

**MINUTES OF THE
BOARD OF DIRECTORS MEETING OF THE
OTAY WATER DISTRICT AND
August 6, 2008**

1. The meeting was called to order by President Croucher at 3:32 p.m.

2. ROLL CALL

Directors Present: Bonilla, Breitfelder, Croucher, Lopez and Robak

Staff Present: General Manager Mark Watton, Asst. GM Administration and Finance German Alvarez, Asst. GM Engineering and Water Operations Manny Magana, General Counsels Yuri Calderon and Marie Mendoza, Chief of Information Technology Geoff Stevens, Chief Financial Officer Joe Beachem, Chief of Engineering Rod Posada, Chief of Operations Pedro Porras, Chief of Administration Rom Sarno, District Secretary Susan Cruz and others per attached list.

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

A motion was made by Director Breitfelder, seconded by Director Lopez and carried with the following vote:

Ayes:	Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to approve the agenda.

5. PUBLIC PARTICIPATION – OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO SPEAK TO THE BOARD ON ANY SUBJECT MATTER WITHIN THE BOARD'S JURISDICTION BUT NOT AN ITEM ON TODAY'S AGENDA

No one wished to be heard.

6. APPROVAL OF MINUTES OF THE REGULAR BOARD MEETING OF MAY 7, 2008 AND SPECIAL MEETING OF JUNE 23, 2008:

A motion was made by Director Breitfelder, seconded by Director Lopez and carried with the following vote:

Ayes: Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes: None
Abstain: None
Absent: None

to approve the minutes of the regular board meeting of May 7, 2008 and special meeting of June 23, 2008.

CONSENT CALENDAR

7. ITEMS TO BE ACTED UPON WITHOUT DISCUSSION, UNLESS A REQUEST IS MADE BY A MEMBER OF THE BOARD OR THE PUBLIC TO DISCUSS A PARTICULAR ITEM:

- a) AWARD A FIVE YEAR CONTRACT (TWO YEARS WITH THREE OPTION YEARS) TO WILLIS RISK AND INSURANCE SERVICES FOR CONSULTING SERVICES FOR BENEFITS AND AS THE DISTRICT'S BROKER OF RECORD IN THE AMOUNT OF \$35,000 PER YEAR FOR THE FIRST TWO YEARS AND UP TO THREE ADDITIONAL TERMS WITH COSTS INCREASES LIMITED TO A MAXIMUM OF 3% PER YEAR
- b) AWARD A CONSTRUCTION CONTRACT TO FOX CONSTRUCTION FOR THE REGULATORY SITE STORAGE BINS AND EQUIPMENT COVER RELOCATION PROJECT IN AN AMOUNT NOT TO EXCEED \$225,000

Director Robak requested that the following agenda items be pulled for discussion:

- c) ADOPT THE MITIGATED NEGATIVE DECLARATION FOR THE 1296-3 RESERVOIR CONSTRUCTION PROJECT

Director Breitfelder requested that the following agenda items be pulled for discussion:

- d) ADOPT THE 2008 LEGISLATIVE PROGRAM
- e) ADOPT A "SUPPORT" POSITION ON SENATE BILL 1XX – PERATA RELATED TO FUNDING FOR WATER QUALITY, FLOOD CONTROL, WATER STORAGE AND WILDLIFE PRESERVATION PROJECTS

A motion was made by Director Robak, seconded by Director Lopez and carried with the following vote:

Ayes: Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes: None
Abstain: None
Absent: None

to approve items “a” and “b” on the consent calendar.

c) ADOPT THE MITIGATED NEGATIVE DECLARATION FOR 1296-3 RESERVOIR CONSTRUCTION PROJECT

Director Robak inquired with regard to the Engineering and Water Operations Committee discussion on this item, the notes indicate that the Jamul-Dulzura Planning Group had no comments or concerns. Environmental Compliance Specialist Lisa Coburn-Boyd indicated that there were no comments or concerns regarding the environmental portion (Mitigated Negative Declaration), but they did express concerns with the building of the reservoir. Staff is requesting that the board adopt the Mitigated Negative Declaration for the project.

A motion was made by Director Robak, seconded by Director Breitfelder and carried with the following vote:

Ayes: Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes: None
Abstain: None
Absent: None

to adopt the Mitigated Negative Declaration for the 1296-3 Reservoir Construction Project.

d) ADOPT THE 2008 LEGISLATIVE PROGRAM

Pres Croucher: Moving on to item 6d we have the adoption of the 2008 Legislative Program. Director Breitfelder you had some questions?

Dir Breitfelder: Yes, obviously this policy is to give direction to staff in terms of addressing legislation as a standard operating procedure and it was heard in Finance. We thought the rubber had hit the road in terms of the board being unclear to staff in terms of its position on groundwater recharge. Referring to item “d” on page 2 and I didn’t see in the notes from the other committee meeting where that was addressed.

Pres Croucher: I think from our committee, Jose correct me if I am wrong, we decided that if it was an issue that was controversial...

GM Watton: I think Jaime was on that.

Pres Croucher: Jaime? Jaime was on it.

Dir Lopez: Yes.

Pres Croucher: I believe that we said that if it is a controversial issue that we would bring it back to the board for further direction and staff should not move without getting board direction.

Dir Bonilla: Absolutely.

Dir Breitfelder: I don't see...given the spectrum of opinion on this issue, I don't see how there is virtually any facet to it that is not controversial.

Dir Croucher: So then, therefore, it would come back to the board as a whole.

Dir Breitfelder: Well, therefore, it is not really appropriate for standard operating procedure where we are directing staff as a matter of standard operating procedure to oppose efforts to restrict the use of recycled water for groundwater recharge. I think it is finally time where we actually have to make the decision what we think about this.

Dir Croucher: On page 2, which one?

Dir Breitfelder: Page 2, "d" like David.

Dir Croucher: So we would...were not making an effort to restrict the use of water, but we would oppose restricting the use of water...If we need to make board direction, if we need to get a consensus of the board as far as our direction on this particular item, I don't see a problem with that. I can tell you right now that my belief is we should oppose efforts to restrict the use of recycled water for groundwater recharge. Oppose efforts to restrict it. That is my personal. If we need to get a consensus of the board so we can go from there...

Dir Breitfelder: Actually, this vote will serve that purpose as long as we have a meeting of the minds. Then voting "yes" for this, we are supporting groundwater recharge.

Dir Croucher: Correct.

Dir Lopez: Okay.

Dir Croucher: Do we have any Directors, as far as individually, that want to speak up on it so the staff knows the overall consensus of where we stand? Director Robak?

Dir Robak: We did hear this at the Finance Committee and there is definitely a difference of opinion between Larry and I, no question about it. I think I have made myself pretty clear on what my position is, which is, I think the science is solidly behind it. What Orange County is doing right now is a testament to that. I have seen it with my own eyes so I don't know what else I have say about it. I mean if...I think if we have a project in San Diego that is for real, it is going to come to us and Gary I think you are right on the money. If something comes to fruition to San Diego, we are going to have to weigh in, but I am not aware we have a viable project on the table right now. So I'm concurring with the committee's recommendation, if it does come, it will come back to us directly. So I don't know what else to say really.

Dir Croucher: Director Lopez?

Dir Lopez: When you interject Orange County and some pockets that are in place, unless it comes to us then that is when we are going to take action. As far as I'm concerned we are not restricting anything from us reviewing at this point. I understand where you are coming from, but I'm totally behind our efforts here as described on the committee comments.

Dir Croucher: Director Bonilla?

Dir Bonilla: Absolutely, I stand behind the committee recommendation. I agree with Director Robak and yourself.

Dir Croucher: Would it be appropriate to vote? I think the only question is our item, Oppose efforts to item "d".

Dir Breitfelder: It is perfectly appropriate. I accept that we don't have to agree, we just have to be clear.

Dir Croucher: I concur. So all we would need to do would be to vote on item, Oppose efforts to "d," because that seems to be the only one that we have disagreement on.

Dir Bonilla: Someone make the motion and I will second it.

Dir Robak: Is there a motion on the table right now?

Dir Croucher: As of right now, there is no motion on the table.

Dir Robak: I would move that we support the committee's recommendation. That would be my motion.

Dir Croucher: Okay, there is a motion.

Dir Bonilla: I will second it.

Dir Croucher: Second. Please vote.

~~Director Breitfelder indicated that the Legislative Program guidelines provide direction to staff with regard to addressing legislation. He indicated that the Finance, Administrative and Communications Committee had discussed that the board was unclear with regard to its position on groundwater recharge (item "d" on page 2 of the Legislative Program guidelines). He indicated that it did not seem from the notes that the Legal and Legislative Committee addressed this fact. President Croucher indicated that the committee had discussed the issue and determined that if the item was a controversial issue it would be brought back to the board for further direction. Director Breitfelder felt that the board should take action for a formal position on whether to oppose or support efforts to "Restrict the use of recycled water for groundwater recharge." Director Robak indicated that currently there was no viable project in San Diego for groundwater recharge and he would support the committee recommendation that should a project be presented, then the item would be brought back by staff for direction from the board. Director Lopez and Bonilla indicated their concurrence with Director Robak.~~

A motion was made by Director Robak, seconded by Director Bonilla and carried with the following vote:

Ayes:	Directors Bonilla, Croucher, Lopez and Robak
Noes:	Director Breitfelder
Abstain:	None
Absent:	None

to support the committee recommendation.

- e) ADOPT A "SUPPORT" POSITION ON SENATE BILL 1XX – PERATA RELATED TO FUNDING FOR WATER QUALITY, FLOOD CONTROL, WATER STORAGE AND WILDLIFE PRESERVATION PROJECTS

Director Breitfelder indicated that he wished to get a little assurance on this item. He understands that there is approximately \$13 billion accrued State-wide for various water uses and Perata's bill is about 5% of that total. He stated he wished to get reassurance that this is a situation unlike other water bonds – where there is not much water projects in the bond – and that the bond is actually good use of the money proportionate to the amount expended.

General Manager Watton indicated that Senator Perata bill's goal is to get some money from those prior bonds moved into building projects. There is about \$800 million within *Senate Bill 1XX – Perata* for water projects. He stated that the bill would provide for immediate Delta improvements and would bring approximately 130,000 to 190,000 AF of water to Southern California. The MWD and California Urban Water Agencies support the bill and MWD indicates that they have crews that can be dispatched in a couple of weeks if the bill is approved.

It was noted that it is unclear if the bill will pass as it may get held back in the budget discussions. He stated that there are republicans that oppose the bill because of the dam issue. It was discussed that the District's committee supports staff's recommendation to take formal action to support the bill in hopes to get immediate improvements to the Delta moving forward.

A motion was made by Director Breitfelder, seconded by Director Lopez and carried with the following vote:

Ayes:	Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to support staff recommendation.

ACTION ITEMS

8. ENGINEERING AND WATER OPERATIONS

- a) ADOPT RESOLUTION NO. 4128 OF THE BOARD OF DIRECTORS OF THE OTAY WATER DISTRICT REQUESTING FORMAL TERMS AND CONDITIONS FROM THE SAN DIEGO COUNTY WATER AUTHORITY AND METROPOLITAN WATER DISTRICT FOR THE CONCURRENT ANNEXATION OF TERRITORY DESCRIBED AS "SYCUAN RESERVATION" TO THE OTAY WATER DISTRICT

Engineering Public Services Manager David Charles indicated that staff received a written request and petition from Chairman Daniel Tucker of the Sycuan Band

of the Kumeyaay Nation (Sycuan) to commence annexation proceedings for water and sewer services. Staff is presenting a resolution to request formal terms and conditions from CWA and MWD for the annexation of Sycuan's reservation land. Sycuan is requesting annexation to reduce their dependency on wells and to attain a stable water resource for their reservation. The reservation land is approximately 634 acres and water services will be provided by ID 20 and sewer services will be served by ID 18. He noted that Sycuan will consider annexation for sewer services at a later date.

As the reservation land is outside the District's sphere of influence, the annexation will also require processing through LAFCO. Sycuan has hired engineering consultant Dexter Wilson Engineering, Inc. to handle all documentation required for the annexation.

Staff noted that Sycuan has also requested the annexation of parcels identified as group B on the map attached to staffs' report for sewer service only. These parcels are currently within Padre Dam MWD's service area and will require deannexation from Padre Dam MWD and annexation to Otay WD. Since these parcels will not require annexation to CWA or MWD and Sycuan is not ready to proceed with the sewer annexation, the District has agreed to process the annexation of these parcels at a later date.

Engineering Public Services Manager Charles indicated that the projected need of 392 AF per year for Sycuan's Original Reservation was incorporated into the CWA 2005 Urban Water Management Plan. Sycuan has indicated their commitment to a goal by working toward projects that will offset the projected 400 AF per year subject to the approval by the District and the Sycuan Tribal Council. The 400 AF required by this annexation will be offset and will not require an increase of imported water delivered to Otay.

He stated that the notes from committee discussion are attached to staffs' report. He noted that a revised Resolution has been provided the board as the original presented resolution had a transposed APN number (the correct APN number is 516-040-01).

Chairman Tucker thanked the board for taking the time to work with them and they looked forward to the partnership with Otay. He indicated that this issue is very important to their tribe and community.

General Manger Watton noted that the resolution will request terms and conditions from CWA and MWD and is the launching point for the annexation process. He stated that there will be many months of processing through LAFCO (possibly a year or two) prior to coming back to the board for a formal request for annexation. Today's board action would support moving the annexation forward through the process. He stated that staff has had a discussion with Sycuan and they feel they will be successful with offsets which will bring success for

annexation with CWA and MWD. He noted that Otay has been planning for the tribe's annexation to the District for some time. He stated that there is capacity in the District's sewer system as some developments that were planned will not come to fruition and have become open space. He noted that Sycuan has purchased the Singing Hills Resort and other large properties within the District's service area. He indicated that Sycuan is already a large customer of the District's and they are a good customer.

Director Bonilla indicated that the District had discussed a problem with well water used for irrigation at one of the golf courses within the District's service area. He inquired if that golf course was the Singing Hills Resort. It was indicated that that golf course was the Steele Canyon Golf Course. It was noted that the Singing Hills Golf Resort is utilizing well water, but there are no issues with their use of well water. He also inquired what the total area of land is that the District will be servicing. Engineering Public Services Manager Charles indicated that parcels A and B (see map attached to staffs' report) will be annexed for sewer service and parcel A (the original reservation land) will be annexed for water as well. The total water demand will be approximately 392 AF. General Manager Watton clarified that the resolution presented for adoption today is just for water service to parcel A. At a future date, staff will be presenting parcels A, B & C for sewer service. Director Bonilla inquired what was LAFCO's position on this annexation. It is expected that the District will go through LAFCO's process and the District will need to press them to move this process forward. It is felt the annexation process will take about two to three years.

This item was reviewed by the District's committee and Director Robak indicated that any time an annexation is being considered, it is a concern as water issues will be controversial. He indicated, however, it is good to hear that there is support in the community as the community wishes to protect their wells. The situation, at this time, appears to be win/win, especially when their water use can be offset with additional supplies.

Director Breitfelder thanked the Sycuan representatives for attending today's meeting. He indicated that he did not believe that the District has ever had a situation where water use would be 100% offset. He stated if Sycuan is able to meet this goal, they certainly deserve the District's support.

A motion was made by Director Robak, seconded by Director Bonilla and carried with the following vote:

Ayes:	Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to adopt Resolution No. 4128 requesting terms and conditions from CWA and MWD for the annexation of the Sycuan Reservation (APN No. 516-040-01) for water service.

b) ADOPT THE MITIGATED NEGATIVE DECLARATION FOR THE JAMACHA ROAD 36-INCH POTABLE WATER PIPELINE AND 12-INCH POTABLE WATER PIPELINE REPLACEMENT PROJECT

Environmental Compliance Specialist Lisa Coburn-Boyd indicated that there are two projects included in the MND:

- 36-inch pipeline project which begins at the Otay 14 FCF in El Cajon and ends at the Regulatory Site
- Pipeline replacement project along Jamacha Road replacing concrete cylinder pipe with PVC pipe.

She noted that the pipeline replacement project already has a Notice of Exemption (NOE) in place, but is included in the MND as it is a component of the overall 36-inch pipeline project.

She indicated that the environmental impacts requiring mitigation includes air quality, biological resources, hazards and hazardous materials, noise and transportation/traffic mitigation. She presented a map showing the location of the projects (please see attached copy of the presentation to staffs' report) and indicated that the draft MND was sent to the State Clearinghouse in October 2007 and was distributed to 13 agencies. The District received one comment letter from the Native American Heritage Commission.

She stated that during the design phase, issues arose concerning the 36-inch pipeline alignment through the City of El Cajon and several alternative alignments were proposed through the area. Due to the alternative alignments, staff amended the original MND analyzing the alternative alignments and no new significant environmental impacts were identified and, thus, no additional mitigation was required. The amended MND was forwarded to the State Clearinghouse on October 2007 and distributed to 13 agencies and a notice of the availability of the amended MND was published in the *Union-Tribune*. The District received one comment from the Native American Heritage Commission. Environmental Compliance Specialist Coburn-Boyd indicated that a segment of a possible alternative alignment, identified as Alt. 2a (see copy of presentation), was not identified in the amended MND. The new segment/alignment was reviewed by the District's consultant and it was decided that it substantially conforms to the other alternative alignments and no additional recirculation of the MND was required. The District did send notices to the homeowners who would be affected by this project to make them aware of the project and that the MND was available for their review and comment. No comments were received. She stated that staff is requesting that the board adopt the MND and within five days

of the adoption, the “Notice of Determination” will be filed. She explained that 30 days after filing, the statute of limitations for legal challenges from those agencies or individuals that commented on the MND concludes.

Director Bonilla inquired what were the Native American Heritage Commission’s comments. Environmental Compliance Specialist Coburn-Boyd indicated that they really did not have comments. They had forwarded a form letter, which they send to every MND filed for public review, indicating that the District needs to be aware that when it digs for this project, there is a possibility that it could come upon tribal remains as the area was inhabited by tribes in the past. They asked that we contact the commission should we come upon tribal remains. It was noted that the project could be shutdown if remains are found until the remains can be excavated. Environmental Compliance Specialist Coburn-Boyd, however, indicated that this corridor has been dug up in the past, so it is unlikely that remains will be uncovered.

Director Robak inquired if all alignment alternatives were covered in the MND. Environmental Compliance Specialist Coburn-Boyd indicated that they were and noted that the alternate alignment noted in red (in staffs’ presentation) is the preferred alignment. It was clarified that the adoption of the MND is an approval of all alternatives.

A motion was made by Director Breitfelder, seconded by Director Lopez and carried with the following vote:

Ayes:	Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to approve staffs’ recommendation.

- c) **ADOPT RESOLUTION NO. 4129 OF THE BOARD OF DIRECTORS OF THE OTAY WATER DISTRICT WAIVING BOARD POLICY NO. 21 AND AWARDDING A PROFESSIONAL ENGINEERING DESIGN SERVICES CONTRACT TO LEE & RO, INC. FOR THE COMPLETION OF THE DESIGN OF THE 36-INCH PIPELINE, SDCWA OTAY FCF NO. 14 TO THE REGULATORY SITE PROJECT TO LEE & RO, INC. IN AN AMOUNT NOT TO EXCEED \$769,000**

Engineering Manager Ron Ripperger stated that the City of El Cajon indicated that they would not permit the current pipeline design through the corridor of Jamacha Road and Washington Avenue. He indicated that staff then gathered a focus group in March 2008 comprised of experts in pipeline design, trenchless technology and construction to review the current alignment and recommend alternative alignments to avoid the Jamacha Road and Washington corridor. The

alternative alignments were discussed with IEC and the discussion to design an alternate alignment avoiding the busy corridor had reached an impasse. The District then terminated IEC's professional services contract and subsequent to terminating IEC's contract, the District negotiated with Lee & Ro to complete all remaining work which includes finalizing the project and preparing the contract documents to advertise for bids for the construction of the pipeline project.

He noted that Lee & Ro had tied for second in the original consultant selection process for this project. He stated that Lee & Ro recently successfully completed the design of the District's 30-inch Recycled Water Pipeline in the cities of San Diego and Chula Vista. They are also currently a member of the program management for Flow Control Facility No. 14 with CWA.

He indicated with regard to fiscal impact, Lee and Ro's fee for their scope of services range from \$535,000 to \$769,000 depending upon the completeness of the work product by IEC. Staff estimates based on the review of the material submitted by IEC that Lee and Ro's actual costs will most likely be close to the lower end of the range.

Director Breitfelder indicated that he felt that staff has handled this unusual situation very well. He inquired with regard to the Caltrans permit if it was expected to go through until late October. Engineering Manager Ripperger indicated that that was correct. He indicated that the permits were part of the whole process in the awarded contract. Director Brietfelder inquired if there are any legal ramifications in waiving Policy 21. General Counsel Yuri Calderon indicated that this is an unusual circumstance as the project has already been started. The District, during a competitive bid process, had two contractors who tied for second and basically the District is moving to the next responsive bidder to negotiate. For all practical purposes, the District has substantially complied with the law as it was a competitive bid process.

General Manager Watton indicated that though the District is a little behind schedule, Lee and Ro and staff will work hard to complete the project by March 2010 as was originally proposed.

Director Robak indicated that he wished to clarify that the District will not be spending more on this project than originally budgeted. It was indicated that that was staffs' intent. Director Robak inquired about the chart within staffs' report noting the cost differential between IEC and Lee & Ro and it seems that the cost for the project will be less with Lee & Ro than IEC (the chart is showing <\$55,503> for Scenario 1 and <\$89,175> for Scenario 2). General Manager Watton indicated that staff estimated that the new alignment would cost approximately \$200,000 and the cost would actually be more by approximately \$55,503 for Scenario 1 or \$89,175 for Scenario 2. He indicated that the budget has a contingency built in and staff anticipates spending some of the contingency money for the additional design work needed while still staying within the budget.

Director Robak further inquired why the “District Provided Services” and “Total Payments” to IEC in Scenario 1 and Scenario 2 were not the same. It was indicated that it is dependent on whether the District provides the services or Lee & Ro provides the services. With regard to IEC, the payment is based on assumptions from the documents received from IEC. At the time the staff report was prepared and circulated, staff was uncertain what would be received from IEC. IEC, has since, turned over electronic and other documents that staff is still reviewing. Staff wished to show best and worst case scenarios. Staff, however, is optimistic that the District will be able to use the material that they have developed for the project. Director Robak inquired what the cost per day would be should the project be delayed. General Manager Watton indicated that staff has done some preliminary calculations and the cost would be approximately \$300,000 to CWA for a six month delay. However, staff believes that the project will be completed on time.

A motion was made by Director Breitfelder, seconded by Director Lopez and carried with the following vote:

Ayes:	Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to approve staffs’ recommendation.

9. GENERAL MANAGER

- a) ADOPT AN “OPPOSE UNLESS AMENDED” POSITION ON AB 2986 (LENO) RELATING TO WASTE DISCHARGE REQUIREMENTS (BUELNA)

Communications Officer Armando Buelna indicated that staff is requesting that the board take an *oppose unless amended* position on AB 2986. He indicated that AB 2986 is sponsored by Assemblyman Mark Leno of Mill Valley to address aging sewer systems. He stated that it would require that the State or the Regional Water Quality Control Board (RWQCB) issue an annual report card with a grade of “A” through “F” for every collection, sewer system and treatment plant in the State of California based on different methodologies that would be developed by the State or RWQCB. He stated that the grading system’s purpose would be to inform the public about failing or failed water systems in the State so that problems can be clearly identified and addressed by the public. He indicated that it is felt that the public’s awareness of failing or failed systems, would make them more supportive of rate increases or other measures to address the failing facilities. The bill is sponsored by the Friends of the Earth and the San Francisco Bay Keeper and was motivated by a sewer spill that occurred in Richardson Bay, Marin County, in January 2008.

The bill is opposed by ACWA, the League of California Cities and a number of other California public organizations. Feedback has been provided to Assemblymember Leno which also included the elimination of the report card approach. It was felt that the report card approach may have the opposite effect and discourage investment in aging or failing systems. They also questioned how the bonding/rating agencies would view a “bad grade” issued to a failing system and that the cost of the new program would be placed on the public agencies through the creation of new fees and additional staff at a cost of approximately \$3 million annually. They felt that the State should identify issues and challenges that exist within the State sewer systems and develop programs to provide money and recommendations to address the issues.

Communications Officer Buelna indicated that AB 2986 was recently amended, however, it stills contains the report card approach. The bill has gone through the Assembly and is currently being reviewed by the Senate Appropriations Committee. At this time, no hearing has been requested by the author. He indicated that while Otay would probably receive a very good grade on its sewer system as the system is in very good working order, the bill still does raise a number of issues such as the report card approach, the unknown rating methodology that would be utilized and the cost of implementation.

Director Breitfelder indicated that he felt the program would benefit those who do not take good care of their infrastructure, but would burden those who do, with additional costs.

General Manager Watton indicated that the concern with the bill is the simplistic rating approach and that this entails another layer of record keeping that would be redundant.

A motion was made by Director Bonilla, seconded by Director Robak and carried with the following vote:

Ayes:	Directors Bonilla, Croucher, Lopez and Robak
Noes:	Director Breitfelder
Abstain:	None
Absent:	None

to approve staffs' recommendation.

10. BOARD

a) DISCUSSION OF 2008 BOARD MEETING CALENDAR

General Manager Watton noted that the November 2008 board meeting was moved to mid-month (November 13). He inquired if the board would consider

moving the December board meeting a week out which would provide staff additional time for the Proposition 218 noticing and would put the November and December meeting about a month apart. It was requested that District Secretary Susan Cruz check with all Board members to find a day in December that will accommodate their schedules.

INFORMATIONAL ITEMS

11. THIS ITEM IS PROVIDED TO THE BOARD FOR INFORMATIONAL PURPOSES ONLY. NO ACTION IS REQUIRED ON THE FOLLOWING AGENDA ITEM.
 - a) UPDATE ON DROUGHT RESPONSE CONSERVATION PROGRAM (SARNO)

The board received and filed staffs' informational report.

REPORTS

12. GENERAL MANAGER'S REPORT

General Manager Watton introduced new staff members Bob Kennedy who joined the Engineering Department approximately three months ago and Ted Cudal, the District's new Safety Officer, who has been working at the District for a few days now. Chief of Engineering Posada also introduced Erik Berliner, Engineering Intern, who has been with the District for approximately six months.

General Manager Watton indicated that attached to his GM Report are copies of some of the mailings to customers (*Pipeline Newsletter* and the *Consumer Confidence Report*) from the District. He indicated that they are full color as a result of committee recommendations. It is hoped that the publications bright colors will capture customers' attention and the District will increase the readership of its publications.

He also shared that included with his report is a copy of a powerpoint presentation regarding the *20 Gallon Challenge* survey results. He indicated that there is some interesting information in the presentation for those who are keeping abreast of the effectiveness of the challenge.

He indicated that the board is aware that an employee survey was performed in May. He stated that the consultant is preparing the final report and in discussions with President Croucher, the report will be presented at the September 3, 2008 board meeting.

He noted that the artificial turf grass rebate program has been reinstated as the Consumer Product Safety Commission concluded that the newer artificial turf

does not contain high amounts of lead. CWA has sent out press releases and the program will be retroactive to the date of suspension (June 26, 2008).

He indicated that the District began participating in the MWD rebate programs (July 1, 2008) and is fully engaged with the programs (smart controller, rotating sprinkler nozzle, high efficiency clothes washer and high efficiency toilet rebate programs).

General Manager Watton also indicated that the District has engaged PBS&J, Ms. Karen Keese, to review the District's rates and provide recommendations on various customer rates. He indicated that Ms. Keese is very experienced and is performing rate studies for other Districts within the county. Her work with other agencies will provide the District information about what other District's are doing and different approaches.

He noted on pages five through seven of his report lists the many projects that Engineering is accomplishing. He indicated that he would not review each item, but he wished to highlight that operations and engineering are very busy.

He indicated that eight meters were sold in June. He noted that this is down from the monthly highs of 200. However, this is a positive as meters are still being sold though the economy has slowed.

He stated that deliveries to Mexico has ceased as agreed. He indicated that the District did receive the back payments from Mexico and anticipates a full recovery through the additional water deliveries and the payments. The District is currently working with CWA and the IBWC on extending the agreement for the emergency water deliveries. He noted that the water delivered is Mexico water from the Colorado River. The new agreement will be similar to the old agreement with the exception of the capital cost recovery component as it has already been paid for.

Director Bonilla inquired if Mexico has expressed their need for more water. General Manager Watton indicated that they have and they were very concerned with keeping the contract in place and promptly made the back payments on the capital recovery costs. It was discussed that Mexico is connected to the District's system, but they are not taking water at this time based on the agreement for the summer months. Per the contract, the District will deliver whatever Mexico requires as long as it does not impact the District's customers. The water deliveries is a very flexible arrangement.

a) SAN DIEGO COUNTY WATER AUTHORITY UPDATE

President Croucher indicated that CWA is monitoring very closely the effectiveness of the \$1.8 million conservation ad program. He also shared that

Vallecitos WD and Fallbrook PUD have donated \$5,000 each to the Water Conservation Garden.

He stated that CWA is continuing to track water supplies and the Bay Delta issues. He indicated that the State Governor will be holding a press conference today at 2:45 p.m. to announce that, due to state legislators' inability to agree on the state budget, he will not be signing any bills until a budget is agreed upon. The consequence of unsigned bills is that they are automatically rejected after 14 days.

General Manager Watton indicated that a dispute between Olivenhain MWD, City of San Diego and CWA has developed over the water quality in Lake Hodges. Discussions will be taking place in the next 60 to 90 days to see if the dispute can be resolved. CWA will be also be discussing the issue in closed session.

13. DIRECTORS' REPORTS / REQUESTS

Director Robak indicated that there was an article in the paper evaluating the *20 Gallon Challenge* and how effective each agency has been with the challenge. He inquired where the District rated in the evaluation. It was indicated that the District was at 6.8% savings. It was noted that many of the districts were fairly low and the program has not seen the success that was hoped for. Director Robak indicated that he was happy to see that CWA has reinstated the artificial turf rebate program. He indicated that he felt that they were a bit premature in their action to cease the program and he was happy to see it quickly reverse course. He also stated that he wished to discuss with the General Manager and Water Conservation Manager that if the District provides a list artificial turf grass vendors, that we assure they are approved by the Better Business Bureau. Director Robak indicated he will be doing his part and plans to remove the grass from his yard as well.

Director Lopez indicated that he attended the GIS presentation provided by Chief Information Officer Geoff Stevens and GIS Manager Ming Zhao at the ESRI conference. He stated that the presentation is very worthwhile and he recommended that a copy of the presentation be provided to the board members. It was noted at the conference that Otay is recognized as one of the top ten users of GIS systems in the County and ESRI had thanked the District for the many tours they have provided to various agencies and organizations interested in implementing GIS systems. He stated that Chief of Engineering Rod Posada made presentations to the Chula Vista Interagency Water Task Force regarding the drought issues and the lessons the District learned from the Fenton Business Center misconnection. He indicated that he felt the misconnection presentation should be viewed by not only the county of San Diego, but nationally as well, so it can be shared what the District has learned and the processes that it has put into place to assure that the issue does not occur again.

Director Bonilla indicated that he concurred with Director Lopez on the presentations and, in a discussion with General Manager Watton, had commended Chief of Engineering Rod Posada on the presentations he had proved the Task Force.

Director Bonilla also inquired about the difference between a *Level II* and *Level III* drought alert. General Manager Watton indicated that the largest difference is at *Level III* the District would start restricting meter sets, essentially cutting growth. He inquired if that should not be noted in the customer *Pipeline Newsletter* to better clarify the difference in the levels as they seem to be the same as printed in the *Drought Watch* declaration chart in the newsletter. It was indicated that the verbiage will be updated to note that growth will be affected at Level III.

Director Breitfelder indicated that he just wished to make an observation and thank Chief Financial Officer Beachem for achieving better returns on the District's investments than what LAIF has earned for the last several months.

14. PRESIDENT'S REPORT

President Croucher indicated that the board would like to move forward with the General Manager's review and requested that an Ad Hoc Committee be scheduled for the General Manager's review. He indicated that the Ad Hoc Committee members will include Director Bonilla as chair and himself. He indicated that the committee would like to follow CWA's process and an evaluation form will be developed and sent out through District Secretary Susan Cruz to all Directors. He also stated that the customer *Pipeline Newsletter* was looking very good and noted that Communications Officer Buelna is also the editor of the CSDA County newsletter.

RECESS TO CLOSED SESSION

15. CLOSED SESSION

The board recessed to closed session at 4:50 p.m. to discuss the following matters:

- a) CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION
[GOV-ERNMENT CODE §54956.9(b)]

1 CASE
- b) CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION
[GOVERNMENT CODE §54956.9(a)]
 - l) MULTIPLE CASES RELATED TO THE FENTON BUSINESS CENTER AND FILED WITH THE SUPERIOR COURT OF THE COUNTY OF SAN DIEGO RECENTLY CONSOLIDATED UNDER

CASE NO. 37-2007-00077024-CU-BC-CTL; AND TWO NON-CONSOLIDATED CASES, NOS. 37-2008-83163-CU-PO-CTL AND 37-2008-00086689-CU-PO-CTL

- II) 1 CASE - AMERICAN PROTECTION INSURANCE V. OTAY WATER DISTRICT, DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA, #08-CV-0662-JM-POR
- III) OTAY WATER DISTRICT V. NORTHROP GRUMMAN

RETURN TO OPEN SESSION

16. REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION. THE BOARD MAY ALSO TAKE ACTION ON ANY ITEMS POSTED IN CLOSED SESSION

The board reconvened at 5:32 p.m. General Counsel Yuri Calderon indicated that three actions were taken in closed session:

- 1) A motion was made by Director Bonilla, seconded by Director Breitfelder and carried with the following vote:

Ayes: Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes: None
Abstain: None
Absent: None

to deny the tort claim filed by Bremco Construction.

- 2) A motion was made by Director Breitfelder, seconded by Director Bonilla and carried with the following vote:

Ayes: Directors Bonilla, Breitfelder, Croucher and Lopez
Noes: Director Robak
Abstain: None
Absent: None

to retain the Hilding Law Firm in the matter of American Protection Insurance v. Otay Water District.

- 3) A motion was made by Director Bonilla, seconded by Director Breitfelder and carried with the following vote:

Ayes: Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes: None

Abstain: None
Absent: None

to accept the mediator's settlement in the Northrop Grumman matter.

General Counsel Calderon indicated that no other reportable actions were taken in closed session.

17. ADJOURNMENT

With no further business to come before the Board, President Croucher adjourned the meeting at 5:33 p.m.

President

ATTEST:

District Secretary