

**MINUTES OF THE BOARD OF DIRECTORS OF THE FALLBROOK  
PUBLIC UTILITY DISTRICT AND RAINBOW MUNICIPAL  
WATER DISTRICT JOINT SPECIAL BOARD MEETING/PUBLIC FORUM  
FEBRUARY 12, 2013**

1. **CALL TO ORDER** - The Joint Special Board Meeting of the Boards of Directors of the Fallbrook Public Utility District ("FPUD") and the Rainbow Municipal Water District ("RMWD") was called to order at 4:00 p.m. by RMWD Board President McManigle who was selected to Chair the meeting.

2. **PLEDGE OF ALLEGIANCE**

FPUD Board President Hayden led the Pledge of Allegiance.

3. **ROLL CALL:**

Attendance was taken by RMWD Executive Assistant Washburn and FPUD Secretary Boultinghouse, respectively, as follows:

RMWD Board of Directors Present:

- George McManigle, President/Chair
- Dennis Sanford, Vice President (*left at 5:45 p.m.*)
- Helene Brazier, Director
- Jack Griffiths, Director
- Bob Lucy, Director

FPUD Board of Directors Present:

- Bert Hayden, President
- Al Gebhart, Vice President (*arrived at 4:05 p.m.*)
- Milt Davies, Director
- Don McDougal, Director
- Archie McPhee, Director

Also Present:

- Dave Seymour, RMWD General Manager
- Dawn Washburn, RMWD Executive Assistant
- Brian J. Brady, FPUD General Manager
- Mary Lou Boultinghouse, FPUD Secretary
- Robert James, FPUD General Legal Counsel
- Public: Approximately eight members of the public were in attendance.
- Staff: Approximately nine FPUD staff members and seven RMWD staff members were in attendance.

(\*) - Asterisk indicates a report is attached.

#### **4. PUBLIC COMMENT**

Director McManigle received a speaker slip from Mr. DuMonte Voight and called for Mr. Voight's comments. Mr. Voight stated he wished to address the Boards later in the meeting.

Director McManigle called for additional public comments and speaker slips; there were none.

#### **BOARD ACTION ITEMS**

#### **5. PENDING FORMATION OF A JOINT POWERS AUTHORITY BETWEEN FALLBROOK PUBLIC UTILITY DISTRICT AND RAINBOW MUNICIPAL WATER DISTRICT**

Director McManigle stated the purpose of the Joint Special Board Meeting of the Boards of Directors of the Fallbrook Public Utility District and the Rainbow Municipal Water District is to collectively review and discuss the three documents that have been drafted by legal counsel relative to the formation of a joint powers authority ("JPA") between the two agencies.

Director Brazier requested she be allowed time during the meeting to make a "minority statement." Director McManigle granted her request and announced that General Manager Brady will next provide the Boards with a presentation.

General Manager Brady stated he will be presenting the Boards with a slide show that summarizes the three draft documents relative to the formation of a JPA between FPUD and RMWD. Copies of the draft documents and related materials were distributed to Members of the Boards and hand-outs of the same were made available to the audience members in attendance. General Manager Brady emphasized that the three documents are still in draft form. Last week the ad hoc committee met to review and discuss the documents. As a result of that meeting, the ad hoc committee recommended some revisions to the draft versions of the documents presented to the Boards at their January 2013 regular board meetings. The recommended revisions were made, and the revised documents are being presented today for the Boards' review, comments, and recommendations.

General Manager Brady reported the presentation will outline key points of the following documents: (1) North County Joint Powers Authority Joint Exercise of Power Agreement ("Agreement"), (2) Bylaws of North County Joint Powers Authority ("Bylaws"), and (3) Employee Leasing Agreement ("Leasing Agreement"). If the Boards choose to proceed with the formation of a JPA, a checklist was developed by special legal counsel of a schedule of tasks required during the start-up process and is included in the hand-outs as an informational tool. Dr. Brady said, "The real purpose of today's meeting is to allow the Boards and the public to discuss issues that are important to them."

Director Brazier asked General Manager Brady if he will be reviewing the recitals and articles in the documents or if the presentation will be an overview only. General Manager Brady explained the slide show is an overview of the relevant portions of the three documents; however, the details of the recitals and articles of those documents can be discussed if that is the Boards' preference.

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The slide show began with the definition of a JPA agreement. General Manager Brady pointed out that a JPA agreement must be approved by both Boards. The purpose of a JPA agreement between FPUD and RMWD is (1) to create the North County Joint Powers Authority (“Authority”) and (2) to provide for the administration of the Member Agencies by managing the combined resources of the Member Agencies. There are seven main items in the draft Agreement that will be discussed: (1) Powers of Authority, (2) Board of Directors, (3) Meetings of the Board, (4) Officers and Employees of the Board, (5) Committees, (6) Finances, and (7) Termination/Amendment.

The presentation began with an overview of the Agreement. Articles 1.1, 1.1.2, and 1.5.2 were highlighted by General Manager Brady. He stated the actions set forth in Article 1.5.2, Specific Powers, (a) through (n) are very normal for public agencies.

Article 2 is an important section of the Agreement, which relates to the formation of the Board of Directors of the Authority. The ad hoc committee has recommended that the Authority’s Board of Directors consist of seven members; three appointed from each Member Agency’s governing board. The seventh member would be appointed by the Authority’s Board of Directors from among residents of the communities served by the Member Agencies. Article 2 includes the procedure for appointment to the Authority’s Board, selection of an alternate Director, and the term of office. There is also a provision for bylaws.

Article 3 sets forth the minimum requirement for the frequency of JPA board meetings, which is one meeting each fiscal quarter. The remaining sections of Article 3 set forth additional requirements, which include the Brown Act, voting, what constitutes a quorum, minutes, and rules.

Article 4 sets forth how the Board will elect its Officers and their terms of office. General Manager Brady noted the Treasurer and Auditor Controller position is typically selected from staff and not elected from members of the Board. Those duties can be assumed by one person or can be split at the Board’s discretion. The Authority’s Attorney would be either FPUD or RMWD’s general counsel and appointed by the Authority’s Board of Directors. The term “Executive Director” is used instead of “General Manager” to avoid confusion with the Member Agencies’ General Managers. The Executive Director is appointed by the Board, and General Manager Brady emphasized that RMWD General Counsel Moser, FPUD General Counsel James, and Special Counsel deSousa reviewed and/or drafted the Agreement. There was concern whether a conflict of interest existed if the Executive Director of the Authority simultaneously served in the position of General Manager for both Member Agencies. All three legal counsels agreed it does not constitute a conflict of interest, but there are prescribed resolutions both Boards must pass in order to formalize the appointment.

General Manager Brady noted committees may be formed by the Authority’s Board pursuant to Article 5. Article 6 sets forth the fiscal year for the Authority, which is concurrent with RMWD and FPUD’s fiscal years. The timeline to establish an interim budget and an annual budget along with sources of funds available to the Authority are included in this section.

Article 7 discusses termination and amendment of the Agreement. General Manager Brady noted the Agreement, as drafted, stipulates the JPA shall be in force for at least one year and is a non-cancelable commitment during the first year.

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Director Lucy stated he thought this meeting would be a workshop for both Boards to discuss the documents presented and allow for questions and answers. He would like to make certain everyone has the opportunity to give their input and state their concerns. Director McManigle established one document would be presented at a time, and he asked General Manager Brady to pause the presentation to allow for questions, comments, and discussion on the document presented.

Director McPhee stated he is concerned the Board will not agree on whom to appoint as the seventh member of the Authority's Board. After brief discussion, Director McDougal pointed out that if the Board comes to an impasse, the Authority's Board would recruit other candidates until a mutually agreeable candidate is found. General Manager Brady reported he and General Manager Seymour have had discussions that a notice would be advertised to solicit Letters of Interest from members of the communities for the seventh seat on the Authority's Board.

Mrs. McPhee, an audience member, declared she would like the right to vote for anyone who represents her and feels this matter should be placed on the ballot "so the voters can have a say, not just you." Director Davies noted an election would cost approximately \$70,000.

Director Griffiths stated both districts should take a small step by way of a mutual assistance agreement, and the current proposal is too complicated.

Director McPhee suggested two certified accountants be hired to determine the savings potential of forming a JPA and each accountant should submit a report with his/her findings. Director McPhee stated he does not see any savings by forming a JPA.

Director Brazier requested the Agreement be reviewed page-by-page from the beginning. She mentioned that a comment was made earlier in the meeting that "we are here to get it done." Director Brazier said, "This has been the problem with the whole process. The Boards should be together to get done what is in the best interest of both districts, and that has to be determined first." Director Brazier stated she does not feel that has been done.

Director Brazier referenced Article 1.5.2 and stated acquiring items by the Authority could be an impediment to dissolution. She suggested a good faith statement be included to prevent the purchase of real property or entering into extensive obligations during the first year. Director McDougal stated three board members from each agency will sit on the Authority's Board; therefore, each Member Agency Board will participate in the Authority's decision-making process through their board members who sit on the Authority's Board. General Manager Seymour stated each Member Agency will adopt its budget that will include expenditures. Director McDougal stated the "fail-safe" is the Authority has no money that is not allocated by the Boards so there is a check-and-balance.

Discussion included Article 1.5.2 (h), and General Manager Brady clarified this section applies to someone other than a District employee.

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Director Brazier asked for clarification of Article 1.5.1 and the restrictions referred to. General Manager Brady reported that when a joint powers authority is formed, a government code to operate under must be chosen. The Public Utilities Code provides more latent powers than the Water Code, but for practical purposes the government codes are almost identical. Director Brazier asked what areas do they differ in and how would that impact both districts. General Manager Brady stated he could develop a comparison to show where the differences are, but the biggest difference is in the latent powers.

Director Sanborn directed attention to Article 4.5 and stated he would prefer not to use one of the Member Agencies' general counsels as the Authority's Attorney. He feels an outside counsel would show impartiality. Director Brazier was concerned that hiring an outside attorney adds to expenses. Director McDougal pointed out that attorneys charge by the hour so the charge is the same whether it is an outside counsel or one of ours that represent the Authority, and he explained that the primary purpose of legal counsel is to make certain the Board follows procedures, the laws, the Brown Act, etc. Attorneys are not involved in operations. On Director Hayden's suggestion, it was agreed to change the word "shall" to "may" to provide flexibility in retaining legal counsel.

In reference to Article 4.6, Director Brazier requested information on how the decision will be made to select the seventh member of the Authority's Board and will it be done with the Executive Director. Discussion then turned to how the Executive Director of the Authority will be selected. Director McDougal stated General Manager Seymour is retiring, FPUD has a General Manager, and the FPUD General Manager (through the Leasing Agreement) would be able to manage both districts. The logical choice for the Executive Director is General Manager Brady, and that is where part of the savings comes from. The Authority's Board could possibly decide not to appoint Dr. Brady, but that would reduce the savings potential.

A question was raised by a RMWD staff member in the audience, "What will happen if Dr. Brady retires—what happens then?" General Manager Seymour responded per the Agreement, the Authority would appoint a new Executive Director. As a technicality of PERS, that person may also have to be an employee of one of the districts.

Director Brazier stated that FPUD has hired its own General Manager for its own purposes; RMWD has hired its own General Manager for its own purposes. They are not necessarily congruent, and the qualities desired by each district may not be the same for the other. RMWD has not had the opportunity to weigh-in on this decision other than approve by default. Director Sanford stated it is not a foregone conclusion that Dr. Brady will be the Executive Director. Director Brazier responded there has been no mechanism to inquire otherwise. Director Sanford stated it is not guaranteed that Dr. Brady will be the Executive Director, and the Authority's Board could appoint another person to the position.

Director Brazier stated her concerns were with saving money. The FPUD General Manager has recently received a substantial raise, and RMWD's ratepayers will have to pay for half of his salary and half of the Executive Director's salary. Director McDougal stated RMWD will eliminate the General Manager's salary due to General Manager Seymour's retirement and only pay half of FPUD's General Manager's salary, which will result in a net savings. Director Brazier stated proportionality has not yet been established, and she asked if the cost would be half. Director McDougal replied the Authority's Board of Directors would make that determination. Director Brazier expressed her concern that it is not known going in how much the JPA will cost or how the Authority will bill the Member Agencies. Discussion ensued relative

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to whether or not it is possible to know all costs of the JPA in advance. Director Brazier stated the purpose of knowing the costs in advance is to know whether or not a JPA will cost more than it will save. Director Brazier also stated forming the Authority will add another layer of bureaucracy.

Director Sanford turned discussion to Article 6.3.3 and said he would like to see 120 days reduced to a shorter timeframe. General Manager Brady explained that 120 days is generally what water districts give themselves before they put out their audited financials; however, it is possible to make the timeframe shorter. Discussion ensued relative to the timeframes required by Articles 6.3.3 and 6.5, and there was a consensus to change the timeframe in Article 6.3.3 to 90 days and Article 6.5 will remain the same.

Director Griffiths stated he does not feel RMWD will save as much money as claimed because RMWD “bumped-up” someone else to cover the half-time General Manager. Director McDougal stated his position is the split will not be an exact 50-50 and without other costs. There is going to be a consolidation of many positions within many areas, but the net savings should be fairly substantial for both districts. Discussion included whether or not the parties have the option of terminating the Agreement or withdrawing from the Authority if the JPA is not working. The Agreement provides that option, and Director Hayden stated that is why he prefers a JPA over a consolidation.

Director Davies addressed Director Brazier and inquired how there is no savings for RMWD if the general manager, assistant general manager, finance manager, and operations manager leave. Director Brazier replied there is a savings, but at what cost and said, “With some of those people leaving, they leave a hole in RMWD’s ability to conduct its business. That hole has to be filled by someone with like skills. The savings is then erased. RMWD has lost an engineer, and RMWD is going into a 10-year expansion period. RMWD needs another engineer and not a technician as a replacement.” Director Davies stated he presumed RMWD would go to the Authority to find a replacement. Director Brazier replied, “If FPUD can have their own people, why can’t RMWD have their own?” Discussion included leasing FPUD employees to RMWD. Director Brazier asked if FPUD can lease out its employees, does that mean the employees do not have enough work to keep them busy for one year. Director Davis stated the General Managers have reported staff has the capacity to work between the two agencies. Director Sanford added if services provided by the Authority are not adequate, the Member Agencies can address the problem at that time. Director Brazier emphasized if you need services, it does not matter where the services are hired from--the cost is the same, and there is no savings.

Director Sanborn directed attention to Article 7.1 and asked for clarification of the language in the termination section. This section states the Agreement may not be terminated without mutual written consent. Director Brazier asked if the language precludes one district from opting out. General Manager Seymour stated Article 7.3 provides for withdrawal from the Agreement. Director Hayden pointed out the initial obligation is for one year, and we have to give it (*the JPA*) a good try.

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General Manager Seymour also reported if a Member Agency withdraws from the Authority, it will not get its assets distributed immediately. In dissolution, everyone gets what they put into the JPA right away. General Manager Seymour explained there are two different scenarios for ending participation in the JPA: (1) dissolution and (2) withdrawal. General Manager Seymour further explained if one Member Agency withdraws, that agency's assets will stay with the Authority until the JPA is dissolved.

Directors Sanford and Brazier stated they did not like those terms because if the Authority continues to be in existence, then the leaving Member Agency is at a disadvantage. Director McDougal addressed the Board and stated the ad hoc committee discussed the language and decided major asset purchases would be done by the individual agencies. Property accumulated by the Authority would most likely be software, etc., which would not greatly impact a Member Agency upon withdrawal. Discussion of Article 7.4 included the effect of withdrawal on employees.

Director Brazier stated she was concerned with the language in the last sentence of Article 7.5 relative to the phrase "without regard to a Member Agency's contribution" concerning disbursement of assets. Discussion ensued relative to the financial impact on a Member Agency who has contributed towards assets of the Authority and chooses to withdraw. Director Sanborn requested this issue be directed to General Counsel James for clarification. General Counsel James reported there are two ways of terminating the Agreement. The first is by mutual agreement, which would provide for distribution as quickly as the JPA Board feels it is appropriate. The second is where one agency in the group wants out. The "wants-out" appears to be where the Authority would not be required to do a complete, equitable accounting but would make distributions based on the Board of Directors' determination of an equitable distribution.

Director Sanford expressed his concern that in the event a Member Agency withdraws, it will not have representation on the Board of Directors at the time of determination. Other Directors disagreed with Director Sanford's understanding of the language in the Agreement. Discussion included scenarios that might occur upon withdrawal and possible changes to the language in this section to protect a Member Agency's assets upon withdrawal. Other discussion included what constitutes the difference between withdrawal and dissolution and the effects of either action. General Counsel James stated the language could be changed if desired.

Director Brazier requested clarification on the terms of the first year and when notice to terminate would be required. Her concern is that notice must be given within the first seven days of each fiscal year and the notice would not be effective until the last day of the fiscal year in which the notice was given. Discussion took place concerning the possibility that the Agreement is an initial two-year commitment rather than a one-year commitment as previously understood. There was a consensus among the Directors that the language should allow flexibility in the notice and effective date. Director McDougal suggested adding a sentence, "This agreement may be terminated within 30 days, for example, prior to the one-year anniversary." After discussion on possible options, it was decided to defer to legal counsel to make the appropriate revisions to Articles 7.1 and 7.3 in reference to the timeframe for giving notice to withdraw.

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Director Brazier inquired who or what entity is referred to in Article 9.1 to challenge the validity of the Agreement. General Manager Seymour gave many examples on who could possibly challenge the Agreement before a court of competent jurisdiction.

Director McManigle turned discussion to the Employee Leasing Agreement. Discussion ensued on various sections for clarification and understanding of the language. A RMWD staff member in the audience expressed her concern with the 30-day notice requirement in Section 5(c), and she suggested the requirement be changed to a 15-days. No substantial revisions were made to the Leasing Agreement other than a possible change to the number of days to give notice in Section 5(c) as discussed.

Director McManigle acknowledged Mr. DuMonte Voight as having the floor. Mr. Voight stated he was very pleased to see both Boards working together. He is very, very pleased to see that both Boards have done their due diligence. As a ratepayer, he is interested in the benefit to the customers. He hopes the next time the Boards meet, the Boards will be able state the costs and net benefits of the JPA to the ratepayers.

Director Griffiths stated some people he spoke with did not see the announcement for the Joint Special Board Meeting in the newspaper. He noted tonight's turn-out was not what he expected and strongly objected to the ratepayers not being able to vote on the JPA. Director Brazier stated she experienced the opposite reaction to the announcement in the Village News because it was reported to be a four-hour plus meeting.

Director Davis asked Director McManigle if the provision for compensation to the members of the Board of Directors was removed from the Agreement, and he responded that it had not. General Manager Brady reported the Board of Directors will have the discretion to either set a reasonable amount for compensation or waive compensation altogether. Director Davies stated for the record he is suggesting those selected to serve on the Authority's Board of Directors serve at no compensation/cost to the Member Agencies or their ratepayers. Director Griffiths disagreed because he felt a no compensation/cost policy would discourage younger community members from serving on the Board of Directors.

General Manager Brady reported the Bylaws is the last document for discussion. Dr. Brady summarized the purpose of bylaws and briefly reviewed the articles and sections. Discussion was held concerning the definition of "cause" as reason for involuntary resignation or removal from office in response to a question from Director Brazier.

Discussion then turned to the Checklist for Formation drafted by special counsel BB&K, which was included in the hand-outs. General Manager Brady briefly discussed the schedule of tasks for formation and start-up of the Authority and the timeline required. Director Davies inquired whether or not the Authority would have to purchase insurance. General Manager Brady stated a rider can be obtained from ACWA JPIA to include the Authority. RMWD will have to check with their insurance carrier for its requirement. Director Davies asked how the seventh member, who is elected from the community, will be covered by insurance, and General Manager Brady stated it will be investigated. General Manager Seymour directed attention to Article 8.1 of the Agreement relative to insurance coverage.

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Director McManigle called for additional comments and questions from members of the Board and audience. A RMWD staff member in the audience stated he was concerned with recent revisions to the PERS formula (2%@62) and how those changes could impact recruitment of a quality candidate for the General Manager's position. He also expressed concern with the length of contract term for General Manager Seymour's replacement. He asked, "What kind of general manager will we get in the future?"

General Manager Brady clarified one aspect of the revisions to PERS is if a person is currently in the PERS system, that person would not be subject to the new 2%@62 formula. General Manager Brady also clarified the Leasing Agreement states the current Member Agencies' employees are covered under their individual Member Agencies' MOUs. No hired or existing employees will be employees of the JPA.

General Manager Brady stated he and General Manager Seymour will collaborate on the suggested changes and forward the revised documents to both agencies' general legal counsel for review and approval. The revised documents will be brought back to the full Boards for consideration and possible action at both agencies' individual regular board meetings in February. Director Davies requested the revised documents and a bullet list of the changes be distributed to the Directors as soon as possible prior to the next meetings.

Director Brazier requested her written opinion entitled, "Minority Opinion on JPA," be submitted to both board secretaries for inclusion in the minutes. There was no objection. As requested, Director Brazier's written Minority Opinion on JPA is attached hereto and marked Exhibit "A".

Director Davies asked Director Brazier if her written opinion was developed prior to today's meeting. She stated it was. Director Davies also asked Director Brazier if she had changed her mind. Director Brazier stated she may have. Director Davies asked if she was going to revise the statement prior to submission. Director Brazier clarified the written statement is her concerns as of the beginning of today's meeting; some of her concerns had been answered.

Director Brazier stated her main concerns still exist. At the beginning of the process, she was very open-minded. Her only concern was what is in the best interests of RMWD. In pursuance of that, she believes three things should have been done and still need to be done: (1) a full staffing study, (2) a complete financial analysis, and (3) a study on governance. Director Brazier presented an overview each item, which are listed in Exhibit "A". She stated that if those three areas had been examined, she would have a basis to make a decision based on due diligence. She stated that has not happened, and she is still up in the air. In conclusion, she requested that the full comments be included in the minutes.

Director McManigle asked Director Brazier what it will take for her to move forward. She replied that she is moving forward by asking the questions and will support what is in the best interests of RMWD.

Director McManigle called for a motion to adjourn.

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6. **ADJOURNMENT - To Tuesday, February 26, 2013, at 1:00 p.m.**

**Action:**

***Moved by Director Lucy to adjourn the Joint Special Meeting of the Boards of Directors of the Fallbrook Public Utility District and the Rainbow Municipal Water District at 6:08 p.m.. Seconded by Director McPhee.***

***After consideration, the motion CARRIED by the following vote:***

**AYES:** Davies, Gebhart, Hayden, McDougal, McPhee, Brazier Griffiths, Lucy,  
McManigle, Sanford

**NOES:** None

**ABSTAIN:** None

**ABSENT:** None

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**George McManigle, Board President**

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**Dawn M. Washburn, Board Secretary**

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