

OTAY WATER DISTRICT
SPECIAL MEETING OF THE BOARD OF DIRECTORS
DISTRICT BOARDROOM

2554 SWEETWATER SPRINGS BOULEVARD
SPRING VALLEY, CALIFORNIA

WEDNESDAY
November 30, 2011
3:30 P.M.

AGENDA

1. ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. APPROVAL OF AGENDA
4. 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

ACTION ITEMS

5. REJECT BARNES CLAIM (SARNO)
6. APPROVE AN AGREEMENT WITH THE LAW FIRM OF STUTZ, ARTIANO, SHINOFF AND HOLTZ, A PROFESSIONAL CORPORATION, FOR A TERM OF TWO (2) YEARS THROUGH DECEMBER 31, 2014, TO PROVIDE GENERAL COUNSEL SERVICES TO THE DISTRICT (WATTON)

INFORMATIONAL ITEMS

7. UPDATE ON DESALINATION PROJECT (WATTON)

RECESS TO CLOSED SESSION

8. CLOSED SESSION
 - a) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION [GOVERNMENT CODE §54956.9]
 - (l) SALT CREEK GOLF, LLC, UNITED STATES BANKRUPTCY COURT, CASE NO. 11-13898-LA11

RETURN TO OPEN SESSION

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

All items appearing on this agenda, whether or not expressly listed for action, may be deliberated and may be subject to action by the Board.

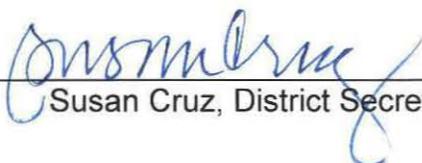
The Agenda, and any attachments containing written information, are available at the District's website at www.otaywater.gov. Written changes to any items to be considered at the open meeting, or to any attachments, will be posted on the District's website. Copies of the Agenda and all attachments are also available through the District Secretary by contacting her at (619) 670-2280.

If you have any disability which would require accommodation in order to enable you to participate in this meeting, please call the District Secretary at 670-2280 at least 24 hours prior to the meeting.

Certification of Posting

I certify that on November 23, 2011, I posted a copy of the foregoing agenda near the regular meeting place of the Board of Directors of Otay Water District, said time being at least 24 hours in advance of the special meeting of the Board of Directors (Government Code Section §54954.2).

Executed at Spring Valley, California on November 23, 2011.



Susan Cruz, District Secretary



AGENDA ITEM 5

STAFF REPORT

TYPE MEETING:	Special Board Meeting	MEETING DATE:	November 30, 2011
SUBMITTED BY:	Rom Sarno Chief, Administrative Services	W.O./G.F. NO:	DIV. NO. All
APPROVED BY: (Chief)			
APPROVED BY: (Asst. GM):	German Alvarez Assistant General Manager, Finance and Administration		
SUBJECT:	REJECTION OF THE DENNIS O. BARNES AND MARY E. BARNES CLAIM		

GENERAL MANAGER'S RECOMMENDATION:

That the Board reject the claim submitted by Dennis O. Barnes and Mary E. Barnes, 8766 Leigh Avenue, Spring Valley, CA 91977, received November 7, 2011, requesting reimbursement in the amount of \$13,143.81, for excavation, equipment rental, materials and repair charges incurred due to water damage at their residence.

COMMITTEE ACTION: _____

Not taken to Committee.

PURPOSE:

To request that the Board reject the claim submitted by Dennis O. Barnes and Mary E. Barnes, requesting reimbursement in the amount of \$13,143.81, for excavation, equipment rental, materials and repair charges incurred due to water damage at his residence.

ANALYSIS:

The Barnes allege that water damage caused to their property was due to a leak from the District's water system. District staff responded to a call from Mr. Barnes on July 15, 2011, complaining that water was coming from a neighbor's yard. It was later determined that the water was not coming from the neighbor's property. A leak was found in a District 2" blow-off across the street from the Barnes' property. The leak was minimal and was repaired on July 18, 2011. The 2" blow off was subsequently removed on August 1, 2011, after another leak was detected on it.

The leak from the blow-off did not cause the damage at the Barnes' property.

District staff set up correlators and conducted an extensive leak survey to ensure the leak was not on the District's side. There were no other identifiable leaks.

The Barnes' request the District pay \$13,143.81, for the charges incurred as a result of the flooding at their residence on July 4 and September 3, 2011. These include charges for excavating, concrete and waterproofing, carpeting and flooring.

Based on the above, it is requested that the Board of Directors reject this claim. This Board action will also start the time for statute of limitations to file a lawsuit.

FISCAL IMPACT: _____

None.

STRATEGIC GOAL:

This item supports a strategic objective of maintaining and protecting District assets and property.

LEGAL IMPACT: _____

None.



Mark Watton
General Manager

Attachments: Attachment A - Claim submitted by Dennis O. Barnes and Mary E. Barnes

CLAIM AGAINST
OTAY WATER DISTRICT

- 1. Claimant(s) Name(s): DENNIS O. BARNES MARY E. BARNES
- 2. Claimant(s) Address(es): 8766 LEIGH AVE SPRING VALLEY CA 91977
- 3. Telephone Number(s): HOME PH (619) 472-5367 - CELL DENNIS 244-0523
- 4. Address for Notices (if different from above): _____

5. Incident or Occurrence which gives rise to claim:

a) Date: 4/JULY/2011 & 3 SEPT 2011 Time: _____

b) Location: 8766 LEIGH AVE SPRING VALLEY CA

c) Name of the person(s) injured and description of personal injury(ies), if any:

d) Describe the property, injury, damage or loss, if any:

WATER DAMAGE TO DRY WALL & RUG (SEE ATTACHED LETTER)

e) Name(s) of District employees believed to be involved, if any. Specify the particular act or omission you claim caused the injury or damage. Include a statement explaining why you feel the District or its employees were at fault.

FLOODING ON 2 OCCASSIONS. AFTER THE 1ST OCCASSION; I HIRED WORKERS TO EXCAVATE SOIL, SEAL OUTER FOUNDATION, REPLACE SOIL WITH 'BASE', 'COMPACTED' & CONCRETE POURED. FLOODING OCCURED AGAIN & NEW MEASURE ARE MADE TO PREVENT FURTHER FLOODING.

6. Name, address and telephone number of witness(es) to the incident:

MIKE PHILLIPS OTAY WATER DIST. EMPLOYEE / EVERETT LEEYER, GUARDIAN WATER PROFFIVE & CAULKING (619) 448-3700 / JES BOBCAT (619) 504-8228

7. Amount claimed, if under \$10,000. Be sure to attach invoices or other documentation reflecting the amount of damage, cost or loss, including medical bills or reports if claiming personal injury costs or losses.

a) Amount claimed as of date of claim: \$ 12,078.00

b) Estimated amount of any prospective injury, damage or loss: \$ _____

c) Total amount claimed: \$ 12,078.00

d) Explain how the claim amount was calculated:

PARTS & LABOR / J.J. BOB CAT SERVICE / BASE COMPRESSOR OR MOTOR BACKFILL
CONCRETE (9 1/2 YDS) FORM, FINISHES, PUMP REBAR,

If the amount is more than \$10,000, please indicate whether your case would be an unlimited or limited civil case (see Government Code Section 910(f)):

Unlimited Civil (Claim over \$25,000)

Limited Civil (Claim less than \$25,000)

8. Any additional information that might be helpful in considering this claim. If the claim involves medical treatment, please provide the names, address and telephone number of any doctors and/or hospitals providing treatment. If the claim relates to an automobile accident or incident, you may be asked to provide information concerning your vehicle and driver's insurance.

(If additional space is needed to provide your information, please attach additional sheets indicating the paragraph(s) to which the additional information pertains)

Warning: Presentation of a false claim is a felony (Penal Code Section 72). Pursuant to CCP Sections 128.5 and 1038, the District may seek to recover all costs of defense in the event an action is filed which is later determined not to have been brought in good faith and with reasonable cause.

I have read the statements made in the above claim and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief, and as to such matters I believe that same to be true. I certify under penalty of perjury that the foregoing is true and correct.

Date: 20 SEPT 2011

Dennis O. Barnes
Claimant or Authorized Representative

To: Otay Water District

I live at 8766 Leigh Ave. Spring Valley, Ca 91977.

I am now and have been receiving water damage to my house. My wife and I have contacted your office on numerous occasions. One of your employees (Mike Phillips) came to our house and checked our water meter, and our neighbors water meter to insure that there was not a leak in our water supply line, and no leak detected. Mr. Phillips mentioned that there was a possibility that it could be spring water, so I purchased a test kit which showed the water was treated water.

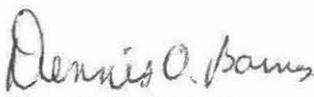
My next door neighbor has been pumping water since last Dec., the water being pumped to his back yard. His neighbor has had water damage to their home.

Recently repair work was done on our street and directly across from our house a broken water pipe was repaired.. We have had flooding on two different occasions, the first was on the 4th of July , 2011 which

lasted three days and the second flooding started on the 3rd of Sept 2011 and I am still pumping at least ten gallons of water a day.

We have paid \$ ^{13,143.81} ~~12,078.00~~ for damages and for preventive maintenance after the July flooding and now have to hire a company to due further preventive maintenance.

I an asking for compensation for the above \$ ^{13,143.81} ~~12,078.00~~ and for the new work to be done to prevent the flooding.


Sincerely, Dennis O. Barnes

JJ's Bobcat
License # 913231
11456 Lyons Valley Road Jamul, CA 91935
(619)504-8228

Customer Name: Dennis & Mary Barnes
Address: 8766 Leigh Ave. Spring Valley, CA
Email: barnesthree@cox.net

Work Performed

Area 1 & 2

- 1) Saw cut, break, and remove, 6ft by 36ft concrete east side of house.
- 2) Excavate 24 inches of mud.
- 3) Waterproof areas.
- 4) Import Class II Base and re-compact.
- 5) Replace concrete and steps.

Area 3

- 1) Break and remove driveway.
- 2) Excavate 6ft by 24 inches of mud next to garage entrance.
- 3) Waterproof, import base, and re-compact.
- 4) Replace concrete.

Area 4

- 1) Excavate 24 ft by 6 ft by 24 inches of mud on southwest side of house.
- 2) Waterproof.
- 3) Import base and re-compact.
- 4) Replace concrete.

Gate, brick work, and sprinkler repairs.

Work Began on July 12, 2011 and ended August 1, 2011

Total cost \$11,691.60

Thank you for your business.

Mary + Dennis Estimate

Material:

Gym Room (12x16):

Carpet & Pad – 21.33 Yds. \$191.97

Baseboard – 26 Ft. \$50.00

Storage Room (8x12):

Carpet & Pad – 10.66 Yds. \$85.28

Subtotal: \$327.25

Install:

Gym Room:

Carpet & Pad \$75.00

Storage Room:

Carpet & Pad \$37.50

Subtotal: \$112.50

JOB TOTAL: **\$439.75**

58955



DIAMOND CONCRETE SUPPLY, INC.

P.O. BOX 900238 · SAN DIEGO, CA 92190 · 619-287-2566

DATE	ORDER NO.
CKET NO.	CUM. PROD. QTY.

TIME DUE ON JOB	7:00
ARRIVE JOB*	7:00

TIME LOADED	
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BATCHING & WEIGHING LOCATION
 6974 Mission Gorge Road
 San Diego, CA 92120

WEIGHMASTER CERTIFICATE
 THIS IS TO CERTIFY that the following described commodity was weighed, measured, or counted by a weighmaster, whose signature is on this certificate, who is a recognized authority of accuracy, as prescribed by Chapter 7 (commencing with Section 12700) of Division 5 of the California Business and Professions Code, administered by the Division of Measurement Standards of the California Department of Food and Agriculture.

Seller makes no warranty of any kind, express or implied, regarding the material and all warranties, including any implied warranty of merchantability or of the fitness for a particular purpose, are hereby excluded.

The material is sold by the cubic yard, cubic meter, or ton, or load. Customer acknowledges that the amount of Material ordered has been determined by the Customer, and the Customer assumes full responsibility, and shall hold the Seller harmless, regarding the adequacy of the amount of Material ordered.

WARNING
 The aggregates in this product contains as much as 0.1% crystalline silica which has limited evidence of carcinogenicity in humans; and detectable amounts of chemicals known to the State of California to cause cancer, birth defects or reproductive harm.

TRUCK SPOTTED	
START UNLOADING	
FINISH UNLOADING*	
LEAVE JOB	
ARRIVE PLANT	

CUSTOMER NAME	CUSTOMER NO.	CUSTOMER P.O.	CUSTOMER JOB NO.	PROJECT NO.	QUANTITY ORDERED
PAYMENT TYPE	CUST/CHECK/CREDIT CARD APPROVAL NO.	DRIER'S LICENSE NO.	PHONE / CELL	MISCELLANEOUS	

JOB ADDRESS / SPECIAL INSTRUCTIONS

1291 A-5 #
 OK

PRODUCT	DESCRIPTION	UNIT OF MEASURE	TOTAL	UNIT PRICE	AMOUNT
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18360 lb	18360 lb	1.0	18360	0.00	18360.00
9540 lb	9540 lb	1.0	9540	0.00	9540.00
5900 lb	5900 lb	2.5%	5900	0.00	5900.00
381 lb	381 lb	0.5	381	3196.1	1217713.56
184 lb	184 lb	1.0	184	11.02	2027.56

DRIVER'S NAME	LOAD NO.	DEPUTY BY
TRUCK NUMBER	VEHICLE LICENSE NO.	MAP PAGE
		ZONE
		MILEAGE

SCALE TICKET	GALLONS OF WATER ADDED						SUB-TOTAL
	SLUMP	BEGIN JOB	MIDDLE JOB	END JOB	SLUMP	SLUMP	
GROSS							
TARE							
NET							

DIAMOND CONCRETE SUPPLY INC.
 Upon completion of the delivery, the Diamond Concrete driver/drivers left the streetwork area in a satisfactory condition.
 (Any discharge into storm drains violates Federal Water Pollution Laws)
 Purchaser/homeowner/contractor receiving Ready-Mix Concrete, releases Diamond Concrete from any violations that occur when purchaser/homeowner/contractor washes "GRAY" water into street and Storm Drains.
ALL ORDERS ARE FOR STREET CURB DELIVERY
 I, the undersigned, will assume all responsibility for any damage resulting from deliveries made inside curb line.
 Note: A \$50.00 service charge will be added to any check returned uncollected to Diamond Concrete.

SIGNATURE	I / WE RELEASE DIAMOND CONCRETE SUPPLY, INC.	DRIVER SIGNATURE (READY-MIX)
-----------	--	------------------------------

one available to sign, customer waives receipt
 ature. (First delivery ticket Buyer/Contractor

RECEIVED BY (SIGNATURE)	PRINT CUSTOMER NAME
-------------------------	---------------------

DRIVER SIGNATURE (READY-MIX)
 Carlos Gordon

TOTAL	
STANDING TIME	0
THIS TICKET'S GRAND TOTAL	106.46
TOTAL \$ ALL LOADS	



STAFF REPORT

TYPE MEETING:	Special Board Meeting	MEETING DATE:	November 30, 2011
SUBMITTED BY:	Mark Watton, General Manager	W.O./G.F. NO:	DIV. NO.
APPROVED BY:			
SUBJECT:	Approve Agreement for General Counsel Services		

GENERAL MANAGER'S RECOMMENDATION:

Approve an agreement with the law firm of Stutz, Artiano, Shinoff and Holtz, A Professional Corporation, for a term of two (2) years through December 31, 2014, to provide general counsel services to the District.

PURPOSE:

To present for the board's consideration an agreement with the law firm of Stutz, Artiano, Shinoff and Holtz, A Professional Corporation, for a term of two (2) years through December 31, 2014, to provide general counsel services to the District.

ANALYSIS:

Stutz, Artiano, Shinoff and Holtz, A Professional Corporation (SASH), has served as the District's special counsel since January 1, 2011. The District's current contract with SASH was for a one-year period and is set to expire at the end of calendar year 2011.

The District's Ad Hoc Legal Matters Committee reviewed and discussed the services that SASH has provided over the last year. It was indicated that the District has been happy with the services SASH has provided and the committee is recommending that the board approve the proposed agreement as per the terms indicated in the agreement (Attachment A). If approved, the agreement would provide for a two (2) year term expiring on December 31, 2014.

FISCAL IMPACT: _____

The agreement allows for one hundred (100) hours or \$20,000 per calendar month of basic retainer services as described in the attached agreement. Additional services, as described in Section 4.b of the agreement, and time in excess of the one

hundred (100) hours will be compensated on an hourly basis based on the rates noted in the agreement.

LEGAL IMPACT: _____

None.



General Manager

Attachment A: Proposed Legal Services Agreement

LEGAL SERVICES AGREEMENT

1. IDENTIFICATION OF PARTIES. This Agreement, executed in duplicate with each party receiving an executed original, is made between Stutz Artiano Shinoff & Holtz, A Professional Corporation, hereinafter referred to as "Law Firm" and Otay Water District, hereinafter referred to as "Client." This Agreement is entered into beginning the month of January, 2012, for legal services. The agreement is made for a term of two years up to and including December 31, 2014. The Client and Law Firm will hold an annual review in 2013 regarding expectations, performance, and other issues impacting the Client and Law Firm under this agreement.

2. LEGAL SERVICES TO BE PROVIDED. The legal services to be provided by Law Firm to Client are as follows:

Representation, counsel and consultation in connection with Client's general counsel needs; human resources, legal support including review of policies and procedures, contract review; preparation and participation in monthly Board meetings and special meetings ("Services").

Without limiting the generality of the foregoing, this Agreement shall govern so long as Client desires to retain the Law Firm in connection with Services.

3. RESPONSIBILITIES OF LAW FIRM AND CLIENT. Law Firm will perform the services called for under this Agreement, keep Client informed of progress and developments, and respond promptly to Client's inquiries and communications. Daniel R. Shinoff and Jeffery A. Morris are intended to be the Law Firm attorneys primarily responsible for the consultation and representation. Client will cooperate with the Law Firm in the representation set forth herein, and will timely make any payments required by this Agreement.

4. ATTORNEY'S FEES. Client will pay Law Firm for attorneys' fees for the consultation and legal services provided under this Agreement as follows:

A. Basic Retainer. Law Firm shall be compensated for the performance of basic retainer services pursuant to this Agreement in the amount of Twenty Thousand Dollars (\$20,000) per calendar month commencing as of the effective date of this Agreement. Basic retainer services for the purposes of this Agreement shall be deemed to be the first one hundred (100) hours of Law Firm's legal services rendered each month.

B. Additional Services. Law Firm shall be compensated for additional services in accordance with the following:

1. As directed by the General Manager or Board President;
2. PERB hearings, writs of mandate, or other litigated matters not covered by insurance;

3. Other complex matters, employment, personnel matters, or special projects with the approval of the General Manager or Board President.

Additional services and time in excess of the one hundred (100) hours per calendar month spent by Law Firm's Attorneys, Law Firm shall be compensated on an hourly basis at \$240.00 per hour for partners, \$210.00 per hour for associates, and \$95.00 per hour for paralegals. The Law Firm will charge in increments of one-tenth of an hour, rounded off for each particular activity to the nearest one-tenth of an hour. The minimum time charged for any particular activity will be one-tenth of an hour.

Law Firm will charge for all activities undertaken in providing consultation and legal services to Client under this Agreement, including, but not limited to, the following: time spent formulating and dispensing legal advice and opinions; negotiation; gathering relevant information; conferences; correspondence and legal documents (review and preparation); legal research; and telephone conversations.

Client acknowledges that Law Firm has made no promises about the total amount of attorneys' fees to be incurred by Client under this Agreement.

5. COSTS. Client will pay all "costs" in connection with Law Firm's representation of Client under this Agreement. Costs will be billed directly to Client unless, at the option of Law Firm, costs are advanced by Law Firm. Costs include, but are not limited to, long-distance telephone charges, messenger service fees, photocopying expenses, as well as any other items generally accepted as "costs."

6. STATEMENTS AND PAYMENTS. Law Firm will send Client monthly statements indicating attorneys' fees and costs incurred and their basis, any amounts applied from deposits, and any current balance owed. If no attorney's fees or costs are incurred for a particular month, or if they are minimal, the statement may be held and combined with that for the following month. Any balance will be paid in full within thirty (30) days after the statement is mailed.

7. MEDIATION CLAUSE. Client and Law Firm are agreeing to have any and all disputes (except where Client may request arbitration of a fee dispute by the State Bar) that arise out of, or relate to this Agreement, including but not limited to claims of negligence or malpractice arising out of or relating to the legal services provided by Law Firm to Client, go to mediation before the filing of any civil proceeding. Client, however, may request arbitration of a fee dispute by the State Bar or San Diego County Bar Association as provided by Business and Professions Code Section 6200, et seq.

8. ERRORS AND OMISSIONS INSURANCE. The Law Firm maintains errors and omissions insurance coverage applicable to the services to be rendered under this Agreement.

9. TERMINATION. The Client or the Law Firm may, at any time, with or without reason, terminate this Agreement upon thirty (30) days prior written notice to the other party. In the event of termination, the Law Firm shall be entitled to payment only for acceptable and allowable work performed under this Agreement through the date of termination.

THE FOREGOING IS AGREED TO BY:

DATED: _____

OTAY WATER DISTRICT

By: _____

Mark Watton
General Manager

DATED: _____

STUTZ ARTIANO SHINOFF & HOLTZ
A Professional Corporation

By: _____

Jeffery A. Morris, Esq.
Partner