

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS MEETING

MINUTES OF MAY 12, 2021
1:30 pm

President McDonald called the Board of Directors' meeting to order at 1:30 pm by teleconference and Zoom meeting; all those in attendance stood for the pledge of allegiance led by President McDonald.

ROLL CALL:

BOARD MEMBERS PRESENT:

Melody McDonald, President
Richard Corneille, Vice President
David E. Raley, Director
Robert Stewart, Director
John Longville, Director

BOARD MEMBERS ABSENT:

None

GENERAL COUNSEL PRESENT:

David Cosgrove, Rutan & Tucker

STAFF PRESENT:

Daniel Cozad, General Manager
Betsy Miller, Land Resources Manager/Assistant General Manager
Erwin Fogerson, Senior Engineer/Project Manager
Katelyn Scholte, Assistant Engineer
Athena Lokelani, Administrative Specialist

GUESTS PRESENT:

T. Milford Harrison, San Bernardino Valley Municipal Water District
June Hayes, San Bernardino Valley Municipal Water District
David E. Smith, East Valley Water District

1. PUBLIC PARTICIPATION

President McDonald announced that any person present, who so desired, may make an oral presentation to the Board of Directors. There being none, the meeting continued with the posted agenda items.

2. ADDITIONS/DELETIONS TO AGENDA

Mr. Cozad requested the addition of an informational item to the Board agenda, following Item 3. This item is related to two awards the District received, through our Outreach efforts, after the agenda was posted.

It was moved by Director Longville and seconded by Director Stewart to add the informational outreach item to the agenda following item 3 as recommended by staff. The motion carried 5-0, with all Board members present voting in the affirmative.

President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Yes
Director Raley: Yes
Director Stewart: Yes

3. STANDING COMMITTEE APPOINTMENT CHANGES

President McDonald recommended appointing Direct Stewart as a primary on the Operations Committee, with herself moving to the alternate position.

It was moved by Vice President Corneille and seconded by Director Longville to appoint Director Stewart as primary on the Operations Committee with President McDonald as the alternate. The motion carried 5-0, with all Board members present voting in the affirmative.

President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Yes
Director Raley: Yes
Director Stewart: Yes

Director Longville expressed his appreciation for District Counsel and his attentiveness to the law in regards to Board hearings.

4. OUTREACH

Mr. Cozad presented this item for discussion, showing the press release for the awards via Zoom. The District received the Southern California Association of Government's (SCAG) Green Region Initiative Award for the Upper Santa Ana Wash Habitat Conservation Plan. The YouTube video prepared by SCAG to recognize this award was shown via Zoom. There will be a Zoom presentation for the APA award on Thursday at 5:00 pm; Ms. Miller will forward the information to the Board. Director Longville stated that obtaining this type of award from SCAG and the APA is an extraordinary accomplishment.

Director Hayes of Valley Municipal congratulated the District on their achievements and expressed her appreciation of the District's partnership with Valley Municipal. Mr. Cosgrove recognized the efforts of Burnie Cavendar, former General Manager, and Jeff Beehler, former Land Resources/Assistant General Manager, to bring the Wash Plan to fruition. He also expressed gratitude for Mr. Cozad and his leadership in bringing the Wash Plan into its implementation phase. President McDonald concurred with these comments and expressed her appreciation to existing and former staff.

5. CONSENT CALENDAR

It was moved by Director Longville and seconded by Vice President Corneille to approve the Consent Calendar: Item A: Board Minutes, April 28, 2021; Item B: Budget Workshop Minutes, April 28, 2021; and

Item C: Expenditure Report, April 2021. The motion carried 5-0, with all Board members present voting in the affirmative.

**President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Yes
Director Raley: Yes
Director Stewart: Yes**

6. COMMITTEE REPORTS/ACTION ITEMS

A. OPERATIONS COMMITTEE VERBAL UPDATE

Vice President Corneille provided a verbal update of the Operations Committee held on May 5. He indicated that the Committee received a comprehensive Field Supervisor update from Manuel Colunga. Mr. Fogerson updated the Board on the Active Recharge Transfer Projects; he is preparing requests for proposals (RFPs) for engineering services based on the existing interest list. The Mill Creek Diversion was also discussed. The Mentone Shop Improvements were discussed, with further details in item B shown next on the agenda. This item was received and filed.

B. MENTONE SHOP IMPROVEMENTS

Mr. Fogerson discussed this item, noting its inclusion on package page 19. The District received two proposals in response to our RFP for architectural services related to shop improvements. Staff reviewed these proposals and presented the results of this analysis to the Operations Committee. He indicated that the local firm was more responsive; however, a design-build concept may provide an optimal approach. Thus, staff and the Operations Committee recommend that the Board consider authorizing a design-build procurement approach for the building. Mr. Cozad indicated that the Committee was supportive of that approach, which would likely result in a faster process. Vice President Corneille expressed his disappointment that there was not more interest from architectural firms and that the reasonably priced firm was unwilling to negotiate. Director Raley indicated his disappointment in the length of time that the procurement of this project is taking.

It was moved by Vice President Corneille and seconded by Director Longville to approve the design-build procurement approach for the Mentone Shop Improvements. The motion carried 5-0, with all Board members present voting in the affirmative.

**President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Yes
Director Raley: Yes
Director Stewart: Yes**

C. GENERAL MANAGER ANNUAL PERFORMANCE EVALUATION, RESOLUTION NO. 587 AND EMPLOYMENT AGREEMENT

Director Stewart said that the Ad Hoc General Manager Evaluation Committee (Committee) met on April 22; the minutes for this meeting are included on package page 26. He indicated that the Committee reviewed the Draft Agreement (page 28), Resolution (page 34), Salary Survey (page 27), 2020 and 2021 Board Priorities (pages 38 and 39, respectively), and District Accomplishments (page 40). Several significant accomplishments were achieved within this fiscal year, and the remaining priorities were

discussed in depth. Director Stewart indicated that the District's team environment contributes to accomplishing these goals. The Committee also briefly discussed staffing and succession. The Committee recommended that the General Manager receive the discretionary bonus outlined in his contract for FY2020-2021 and COLA (1.5%) for FY2021-2022 with no merit salary increase, and the revisions to Resolution No. 587 as presented. Director Stewart said that the Committee did not recommend a merit increase due to the general exponential growth of government employee salaries and compensation, the data reviewed at San Bernardino Valley Municipal Water Districts Wages, Benefits and Insurance Workshop (Wages Workshop) and the pandemic. Director Longville spoke in opposition to the Committee's recommendation. He indicated that the General Manager's performance has been exceptional; therefore, the recommendation that there be no merit increase is not justified. As an example, the District was recently selected for two awards under his leadership as noted in the informational item shared previously at this meeting. Director Longville stated that the General Manager is the second-lowest paid manager within the salary survey area and expressed concerns with underpaying the position. He recommended that the general manager receive the total 5% merit increase and the approved COLA. President McDonald spoke in support of Director Longville's recommendation. She expressed her appreciation for Mr. Cozad and the entire staff. She indicated that the District's small size requires its employees to do a whole lot more with less.

President McDonald asked the Committee what the General Manager requested as a merit increase. Director Stewart said that the Committee considered only the zero percent increase and did request input on alternative options. She asked Mr. Cozad for feedback. Mr. Cozad indicated that he believes his performance this year has been equally as good as previous years and noted that his average salary increase during his tenure with the District has been 4.3%. There was a discussion about the lack of equivalent entities with which to compare salaries. He indicated that Chino Basin Desalter is likely the most similar in employees and scope and that their general manager salary is higher than the District's pay. Director Longville thanked Mr. Cozad for his feedback and willingness to take a lesser merit increase but expressed concern over the level of pay and its potential effects on recruitment and succession planning. Director Raley spoke in opposition to these comments, referencing the lack of completion of the Mentone Shop improvement project as a concern. He stated that following the Wages Workshop presented by Valley Municipal earlier this week he believes the Committee recommendation aligns with current salaries. He also expressed concern over the Other Post Employment Benefits (OPEB) that the District will be paying once Mr. Cozad retires. Vice President Corneille said that the Board should be looking at the contract as a whole. He reviewed the salary, discretionary bonus, OPEB, and paid time off noted within the contract. He said that Mr. Cozad had done an excellent job for the District, and he proposed a merit increase of 2.5% with a 1.5% COLA, totaling 4%.

It was moved by Director Longville and seconded by President McDonald to approve the payment of the discretionary bonus of the 2020-2021 agreement at five percent of annual salary and the new agreement with the revisions to increase to the General Manager's salary at 5% for merit increase and 1.5% COLA for the fiscal year 2021-2022. The motion was withdrawn, and a substitute motion was presented.

Director Hayes noted that General Manager compensation was not directly discussed at Valley Municipal's Wages Workshop. The report indicated that the salary for their General Manager was based on a negotiated rate rather than the salary study report.

A substitute motion was offered. It was moved by Director Longville and seconded by President McDonald to approve the payment of the discretionary bonus of the 2020-2021 agreement at five percent of

annual salary and the new agreement with the revisions to increase the General Manager's salary at 2.5% for merit increase and 1.5% COLA for the fiscal year 2021-2022. The motion carried 3-2, with President McDonald, Vice President Corneille, and Director Longville voting in the affirmative and Director Raley and Stewart voting in opposition.

**President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Yes
Director Raley: No
Director Stewart: No**

Vice President Corneille encouraged the General Manager to use vacation time to lower the current balance of ninety days. He expressed concern over the liability to the District for both sick and vacation time. Mr. Cozad said he has scheduled five weeks of vacation this year but is not often ill and thus is unlikely to use significant amounts of sick time. He noted that, due to the pandemic, it has been difficult to plan for vacations. Mr. Cozad shared that the compensated absences reserve has been specifically funded to cover the payout of such costs upon employees' termination. President McDonald agreed that Mr. Cozad should utilize his vacation and understands that he was unable to use significant leave time during the pandemic. Vice President Corneille asked if there should be a cap on how much sick leave the General Manager can accumulate. Mr. Cozad said that the Board was hesitant about including severance within his employment contract as had been done for previous general managers, but the Board agreed to allow Mr. Cozad to earn his severance through accumulation of sick and vacation time. This agreement also provides for the employee to sell back unused sick and vacation time. Vice President Corneille suggested the District buy back unused paid time off. Director Stewart is supportive of the discussion and suggested that the Board revisit the limit on sick and vacation time. He indicated that 30 days is not much during a pandemic year. Mr. Cosgrove interjected that the issue should be referred to the Finance & Administration Committee for consideration at a future meeting. Vice President Corneille recommended that the last sentence in Section 10 that is shown in redline remain as "Such benefit shall not apply to the employee if the employee is dismissed for cause at any time prior to retirement."

President McDonald and Vice President Corneille thanked Mr. Cozad for his leadership. Mr. Cozad thanked the Board and acknowledged that staff makes the achievements possible. Director Harrison of Valley Municipal spoke on his experience as a former Board member and as a Board member of a partner agency noting that the accomplishments of the District and Mr. Cozad over the past year have been astounding, including the significance of Wash Plan implementation.

It was moved by Vice President Corneille and seconded by Director Longville to approve the employment agreement as presented with the following revisions to include a salary adjustment of 1.5% COLA, merit salary increase of 2.5% as approved by prior motion, and that the District will be buying back 45 days of the days of sick leave within the fiscal year and including the revisions to Section 10. The motion carried 4-1, with Vice President Corneille, President McDonald, Director Stewart, and Longville voting in the affirmative. Director Raley noted his abstention from the vote.

**President McDonald: Yes
Vice President Corneille: Yes**

Director Longville: Yes
Director Raley: Abstained
Director Stewart: Yes

It was moved by Director Stewart and seconded by Director Longville to approve Resolution No. 587 as presented subject to conforming amendments consistent with the discussion on the salary and contract provisions. The motion carried 5-0, with all present voting in the affirmative.

President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Yes
Director Raley: Abstained
Director Stewart: Yes

D. UNAUDITED FINANCIAL REPORTS, APRIL 2021

Mr. Cozad introduced this item for discussion, noting its inclusion beginning on package page 52. Director Stewart asked why the Redlands Plaza expenses are reduced. Mr. Cozad said there had not been any major required maintenance this fiscal year, and common area maintenance has been less because not all tenants have been occupying their units due to the pandemic. Vice President Corneille asked that the District require ThunderWheel Communications to submit an invoice by the end of the fiscal year.

It was moved by Director Stewart and seconded by Director Longville to approve the Unaudited Financial Reports for April 2021. The motion carried 5-0, with all Board members present voting in the affirmative.

President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Yes
Director Raley: Yes
Director Stewart: Yes

E. ANNUAL ENTERPRISE AND DISTRICT INTEGRATED BUDGET FOR 2021-2022

Mr. Cosgrove recused himself from participating in the budget workshop. He indicated that the budget workshop discussion as referenced in the staff report might implicate structural changes related to legal services and may affect himself personally or his law firm, which raises a potential conflict of interest under the FPPC. There is a potential of reasonable or foreseeable interest related to the personal finance of himself or his source of income, such as revenues derived by Rutan & Tucker, that may result from consideration of these potential structural changes. In addition, there is a prospect or possibility that some sort of contract may be entered into in respect to that structural change under Government Code §1090. This section requires persons with an interest in the proceedings to declare that interest; such persons may not participate in any way in making a contract. Mr. Cosgrove indicated that in the case of either a remote interest under Government Code §1091 (b) or a non-interest under 1091.5 (a), he has not engaged in discussions with any Board member related to this subject matter. In order for the Board to maintain maximum flexibility and avoid any issues related to conflict of interest, he recused himself from participation in this meeting in his official position as General Counsel to avoid any implication that he may be involved in the making of a contract. The Board accepted his recusal and proceeded with regular agenda items.

Mr. Cozad opened this item for discussion, noting its inclusion on package pages 58 to 71. He said that feedback received from the Board at the April 28 Budget Workshop had been incorporated into the budget. Staff increased the budget for directors' fees to account of potential changes due to the pandemic that would not be expected in future years. The budget for legal fees was increased, and there was a reduction in telephone and internet costs as requested. He thanked Angie Quiroga, Administrative Analyst, for negotiating that reduction.

Mr. Cozad reviewed the COLA, which is based on the CPI-U All-West, which was recently updated. While the COLA included in the budget was 1.5% based on December 2019 through December 2020, the update shows it is now 3.9% for April 2020 through April 2021. Based on economic projects, this is expected to continue increasing throughout the year. This rapid change in CPI could cause a large COLA in next year's budget. Staff suggests including a 2% COLA increase for the coming fiscal year to help address this issue. Director Stewart, Vice President Corneille, Director Longville, and President McDonald concurred with the staff's recommendation. Director Raley suggested increasing the budget to include the full 3.9% noting that it is likely to go up to 9%-10% next year.

Vice President Corneille stated that one closed session item might impact the budget and suggested that the Board consider postponing approval of the budget. The staff salary raise pool was briefly discussed. Director Stewart concurred with Vice President Corneille's suggestion to defer approval of the budget. President McDonald spoke in favor of approval and indicated that the Board can always approve the budget now and approve future revisions as needed to address changes.

Review of the budget continued as follows:

- GL 4016 Interest Income ARTP – Vice President Corneille asked how this was calculated. Mr. Cozad indicated that it was calculated based on feedback provided by PFM Investment Managers. They manage the Trust's investment portfolio, a portion of which is fixed income.
- CIP List – Vice President Corneille suggested that the dates be added for the fiscal year. He requested that Item 3C include the Santa Ana River facilities planning, or these may be shown as a separate item. Item 8 – there are no planned significant equipment purchases next year. Vice President Corneille said that Item 15 should precede Item 3C.
- GL 5175 and 5180 – Director Stewart reviewed the legal fees versus proposed salaries. He asked why legal fees appear to have doubled. Mr. Cozad indicated that the categories had been reduced to a total of \$30,000 for both. He noted the increase on package page 59 which lists the specific projects requiring legal support.

It was moved by Director Longville and seconded by President McDonald to approve the budget with revisions to the COLA to be 2%. The motion carried 3-2, with President McDonald, Director Longville Raley voting in the affirmative, and Vice President Corneille and Director Stewart voting in opposition.

President McDonald: Yes

Vice President Corneille: No

Director Longville: Yes

Director Raley: Yes

Director Stewart: No

7. INFORMATION ITEMS

A. WASH PLAN IMPLEMENTATION AND STATE PERMITTING UPDATE

Ms. Miller provided a verbal update. She said the year one implementation actions are in progress. Staff is beginning to organize and prepare for year two. The majority of the work has been done in preparing the State and Water Permits applications with Task Force partners. Some of the longstanding issues on the scope of work for the appraisal seem to be nearing a resolution. Mr. Cosgrove is drafting a response pertaining to the appraisal directorate. The changes to land exchange may affect the Enhanced Recharge Agreement, resulting in the potential need to be an amendment. Staff is working with USGS on finalizing their agreement to prepare a monitoring protocol for San Bernardino kangaroo rat. This item was received and filed.

B. GENERAL MANAGER'S REPORT AND MONTHLY RECHARGE REPORT

Mr. Cozad indicated that the written General Manager's Report was included in the Board package on pages 72 through 75. The Monthly Recharge Report was included on package page 76. This item was received and filed.

C. FUTURE AGENDA ITEMS AND STAFF TASKS

Director Raley requested a timeline for completion and monthly progress reports on the Trails Plan and Mentone Shop Improvements.

8. MONTHLY BOARD MEMBER MEETING REPORTS, AND/OR BOARD MEMBER COMMENTS

Vice President Corneille attended the Active Recharge Transfer Projects Policy Committee (ARTP) meeting on April 13, and Valley Municipal Engineering Workshop, Operations Committee on May 5, and Redland Rise N Shine on May 7.

Director Raley attended the Valley Municipal Special Board Meeting on April 15, Valley Municipal Board Meeting on April 20, and Valley Municipal Board Meeting on April 6. He attended the Wage, Benefits, and Insurance Workshop on May 10, signed District expenditures on May 11, and attended the Valley Municipal Engineering Workshop on April 13. He attended the Ad Hoc General Manager Evaluation Committee on April 22.

Director Longville attended the Conservation District Board meetings on April 14 and 28.

Director Stewart attended the Conservation District Board meetings on April 14 and 28. He attended the Operations Committee as an alternate on May 5 and Finance & Administration on March 24. He attended the Wage, Benefits, and Insurance Workshop on May 10 and today's Board meeting.

President McDonald attended the Wage, Benefits, and Insurance Workshop on May 10, Valley Municipal Engineering Workshop on May 11, and Operations Committee on May 5. She attended the Valley Municipal Resources Workshop on May 6, Valley Municipal Board Meeting on May 4, Federal Affairs Committee on May 3, and Association of San Bernardino County Special District Board Meeting. She attended the ACWA State Legislative Committee and Highland Area Chamber of Commerce meetings.

9. UPCOMING MEETINGS

The Advisory Commission on Water Policy will be held on May 20 and July 15.

10. CLOSED SESSION

Mr. Cosgrove recused himself from participating in the closed session. He indicated the reasons were the same as those previously entered into the record in connection with the 4-28-21 Budget Workshop, consisting of a potential reasonably foreseeable financial interest in both personal finances and a source of income that might be materially affected, and requested that the identification of those from the minutes of the 4-28 workshop be incorporated into the 5-12-21 minutes as well. That provision was as follows: [Mr. Cosgrove] indicated that the budget workshop discussion as referenced in the staff report might implicate structural changes related to legal services and may affect himself personally or his law firm, which raises a potential conflict of interest under the FPPC. There is a potential of reasonable or foreseeable interest related to the personal finance of himself or his source of income, such as revenues derived by Rutan & Tucker, that may result from consideration of these potential structural changes. In addition, there is a prospect or possibility that some sort of contract may be entered into in respect to that structural change under Government Code §1090. This section requires persons with an interest in the proceedings to declare that interest; such persons may not participate in any way in making a contract. Mr. Cosgrove indicated that in the case of either a remote interest under Government Code §1091 (b) or a non-interest under 1091.5 (a), he has not engaged in discussions with any Board member related to this subject matter. In order for the Board to maintain maximum flexibility and avoid any issues related to conflict of interest, he will recuse himself from participation in this meeting in his official position as General Counsel to avoid any implication that he may be involved in the making of a contract. The Board accepted his recusal and proceeded with posted agenda items.

It was moved by Vice President Corneille and seconded by Director Longville to adjourn to Closed Session. The motion carried with all directors present voting in the affirmative.

**President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Yes
Director Raley: Yes
Director Stewart: Yes**

General Counsel announced that the meeting would adjourn to Closed Session under the item listed on the published agenda under Closed Session. He was then excused, and did not participate in the closed session..

At 4:47 pm, the meeting reconvened into Open Session. Mr. Cozad noted while in Closed Session that the Board provided direction to Special Counsel to finalize the employment agreement for In-house Counsel and coordinate with the General Manager to agendize the agreement for consideration at the next regular meeting of the Board.

11. ADJOURN MEETING

It was moved by Director Longville and seconded by Director Stewart to adjourn. The motion carried 5-0, with all Directors present voting in the affirmative.

President McDonald: Yes
Vice President Corneille: Yes
Director Longville: Yes
Director Raley: Yes
Director Stewart: Yes

At 4:48 pm, the meeting adjourned to the Board meeting scheduled for 1:30 pm on June 9, 2021, via Zoom.



Daniel B. Cozad
General Manager