

MINUTES OF A REGULAR MEETING
OF THE BOARD OF DIRECTORS OF THE
OLIVENHAIN MUNICIPAL WATER DISTRICT

October 28, 2009

A regular meeting of the Board of Directors of the Olivenhain Municipal Water District was held on Wednesday, October 28, 2009 at the District office, 1966 Olivenhain Road, Encinitas, California.

President Sprague called the meeting to order at 8:00 A.M. Following the Pledge of Allegiance, the Assistant Secretary called the roll. Directors present were Krauss, Sprague, Topolovac, and Varty. Director Muir was absent.

President Sprague declared a quorum present and ordered the meeting to proceed. In attendance were Kimberly Thorner, General Manager; Wes Peltzer, General Counsel; Tom Kennedy, Operations Manager; George Briest, Engineering Manager; Rainy Selamat, Finance Manager; and Naomi Sabino, Executive Secretary.

Also in attendance were District customers Dr. Donald Wilson and Hal Mortensen; District Consultant, Don MacFarlane - AECOM; District employees Joseph Randall - Management Analyst Supervisor, Jennifer Joslin - Human Resources Analyst, Bill Duvel - Line Locator/Inspector, Wayne Alexander - Inspection Supervisor, Karen Ogawa - Engineering Project Supervisor, Cathleen Hudson - Accountant I, and Cynthia Pecile - Engineering/Right Of Way Coordinator.

5. ADOPTION OF AGENDA

President Sprague moved to adopt the agenda as recommended, seconded by Director Varty and carried with Director Muir absent.

6. PERSONAL APPEARANCES AND PUBLIC COMMENTS

District employees were present for agenda item number 7.

7. PRESENTATION OF AWARDS AND HONORABLE MENTIONS

* Bill Duvel – 25 Year Service Anniversary

Following words of appreciation for Mr. Duvel by Inspection Supervisor Alexander, General Manager Thorner, and Engineering Manager Briest, President Sprague presented Mr. Duvel with a check and a framed Resolution on behalf of the District. Mr. Duvel was congratulated by the Board and all those present.

President Sprague asked Dr. Donald Wilson to draw the next 20-Gallon Challenge winner. The name of District customer Arnie Katz was drawn.

8. CONSIDER APPROVAL OF THE MINUTES OF THE OCTOBER 14, 2009 REGULAR BOARD OF DIRECTORS MEETING

Director Topolovac moved to approve the Minutes of the October 14, 2009 Board of Directors meeting, seconded by Director Krauss and carried with Director Muir absent.

9. CONSENT CALENDAR

C-a CONSIDER ADOPTION OF A MOTION APPROVING THE PAYMENT OF LISTED WARRANTS FROM THE DISTRICT'S REVOLVING AND REGULAR ACCOUNTS; LISTED TRANSFERS OF FUNDS; REIMBURSEMENT OF EXPENSES TO BOARD MEMBERS AND STAFF; AND MONTHLY INVESTMENT REPORT

C-b CONSIDER ADOPTION OF A MOTION APPROVING OF THE DISTRICT'S "UNAUDITED" INCOME STATEMENT, BUDGET SUMMARY WITH NOTES EXPLAINING SIGNIFICANT VARIANCES, AND CONSTRUCTION IN PROGRESS REPORT

Director Krauss moved to approve the Consent Calendar, seconded by Director Varty and carried with Director Muir absent.

10. CONSIDER INFORMATIONAL REPORT FROM THE GENERAL MANAGER ON CLIMATE CHANGE ISSUES

General Manager Thorner reviewed a PowerPoint presentation regarding the various laws as well as reporting, environmental, and sustainability requirements the District must consider and implement by 2012. The presentation also summarized current and future actions being taken by the District that are already in compliance with these requirements.

Directors Topolovac and Krauss inquired what the baseline is for the 20% statewide reduction in per capita water use by 2020. Management Analyst Supervisor Randall responded that the baseline is a 10 year average, not to begin prior to December 31, 2004 nor later than December 31, 2009; however, the exact formula for calculating the reduction has not yet been established by the legislature. General Manager Thorner added that the legislature may take climate zones into consideration when finalizing the formula. She further stated that the District's service area consists of four different climate zones.

Director Topolovac questioned whether the 20% reduction will be required of districts that possess a local water supply and do not need to import water. General Manager Thorner replied Yes. Director Topolovac suggested that compliance with these new regulations will require that the legislature soften their position, or that new legislation be written, on both the use of gray water and utilizing recycled water on residential lawns. He stated that, similar to the Clean Water Act of the 1970s and the Clean Air Act of 1990, the climate change legislation is a worthwhile effort; however, an affordable way to comply with its requirements must be found.

Operations Manager Kennedy stated that solar parking covers, similar to parking covers installed at Vallecitos Water District, may be pursued at the District following the completion of Building J. These solar covers were mentioned as an example of actions being explored by the District in order to comply with the climate change legislative requirements.

Director Krauss stated that reducing water vapor, methane gas recovery at the treatment plant, and other actions can be pursued to reduce the District's greenhouse gas emissions. He voiced a concern, however, about complying with these regulations while remaining focused on the District's mission to provide safe, reliable water in a cost-effective manner. General Manager Thorner responded that this mission will unequivocally continue to be the District's priority, whereas compliance with climate change requirements will be explored and pursued strictly

within the confines and parameters of the District's primary mission.

No Board action was required.

11. CONSIDER AN AGREEMENT WITH THE ELFIN FOREST HARMONY GROVE VOLUNTEER FIRE DEPARTMENT (EFHGVFD) FOR EMERGENCY FIRE AND MEDICAL SERVICES FOR THE ELFIN FOREST RECREATIONAL RESERVE (EFRR) IN THE AMOUNT OF \$20,000 ANNUALLY AND AUTHORIZE THE GENERAL MANAGER TO SIGN ON BEHALF OF THE DISTRICT

Operations Manager Kennedy commented that approval of this Agreement will serve to continue an arrangement that is already in place with EFHGVFD.

Director Topolovac moved to approve the Agreement with EFHGVFD in the amount of \$20,000 per year, seconded by Director Krauss and carried with Director Muir absent.

12. CONSIDER STATUS REPORT ON STATE AND FEDERAL LEGISLATION

General Manager Thorner presented this informational item which summarized legislation that has been passed by the Governor, what the legislation means, whether or not the District opposed the legislation, and the end status.

No Board action was required.

13. CONSIDER APPROVAL OF REVISED DISTRICT LEGISLATIVE GUIDELINES FOR 2010

General Manager Thorner stated that the Legislative Guidelines were adopted by the Board in 2008. The revised guidelines incorporate current legislation, the District's position on each, and the San Diego County Water Authority's updated legislative guidelines.

Director Krauss recommended that the District's position on climate change legislation be added to this document. General Manager Thorner proposed adding language stating that "the District would oppose any legislation that places an undue burden or compromises the District's ability to implement its primary mission."

Per the Board's request, the Legislative Guidelines will continue to be brought before the Board on an annual basis; in addition, the District will use the standing, monthly Legislative Report to report to the Board and discuss any items of significance throughout the year. Reference to the latter reports will be added to the introductory memo of the agenda item entitled "Informational Reports – Legislative Report."

Director Sprague moved to approve the revised Legislative Guidelines with the proposed amendment as discussed, seconded by Director Topolovac and carried with Director Muir absent.

14. CONSIDER ADOPTION OF AN ORDINANCE UPDATING THE DISTRICT'S ADMINISTRATIVE AND ETHICS CODE (ARTICLE 8 – WATER RATES AND CHARGES)

General Counsel Peltzer recommended that roll call votes only be taken for Ordinances; roll call votes are not required for Resolutions. He also recommended adding Resolutions to the

Consent Calendar when the Board has already given direction to Staff on a particular issue. The Board agreed to follow these recommendations going forward.

General Manager Thorner presented for the Board's consideration Ordinance No. 372 entitled:

ORDINANCE OF THE BOARD OF DIRECTORS
OF THE OLIVENHAIN MUNICIPAL WATER DISTRICT
UPDATING THE DISTRICT'S ADMINISTRATIVE AND ETHICS CODE
(Article 8 – Water Rates and Charges)

Upon motion by Director Topolovac and seconded by Director Krauss, Ordinance No. 372 was adopted by the following roll call vote:

AYES: Directors Krauss, Sprague, Topolovac, and Varty
NOES: None
ABSTAIN: None
ABSENT: Director Muir

15. CONSIDER ADOPTION OF A RESOLUTION APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE SALE OF THE SELLER'S PROPOSITION 1A RECEIVABLE FROM THE STATE; AND DIRECTING AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

Director Topolovac moved to approve Resolution 2009-32 as written, seconded by Director Varty and carried with Director Muir absent.

16. CONSIDER AWARD OF A CONTRACT TO AZTEC LANDSCAPING, INC. FOR THE CONSTRUCTION OF THE DISTRICT HEADQUARTERS' IRRIGATION AND LANDSCAPING IN THE AMOUNT OF \$135,429.75, AND AUTHORIZE THE GENERAL MANAGER TO SIGN ON BEHALF OF THE DISTRICT

Engineering Manager Briest stated that the third lowest bidder on this Request for Proposal acknowledged the addendum; the first and second lowest bidders did not. However, Staff's position is that acknowledgment of the addendum is not material to the bid and recommends awarding the contract to the lowest bidder, Aztec Landscaping, Inc. Staff also recommended negotiating a change order with the contractor to account for an error in the landscape plans in terms of the actual number of feet of pipe required for the project.

President Sprague inquired what Aztec's history is with the District; Engineering Manager Briest stated they have not previously worked with the District.

Director Topolovac requested Staff's complete assurance that plants being used in landscaping the District's headquarters will be as close to xeriscape and/or as water wise as possible in order to set the right example within the community.

General Counsel Peltzer asked that the Board vote to move this item to Closed Session for further discussion. The Board voted 4-0 to delay discussion of this item until Closed Session per General Counsel Peltzer's request.

17. CONSIDER APPROPRIATING \$450,000 FROM THE RECYCLED WATER CAPITAL FUND FOR THE CONSTRUCTION OF THE SAN DIEGO RECYCLED WATER CONNECTION NO 2

Director Krauss moved to approve the appropriation in the amount of \$450,000 for the construction of the San Diego Recycled Water Connection No. 2, seconded by Director Varty and carried with Director Muir absent.

18. CONSIDER AN INFORMATIONAL REPORT AND SETTING OF A TIME AND PLACE FOR A PUBLIC HEARING TO CONSIDER THE OLIVENHAIN MUNICIPAL WATER DISTRICT'S POTABLE WATER CAPACITY FEES FOR CY 2010 (November 18, 2009 – 5:30 P.M.)

General Manager Thorner and Engineering Manager Briest reported that this will be the third and final increment of capacity fee increases previously approved by the Board. Engineering Manager Briest stated that, in 2010, the District will prepare a new capacity fee report and possibly a Master Plan update to determine what changes, if any, are required to the current capacity fee structure. Staff recommended a Public Hearing be held on November 18, 2009 to consider the proposed increase in capacity fees, with subsequent implementation of any approved capacity fee increase occurring in December 2009.

Director Topolovac moved to hold the Public Hearing to Consider the District's Potable Water Capacity Fees for CY 2010 at the District's offices on November 18, 2009 at 5:30 p.m., seconded by Director Krauss and carried with Director Muir absent.

President Sprague asked to consider Informational Reports prior to discussing agenda item #19 in Closed Session.

22. INFORMATIONAL REPORTS

A. President's Report

President Sprague stated he had nothing to report.

B. General Manager's Report

General Manager Thorner reported that the issuance of the bonds on November 6 was looking very favorable.

C. Consulting Engineer's Report

Consulting Engineer MacFarlane stated he had nothing to report.

D. General Counsel's Report

General Counsel Peltzer reported on the District's need to pay attention to providers who could potentially deposit hazardous waste in the District's sewer system since the District would share liability for this contamination. He recommended that both a defense and an indemnity clause be inserted in all District agreements with such providers, and additionally recommended routinely testing the sewer system to confirm there are no leaks. Operations Manager Kennedy

and Engineering Manager Briest will review any existing provider agreements and discuss the insertion of necessary language with General Counsel Peltzer.

E. San Diego County Water Authority Report

Director Muir was not present to report.

F. Metropolitan Water District Report

General Manager Thorner stated that she will attend the Metropolitan Water District desalination meeting on November 9 and 10.

G. IRWMP Committee Report

General Manager Thorner stated that there was nothing to report at this time.

H. Twelve Month Calendar / Other Meetings/Reports

VIP Tour (October 15)

Director Topolovac reported that Staff did a nice job on the tour. He offered the suggestion to set up future lunches at a different venue, possibly at the Interpretive Center. He stated that he received many favorable comments by attendees.

Water Agencies Association Dinner (October 15)

Director Varty stated that he was impressed with Fieldman, Rolapp & Associates' presentation on bond-related issues as the examples provided were similar to those that were recently experienced by the District.

Council of Water Utilities (COWU) Breakfast Meeting (October 20)

Directors Krauss and Muir attended this meeting. Director Krauss reported that Camp Pendleton is looking into building an up to 150 mgd desalination plant. The Marine Corps, however, has made it clear that their military mission comes first; construction of a desalination plant will not be allowed to interfere with that mission. Director Krauss also learned that Camp Pendleton is practically self-sufficient in terms of their water supply which consists of 99% groundwater.

OMWD Conservation Committee Meeting (October 21)

Director Muir and Topolovac attended. General Manager Thorner reported that Metropolitan Water District still has funds remaining in their conservation program. She also stated that the Committee reviewed the District's discussion with California State University San Marcos (CSUSM) and concluded that a partnership with Vallecitos or separate grant funding would be needed in order to participate in a larger study with CSUSM.

SDCWA Board Meeting (October 22)

Director Muir was not present to report.

I. Legislative Report

General Manager Thorner stated that all legislative reports had been provided earlier in the Board Meeting.

J. LAFCO Advisory Committee

General Manager Thorner reported that LAFCO did not meet in October.

23. CORRESPONDENCE

All correspondence was provided to the Board in advance of the meeting. President Sprague requested that, in addition to receiving copies of the District's response to any complaint letters, a copy of the customer's original letter should be attached to the District's response for ease of reference.

24. AUTHORIZATION TO ATTEND UPCOMING MEETINGS /CONFERENCES / SEMINARS

There were no meetings requiring authorization to attend.

25. FUTURE AGENDA ITEMS

There were no additional items to be added to a future agenda.

26. CONSIDER PUBLIC COMMENT

Dr. Wilson asked if there was any value to sending a notice to OMWD customers indicating that they can purchase OMWD bonds through Stone & Youngberg, allowing them to invest in the District. The Board and Staff agreed this would be a good idea. Director Krauss stated we would need to make it clear that such an offer to purchase bonds is in no way a solicitation by the District.

On the matter of climate change, Dr. Wilson opined that the District will likely need to select a person or team who will be dedicated to fulfilling the legislative requirements in a cost-effective manner.

NOTE: The meeting was in Closed Session
between 10:05 A.M. and 11:17 A.M.

27. CLOSED SESSION

- A) CONSIDER LITIGATION ON THE GREGORY CANYON RECYCLED WATER AGREEMENT [PURSUANT TO GOVERNMENT CODE SECTION 54956.9(a)]
- B) CONSIDER POTENTIAL LITIGATION – SAN DIEGO COUNTY WATER AUTHORITY / HODGES ISSUES [PURSUANT TO GOVERNMENT CODE SECTION 54956.9(b)]

19. CONSIDER APPROVAL OF A MEMORANDUM OF UNDERSTANDING REGARDING SETTLEMENT TERMS AND CONDITIONS BETWEEN THE DISTRICT, SAN DIEGO COUNTY WATER AUTHORITY, AND THE CITY [PURSUANT TO GOVERNMENT CODE SECTION 54956.9(b)] (CLOSED SESSION)

OPEN SESSION

President Sprague stated that Staff was instructed as to the Closed Session items.

General Manager Thorner stated Staff's recommendation to approve the Memorandum of Understanding (MOU) with the San Diego County Water Authority (SDCWA) and the City of San Diego as presented (agenda item #19), including all of the property transfers. The latter includes the need for General Counsel Peltzer to draft language, including some type of indemnity protection, whereby the District agrees to transfer the hillside next to the DCMWTP and the Pump Station as well as the SDCWA's agreement to pay for the lot split costs.

Director Sprague moved to approve the MOU with the insertion of additional language as recommended by Staff, seconded by Director Krauss and carried with Director Muir absent.

Staff was also instructed as to the disposition of the contract to Aztec Landscaping, Inc. President Sprague moved to approve the contract with Aztec Landscaping, Inc. in the amount of \$135,429.75 for the construction of the District Headquarters' Irrigation and Landscaping, seconded by Director Krauss and carried with Director Muir absent and Director Topolovac voting No.

20. RECEIVE AND DISCUSS ENGINEER'S REPORT ON ASSESSMENTS FOR THE 2007 REASSESSMENT DISTRICT NO. 96-1 BONDS

Director Topolovac moved to accept the Engineer's Report as presented, seconded by Director Krauss and carried with Director Muir absent.

21. CONSIDER A RESOLUTION OF THE BOARD OF DIRECTORS OF THE OLIVENHAIN MUNICIPAL WATER DISTRICT APPROVING AN ENGINEER'S REPORT ON ASSESSMENTS FOR THE 2007 REASSESSMENT DISTRICT NO. 96-1 BONDS AND APPROVING A SETTLEMENT AGREEMENT WITH THE SAN DIEGO COUNTY WATER AUTHORITY AND CITY OF SAN DIEGO

Director Sprague moved to approve Resolution 2009-31 approving the Engineer's Report and the MOU with the San Diego County Water Authority, seconded by Director Topolovac and carried with Director Muir absent.

28. ADJOURNMENT

President Sprague adjourned the meeting at 11:23 A.M.

Edmund K. Sprague, President
Board of Directors
Olivenhain Municipal Water District

ATTEST:

Jacob J. Krauss, Secretary
Board of Directors
Olivenhain Municipal Water District