

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

MINUTES OF THE
BOARD OF DIRECTORS REGULAR MEETING
OTAY WATER DISTRICT
February 16, 2000

1. The meeting was called to order by President Price at 1:32 p.m. in the District Boardroom, 2554 Sweetwater Springs Boulevard, Spring Valley, California.

DIRECTORS PRESENT: Directors, Laudner, Poveda, Price, Inocentes and Watton

DIRECTORS ABSENT: None

STAFF PRESENT: General Manager Cardenas
Attorney Harron
Operations Dept Head Mahanke
Admin Services Dept Head Alvarez
Finance Department Head Chambers
District Secretary Smith
Others as per attached list

2. After the Pledge of Allegiance, a motion was made by Director Inocentes, seconded by Director Laudner, and unanimously carried, to approve the agenda.

3. Director Laudner asked that the approval of the minutes of the Special Meeting of January 31, 2000 and February 2, 2000 be separated. A motion was made by Director Poveda, seconded by Director Watton, and carried with Director Laudner abstaining, to adopt the Minutes of the Special Meeting of January 31, 2000. A motion was made by Director Laudner, seconded by Director Poveda, and unanimously carried to adopt the Minutes of the Regular Meeting of February 2, 2000.

1 4. A motion was made by Director Inocentes, seconded by Director
2 Watton, and unanimously carried, to approve the Demands as listed.

3 5. President Price inquired if anyone in the audience desired to ad-
4 dress the Board on any item not on the agenda. No one wished to be heard.
5

6 6. A motion was made by Director Poveda, seconded by Director Wat-
7 ton, and unanimously carried, that the following items on the consent calendar be
8 approved.
9

10 a) RESOLUTION NO. 3846

11 A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
12 OTAY WATER DISTRICT CONCURRING IN NOMINATION
13 OF HENRY L. INGRAM TO THE EXECUTIVE COMMITTEE
14 OF THE ASSOCIATION OF CALIFORNIA WATER
15 AGENCIES JOINT POWERS INSURANCE AUTHORITY
16 ("ACWA/JPIA")

17 RESOLUTION NO. 3847

18 A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
19 OTAY WATER DISTRICT CONCURRING IN NOMINATION
20 OF RICHARD G. "DICK" WEINKLE TO THE EXECUTIVE
21 COMMITTEE OF THE ASSOCIATION OF CALIFORNIA
22 WATER AGENCIES JOINT POWERS INSURANCE
23 AUTHORITY ("ACWA/JPIA")

24 b) AUTHORIZATION OT ISSUE A PURCHASE ORDER IN THE
25 AMOUNT OF \$48,304.24 TO BARRETT ENGINEERED PUMPS
26 FOR THE PURCHASE OF ONE GODWIN MODEL HL5MS
27 PUMPING UNIT

28 c) RESOLUTION NO. 3850

29 A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
OTAY WATER DISTRICT COMMENDING MARCO POLO
CORTES, THE OUTGOING PRESIDENT OF THE SAN
DIEGO COUNTY HISPANIC CHAMBER OF COMMERCE

1 the Archer Western bid. Mr. Zuccaro claimed there were three items omitted from
2 Archer Western's listing of subcontractors, soils engineer, electrical work and land
3 survey. He stated that Mr. Harron had been shown bids received by Archer for
4 electrical and land surveying and that the bid amounts were less than one-half of
5 one percent threshold for listing under the law. His concern was that the Board be
6 sure the fax confirmations of these bids predate the bid opening.
7

8
9 Mr. Zuccaro stated his client was very concerned regarding the soils engi-
10 neer portion because there was no bid for this piece of work and in order for the
11 bid to be responsive Archer must prove they have a California registered soil en-
12 gineer in their employ. He said California law and Otay bid requirements require
13 that all work specified be performed by people who are licensed for that work by
14 the State. He continued by saying that this question must be addressed to Archer
15 Western and answered affirmatively before the Board can seriously consider their
16 contract bid. He said if Archer Western did not have a registered engineer at the
17 time they submitted their bid, then their representation to the Board that they are
18 able to do the work is inaccurate. He stated that Archer Western wants the option
19 of either doing the work in-house or hire a subcontractor that is a registered soils
20 engineer and by receiving this option it gives them a tremendous advantage in the
21 bidding process. He again reiterated that Archer Western needed to prove that
22 they had a licensed soils engineer on staff when they submitted the bid.
23
24
25

26 Acting General Manager Harron stated the law says if the bid is under one-
27 half of one percent, you either have to list that subcontractor or it is a presumption
28 that you are fully qualified. He said Archer Western's position is that it is not one-
29 half of one percent, so they don't have to list. He said after receiving the complaint

1 from Erreca, Staff met with Archer Western and they explained why they felt the bid
2 was under one-half of one percent and their explanation was reasonable and it
3 appears the work can be done for less than that amount. The District has the right
4 to the presumption that if that is the case, we do not have to require any further
5 proof and can accept the bid as responsive. Mr. Harron continued saying that the
6 subcontracting law has penalties if the contractor misrepresents their bid. The
7 contract can be voided and the District could impose a 25% penalty on Archer
8 Western and he feels the District can reasonably rely on their representation and
9 the fact that Staff has explored and investigated and satisfied themselves that the
10 bid appears to be sound. He said there is also a provision that if a contractor
11 gives a false bid, their license is at stake so there are plenty of consequences if
12 they don't do the work for the price they quoted.
13
14
15

16 President Priced asked if Archer Western will indemnify the District and
17 Acting General Manager Harron stated that Archer Western will defend their bid.
18

19 Mr. Zuccaro again stated that he would like Archer Western to represent to
20 the Board that they had a licensed soils engineer in their employ prior to the bid
21 being submitted.
22

23 Director Watton asked if the basis for his theory is that Archer Western
24 doesn't have the capability of a soils engineer and there is some question regard-
25 ing electrical and survey. Mr. Zuccaro stated it was.
26

27 Director Watton asked Archer Western what their answer was regarding
28 the soils engineer.
29

1 Edward Ballard, Attorney for Archer Western, said they were trying to show
2 the Board that under California Professions Code and Public Contracting Code it
3 clearly states a soils engineer or geologist is not a subcontractor.

4 President Price said there is a question regarding the person that Archer
5 Western has on staff being there prior to the submission of the bid.

6 Mr. Ballard said they have submitted responses to the legal arguments Er-
7 reca's counsel had made to Otay's in-house attorney. He said by law and Otay's
8 bid requirements, the firms were required to list subcontractors that do work on the
9 job that exceed one-half of one percent and Archer Western has done that. He
10 stated that there was a soils engineer that solicited proposals to various contrac-
11 tors that were bidding this project and their proposal exceeded the one-half of one
12 percent. He said Erreca included that proposal in their bid and Archer Western
13 did not because they felt the proposal was too high and that they could do the work
14 for less than one-half of one percent. Mr. Ballard said with regard to the electrical
15 subcontractor and surveying work, Archer Western's numbers did not exceed the
16 one-half of one percent threshold.

17 Mr. Ballard said that Mr. Zuccaro cited legal precedents to back their posi-
18 tion which are not on point with this situation. He said in both cases cited the bids
19 were unresponsive on their face and in this situation, the bid is responsive. He
20 continued by saying that there are provisions in the Public Contract Code that if
21 Archer Western were to violate the law after submission of their bid, the District
22 would have mechanisms to deal with that. Mr. Ballard said the opposing counsel
23 is concerned about something that may happen in the future. Archer Western has
24 represented in their bid that the subcontracting work doesn't exceed one-half of
25 one percent and the bid complies on its face with the law and Otay, as a public
26 agency, is required to award the contract to Archer unless Otay can find substan-
27 tial evidence to the contrary.

28 Director Watton said he is hearing that Archer Western has a soils, electri-
29 cal and survey either in-house or below the one-half of one percent threshold and
Mr. Ballard said that is correct.

1 President Price asked Acting General Manager Harron if his recommenda-
2 tion was to still award to Archer Western and Mr. Harron stated it was.

3 Mr. Zuccaro stated the Board didn't receive an answer to the question
4 whether they have someone in-house. Director Watton stated he did get an an-
5 swer. Mr. Zuccaro said that Archer Western has gained an unfair advantage be-
6 cause now that the bids have been open they can go out and get a soils engineer
7 at less than one-half of one percent. He said the law prohibits bid shopping after
8 the fact.

9 Director Watton asked Mr. Harron if the District was satisfied that did not
10 occur. Mr. Harron said the law says if it is under one-half of one percent you don't
11 have to prove. Director Watton said if it is over that after the project is completed,
12 there are penalties. Mr. Harron said that was correct.

13 A motion was made by Director Poveda, seconded by Director Laudner
14 and unanimously carried, to increase the CIP Budget No. 071 to \$4,181,000 and
15 award the contract to Archer Western Contractors, Ltd. In the amount of
16 \$3,566,124.51 for construction of the Telegraph Canyon Road Recycled Water
17 Main Project.

18 11. President Price presented Item 12, request for authorization to initi-
19 ate reclassifications, additions and deletions of positions, title changes and
20 changes in reporting relations due to restructuring in the Operations and Mainte-
21 nance Department.

22 Director Watton stated that given the events of the afternoon, he would pre-
23 fer to table the item. Operations Department Head Mahanke said he would like to
24 defer some of the items but maybe bring back a few of the items at budget time
25 with some recommendations. He stated he would appreciate going ahead with
26 the change in status of the part-time to full-time office assistant. President Price
27 directed that Staff bring that one item back to a future Board Meeting.

28 12. President Price presented

29 RESOLUTION NO. 3848

1 A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
2 OTAY WATER DISTRICT NOMINATING _____
3 _____ FOR APPOINTMENT TO THE LAFCO
SPECIAL DISTRICTS ADVISORY COMMITTEE

4 A motion was made by Director Price, seconded by Director Watton, and
5 unanimously carried, to nominate Director Del Laudner for appointment to the
6 LAFCO Special Districts Advisory Committee.

7 A motion was made by Director Laudner, seconded by Director Watton,
8 and unanimously carried to recommend Bud Pocklington for the LAFCO Special
9 District Member.

10 13. President Price stated the next item would be discussion and possible
11 action regarding Directors' division boundaries. She stated the Board re-
12 viewed the possible boundary changes at a special meeting and its last regular
13 meeting.

14 A motion was made by Director Poveda, seconded by Director Price, and
15 unanimously carried to adopt

16 RESOLUTION NO. 3849

17 A RESOLUTION OF THE BOARD OF DIRECTORS OF
18 OTAY WATER DISTRICT APPORTIONING THE DIVISIONS
19 WITHIN THE OTAY WATER DISTRICT (WO 2466)

20 President Price stated that sometime within the next year she would like to
21 see a policy that would trigger when boundaries should be looked at whether it be
22 census or number of meters sold.

23 14. Geoff Stevens, Information Technology Manager, said that Staff had
24 found that District data needed to be integrated between applications which re-
25 quires the server to be very reliable and redundant. He stated that an example of
26 information that would be on the server would be the data that would allow cus-
27 tomer service to present bills on-line to customers. The District has outgrown the
28 existing server to provide the needed information and the reason for the cost is the
29 system is very reliable due to the high degree of redundancy in its architecture.

1 A motion was made by Director Watton, seconded by Director Inocentes
2 and unanimously carried, to authorize a purchase order in the amount of
3 \$46,975.77 to Compaq Computer Corporation for a Compaq Database Server.

4 15. Administrative Services Department Head Alvarez presented the
5 department's monthly report. He stated that Staff is planning to schedule sexual
6 harassment training in April and looking at revising the current policy to make sure
7 it is in compliance. Director Price asked that Mr. Alvarez report to the Board re-
8 garding what Staff is doing in the terms of ongoing sexual harassment training.

9 Mr. Alvarez stated that Staff is trying to streamline the application process
10 by accepting resumes in lieu of preprinted applications.

11 Director Price stated she was happy to see the elimination of separate
12 mailing of past due notices and commended Wendy Harris, Jeanne Pitts, Sharon
13 Shields-Smock and Elaine Henderson for their work.

14 Director Price also said she was glad to see the retirees being included
15 regarding the change to PERS. She wanted to hear when the mailers were sent
16 and the meetings scheduled for the retirees.

17 16. Operations Department Head Mahanke submitted his monthly re-
18 port. He said that Helix Water District had a 36" raw water line break that feeds
19 their treatment plant. Staff moved the 235 backhoe over to the break, started ex-
20 cavating and supplied a 25-foot length of 36" pipe for Helix's use in their repair.
21 He said that Helix was very grateful for our assistance. Mr. Mahanke thanked Tom
22 Bohnsack, Tim Keeran, Rick Bartlett, Mark Davis, Gabe Silva, Allen Biery, Mitch
23 Atkinson, Jerry Munoz, Ed Sanchez, Nick Pantazopolus, Jeff Novak and Don Hen-
24 derson for their work on the Helix emergency.

25 17. Engineering Manager Peasley presented the Engineering Depart-
26 ment's monthly report. He stated the Loma Del Sol pipeline project was out to bid
27 and the Central Area Fence Project would soon go out for bid. He said that Phase
28 2 of the 7-11 Reservoir, liner and cover in the Use Area, would also be coming
29 forward for bid.

1 18. Finance Department Head Chambers presented her monthly report.
2 She said that Joe Beachem, Accounting Manager, would make a short presenta-
3 tion on the inclusion of the monthly financial statements.

4 Mr. Beachem made a brief presentation regarding the monthly financial
5 statements (copy attached).

6 19. General Counsel Harron presented his monthly report. He stated
7 that he and the Insurance Ad Hoc Committee would be meeting with the
8 ACWA/JPIA representative tomorrow. He also said that the District had collected
9 the money owed by the Border Patrol.

10 20. Director Poveda stated under the General Manager's Report he had
11 requested a break-down of Directors' expenses and would like to open it up for
12 discussion. Director Watton stated he preferred Format A and Directors Poveda,
13 Price and Inocentes agreed. Director Inocentes said he didn't have a problem
14 with any of the formats.

15 Director Poveda stated he would like to see Directors' expenses
16 agendized as a quarterly or bi-annual report and feels that it's important to make
17 this information public. He said he questioned the last item in the Format A report
18 entitled "unreimbursed advances." He asked Acting General Manager Harron
19 what that meant. Mr. Harron said the District had certain rules with regard to travel,
20 if a family member is paid for by the District and the Board Member doesn't repay
21 it within a certain number of days that would go under unreimbursed advances.
22 Director Poveda asked if that was a debit to the District and Mr. Harron said it
23 would be an expenditure that is not authorized and paid back within a certain
24 amount of time. Director Poveda said he was curious as to why Directors would
25 be running a balance with the District because he wasn't aware the District was a
26 bank. He stated he saw that Director Inocentes had an outstanding balance of
27 \$216, \$166 as of May of 1999, almost a year ago. Director Inocentes said it was
28 something that hadn't been paid and it will be taken care of within the next couple
29 of weeks, probably by the end of the week.

1 Director Price said the question just posed by Director Poveda should be
2 addressed in some policy and a travel policy will be brought forward to the Fi-
3 nance Committee where they can brainstorming things such as this.

4 Director Poveda stated that he feels it is important for Directors not to be
5 carrying balances with public dollars, he thinks it is unfortunate to have a balance
6 running for almost a year and feels the public deserves better than that. He stated
7 he was also curious at the level of expenditures, that under the totals Director Ino-
8 centes, \$23,488, Director Laudner, \$16,370, himself \$17,713, Director Price,
9 \$30,118 and Director Watton, \$16,208. Director Poveda said he felt it was a
10 good opportunity to maybe look at some policy at a workshop. There are three
11 Directors that are in the middle of the road, and he said he understood that Direc-
12 tor Price was on ACWA/JPIA where she does a lot of traveling and he thinks Di-
13 rector Inocentes does as well, but the totals stood out to him as a Director and he
14 was curious about the totals. Director Price said she didn't feel there were any
15 surprises in the information and Director Inocentes said he didn't either. Director
16 Price said that she would like to go back in the records further to the time prior to
17 her retirement as to what her expenditures were then. She said she had the op-
18 portunity over the past year to participate on several state-wide organizations,
19 ACWA being primarily one of them, and a lot of the travel comes in from flying to
20 the ACWA State Legislative Committee Meetings. Director Price said that each
21 Director has different levels of participation within the State, some more locally
22 than others, and some people are full-time employed and others are not and she
23 didn't feel it was fair to just go across the line stating what amount of money had
24 been spent but felt it was important to get the breakdown. Director Price contin-
25 ued saying she saw the need for a policy on travel and will push for that because
26 the Directors do need to be accountable to their constituents.

27 Director Watton stated he wanted to agendize this subject for full Board
28 Meeting rather than the Finance Committee and he requested an update on For-
29 mat A showing January and February. He said the range of discussion could be
where the Board is now, with very little restrictions, to a Sweetwater Authority

1 model where they approve meetings at every Board Meeting. He stated this could
2 be the framework for the discussion.

3 Director Watton said he would also like to discuss the Board's travel per
4 diem and find a way to put some collars on that. He said that the spectrum could
5 cover where you present your receipts and get reimbursed to being allowed a
6 small amount every day and if you go over that then it's a personal expense.

7 Director Price asked that the local school districts be contacted regarding their
8 travel policies.

9 Director Poveda said what he is talking about is a pure per diem per se.
10 He stated the schools and colleges give you a certain amount for your meals, you
11 receive that in advance and if you go over that amount, it's your responsibility. He
12 said he thinks Staff appreciates that because you are not turning in receipts and
13 from a budgetary standpoint you know what to budget in terms of the per diem for
14 events.

15 Director Poveda asked for an explanation on how there could be payment
16 for more than 10 meetings for some of the Directors in one month. Director Ino-
17 centes stated it was when a Director turns two-months expenses in for one month.
18 District Secretary Smith stated that it was not an error, that the Directors are nor-
19 mally a month behind in receiving their payments but on some occasions they will
20 turn in two months of expenses during the same month but it isn't a double pay-
21 ment. Director Poveda asked if there was someway to reflect that in the report so
22 that it didn't look like a Director received double payment.

23 Director Laudner asked Acting General Manager Harron why the Directors
24 were employees because it wasn't always that way. Mr. Harron felt it was for tax
25 reasons but will look into it and bring it back to the Board

26 21. Director Watton stated that there was a bus trip scheduled for the
27 Diamond Valley Opening and there needed to be consideration whether the Dis-
28 trict would pay for lunch for the participants which would be approximately a \$600
29 to \$700 expenditure. Acting General Manager Harron stated this issue came up
after the Agenda was posted. Director Watton asked if under the General Man-

1 ager's authority Mr. Harron would have authority for the expenditure and Mr. Harron
2 said he would. Director Watton asked if the Board would be comfortable with Mr.
3 Harron having Otay buy lunch for the participants on the bus from Otay. A motion
4 was made by Director Laudner, seconded by Director Poveda, and unanimously
5 carried to authorize the Acting General Manager to fund lunch on March 18th.

6 Director Watton stated the Water Authority had a lengthy workshop and in-
7 vited Staff to start attending the workshops due to the background that goes on.
8 He said during the public workshop he advocated stopping the spending on the
9 Emergency Storage Project until it is decided which districts are going to remain.
10 He said there are people in north county who think that CWA is going to build
11 whatever benefits them and then they will vote and stop the project. He stated it is
12 an integrated system and the project documents do not allow for a partial project.

13 He said also that he believes some of the originators of the Economic
14 Study Group are beginning to feel they are not going to be able to pick the trans-
15 portation element that they want and leave everything else. He said it will probably
16 be an unbundled rate and everyone will have to figure out whether they are in or
17 out.

18 Director Watton said the CWA Board voted to release a Water Authority
19 proposal to Met which Joe Parker attempted to present to their Board. Mr. Parker
20 was cut off and the Met Board took the report under advisement. He said there is
21 a framework by some of the member agencies of Met, probably all but San Diego,
22 where they would redistribute Met's excess money, approximately \$70,000,000,
23 based on historical equity share without regard to who paid the money in. Director
24 Watton said there would be a workshop at Met in mid-March on the rates.

25 22. Director Laudner stated he attended the Cal Fed seminar in Los
26 Angeles.

27 Director Inocentes said in the Met's Budget and Finance Committee, Har-
28 old Ball did a presentation regarding the extra money that Met has collected and
29 asked that the money be returned.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Director Price stated she had also attended the Cal Fed briefing. She mentioned at the Interagency Meeting there was a presentation made by the Senior Planner of Chula Vista regarding development projections and suggested that maybe the same person could make a presentation at a future Board Meeting. Director Price said that Director Watton had presented an overview on the CWA rate structures and commended him for doing that.

23. With no further business to come before the Board, the meeting was adjourned at 5:32 p.m.

President

ATTEST:

District Secretary