

**MINUTES OF THE
BOARD OF DIRECTORS MEETING OF THE
OTAY WATER DISTRICT
November 4, 2015**

1. The meeting was called to order by President Lopez at 3:34 p.m.

2. ROLL CALL

Directors Present: Lopez, Robak, Smith and Thompson

Directors Absent: Director Croucher (due to a personal commitment)

Staff Present: General Manager Mark Watton, General Counsel Dan Shinoff, Asst. General Manager German Alvarez, Chief of Engineering Rod Posada, Chief Financial Officer Joe Beachem, Chief of Information Technology Geoff Stevens, Asst. Chief of Administration and Information Technology Adolfo Segura, Asst. Chief of Operations Jose Martinez, District Secretary Susan Cruz and others per attached list.

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

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

Ayes: Directors Lopez, Robak, Smith and Thompson

Noes: None

Abstain: None

Absent: Director Croucher

to approve the agenda.

5. APPROVE THE MINUTES OF THE BOARD MEETING OF AUGUST 13, 2015

Director Thompson indicated that he wished to clarify at the top of page six (6) of the August 13, 2015 minutes where it indicates, "Because there currently are no metrics..." he would like to amend his statement to indicate that, "Because there currently is no quantifiable data to measure..." as he did not feel that the public would understand what is meant by *no metrics*.

A motion was made by Director Smith, seconded by Director Thompson and carried with the following vote:

Ayes: Directors Lopez, Robak, Smith and Thompson

Noes: None

Abstain: None
Absent: Director Croucher

to approve the minutes of August 13 with Director Thompson's amendment.

6. 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.

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 pulled items 6c, AUTHORIZE THE GENERAL MANAGER AND DISTRICT STAFF TO EXPLORE, NEGOTIATE AND ENTER INTO A LETTER OF INTENT OR MEMORANDUM OF UNDERSTANDING (LOI/MOU) BETWEEN THE DISTRICT AND CADIZ, INC. FOR THE PURCHASE OF 5,000 ACRE-FEET PER YEAR (AFY) OF RAW WATER AND TO APPROVE THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) NOTICE OF EXEMPTION FOR THE POTENTIAL WATER PURCHASE; 6d, APPROVE AN AGREEMENT WITH THE LAW FIRM OF STUTZ, ARTIANO, SHINOFF AND HOLTZ, A PROFESSIONAL CORPORATION, FOR A TERM OF TWO (2) YEARS THROUGH DECEMBER 31, 2017, TO PROVIDE GENERAL COUNSEL SERVICES; 6e, APPROVE A FINE OF \$22,000 TO SHARP CHULA VISTA FOR MULTIPLE VIOLATIONS OF THE DISTRICT'S CODE OF ORDINANCES; for discussion.

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

Ayes: Directors Lopez, Robak, Smith and Thompson
Noes: None
Abstain: None
Absent: Director Croucher

to approve the following consent calendar items:

- a) APPROVE A CONSTRUCTION CONTRACT WITH MONTGOMERY CONSTRUCTION SERVICES, INC. FOR THE OPERATIONS YARD PROPERTY ACQUISITION IMPROVEMENT PROJECT IN AN AMOUNT NOT-TO-EXCEED \$449,611.05
- b) ADOPT THE MITIGATED NEGATIVE DECLARATION FOR THE CAMPO ROAD SEWER REPLACEMENT PROJECT

President Lopez presented item 6e for discussion:

- e) APPROVE A FINE OF \$22,000 TO SHARP CHULA VISTA FOR MULTIPLE VIOLATIONS OF THE DISTRICT'S CODE OF ORDINANCES

Customer Service Manager Andrea Carey requested that the board uphold staffs' recommendation to impose a \$22,000 fine to Sharp Chula Vista for multiple violations of the District's Code of Ordinances. Please reference the Committee Action notes (Attachment A) attached to the staff report for the details of Ms. Carey's report.

Mr. Matthew Teichner, Project Manager for Sharp Chula Vista, indicated they take regulatory compliance very seriously and explained how their test system worked. He stated that they did not steal water from the District or tamper with the District's system. He indicated that the hospital's relationship with the District is important to them and expressed that it is never their intent to break or evade regulations. He requested that the board reduce the proposed \$22,000 fine as Sharp Chula Vista felt it is excessive, based on circumstantial evidence, and due to a misunderstanding of how their test system worked.

General Manager Watton indicated that the relationship with Sharp Chula Vista has been respectful. In previous instances where Sharp Chula Vista's contractors were found taking short cuts, the District worked with those contractors and corrective action was taken. With regard to these incidents, these are large valves and it is highly unlikely that a vandal would open the valves since they require special tools to operate. The District did not open the valves and there is only one party that had an incentive to open the valves. The proposed \$22,000 fine is assessed for each violation of the District's Code performed on two water systems.

Mr. Teichner acknowledged that there have been previous conflicts between the District and Sharp's contractors and there was some misunderstanding with Otay WD's involvement in their projects. He stated that he should have come to Otay WD at the beginning of the project, but would be doing that tomorrow for the next phase of the work on this project.

General Manager Watton indicated his appreciation for their future cooperation and stated to the board that the amount of the imposed penalty is at their discretion and staff is not resolute as to the amount of the fine.

Director Robak indicated that this item was reviewed by the District's Finance, Administration and Communications Committee in September and the committee supported staffs' recommendation based on the information presented and past incidences with Sharp Chula Vista's contractors.

There was further discussion and presentations made by the District's Inspection Manager, Mr. Brandon DiPietro, and Sharp Chula Vista's site foreman, Mr. Dan

George of Kyne Construction regarding what was observed at the project site at Sharp Chula Vista the day the violations were discovered.

A motion was made by Director Thompson, seconded by Director Smith and carried with the following vote:

Ayes: Directors Lopez, Robak, Smith and Thompson
Noes: None
Abstain: None
Absent: Director Croucher

to consider the violations as occurring on one water system instead of two water systems and imposing a fine that is half (\$11,000) of the recommended \$22,000 to Sharp Chula Vista.

President Lopez presented 6c for discussion:

- c) AUTHORIZE THE GENERAL MANAGER AND DISTRICT STAFF TO EXPLORE, NEGOTIATE AND ENTER INTO A LETTER OF INTENT OR MEMORANDUM OF UNDERSTANDING (LOI/MOU) BETWEEN THE DISTRICT AND CADIZ, INC. FOR THE PURCHASE OF 5,000 ACRE-FEET PER YEAR (AFY) OF RAW WATER AND TO APPROVE THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) NOTICE OF EXEMPTION FOR THE POTENTIAL WATER PURCHASE.

Director Robak inquired why the District was entertaining a relationship with Cadiz, Inc. as he felt it was not looking positive for the project and it is very controversial. General Manager Watton indicated that the District wishes to indicate interest in reserving water supplies from the project as it becomes an additional water resource should the project come to fruition. He stated there is no cost or risk to the District to reserve supplies from the project. Regarding environmental impacts, there are no environmental considerations relative to the District as the water would be conveyed to the Otay WD through existing MWD and CWA infrastructure (no new infrastructure would need to be built).

In response to an inquiry from Director Thompson, General Manager Watton indicated that MWD is currently charging approximately \$700 per AF to wheel the Colorado River water through the QSA. Staff has estimated a fair wheeling rate for Cadiz water would be closer to \$200 per AF or a little under. He stated if the District can get the Cadiz water for this rate, it is a good deal. However, if it is wheeled at the QSA rate it would not be a reasonable rate. General Manager Watton indicated in response to another inquiry from Director Robak, that no other agency in San Diego, including CWA, is seeking an agreement with Cadiz as they only have 50,000 AF available and it is already fully subscribed. CWA had interest, but they have other sources they are also exploring.

A motion was made by Director Smith, seconded by Director Thompson and carried with the following vote:

Ayes: Directors Lopez, Robak, Smith and Thompson
Noes: None
Abstain: None
Absent: Director Croucher

to approve staffs' recommendation.

President Lopez presented 6d for discussion:

- d) APPROVE AN AGREEMENT WITH THE LAW FIRM OF STUTZ, ARTIANO, SHINOFF AND HOLTZ, A PROFESSIONAL CORPORATION, FOR A TERM OF TWO (2) YEARS THROUGH DECEMBER 31, 2017, TO PROVIDE GENERAL COUNSEL SERVICES

General Manager Watton indicated that this is a discretionary item for the board and staffs' sense is that the board is happy with the services provided by Stutz Artiano, Shinoff and Holtz, LLC (SASH). Staff has attached to the report a survey comparing general counsel service hourly cost among the local agencies and it is felt that SASH's rates are competitive. Staff is also pleased with the firm's work and, thus, staff is recommending the renewal of the District's agreement with SASH.

Director Thompson suggested that he would like a discussion in the future of the rationale for a retainer. General Manager Watton indicated that typically the District is below the retainer amount, but there are some months where the District is over the retainer due to more legal activity. He stated that the District only pays for the hours worked by the firm.

A motion was made by Director Thompson, seconded by Director Smith and carried with the following vote:

Ayes: Directors Lopez, Robak, Smith and Thompson
Noes: None
Abstain: None
Absent: Director Croucher

to approve staffs' recommendation.

ACTION ITEMS

8. FINANCE, ADMINISTRATION AND INFORMATION TECHNOLOGY

- a) APPROVE THE DISTRICT'S AUDITED FINANCIAL STATEMENTS INCLUDING THE INDEPENDENT AUDITOR'S UNQUALIFIED OPINION FOR FISCAL YEAR ENDED JUNE 30, 2015

Senior Accountant Marissa Dychitan indicated that staff is recommending that the board approve the District's audited financial statements, including the Independent Auditors' unqualified opinion for the fiscal year ended June 30, 2015. She stated that Teaman, Ramirez & Smith, Inc. performed the audit and found that, in all material respects, the financial statements correctly represent the financial position of the District. Please reference the Committee Action notes (Attachment A) attached to the staff report for further details of Ms. Dichitan's and the Auditor's (Mr. Rich Teaman's) report.

Mr. Teaman indicated in response to an inquiry from Director Robak that from his firm's observation, the District is well funded and managed and the District seems to take the appropriate steps to assure the financial stability of the District.

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

Ayes: Directors Lopez, Robak, Smith and Thompson
Noes: None
Abstain: None
Absent: Director Croucher

to approve staffs' recommendation.

9. WATER OPERATIONS AND ENGINEERING

- a) APPROVE AMENDMENT NO. 4 TO THE EXISTING CONTRACT WITH AECOM TECHNICAL SERVICES, INC. (AECOM) FOR THE DESIGN OF THE OTAY MESA DESALINATION CONVEYANCE AND DISINFECTION SYSTEM PROJECT; INCREASING THE CONTRACT BY \$22,425, RESULTING IN A HIGHER CONTRACT AMOUNT NOT-TO-EXCEED \$3,800,863

Environmental Compliance Specialist Lisa Coburn-Boyd indicated that staff is requesting that the board approve amendment number four (4) to the District's existing contract with AECOM Technical Services, Inc. (AECOM) for the design of the Otay Mesa Desalination Conveyance and Disinfection System Project. Please reference the Committee Action notes (Attachment A) attached to the staff report for further details of Ms. Coburn-Boyd's report.

General Manager Watton indicated that the State of Baja should be receiving tenders to build the desalination plant in the next four (4) weeks. NSC Agua has submitted their tender. He indicated that Mexico will buy a majority of the water from the project and that he has submitted a letter on behalf of the District to the State of Baja restating the District's desire to purchase water from the project and indicating the amount of water the District is interested in purchasing.

It was discussed that the EIR/EIS does includes the construction of a pump station and water treatment facility should they be required.

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

Ayes: Directors Lopez, Robak, Smith and Thompson
Noes: None
Abstain: None
Absent: Director Croucher

to approve staffs' recommendation.

- b) APPROVE TWO (2) AGREEMENTS FOR METERED EMERGENCY INTERCONNECTIONS BETWEEN OTAY AND THE HELIX WATER DISTRICT AT BLOSSOM LANE AND IVY STREET

Senior Civil Engineer Steve Beppler indicated that staff is requesting the board's approval of two (2) agreements for metered emergency interconnections between Otay WD and the Helix WD at Blossom Land and Ivy Street in Lemon Grove. Please reference the Committee Action (Attachment A) notes attached to the staff report for further details of Mr. Beppler's report.

General Manager Watton noted that this item was supported by committee, but the committee had interest in the location of all District interconnects. He noted there are two maps attached to staff's report showing all the District's interconnections (31 total interconnections).

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

Ayes: Directors Lopez, Robak, Smith and Thompson
Noes: None
Abstain: None
Absent: Director Croucher

to approve staffs' recommendation.

10. BOARD

- a) DISCUSSION OF THE 2015 BOARD MEETING CALENDAR

There was discussion that there was no urgent business to be heard and staff is prepared if the December 2015 board meeting is canceled as has been done in the past. It was suggested that the meeting be held on the calendar and a cancellation be posted if the meeting is not needed.

INFORMATIONAL ITEM

11. THE FOLLOWING ITEMS ARE PROVIDED TO THE BOARD FOR INFORMATIONAL PURPOSES ONLY. NO ACTION IS REQUIRED ON THE FOLLOWING AGENDA ITEMS:

- c) RECEIVE THE FINDINGS OF THE 2015 CUSTOMER AWARENESS AND OPINION SURVEY (BUELNA)

Communications Officer Armando Buelna indicated that staff is presenting the results of the 2015 Customer Awareness and Opinion Survey. He indicated that this is a statistically reliable survey based on telephone interviews of residential customers of the District. The survey was performed by Rea & Parker Research, Inc. between August 31 and September 9, 2015. He indicated that Drs. Rea and Parker are in attendance of today's meeting and will be presenting the results of the survey. Please reference the Committee Action notes (Attachment A) attached to the staff report for further details of Mr. Buelna's and Drs. Rea and Parker's report.

Dr. Parker indicated in response to an inquiry from Director Robak that cell phone respondents are a little different demographically than respondents who have a landline and they wished to track in the survey cell phone respondents' views and experience with the District to see if, and how, they differ from landline customers.

The board was interested in knowing how the reduction in water use by the District's customers is impacting the District's budget. General Manager Watton indicated that staff would be presenting this information at an upcoming Workshop for the Board.

REPORTS

12. GENERAL MANAGER'S REPORT

CWA Report

General Manager Watton indicated with regard to CWA's lawsuit with MWD that the judge awarded the statute pre-judgement interest of 10% which brings the judgement to \$240+ million. It is expected that MWD will appeal the judgement. The interest for post judgement is set at 7% for the length of the appeal process.

He also shared that he has provided handouts on the dias and the first is an update on ACWA's proposed ballot measure related to Proposition 218; a letter to ACWA from Ms. Maureen Stapleton, General Manager of CWA, regarding their not vetting the ballot measure through the ACWA members and Mr. Tim Quinn's, ACWA Executive Director, response to CWA's letter; and information on the California Water Fix for the Delta Tunnels.

Mr. Watton also presented information from his report. He reported on the District's preparedness and planning for storm related flooding, Safety Training,

the Countywide GIS Image Project, the FY 2015 Comprehensive Annual Financial Report, the Rosarito Desalination Project, recycled water fire hydrant installations, the Ralph W. Chapman Water Reclamation Facility Indirect Potable Reuse/Direct Potable Reuse project with Sweetwater Authority, and water purchases.

13. DIRECTORS' REPORTS/REQUESTS

Director Robak indicated that he felt that the annual Customer Survey is a great tool, especially with regard to measuring the effectiveness of the Water Conservation Garden (WCG) as it is the only tool that provides data on the WCG. He stated that the District did a very good job in handling the break at Hillsdale and that he received good feedback from the community as well. He indicated that he attended a quarterly meeting of the Conservation Action Committee at the SDG&E Energy Conservation Center. Mr. Charles Fishman, an author who wrote a book on water, presented at the meeting. He indicated Mr. Fishman has a perspective on water that encompasses the world, far beyond the Southern California paradigm. He also shared that Mr. John Bolthouse has submitted his resignation as the Executive Director of the WCG effective December 18 and has accepted a new position as the Executive Director of the Friends of Balboa Park organization. He lastly shared that he attended the South County Economic Development Council's Elected Officials event and was asked to provide a report on the Otay WD. He indicated that he spoke on the inequitable recycled water rate increase that is being proposed on the Otay WD by the City of San Diego and that the information was well received. He stated the East County Chamber of Commerce is formally supporting the District's position on the City's recycled rate increase.

Director Smith reported, in the interest of transparency, that he created a sole proprietor civil engineering services company last month. The company's name is Smith Civil Engineering Solutions.

14. PRESIDENT'S REPORT

President Lopez reported on meetings he attended during the month of October 2015 (a list of meetings he attended is attached). He also acknowledged the agencies and organizations who supported the District's position on the City of San Diego's proposed recycled water rate increase to the Otay WD.

15. CLOSED SESSION

The board recessed to closed session at 6:10 p.m. to discuss the following matter:

- a) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9:

1 CASE

b) PUBLIC EMPLOYEE PERFORMANCE EVALUATION [GOVERNMENT CODE §54957.6

TITLE: GENERAL MANAGER

The board reconvened at 8:33 p.m. and General Counsel Dan Shinoff reported that the board met in closed session and took no reportable action on item *a* above. Director Thompson reported with regard to item *b*, that he and Director Smith served on the Ad Hoc General Manager Evaluation Committee. He stated that the Board conducted the General Manager's performance evaluation in closed session and the board is very pleased with General Manager Watton's performance over the last year.

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

Ayes: Directors Lopez, Robak, Smith and Thompson
Noes: None
Abstain: None
Absent: Director Croucher

to amend the General Manager's contract to extend it an additional year to 2018 and provide a salary increase of 2% effective July 1, 2015 and an adjustment effective July 1, 2016 based on the same formula for the employees scheduled to become effective the same date, July 1, 2016. The 2016 increase would be a minimum of 2% and a maximum of 3%. The board also directs General Counsel to draft the amendment to the General Managers contract based on these parameters.

Director Thompson acknowledged that the District's General Manager is one of the highest paid General Managers of a public agency in the County. He indicated the reason the District's General Manager is one of the highest paid is because he is one of the very best in the County. He stated the members of the board, of which a number has many years of experience in both the private and public sectors, recognizes the value the General Manager provides the District with his experience and knowledge of the industry. He indicated that his salary is a recognition of his career contributions and experience in the industry. Director Thompson noted that the proposed increase provided the General Manager is in line with the increases provided the employees of the District. The extension of the 3rd year is on his contract is to encourage him to continue his service with the District.

General Manager Watton thanked the board and indicated that he is honored to be the General Manager of the District. He stated that it has been a great experience and he is humbled by the board's confidence in him. He again thanked the board for the review and the kind words.

16. ADJOURNMENT

With no further business to come before the Board, President Lopez adjourned the meeting at 8:40 p.m.

President

ATTEST:

District Secretary

**President's Report
November 4, 2015 Board Meeting**

A) Meetings attended during the Month of October 2015:

- 1) **October 6:**
 - a. **Attended the District's Ad Hoc Salt Creek Golf Course Development Committee.** Discussed future of the Salt Creek Golf Course. Attendees: Director Thompson, General Manager Watton, Bill McWethy, Fred Grand and Alan Nevin
 - b. **Attended the District's Ad Hoc Salt Creek Golf Course Development Committee.** Follow-up discussion to earlier morning meeting above regarding the future of the Salt Creek Golf Course. Attendees: Director Thompson and General Manager Watton
- 2) **October 7: OWD Regular Board Meeting**
- 3) **October 13: Attended Southwestern College's Board Meeting to accept their Resolution of Support for Zonal Rating for the City of San Diego's Recycled Water Rate.**
- 4) **October 14: Attended the District's Employee Recognition Luncheon.**
- 5) **October 16: Committee Agenda Briefing.** Met with General Manager Watton to review items that will be presented at the October committee meetings.
- 6) **October 19: Attended the District's Desalination Project Committee.** Discussed and received an update on the Rosarito Desalination Project.
- 7) **October 21: Attended the District's Finance, Administration and Communications Committee.** Reviewed, discussed, and made recommendation on items that will be presented at the November board meeting.
- 8) **October 22: Attended the City of Chula Vista's Ribbons and Shovels Event.** Attendees: Director Thompson
- 9) **October 27: Board Agenda Briefing.** Met with General Manager Watton and General Counsel Dan Shinoff to review items that will be presented at the November 4 Board Meeting.

10) **October 28:**

- a. **Interview with Univision** regarding the City of San Diego's proposed recycled water rate increase.
- b. **Attended the Press Conference hosted by Otay Water District and City of Chula Vista.** Shared information on the City of San Diego's proposed recycled water rate increase.