

**MINUTES OF THE  
BOARD OF DIRECTORS MEETING OF THE  
OTAY WATER DISTRICT AND  
October 9, 2008**

1. The meeting was called to order by Vice President Lopez at 3:33 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Directors Present: Bonilla, Breitfelder, Lopez and Robak

Directors Absent: Croucher (due to illness)

Staff Present: General Manager Mark Watton, Asst. GM Administration and Finance German Alvarez, Asst. GM Engineering and Water Operations Manny Magana, General Counsel Yuri Calderon, 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.

4. APPROVAL OF AGENDA

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

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

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 THE MINUTES OF THE REGULAR MEETING OF JUNE 10, 2008, JULY 2, 2008 AND AUGUST 6, 2008; AND THE MINUTES OF THE JOINT AGENCY BOARD MEETING OF SEPTEMBER 19, 2008

Director Breitfelder indicated with regard to the June 10, 2008 minutes, the bottom of page 2, though it is not inaccurate, it gives a misimpression because it is not as complete as it could be. He indicated that Director Robak's comment

that he was comfortable with the information he received concerning the OPEB liability at the Finance, Administration and Communications Committee makes it seem like he (Director Breitfelder) had some issue with the information and that staff had done a bad job. He indicated it is quite the opposite and he felt that though the committee was satisfied with the information presented, it did not justify the committee surrendering jurisdiction of a financial matter. He indicated that he wished the minutes to reflect this. It was indicated that District Secretary Susan Cruz will listen to the recording of the meeting and rework the paragraph from the recording.

Director Breitfelder indicated with regard to the minutes of August 6, 2008, bottom of page 3, that it was quite clear from the discussion at the time that in giving direction to staff, that the board was not acquiescing to any legislation with restrictions on the use of recycled water for groundwater discharge and that the board is taking a position in favor of groundwater discharge. He indicated that he felt that by the end of the conversation this was clear.

District Secretary Cruz indicated that she did listen to the tape once again as she had also thought the board took a position on the matter. However, when she listened to the discussion again, the board had decided that they would not take a position on groundwater recharge until a San Diego project was presented. She indicated that she would provide a verbatim transcript for the board on the discussion. General Manager Watton indicated that it would be incorporated into the minutes for the board's consideration at the next meeting.

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

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

to approve the minutes of the regular board meeting of July 2, 2008.

Vice President Lopez presented the minutes of the Joint Agency Board Meeting of September 19, 2008 for ratification.

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

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

to approve the minutes of the Joint Agency Board Meeting of September 19, 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:

Director Robak indicated that he wished to pull item 6a from the Consent Calendar.

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

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

to approve the following consent calendar items:

- b) AUTHORIZE THE GENERAL MANAGER TO SIGN AMENDMENTS TO FOUR SEPARATE UTILITY AGREEMENTS WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) RELATED TO THE CONSTRUCTION OF THE SR-905 36-INCH PIPELINE UTILITY RELOCATIONS
- c) AWARD A CONSTRUCTION CONTRACT TO NEWest CONSTRUCTION COMPANY, INC. FOR THE 450-1 RESERVOIR DISINFECTION FACILITY PROJECT IN AN AMOUNT NOT-TO-EXCEED \$342,865
- d) APPROVE AN AGREEMENT WITH CRICKET COMMUNICATIONS, INC., A DELAWARE CORPORATION, FOR THE INSTALLATION OF A COMMUNICATIONS FACILITY AT THE 832-1 & 2 RESERVOIR SITE
- e) APPROVE AN AGREEMENT WITH CRICKET COMMUNICATIONS, INC., A DELAWARE CORPORATION FOR THE INSTALLATION OF A COMMUNICATIONS FACILITY AT THE 1200-1 RESERVOIR SITE
- f) RATIFY THE TERMS OF THE SETTLEMENT AGREEMENT WITH NORTHROP GRUMMAN

Vice President Lopez presented consent calendar item 6a for discussion:

- a) AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE PROPOSED AMENDED AGREEMENT NO. 1 TO THE AGREEMENT FOR THE TEMPORARY EMERGENCY DELIVERY OF A PORTION OF THE MEXICAN TREATY WATERS AND APPROVE THE PROPOSED WHEELING RATE FOR THE DELIVERY OF TREATY WATER TO THE CITY OF TIJUANA

Director Robak indicated that he wished to clarify if the outstanding debt has been paid. General Manager Watton confirmed that it has been paid. He inquired with regard to the wheeling rate, the cost is amortized into the cost of the capital improvement cost plus the cost of Operations and Maintenance. General Manager Watton indicated that that was correct. Director Robak further inquired that now that Mexico is current, the cost is strictly the Operations and Maintenance cost and the actual cost of the water. General Manager Watton indicated that that was also correct.

Director Bonilla asked if this item was reviewed by committee. General Manager Watton indicated that the Engineering, Operation and Water Resources Committee had reviewed this item and a record of the discussion is attached to staffs' report. The members of the committee are Directors Croucher and Lopez and the committee had recommended presentation on the consent calendar.

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

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

to approve staff recommendation with regard to consent item 6a.

## ACTION ITEMS

### 8. ENGINEERING AND WATER OPERATIONS

- a) AWARD OF A CONSTRUCTION CONTRACT TO SCW CONTRACTING COMPANY FOR THE 1485-1 PUMP STATION REPLACEMENT PROJECT IN AN AMOUNT NOT-TO-EXCEED \$1,530,500 (RIPPERGER/GRUNOW)

General Manager Watton indicated that this item was also was presented to the Engineering, Operations and Water Resources Committee and the committee agreed with staffs' recommendation, however, the committee felt because there was an issue surrounding the bid (which has been resolved) that the item should be agendized as an action item so that the full board understands the issues.

Sr. Civil Engineer Ron Grunow indicated that this project is for the replacement of the 1485-1 Pump Station which has been exposed to the elements (heat, cold, moisture and sunlight) and is at the end of its life. He indicated that the new Pump Station will be enclosed and will contain three new 40hp motors and pumps. There will also be a bridge crane for service and maintenance and onsite parking for utility vehicles. The property will be surrounded by a fence and block wall for sound. He indicated that the project was presented to the Jamul-Delzura Community Planning Group on June 24, 2008 and the planning group

was fine with the design and schedule. The design was handled by JC Heden and Associates, Inc.

Sr. Civil Engineer Grunow also shared that the project was advertised for bid on July 24, 2008 and the pre-bid meeting was held on August 5, 2008. He stated eight bids were received and it was determined at a public bid opening on August 26, 2008 that the apparent low bidder was SCW Contracting Company with a bid of \$1,530,500. He indicated that the Engineer's estimate for the project was \$1,823,000.

He stated, however, there were two apparent errors in the bid process:

1. SCW Contracting Company listed the amount of their bid as \$1,580,000. However, the calculated amount was actually \$1,530,500 (a difference of \$49,000).

SCW Contracting Company made staff aware that they would like to plead their bid to the board for the higher dollar value. Staff had made the contractor aware that in the specifications it clearly states how discrepancies are handled. He noted in Exhibit B, the highlighted paragraph which notes, *"In the event the total bid amount does not agree with the sum of the total amounts for each item, the unit and lump sum price bid for each item along with its corrected/uncorrected total amount extension, shall govern. The total bid amount will be corrected accordingly, and the contractor shall be bound by said correction."*

2. SCW Contracting Company also did not list their Geotechnical Sub-Contractor for the geotechnical services to be performed on-site.

However, if the sub-contractors total cost for the work on the project is less than ½% of the total contract, there is no requirement to list the sub-contractor. As the sub-contractor's cost is less than ½% of the total contract, this issue has been accepted as there is no requirement to list the sub-contractor.

There was a subsequent protest related to this issue, but it will not be carried further due to the reason noted above.

Sr. Civil Engineer Grunow indicated that the fiscal year budget is \$2,375,000 and the total projected expenditures plus commitments are \$2,148,450. Staff recommends that the project be awarded to SCW Contracting Company. He noted that the paperwork has been processed to SCW Contracting Company and they have executed the documents. He indicated that Mr. Kurt Bjoin was in attendance of today's meeting to speak on behalf of SCW Contracting Company.

Director Breitfelder inquired with regard to the three companies whose bid amounts were noted with corrected amounts seemed counter intuitive as some were more and some were less. Sr. Civil Engineer Grunow indicated that the total bid amount and the sum total of the line items generally match. However, if

the sum total of the line items are in conflict with the total bid amount, it is the sum of the line items that is used.

Mr. Kurt Bjoin, Project Manager for SCW Contracting Company, indicated that after they had submitted their bid and their company had been identified as the apparent lowest bidder, they had been contacted by the District indicating that there was a clerical error in their bid. The sum total of the line items presented in their bid was \$1,530,500 and that their bid would be adjusted to this figure. They were asked to advise the District if they would be happy to proceed with the new figure. He indicated that his firm is not happy, but they do understand the protocol and it does make sense. He indicated that he wished to explain their process for putting together their company bid. He indicated that there were 37 separate items that were part of the bid and many of them were filled in at the last minute prior to the bids submission. He indicated that he had made a last minute adjustment to one of the line items in the bid and, due to a miscommunication between himself and the assistant putting the bid sheets together, the finalized documents did not include his adjustment as he did not realize that they were working off two separate pages (files). He indicated that their total bid amount of \$1,580,000 is what he felt the project would cost and that SCW Contracting Company would still be the lowest responsive bidder whether their bid was adjusted to \$1,530,500 or not. He indicated that SCW Contracting Company is still moving forward with the project, but he wished to present what happened and ask the board to accept their total bid amount of \$1,580,000.

Director Bonilla indicated that he sympathizes with Mr. Bjoin as certainly no one wishes to see anyone loose money on the project. He indicated that the District's attorney has indicated that the protocol is the law and, unfortunately, the District does not have any other option.

Mr. Bjoin indicated that he hoped the District would provide SCW Contracting Company a change order for the \$49,000. The District's General Counsel, Yuri Calderon, indicated that a change order would imply that there are some changed conditions. He indicated that there has not been anything brought to their attention that would be outside of the bid specifications and would justify a change order process.

General Manager Watton indicated that staff did discuss the situation in detail as they certainly understand SCW Contracting Company's situation. However, there is no other option without rebidding the project.

Director Robak inquired with regard to the legal reason why a change order could not be issued. General Counsel Calderon indicated that the Public Bidding Law is very clear and specific. He indicated that the intent of the law is to provide a fair and level playing field for contractors to acquire public work at a competitive price. He indicated in this particular case, the District is not questioning whether SCW Contracting Company has any ill intent, but the law is designed to protect public agencies from bidders who indicate that they made a mistake (they are still the lowest responsive bidder, but realize that they require another \$50,000). He indicated that once a bid is submitted, there are limited options and the agency

cannot negotiate with the bidder. He indicated that policy precludes the District from issuing a change order for something that is clearly in the documents and doing so would result in a gift of public funds. That is, the public contract document binds the District to pay for a certain service and if the District tried to pay a second time for the service, it is basically giving those funds away. He indicated the change order process requires there be something new that is being requested outside the specifications in the agreement/bid documents or have some changed condition that was not anticipated. This particular circumstance does not fall within any of these exceptions. For the board to do anything other than accept the bid or reject all bids and require that the project be rebid, would not be consistent with the law.

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

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

to approve staffs' recommendation.

9. BOARD

a) DISCUSSION OF 2008 BOARD MEETING CALENDAR

General Manager Watton noted the new dates for the November and December 2008 Regular Board Meetings of November 13, 2008 and December 15, 2008.

REPORTS

10. GENERAL MANAGER'S REPORT

a) SAN DIEGO COUNTY WATER AUTHORITY UPDATE

General Manager Watton provided a presentation on CWA's Drought Management Plan Implementation. He indicated on slide number seven (see attached copy of presentation) it shows a comparison of Municipal and Industrial Water Use and indicated that a comparison of July 2007 and July 2008 usage is down 6%; and August 2007 and August 2008 is down 9%. He noted the agencies that have adopted the Drought/Conservation Ordinances and those agencies who have not (see attached copy presentation). He noted that in year 2009 through 2013 water transfers from the IID and from the Canal Lining will increase from 100,580 AF in 2009 to 180,200 AF in 2013 providing additional water supplies. He indicated that over the next five years, the county will be in good shape with regard to supply as long as it meets the *20 Gallon Challenge* savings and as long as 100% of the MWD resource options come to fruition. If MWD is 60% successful with the resource options, in 2010 the county will require

15% conservation to meet required water supply demand. He indicated that he felt that this scenario will probably be the more likely option. He stated that in 2011 when the Colorado River ramps up, the County can meet supply demands with the *20 Gallon Challenge* savings. He indicated that if MWD moves away from the allocation program and focuses on preferential rights, then conservation would be required in both 2009 (24%) and 2010 (18%). He stated that he is not certain that this would happen, but he wished to share the information as it is a possibility. Director Breitfelder inquired why the MWD supply differs on slide 16 and 17. General Manager Watton indicated that slide 16 compares 100% of MWD resources options based on MWD preferential rights and slide 17 reflects 60% of MWD resource options with preferential rights.

General Manager Watton then presented his GM Report and stated that the design for the 36-inch Potable Water Pipeline would be completed in December 2008. It was originally expected to be completed in July 2008. The project is a little behind schedule, however, staff feels that the District will make up time during the construction phase. He indicated that Le & Ro is fully engaged and the project is moving along well.

He indicated that Director Croucher, CWA and several local agencies have been working on developing a group to provide representation to retail water agencies. It is felt that ACWA is not representing the retail agencies and there is interest in developing a group to represent retail water agencies in San Diego, Los Angeles and Orange County to provide better representation in Sacramento for Southern California. An exploratory group identified as VOCAL (Voice of the Consumers at the Local Level) will provide a presentation at the next Water Agencies Association meeting scheduled on October 16, 2008 to see if other agencies would have interest in developing such a group.

He indicated that staff met with CESPT staff (Tijuana's Water Agency) at their offices in Tijuana) on August 27, 2008 to discuss the Rosarito Beach Desalination Project. Staff also toured their Los Olivos Recycled Water Plant. The District was also invited to the inauguration of the Los Olivos Recycled Water Plant and Chief of Engineering Posada and Assistant General Manager Alvarez, represented the District at the event on September 25, 2008. CESPT staff visited the District on October 8, 2008 to continue discussions on the Desalination Project and to shared information on recycled water. CESPT will be commencing a study in January 2009 to review environmental issues and possible locations for the Desalination Plant.

He also noted that William Granger testified at the California Urban Water Conservation Council Plenary meeting in September to provide comments on the draft revisions to the BMPs. The District is looking for more flexibility in the BMPs as the State Water Resources Control Board prefers less flexibility. Stated that the State Board is more likely to leave some flexibility when they hear customer input through the water agencies.

General Manager Watton indicated that the District's current AA- rating may be upgraded by the rating agencies. The rating agencies are recognizing the

financial strength of local retail water agencies and the rating increase may be provided across the board to all agencies. This rating increase is very significant as it provides cost savings when the District issues debt.

He indicated that staff met with Directors Bonilla and Croucher to review the District's investments and criteria for investments. He indicated that the District will not incur losses on its investments as it does not invest in the types of securities that have been experiencing losses.

He noted that potable water purchases have decreased 10.26%. The decrease is due to the District's new source for recycled water and customers beginning to respond to the water conservation messages.

Director Robak inquired with regard to the General Manager's report concerning the Jamul-Dulzura Elementary School District's plan to install artificial turf at the Oakgrove Middle School. He asked if the District would be contributing money to the project. General Manager Watton indicated that he is not sure what the school's contribution will be, but the District has extended the funding that is available to all the schools within its service area. He indicated that such turf projects cost approximately \$1 million and Otay's contribution ranges from \$50,000 to \$85,000. It is not known if the project is definitive, but staff wanted to assure the school knew that funding was available from the District.

#### 11. DIRECTORS' REPORTS/REQUESTS

Director Robak indicated that he had been driving along Steele Canyon Road and noted that the District was flushing one of its lines and water was flowing down the hill. He asked if the District communicates with the community when it is flushing a line as the public might question why water is being wasted because they do not understand what is being done. General Manager Watton indicated that Helix has developed a notice and the District will be developing a similar notice to provide to distribute to the public.

Director Breitfelder indicated that the Rural Water Association spoke at the last Council of Water Utilities meeting. They presented on desalinated water and hoped to build a relationship with suburban water agencies. He indicated that the Conservation Action Committee has been focused on meeting with representatives from the Department of Water Resources to discuss their State model ordinance with local stakeholders. The objective was to have an interactive process to further influence the State ordinance so that it has a motivating effect on local stakeholders and they understand the importance of the model ordinance throughout the state. He indicated that Supervisor Ron Roberts presented at the recent CSDA meeting on Proposition A. He indicated that he also attended the CSDA conference and he had an opportunity to speak with representative from U.S. Bank. He indicated that it seems the District has had some very promising discussions with U.S. Bank regarding some banking services. General Manager Watton indicated that the District is very well situated with Union Bank, however, staff is always exploring what is available in the market to assure that the District is getting the best services for the cost. He

wished to indicate that the District is not, at this time, switching banks. Director Breitfelder also shared that he had a discussion with other Districts regarding rate increases during the CSDA conference and he had shared with them the District's rate study and how it has helped with the District's strategic decision making. He also shared with them the name of the District's consultant, PBS&J, who assisted the District with its rate study.

Director Lopez indicated that he also attended the recent CSDA meeting where Proposition A was discussed. He indicated that State Assemblymember Mary Salas was very interested in what was occurring with the Rosarito Desalination Project. General Manager Watton indicated that he did have an opportunity to share with her information on the project. Director Lopez thanked General Manager Watton for following up on her inquiry.

#### RECESS TO CLOSED SESSION

#### 14. CLOSED SESSION

The board recessed into closed session at 4:42 p.m. to discuss the following matters:

- b) CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION  
[GOVERNMENT CODE §54956.9(a)]
  - (I) 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) AMERICAN PROTECTION INSURANCE V. OTAY WATER DISTRICT, DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, #08-CV-0662-JM-POR
- c) CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION  
[GOVERNMENT CODE §54956.9(b)]

1 CASE

#### RETURN TO OPEN SESSION

#### 15. 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 6:12 p.m. General Counsel Yuri Calderon noted for the record that Director Robak left closed session at 5:50pm. He indicated that two actions were taken in closed session:

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

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

to authorize the Board President to select a board member and authorize that board member to settle at any subsequent mediation that may occur with respect to American Protection Insurance v. Otay Water District matter.

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

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

to accept in part and reject in part the claim filed by IEC. The board accepted the portion of the claim for \$153,651.35 and denied the balance of the claim in the amount of \$143,524.61.

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

16. ADJOURNMENT

With no further business to come before the Board, Vice President Lopez adjourned the meeting at 5:46 p.m.

\_\_\_\_\_

President

ATTEST:

\_\_\_\_\_

District Secretary