

March 12, 2009
Fremont, California

The regular monthly meeting of the Board of Directors of ALAMEDA COUNTY WATER DISTRICT was held on March 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 Koller, Huang, Weed and Gunther

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, Human Resources Manager Altarine Vernon, Groundwater Resources Engineer Mike Halliwell, Attorney Patrick Miyaki and Assistant District Secretary Andrew Warren.

President James Gunther presided.

Director Weed led in the Salute to the Flag.

- Director Gunther reported that Board of Director Art Lampert passed away on Saturday, March 7, 2009. Director Lampert will be missed by his many friends and colleagues. A resolution honoring Director Lampert for his service as Director of the Alameda County Water District Board will be given to his family at a special Board Meeting, April 7, 2009. Information regarding memorial services will be announced at a future date.
- Director Koller reported that former Board of Director Harry Brumbaugh passed away on March 4, 2009. Mr. Brumbaugh was dedicated to public service and will be missed by his many friends in the community.

3 - PUBLIC COMMENTS

- Ms. Wynn Grcich, a resident of Union City, addressed the Board and commented on reports discussing the potential human health effects of fluoridated water supplies.

4 – CONSENT CALENDAR

A motion was made by Director Huang to add items 5.1 through 5.3 to the Consent Calendar, seconded by Director Koller.

The motion was passed by the following vote:

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

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

- 4.1 Approval of Minutes – Regular Meeting of February 12, 2009
- 4.2 Ratification of Payment of Audited Demands dated February 6, February 13, February 20, and February 27, 2009
- 4.3 Authorization of Purchase Order Amendment for Additional Consulting Services to Update Actuarial Valuation Report

- 5.1 Authorization of Additional Funds for the Residential and Commercial High Efficiency Clothes Washer Rebate Programs
- 5.2 Resolution Authorizing the General Manager to Execute an Agreement with the State Water Resources Control Board for Economic Recovery Funding
- 5.3 Resolution Authorizing General Manager to Enter into Amended Memorandum of Understanding Regarding Alameda Creek Flows Studies and Ratification of the Board President’s Action to Authorize a Purchase Order for Consultant Services

The motion was passed by the following vote:

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

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

5.1* AUTHORIZATION OF ADDITIONAL FUNDS FOR THE RESIDENTIAL AND COMMERCIAL HIGH EFFICIENCY CLOTHES WASHER REBATE PROGRAMS

From January 1, 2008 through December 31, 2008, ACWD participated in the Bay Area Water Agency Residential High Efficiency Clothes Washer Rebate Program (“Residential Program”), in partnership with, and administered by, Pacific Gas and Electric Company (PG&E). The Residential Program was supported, in part, by a grant through the state Department of Water Resources (DWR). At the same time, ACWD participated in the Commercial High Efficiency Clothes Washer Rebate Program (“Commercial Program”), also in partnership with PG&E, but administered by the Bay Area Water Supply and Conservation Agency (BAWSCA). The Commercial Program was a 50/50 cost-share program between ACWD and Union Sanitary District. The intent of these programs is to encourage customers to purchase high efficiency clothes washers, as well as encourage manufacturers to develop and market these washers, by providing rebates for the most water-efficient clothes washers available.

Additional marketing efforts through the partnership with PG&E were very successful and therefore the number of rebate applications submitted this year for both programs exceeded ACWD staff expectations. As a result, the funding originally set aside for these programs is depleted. The residential program was budgeted for 2050 rebates, and it is anticipated that a total of 2500 rebates will be received by the time the application period ends on March 31, 2009. Similarly, the commercial rebate program was budgeted for 35 rebates in 2008, and we received a total of 133 rebate applications. Based on this level of activity, and to honor all rebate

applications, an additional \$57,000 will be required for the residential program (\$125 per rebate plus processing fees) and an additional \$10,730 will be required for the commercial rebate program (\$110 per rebate). Because the FY 08/09 budget is not sufficient to cover the additional costs, staff requests a total reserve authorization of \$67,730 to cover these programs.

A motion was made by Director Weed, seconded by Director Huang to 1) authorize an amendment to the Purchase Order with Pacific Gas and Electric Company for an additional \$57,000 for the residential washer program; 2) authorize an amendment to the Purchase Order with the Bay Area Water Supply and Conservation Agency for an additional \$10,730 for the commercial washer program; and 3) approve a reserve authorization for \$67,730 to cover the additional costs of these programs.

5.2* RESOLUTION AUTHORIZING THE GENERAL MANAGER TO EXECUTE AN AGREEMENT WITH THE STATE WATER RESOURCES CONTROL BOARD FOR ECONOMIC RECOVERY FUNDING

As part of the Economic Recovery Bill, the Federal Government has made approximately \$280 million available for the State Water Resources Control Board (Water Board) to administer grants and/or loans under the Clean Water State Revolving Fund Program. This economic recovery money will be distributed for eligible projects that will be ready for construction within the next 12 months. Because eligibility criteria includes projects that are in nationally designated estuaries, including the San Francisco Bay Delta, the District's projects to restore steelhead in the Alameda Creek Watershed qualify.

District staff intends to apply for economic recovery funding for the construction of the Bunting Fish Screen and the Rubber Dam No. 2 Decommissioning Projects, which are both scheduled for construction during the summer of 2009. The proposed Fish Ladder over the BART Weir and Rubber Dam No. 1 will also be included in the application. The Water Board requires a resolution from the District's Board to be submitted with the application.

A motion was made by Director Weed, seconded by Director Huang to adopt a resolution authorizing the General Manager to apply for financial assistance and to negotiate and execute an agreement with the State Water Resources Control Board for economic recovery funding.

RESOLUTION NO. 09-011

OF BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
AUTHORIZING THE GENERAL MANAGER TO EXECUTE AN
AGREEMENT WITH THE STATE WATER RESOURCES CONTROL
BOARD FOR ECONOMIC RECOVERY FUNDING

The motion was passed by the following vote:

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

5.3* RESOLUTION AUTHORIZING GENERAL MANAGER TO ENTER INTO AMENDED MEMORANDUM OF UNDERSTANDING REGARDING ALAMEDA CREEK FLOWS STUDIES AND RATIFICATION OF THE BOARD PRESIDENT'S ACTION TO AUTHORIZE A PURCHASE ORDER FOR CONSULTANT SERVICES

In 2006, ACWD, together with the other stakeholders in the Alameda Creek Fisheries Work Group (Work Group), entered into a Memorandum of Understanding (MOU) for conducting baseline flow studies. Under this agreed-upon approach, a consultant (McBain and Trush, Inc.) has worked with the Work Group members to conduct the initial flow and habitat studies. ACWD has also agreed to administer the contract with the Work Group consultant. The first task (Phase 1) which included a review of all available data and recommendations for additional data collection was completed in 2007. A second phase (Phase 2) is currently underway, and consists of data collection and evaluation with the goal of estimating the range of additional flows (timing, location and quantity) needed in the watershed to support a steelhead fishery. Under the original MOU, ACWD together with SFPUC, Zone 7 Water Agency and PG&E all agreed to contribute \$30,000 each towards the cost of the Work Group consultant to conduct these studies. The California State Coastal Conservancy also agreed to provide matching funds of up to \$120,000.

In November of 2008, McBain and Trush, completed the first Phase 2 study – the 2009 Alameda Creek Instream Flow and Habitat Sampling and Analysis Plan (“2009 Sampling and Analysis Plan”). The 2009 Sampling and Analysis Plan included a detailed work plan for conducting in-stream habitat mapping in 2009 and evaluation of the findings. The total estimated cost for this work is approximately \$226,000. However, the funding provided for in the original MOU has mostly been expended, and additional funding of \$180,000 will be required to complete the 2009 Sampling and Analysis Plan. Therefore, the Work Group is proposing to amend the MOU to provide for additional funding. Under the proposed amendment, the following organizations agree to provide funding to begin Phase 2 of the Flow Studies and in the following amounts: Alameda County Water District, \$40,000; Pacific Gas and Electric Company, \$20,000; Alameda County Flood Control and Water Conservation District, \$40,000; San Francisco Public Utilities Commission, \$40,000; and Zone 7 Water Agency, \$40,000. In addition, the California State Coastal Conservancy, may provide up to \$30,000, pending resolution of State budget issues.

As a next step for the Phase 2 flows studies, McBain and Trush has recently submitted a proposal to begin the necessary field work portion of the 2009 Sampling and Analysis Plan. This field work will include: 1) completing the basemap photography and production; 2) completion of the spawning habitat assessment; and 3) initiating the field habitat mapping of the three mainstem study reaches in upper Alameda Creek. The estimated cost of these tasks is \$57,000. Based on the funding commitments provided for in the MOU amendment, ACWD's share of these costs will be \$12,667. There are sufficient funds in the FY 08/09 budget for this expenditure. To avoid undue delays, it was necessary for the consultant to start this work as soon as possible in order to capture necessary data from the current wet conditions. Accordingly, the Board President authorized approval of the purchase order on an emergency basis for these tasks to begin on February 25, 2009.

A motion was made by Director Weed, seconded by Director Huang to 1) adopt a resolution authorizing the General Manager to enter into an amended Memorandum of Understanding with

the Alameda Creek Fisheries Work Group members for cost-sharing for the Alameda Creek fisheries flow studies; 2) ratify the Board President’s action to authorize a Purchase Order to McBain and Trush, Inc. in an amount not to exceed \$57,000 for consulting services for the initial tasks of the 2009 Sampling and Analysis Plan as part of the Alameda Creek Flow Studies, with a net ACWD cost of \$12,667 after cost-sharing; and 3) authorize the General Manager to execute a services agreement with McBain and Trush, Inc. for the initial field work as outlined in the 2009 Sampling and Analyses Plan.

RESOLUTION NO. 09-012

OF BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
AUTHORIZING THE GENERAL MANAGER TO ENTER INTO AN
AMENDED MEMORANDUM OF UNDERSTANDING REGARDING
ALAMEDA CREEK FLOWS STUDIES

The motion was passed by the following vote:

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

5.4 RESOLUTION AWARDDING CONTRACT FOR BUNTING POND FISH SCREEN
FABRICATION

Mr. Shaver reported that the Bunting Pond Fish Screen Project is part of an overall program to restore steelhead in the Alameda Creek Watershed and will prevent the entrainment of out-migrating juvenile steelhead at the Bunting intake location. The District completed a similar installation for the Alameda Creek Pipeline No. 1 Fish Screen Project in March 2008.

Similar to the previously completed Alameda Creek Pipeline No. 1 Fish Screen Project, the Bunting Pond Fish Screen Project will be constructed in two elements: 1) sitework, which includes grading and installing temporary water diversion facilities within the channel, as well as reinforced concrete, diversion piping modifications, and electrical work, and 2) the fish screen, which includes fabrication, installation, and commissioning of the fish screen equipment.

Construction of the sitework element is being combined with another planned steelhead restoration project, the Rubber Dam No. 2 Decommissioning Project. Combining this work should result in more attractive bids because of the similar construction methods (heavy civil) required and the close proximity of both projects. The construction bid documents are complete and will be advertised for bids in March 2009.

For the fish screen element, staff previously evaluated eight (8) different fish screen types and determined that the self-cleaning, retractable, rotating, cylindrical wedge wire fish screens that are designed and manufactured by Intake Screen, Inc. (ISI) of Sacramento, California best met the District’s needs. This evaluation was presented to the Board on December 14, 2006. The Board subsequently authorized the District to purchase and install the ISI screens for the

Alameda Creek Pipeline No. 1 Fish Screen Project. Because the screens have been performing satisfactorily since March 2008, staff informed the Engineering and Capital Projects Committee of its intent to use the same ISI screen, provided that ISI agrees to supply the equipment at a fair price. Staff subsequently prepared and submitted bid documents to ISI to design, fabricate, install, and commission the fish screen.

On February 24, 2009, ISI submitted a bid in the amount of \$291,250 for the work. Staff evaluated the proposal and determined that it is in compliance with the proposal requirements and that the cost is appropriate for the work being performed. The engineer's estimate is \$280,500. Staff also checked recent references and confirmed that ISI still has the necessary qualifications and experience to perform the work.

This project was originally planned for construction during the summer of 2010. However, as explained above, staff accelerated the project schedule to coincide with the construction of the Rubber Dam No. 2 Decommissioning Project. Additionally, with completion of the final design, the revised estimated cost of the two project elements is \$236,000 higher than the original estimate. Therefore, a reserve fund appropriation of \$236,000 is required to cover the project costs until end of this fiscal year.

Mr. David Bunting of Colusa, California addressed the Board and inquired about the project. Mr. Shaver responded to Mr. Bunting's questions.

A motion was made by Director Huang, seconded by Director Koller to 1) authorize a reserve appropriation in the amount of \$236,000 for the Bunting Pond Fish Screen project; 2) adopt a resolution accepting the proposal and awarding the contract for Bunting Pond Fish Screen Project to Intake Screens, Inc., in the amount of \$291,250, which is the total of the unit price and lump sum bid items, Job 4313.1.

RESOLUTION NO. 09-013

OF BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
ACCEPTING PROPOSAL OF, AND AWARDING CONTRACT TO INTAKE
SCREENS, INC., FOR JOB 4313.1

The motion was passed by the following vote:

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

5.5 AUTHORIZATION OF PURCHASE ORDER AMENDMENTS FOR DESIGN
SERVICES FOR THE RUBBER DAM NO. 2 DECOMMISSIONING AND BUNTING
POND FISH SCREEN PROJECTS

Mr. Shaver reported that the Rubber Dam No. 2 Decommissioning and Bunting Pond Fish Screen Projects are part of an overall program to restore steelhead in the Alameda Creek Watershed. On August 10, 2006, the Board authorized CH2M Hill, Inc. (CH2M Hill) to perform

design services in the amount of \$128,567 for the construction of Rubber Dam 2 Decommissioning Project. On August 14, 2008, the Board authorized CH2M Hill to perform design services in the amount of \$212,093 for the construction of a fish screen at the Bunting Pond water diversion intake. Design work is almost complete and both projects are scheduled for construction in summer 2009.

The Rubber Dam No. 2 Decommissioning Project involves the removal of the inflatable dam and modifications to the foundation to facilitate fish passage. During the design, the project scope evolved significantly. The initial project concept was to either create a simple notch in the concrete foundation or to remove the foundation completely to facilitate fish passage. However, after consultation with the National Marine Fisheries Services and the Alameda County Flood Control and Water Conservation District (County), staff determined that the best overall approach is to install an engineered “Larinier” fishway into the existing foundation. This design optimizes fish passage at relatively low flows and maintains the existing foundation as a hydraulic grade control structure, thus minimizing future channel erosion concerns. This change in scope, and the associated time and effort for permitting and the transfer of ownership of the foundation to the County, has resulted in \$39,830 additional design-related costs. Before construction of the Rubber Dam No. 2 Decommissioning Project may proceed, an agreement to transfer ownership of the dam foundation from the District to the County is required. Staffs from both the District and the County are currently discussing the terms and it is anticipated that the agreement will be presented to the Board during April or May.

Additionally, at staff’s request, CH2M Hill submitted proposals to perform the following work items for both the Rubber Dam No. 2 Decommissioning and Bunting Pond Fish Screen Projects during construction: 1) review shop drawings and submittals; 2) attend construction meetings and site visits; 3) respond to contractor’s requests for information; 4) prepare contract change orders as required; and 5) complete as-built record drawings. The estimated cost of engineering services during construction for the Rubber Dam No. 2 Decommissioning Project and the Bunting Pond Fish Screen Project is \$41,023 and \$60,990, respectively. All services will be performed on a time and expense basis. Staff has evaluated the proposal and has determined that the estimated level of effort for the work is appropriate. There is adequate funding in the project budgets for these expenditures.

Discussion ensued and staff answered questions from the Board.

A motion was made by Director Koller, seconded by Director Huang to 1) authorize a purchase order amendment to CH2M Hill, Inc. for additional design services and design services during construction in the amount of \$80,853 for the Rubber Dam No. 2 Decommissioning and Foundation Modification Project, Jobs 6319 and 6320, and 2) authorize a purchase order amendment to CH2M Hill, Inc. for design services during construction in the amount of \$60,990 for the Bunting Pond Fish Screen Project, Job 4313.

The motion was passed by the following vote:

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

5.6 AUTHORIZATION OF GENERAL MANAGER TO EXECUTE AN AGREEMENT REGARDING THE 2009 QUAGGA AND ZEBRA MUSSEL PREVENTION PROGRAM AT THE QUARRY LAKES REGIONAL RECREATION AREA

Mr. Wadlow reported that on July 10, 2008, the Board authorized the General Manager to negotiate an agreement with the East Bay Regional Park District (EBRPD) for a pilot watercraft inspection program for Quagga and Zebra Mussel prevention at the Quarry Lakes Regional Recreational Area. The program included cost-sharing for one temporary park ranger for three months to cover boat inspections five days per week, including weekends. Any additional costs for staffing to provide coverage for the balance of 2008 were the sole responsibility of EBRPD.

ACWD and EBRPD continue to share concerns over the potential consequences of an invasive species infestation at Quarry Lakes. EBRPD would suffer damage to the aquatic ecosystem and reduction in recreational opportunities at the lakes, and ACWD would experience impaired groundwater recharge operations and greatly increased costs for maintenance and capital improvements. Fortunately, there has been no indication to date of a species invasion at Quarry Lakes. Continued vigilance by means of a watercraft inspection program is critical to ensuring that this objective is maintained.

The 2008 pilot program demonstrated the effectiveness of watercraft inspection and has enabled development of a 2009 program that best meets the agencies' joint interests. EBRPD has proposed that ACWD be responsible for 50% of the cost of a dedicated inspector (40-hours per week) for 9 months; EBRPD will then be responsible for all other costs of inspection beyond this time when the boat launch is open to the public. Because this has been identified as an ongoing program need, temporary contract staff can no longer be used and permanent staffing is required. This factor, combined with the longer duration of the program in 2009, has increased ACWD's share of costs to a maximum of \$31,292. It is proposed that the prorated share of costs for the CY 2009 program through June 30, 2009 be appropriated from the General Fund Reserve and that the balance of present and future costs be included in the FY 09/11 biannual budget for the Board's future consideration.

Director Weed voiced his concerns regarding the watercraft inspection program due to the invasive nature of Quagga and Zebra mussel infestation.

Further discussion ensued and staff answered questions from the Board.

A motion was made by Director Huang, seconded by Director Koller to 1) adopt a resolution authorizing the General Manager to execute an agreement with EBRPD to fund the 2009 watercraft inspection program at Quarry Lakes for Quagga and Zebra mussel prevention at a cost not to exceed \$31,292 for CY 2009; and 2) authorize a reserve fund appropriation of \$17,369 to cover program costs through June 30, 2009.

The motion was passed by the following vote:

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

5.7 AUTHORIZATION OF GENERAL MANAGER TO EXECUTE AN AGREEMENT REGARDING THE 2009 QUAGGA AND ZEBRA MUSSEL PREVENTION PROGRAM AT LAKE DEL VALLE

Mr. Wadlow reported that on June 12, 2008, the Board authorized the General Manager to negotiate a four-way agreement among the East Bay Regional Park District (EBRPD), Zone 7 Water Agency, Santa Clara Valley Water District (SCVWD) and ACWD to fund a pilot watercraft inspection program for Quagga and Zebra mussel prevention at Lake Del Valle. The purpose of the pilot program was to prevent the introduction of Quagga or Zebra mussels into Lake Del Valle by watercraft, and to provide an opportunity to evaluate a long term approach to protecting this critical water supply for the South Bay Aqueduct (SBA) contractors. The pilot program was successful. The potential consequences of an infestation at Lake Del Valle include damage to the aquatic ecosystem and reduction in recreational opportunities at the lake, loss of South Bay Aqueduct transmission capacity, fouling of water treatment plant intakes and process equipment, impairment of hydropower generation, and reduction of groundwater recharge capability. An active prevention program is cost-effective since it helps forestall an infestation which would incur significantly higher costs for maintenance and capital investments in SBA and water utility infrastructure.

By law (Section 2302 of the California Fish and Game Code as amended in September, 2008), the Department of Water Resources (DWR) has responsibility for protecting all state owned reservoirs including Lake Del Valle from an infestation of Quagga and/or Zebra mussels. District staff has pursued this issue on multiple fronts with DWR. However, due to the State's ongoing budget crisis and the Governor's direction to DWR to immediately pursue a Delta solution and respond to the statewide drought, there is little likelihood that DWR will be able to provide the requisite funding or implement an adequate program to comply with the Fish and Game Code. Because the customers of all four agencies benefit from a mussel prevention program at Lake Del Valle, continuation of a watercraft inspection program by EBRPD, Zone 7, SCVWD and ACWD in 2009 is prudent. The estimated cost of the 2009 program is \$358,888. Each agency would contribute one quarter of the cost, or \$89,722. EBRPD, SCVWD, and Zone 7 have approved funding for the 2009 program. It is proposed that the prorated share of costs for the CY 2009 program through June 30, 2009 be appropriated from the General Fund Reserve and that the balance of present and future costs be included in the FY 09/11 biannual budget for the Board's future consideration.

Discussion ensued and staff answered questions from the Board.

A motion was made by Director Huang, seconded by Director Koller to 1) adopt a resolution authorizing the General Manager to execute a four-way agreement among EBRPD, Zone 7, SCVWD, and ACWD to fund the 2009 watercraft inspection program for Quagga and Zebra

mussel prevention at Lake Del Valle at a cost not to exceed \$89,722 for ACWD; and 2) authorize a reserve fund appropriation of \$46,715 to cover program costs through June 30, 2009.

The motion was passed by the following vote:

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

5.8 RESOLUTION AUTHORIZING ESTABLISHMENT OF A TRUST FOR THE ALAMEDA COUNTY WATER DISTRICT RETIREE HEALTH REIMBURSEMENT AND BENEFIT PLAN

Ms. Vernon reported that the District provides health coverage for its eligible employees and retirees under the CalPERS health plan – the Public Employees Medical and Hospital Care Act (PEMHCA). As a participating employer in PEMHCA, the District is required to make monthly contributions to PEMHCA for covered employees and retirees.

Effective January 1, 2009, the District reduced its required monthly PEMHCA contribution to the minimum dollar amount allowed under the PEMHCA laws, which is currently \$101 per month for calendar year 2009. Under the PEMHCA rules, covered employees and retirees are responsible for paying the cost of their monthly premium over this \$101 minimum employer contribution.

To subsidize this excess cost, the Board adopted a cafeteria plan for employees. The District contributes funds to a cafeteria plan for each eligible employee; in turn, the employee can elect to use these funds to pay for the PEMHCA premium.

For covered retirees, the Board adopted a retiree health benefit trust to subsidize the PEMHCA coverage cost, since, under the tax laws, retirees cannot participate in a cafeteria plan. Instead, the District contributes funds known as “longevity payments” to the trust. These longevity payments are then disbursed from the trust to retirees as reimbursements for their PEMHCA premium in excess of the \$101 minimum employer contribution. To implement this new structure for retirees, the District adopted a model trust provided by ICMA-RC, a third-party vendor. The District also engaged ICMA-RC to administer and operate the trust, including disbursing retirees’ reimbursements. The District implemented this process because CalPERS did not have a method to receive dual payments from one entity for medical costs.

The District was recently advised by legal counsel that CalPERS has now established a process that will allow an employer to pay for the balance of health care costs in excess of the PEMHCA minimum directly to CalPERS through a 115 trust account. A 115 trust is a trust exempt from federal taxes under section 115 of the Internal Revenue Code. Establishing this type of trust will benefit the District in two important ways: 1) it allows the District to directly administer the longevity payments internally; and 2) it provides another option for the District to address its Other Post Employment Benefits (OPEB) liability without at this time contracting with a provider such as CalPERS, given the volatility of current stock market conditions. The District may elect to deposit into this trust account the necessary funds to meet its annual OPEB

obligation and to comply with GASB 45 reporting guidelines using more conservative investment vehicles that would be under the District's control, such as are used to invest other District funds. Funding of the District's OPEB liability will be discussed in greater detail with the Board in conjunction with the upcoming budget workshops in May.

The District will be terminating ICMA-RC's services as a third-party administrator for the Health Reimbursement Arrangement. Doing this presents several advantages for the District. First, using a third-party vendor adds a layer of complexity that has resulted in implementation issues during the recent transition in process. Administering the longevity payments internally would eliminate this complexity, reducing the likelihood of errors and easing the burden on District staff. Moreover, the payments can now be made directly to CalPERS without the need for a third party administrator. Second, administering the payments internally will save the District money. This is because the District would no longer have to pay ICMA-RC's fees. Third, due to the problems with the change in process, District staff has devoted a substantial amount of time working with ICMA-RC to process longevity payments. By comparison, administering the payments internally should actually reduce the amount of time that staff must spend on this task. In sum, staff believes that the District can administer the payments more efficiently and effectively than the current process allows.

The attached trust provides that the District will operate and administer the new trust for the benefit of eligible retirees and their qualified dependents and survivors. Contributions to the trust will be irrevocable. Assets under the trust may not be diverted for any purpose other than funding health benefits for eligible persons, unless and until all liabilities associated with those benefits are satisfied. These provisions are essentially identical to the ICMA-RC's trust, except that the District will be solely responsible for operating and administering the new 115 trust.

Under the trust's terms, a "committee" will be responsible for operating and administering the trust, including directing the investment of trust assets. In addition, a "trustee" will be responsible for holding trust assets and investing the assets as directed by the committee. The Board appoints the committee and the trustee; if none are appointed, the Board will serve that role. We recommend that the Board appoint the General Manager as trustee, and appoint the following positions to comprise the committee: General Manager, Finance Manager, Human Resources Manager, Financial Services Manager, and Supervising Human Resources Analyst.

Finally, legal counsel has recommended that the District develop a plan document setting out the terms of the longevity payments, including provisions for eligibility, contributions, benefit amounts, and claims procedures, among others. A plan document would clarify the intended operation of the longevity payments, thereby reducing the potential for confusion and disputes.

This item was reviewed with the Administration and Finance Committee on March 3, 2009. The committee supports the staff's recommendations.

A motion was made by Director Huang, seconded by Director Weed to adopt a resolution that provides for 1) termination of ICMA-RC's services as third party administrator for the Health Reimbursement Arrangement; 2) adoption of a 115 trust substantially in the form attached and appointment of a trustee and a committee; 3) development of a plan document setting out the

terms of the longevity payments; and 4) authorizing the General Manager to take all actions and execute all documents needed to implement these resolutions.

RESOLUTION NO. 09-014

OF THE BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
ADOPTING AN OTHER POST EMPLOYMENT BENEFIT TRUST

The motion was passed by the following vote:

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

5.9 ACTION ON FILLING VACANCY ON BOARD OF DIRECTORS

Director Arthur Lampert passed away on Saturday March 7, 2008 after serving on the Board of Directors for over ten years. Director Lampert's term of office would have expired in November 2010. Pursuant to Government Code Section 1780, the Board of Directors has sixty days from the date a vacancy occurs (until May 7 2009) in which to either call an election or make an appointment.

The threshold decision the Board needs to make is whether or not to call an election or make an appointment. Government Code Section 1780(a) provides that, should an election be held, it must be held on the next election date established in Elections Code Section 1000 that is 130 days or more after the date the Board calls the election. Based on a March 12, 2009 decision date, this means that an election would be held on November 3, 2009. Because this is not the normal date for the conduct of District elections, there would be additional expenses incurred as a result of calling an election for this date, and any candidate elected would then stand for election again in November 2010.

Should the Board determine that it desires to appoint an eligible individual to the vacant position, the appointed individual would serve for the unexpired balance of Director Lampert's term, until November 2010. An appointment must be made by May 7, 2009. Government Code Section 1780 further requires that, at a minimum, notices of the vacancy be posted in three or more conspicuous places in the District at least 15 days before the appointment is made. The Board had previously followed a process for appointing a member to the Board as a result of a vacancy in 2002. This process was very detailed and provided for 15 work days notice of the vacancy, posted at the three city halls, in addition to a press release advising of the vacancy and application process, as well as display ads in local newspapers. Applicants were requested to complete declaration of candidacy forms as well as provide a maximum three page statement of qualifications which asked four basic questions. Applicants were advised that their responses would be assessed and that candidates considered to possess the most appropriate qualifications would be invited to continue in the selection process. Seven candidates applied for the vacancy and the Board subsequently decided to interview all seven. Additional detail on the selection process and a recommended timeline will be presented at the Board meeting.

A motion was made by Director Koller, seconded by Director Weed to make an appointment to the vacant Board member position, and, provide direction on the process to be followed for an appointment to be made by May 7, 2009.

The motion was passed by the following vote:

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

6 – REPORTS

6.1 BOARD COMMITTEE REPORTS

- Operations & Water Quality Meeting of February 4, 2009: (1) Update on Alameda County use of Pesticides/Herbicides Adjacent to Alameda Creek
- Legal & Legislative Meeting of February 11, 2009: (1) Review of State and Federal Legislation
- Water Resources Planning Meeting of February 18, 2009: (1) Dry Year Contingency Planning
- Engineering & Capital Projects Meeting of February 19, 2009: (1) Vineyard Heights Tank Seismic Upgrade Project; (2) SFPUC Bay Division Pipeline No. 5 Project; (3) Potential ACWD Economic Stimulus Projects
- Administrative & Finance Meeting of March 3, 2009: (1) OPEB Funding Update; (2) Establishment of District Trust Account

6.2 OPERATIONAL REPORTS

- Rainfall Report
- Water Production Report
- Investment Report
- Quarterly Groundwater Recharge Report

6.3 STAFF REPORTS

- Update on 2009 Water Supply Outlook - Mr. Cartwright reported that recent rains have helped the current water supply outlook. Uncertainties do remain however that could affect our water supply such as environmental restrictions on Delta pumping. A water supply conditions update will be presented to the Board at the April 7 meeting.

Mr. Halliwell reviewed the findings for the Survey Report on Groundwater Conditions, which recommends an assessment on the production of groundwater from

the groundwater supplies within the District during FY 09/10. A public hearing will be held on April 14, 2009, regarding the Replenishment Assessment. Discussion ensued and staff responded to questions from the Board.

6.4 GENERAL MANAGER’S REPORTS

- Mr. Piraino commented on the status of California SB 133 which is scheduled to be heard before the Senate Natural Resources and Water Committee on March 24, 2009.

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

- Director Weed reported on his trip to Washington, D.C. for the ACWA Legislative meeting to discuss policy issues. He also reported that ACWA Region 5 will be meeting in Livermore on April 2 and April 3, 2009 at Zone 7 and will be taking a tour of their facilities.
- Director Gunther announced a memorial service for former Board of Director Harry Brumbaugh will be held on March 20, 2009 at 3:00 P.M. at St. James Episcopal Church, Fremont.

There being no further business to come before the Board, President Gunther adjourned the meeting at 8:19 P.M.

Andrew Warren, Assistant District Secretary

Attest:

James G. Gunther, President