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MINUTES OF THE  
BOARD OF DIRECTORS REGULAR MEETING  
OTAY WATER DISTRICT  
May 16, 2001

1. The meeting was called to order by Acting General Manager Griego at 6:00 p.m. in the District Boardroom, 2554 Sweetwater Springs Boulevard, Spring Valley, CA.

DIRECTORS PRESENT: Bonilla, Cardenas, Inocentes and Lopez

STAFF PRESENT: Acting General Manager Griego  
Chief of Engineering and Water Ops.  
Gunstinson  
District Secretary Cruz  
Others per attached list

2. Upon conclusion of the Pledge of Allegiance, Acting General Manager Griego indicated that Pam Rega, School Education Representative, had student awards to present to winners of our annual water awareness poster contest. Ms. Rega indicated that each year, during the month of May, water awareness month is celebrated throughout the state of California. She stated that Otay holds an annual water awareness month poster contest for students grades K through 6 and the contest serves a dual purpose; not only does it encourage our children to think about water conservation, but the message is also shared with their parents as they involve them in the poster contest project. Ms. Rega indicated that the District received numerous entries from 15 of the 24 elementary schools in the District. She stated the contest is divided into two categories: 1) grades K-3 and 2) grades 4-6; and the posters were judged by Otay employees. She noted that three of the calendars are then sent to Metropolitan Water District's (MWD) calendar contest in which the District had winners in the last three years. Ms. Rega presented to Ms. Ashleigh Warren, a

Approval  
of  
Agenda

1 third grade student from Avocado Elementary School, the poster award for  
2 category one. She stated that Ashleigh would also receive a \$100 savings  
3 bond. Ms. Rega indicated that Ms. Hyun Jung Go, a fourth grader at Discovery  
4 Charter School, was selected the winner in category two. She stated that Hyun  
5 had not yet arrived, however, Hyun would also receive an award for her poster  
6 and a \$100 savings bond. Ms. Rega then indicated that the District would like  
7 to honor Ms. Jessica Best, who had a winning entry for the month of March  
8 2001 in MWD's calendar. Jessica was a third grade student at Jamul  
9 Intermediate School when she won the poster contest. Ms. Rega presented  
10 Jessica a \$100 savings bond along with her award.  
11  
12

13 3. Acting General Manager Griego presented the agenda for  
14 approval. He indicated that the first nine items on the agenda deals with  
15 business matters which have been carried over from the last three meetings  
16 and are things which require the Board's consideration so staff may carry on the  
17 business of the District.  
18

19 A motion was made by Director Lopez, seconded by President Bonilla  
20 and carried with the following vote:  
21

22 Ayes: Directors Bonilla, Cardenas, Inocentes and Lopez  
23 Noes: None

24 to approve the agenda as presented.

25 4. The demands list for the meetings of May 16, 2001, May 2, 2001  
26 and April 18, 2001 were submitted for Board approval.

27 A motion was made by Director Lopez, seconded by President Bonilla  
28 and failed with the following vote:  
29

Ayes: Directors Bonilla and Lopez  
Noes: Director Cardenas and Inocentes

Approval  
of  
Agenda

Approval  
of  
Demands

1 for the approval of the demands.

2 5. Acting General Manager Griego asked if anyone in the audience  
3 wished to be heard on any item.  
4

5 Mr. Gene Haden, a resident of Otay Water District, indicated that he had  
6 been an Otay Water District Director representing Division 4 for 30 years. He  
7 indicated that during his term, they had a very objective and cohesive Board  
8 which reviewed issues with legal advise and had tried to make the very best  
9 decisions for the good of the District and its customers. He stated the District  
10 also had an efficient and well-trained staff, at that time, who also worked for the  
11 good of the District and its customers and that the District had a very  
12 cooperative/positive relationship with other agencies throughout San Diego  
13 County. Mr. Haden indicated that he is concerned with the reports he has  
14 seen/heard in the last four months which indicate that Otay "is in total disarray."  
15 He noted that approximately 20 employees have left the District after being fired  
16 or resigning "because of dissatisfaction or bad morale." He was concerned that  
17 many were long time, career employees, and that they were replaced with  
18 friends and cohorts of the Board who were not experienced with running a  
19 water District. Mr. Haden was critical of the hiring of an internal auditor, a  
20 position which was new to the District. He indicated that the District generally  
21 hires a professional auditing firm to audit the District's records. Mr. Haden  
22 noted that the hired internal auditor was currently on paid administrative leave  
23 because of writing a \$1250 check to an illegitimate company and stated that the  
24 hired auditor had also lied on his resume with regard to his education. Mr.  
25 Haden was critical of the number of General Managers over the last year and  
26  
27  
28  
29

1 stated that the Otay Water District had been respected by other agencies in  
2 San Diego County and today, in speaking with individuals in other districts, Otay  
3 has become the “laughing stock” in the water industry. Mr. Haden asked  
4 Directors Bonilla, Cardenas and Inocentes to resign from their positions and  
5 turn the District over to the appropriate agency who could run the District’s  
6 operations until a new election or appointments can be made.  
7

8 Director Cardenas indicated that he agreed with Mr. Haden’s comments  
9 and indicated that this District has never had a President or Attorney who made  
10 unilateral decisions and stated that he would tender his resignation today if  
11 Directors Bonilla, Inocentes and Lopez, as well as the Attorney, also tender  
12 their resignation. No resignations were tendered.  
13

14 6. Acting General Manager Griego presented the following items on  
15 the consent calendar for approval:

- 16
- 17 a) ADOPTION OF RESOLUTION NO. 3902 OF THE BOARD OF  
18 DIRECTORS OF OTAY WATER DISTRICT ORDERING THE  
19 ANNEXATION OF CERTAIN TERRITORY TO THE OTAY  
20 WATER DISTRICT, AND IMPROVEMENT DISTRICT NO. 3  
21 THEREOF, DESIGNATED “BLACKMAN ANNEXATION” (WO  
22 8797 – DIV. 3)
  - 23 b) ADOPTION OF RESOLUTION NO. 3906 OF THE BOARD OF  
24 DIRECTORS OF OTAY WATER DISTRICT FIXING TERMS AND  
25 CONDITIONS FOR THE ANNEXATION TO OTAY WATER  
26 DISTRICT SEWER IMPROVEMENT DISTRICT OF THOSE  
27 LANDS DESCRIBED AS "CHRIS WHITE SEWER  
28 ANNEXATION" (APN 517-112-2900) AND ANNEXING SAID  
29 PROPERTY TO OTAY WATER DISTRICT SEWER  
IMPROVEMENT DISTRICT (WO 0210-20.237/DIV. 5 )
  - c) ADOPTION OF RESOLUTION NO. 3910 OF THE BOARD OF  
DIRECTORS OF THE OTAY WATER DISTRICT DECLARING  
INTENTION TO EXCLUDE TERRITORY FROM IMPROVEMENT  
DISTRICT NO. 19 (WO 0210.20.238/DIV. 4)

Consent  
Calendar

- 1 d) REQUEST TO AMEND REIMBURSEMENT AGREEMENTS  
WITH OTAY PROJECT L.P. AND ACI SUNBOW
- 2 e) REQUEST TO FILL SOME DISTRICT VACANCIES
- 3
- 4 f) AWARD OF JANITORIAL SERVICE CONTRACT FOR  
ADMINISTRATIVE AND OPERATIONS OFFICES
- 5

6 Director Cardenas requested that items "a" thru "f" be pulled  
7 from the consent calendar for discussion.

8 7. Acting General Manager Griego presented item 7a, the adoption  
9 of Resolution number 3902, the Blackman Annexation. Mr. David Charles  
10 indicated that Mr. Blackman is currently receiving water from the District and is  
11 formally seeking annexation into OWD's sewer district. Mr. Charles stated that  
12 by the annexation of Mr. Blackman's property into the District's sewer service,  
13 he would pay a single water rate. Mr. Blackman is currently paying twice the  
14 water rate, as he is an "outside" user. Mr. Charles indicated that Mr. Blackman  
15 is going through the legal process to annex because his water rates are too  
16 high.  
17

18  
19 Director Cardenas indicated that generally such an item would go through  
20 a committee. He indicated that, however, he is in receipt of a memo which  
21 states that the District committees have been disestablished. He stated that  
22 such an item would need to be placed on an analysis form in terms of how such  
23 a request would affect our water and sewer systems (in terms of our plant  
24 capacity). He stated further that he has been asked to only communicate with  
25 the General Manager, but has had a difficult time reaching the General  
26 Manager because he is either on the phone, in a meeting, etc. Thus, he was  
27 unable to obtain information on these items. Director Cardenas indicated that,  
28  
29

Adoption  
of Reso-  
lution  
#3902

1 therefore, he could not make an informed decision on any of the items listed on  
2 the agenda. Director Inocentes stated he agreed with Director Cardenas.

3 A motion was made by Director Cardenas, seconded by Director  
4 Inocentes and failed with the following vote:

5 Ayes: Directors Bonilla and Lopez  
6 Noes: Director Cardenas and Inocentes

7 to adopt resolution number 3902.

8  
9 8. Acting General Manager Griego indicated the next item on the  
10 agenda is item 7b, the adoption of Resolution number 3906 , Chris White  
11 Annexation. Mr. Charles indicated that this was another piece of property with  
12 a single family home which is seeking sewer service. He stated that, this  
13 property would also need to be annexed into the Otay sewer district before any  
14 service could be provided.  
15

16 Director Cardenas indicated that he could not make a decision as he did  
17 not have enough information.

18 A motion was made by Director Cardenas, seconded by Director  
19 Inocentes and \*\*carried with the following vote:

20  
21 Ayes: Directors Bonilla and Lopez  
22 Noes: None  
23 Abstain: Director Cardenas and Inocentes

24 to adopt resolution number 3906.

25 Special Counsel Garcia indicated that \*\*abstention votes would go in  
26 favor of the prevailing parties. Thus, if the vote was two to one for an item, then  
27 the abstention would be placed toward the majority vote, in this case, the item  
28 would succeed. He noted that abstentions are neutral votes and the majority  
29

Adoption  
of  
Resolu-  
tion  
#3906

1 vote would receive the abstention vote. Director Cardenas indicated that he did  
2 not agree, however, he would abide by Special Counsel's opinion.

3 9. Acting General Manager Griego indicated the next item on the  
4 agenda was item 7c, adoption of Resolution Number 3910, intent to exclude  
5 territory from improvement district 19. Mr. Charles indicated that this is a parcel  
6 of land which resides in improvement district 19 and, as it will be part of the San  
7 Miguel Ranch area which resides in improvement district 22/27, it is requested  
8 that the Board approve the intent to exclude the parcel from improvement  
9 district 19 so it may be become a part of improvement district 22/27. He  
10 indicated that if the Board approved the exclusion then staff would post a two-  
11 week announcement in the newspaper so that the public is aware of the  
12 District's "Intent to Exclude" the piece of land from one improvement district and  
13 annex it into another improvement district. He stated that following the two  
14 week posting, staff would present to the Board an adoption of a resolution to  
15 annex the parcel to improvement district 22/27.  
16  
17  
18

19 Director Cardenas asked Special Counsel Garcia and Director Lopez if  
20 they could explain to him what improvement district 19 was. Director Lopez  
21 indicated that he was not versed in that information, however, he looks to the  
22 General Manager to make the proper recommendations. Director Cardenas  
23 indicated that Directors are being asked to vote on the item and he would like  
24 more information on the item.  
25

26 Mr. Charles indicated that improvement district 19 is a defined service  
27 area like any other of our nine improvement districts. He stated that each area  
28 is defined by a demographic which is defined by a boundary which the District  
29

Adoption  
of Reso-  
lution  
#3910

1 identifies by a number. He noted that the District has maps which shows the  
2 boundaries to these service areas.

3 Director Cardenas asked how district 19 is funded. Ms. Suzanne  
4 Chambers indicated that there is no funding in district 19.

5 A motion was made by Director Lopez, seconded by President Bonilla  
6 and failed with the following vote:

8 Ayes: Directors Bonilla and Lopez  
9 Noes: Director Cardenas and Inocentes

10 to adopt resolution number 3910.

11 10. Acting General Manager Griego indicated the next item on the  
12 agenda was item 7d, a request to amend reimbursement agreements with Otay  
13 Project L.P. and ACI Sunbow. Mr. Griego indicated that staff is requesting that  
14 the District execute amendments to the two agreements. He stated the first  
15 amendment would add projects to Otay Ranch (Otay Project), Villages 1 and 5;  
16 and the second amendment transfers projects from ACI Sunbow for the  
17 Sunbow development to Otay Project. Mr. Griego added that these  
18 amendments are at the request of the developers. He indicated that a table is  
19 attached to the staff report (attached) showing the funding details for each of  
20 the capital projects and the improvement district from which they are being  
21 funded.  
22  
23

24 A motion was made by Director Lopez, seconded by President Bonilla  
25 and carried with the following vote:

27 Ayes: Directors Bonilla, Cardenas, Inocentes and Lopez  
28 Noes: None

29 to amend the reimbursement agreements with Otay Project L.P. and ACI  
Sunbow as recommended by staff.

Amend  
Reimburse-  
ment  
Agreements  
with Otay  
Project L.P.  
and ACI  
Sunbow

1           11.     Acting General Manager Griego indicated the next item was a  
2 request to fill some District vacancies. Mr. Rom Sarno indicated that staff is  
3 requesting the reclassification of one position and the approval to fill current  
4 vacancies within the District. These vacancies are those which have been  
5 identified as critical to the District's continued operations. He noted that the  
6 staff report (attached) has identified each position and provides supporting  
7 background for each position.  
8

9           Director Cardenas indicated that he had copies of minutes of two  
10 previous Board meetings where the President has enacted a hiring freeze with  
11 consensus from the Board. He indicated that he believed that the freeze has  
12 not been lifted and wanted it clarified whether there was a hiring freeze at the  
13 District. He stated that the Board would need to vote or have consensus on this  
14 issue. Mr. Sarno indicated that the positions were being brought forward so the  
15 Board could decide whether they were going to approve the hiring of the  
16 specified positions. Director Cardenas clarified that the Board would not  
17 suspend the hiring freeze by voting to fill vacancies. He indicated that the  
18 Board should vote to maintain or eliminate the hiring freeze.  
19  
20

21           Director Lopez requested that the minutes be reviewed to clarify if there  
22 was a vote to institute a hiring freeze. Acting General Manager Griego  
23 indicated that there is a record in the minutes where the President requested  
24 the hiring freeze and although there was not a vote, the board had concurred.  
25 Director Cardenas added that the minutes of the April 4, 2001 Board meeting  
26 also shows that the President had reiterated that there was a hiring freeze.  
27  
28

29           President Bonilla asked staff what the immediate needs were with regard  
to staffing. Mr. Sarno indicated that the positions identified in the staff report

1 are those which are critical to the continued operations of the District. Acting  
2 General Manager Griego further indicated that the list had been reduced from  
3 approximately 20 current vacant positions to those listed in the staff report. He  
4 stated that those listed are the most critical to the operations of the District and  
5 is asking the Board to waive the hiring freeze so the District may hire these  
6 critical positions. Director Cardenas indicated that the staff report does not  
7 request a lifting of the hiring freeze and would like Special Counsel's opinion on  
8 amending staff requests. Special Counsel Garcia indicated that the water code  
9 provides that the Board can act by motion or ordinance only. He stated that in  
10 reviewing the January 10, 2001 minutes in which the action was taken indicates  
11 that the "hiring freeze" was not voted upon via a motion and a second. He  
12 further stated that, though staff treated it as such, technically it was not a  
13 binding action which was ratified by the Board. Special Counsel Garcia added  
14 that the General Manager, under the water code and codes of ordinances, has  
15 full authority to hire/fire certain positions and set compensation. He stated that  
16 the limitations on the General Manager arise from limitations of contracts and  
17 negotiated agreements.  
18  
19  
20

21 Director Cardenas asked if the General Manager has the authority to set  
22 salary ranges. Special Counsel Garcia indicated that, the General Manager  
23 does have the authority to set ranges subject to the agreement within the  
24 Memorandum of Understanding. Director Cardenas noted that the District has  
25 a policy which states that salaries would not go above the 75 percentile of a  
26 range and stated that he disagreed with Special Counsel's opinion.  
27  
28

29 A motion was made by Director Lopez, seconded by President Bonilla  
and carried with the following vote:

1           Ayes:           Directors Bonilla and Lopez  
2           Noes:           Director Cardenas  
3           Abstain:        Director Inocentes

4 to fill some District positions as recommended by staff.

5           12.     Acting General Manager Griego indicated that the next item on  
6 the agenda is item 7f, award of a janitorial service contract. Mr. Jim Gunstinson  
7 indicated that the District's current janitorial service contract has expired and  
8 indicated that our current vendor has agreed to provide services until the end of  
9 the month. He stated that, at that time, the District will need to have a new  
10 contract in place. He indicated that bids were solicited for the service and the  
11 bids are noted in the staff report. He asked that the Board approve the award  
12 of the service contract to Jani-King as recommended in the staff report.

Award of  
Janitorial  
Service  
Contract

13           A motion was made by Director Lopez, seconded by President Bonilla  
14 and failed with the following vote:

15           Ayes:           Directors Bonilla and Lopez  
16           Noes:           Director Cardenas and Inocentes

17 to approve the award of the janitorial service contract.

18           13.     Acting General Manager Griego indicated the next item on the  
19 agenda is the selection of the Auditor for Fiscal Year ending June 30, 2001.  
20 Ms. Chambers indicated that staff is requesting that the Board approve the  
21 appointment of Hutchinson & Bloodgood, LLP to serve as the District's auditors  
22 for the fiscal year ending June 30, 2001. She noted that Hutchinson &  
23 Bloodgood is a firm that the District has used in the past for approximately four  
24 (4) years and that they have excellent qualifications and experience.

Selection  
of Auditor  
for FY01

25           Director Inocentes asked who sat on the selection committee for the  
26 selection of the auditing firm? Ms. Chambers indicated that she and Ruben  
27  
28  
29

1 Rodriguez sat on the committee. He indicated that he had thought that the  
2 committee had not made a recommendation and asked how the selection was  
3 made. Ms. Chambers indicated that she and Mr. Rodriguez sat in on the  
4 interviews and that she had reviewed the information from the interviews with  
5 Acting General Manager Griego. She stated that it was through this discussion  
6 and her recommendation that Hutchinson & Bloodgood, LLP be selected.  
7

8 Acting General Manager Griego added that Ms. Chambers had reviewed each  
9 firm's background with him and realizing the District must meet a timetable, staff  
10 is recommending Hutchinson & Bloodgood, LLP because of its experience and  
11 qualifications.  
12

13 Director Cardenas indicated that because of all the contracts which have  
14 been awarded without his knowledge and approval, he has become suspicious  
15 of anything which is brought before the Board and cannot make a decision at  
16 this point.  
17

18 A motion was made by Director Lopez, seconded by President Bonilla  
19 and failed with the following vote:

20 Ayes: Directors Bonilla and Lopez  
21 Noes: Director Cardenas and Inocentes

22 to approve the appointment of Hutchinson & Bloodgood, LLP to serve as the  
23 District's auditors for the fiscal year ending June 30, 2001 as recommended by  
24 staff.  
25

26 14. Acting General Manager Griego indicated the next item on the  
27 agenda is the award of a construction contract for the 711 zone pipeline on east  
28 H Street and Lane Avenue. Mr. Mehdi Arbabian indicated that this project had  
29 been brought before the Board back in early March 2001. At that time, the

Award of  
Con-  
struction  
Contract  
for 711  
Zone  
Pipeline

1 contract was awarded to the lowest bidder; however, the selected contractor  
2 (Mesa Construction Projects, Inc.) has not been able to fulfill its obligations and  
3 has failed to execute the contract documents. He stated that staff is asking the  
4 Board to authorize the award of the contract for the 711 zone pipeline project to  
5 the second lowest bidder (Rasic Construction Company, Inc.). Mr. Arbabian  
6 stated that the difference between the lowest bidder and the second lowest  
7 bidder is approximately \$38,845 and that staff had sought Special Counsel's  
8 advise and Special Counsel had suggested that the amount be liquidated from  
9 Mesa Constructions Projects, Inc. bid bond. Mr. Arbabian indicated that staff is  
10 requesting that the Board authorize releasing Mesa Construction from their  
11 obligation and only liquid their bond to the extent of \$38,000, and award the  
12 project to Rasic Construction in the amount of \$1,123,756.  
13  
14

15 Director Cardenas asked which Special Counsel had been consulted.  
16 Mr. Arbabian indicated that staff consulted with Mr. Henry Barbosa. Director  
17 Cardenas asked Special Counsel Garcia if he recognized Mr. Barbosa as being  
18 retained by the District. Special Counsel Garcia indicated that whether Mr.  
19 Barbosa was properly hired or not, he did provide legal advise and acted as  
20 legal counsel. He added that he is not personally aware of the circumstances  
21 under which he was retained and cannot provide an opinion on the matter at  
22 this time.  
23  
24

25 Directors Cardenas and Inocentes indicated that they had reservations  
26 about the approval of a \$1.1 million contract with there being a question of Mr.  
27 Barbosa being properly retained by the District and his providing advise on the  
28 matter as it may open up the District to liability. Special Counsel Garcia  
29

1 indicated that Mr. Barbosa is from a reputable firm and is certain that they  
2 would have the insurance to cover any liability should there be any.

3           There was discussion on whether tabling a decision in this matter would  
4 “kill” the District. Mr. Gunstinson indicated that it would not, however, it would  
5 put the District behind the eight-ball as far as the reservoir being completed, as  
6 there is a certain time-span in which the reservoir must be filled when they are  
7 completed. He stated that this is the reason the 711 zone pipeline is being  
8 requested. He noted that this is an integral portion of the 711 pipeline as it is  
9 the only way to get water to this reservoir.  
10

11           Director Cardenas indicated that with there being a question on legal  
12 liability, he could not take a chance and could not make an informed decision.  
13  
14 Director Inocentes agreed.

15           A motion was made by Director Lopez, seconded by President Bonilla  
16 and failed with the following vote:  
17

18           Ayes:           Directors Bonilla and Lopez  
19           Noes:           Director Cardenas and Inocentes

20 to authorize releasing Mesa Construction from their obligation and only liquid  
21 their bond to the extent of \$38,000, and award the project to Rasic Construction  
22 in the amount of \$1,123,756.

23           15.   Acting General Manager Griego indicated the next item on the  
24 agenda is the award of a construction contract for the High Head Pump Station  
25 Engine installation. He noted that this project was critical to meeting our  
26 connection for emergency water to Mexico. Mr. Arbabian indicated that the  
27 District is entering into an agreement with CWA to provide water through the  
28 Otay facility to Tijuana, Mexico. He stated that the District is purchasing three  
29

Award  
contract  
for High  
Head  
Pump  
Station

1 (3) new engines that would replace the existing High Head Pump Station  
2 engines. He stated that the engines would comply with the APC requirements  
3 and staff is requesting that the Board authorize awarding this project in the  
4 amount of \$633,000 to DenBoer Engineering and Construction, Inc. He added  
5 that the project was bid out in March 20, 2001 and the District received five  
6 bids.

8 Director Cardenas asked if this was a reimbursable agreement with  
9 CWA? Mr. Arbabian indicated that it was.

10 A motion was made by Director Cardenas, seconded by Director Lopez  
11 and carried with the following vote:

13 Ayes: Directors Bonilla, Cardenas, Inocentes and Lopez  
14 Noes: None

15 to award the construction contract for the High Head Pump Station engine  
16 installation to DenBoer Engineering and Construction, Inc. in the amount of  
17 \$633,000.

18 16. Acting General Manager Griego indicated that the next item on  
19 the agenda are items requested by Director Cardenas:

- 21 a) REORGANIZATION OF THE OTAY WATER DISTRICT BOARD  
22 b) PERSONNEL MATTERS REGARDING THE SPECIAL  
23 COUNSEL:  
24 Dismissal of Special Counsel Burke Williams & Sorensen  
25 c) PERSONNEL MATTERS REGARDING THE ACTING GENERAL  
26 MANAGER:  
27 Dismissal of Acting General Manager  
28 d) PERSONNEL MATTERS REGARDING THE APPOINTMENT OF  
29 AN ACTING GENERAL MANAGER:  
Appointment of Jim Gunstinson as Interim General  
Manager

Board  
Actions

- 1 e) ADOPTION OF ORDINANCE NO. 491 OF THE BOARD OF  
2 DIRECTORS OF THE OTAY WATER DISTRICT AMENDING  
3 THE CODE OF ORDINANCES SECTION 1.03 REGARDING THE  
4 PROCEDURE FOR THE ELECTION OF BOARD OFFICERS
- 5 f) RESCISSION OF CHANGES TO PRESIDENT'S AUTHORITY IN  
6 THE CODE OF ORDINANCE POLICY 8 ADOPTED BY THE  
7 BOARD OF DIRECTORS AS OF JANUARY 2001
- 8 g) DISCUSSION OF SELECTION AND APPOINTMENT OF THE  
9 VACANT DIVISION 3 SEAT OF THE BOARD OF DIRECTORS

10 Director Cardenas indicated he wished to clarify that he had not requested that  
11 the items be placed on the agenda; he stated that according to our Special  
12 Counsel, the court had ordered that the above items be placed on the agenda.  
13 He indicated that he had been denied the ability to add the items via the regular  
14 route and so they had gone to court and this was the reason that they had been  
15 added. He further indicated that he did not believe that any of the current Board  
16 members are worthy of being President of this Board and, though he had  
17 placed the item on the agenda, he would not vote for any member to be  
18 President of this Board.

19 President Bonilla asked clarification on advice provided by legal counsel  
20 regarding the addition of the above items to the agenda. Special Counsel  
21 Francisco Leal indicated that the District had gone to court in order to resolve  
22 this matter and was seeking a court order which would compel the judge and  
23 members of the Board to add the items to the agenda, which would induce the  
24 Board to vote on the above matters. Special Counsel Leal indicated that the  
25 judge had been unwilling to go that route, however, he did have a conversation  
26 with Special Counsel Leal and opposing Counsel of Foley & Lardner, LLP who  
27 represented President Bonilla. He stated that it was his understanding that they  
28 had reached a stipulation, in front of the judge, that these matters would go on  
29

1 the agenda and the District would have an opportunity to cure these provisions.  
2 He further stated that without the items on the agenda, there would not be an  
3 opportunity to cure. However, there was not an official order to place the items  
4 on the agenda.

5 Director Inocentes indicated that until a fifth member of the Board has  
6 been elected, he would not support any of the actions listed as items 10a  
7 through 10d on the agenda.

9 A motion was made by Director Inocentes, seconded by President  
10 Bonilla and carried with the following vote:

11 Ayes: Directors Bonilla, Inocentes and Lopez  
12 Noes: Director Cardenas

13 that items 10a through 10d be brought back to the first meeting of the Board  
14 when there would be five (5) members seated.

16 Acting General Manager Griego indicated the next item on the agenda is  
17 item 10e, adoption of Ordinance Number 491 amending the Code of  
18 Ordinances section 1.03 regarding the procedure for the election of Board  
19 officers.  
20

21 Director Cardenas asked Special Counsel Garcia for clarification on this  
22 issue. He asked if the code allows the Board to change officers at anytime or  
23 can the election of officers only occur once a year. Special Counsel Garcia  
24 indicated that there are two views on this issue, a minority and majority opinion.  
25 He indicated one view of the water code is that the code actually provides that  
26 you cannot change the president except for every two years (every odd year).  
27 He stated the other view is common practice with water districts; they vote for  
28 president annually. He indicated that the Otay Code of Ordinances provides  
29

Adoption of  
Ordinance  
#491  
Regarding  
the Election  
of Board  
Officers

1 that elections are done annually and specifies the procedures for the election.

2 He stated that if the Board wishes to do something different than what is  
3 stipulated in the Code of Ordinances then the Board must change the code.

4 Director Cardenas asked if the code had an “or” statement, indicating that the  
5 procedures can be changed. Special Counsel Garcia indicated that it did not.  
6

7 A motion was made by Director Cardenas, seconded by Director  
8 Inocentes and failed with the following vote:

9 Ayes: Directors Cardenas and Inocentes  
10 Noes: Directors Bonilla and Lopez

11 to amend the Code of Ordinances which allows the District to elect officers from  
12 “time to time.”

13 Acting General Manager Griego indicated the next item is 10f, rescinding  
14 changes to the president’s authority in Policy 8 of the Code of Ordinances  
15 adopted by the board as of January 2001. Director Cardenas indicated that this  
16 item was added at Director Lopez’s request, because he was concerned that  
17 his hands were tied and that the President’s authority was more far reaching  
18 than what he had anticipated; that is, that Board members should request  
19 information only through the General Manager, that he is only authorized to add  
20 items to the Board agenda, approves attendance of meetings, etc. Director  
21 Cardenas further stated that he resents the fact that this Board is not being  
22 allowed to do its job correctly and is being kept from information.  
23  
24  
25

26 Director Lopez indicated that that was one of the many concerns which  
27 he had. He added that he also feels like Director Inocentes that this is  
28 something that needs to be discussed with the fifth member of the Board. He  
29

Rescind  
Changes  
to Policy  
8

1 stated that this is not the only issue and that this issue and others which he has  
2 should be discussed with the consensus of the five (5) members of the Board.

3 A motion was made by Director Cardenas, seconded by Director  
4 Inocentes and failed with the following vote:

5 Ayes: Directors Cardenas and Inocentes  
6 Noes: Directors Bonilla and Lopez

7 that all the powers provided the President of the Board be rescinded and it go  
8 beyond the January 2001 date.  
9

10 Acting General Manager Griego indicated the next item, 10g is the  
11 discussion of the selection and appointment of the vacant Division 3 seat of the  
12 Board of Directors. Director Cardenas indicated he had placed this item on the  
13 agenda to allow the Board members to bring forward any nominations for  
14 individuals they feel are qualified for the Division 3 seat, so Directors in future  
15 would not indicate in future that they did not have a chance to appoint a  
16 candidate. He stated that he, however, is in favor of the Board of Supervisors  
17 in making the appointment.  
18

19 Director Inocentes noted that all four applicants were present and asked  
20 whether the applicants would like to present to the Board the reasons they wish  
21 to be a Board member and how they might help the current Board.  
22

23 Director Lopez indicated that he commends the four candidates for their  
24 interest in sitting on the Otay Board. He stated that under the conditions in  
25 which he was elected, he was in a position to indicate that he would not wish  
26 this upon the candidates. He stated that if we were to give the candidates the  
27 utmost respect and dignity that an appointment should not be made today. He  
28 stated that he did not feel that a fair judgment could be made at this point and  
29

Appt. of  
Division 3  
Director

1 had very strong reservations about making an appointment. He noted that the  
2 candidates have seen the indication of the dysfunction of the Board during this  
3 evening's meeting and would like the Board of Supervisors to make the  
4 appointment of the Division 3 seat.

5 A motion was made by Director Lopez, seconded by President Bonilla  
6 and carried with the following vote:

8 Ayes: Directors Bonilla, Cardenas and Lopez  
9 Noes: None  
10 Abstain: Director Inocentes

11 to let the Board of Supervisors make the appointment to the Division 3 seat on  
12 the Otay Board.

13 17. Acting General Manager Griego indicated that the District had just  
14 received a notice that a suit has been filed to obtain a restraining order on  
15 behalf of Ruben Rodriguez. He stated that the insurance carrier has assigned  
16 the law firm of Wilson, Petty, Kosmo & Turner, LLP to represent the District.

GM  
Report

17 18. Director Cardenas read a list of items he wished placed on the  
18 next Board meeting agenda. He indicated that he would provide a copy of the  
19 list.  
20

Board  
Reports

21 19. Acting General Manager Griego indicated that the Board will be  
22 convening into closed session to discuss the following item:  
23

Closed  
Session

24 a) LITIGATION – (OTAY WATER DISTRICT vs. TREPTE  
25 CONSTRUCTION CO.) (GOV. CODE §54956.9)  
26

27 The Board convened into closed session at 7:30 p.m.  
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20. The Board reconvened at 7:42 p.m. Acting General Manager Griego indicated that the Board did not meet in closes session due to a lack of a quorum and stated that there was nothing to report.

21. With no further business to come before the Board, the meeting was adjourned at 7:43 p.m.

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
District Secretary