

**MINUTES OF THE
BOARD OF DIRECTORS MEETING OF THE
OTAY WATER DISTRICT
March 3, 2010**

1. The meeting was called to order by President Bonilla at 3:30 p.m.

2. ROLL CALL

Directors Present: Bonilla, Breitfelder, Croucher, Lopez and Robak

Staff Present: General Manager Mark Watton, Asst. GM Administration and Finance German Alvarez, Asst. GM Engineering and Water Operations Manny Magana, Counsel Bonifacio Garcia, Chief of Information Technology Geoff Stevens, Chief Financial Officer Joe Beachem, Chief of Engineering Rod Posada, Chief of Administration Rom Sarno, District Secretary Susan Cruz and others per attached list.

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

Following a motion by Director Breitfelder to approve the agenda, Director Croucher indicated that he would like to move agenda item number 12a, AWARD A PROFESSIONAL AS-NEEDED CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES CONTRACT TO VALLEY CONSTRUCTION MANAGEMENT FOR AN AMOUNT NOT-TO-EXCEED \$175,000, to the consent calendar. He indicated that during the Engineering, Operations and Water Resources Committee review of this item, there were a couple questions that have been reviewed by staff and he is comfortable that staffs' recommendation is appropriate. Director Breitfelder accepted the amendment to the agenda.

The motion was seconded by Director Croucher and carried with the following vote:

Ayes:	Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to approve the agenda with Director Croucher's amendment to move item 12a to the consent calendar.

5. APPROVAL OF THE MINUTES OF THE SPECIAL MEETING OF AUGUST 24, 2009 AND REGULAR MEETING OF NOVEMBER 4, 2009

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

Ayes: Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes: None
Abstain: None
Absent: None

to approve the minutes of the special meeting of August 24, 2009 and regular meeting of November 4, 2009.

6. PUBLIC PARTICIPATION – OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO SPEAK TO THE BOARD ON ANY SUBJECT MATTER WITHIN THE BOARD'S JURISDICTION BUT NOT AN ITEM ON TODAY'S AGENDA

No one wished to be heard.

CONSENT CALENDAR

7. ITEMS TO BE ACTED UPON WITHOUT DISCUSSION, UNLESS A REQUEST IS MADE BY A MEMBER OF THE BOARD OR THE PUBLIC TO DISCUSS A PARTICULAR ITEM:

A motion was made by Director Croucher, seconded by Director Breitfelder and carried with the following vote:

Ayes: Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes: None
Abstain: None
Absent: None

to approve the following consent calendar items:

- a) REPORT ON DIRECTOR'S EXPENSES FOR THE 2ND QUARTER OF FISCAL YEAR 2010
- b) APPROVE THE ADJUSTMENT OF THE WHEELING RATE FOR THE DELIVERY OF TREATY WATER TO THE CITY OF TIJUANA, AND THE REFUNDING OF ACCUMULATED OVERPAYMENTS FOR PAST WATER DELIVERIES TO RETURN THE DISTRICT TO A COST-NEUTRAL POSITION WITH RESPECT TO THE WATER TRANSFER AGREEMENT WITH MEXICO
- c) APPROVE THE APOINTMENT OF DIEHL, EVANS & COMPANY, LLP, TO PROVIDE AUDIT SERVICES TO THE DISTRICT FOR THE FISCAL YEAR ENDING JUNE 30, 2010
- d) REJECT TRANSPAC CLAIM

- e) APPROVE THE ADOPTION OF THE MITIGATED NEGATIVE DECLARATION FOR THE RANCHO DEL REY GROUNDWATER WELL PROJECT
- f) APPROVE A PROFESSIONAL SERVICES CONTRACT FOR CONSTRUCTION MANAGEMENT SERVICES TO RBF FOR THE OTAY MESA RECYCLED WATER SUPPLY LINK PROJECT IN AN AMOUNT NOT-TO-EXCEED \$708,560
- g) AWARD A PROFESSIONAL AS-NEEDED CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES CONTRACT TO VALLEY CONSTRUCTION MANAGEMENT FOR AN AMOUNT NOT-TO-EXCEED \$175,000

ACTION ITEMS

8. FINANCE AND ADMINISTRATION

- a) REVIEW OF DETAILS RELATED TO THE PROPOSED DEBT ISSUANCE TO FINANCE THE DISTRICT'S CAPITAL INFRASTRUCTURE

Chief Financial Officer Joe Beachem indicated that this item is an informational item to review staffs' recommendation for the proposed bond issuance. He indicated that staff will be presenting the reasons for their recommendation that the District issue debt at this time (timing of the debt), how the Capital Improvement Program (CIP) will be funded by the bond issuance, the amount of the debt and the opportunity to utilize Build America Bonds (BAB) for this debt issuance, the forming of the Otay Water District JPA, the selection of an underwriter, and the proposed actions to approve the bonds.

He indicated earlier in the year when the FY 2010 budget was presented to the board for approval, staff had discussed their expectation to issue debt prior to the end of the year as the District's reserve funds would start to become drawn down below target levels. He indicated that as of December 31, 2009, the District's reserve funds were approximately \$59 million and the District's target level is slightly under \$50 million. He stated that the District's expenditures per month, with the CIP construction projects, are approximately \$2 million. At this rate of expenditure, staffs' projection is on target and it is expected that the District will issue debt this fiscal year.

He noted that the CIP budget for the next three years is approximately \$107.9 million and a significant amount of this cost will be funded through water rates as they are betterment and replacement projects. The budget also includes expansion projects which are partially funded through capacity fees, restricted fees and reserves. The remaining cost of the expansion projects will be funded by debt. Staff recommends that the District not issue debt for less than a two-year time period as the issuance expense is not cost effective and is proposing that the District issue \$51.3 million in debt to cover the next three years of CIP

projects. The proposed amount would protect the District's credit rating as it would keep the District's debt coverage ratio above the target level of 150%. The debt coverage ratio is a measure that is referenced to determine the District's financial soundness. Staff expects interest rates to increase and, thus, the benefit of issuing Build America Bonds (BABs) will partially go away which will make issuing debt later more expensive. With the present value analysis of issuing \$51.3 million in debt or \$36.1 million to cover two years of CIP projects, staff finds that it is financially beneficial to the district to issue the higher amount, locking in the lower interest rates that are available today and issuing the BABs.

He stated the impact on rates, if the District issued \$51.3 million versus \$36.1 million, is an additional 1.5% to the rate in 2011 and another 1.7% in 2012. However, from 2013 and thereafter, the District would receive a savings of 3% on rates. If the District only issued \$36.1 million today, it would need to issue another \$50 million in three years. With interest expected to increase, the cost of that issuance would be significantly higher and the impact to rates would be higher. Thus, there is a financial benefit to the District to issue the higher amount of debt (\$51.3 million) now while interest rates are low.

Chief Financial Officer Beachem indicated that the District does not need to issue the debt now and can watch rates in the next few months, and when rates are good, the District would issue the debt. The annual debt service, amount of interest and principle that the District would pay each year, would be approximately \$3 million dollars at an expected interest rate (after the credit that the District would receive by issuing Build America Bonds) of approximately 4.25%.

Ms. Suzanne Harrell, the District's Financial Advisor, reviewed the BABs Program and the Otay Water District Financing Authority. She indicated that as part of the stimulus package, the American Recovery and Reinvestment Act, Congress authorized a new type of bond that can be issued at taxable interest rates rather than the traditional tax exempt interest rates. The United States Treasury will pay issuers of BABs 35% of the interest expense they incur on the issuance of these bonds (the interest rate is higher, but the District will receive 35% reimbursement for interest expenses). The impact is that the BABs interest rate would be almost 0.5% lower than traditional tax exempt bonds (approximately \$275,000 per year in interest savings over the 30 year life of the issuance). These types of bonds are most effective on the long end of the yield curve, so their maturity dates would be 15 years and longer. The BABs Program was originally set to expire at the end of this year, however Congress is thinking about extending the program but with a reduced percentage credit (28%).

She stated that the issuance of revenue bonds will save the District between 10 and 30 basis point on the interest rate. She indicated in order to issue a revenue bond, the District must form a financing authority. The District has become a member of the California Municipal Finance Authority (CMFA) as a first step to creating a Joint Powers Agreement (JPA) with the CMFA. She stated once the JPA is created, the District would be allowed to issue revenue bonds.

She indicated because of BABs taxable nature, there is not a very competitive market in terms of selling the bonds through the competitive sale process. Thus, in this type of transaction, the District would want to work with one underwriting firm on a negotiated basis as opposed to receiving bids for the lowest interest rate as the District will need the flexibility to determine where the breakeven point is; when to cutoff tax exempts versus taxable bonds. In addition, the underwriters need an opportunity to canvas their investors. The District solicited Requests for Proposals (RFP's) from six firms and five responses were received. Citigroup Global Markets, Inc. scored the highest in terms of their ability to market both BABs and tax-exempt bonds at the lowest rate and they had competitive fees.

Director Robak inquired, following this issuance, when the District is expecting to issue additional debt. Chief Financial Officer Beachem indicated that in approximately three years the District anticipates it will need to issue about \$30 million in debt if the CIP does not change significantly and depending on how much the economy rebounds (if developer project activity increases then capacity fees would increase and, thus, delay the need to issue debt).

9. ADOPT RESOLUTION NO. 4154 APPROVING THE JOINT EXERCISE OF POWER AGREEMENT WITH THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY TO ESTABLISH THE OTAY WATER DISTRICT FINANCING AUTHORITY; ADOPT RESOLUTION 4155 AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT PURCHASE AGREEMENT, A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT AND AN OFFICIAL STATEMENT AND APPROVING A TRUST AGREEMENT AND THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT IN CONNECTION WITH WATER REVENUE BONDS AND APPROVING AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH; AND APPROVE THE SELECTION OF AN UNDERWRITER FOR THE BONDS

Chief Financial Officer Beachem indicated that staff is requesting that the board adopt Resolution No. 4154 to approve the JPA and approve Resolution No. 4155 to approve the various bond documents as listed in staffs' report.

A motion was made by Director Croucher, seconded by Director Breitfelder, and carried with the following vote:

Ayes:	Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to approve staffs' recommendation.

10. RECESS OTAY WATER DISTRICT BOARD MEETING
11. CONVENE OTAY WATER DISTRICT FINANCING AUTHORITY GOVERNING BOARD MEETING

2. RECESS OTAY WATER DISTRICT BOARD MEETING

3. CONVENE OTAY WATER DISTRICT FINANCING AUTHORITY GOVERNING BOARD MEETING

a) ROLL CALL

12. ROLL CALL

Directors Present: Bonilla, Breitfelder, Croucher, Lopez and Robak

13. PUBLIC PARTICIPATION – OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO SPEAK TO THE AUTHORITY COMMISSION ON ANY SUBJECT MATTER WITHIN IT'S JURISDICTION BUT NOT AN ITEM ON TODAY'S AGENDA

No one wished to be heard.

14. ORGANIZATIONAL ITEM

a) RESOLUTION NO. 2010-01 ADOPTING THE BYLAWS OF THE AUTHORITY, WHICH PROVIDE, AMONG OTHER THINGS, THAT THE MEMBERS OF THE BOARD OF DIRECTORS OF THE OTAY WATER DISTRICT WILL SERVE AS THE AUTHORITY COMMISSION IN THE SAME CAPACITY AS SUCH DIRECTOR SERVES IN THE BOARD OF THE DISTRICT AND THAT THE STAFF OF THE DISTRICT WILL BE THE STAFF OF THE AUTHORITY

A motion was made by Director Breitfelder, seconded by Director Robak, and carried with the following vote:

Ayes:	Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to adopt Resolution No. 2010-01.

15. REGULAR BUSINESS

a) RESOLUTION NO. 2010-02 AUTHORIZING THE ISSUANCE OF REVENUE BONDS IN A PRINCIPAL AMOUNT NOT TO EXCEED \$52,000,000 TO FINANCE THE ACQUISITION, CONSTRUCTION, IMPROVEMENT, RENOVATION AND EQUIPPING OF FACILITIES OF THE OTAY WATER DISTRICT AND OTHER MATTERS RELATING THERETO

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

Ayes:	Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to approve Resolution No. 2010-02.

4. ADJOURN OTAY WATER DISTRICT FINANCING AUTHORITY BOARD MEETING
5. RECONVENE OTAY WATER DISTRICT BOARD MEETING

ACTION ITEMS

16. PUBLIC PARTICIPATION – OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO SPEAK TO THE BOARD ON ANY SUBJECT MATTER WITHIN THE BOARD'S JURISDICTION BUT NOT AN ITEM ON TODAY'S AGENDA

A member of the public who had arrived late requested to comment on item 6e, APPROVE THE ADOPTION OF THE MITIGATED NEGATIVE DECLARATION (MND) FOR THE RANCHO DEL REY GROUNDWATER WELL PROJECT. President Bonilla indicated that he would make an exception today and receive the public comment during this time of the meeting.

Mr. Joe Ziluinskis of Chula Vista indicated that he is not speaking against the well project but wished to share his concerns. He stated that he did not know if the environmental study for the project has been completed and approved. His home in Chula Vista has a back wall that is directly opposite the project site and the MND indicates that the project lighting would be similar in scale to that of the Day Care Center that exists adjacent to the project site and as a result would not adversely affect daytime or nighttime views. He indicated that the Day Care Lighting illuminates his entire backyard, his master bedroom, bath, and through the front of his home. He requested that the project lighting be modified to reduce impact to his property. Mr. Ziluinskis also expressed concern of the proposed driveway to the project site as it is located on a curve and hillside on Rancho del Rey Parkway. He indicated that traffic is very fast on this road and trucks entering or leaving the driveway could cause a traffic hazard. He suggested that the District utilize the existing driveway to the Day Care facility as it sits at a three way stop sign. He also inquired about the blueprints for the plans/specifications of the building that will be built at the project site as he wished to see how the building would impact the views from his property.

General Manager Watton indicated that he will refer Mr. Ziluinskis' concerns to the Engineering Project Manager and he will be in contact with you to discuss and share the plans with Mr. Ziluinskis' and address his concerns.

President Bonilla indicated that the District will review Mr. Ziluinskis' concerns very seriously and indicated he wished to be updated on the outcome of the review process. Director Croucher thanked Mr. Ziluinskis for addressing his concern with the project in a very positive manner with an openness to work with the District. He indicated that it is very much appreciated.

17. BOARD

a) DISCUSSION OF 2010 BOARD MEETING CALENDAR

It was discussed that Director Croucher will be out of the country during the April 7, 2010 board meeting. Director Lopez indicated that he may be out-of-town during the April meeting as well. It was indicated that if Director Lopez will also be unable to attend the April 7 meeting, that the meeting should be rescheduled. Director Lopez indicated that he would advise when his plans are finalized.

INFORMATIONAL ITEMS

18. THIS ITEM IS PROVIDED TO THE BOARD FOR INFORMATIONAL PURPOSES ONLY. NO ACTION IS REQUIRED ON THE FOLLOWING AGENDA ITEMS:

a) CAPITAL IMPROVEMENT PROGRAM UPDATE REPORT FOR THE SECOND QUARTER OF FISCAL YEAR 2010 [RIPPERGER]

Engineering Manager Ron Ripperger presented the second quarter CIP update in which he highlighted the status of CIP expenditures, significant issues and progress milestones on major projects.

He noted that the Fiscal Year 2010 CIP consists of 87 projects totaling \$37.3 million. He indicated that the District's CIP is broken down into four categories:

• Capital Facility Projects	\$28.73 million
• Replacement/Renewal	\$ 6.72 million
• Capital Purchases	\$ 1.83 million
• Developer Reimbursements	<u>\$ 0.00 million</u>
TOTAL:	\$37.30 million

He stated that overall expenditures through the second quarter of Fiscal Year 2010 totaled approximately \$12.1 million, which is approximately 32% of the District's fiscal year budget.

He presented a slide depicting a map showing the District's major CIP projects, their status and their location within the District's service area. He stated, of the 22 projects depicted, six is in the planning stage, eight are in design, four are in construction and four have been completed and are in use. He reviewed the status of the District's flagship projects which included the 36-inch Pipeline from FCF No. 14, 1296-3 Reservoir and the 1485-1 Pump Station Replacement Project.

Engineering Manager Ripperger presented slides which provides the status of the various consultant contracts for planning, design, public services, construction/inspection and environmental. He noted that change orders for construction is still very low at -0.20%. He also presented slides providing a listing of all CIP projects planned for Fiscal Year 2010 and the status of each.

REPORTS

19. GENERAL MANAGER'S REPORT

SAN DIEGO COUNTY WATER AUTHORITY UPDATE:

General Manager Watton indicated that he was out-of-town on business and did not attend the last CWA meeting. He noted that CWA will be holding their Board Workshop at Otay in April. He indicated that the member agencies are looking for alternative water resources which will translate to lower water sales to CWA. CWA's board will discuss/explore what CWA will look like in 2, 5, 10 years in the future with the changing environment and what they should be focusing on.

Director Croucher indicated that we have had good rain and snow this season, however, the State still continues to have a water shortage. Pumping in the Bay Delta was allowed for about a week and was stopped once again due to concerns surrounding the smelt. CWA legal issues that continue are the QSA and the Bay Delta.

20. DIRECTORS' REPORTS/REQUESTS

Director Breitfelder indicated that at the last meeting of the Metro Commission Mayor Cox had indicated that the City of San Diego owes the City of Chula Vista \$2.1 million from an over payment made by the City of Chula Vista to the commission quite some time ago. A report on the status of the overpayment will be reported upon at the Metro Commission meeting scheduled the following day, March 4. He also shared that the Water Conservation Garden had provided a report on activities and the presentation seemed to be an early draft version of a strategic plan. The report also included information on performance measures which had given him an increased level of confidence. He indicated that he attended a meeting of the South County Economic Development Commission (SDEDC) for the first time as a representative of the District and there was an impressive number of representatives from the corporate community in attendance of the meeting. He stated that the administrator of the SDEDC had indicated that the SDEDC's Infrastructure Committee would welcome an update on any projects of particular significance to the area and they would be happy to share the information with the community.

Director Robak indicated noted that the District's panel reviewing the Otay Mesa Recycled Water Supply Link project had included an outside person. He stated that he did not recall seeing this in the past and inquired if this was common practice. Assistant General Manager Magana indicated that the District

occasionally brings in an outside individual for large projects. Director Robak was supportive of this practice. Director Robak also requested if staff might research the possibility of streaming the District's board meetings online and archive them similar to the minutes and agendas currently being archived. He indicated he wished to put the idea out for consideration.

21. PRESIDENT'S REPORT

President Bonilla indicated that he met with staff on February 16 to discuss the agenda items for the February committee meetings and discuss bond and rate matters. He also met with La Mesa Mayor Art Madrid and had provided him an update on Otay matters and projects. He indicated that he attended the Finance, Administration and Communications Committee on February 19 to review and make recommendations on items that are scheduled for presentation at the March board meeting. He lastly shared that on February 27 he met with General Manager Watton, General Counsel Yuri Calderon and attorney Bonifacio Garcia to discuss matters that will be presented at the March board meeting and received an update on the desalination project.

General Manager Watton indicated he had provided a copy to each of the Directors SANDAG's latest update on where in the County future residential and industrial communities are being planned. SANDAG indicates that 42% of future industrial growth and 14% of residential growth will reside within Otay's service area. Much of the County's growth is still planned within Otay's service area.

RECESS TO CLOSED SESSION

22. CLOSED SESSION

The board recessed to closed session at 4:23 p.m. to discuss the following items:

- a) CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION
[GOVERNMENT CODE §54956.9(a)]
 - (i) MULTIPLE CASES RELATED TO THE FENTON BUSINESS CENTER AND FILED WITH THE SUPERIOR COURT OF THE COUNTY OF SAN DIEGO CONSOLIDATED UNDER CASE NO. 37-2007-00077024-CU-BC-SC

- b) CONFERENCE WITH REAL PROPERTY NEGOTIATORS
[GOVERNMENT CODE §54956.8]

PROPERTY: INTENT TO PURCHASE WATER FROM A NEW SOURCE

AGENCY NEGOTIATORS: MARK WATTON, YURI CALDERON & BONIFACIO GARCIA

NEGOTIATING PARTIES: GOUGH THOMPSON, NS AGUA, AND OTHER POTENTIAL SOURCES OF POTABLE WATER AND/OR THEIR

DESIGNATED REPRESENTATIVES, SUCCESSORS OR OTHER
AUTHORIZED ENTITIES

UNDER NEGOTIATION: PRICE AND TERMS OF ACQUISITION,
INCLUDING BUT NOT LIMITED TO TIMING AND AMOUNT OF
ACQUISITION

RETURN TO OPEN SESSION

23. REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION. THE BOARD
MAY ALSO TAKE ACTION ON ANY ITEMS POSTED IN CLOSED SESSION

The board reconvened at 4:33 p.m. and Counsel Bonifacio Garcia indicated that the board took one reportable action in closed session by a motion made by Director Croucher, seconded by Director Lopez, and carried with the following vote:

Ayes:	Directors Bonilla, Breitfelder, Croucher, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to deny a claim made in connection with the Fenton Business Center litigation.

Counsel Garcia indicated that the board took no other reportable actions in closed session.

24. ADJOURNMENT

With no further business to come before the Board, Vice President Lopez adjourned the meeting at 4:34 p.m.

President

ATTEST:

District Secretary