

**MINUTES OF THE REGULAR BOARD MEETING
OF THE BOARD OF DIRECTORS OF THE
RAINBOW MUNICIPAL WATER DISTRICT
APRIL 27, 2010**

1. **CALL TO ORDER** - The Regular Meeting of the Board of Directors of the Rainbow Municipal Water District on April 27, 2010 was called to order by President Petty at 11:34 a.m. in the Board Room of the District, 3707 Old Highway 395, Fallbrook, CA 92028. President Petty presiding.

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL:**

Present: Director Griffiths
Director Lucy
Director McManigle
President Petty
Director Walson

Absent: None

Also Present: Finance Manager Buckley
District Engineer Lee
General Manager Seymour
Operations and Maintenance Manager Sneed
Board Secretary Washburn
Legal Counsel Moser

No members of the public were present before Open Session. Eleven members of the public were present for Open Session.

4. **ADDITIONS/AMENDMENTS TO THE AGENDA (Government Code §54954.2)**

There were no additions/amendments to the agenda.

5. **ORAL/WRITTEN COMMUNICATIONS FROM THE PUBLIC
OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE BOARD REGARDING
CLOSED SESSION AGENDA ITEMS (Government Code § 54954.2).**

There were no public comments.

Time: 11:35 a.m.

6. CLOSED SESSION

At any time during the session, the Board of Directors Meeting may adjourn to Closed Session to consider litigation or to discuss with legal counsel matters within the attorney client privilege.

- A. Conference with Legal Counsel–Existing Litigation (Government Code §54956.9(a))
 - Engineering Systems Inc./MIOX/Dudek & Associates
 - Agustin Angeles
- B. Conference with Legal Counsel-Anticipated Litigation (Government Code §54956.9)
 - 30465 & 30516 Old River Road, Bonsall, CA
- C. Conference with Real Property Negotiators (Government Code §54956.8)
 - 4355 Citrus Drive, Fallbrook, CA

Agency Negotiators: Dave Seymour and Brian Lee
Under Negotiation: Price and Terms

The meeting reconvened at 1:01 p.m.

7. REPORT ON POTENTIAL ACTION FROM CLOSED SESSION

President Petty reported direction was given to Legal Counsel on Item #6A, there was no direction provided on Item #6B, and staff and Legal Counsel were given direction on Item #6C

Time Certain: 1:00 p.m.

8. REPEAT REPORT ON POTENTIAL ACTION FROM CLOSED SESSION

This was covered under Item #7.

9. REPEAT ADDITIONS/DELETIONS/AMENDMENTS TO THE AGENDA (Government Code §54954.2)

President Petty reported there were no additions or amendments to the agenda.

10. ORAL/WRITTEN COMMUNICATIONS FROM THE PUBLIC OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE BOARD REGARDING ITEMS NOT ON THIS AGENDA (Government Code § 54954.2).

There were no public comments.

11. ANNIVERSARY ACKNOWLEDGEMENT – THOMAS SJUNESON (10 YEARS)

Mr. Seymour acknowledged Thomas being with RMWD for ten years starting in the Meter Services Department and currently as a Utility Worker II in Water Services. He presented Mr. Sjuneson with a plaque and check in acknowledgement for his tenure and great work.

(*) - Asterisk indicates a report is attached.

***12. APPROVAL OF MINUTES**

A. March 23, 2010 - Regular Board Meeting

Action:

Moved by Director McManigle to approve the minutes as written. Seconded by Director Lucy.

After consideration, the motion CARRIED by the following vote:

AYES: Director Griffiths, Director Lucy, Director McManigle, President Petty and Director Walson.

NOES: None.

ABSTAINED: None.

ABSENT: None.

13. BOARD OF DIRECTORS' COMMENTS/REPORTS

Directors' comments are comments by Directors concerning District business, which may be of interest to the Board. This is placed on the agenda to enable individual Board members to convey information to the Board and to the public. There is to be no discussion or action taken by the Board of Directors unless the item is noticed as part of the meeting agenda.

A. President's Report (Director Petty)

1. SDCWA

2. CSDA

President Petty explained since he was on vacation during these meetings, he was not in attendance and had nothing to report.

Discussion ensued regarding some of the high priority issues currently under consideration at SDCWA.

B. Meeting, Workshop, Committee, Seminar, Etc. Reports by Directors (AB1234)

None.

C. Directors Comments

Director McManigle mentioned how pleased he was with the April 2010 Newsletter and in that it was well-written and informative.

***14. COMMITTEE REPORTS (Approved Minutes have been attached for reference only.)**

A. Budget and Finance Committee

1. March 4, 2010 Minutes

Mr. Fagan reported on the April 8, 2010 committee meeting. He recommended the minutes be read for reference on the discussions that took place. He expressed concern the operations budget may be cut too much. He also mentioned the lengthy discussion regarding the evaporation offset fee and how the members were unable to come up with a recommendation for Board consideration. He noted the committee would be pleased to see the money come in; however, they want to be fair to the customers. He announced the next meeting will be held on

(*) - Asterisk indicates a report is attached.

May 7, 2010 where they will come up with numbers for the capital budget as well as surcharges to cover the reservoir costs. He said once a recommendation has been reached by the committee members, he would send a letter with the recommendation to the Board.

Director Walson stated by not imposing the surcharges, the District stands to lose a considerably large sum of money.

- B. Communications Committee**
 - 1. March 1, 2010 Minutes

Mr. Seymour reported the committee was progressively working on a quarterly newsletter.

- C. Engineering Committee**
 - 1. February 2, 2010 Minutes
 - 2. March 2, 2010 Minutes

Ms. Brazier reported minutes from both the February and March committee meetings were approved as revised after the approval of an addition to the February minutes requested by an unnamed member of the public. She noted the committee reviewed the change and had no objection. She mentioned the committee did not accept the resignation submitted by Mr. Walson at the March meeting and he has agreed to continue serving on the committee. She pointed out the committee voted to recommend to the Board two new alternate members, Mr. Prince and Mrs. Rhyne and asked they be seated. She mentioned the long and lengthy discussion that took place regarding the evaporation offset fees. She noted the committee voted with one member dissenting to recommend to the Board the averaging of the offset costs for Northside and Morro Reservoirs and that staff formulate and vary the offset fee of \$10,187.14 based on four-tenths acre-foot usage. She also mentioned the committee discussed a Morro to Beck pump station; however, since the Board already approved building a tank, the committee voted not to pursue Mr. Griffiths' pump station idea. She concluded by noting the committee will not be meeting in May, 2010.

BOARD ACTION ITEMS

***15. DISCUSSION AND POSSIBLE ACTION TO APPROVE THE AMENDED AND RESTATED WATER PURCHASE AGREEMENT BY AND BETWEEN RAINBOW MUNICIPAL WATER DISTRICT AND POSEIDON RESOURCES**

Mr. Seymour explained the proposed changes included in the Board packet had since been revised by Legal Counsel and how should the Board approve the amended agreement at this meeting, it would be subject to any final changes approved by Legal Counsel and the general manager. He reiterated the Board Members will be discussing and possibly taking action on the new revision provided to them at this meeting. He introduced Mr. McLaggan from Poseidon Resources.

Mr. McLaggan gave a presentation to the Board regarding the proposed changes in the agreement as well as how they will affect RMWD. He referenced handouts he provided to the Board and audience. Discussions ensued.

Legal Counsel asked Mr. McLaggan some clarification questions relating to the Carlsbad Water Supply Agreement that affects the quantity of water being purchased. He referenced Section 1.1 of the agreement. Discussion continued.

(*) - Asterisk indicates a report is attached.

Mr. McLaggan confirmed Carlsbad's staff has approved the proposed agreement; however, their legal counsel was in the process of reviewing it.

Director Griffiths expressed concern that RMWD was being placed in the middle of something over which it would have very little control. He requested further explanation as to why RMWD was being put in this situation. Mr. McLaggan provided an explanation. It was noted RMWD will have contractual agreements with both MWD and SDCWA. Discussion followed.

Legal Counsel pointed out there were many new pages in this agreement relating to financing and briefed the Board on how RMWD may be impacted as well as the documentation that may be requested of the District as part of this agreement. He also noted there were some comments regarding extensions Legal Counsel wanted to ensure were covered by the agreement with Poseidon. He stated these were two major items he wanted to bring attention to; however, he believed they could both be worked out through discussions with Poseidon.

Discussion ensued.

Director Lucy asked how RMWD would be impacted in the event of a shutdown. Legal Counsel pointed out potential shutdowns are reflected in the agreement. Discussion followed.

Director Walson asked for clarification on Recital Page, Item E. Legal Counsel explained RMWD was not the lead agency in this case; therefore, RMWD's obligations as a responsible agency are much less as a mere purchaser of the water. He noted it was required RMWD had to be included in the agreement as a responsible agency based on the fact it is public. He concluded by stating RMWD would most likely not be involved in any CEQA lawsuits.

Director Walson inquired about Section 20 regarding indemnity. Legal Counsel explained RMWD was basically indemnifying any breach of something promised in this agreement.

Director Walson asked some questions regarding the purchase price. Mr. McLaggan responded.

Action:

Moved by President Petty to continue both Items #15 and #16 until the next RMWD Board meeting with the proviso that all RMWD Board Members would get their questions to Mr. Seymour no later than Monday, May 3, 2010 so that he can get them to Legal Counsel for response. Seconded by Director Griffiths.

After consideration, the motion CARRIED by the following vote:

AYES: Director Griffiths, Director Lucy, Director McManigle, President Petty and Director Walson.
NOES: None.
ABSTAINED: None.
ABSENT: Director Lucy.

- *16. A RESOLUTION OF RAINBOW MUNICIPAL WATER DISTRICT APPROVING AN AMENDED AND RESTATED WATER PURCHASE AGREEMENT BETWEEN THE RAINBOW MUNICIPAL WATER DISTRICT AND POSEIDON RESOURCES (CHANNELSIDE) LLC;**

(*) - Asterisk indicates a report is attached.

**MAKING INDINGS REGARDING THE ENVIRONMENTAL EFFECTS OF THE AGREEMENT,
AND AUTHORIZING THE FILING OF A NOTICE OF DETERMINATION**

Action:

Moved by President Petty to delay Item #16 until Item #15 is decided upon. Seconded by Director McManigle.

After consideration, the motion CARRIED by the following vote:

AYES: Director Griffiths, Director Lucy, Director McManigle, President Petty and Director Walson.

NOES: None.

ABSTAINED: None.

ABSENT: None.

Director Lucy excused himself from the meeting at 2:26 p.m.2:26:11 PM

17. DISCUSSION ON EVAPORATION OFFSET ACCOUNT

Mr. Seymour pointed out there has been approximately 6-8 hours spent discussing what rate should be set for the Evaporation Offset Fee. He noted the Engineering committee came up with an offset amount of \$10,187 for four-tenths an acre foot which staff supports.

Director Walson stressed why he believed calculating this cost was a two-part process and claimed staff could not substantiate their numbers. He explained how he made his calculations which resulted in a much higher figure than staff's.

Director Walson briefed the Board, staff, and audience members on the information contained in the handout he prepared.

Action:

Moved by President Petty to accept Staff Recommendation-vote to approve the Engineering Committee's recommendation and set a price of \$10,187 per 0.40 acre-feet of estimated yearly consumption for an Evaporation Offset Account. Seconded by Director McManigle.

After consideration, the motion FAILED by the following vote:

AYES: Director McManigle and President Petty.

NOES: Director Griffiths and Director Walson.

ABSTAINED: None.

ABSENT: Director Lucy

Discussion continued.

Director Griffiths said he had a problem justifying any of the proposed numbers.

Mrs. Walson expressed concern regarding selling meters off Morro when it was not yet complete. She mentioned although the ratepayers are not going to be happy about RMWD selling meters to an out-of-state developer. She mentioned she had interviewed someone in

(*) - Asterisk indicates a report is attached.

Division 2 who stated he did not feel the ratepayers would like this at all, especially in light of the upcoming elections.

President Petty submitted a New Water Supply & Demand Offset Fee Comparison survey as part of the minutes (see Exhibit "A" attached hereto). He pointed out the survey demonstrates RMWD's offset fees are much higher than that of other member agencies. He pointed out no matter what price RMWD decides to charge, it would have to be paid by developers as well as individual ratepayers. He noted the Board had previously decided and agreed on a price of \$13,265 and that this number could be defended. He talked about since there have been many hours at the committee levels discussing this matter where a new figure of \$10,187 had been calculated. He said he respected the work of Director Walson, staff, and the committee, all of which came up with defensible calculations.

President Petty called for the vote.

Director Walson made a new motion.

Action:

Moved by Director Walson to set RMWD's Evaporation Offset Fee at \$13,265 which was the same price at which meters were purchased by K. Hovnanian in September 2009 and October 2009. Seconded by Director McManigle.

After consideration, the motion CARRIED by the following vote:

AYES: Director Griffiths, Director McManigle, President Petty and Director Walson.
NOES: None.
ABSTAINED: None.
ABSENT: Director Lucy.

Director Griffiths suggested including language in the meter purchase agreement prohibiting the purchasers from coming back and filing complaints after buying meters; however, the idea was rejected.

***18. DISCUSSION AND POSSIBLE ACTION ON REQUEST FOR DOMESTIC METER PURCHASES**

Mr. Lee mentioned RMWD received a request for fifteen 1" domestic meters. He said in light of the Board action on Item #17, staff recommends the Board authorize the selling of these meters at the regular domestic price including the evaporation offset fee.

Action:

Moved by Director McManigle to approve Staff Recommendation-authorize staff to sell the fifteen requested domestic meters at the current price including any evaporation offset fees. Seconded by President Petty.

After consideration, the motion CARRIED by the following vote:

AYES: Director Griffiths, Director McManigle, President Petty and Director Walson.
NOES: None.
ABSTAINED: None.
ABSENT: Director Lucy.

Director Walson inquired as to a meter being held in reserve at this set price for the woman requesting a meter at the last meeting. Legal Counsel stated the offset price would apply to anyone coming in to purchase a meter and every customer must be treated the same.

It was noted K. Hovnanian will be purchasing a total of 64 meters to complete their project.

19. DISCUSSION AND POSSIBLE ACTION ON METER EASEMENTS ALONG RANGER ROAD

It was noted this item was placed on the agenda as a place holder in the event the parties involved attended the meeting to address the Board regarding the meter easements along Ranger Road; however, they were not in attendance. The item was deferred.

20. DISCUSSION AND POSSIBLE ACTION ON BECK GEOTECHNICAL STUDY

Mr. Lee announced staff received four proposals to their RFP for a geotechnical study of Beck Reservoir resulting in GEI Consultants receiving the highest ranking. He explained staff was recommending the Board authorize staff to negotiate and execute a contract with GEI Consultants for a not-to-exceed cost of \$81,930. He pointed out this was a 6-9 month project at the end of which staff hopes to have a better understanding of what the requirements will be to secure a DSOD permit for maintaining operation at Beck Reservoir if not actually applying for the permit directly at that time.

Directors Walson and Griffiths requested a copy of the scope of work from the proposed firm.

Action:

Moved by Director McManigle to approve Staff Recommendation-authorize staff to negotiate and execute a contract with GEI Consultants at a not-to-exceed cost of \$81,930. Seconded by Director Griffiths.

After consideration, the motion CARRIED by the following vote:

AYES: Director Griffiths, Director McManigle, President Petty and Director Walson.
NOES: None.
ABSTAINED: None.
ABSENT: Director Lucy.

21. DISCUSSION AND POSSIBLE ACTION ON DESIGN Q3 PIPELINE RESTORATION

(*) - Asterisk indicates a report is attached.

Mr. Lee stated the basic question before the Board at this time was whether the District should install two pipelines or three pipelines. He explained the velocity issues involved with the project. He elaborated on the approaches being taken on this restoration matter. He mentioned the cost difference between two pipes or three pipes will be anywhere from \$500,000 to \$775,000 based on engineering's estimates.

Discussion ensued.

Director Griffiths explained why he felt it would be best to put in HDPE (high density polyethylene). He claimed it had the advantage of being softer as well as capable of accepting higher velocities. He said he would support starting off with the HDPE line and then going from there.

Discussion ensued regarding why restoring Line NN, Line A, and one line in Q3 would not be sufficient. Mr. Lee explained Line NN and Line A do not provide sufficient water across the river and only serve smaller areas of the south zone or Morro zone. He noted the main contributor of water to either side of the river is Line Q3 and Moosa Canyon line is the secondary line of water moving back and forth across the river.

Action:

Moved by Director Walson to direct staff to proceed with attempting to install a new 16" pipeline within the existing 22" steel pipe for a cost of \$560,000 and then reconsider the other lines based on whether or not it succeeds. Seconded by Director Griffiths. No vote taken.

President Petty explained why it did not make sense for the District to downsize the pipe and have smaller and less pipe servicing the area in question in order to save money when it could end up costing the District more money in the future in the event it does not serve the capacity. Discussion ensued.

Mr. Lee confirmed the table being referenced shows RMWD needs three 16" pipelines at Q3 to provide the continuation of service the District has been providing. Director Walson inquired as to where the demand number for the south zone could be found. Mr. Lee explained the tables were generated by the demands provided for in the Master Plan.

President Petty stated his concern was focused on the adequacy of this system right now as it is being operated in order to ensure water is provided to the ratepayers the most reliable system available at a reasonable price. Director Walson challenged the capacity information was not available according to the engineer. President Petty reminded Director Walson that Mr. Lee just told the Board the capacity information was provided in the Master Plan.

Mr. Seymour reminded the Board the District must be able to rely heavily on all of its pipeline crossings when Morro Reservoir comes out of service for covering. He suggested moving forward with the relining or putting in new 16" pipe in the existing casing while at the same time move forward on just the design to either do one or two additional pipes. He attempted to explain it would be more expensive to design two separate plans, but would be more prudent for the Board to decide whether or not they want one or two pipe designs at this time.

It was agreed RMWD needs to do the one line at the very minimum. Mr. Lee clarified why this matter was brought before the Board for consideration. Mr. Seymour reiterated the Board needed to decide whether or not they wanted to plan for one or two pipelines.

Director Walson acknowledged in order to make progress the design work needed to be done; therefore, he amended his original motion.

Action:

Moved by Director Walson the District attempt to put a 16" line in the existing 22" line as well as complete the design work for an additional two 16" lines. Seconded by Director Griffiths.

After consideration, the motion CARRIED by the following vote:

AYES: Director Griffiths, Director McManigle, President Petty and Director Walson.
NOES: None.
ABSTAINED: None.
ABSENT: Director Lucy.

Director Griffiths requested Director Walson to consider amending his motion again to state "largest size pipe possible" as opposed to stipulating "16" only. Discussion ensued.

Director Walson did not amend his motion.

Director Griffiths requested a copy of the AWWA CD for review. Mr. Lee explained it was a copyrighted CD; therefore, he would have to figure out how to make it available for review.

***22. DISCUSSION AND POSSIBLE ACTION ON NOTICE OF NECESSITY FOR LIFT STATION 2**

Mr. Lee explained RMWD was currently in the imminent domain procedures for Lift Station 2. Legal Counsel stated in order to proceed with imminent domain, the Board must approve the Resolution with a two-thirds vote. He noted by not attending the meeting, the property owner was not objecting this matter.

Action:

Moved by President Petty to approve Resolution 10-07. Seconded by Director McManigle.

After consideration, the motion FAILED by the following vote:

AYES: Director McManigle, President Petty and Director Walson.
NOES: Director Griffiths.
ABSTAINED: None.
ABSENT: Director Lucy.

Legal Counsel confirmed the approval of Resolution 10-07 does not pass due to the fact it did not get a two-thirds vote and recommended the Board continue the item until the next Board meeting. President Petty asked for this item to be continued to the next Board meeting.

(*) - Asterisk indicates a report is attached.

23. DISCUSSION AND POSSIBLE ACTION TO ISSUE AN RFP FOR A PUMP BOOSTING SYSTEM BETWEEN MORRO RESERVOIR AND BECK RESERVOIR (REQUESTED BY: DIRECTOR GRIFFITHS)

Director Griffiths stated it appeared someone has told the California Department of Public Health Services that once RMWD fixes its tanks, Beck Reservoir will be taken out of service. He pleaded with staff to please consider issuing an RFP for a pump boosting system between Morro Reservoir and Beck Reservoir.

Action:

Moved by President Petty to reject the proposal. Seconded by Director McManigle.

After consideration, the motion carried by the following vote:

AYES: Director McManigle, President Petty and Director Walson.
NOES: Director Griffiths.
ABSTAINED: None.
ABSENT: Director Lucy.

Mr. Seymour explained this proposal was discussed two years ago and how it was discovered through those discussions and work involved no matter what happens with Beck Reservoir, RMWD must have water storage capabilities. He stated putting a tank in at Pala Mesa it gets RMWD in compliance with CDPH as well as paves the way for establishing a treatment plant for Beck Reservoir should the District decide to proceed in that direction.

Director Griffiths claimed he was trying to provide the Beck Reservoir customers with the best reliable service; however, it appeared RMWD was planning to give them an unreliable service.

Director Griffiths requested the vote be read aloud for the record. Ms. Washburn complied.

President Petty noted for the record that the proposal has been previously rejected by the Engineering Committee, staff, as well as the Board.

***24. RECEIVE AND FILE INFORMATION ITEMS FOR MARCH 2010**

- A. General Manager Comments**
 - 1. Meetings, Conferences and Seminar Calendar
- B. Operations & Maintenance Manager Comments**
 - 1. Water Services Report
 - 2. Water Operations Report
 - 3. Valve Maintenance Report
 - 4. Wastewater Services Report
 - 5. Safety and Emergency Planning Report
 - 6. Meter Services Report
 - 7. Cross Connection Report
 - 8. Project Management Report
- C. District Engineer Comments**
 - 1. Engineering Report
- D. Human Resource Manager Comments**
 - 1. Changes in Personnel

(*) - Asterisk indicates a report is attached.

2. Organizational Chart

Action:

Moved by Director McManigle to receive and file information items. Seconded by Director Walson.

After consideration, the motion CARRIED by the following vote:

AYES: Director Griffiths, Director McManigle, President Petty and Director Walson.
NOES: None.
ABSTAINED: None.
ABSENT: Director Lucy.

Director Walson requested a count of the RP devices by meter size. Mr. Sneed noted some discrepancies may have been found and the numbers may not match due to this discovery.

Director McManigle commented on the vast operations improvements reported on Page 24B4.

Director Griffiths made inquiries on Item #24B6. Mr. Sneed also provided an update on the matter with ITRON meters including some cost recovery to be received by RMWD.

Discussion ensued regarding the upcoming enforcement of wastewater facilities and operations.

Director Walson made inquiries on Item #24B8.

Director Griffiths asked questions regarding Item #24B3.

Discussions took place on Item #24C1.

Mr. Lee announced the Associate Engineer, Kirsten Plonka, had a baby girl on April 23rd.

***25. RECEIVE AND FILE FINANCIAL STATEMENTS AND INFORMATION FOR MARCH 2010**

A. Finance Manager Comments

1. Interim Financial Statement
2. Monthly Investment Report
3. Directors' Expense
4. Check Register
5. Water Purchases & Sales Summary
6. Statistical Summary
7. Metropolitan IAWP Reduction Programs
8. Metropolitan SAWR Reduction Program
9. RMWD Domestic Reduction Program
10. Projected CIP Cash Flow Report
11. Current Capital Improvement Projects

Action:

Moved by Director Walson to receive and file financial statements and information. Seconded by Director McManigle.

(*) - Asterisk indicates a report is attached.

After consideration, the motion CARRIED by the following vote:

AYES: Director Griffiths, Director Lucy, Director McManigle, President Petty and Director Walson.
NOES: None.
ABSTAINED: None.
ABSENT: None.

Director Walson asked for a follow up on the Bonsall Reservoir matter. Mr. Seymour said he visited the site personally; however, the direction of the Board was to send a letter of termination to the Lessee which will be done in the near future.

Director Griffiths asked a question on Item #25A2.

Directors Walson and Griffiths made inquiries on Item #25A4.

26. LIST OF SUGGESTED AGENDA ITEMS FOR THE NEXT REGULAR BOARD MEETING

It was noted the Poseidon Contract and Resolution as well as the Notice of Necessity for Lift Station 2 needed to be on the May Board meeting agenda.

27. ADJOURNMENT - To Tuesday, May 25, 2010 at 1:00 p.m.

The meeting was adjourned with a motion made by President Petty to a regular meeting on May 25, 2010 at 1:00 p.m.

The meeting was adjourned at 4:16 p.m.

Rua Petty, Board President

Dawn M. Washburn, Board Secretary