

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS

MINUTES OF THE BOARD MEETING OF
May 12, 2010
1:30 P.M.

President Clare Henry Day called the Board Meeting of the Board of Directors to order at 1:30 p.m. All present stood for the pledge of allegiance, led by President Day.

ROLL CALL:

BOARD MEMBERS PRESENT:

Clare Henry Day, President
Melody McDonald, Vice President
Manuel Aranda, Director
Arnold Wright, Director
Richard Corneille, Director
John Longville, Director
David E. Raley, Director

BOARD MEMBERS ABSENT:

None

GENERAL COUNSEL PRESENT:

David Cosgrove, Rutan & Tucker, LLP

STAFF PRESENT:

R. Robert Neufeld, General Manager
Claud Seal, Assistant General Manager/District Engineer
Samantha Brown, Finance Supervisor
Lisa Pierce, GIS Coordinator
Shanae Smith, Executive Assistant II

GUESTS PRESENT:

Kevin Milligan, City of Riverside Public Utilities
Max Rasouli, City of Riverside Public Utilities
Doug Headrick, San Bernardino Valley Municipal Water District
Chris Diggs, City of Redlands
Dr. Katy Henry, Member of the Public
Stacey Aldstadt, City of San Bernardino Municipal Water Department
Greg Gage, City of San Bernardino Municipal Water Department

T. Jarb Thaipejr, City of Loma Linda
Don Lee, TetraTech
Charles Roberts, Highland Community News

1. PUBLIC PARTICIPATION

President Clare Henry Day announced this as the time for any persons present, who so desire, to make an oral presentation to the Board of Directors. Hearing none, the meeting proceeded with the published agenda items.

2. ADDITIONS/DELETIONS TO AGENDA

No additions/deletions to the agenda.

3. CONSENT CALENDAR

The minutes of the April 28, 2010 minutes were reviewed. Minor revisions were noted.

It was moved by Director Aranda and seconded by Director McDonald to approve the Minutes of the April 28, 2010 Board meeting, as amended. The motion carried unanimously.

4. REPORTS AND INFORMATION ITEMS

A. Monthly Activity Reports, and/or Comments by Board Members

Director Corneille summarized the Groundwater and Water Management Committee sessions he attended during the 2010 ACWA Spring Conference. He reported that a draft position paper summarizing the ACWA Strategic Framework for Sustainable Groundwater Management in California was distributed to the committee members for final comments at the Groundwater Committee session. The position paper is partially in response to the "Improving Management of the State's Groundwater Resources," legislative analyst report which recommended a mandatory requirement that groundwater levels be monitored in all groundwater basins throughout the state, including, consider phasing in statewide groundwater permitting over a multi-year period based on data from standard monitoring requirements. He said ACWA is concerned that the state is becoming too involved in local issues, and the position paper informs the state that many basins are being managed quite well locally. The position should be supported by the District.

Director Corneille distributed hand-outs regarding the implementation of SBX7 6, indicating the requirements for all groundwater basins to collect data on groundwater elevations that would make the data available to the public. The deadline for the submittal to the Department of Water Resources (DWR) for parties interested in assuming the groundwater elevation monitoring reporting functions is January 1, 2011. The initial report submittal deadline is scheduled on or before January 1, 2012. He said it would be natural for the District to volunteer and provide the monitoring service, as the District currently provides data collection services to the local producers in the basin

and an annual report. He briefly summarized the agenda for the Advisory Commission on Water Policy meeting scheduled for May 13, 2010, at the San Bernardino Valley Municipal Water District (SBVMWD), including presentations on the Enhanced Recharge Study, storm water capture and the status of the issues in the Delta.

Director Raley reported attending the Redlands Chamber of Commerce (RCC) Rise 'n Shine meeting.

Director Aranda summarized the Outreach Committee meeting he attended during the 2010 ACWA Spring Conference regarding the water bond. He also reported attending the Loma Linda Chamber of Commerce (LLCC) Legislative Committee meeting.

Director Longville reported attending the California Special Districts Association (CSDA) Legislative Days seminar in Sacramento, where he took part in discussions regarding the lack of support for efforts to increase taxes, which he believes will likely result in more services being converted into user fee services no longer tax supported.

Director McDonald reported attending the Association of California Water Agencies Joint Powers Insurance Authority's (ACWA/JPIA) Conference, where elections were held for the Executive Committee members, Presidency and Vice Presidency positions unanimously voted on by the District's Board of Directors. She won a seat on the Executive Committee by obtaining the highest number of votes. In addition, she summarized the ACWA portion of the conference and expanded on Director Corneille's report regarding the DWR's Groundwater Elevation Monitoring Program and the ACWA member survey. She also reported attending the ACWA Water Management Committee and Region 9 meetings at the conference.

B. Board Committee Reports

There were no committee reports for this meeting.

C. Finance Supervisor's Report

There was no finance report for this meeting.

D. Assistant General Manager's Report

1. The previously reported Seven Oaks Dam (SOD) gates and flow tests have been postponed until some future date. There is an issue with the downstream Santa Ana Sucker fish spawning beds that could be disturbed by the high river flows. We will continue our preparation for the higher test flows in the future.
2. In anticipation of the higher test flows, we are making preparations to direct diverted river flows into first Dike D to the west of our currently used spreading basins, and then the old CEMEX aggregate pit operation further west. We have verbal permissions from CEMEX to flood the pit. We have been cleaning up and opening the channels and restocking the wood in the gates.

3. Santa Ana River (SAR) spreading is up to 5,207 acre feet, Mill Creek (MC) is up to 4,818 acre feet, and both areas are taking daily inflows of 10 to 54 cfs. The District diverted more of the water and let it clarify into other basins.
4. Staff has continued to work with SBVMWD in the Water Spreading Enhancement Project.
5. The Greenspot Road Realignment – Staff is asking for approval on this meeting's agenda per the meeting with Highland.

Mr. Seal answered questions from the Board. A discussion ensued regarding the current projects being undertaken by the City of Highland.

E. General Manager's Report

Mr. Neufeld reported attending the Big Bear Watermaster (BBWM) Committee meeting on May 11, 2010. The Big Bear Lake was reported at 2.666 feet from being completely full, primarily resulting from this year's high levels of precipitation in the mountains. It is very likely that we will need to begin releases due to water levels reaching a predetermined level in the lake behind the dam; water has to be released due to the possibility of spilling. Future development projects issues were also discussed. The area of concern is two proposed new residential projects being planned near the lake. The new by-pass road is anticipated to be completed by the end of this year. The committee took action and will intervene by commenting on potential projects and express their concern over any decrease in water supplies to the lake or from water supplies in the lake or the impact on surface waters with regard to California Environmental Quality Act (CEQA). As a result, dialogue has begun with Bear Valley Mutual Water Company (BVMWC), as they may not use all of their allocated water. The next BBWM Committee meeting is scheduled for June 22, 2010.

Mr. Neufeld reported on a series of ongoing meetings regarding the Santa Ana Sucker and the Critical Habitat Designation along the Santa Ana River, and the potential impacts. John Husing, a noted Economist who has been instrumental in assisting the task force in the development of the economic impacts for the Santa Ana Sucker, was in attendance at the meeting where he presented a draft report that will reflect in excess of a \$2 billion economic impact on the Inland Empire. The number of the participants in the group has grown to seventeen parties, and as a member, Mr. Neufeld said he was asked to work with the San Gabriel Watermaster and Raymond Basin Watermaster to obtain strong political support, as the majority of representatives in the San Gabriel area are comprised primarily of the Democratic Party members. He said the task force is working to obtain the support across the boundaries of those two basins, as there are five Democrats and two Republicans. The idea being, they will be impacted in the same manner as the Santa Ana Region, which is predominantly Republican. A discussion ensued regarding the postponement of the SOD testing, and a potential for artificial streams that may convince the United States Fish and Wildlife Service (USFWS) that small populations of fish are being supported.

In addition, the District has an opportunity to conduct outreach by diverting the flows used for the SOD testing to the unused CEMEX facilities, and District staff is in discussions with CEMEX for the use of those facilities.

Mr. Neufeld reported he presented the District's proposed strategic plan to the City of Highland at their City Council meeting on, May 11, 2010. The council members voted unanimously, 3-0 in support of the plan and commended the District on its efforts for the last two years, and encouraged the District to move forward with the proposed plan. Director McCallon recused himself due to a potential conflict regarding LAFCO issues, and Councilman Timmer was noted absent. He said John Jacquess, called this morning to compliment him on the presentation and announced that the city is strongly in favor of the proposed regional park.

Mr. Neufeld said he is continuing to meet with parties who expressed interest and concerns regarding the District's proposed strategic plan and welcomed the opportunity to meet and discuss the plan in detail with other interested parties. Director Corneille inquired about the strategic plan and whether it would be an item on the next agenda. Mr. Neufeld said staff has meetings scheduled with the City of Riverside, SAWPA and had already met with Stacey Aldstadt, General Manager of the City of San Bernardino Municipal Water Department. Director Corneille suggested that the City of Redlands meet with staff, as they had expressed concerns regarding the plan. Director Aranda suggested that the City Manager for the City of Loma Linda City meet with staff as well.

Mr. Neufeld updated the Board on the status of the collaborative effort among the General Managers of the District, Western Municipal Water District (WMWD), and SBVMWD addressing concerns regarding making improvements to benefit everyone in the basin. He introduced Mr. Headrick, who stated he presented the principals of collaboration to the SBVMWD Board of Directors two weeks ago, where they voted hands down to adopt the principals, and asked staff to continue forward with hiring a professional facilitator to assist with the completion of the process.

F. Information Items

David Cosgrove presented the Local Area Formation Commission (LAFCO) Claim update regarding information requests made by LAFCO related to the Sphere of Influence determination. A claim in the amount of \$140,000 was submitted to the State Controller's office and a claim number was assigned to the District. It was indicated that the Governor's budget has a back-log of state mandated costs; however, the claims roll over, and are redeemable when funds are available.

G. Future Agenda Items and Staff Tasks

The Board requested the following items be added to the May 26, 2010 Board meeting agenda for discussion:

- Consideration of the DWR Groundwater Elevation Monitoring Program - SBX7 6
- Water Charge Summary Table indicating the amount of water pumped for agricultural and non-agricultural usage, and payment history
- Wash Plan Update
- Status update on the use of the vacant Mentone property

Mr. Cosgrove reported that staff is waiting for a response from the USFWS regarding the Section 7 Consultation for the NEPA/EIS review by the Bureau of Land Management (BLM), and the informal review of the draft Habitat Conservation Plan (HCP). Randy Scott, Project Manager for the Wash Plan hopes to coordinate a meeting in June.

H. Revenue Producing Activities

Mr. Seal stated that staff is taking a different tactic in terms of diverting the water in Mill Creek. When water is unsuitable to go into the settling basins, the water is diverted, the settling materials are removed, and the water is diverted to the unused basins. The basins are then excavated and the saleable sand product is placed on the market for customers interested in purchasing. Regarding the operations at the borrow pit, Ranch Rock Products, Inc., is currently taking materials that were stockpiled last year, paying the District a total of \$1,600 to date.

Director Aranda inquired about the proposed SOD property acquisition with regard to cost saving projects previously brought to the Board by staff. Mr. Neufeld reported that staff had ongoing discussions with Orange County Flood Control District (OCFCD) regarding the possibility of acquiring the property at SOD, however due to conflicts in schedules, no progress had been made. He said Claud Seal received an inquiry from SBCFCD concerning the status of the acquisition, as they too are in support of that effort. Director Aranda suggested forming an Ad Hoc Committee to continue the negotiations with OCFCD. Mr. Neufeld opposed, as he felt it best that the General Manager continue coordination with OCFCD staff.

5. ACTION ITEMS, NEW BUSINESS

- A. Consider Approval of Right of Way Dedication for Greenspot Road Realignment for the City of Highland

It was moved by Director Longville and seconded by Director McDonald to Approve the Right of Way Dedication for Greenspot Road Realignment for the City of Highland. The motion carried unanimously.

- B. Adoption of Addendum to 2010 Engineering Investigation (EI)

Claud Seal presented the 2010 Engineering Investigation (EI) Report Addendum. He reported that there were three iterations of the EI Report due to a change in

methodology. Prior water depths had been considered positive in value rather than negative values. Algebraically, staff was adding instead of subtracting, but has since returned to the prior method consistent with the earlier methodology. Variations in the sub-basin definitions will be evaluated next year. Staff will be looking at the calculations differently, still considering the sub-basin calculations and using old factors that may or may not be pertinent now. 3D modeling evaluating the entire basin will also be used, including all wells available, as staff continues to work to improve techniques. Mr. Seal identified the following challenges while compiling this year's report:

- Data not obtained in a timely manner; only 150 Wells reported by February and early March.
- Report finalized with 218 Wells for Production and 150 for water Elevation changes.
- Coordination of data From 15 different agencies was challenging, as not all well data were reported in same format. Data normalization time consuming.
- Averaging of water levels by sub-basins changes dramatically; depends on data availability for Fall 09 and Fall 08 reports.
- Some agencies capture weekly, not monthly data -- averaging for various seasons not always consistent.
- Water Code requirements not initially clear.
- District billing period in July and January, out of sync with defined water year, October – September.
- Previous EI calculations used January - December for production values and fall, for well water levels.
- Minimal time available to collect data, categorize, tabulate, calculate values, proof, print EI Summary Report.

After the presentation, Mr. Seal answered questions from the Board. A lengthy discussion ensued regarding clarification of the water year used in this year's report, and the appropriate statutory findings required by the water code. In addition, Director Raley raised concerns regarding the safe yield referenced in the Western Judgment related to the depletion of the water in the basin, and requested clarification on the form of measurement used to determine the effectiveness of the District's operations. Doug Headrick, General Manager of the SBVMWD stated that the Basin Technical Advisory Committee (BTAC) is a great forum for discussions, as the Groundwater Management Plan update will be provided for review by the local agencies.

It was moved by Director Corneille and seconded by Director Wright to Adopt the Addendum to 2010 Engineering Investigation (EI). The motion carried unanimously.

Director Corneille complimented Lisa Pierce and Claud Seal on their efforts in compiling the information and increasing the number of wells reported in this year's report.

C. Public Hearing Related to Adoption of Groundwater Charge

Director Wright abstained due to a potential conflict of Interest based on his stock ownership in Bear Valley Mutual Water Company (BVMWC).

David Cosgrove referenced the written staff report regarding the District's public hearing on this year's proposal for a fifteen percent (15%) increase to the groundwater charge on April 28, 2010, following a public meeting on April 14, 2010. At the public hearing of April 28, 2010, the District took public comments, closed the public hearing. Staff was directed to revise the annual Engineering Investigation; to revert the statistical analyses to a "water year" period of July 1 to June 30; and to review the comments and protests received to the charge, and to determine if there existed a "majority protest" under the provisions of Proposition 218. Protest letters were submitted by the City of Redlands, City of Riverside, City of San Bernardino Municipal Water Department, EVWD, and the City of Loma Linda. Staff was asked to tally the number of protests regarding Proposition 218 charge rules regarding groundwater production, and analyzed the wells in conjunction with the Assessor Parcel Numbers (APN). The protests received represented approximately 75% of the reporting wells and approximately 64% of the applicable parcels. Under either method of tally, a majority protest appears to exist. Given the uncertain state of the law regarding Proposition 218 and how it applies to the charge, Counsel suggested proceeding with an increase in the face of a majority protest could invite litigation.

Consequently, staff recommends abandoning the proposal to increase the charge, and maintaining the agricultural and non-agricultural charge the same as the previous year. Mr. Cosgrove answered questions from the Board regarding notices mailed out to the producers related to property, property ownerships, and the annual hearing mechanism related to the charge procedures applicable to the District's groundwater charge.

President Day opened the public hearing.

T. Jarb Thaipejr, City Manager for the City of Loma Linda said he was in agreement with staff's recommendation to not increase the groundwater charge.

There were no more comments from the public. President Day closed the public hearing.

Director Longville voiced his frustration regarding the clarity of the law. He said the District failed to raise rates in small increments at the appropriate time in the past, creating expectations that the rate would never rise, and even when economic trends caused an increase, it resulted in massive opposition. Costs should be reviewed on a regular basis to reflect a balance between costs and revenues. Director Raley said he would like to see a spreading fee implemented. Director Day clarified that the groundwater charge is based on what is removed or produced from the ground set by the water code.

It was moved by Director McDonald and seconded by Director Corneille to

Approve and Adopt Revised Resolution No. 458, Maintaining the Groundwater Charge Rate for the 2010 – 2011 Water Year at the Rates of \$7.85 Per Acre-Foot for Groundwater Production for Non-Agricultural Purposes, and \$2.18 Per Acre-Foot for Agricultural Purposes, and Forgoing Any Increase for the Ensuing Year (July 1, 2010 to June 30, 2010) Subject to Certain Exceptions. The motion carried 6-0, with Director Wright abstaining due to a conflict of interest.

After the motion, Mr. Seal requested a Resources Committee meeting scheduled for May 24, 2010, at 8:00 a.m.

6. UPCOMING EVENTS

The upcoming events were reviewed and filed.

7. CLOSED SESSION

At 3:40 p.m., it was moved by Director Day and seconded by Director Wright to adjourn to Closed Session, Government Code Section 54957(b), to discuss a personnel matter. The motion carried unanimously.

At 4:18 p.m., the meeting reconvened into Open Session, with no reportable action under Government Code 54957.1.

8. ADJOURN MEETING

At 4:18 p.m., the meeting adjourned to the Board meeting scheduled for May 26, 2010, at 1:30 p.m., at District Headquarters, 1630 W. Redlands Blvd., Suite A, Redlands, CA.

R. Robert Neufeld
Secretary of the Board