

AGENDA
SPECIAL BOARD OF DIRECTORS MEETING
18700 Ward Street, Fountain Valley, CA (714) 378-3200
Friday, April 24, 2015, 12:10 p.m.* – Conference Room C-2

(*Immediately following the Property Management Committee meeting.)

PLEDGE OF ALLEGIANCE

ROLL CALL

VISITOR PARTICIPATION

Time has been reserved at this point in the agenda for persons wishing to comment for up to three minutes to the Board of Directors on any item that is not listed on the agenda, but within the subject matter jurisdiction of the District. By law, the Board of Directors is prohibited from taking action on such public comments. As appropriate, matters raised in these public comments will be referred to District staff or placed on the agenda of an upcoming Board meeting.

At this time, members of the public may also offer public comment for up to three minutes on any item on the Consent Calendar. While members of the public may not remove an item from the Consent Calendar for separate discussion, a Director may do so at the request of a member of the public.

CONSENT CALENDAR

All matters on the Consent Calendar are to be approved by one motion, without separate discussion on these items, unless a Board member or District staff request that specific items be removed from the Consent Calendar for separate consideration.

1. **APPROVAL OF MINUTES OF SPECIAL BOARD OF DIRECTORS MEETING HELD MARCH 12, 2015**

RECOMMENDATION: Approve minutes as presented

2. **SUPPORT THE NOMINATION OF MESA WATER DISTRICT DIRECTOR JAMES ATKINSON FOR ACWA REGION 10 BOARD**

RECOMMENDATION: Support the nomination of James Atkinson for the position of ACWA Region 10 Board member, and authorize President Green to cast the OCWD ballot accordingly

3. **ADJOURN TO CLOSED SESSION**

● **CONFERENCE WITH LABOR NEGOTIATORS [Government Code Section 54957.6]**

OCWD designated representative: Stephanie Dosier

⊙ Employee Organization: Orange County Employee Association

⊙ Non-Represented Employees (Confidential and Management)

RECONVENE IN OPEN SESSION

DIRECTOR'S ANNOUNCEMENTS/REPORTS

GENERAL MANAGER'S ANNOUNCEMENT/REPORT

ADJOURNMENT

In accordance with the requirements of California Government Code Section 54954.2, this agenda has been posted in the main lobby of the Orange County Water District, 18700 Ward Street, Fountain Valley, CA and on the OCWD website not less than 24 hours prior to the meeting date and time above. All written materials relating to each agenda item are available for public inspection in the office of the District Secretary. Backup material for the Agenda is available at the District offices for public review and can be viewed online at the District's website: www.ocwd.com

Pursuant to the Americans with Disabilities Act, persons with a disability who require a disability-related modification or accommodation in order to participate in a meeting, including auxiliary aids or services, may request such modification or accommodation from the District Secretary at (714) 378-3233, by email at jdurant@ocwd.com by fax at (714) 378-3373. Notification 24 hours prior to the meeting will enable District staff to make reasonable arrangements to assure accessibility to the meeting.

As a general rule, agenda reports or other written documentation has been prepared or organized with respect to each item of business listed on the agenda, and can be reviewed at www.ocwd.com. Copies of these materials and other disclosable public records distributed to all or a majority of the members of the Board of Directors in connection with an open session agenda item are also on file with and available for inspection at the Office of the District Secretary, 18700 Ward Street, Fountain Valley, California, during regular business hours, 8:00 am to 5:00 pm, Monday through Friday. If such writings are distributed to members of the Board of Directors on the day of a Board meeting, the writings will be available at the entrance to the Board of Directors meeting room at the Orange County Water District office.

MINUTES OF SPECIAL MEETING
ORANGE COUNTY WATER DISTRICT
March 12, 2015, 8:30 a.m.

President Green called to order the March 12, 2015 special meeting of the Board of Directors of the Orange County Water District at 8:30 a.m. in the Boardroom in Fountain Valley. Following the Pledge of Allegiance to the Flag, the Assistant District Secretary called the roll as follows.

OCWD Directors

Philip Anthony
Denis Bilodeau
Shawn Dewane
Jan Flory
Cathy Green
Dina Nguyen
Roman Reyna
Stephen Sheldon (arrived 8:58 a.m.)
Harry Sidhu
Roger Yoh

Staff

Michael Markus, General Manager
Joel Kuperberg, General Counsel
Judy-Rae Karlsen, Assistant District Secretary
Randy Fick, Roy Herndon, William Hunt,
John Kennedy, Michael Wehner

Others

Scott Sommer – Special Counsel
Steven Elie – Musick Peeler & Garrett LLP
Don Calkins – City of Anaheim
Dave Schickling – City of Fullerton

VISITOR PARTICIPATION

There were no persons wishing to address the Board.

MATTERS FOR CONSIDERATION

1. Rescission of the Board's February 18, 2015 Direction to Staff and Consultants to Negotiate a National Contingency Plan Oversight Agreement with the Environmental Protection Agency

General Counsel Joel Kuperberg stated the District received a letter on February 27, 2015 from the law firm Musick, Peeler & Garrett, LLP that alleged the District violated the open meeting provisions of the Brown Act at the February 18, 2015 Board meeting. He briefly reviewed the contents of the letter, summarized the alleged Brown Act violation, and discussed the potential threat of litigation if the District did not take action to cure and correct the alleged violation. Mr. Kuperberg recommended the Board take a formal action to rescind the action taken on February 18, 2015, and he would subsequently send written notice to the law firm of Musick, Peeler & Garrett, LLP notifying them of the action taken. He responded to questions about his recommended action and stated that while the District does not concede that its actions violated the Brown Act or any other law, Government Code section 54960.1 allows the Board of Directors to rescind its February 18, 2015 action and thereby cure the alleged violation.

Musick, Peeler and Garrett LLP attorney Steven J. Elie stated his client (Arnold Engineering Company) was concerned about the closed session action that was announced in open session at the February 18, 2015 Board meeting. He admonished General Counsel Kuperberg for referring to his client as a North Basin polluter.

Director Dewane requested that Mr. Kuperberg clarify the process for the reporting of closed session discussions. Mr. Kuperberg stated the Board may only consider matters that are authorized closed session discussions and that are properly agendaized and posted. He noted that items

discussed in closed session may involve decisions that are not required to be reported out. Mr. Kuperberg also clarified that when the Board rescinds the February 18, 2015 Board action, the Board retains full and unrestricted authority and discretion to reconsider giving direction to staff to negotiate a United States Environmental Protection Agency (U.S. EPA) oversight agreement.

Upon motion by Director Anthony, seconded by Director Flory, the following resolution was unanimously adopted [9-0].

RESOLUTION NO. 15-3-28
 RESCINDING FEBRUARY 18, 2015 DIRECTION TO STAFF TO NEGOTIATE A
 NATIONAL CONTINGENCY PLAN (NCP) OVERSIGHT AGREEMENT WITH U.S. EPA

WHEREAS, at its February 18, 2015 meeting the Board of Directors of the District directed District staff and consultants to negotiate with the United States Environmental Protection Agency (“U.S. EPA”) an agreement by which U.S. EPA would be the oversight entity for the District’s proposed National Contingency Plan (“NCP”) process for the “North Basin Groundwater Contamination Cleanup Project;” and

WHEREAS, the District subsequently received a letter from the law firm of Musick, Peeler & Garrett, attorneys for defendant Arnold Engineering Company in the *OCWD v. Northrop, et al* litigation, alleging that the District violated the open meeting provisions of the Brown Act, Government Code Section 54950, *et seq.*, when the Board took the above action on February 18, 2015 directing staff to negotiate an U.S. EPA oversight agreement; and

WHEREAS, the February 27, 2015 letter from the attorneys for Arnold Engineering Company threatens to file a lawsuit against the District if the Board of Directors does not rescind its February 18, 2015 action; and

WHEREAS, while the District does not concede that its actions violated the Brown Act or any other law, Government Code section 54960.1 authorizes the Board of Directors to rescind its February 18, 2015 action and thereby moot any threatened litigation, while retaining full and unrestricted authority and discretion thereafter to amend and consider the issue of its direction to staff to negotiate an U.S. EPA oversight agreement;

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

Section 1: The Board of Directors’ February 18, 2015 direction to District staff and consultants to negotiate with U.S. EPA an agreement by which U.S. EPA would be the oversight entity for the District’s proposed NCP process for the “North Basin Groundwater Contamination Cleanup Project,” is hereby rescinded.

Section 2: In accordance with Government Code Section 54960.1(f), the Board’s action by this Resolution to cure and correct the February 18, 2015 direction to staff regarding the negotiation of an U.S. EPA oversight agreement shall not be construed or admissible as evidence of a violation of the Brown Act.

Section 3: The District's General Counsel is hereby authorized and directed to inform the attorneys for the Arnold Engineering Company in writing of this action of the Board of Directors.

Ayes: Anthony, Bilodeau, Dewane, Flory, Green, Nguyen, Reyna, Sidhu, Yoh

Absent: Sheldon

Director Flory asked if the Brown Act has a mandate for descriptions of closed session items on meeting agendas. Mr. Kuperberg advised there is a provision in the Brown Act that sets forth minimum standards for describing closed session agenda items and the District follows those statutory provisions. Director Dewane asked for clarification of the process that must now be followed as a result of rescinding the Board action that gave staff direction. Mr. Kuperberg advised the Brown Act sets forth a procedure for curing and correcting an alleged violation of the Brown Act, however the law does not address the actions taken by staff prior to a cure and correct provision. He also stated there is no implication in the law that the actions taken by staff must be reversed or are otherwise suspect.

Director Sheldon arrived at 8:58 a.m. during the following discussion.

2. Authorization to Negotiate a Draft Oversight Agreement with the U.S. Environmental Protection Agency for the North Basin Groundwater Contamination

Executive Director of Operations William Hunt reported that in accordance with Board direction, staff has implemented a National Contingency Plan (NCP) protocol for investigative work and remedial actions at North Basin Groundwater contamination sites. He stated the established protocol incorporates the need for regulatory oversight, and to satisfy that requirement staff is seeking Board authorization to meet with the United States Environmental Protection Agency (U.S. EPA) and negotiate a draft oversight agreement. He briefly explained the clean-up strategy, the various roles of each agency involved, and the proposed remedial action plan.

Mr. Elie stated his client's concerns and advised against pursuing U.S. EPA regulatory oversight at this time if the District has an interest in negotiating future settlements. Mr. Elie noted that the District has already been found to be a polluter of the groundwater basin (perchlorate). He also expressed concerns that the NCP process is not an open and public process.

Mr. Kuperberg advised that the trial court in the North Basin case made a finding that recharging the water from Metropolitan Water District into the groundwater basin near Fullerton constituted pollution because the water contained perchlorate. He noted the finding is currently under appeal and the District is under no judicial or regulatory mandate to clean up the perchlorate, however there are public health goals for maximum contaminant levels.

District Special Legal Counsel Scott Sommer discussed the perchlorate issue and advised that perchlorate is very different than volatile organic compound (VOC) contamination.

Mr. Elie stated the only reason perchlorate became an issue was because the District Special Legal Counsel took the position throughout the lawsuit that the defendants would be liable for all ancillary damages and would also be required to pay for perchlorate clean up. He advised the estimated damage claim was \$200 million. Mr. Elie expressed his client's concerns about the NCP process. He stated that perchlorate will continue to be an issue, and once the U.S. EPA becomes

involved the District will no longer be able to maintain control of the clean-up process. Mr. Elie responded to questions and stated there is a strong possibility that the District's extraction well project that involved cross contamination may be evidence for a future decision that the District is also a potential responsible party.

Mr. Hunt answered questions from the Board about current litigation; he reviewed the list of defendants in the North Basin litigation; the location of known plumes within the boundary of the North Basin contamination area; and presented a status report on groundwater production wells. He advised the next steps are; 1) Meet with the U.S. EPA; 2) Discuss established NCP protocols; and 3) Negotiate a draft oversight agreement that incorporates the necessary terms and conditions for regulatory oversight. Mr. Hunt advised the draft oversight agreement will be brought back to the Board for review prior to approval.

Director Dewane stated his objections to the NCP protocol that requires the involvement of the U.S. EPA and stated the complex remediation of groundwater basin contamination plumes will be compounded by a potential superfund designation in Orange County. Director Sidhu stated his objections to ongoing litigation. Directors Flory and Sheldon agreed with the recommended action to negotiate the oversight agreement with the US EPA, but also recommended the District continue to participate in settlement negotiations. Board discussion ensued and the following action was taken.

MOTION NO. 15-50

AUTHORIZING NEGOTIATIONS WITH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (USEPA) FOR AN AGREEMENT THAT ESTABLISHES THE US EPA AS THE OVERSIGHT ENTITY FOR THE NATIONAL CONTINGENCY PLAN (NCP) PROCESS FOR THE NORTH BASIN GROUNDWATER CONTAMINATION CLEANUP PROJECT; AND THE DISTRICT MAY CONCURRENTLY ENTER INTO BONA FIDE SETTLEMENT NEGOTIATIONS WITH RESPONSIBLE DEFENDANTS FOR GROUNDWATER CONTAMINATION CLEANUP COSTS

Upon motion by Director Flory, seconded by Director Anthony and carried with Director Sidhu voting "No" and Director Green abstaining [8-1-1], negotiation of an Agreement with the U.S. Environmental Protection Agency (US EPA) that establishes the US EPA as the oversight entity for the National Contingency Plan (NCP) process for the North Basin Groundwater contamination cleanup project is hereby approved; and furthermore, the District may concurrently enter into bona fide settlement negotiations with defendants for groundwater contamination cleanup costs.

Ayes: Anthony, Bilodeau, Dewane, Flory, Nguyen, Reyna, Sheldon, Yoh

Noes: Sidhu

Abstain: Green

DIRECTOR REPORTS

Director Anthony requested that staff give a presentation on the groundwater basin contamination plume near the City of Fullerton. Director Dewane requested that information be presented in open session at a future Board meeting.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 9:46 a.m.

Judy-Rae Karlsen, Assistant District Secretary

Cathy Green, President

AGENDA ITEM SUBMITTAL

Meeting Date: April 24, 2014

To: Board of Directors

From: Mike Markus

Staff Contact: M. Markus

Budgeted: No

Budgeted Amount: N/A

Cost Estimate: N/A

Funding Source: N/A

Program/Line Item No: N/A

General Counsel Approval: N/A

Engineers/Feasibility Report: N/A

CEQA Compliance: N/A

**Subject: SUPPORT THE NOMINATION OF MESA WATER DISTRICT DIRECTOR
JAMES ATKINSON FOR ACWA REGION 10 BOARD**

SUMMARY

The Association of California Water Agencies (ACWA) current governance structure is based on 10 regional based configurations to provide geographic balance and to group agencies with similar interests. A vacancy currently exists in Region 10, and a special election will take place on May 4, 2015 at the ACWA Spring Conference. Mesa Water District Director James Atkinson has requested that OCWD support his election to this office.

Attachments:

Resolution endorsing James Atkinson for ACWA Region 10 Board Member
Letter from Mesa Water District requesting support for James Atkinson
James Atkinson Statement of Qualifications

RECOMMENDATION

Support the nomination of James Atkinson for the position of ACWA Region 10 Board member, and authorize President Green to cast the OCWD ballot accordingly.

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE ORANGE COUNTY WATER DISTRICT
CASTING OCWD BALLOT FOR JAMES ATKINSON
AS A MEMBER OF THE ASSOCIATION OF CALIFORNIA WATER AGENCIES
REGION 10 BOARD MEMBER**

WHEREAS, the Board of Directors of the Orange County Water District does encourage and support the participation of its members in the affairs of the Association of California Water Agencies (ACWA); and

WHEREAS, Mesa Water District Director James Atkinson has indicated a desire to serve as a Board member of ACWA Region 10;

NOW, THEREFORE, the Board of Directors of the Orange County Water District does hereby place its full and unreserved support in the nomination of James Atkinson for the position of ACWA Region 10 Board member and authorizes its ACWA Region 10 Director Cathy Green to cast the OCWD ballot accordingly.

Adopted and approved this 24th day of April, 2015.

Janice Durant
District Secretary



*Dedicated to
Satisfying our Community's
Water Needs*

BOARD OF DIRECTORS

Shawn Dewane
*President
Division V*

Ethan Temianka
*Vice President
Division III*

Jim Atkinson
*Director
Division IV*

Fred R. Bockmiller, Jr., P.E.
*Director
Division I*

James R. Fisler
*Director
Division II*

Paul E. Shoenberger, P.E.
General Manager

Coleen L. Monteleone
District Secretary

Andrew N. Hamilton
District Treasurer

**Bowie, Arneson,
Wiles & Giannone**
Legal Counsel

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April 20, 2015

Honorable Cathy Green
President
Orange County Water District
18700 Ward Street
Fountain Valley, CA 92708

Dear President Green,

On behalf of Mesa Water District (Mesa Water®), it is a great honor to recommend that the Orange County Water District (OCWD) submit a letter of support for Jim Atkinson for election to the Association of California Water Agencies (ACWA) Region 10 Board.

Jim Atkinson has served on Mesa Water's Board of Directors for 17 years and, during that time, he has made fair and informed decisions that have greatly benefited constituents shared by Mesa Water® and OCWD. Additionally, since 1998, Director Atkinson has participated in the Water Advisory Committee of Orange County (WACO); and, since 2012, he has represented Region 10 by serving on ACWA's Water Quality Committee.

Due to his public service experience -- and his 30-year career at The Aerospace Corporation in El Segundo, working as a the Laboratory Operations Business Manager -- Director Atkinson possesses the qualifications, knowledge and understanding of the many business, government, and water-related issues facing ACWA Region 10. Attached for your review is Director Atkinson's Statement of Qualifications for election to the ACWA Region 10 Board. Most importantly, Director Atkinson has proven leadership abilities that can guide ACWA Region 10 to continued success in providing excellent added value to the member agencies it serves.

If you have any questions or requests for additional information, please feel free to contact our General Manager, Paul E. Shoenberger, P.E., by calling 949.631.1206 or emailing PaulS@MesaWater.org. Thank you for your consideration in supporting Jim Atkinson.

Sincerely,

A handwritten signature in blue ink that reads "Shawn Dewane".

Shawn Dewane
Mesa Water Board President

Cc: Mesa Water Board of Directors
Paul E. Shoenberger, P.E., Mesa Water General Manager

Elect Jim Atkinson to ACWA Region 10 Board

Jim Atkinson Director, Mesa Water District



OBJECTIVE: To further the goals of ACWA Region 10 in best serving its members -- and the industry as a whole -- by applying my analytical skills, and my water industry leadership experience, as a member of the ACWA Region 10 Board.

STATEMENT OF QUALIFICATIONS:

- Mesa Water District (Mesa Water®) Director, 1998-present
- Three-term Board President, Mesa Water® (2002, 2003, 2008)
- ACWA Water Quality Committee (Region 10), 2012-present
- Colorado River Water Users Association, 2002-present (includes serving on the Public Affairs Committee)
- Southern California Water Committee, 2010-present
- Water Advisory Committee Orange County, 1998-present
- Chair of various Mesa Water® Committees (Audit Ad Hoc, Executive, Engineering & Operations, Finance, Human Resources, and Public Information)
- Laboratory Operations Business Manager, The Aerospace Corp.

BIOGRAPHY: Initially elected in 1998 and re-elected several times since, Jim Atkinson represents Division 4 -- encompassing the College Park, Mesa del Mar, and Monticello communities of Costa Mesa, as well as John Wayne Airport -- on the Mesa Water District (Mesa Water®) Board of Directors. Having been Mesa Water's Board President for three prior terms -- in 2002, 2003, and 2008 -- Director Atkinson currently serves as Vice Chairman of the District's Legislative & Public Affairs Committee, and as an alternate on Mesa Water's Engineering & Operations Committee.

In addition to serving on Mesa Water's Board, Director Atkinson represents Region 10 of the Association of California Water Agencies (ACWA) on its Water Quality Committee. Additionally, he represents Mesa Water® at the Orange County Water District, and on the Colorado River Water Users Association's Public Affairs Committee. He also represents Mesa Water® at the Water Advisory Committee Orange County and on the Southern California Water Committee.

Director Atkinson has previously chaired Mesa Water's Audit Ad Hoc, Executive, Engineering & Operations, Finance, Human Resources, and Public Information Committees. Additionally, as a Costa Mesa resident for over 30 years, he has served as a Vice President and Director of the Mesa del Mar Homeowners Association, and is active in the community including serving as a Leadership Tomorrow Board member from 2002 to 2006 (after completing the program in 2001), where his role included hosting an educational Water Workshop day.

With Master of Business Administration and Bachelor of Science degrees from the University of La Verne, Director Atkinson worked as the Laboratory Operations Business Manager at The Aerospace Corporation for over 30 years. His experiences there included Business Administration of the Research Laboratory Operations, as well as Construction Management and Facilities Management. Through this employment, he attended earthquake response and recovery training at the California Specialized Training Institute's Emergency Operations Center. He was also an International Code Conference (ICC) Certified Member and an ICC Certified Plumbing Inspector.

Due to his hobby of racing model sailboats with International One Meter boats, Director Atkinson was appointed, in 2011, as the Region 6 Director on the American Model Yachting Association (AMYA) Board.