – Teamsters Local 952
 Scott Maloni – Poseidon Resources
 Bill Cuppy – Huntington Beach real estate broker

Several individuals spoke in opposition to pursuing a term sheet for the following reasons: Lack of necessary permits; permit from the Regional Water Quality Control Board does not permit long-term operation; Residents for Responsible Desalination have filed appeals against the Poseidon permits; Ocean Plan Amendment needs to be finalized to determine standards for ocean water desalination plants; proposed site is vulnerable to sea level rise, storm surge, and earthquakes; effects of 24/7 lights and noise on the Magnolia marsh; inconvenience to residents of having streets torn up in Mesa Verde area of Costa Mesa; Board member disclosure of political contributions and/or remuneration received from Poseidon either directly or indirectly; project should not be negotiated during a period of drought; Carlsbad Desalination Plant should come online before OCWD moves forward; adverse environmental impacts and marine life destruction; facility should be built in South Orange County where the water is needed; regional demand needs to be determined; determination of OCWD's legal authority to enter into a contract with Poseidon; lack of competitive bidding process; determination of conditions that will impact the basin pumping percentage; determination of how MWD's requirement that desalinated water replace imported water in order to receive the LRP subsidy affect imported water allocations, impact on OCWD re the statewide push to allow for potable use of reclaimed water; does the financial analysis include infrastructure needed or additional environmental work; significant cost of the desalinated water; more economically viable options should be explored, future energy costs are uncertain; lack of public outreach; analysis of the cost of municipal desalination vs. desalination by a for-profit company; no rationale for having a multinational corporation take over a project that OCWD is currently doing; AES Power Plant is no longer allowed to have cooling; outdated technology used by Poseidon; completion by Poseidon of subsurface intake studies; formation of Citizen's Advisory Committee; project is too energy intensive; desalinated water will result in the accelerated deterioration of aging pipelines; lack of interest on the part of other agencies

to purchase the water; government should not shoulder the risk for a private company; World Bank says that desalination is a last resort; tiered rates should be implemented for water conservation; consequences if Poseidon files bankruptcy; and the need for more due diligence before proceeding.

Speakers in opposition:

Merle Moshiri – R4RD
 Clem Dominguez
 Bill Robeson
 Mark Dixon – R4RD
 Mary Jo Baretich – Board member of R4RD and Cabrillo Wetlands Conservancy
 Joe Geever – Surfrider Foundation
 Debbie Cook
 Bobbi Ashurst – Huntington Beach resident
 Steve West -- Huntington Beach resident
 Wendy Leece - Costa Mesa resident
 Randy Kokel
 Suzanne Dehritz – Huntington Beach resident
 John F. Scott – R4RD
 Milt Dardis – Huntington Beach resident
 Amy Von Fregmann – Council for Common Sense
 Vern Nelson
 Lori Ann Robeson – Huntington Beach resident
 Jane Rands – Fullerton resident
 Sean Paden – Fullerton resident
 Bruce Wareh – Huntington Beach resident
 Nobu Stillwell – Huntington Beach resident
 Jerry Burr – Huntington Beach business owner

Speakers requesting to be added to Citizens' Advisory Committee

John O'Neill – Garden Grove resident/Chairman of Neighborhood Commission
 Sandy Stiassni – Orange County resident, recommended Alexandra Nagy
 Milt Dardis – Huntington Beach resident

Groundwater Producer Comments:

Irvine Ranch Water District General Manager Paul Cook expressed IRWD's opposition to the project and stated a number of Groundwater Producers (GWP) have commented on the financial analysis hoping their concerns will be addressed. He stated that IRWD has information it would like to share with OCWD regarding the true cost associated with improving the water supply available to the GWP, noting that the Poseidon project water could be ten times the cost of purchasing MWD water. Mr. Cook stated that buying Tier 2 water or banking water in the OCWD basin are two viable options to be used during allocation. He suggested the GWP be included on the negotiating team with OCWD staff in developing terms with Poseidon since they will be the ones paying for the project if it comes to fruition. Mr. Cook stated IRWD recommends decisions be deferred until OCWD has determined how it will use the desalinated water given the legal opinion received today from OCWD General Counsel, OCWD should establish the additional costs and infrastructure needs associated with those uses, should evaluate what the water cost and rate implications for the GWP, analyze how

these costs compare with other opportunities, and obtain a notice of intent from the GWP to purchase this water.

Board Discussion:

The Board noted that tonight's decision is not a binding agreement and a term sheet will clarify what Poseidon has to offer. They stressed their responsibility to look at desalination in an effort to find a new, reliable water supply and to consider the needs of the growing population of the County. Director Flory urged the Board to wait until the GWP have had ample opportunity to weigh in, noting that new injection wells would need to be constructed and it might make more sense to relocate the project. A discussion took place regarding whether a Citizens' Advisory Committee would be the most appropriate vehicle to receive public comment and that perhaps a broader outreach is needed. Director Dewane suggested that the Board delay convening the CEC until, and only if, the MOU comes to fruition. It was agreed that the CEC would need to convene earlier to review the proposed term sheet. The Board took the following two actions approving tonight's staff recommendations.

MOTION NO. 15-5

DIRECTING STAFF TO NEGOTIATE A TERM SHEET WITH POSEIDON RESOURCES
FOR PURCHASE OF WATER CREATED BY THE HUNTINGTON BEACH
OCEAN DESALINATION PROJECT

Upon motion by Director Anthony, seconded by Director Dewane and carried [9-1], staff is directed to begin negotiating a term sheet with Poseidon Resources to purchase the 56,000 acre-feet per year of water created by the Huntington Beach Ocean Desalination project, and to report back to the Board no later than the March 18, 2015 Board meeting on the progress of the negotiations,

Ayes: Anthony, Bilodeau, Dewane, Green, Nguyen, Sarmiento, Sheldon, Sidhu, Yoh

Noes: Flory

MOTION NO. 15-6

ESTABLISHING A CITIZENS ADVISORY COMMITTEE

Upon motion by Director Anthony, seconded by Director Flory and carried [10-0], a Citizens' Advisory Committee (CAC) for the Huntington Beach Ocean Desalination Project is hereby established in which each OCWD Board member will appoint up to two members and one alternate; and staff is directed to issue a public solicitation for persons wishing to serve on the CAC, with applications due January 30 for selection by the Board at the February 17, 2015 Board meeting.

Ayes: Anthony, Bilodeau, Dewane, Green, Flory, Nguyen, Sarmiento, Sheldon, Sidhu, Yoh

INFORMATIONAL ITEMS

ACWA/JPIA President's Special Recognition Award

General Manager Markus reported that the Association of California Water Agencies/Joint Powers Insurance Authority has presented OCWD with the President's Special Recognition Awards in both the liability and property coverage programs. He stated that the JPIA recognizes members that have a Loss Ratio of 20% or less in either the liability, property, or worker's compensation programs.

VERBAL REPORTS

President Green requested that a Board policy be implemented to have the regular Board meeting agendas posted online on the Friday night prior to the meeting to allow the Board and the public sufficient time to read the agendas.

Director Flory requested that the Directors' Reports be agendized separately from Reports on Conferences/Meetings. She further requested an item be placed on the next Board agenda to direct staff to inspect the Raahauge lease property in Prado Basin. Director Anthony concurred with her request.

Director Dewane reported he spent time with visitors from Jordan and Kuwait and extended an invitation for them to visit the District facilities.

ADJOURNMENT TO CLOSED SESSION

The Board adjourned to Closed Session at 9:10 p.m. as follows:

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

[Paragraph (1) of subdivision (d) of Section 54956.9]: One (1) Case

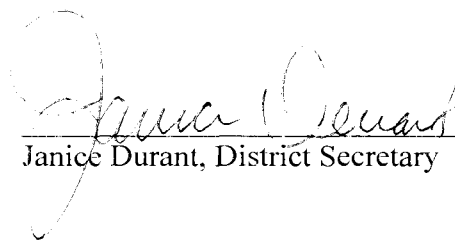
OCWD v. Unocal Corporation, et al (MTBE Litigation) Superior Court Case No. 03CC00176

RECONVENE IN OPEN SESSION

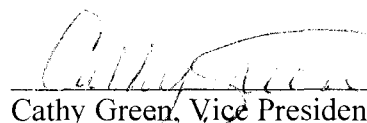
The Board reconvened in Open Session at 9:22 p.m. whereupon General Counsel Kuperberg announced that no reportable action took place in Closed Session.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 9:22 p.m.



Janice Durant, District Secretary



Cathy Green, Vice President