

February 12, 2009
Fremont, California

The regular monthly meeting of the Board of Directors of ALAMEDA COUNTY WATER DISTRICT was held on February 12, 2009 at the hour of 6:00 P.M. in the Directors' Room of the District Office Building, 43885 South Grimmer Boulevard, Fremont, California.

Present: Directors Huang, Weed and Gunther
Absent: Directors Koller and Lampert

Staff members present: General Manager Paul Piraino, Engineering Manager Bob Shaver, Finance and Administration Manager Will Ligh, Operations Manager Walt Wadlow, Water Resources Planning Manager Eric Cartwright, Project Engineering Supervisor Anna Lloyd, Executive Project Manager Karl Stinson, Attorney Ray McDevitt and Assistant District Secretary Andrew Warren.

President James Gunther presided.

Director Huang led in the Salute to the Flag.

3 - PUBLIC COMMENTS

- Ms. Wynn Grcich, a resident of Union City, addressed the Board and commented on the San Francisco Public Utilities Commission Water System Improvement Program and reports discussing the potential human health effects of fluoridated water supplies.
- Mr. B.J. Bunting, a resident of Fremont, addressed the Board and commented on the District's use of fluoride in the water.

4 - CLOSED SESSION

President Gunther adjourned the meeting to a closed session at 6:15 P.M. for a conference on the following items:

- 4.1 Conference with Legal Counsel – Anticipated Litigation
 - Initiation of Litigation Pursuant to Government Code Section 54956.9(c): One Case
- 4.2 Conference with Legal Counsel – Existing Litigation Pursuant to Government Code Section 54956.9(a)
 - Alameda County Water District v. Montgomery Watson Americas (Alameda County Superior Court No. RG 08-515973)

President Gunther reconvened the meeting at 6:45 P.M. With respect to Items 4.1 and 4.2, Mr. Piraino advised that the Board provided direction to staff.

5 – CONSENT CALENDAR

A motion was made by Director Huang to add items 6.1 through 6.6 and 6.8 through 6.11 to the Consent Calendar, seconded by Director Weed.

The motion was passed by the following vote:

AYES: Directors Huang, Weed and Gunther
NOES: None
ABSENT: Directors Koller and Lampert

A motion was made by Director Huang, seconded by Director Weed to approve the following items on the Consent Calendar as amended.

- 5.1 Approval of Minutes – Regular Meeting of January 8, 2009
- 5.2 Ratification of Payment of Audited Demands dated January 2, January 9, January 16, January 23, and January 30, 2009
- 5.3 Resolution Adopting Anti-Nepotism Policy

RESOLUTION NO. 09-002

OF BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
SETTING FORTH A POLICY ADDRESSING ANTI-NEPOTISM

- 5.4 Authorization for Director Weed to Attend Association of California Water Agencies 2009 Washington D.C. Legislative Conference
- 6.1 Authorization of Reserve Fund Appropriation for Asphalt Repairs at Decoto Reservoir and Headquarters Facilities
- 6.2 Resolution of Support for Alameda County Water District Groundwater Protection Act
- 6.3 Delivery of Survey Report and Adoption of Resolutions of Intention for FY 09/10 Replenishment Assessment
- 6.4 Resolution Approving Statement of Investment Policy
- 6.5 Resolution Accepting Completion of PT-6 Well Pump Building
- 6.6 Resolution Authorizing a 2002 – 2007 Point of Delivery Agreement for the Semitropic Groundwater Banking and Exchange Program
- 6.8 Authorization of Purchase Order for Environmental Consulting Services for the Lower Alameda Creek Fish Passage Improvements Project
- 6.9 Resolution Awarding Contract for the Newark Desalination Facility Expansion Project
- 6.10 Authorization of Purchase Order Amendments for Engineering Services for the Newark Desalination Facility Expansion Project
- 6.11 Authorization of Purchase Order for Construction Management Services for the Newark Desalination Facility Expansion Project

The motion was passed by the following vote:

AYES: Directors Huang, Weed and Gunther
NOES: None
ABSENT: Directors Koller and Lampert

6 – ACTION CALENDAR (*Consent Calendar Items are indicated with an asterisk*)

6.1* AUTHORIZATION OF RESERVE FUND APPROPRIATION FOR ASPHALT REPAIRS AT DECOTO RESERVOIR AND HEADQUARTERS FACILITIES

The District periodically replaces asphalt access roads at various facilities when in need of repair.

The Decoto Reservoir is inspected annually by the Division of Safety of Dams. The inspection report from last year indicated that the cracks on the west side of the reservoir's perimeter access road need to be repaired. The replacement of approximately 8,000 square feet of asphalt is estimated to cost \$61,585.

Additionally, the Enterprise access gate at the Headquarters Facility is used by large trucks and the asphalt roadway is showing signs of significant wear. The safety loop for the gate that is imbedded in the asphalt also needs to be replaced. The estimated cost to repair the asphalt surface, the concrete apron at the street, and the safety loop for the gate is \$50,000.

A proposal was submitted by El Camino Paving, who is the current low bidder for District asphalt repair work. This work exceeds the current budgeted amount and will require a reserve appropriation.

A motion was made by Director Huang, seconded by Director Weed to 1) authorize a reserve appropriation in an amount of \$111,585 for asphalt repair work at Decoto Reservoir and Headquarters Facility and 2) authorize a Purchase Order Amendment in the amount of \$111,585 to El Camino Paving for the subject work.

The motion was passed by the following vote:

AYES: Directors Huang, Weed and Gunther
NOES: None
ABSENT: Directors Koller and Lampert

6.2* RESOLUTION OF SUPPORT FOR ALAMEDA COUNTY WATER DISTRICT GROUNDWATER PROTECTION ACT

On November 13, 2008, the Board of Directors authorized a purchase order for limited legislative advocacy services related to the proposed Groundwater Protection Act in order to support passage of the act in the upcoming legislative session. On January 8, 2009, District staff received confirmation that Senator Ellen Corbett has agreed to sponsor the Alameda County Water District Groundwater Protection Act; therefore, a resolution is necessary to demonstrate the District's support of the proposed legislation.

The proposed legislation is intended to provide a regional approach to protect the Niles Cone Groundwater Basin by giving the District direct authority to adopt regulations to manage and regulate wells, exploratory holes, and other excavations that could impact the groundwater basin. The authority for the District to take these actions, which District staff have been performing since the early 1970's, is currently derived from identical ordinances adopted by the three service area cities.

Since the November 2008 Board meeting, a number of minor wording changes have been recommended by the District's legislative advocate and the Legislative Counsel Bureau. A copy of the most recent version of the legislation is included with the Board packet. In addition, Geyer and Associates, the District's legislative advocate, is currently discussing the legislation with the staff of Assembly member Alberto Torrico as a potential co-sponsor of the legislation.

District staff has continued discussions with the Cities of Fremont, Newark, and Union City, and the District received letters of support from Union City and Fremont. The District has also received a letter of support from the Tri-City Ecology Center. Copies of these letters of support are included with the Board packet. District staff anticipates that letters of support from other agencies and organizations will be received in the near future.

A motion was made by Director Huang, seconded by Director Weed to adopt a resolution in support of the Alameda County Water District Groundwater Protection Act.

RESOLUTION NO. 09-003

OF BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
ADOPTING A RESOLUTION OF SUPPORT FOR THE ALAMEDA COUNTY
WATER DISTRICT GROUNDWATER PROTECTION ACT LEGISLATION
PROPOSAL

AYES: Directors Huang, Weed and Gunther
NOES: None
ABSENT: Directors Koller and Lampert

6.3* DELIVERY OF SURVEY REPORT AND ADOPTION OF RESOLUTIONS OF
INTENTION FOR FY 09/10 REPLENISHMENT ASSESSMENT

On November 13, 2008, the Board of Directors ordered the preparation of the 2009 Engineering Survey Report on Groundwater Conditions as provided in Section 7 of the District's Replenishment Assessment Act. The report has been completed as directed, and includes a recommendation for a 5% increase in the Replenishment Assessment rate. The Replenishment Assessment is typically applicable to operators of wells. This proposed increase is subject to public notification requirements that were established through Proposition 218.

The following actions are henceforth required to establish the Replenishment Assessment for FY 09/10.

- February 12, 2009. Regular Board Meeting. On or before the second Tuesday in March, the Board must declare, through adoption of a resolution, its intent to establish a replenishment assessment in FY 09/10. Following adoption of this resolution, a second

resolution must also be adopted at this meeting to extend the deadline for metering of certain non-metered wells for which annual water production would not result in revenues justifying the costs to install meters.

- February 13, 2009. To comply with Proposition 218 notification requirements, notices of the proposed rate increase will be mailed to owners and operators of wells producing water for purposes other than agricultural and municipal recreation.
- March 12, 2009. Regular Board Meeting. Staff will provide a presentation to assist the Board in its review of the Survey Report.
- April 14, 2009. Special Board Meeting. Public Hearing and adoption (tentative) of resolutions establishing the replenishment assessment for FY 09/10.
- No later than May 12, 2009. Board must adopt resolutions in order to establish a replenishment assessment in FY 09/10.

Additional work sessions on the Survey Report can be held at the Board's discretion. The Public Hearing, which must begin April 14, 2009, may be adjourned from time to time, but must be completed no later than May 5, 2009. The resolutions tentatively scheduled for adoption on April 14, 2009, may not be acted upon until completion of the Hearing, but must be adopted prior to May 12, 2009.

The Board received the Survey Report, and a motion was made by Director Huang, seconded by Director Weed to 1) adopt a resolution declaring that funds will be raised by a replenishment assessment in FY 09/10 and calling for a Public Hearing on April 14, 2009; and 2) adopt a resolution extending the deadline for installation of measuring devices on wells.

RESOLUTION NO. 09-004

OF BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
DECLARING THAT FUNDS SHALL BE RAISED TO REPLENISH THE
GROUNDWATER SUPPLIES WITHIN THE DISTRICT DURING FY 09/10
AND CALLING A PUBLIC HEARING

RESOLUTION NO. 09-005

OF BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
EXTENDING DEADLINE FOR INSTALLATION OF MEASURING DEVICES
ON WELLS

AYES: Directors Huang, Weed and Gunther
NOES: None
ABSENT: Directors Koller and Lampert

6.4* RESOLUTION APPROVING STATEMENT OF INVESTMENT POLICY

The investment of public funds is governed by Section 53600 of the California Government Code which specifies the types of investments permitted and identifies investment objectives as

well as reporting requirements. One of the provisions of the Government Code is that the legislative body of a public agency must annually approve a statement of investment policy. The Board of Directors last approved the District's Investment Policy on February 14, 2008.

During the past year, there have been no modifications to the section of the Government Code which governs the investment of public funds. The Administrative and Finance Committee reviewed the District's current Investment Policy on January 27, 2009 and concurred with staff's recommendation that no changes to the policy are required at this time. In accordance with the provisions of the California Government Code which require the annual approval of an investment policy, it is recommended that the current policy be approved for the next twelve month period. The investment policy is attached to the Board resolution as Exhibit A.

A motion was made by Director Huang, seconded by Director Weed to adopt a resolution approving the Statement of Investment Policy.

RESOLUTION NO. 09-006

OF BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
APPROVING STATEMENT OF INVESTMENT POLICY

AYES: Directors Huang, Weed and Gunther
NOES: None
ABSENT: Directors Koller and Lampert

6.5* RESOLUTION ACCEPTING COMPLETION OF PT-6 WELL PUMP BUILDING

On June 12, 2008, the Board awarded the contract for the construction and installation of PT-6 Well Pump Building to T. E. Services Corporation in the amount \$53,672. The scope of work included seismic anchorage calculations, fabrication of a steel framed building, and installation of the building on the existing pump building pad. The well pump building is part of the prototype well installation, which will test the use of 480 volt motors against the existing 2300 volt motors.

The fabrication and installation of the PT-6 well pump building was completed on November 13, 2008 at the cost of \$53,672. There is adequate funding in the budget for this expenditure.

A motion was made by Director Huang, seconded by Director Weed to adopt a resolution to accept completion of PT-6 Well Pump Building, Job 6347.

RESOLUTION NO. 09-007

OF BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
ACCEPTING COMPLETION OF CONTRACT NO. 3579, T.E. SERVICES
CORPORATION, JOB 6347

AYES: Directors Huang, Weed and Gunther
NOES: None
ABSENT: Directors Koller and Lampert

6.6* RESOLUTION AUTHORIZING A 2002-2007 POINT OF DELIVERY AGREEMENT FOR THE SEMITROPIC GROUNDWATER BANKING AND EXCHANGE PROGRAM

The California Department of Water Resources (DWR) requires an annual agreement for the delivery of ACWD's water supplies to the Semitropic Groundwater Banking Program for storage. This agreement, called a Point of Delivery Agreement, requires approval by DWR, ACWD and Kern County Water Agency (the regional water wholesaler for Semitropic Water Storage District).

A Point of Delivery Agreement has been provided by DWR. This agreement covers the years 2002 through 2007, and includes all water delivered to Semitropic for storage by ACWD during that period. Annual Point of Delivery agreements were not previously developed for the 2002 through 2007 period due to issues regarding the term of the agreement and a proposed "use of facilities" fee for the use of the California Aqueduct to deliver ACWD water to Semitropic. Both of these issues have recently been resolved: the agreement now extends to the year 2035 for stored water to be returned to ACWD, and the use of facilities fee has been waived by DWR. Staff has also confirmed with DWR that all other applicable costs under this agreement for the delivery of water to Semitropic from 2002 through 2007 have already been paid by ACWD.

A motion was made by Director Huang, seconded by Director Weed to adopt a resolution authorizing the General Manager to enter into a 2002 – 2007 Point of Delivery Agreement among the California Department of Water Resources, Alameda County Water District, and Kern County Water Agency for the Semitropic Groundwater Banking and Exchange Program.

RESOLUTION NO. 09-008

OF BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
AUTHORIZING A 2002-2007 POINT OF DELIVERY AGREEMENT AMONG
THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AND THE
KERN COUNTY WATER AGENCY FOR THE SEMITROPIC
GROUNDWATER BANKING AND EXCHANGE PROGRAM

AYES: Directors Huang, Weed and Gunther
NOES: None
ABSENT: Directors Koller and Lampert

6.7 RESOLUTION AUTHORIZING PARTICIPATION IN THE DELTA SPECIFIC PROJECT COMMITTEE AND EXECUTION OF AN AGREEMENT FOR THE FUNDING OF THE DELTA HABITAT CONSERVATION AND CONVEYANCE PROGRAM PLANNING COSTS

Mr. Stinson reported that the California Department of Water Resources (DWR), in conjunction with the U.S. Bureau of Reclamation (Reclamation), is moving ahead with the Delta Habitat, Conservation and Conveyance Program (Program), which will include the preliminary design and environmental documents on potential conveyance alternatives, including a peripheral canal. The Program is a three year, \$140 million effort with no funding source. Without funding from the State and Federal contractors, DWR would have a cash flow problem by early 2009 and the planning would come to a halt.

The SWP and Central Valley Project (CVP) contractors are willing to enter into an agreement to fund the three year effort provided DWR and Reclamation enter into a memorandum of agreement that allows the contractors to participate on the executive committee that will guide and direct the preparation of the preliminary design and environmental documents.

The SWP and CVP contractors have developed the organizational structure and agreements in order to accomplish the Program. The following agreements and organizations are planned:

- Delta Specific Project Committee (Committee) of the State Water Project Contractors Authority (SWPCA)
- State and Federal Contractors Authority (SFCA)
- Memorandum of Agreement (MOA)
- Program Funding Agreement between DWR and participating SWP contractors

The Committee is comprised of SWPCA members who wish to participate in the preliminary design and environmental process and are willing to fund a portion of these costs. This Committee will provide a way to communicate on the activities of the Program and will provide feedback to the Executive Committee of the MOA. The Committee and the SFCA will collect dues to fund their activities.

The MOA would be signed by the SFCA, DWR, and Reclamation and would formally create the executive committee (now operating informally) to oversee the preliminary design and environmental review process. Members of the executive committee will include the Metropolitan Water District of Southern California, Kern County Water Agency, Santa Clara Valley Water District, Westlands Water District, the San Luis Delta Mendota Water Authority, two members of the SWPCA Committee, DWR, and Reclamation. This committee will meet quarterly and review the progress and budgets for the Program. Due to their statutory responsibilities, DWR and Reclamation will have the final say on whether program elements are funded.

In order for this plan to proceed, DWR and each participating SWP contractor must sign a Program funding agreement. The total cost of the Program planning process is currently estimated at \$140 million. This cost is to be split between the SWP and the CVP on a 50-50 basis. ACWD's share of the SWP's share of \$70 million would be approximately \$721,000 over the years 2008 to 2010.

DWR's reserve requirements for the bonds that it sells has recently been reduced. This will result in a total of \$72 million in credits to state water contractors, collectively. Contractors participating in the Program funding would receive a credit equivalent to their share of the Program costs in 2008 so there would be no out-of-pocket costs to any participating contractor in 2008. The total credit to ACWD is estimated at \$380,000. The net out-of-pocket costs to ACWD to participate in the Program planning process would be approximately \$341,000 during 2009 and 2010.

If a conveyance project moves ahead as a result of this planning process, the participating contractors funding the planning process would be reimbursed their contributions. There would be no reimbursement should the process result in no projects.

To be actively involved in Delta conveyance planning, staff recommends participating in the DSPC. To date, contractors representing 98% of the SWP Table A have expressed their intention to join the DSPC.

Discussion ensued and Mr. Stinson answered questions from the Board.

A motion was made by Director Gunther, seconded by Director Huang to 1) authorize a reserve fund appropriation of \$341,000; 2) adopt a resolution authorizing ACWD's participation in the SWPCA Delta Specific Project Committee; and 3) authorize the General Manager to execute an agreement with DWR for the funding of the Program planning costs.

RESOLUTION NO. 09-009

OF THE BOARD OF DIRECTORS OF THE ALAMEDA COUNTY WATER DISTRICT AUTHORIZING THE DISTRICT TO BECOME A MEMBER OF THE STATE WATER PROJECT CONTRACTORS AUTHORITY'S DELTA SPECIFIC PROJECT COMMITTEE

AYES: Directors Huang, Weed and Gunther
NOES: None
ABSENT: Directors Koller and Lampert

6.8* AUTHORIZATION OF PURCHASE ORDER FOR ENVIRONMENTAL CONSULTING SERVICES FOR THE LOWER ALAMEDA CREEK FISH PASSAGE IMPROVEMENTS PROJECT

On August 12, 2007, the Board authorized an agreement with the Alameda County Flood Control and Water Conservation District (County) for the development of preliminary design of a fish passage facility in the Alameda Creek Flood Control Channel at the BART Weir/Rubber Dam 1 complex. On May 15, 2008, the Board authorized a purchase order for consulting services to complete the preliminary design of fish passage facilities at both the BART Weir/Rubber Dam 1 complex and at Rubber Dam 3. At that time, staff informed the Board that including preliminary design for both projects into the consultant's scope of work would ensure that all of the fish passage facilities' design criteria is consistent and allow California Environmental Quality Act (CEQA) to be completed for the proposed facilities on both a program and project-level basis. Additionally, earlier completion of the design may improve the possibility of receiving future grant funding and accelerating the projects.

Construction of the fish passage facilities at the BART Weir/Rubber Dam 1 complex are subject to the CEQA. Furthermore, because construction and operation of the fish passage facilities have the potential to adversely affect steelhead and their habitat, the District and County are required to prepare a biological assessment to comply with the Federal Endangered Species Act (ESA). The biological assessment will be used by the US Army Corp of Engineers as part of an ESA Section 7 consultation with the National Marine Fisheries Service (NMFS).

Hanson Environmental, Inc. (Hanson Environmental) has participated in a variety of investigations and projects with the Alameda Creek Fisheries Workgroup since the early 1990's, including the completion of two Mitigated Negative Declarations for the District. Given their expertise in the Alameda Creek watershed and previous satisfactory performance performing

related work for the District, staff requested Hansen Environmental to submit a proposal to prepare the required CEQA documentation and biological assessment. Hanson Environmental's scope of work includes consultations with state and federal agencies, preparation of an initial study and mitigated negative declaration, preparation of a biological assessment, and written responses to agency and public comments. Hanson Environmental's estimated cost for the work on a time and expense basis is \$96,326.75. Although the District is taking the lead, costs for this work related to the BART Weir/Rubber Dam 1 complex will be shared in accordance with the existing agreement with the County. The District is responsible for costs associated with Rubber Dam 3. The District's share of the estimated cost is \$62,654.50 and the County's share is \$33,672.25. Staff has evaluated the proposal and finds the scope of work and level of effort to be appropriate for this project.

Because environmental and preliminary design work that was originally scheduled in the District's Capital Improvement Program for FY 09/10 is being accelerated, a reserve fund appropriation in the amount of \$335,000 is needed to cover consultant and staff costs during FY 08/09. Accordingly, staff will reduce the FY 09/10 amount for the fisheries projects in a like amount during the CIP Update/Budget review processes later this year.

A motion was made by Director Huang, seconded by Director Weed to 1) authorize a purchase order to Hanson Environmental for environmental consulting services in an amount not to exceed \$96,326.75 for the Lower Alameda Creek Fish Passage Improvements Projects; 2) authorize the General Manager to execute a professional services agreement with Hanson Environmental, Inc. for this work; and 3) authorize a reserve fund appropriation in the amount of \$335,000; Jobs 6348, 6359, and 6360.

AYES: Directors Huang, Weed and Gunther
NOES: None
ABSENT: Directors Koller and Lampert

6.9* RESOLUTION AWARING CONTRACT FOR THE NEWARK DESALINATION FACILITY EXPANSION PROJECT

The District's Capital Improvement Program includes the expansion of the Newark Desalination Facility to increase the production capacity from the current 5 million gallons per day (mgd) to 10 mgd. The project includes the installation of two 2.5 mgd reverse osmosis skids; centrifugal and vertical turbine pumps; one cartridge filter vessel; one decarbonator; and modifications to the existing chemical feed equipment, electrical and instrumentation systems.

On October 16, 2008, the District received and opened ten (10) construction bids for the project. Several of the bids, including the low bid, were determined to be non-responsive because one of the identified subcontractors did not meet the specified minimum experience requirements. The remaining bids all contained minor irregularities, including incomplete information, arithmetic errors, and signatures not properly notarized. Additionally, staff identified several modifications and enhancements to the design which, if implemented, would result in easier operation and maintenance of the facility. As a result, the Board rejected all bids on November 13, 2008.

Staff subsequently modified the bid documents and the project was readvertised on December 9, 2008.

On January 15, 2009, the District received and opened seven (7) bids for the readvertised project. The totals for comparison range from a low of \$7,862,538 to a high of \$10,059,600. Included in the total for comparison are a base bid (Schedule A) and a contingency item for contractor extended overhead (Schedule B). The engineer's estimate was \$8,900,000.

In a letter dated January 16, the day after the bid opening, C. Overaa & Company (Overaa), the second low bidder, "protested" the bid submitted by GSE Construction Company, Inc. (GSE Construction), the apparent low bidder, as non-responsive. Overaa's letter was submitted before District staff evaluated the bids or made a recommendation for the award of contract.

A. Staff Evaluation of Bids

All bids were checked arithmetically and for compliance with the bidding requirements. Two bids contained arithmetic errors. Correction of the errors resulted in the third and fourth apparent low-bidders changing positions in the overall bidding order.

The low-bidder, GSE Construction of Livermore, CA, identified more than one subcontractor for the same electrical work. The Subletting and Subcontracting Fair Practices Act (Act), California Public Contract Code Sections 4100 through 4114, states that the prime contractor "shall list only one subcontractor for each portion (of the work) as defined by the prime contractor in his or her bid" [Section 4104(b)]. The Act further provides that if the prime contractor specifies more than one subcontractor for the same portion of work, the prime contractor agrees that it is fully qualified and will perform that portion of the work [Section 4106]. Because GSE Construction named two subcontractors for the same portion of work, the Act mandates that GSE Construction must self-perform the electrical work. The project bid document specifies that a bidder who self performs the electrical work with its own forces must possess a valid Class C-10 contractor license and shall have been operating as an electrical contractor under its present business name and contracting license for at least four (4) years. GSE Construction neither possesses a valid C-10 electrical contractor's license nor meets the minimum specified experience requirements. Because of the above discrepancies in its bid, GSE Construction is non-responsive and its bid should be rejected.

The second low-bidder, Overaa of Richmond, CA, submitted a base bid amount of \$7,895,000. In its bid, Overaa indicated the receipt of two addenda. No addenda were issued by the District during the bidding period, but two addenda were issued by the District for the previously advertised project. Overaa has confirmed that referencing the addenda was a clerical error. The District may waive this error as a minor bid irregularity.

Overaa has been in the contracting business under its present name for over 50 years. References were checked and it was confirmed that the contractor's performance has been satisfactory. Overaa previously satisfactorily completed the Mission San Jose Water Treatment Plant Process Upgrades and the Water Treatment Plant No. 2 Power Modification projects for the District. There is adequate funding in the current budget for this year's expenditures.

B. GSE Construction Protest

On February 4, after GSE Construction was informed of the staff recommendation to reject GSE's bid as non-responsive, GSE Construction's legal counsel submitted a letter

“to formally protest the award of contract to anyone other than GSE.” GSE Construction states in the protest that (1) its bid is responsive, with only minor irregularities that should be waived; and (2) Overaa’s bid contains a significant irregularity that should not be waived.

Staff and the Attorney for the District thoroughly evaluated GSE Construction’s protest letter and recommend that the GSE Construction protest be denied for the following reasons:

1. GSE Construction alleges that it is clear on the face of the bid that it “intended to list and utilize the services of only one subcontractor, Eshone Electric.” We disagree. Section C.3 of the bid specifications, the Designation of Subcontractors form, requires the bidder to list the name and address of all subcontractors who will perform work on the project. This form states that the designation of subcontractors is required by law and cites to California Public Contract Code Sections 4100 through 4114.

GSE Construction listed “SD Electric, 2455 N. Naglee Road, #220, Tracy, CA” as an electrical subcontractor on the Designation of Subcontractors form. There is a line-out of the word “Thomas” that appears to be initialed between the words “SD” and “Electric” in the first line. No other information in this portion of the form is lined-out. There are a total of six subcontractors listed on the Designation of Subcontractors form. The last entry on this form is “Eshone” on one line and “Santa CL” on another line, without a complete address or a designation of what type of work Eshone will perform. However, the Statement of Experience - Electrical Work, Section C.8, submitted with the GSE Construction bid was completed by Eshone, Inc. The GSE Construction bid did not include a statement of experience for SD Electric.

Based on this, it is not clear from the face of the bid that only one electrical subcontractor was designated.

2. Even if GSE Construction intended to designate Eshone as the electrical subcontractor, Eshone does not meet the minimum experience requirements set forth in the bid specifications. Section B.10, Subsection 8 requires that the “electrical sub-contractor shall have been operating as an electrical contractor under its present business name and contracting license for at least the last four (4) years” and that “compliance will be based on the number of years the license has been in place since the license was issued under the present business name.” The Contractor’s License Detail from the Contractors State License Board states that the issue date for Eshone’s license was April 18, 2006, which is only 2 years and 10 months.
3. GSE Construction alleges that Overaa’s bid contained a significant irregularity by acknowledging two addenda. The District did not issue any addenda for this project. Overaa has confirmed that identifying the two non-existent addenda was an inadvertent clerical error. Furthermore, under California Public Contract Code Section 5103, Overaa would not be allowed to withdraw its bid due to a mistake simply because it identified two non-existent addenda in its bid. This is a minor irregularity that may be waived by the District.

A motion was made by Director Huang, seconded by Director Weed to 1) deny the protest submitted by GSE Construction Company, Inc.; 2) reject the bid of GSE Construction Company, Inc. as non-responsive; 3) waive the requirement for strict conformity with the specifications for the minor irregularity in C. Overaa & Company's bid; and 4) adopt a resolution to award the contract for the Newark Desalination Facility Expansion Project to C. Overaa & Company, in the amount of \$7,895,000, which is the total of the unit price and lump sum payment items, Job 6350.

RESOLUTION NO. 09-010

OF BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
ACCEPTING PROPOSAL OF, AND AWARING CONTRACT TO C.
OVERAA & COMPANY, INC., FOR JOB 6350

AYES: Directors Huang, Weed and Gunther
NOES: None
ABSENT: Directors Koller and Lampert

6.10* AUTHORIZATION OF PURCHASE ORDER AMENDMENTS FOR ENGINEERING
SERVICES FOR THE NEWARK DESALINATION FACILITY EXPANSION
PROJECT

On July 12, 2007, the Board authorized a purchase order to Camp Dresser and McKee, Inc. (CDM) in the amount of \$946,251 to proceed with final design and to prepare construction documents for the Newark Desalination Facility Expansion Project (Project). CDM satisfactorily completed this work during July 2008.

During the bid process, staff identified several modifications and enhancements to the design which, if implemented, would result in easier operation and maintenance of the facility. The Board's rejection of bids on November 13, 2008 allowed these design improvements to be incorporated into the bid documents and staff requested CDM to revise the bid documents and to provide support to District staff to address questions raised during the rebid process. The cost for CDM to perform the work was \$68,074.

Staff also requested CDM to submit a cost proposal for construction-related engineering support services. The proposed scope of work includes general construction support (e.g., performing submittal reviews, responding to requests for information from the contractor, performing any needed design modifications or clarifications, attending project meetings, and performing site visits), special construction inspection services, and completion of project record drawings. Work is scheduled to begin in March 2009 and CDM's estimate to perform the work is \$658,647.

The total estimated cost for the required design and construction-related engineering services on a time and expense basis is \$726,721. Staff has reviewed this proposal and finds the scope of work and estimated level of effort to be appropriate for this project. There is adequate funding in the budget for this expenditure.

A motion was made by Director Huang, seconded by Director Weed to authorize a purchase order amendment to Camp, Dresser & McKee, Inc. for: 1) additional design and bid support-

related engineering services in the amount of \$68,074, Job 6283; and 2) engineering services during construction in an amount not to exceed \$658,647, for the Newark Desalination Facility Expansion Project, Job 6350.

AYES: Directors Huang, Weed and Gunther
NOES: None
ABSENT: Directors Koller and Lampert

6.11* AUTHORIZATION OF PURCHASE ORDER FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE NEWARK DESALINATION FACILITY EXPANSION PROJECT

The construction of the Newark Desalination Facility Expansion Project will take approximately 15 months to complete and work is scheduled to begin in March 2009.

Five qualified firms were requested to submit proposals to provide construction management services during construction of the Newark Desalination Facility Expansion Project. The scope of services include performing on-site construction oversight and management by a resident engineer, performing general and specialty inspection, processing requests for clarification and change orders, reviewing and analyzing claims, and assisting with plant start-up. Three firms submitted proposals. Staff interviewed each and performed a comprehensive evaluation based on method of approach, experience, and qualifications. The Covello Group, Inc. of Walnut Creek was determined to be the firm best suited to provide the required services for this project at an estimated cost of \$685,109. The scope of work and estimated level of effort is appropriate for this project. Services will be performed on a time-and-expense basis.

The Covello Group has over 14 years of experience in construction management of various types of projects, including the District's Headquarters Lobby Renovation and the new Water Quality Laboratory. The Covello Group recently provided construction management services for the Zone 7 Water Agency Wellfield Demineralization Project. There is adequate funding in the budget for this expenditure.

A motion was made by Director Huang, seconded by Director Weed to 1) authorize the General Manager to execute a professional services agreement with The Covello Group, Inc. for construction management services for the Newark Desalination Facility Expansion Project; and 2) authorize a purchase order to The Covello Group, Inc. in an amount not to exceed \$685,109, Job 6350.

AYES: Directors Huang, Weed and Gunther
NOES: None
ABSENT: Directors Koller and Lampert

6.12 UPDATE ON WATER SUPPLY CONDITIONS AND AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF WATER RESOURCES FOR PARTICIPATION IN THE 2009 DROUGHT WATER BANK

Mr. Cartwright reported that due to the continued dry hydrologic conditions, together with likely cutbacks in Delta water supplies as a result of a recent biological opinion to protect Delta smelt, the Department of Water Resources (DWR) is coordinating a Drought Water Bank program to

purchase dry year supplies in 2009. The purpose of this program is to provide a means for water agencies, including ACWD, to purchase dry year supplies to supplement other available supplies. ACWD has previously provided the DWR with an initial, non-binding purchase request of up to 10,000 AF from the 2009 Drought Water Bank.

Under the proposed program, the DWR will acquire dry year supplies from willing sellers with commitments from agencies interested in buying dry year water (“buyers”) to finance the acquisition of these supplies. It is envisioned that typical water seller will be agricultural interests in the Sacramento Valley. Over the next several months the DWR will attempt to negotiate these water purchases and transfer agreements. As a condition of participating in the program, buyers will be required to enter into a participant agreement with DWR and to pay to an initial deposit of \$75/AF (\$70/AF deposit towards the purchase of the dry year supply and \$5/AF for DWR administrative costs). Based on the total purchase requests, the DWR plans to begin the acquisition of dry year supplies from willing sellers. These individual water purchases will be aggregated into “pools” that DWR will allocate and make available at a melded purchase price to all participating buyers. The purchase price is not currently known, and will be based on the price negotiated between the DWR and sellers. Participants must indicate their interest in purchasing water from these pools (at the DWR’s negotiated melded rate) within a set time frame (to be determined by the DWR). If the buyer chooses to purchase water from a pool, it must pay the difference between the actual purchase cost and deposit. If a buyer chooses not to participate in any of the pools, the \$70/AF deposit will be refunded in full.

Potential advantages for participation in the Drought Water Bank would be to secure additional water supplies in the event that ACWD’s supplies are significantly cut back. Supplies from the Drought Water Bank would supplement ACWD’s dry year reserves from the Semitropic Groundwater Banking Program and carry-over in the San Luis Reservoir. These additional supplies would also help to maintain local groundwater reserves if dry conditions continue through next year.

Based on a purchase request of 10,000 AF, a deposit of \$750,000 will be required. Of this amount, \$700,000 will be refundable if ACWD chooses not to purchase water from the program. This expenditure has not been included in the FY 08/09 budget, and therefore, a reserve appropriation will be required. Staff will notify the Board when purchase water from the program becomes available, as well as the amount available and cost. Staff will also request Board authorization prior to the actual purchase of water from the Drought Water Bank.

In addition to this proposed action, staff presented other dry year contingency actions to augment supplies and promote demand management, including: (1) the potential for declaring a water shortage emergency and the implementation of water use restrictions and a tiered drought rate structure to encourage conservation; (2) acquiring 5,000 AF/yr of additional recovery capacity from the Semitropic Groundwater Storage Project; and (3) accelerated recovery from Semitropic dry year reserves.

Discussion ensued and Mr. Cartwright answered questions from the Board.

A motion was made by Director Weed, seconded by Director Huang to 1) authorize the General Manager to execute an agreement with the Department of Water Resources (DWR) as a participant in the 2009 Drought Water Bank; 2) authorize a purchase order to the DWR in an amount not to exceed \$750,000 for a deposit and administrative costs for the purchase of up to

10,000 AF from the 2009 Drought Water Bank; and 3) authorize a reserve appropriation of \$750,000 to cover the costs of the deposit.

AYES: Directors Huang, Weed and Gunther
NOES: None
ABSENT: Directors Koller and Lampert

7 – REPORTS

7.1 BOARD COMMITTEE REPORTS

- Operations & Water Quality Meeting of January 7, 2009: (1) Update on LAVWMA Discussions; (2) Update on RD3 Fish Incident
- Engineering & Capital Projects Meeting of January 13, 2009: (1) ACWD Standard Specifications for Water Main Installations; (2) Alameda Creek Fisheries Restoration Projects Update
- Legal & Legislative Meeting of January 14, 2009: (1) Review of State and Federal Legislation; (2) East-West Connector Project DEIR Review
- Administrative & Finance Meeting of January 27, 2009: (1) Annual Review of Deferred Compensation Program; (2) Quarterly Review of Claims; (3) Quarterly Review of Investment Portfolio; (4) Annual Review of Investment Policy
- Water Resources Planning Meeting of January 28, 2009: (1) City of Fremont General Plan Update; (2) Alameda Creek Fisheries Update; (3) 2009 Dry Year Contingency Planning; (4) Semitropic Banking Program Point of Delivery Agreement

7.2 OPERATIONAL REPORTS

- Rainfall Report
- Water Production Report
- Quarterly Well Level Report
- Quarterly Projects Review
- Quarterly Directors' Expense Report
- Investment Report
- Quarterly Personnel Report

7.3 STAFF REPORTS – None

7.4 GENERAL MANAGER'S REPORTS

- Due to the Public Hearing and adoption (tentative) of resolutions establishing the replenishment assessment for FY 09/10 the Regular Board Meeting will be held on April 14, 2009, Mr. Piraino proposed a Special Board Meeting be held on April 7, 2009 at 7:00 P.M. to review drought contingency plans, should 2009 turn out to be a third successive dry year.

- Mr. Piraino reported that the Board received a copy of the District’s Groundwater Protection Act Bill, SB 133 and a fact sheet to discuss with legislators.

8 – DIRECTOR’S COMMENTS AND/OR AGENDA ITEM REQUESTS

- Director Weed informed the Board that the ACWA Region 5 meeting will be held in Livermore, April 2 and 3. A tour of Zone 7 is scheduled for 2:00 P.M. on April 2 and various presentations will be held on April 3.
- Director Weed reported that ACWA’s Spring Conference will be held May 19 - 22 in Sacramento this year. In lieu of a general session on the afternoon of Wednesday, May 20, a planned demonstration will take place at the state capital. This demonstration is planned to emphasize the importance of water issues in California.
- Director Weed also reported that ACWA’s D.C. Conference will be held February 24 - 26, 2009 in Washington, D.C.
- Director Huang thanked Mr. Piraino for speaking to a reporter from the Chinese World Journal on her behalf.

9 – CLOSED SESSION

President Gunther adjourned the meeting to a closed session at 7:52 P.M. for a conference on the following items:

9.1 PUBLIC EMPLOYMENT Pursuant to Government Code Section 54957

- Title: General Manager

President Gunther reconvened the meeting at 8:20 P.M. During the closed session the Board considered issues relating to the General Manager's employment.

There being no further business to come before the Board, President Gunther adjourned the meeting at 8:21 P.M.

Andrew Warren, Assistant District Secretary

Attest:

James Gunther, President