

October 8, 2009
Fremont, California

The regular monthly meeting of the Board of Directors of ALAMEDA COUNTY WATER DISTRICT was held on October 8, 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 (arrived at 6:04 P.M.), Reynolds, 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 Manager Eric Cartwright, Human Resources Manager Altarine Vernon, Attorney Patrick Miyaki and Assistant District Secretary Andrew Warren.

President James Gunther presided.

Director Weed led in the Salute to the Flag.

- President Gunther took a moment to acknowledge General Manager Paul Piraino's last board meeting as General Manager and expressed sincere thanks for his excellent service to the Board, the citizens of the service area and to District staff.

3 – PUBLIC COMMENTS

- Mr. B.J. Bunting, a resident of Fremont, expressed the need for an emergency warning system for residents of Niles in case of an issue with Calaveras Dam.
- Ms. Wynn Greich, of 30166 Industrial Parkway SW, #296, Hayward, addressed the Board and once again emphasized her concerns regarding the potential effects of fluoride on human health.
- A resident of Hayward addressed the Board with concerns regarding use of chloramines in water systems.

4 – CLOSED SESSION

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

- 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)

The meeting reconvened at 7:00 P.M.

Mr. Piraino reported with regard to Item 4.1, the Board approved intervening in an existing lawsuit by unanimous vote. The lawsuit, defendants and substance of the litigation will be disclosed to any person upon inquiry after the District has intervened in the litigation.

Mr. Piraino also reported concerning Item 4.2, the Board approved a Settlement Agreement with Montgomery Watson Americas. The key substantive provisions of this Settlement Agreement are as follows:

1. Montgomery Watson Americas to pay Alameda County Water District the sum of \$900,000
2. Alameda County Water District will dismiss pending lawsuit against Montgomery Watson Americas
3. Montgomery Watson Americas and Alameda County Water District agree to release all claims against each other, except for certain claims against Montgomery Watson Americas

Related to the litigation against Montgomery Watson Americas, the Board previously approved a Settlement Agreement with Koch Membrane Systems. The key substantive provisions of the Settlement Agreement with Koch Membrane Systems are as follows:

1. Koch to provide 312 ultrafiltration membrane system cartridges, as well as some replacement parts, equipment and technical support, to Alameda County Water District, all at no cost to Alameda County Water District (an approximate value of \$1.06 million)
2. Alameda County Water District is not required to pay Koch the final contract balance of \$143,072.
3. Koch and Alameda County Water District agree to waive all claims against each other and agree not to sue each other.

The Board approved both Settlement Agreements by unanimous vote.

5 – CONSENT CALENDAR

A motion was made by Director Huang to add items 6.1 through 6.5 to the Consent Calendar, seconded by Director Koller.

The motion was passed by the following vote:

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

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

5.1 Approval of Minutes – Regular Meeting of September 10, 2009

- 5.2 Ratification of Payment of Audited Demands dated September 11, September 18, September 25 and October 2, 2009
- 5.3 Resolution Vacating Portion of Easement, Robson Homes, LLC

RESOLUTION NO. 09-049

OF BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
VACATING EASEMENT FOR WATER PIPELINE

- 5.4 Authorization for Director Reynolds to Attend California-Nevada American Water Works Association Conference
- 6.1 Authorization of Purchase Order for Service Fittings Material
- 6.2 Authorization to Enter into an Agreement with Verizon
- 6.3 Resolution Approving Phillip J. Utic as a Director for ACWD Public Facilities Financing Corporation
- 6.4 Authorization of Purchase Order for Design and Construction Support Services for the Niles Boulevard Pipeline Project
- 6.5 Resolution Authorizing the Entering into a Statement of Understanding with the National Marine Fisheries Service for the California Central Coast Steelhead Recovery Program

The motion was passed by the following vote:

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

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

6.1* AUTHORIZATION OF PURCHASE ORDER FOR SERVICE FITTINGS MATERIAL

The District has established a process to comply with the State of California’s new legislation for pipes, fittings, and fixtures used to convey water for drinking or cooking. The new legislation, AB 1953, updates California Health and Safety Code Sections 116875-116880 which require a lead content of no more than an average of 0.25% in fittings and fixtures be reduced by January 1, 2010.

In order to comply with the new legislation, the District has identified 155 brass parts and fittings that need to meet the new regulation. Local parts suppliers were contacted and four bids were received. It was determined that two suppliers were the combined lowest bidders and that they could meet the required delivery times. A split bid award is proposed for these suppliers in an effort to minimize costs. Ferguson Enterprises Inc. was the lowest on 76 items for a total bid amount \$29,871.34 (including sales tax) and Groeniger & Company was the lowest on 79 items for a total amount of \$133,786.57 (including sales tax). The total consolidated bid amount for the two companies totals \$163,657.91. Sufficient funds are budgeted for this expenditure.

A motion was made by Director Reynolds, seconded by Director Huang to authorize two separate purchase orders; one for Ferguson Enterprises Inc. in the amount of \$29,871.34 and the second for Groeniger & Company in the amount of \$133,786.57 to purchase the parts and fittings required comply with the California Health and Safety Code.

The motion was passed by the following vote:

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

6.2* AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH VERIZON

The District was approached by representatives of Verizon Wireless to establish a cellular telephone communication site at Lowry Well in Fremont.

The representatives of Verizon Wireless contacted the District in June 2005 about establishing a cellular telephone communication site at Lowry Well. They submitted a zoning application to the City of Fremont. The site plan was conditionally approved by the City for both Verizon Wireless and T-Mobile. T-Mobile took the lead and is currently operating from the Lowry well site. Verizon Wireless put their project on hold until 2008 when negotiations with the District resumed. They are required by the City to use the existing monopole (pine tree) that T-Mobile installed.

District's Counsel and staff have reviewed the lease agreement and are satisfied that it meets District interests. The lease calls for \$2,000 per month rent payment, with a three percent (3%) annual increase.

A motion was made by Director Reynolds, seconded by Director Huang to authorize the General Manager to sign the communications site leasing agreement with Verizon Wireless.

The motion was passed by the following vote:

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

6.3* RESOLUTION APPROVING PHILLIP J. UTIC AS A DIRECTOR OF THE ACWD PUBLIC FACILITIES FINANCING CORPORATION

In January 1992, the Board adopted a resolution authorizing incorporation of the Alameda County Water District Public Facilities Financing Corporation (Corporation). The Corporation serves as the seller of Certificates of Participation to finance major District water system construction projects and related facilities.

The bylaws of the Corporation stipulate that the Corporation shall consist of three directors, all of whom must reside in the District's service area. Due to the recent passing of one of the directors on the Corporation Board of Directors, a vacancy needs to be filled before the Corporation's next annual meeting in January 2010. The bylaws further stipulate that any

vacancy is to be filled by approval of the remaining directors of the Corporation, subject to prior approval by resolution of the Board of Directors of the Alameda County Water District.

Mr. Phillip J. Utic, a resident in the District's service area, is interested in serving as a member of the Corporation Board of Directors, if approved by the ACWD Board of Directors. Mr. Utic is also a former ACWD Board member, which is consistent with the current composition of the Corporation Board of Directors.

This item was reviewed with the Administrative & Finance Committee on August 25, 2009 and with the Board of Directors at the September 10, 2009 Board meeting.

A motion was made by Director Reynolds, seconded by Director Huang to adopt a resolution approving Phillip J. Utic as a Director of the Alameda County Water District Public Facilities Financing Corporation.

RESOLUTION NO. 09-050

OF BOARD OF DIRECTORS OF THE ALAMEDA COUNTY WATER DISTRICT FOR THE APPROVAL OF PHILLIP J. UTIC AS A DIRECTOR OF THE ALAMEDA COUNTY WATER DISTRICT PUBLIC FACILITIES FINANCING CORPORATION

The motion was passed by the following vote:

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

6.4* AUTHORIZATION OF PURCHASE ORDER FOR DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR THE NILES BOULEVARD PIPELINE PROJECT

The City of Fremont (City) is planning construction of the Niles Boulevard Roadway Improvement Project that includes sidewalk and roadway improvements between Hillview Drive and the Sullivan Underpass. As a result of the City's project, an existing 6-inch water main that was installed in 1955 needs to be relocated due to conflicts with the proposed sidewalk. Additionally, upsizing the main to 12-inches is recommended to improve water service in the area. Construction of the City's project is scheduled for early summer of 2010 and the pipeline relocation needs to be completed prior to the City's project. Because this project is partially funded by the City of Fremont Redevelopment Agency, the District will be reimbursed for a portion of the cost of the work.

Four qualified consultants were requested to submit proposals to prepare design drawings and specifications and to provide construction support services. Based on a comprehensive evaluation of the four proposals submitted, HMH of San Jose, California was the firm determined to have the qualifications, staff, and proposed approach that best meets the District's needs. HMH's estimated cost based on a time and expense basis for the work is \$59,940. There is adequate funding in the budget for this expenditure.

A motion was made by Director Reynolds, seconded by Director Huang to 1) authorize a purchase order to HMM for design and construction support services in an amount not to exceed \$59,940 for the Niles Boulevard Pipeline Project; and 2) authorize the General Manager to execute a service agreement with HMM for this work, Job 6438.

The motion was passed by the following vote:

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

6.5* RESOLUTION AUTHORIZING THE ENTERING INTO A STATEMENT OF UNDERSTANDING WITH THE NATIONAL MARINE FISHERIES SERVICE FOR THE CALIFORNIA CENTRAL COAST STEELHEAD RECOVERY PROGRAM

Under the Federal Endangered Species Act (ESA), the National Marine Fisheries Service (NMFS) is required to develop a Recovery Plan for species that are listed as endangered or threatened. The purpose of Recovery Plans is to identify the processes by which listed species and their ecosystems can be restored and their future safeguarded to the point that protections under the ESA are no longer needed. Key elements of a Recovery Plan include: 1) a description of site specific management actions that are needed to achieve the goal of the recovery of the species; 2) measurable criteria which, when met, would result in the species being de-listed; and 3) estimates of the time required and costs to carry out the measures identified in the Recovery Plan. Recovery Plans are not intended to be regulatory documents, but rather are guidance documents for federal agencies and others in recovery efforts.

NMFS is currently in the process of developing a Recovery Plan for Central California Coast Steelhead. The geographic extent of the Steelhead Recovery Plan will include the Alameda Creek watershed, which has been identified as one of the key watersheds in the San Francisco Bay Area for steelhead recovery. To facilitate the development of the Steelhead Recovery Plan, a Statement of Understanding (SOU) among NMFS and local agencies in the Central California Coast region has been developed. The purpose of the SOU is to set forth how the local agencies will participate with NMFS in a collaborative effort as NMFS develops the Recovery Plan. Benefits for local agencies, such as ACWD, to participate in the SOU include: 1) being part of the discussion of recovery goals, objectives and actions such that the local agencies' recovery actions can be consistent with the goals developed for the Recovery Plan, and 2) improved collaboration with other stakeholders and local agencies in the regional recovery efforts. In addition, coordination with NMFS regarding the prioritization of recovery projects in the Alameda Creek Flood Control Channel may improve the grant funding potential for these projects. There is no financial obligation for ACWD to be a signatory to the SOU. Other signatories to the SOU include Zone 7 Water Agency and Sonoma County Water Agency. The SOU was reviewed with the Water Resources Planning Committee on October 1, 2009.

A motion was made by Director Reynolds, seconded by Director Huang to adopt a resolution authorizing the General Manager to enter into a Statement of Understanding with the National Marine Fisheries Service for participation in the development of the Central California Coast Steelhead Recovery Program.

RESOLUTION NO. 09-051

OF BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
AUTHORIZING THE ENTERING INTO A STATEMENT OF
UNDERSTANDING WITH THE NATIONAL MARINE FISHERIES SERVICE
FOR THE CALIFORNIA CENTRAL COAST STEELHEAD RECOVERY
PROGRAM

The motion was passed by the following vote:

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

6.6 RESOLUTION APPROVING ADOPTION OF FREMONT REDEVELOPMENT
AGENCY AGREEMENTS

Director Weed stated that as an owner of commercial property in the Niles district of Fremont, which could be affected by the redevelopment plan, he would recuse himself from any participation in or discussion of Item 6.6. He then left the Directors' Room.

Mr. Shaver then reported that the Fremont Redevelopment Agency (RDA) is proposing to amend the existing Fremont Redevelopment Plan with the Fremont Merged Redevelopment Project Area Plan Amendment (Plan Amendment). The Plan Amendment: 1) amends the existing redevelopment plans for the four project areas (Irvington, Niles, Centerville, and Industrial) that have previously been fiscally merged into a single Merged Redevelopment Project Area; 2) increases the cap on the maximum amount of tax increment financing to be collected in the project areas from \$400 million to \$1.5 billion; and 3) updates the projects, programs, and activities that may be undertaken by the RDA.

The proposed Plan Amendment requires the existing Industrial Area Second Amended and Restated Fiscal Agreement between the RDA and the twelve affected taxing agencies, including the District, to be similarly amended. Accordingly, District staff and legal counsel have been working with RDA and City of Fremont (City) staff for the past two years to revise the fiscal agreement, as well as the related existing water facility relocation cost sharing and hazardous materials remediation agreements. The following three agreements are now mutually satisfactory to RDA, City, and District staffs and were reviewed with the Engineering and Capital Projects Committee on September 24, 2009:

Third Amended and Restated Fiscal Agreement Regarding Fremont Industrial Redevelopment Project: The overall effect to the District would be essentially “revenue neutral.” With “pass-through” payments, the District will continue to receive property tax revenue as if there were no amendment. Similarly, the District would continue to receive the State Water Contract override taxes from all four project areas.

First Amended and Restated Agreement Regarding Redevelopment-Related Water Facility Relocation Costs: This agreement provides for District reimbursement for costs relating to relocating and/or modifying District facilities affected by redevelopment-

funded work. The revisions clarify RDA and District cost-sharing responsibilities, improve communication and coordination between the RDA and the District, and protect the District in the event the District incurs costs to accommodate a planned RDA project that is delayed or cancelled.

First Amended and Restated Agreement Regarding Hazardous Materials Remediation and Groundwater Protection for Fremont's Historic District Redevelopment Project Areas: This agreement established a special remediation account in the amount of \$500,000 to fund the cleanup of hazardous materials at various sites with prioritization given to sites that meet specific criteria. Approximately \$200,000 has been spent on clean-up activities since the remediation account was funded. The proposed revisions reflect the remediation activities that have occurred and require the RDA to replenish the available funding in the remediation account to the original \$500,000 balance.

Discussion ensued and staff answered questions from the Board.

A motion was made by Director Koller, seconded by Director Huang to adopt a resolution approving and authorizing execution of agreements with the Redevelopment Agency of the City of Fremont.

RESOLUTION NO. 09-052

OF BOARD OF DIRECTORS OF ALAMEDA COUNTY WATER DISTRICT
AUTHORIZING THE EXECUTION OF AGREEMENTS WITH THE
REDEVELOPMENT AGENCY OF THE CITY OF FREMONT

The motion was passed by the following vote:

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

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- Mr. Piraino introduced Leonard Pristia to the Board as the new Distribution Maintenance Manager. Mr. Pristia comes to the Alameda County Water District with over 31 years of experience at East Bay Municipal Utility District. The Board welcomed Mr. Pristia to the District.

7 – REPORTS

7.1 BOARD COMMITTEE REPORTS

- Operations & Water Quality Meeting of September 2, 2009: (1) Preparing the ACWD Annex to the Association of Bay Area Government (ABAG) Multi-Jurisdictional Local Hazard Mitigation Plan
- Legal & Legislative Meeting of September 9, 2009: (1) Review of State Legislation

- Engineering & Capital Projects Meeting of September 17, 2009: (1) Deer Road Property; (2) New United Motor Manufacturing, Inc.
- Special Engineering & Capital Projects Meeting of September 24, 2009: (1) Redevelopment Related Agreements
- Water Resources Planning Meeting of October 1, 2009: (1) LAVWMA Agreement Update; (2) Alameda Creek Fisheries Update; (3) 2010 Urban Water Management Plan

7.2 OPERATIONAL REPORTS

- Rainfall Report
- Quarterly Groundwater Recharge Report
- Water Production Report
- Investment Report
- Quarterly Directors' Expense Report

7.3 STAFF REPORTS - None

7.4 GENERAL MANAGER'S REPORTS

- Update on SB 133 (Corbett) – ACWD Groundwater Protection Act – Mr. Piraino reported that SB 133 unanimously passed both Houses of the Legislature and all Policy and Appropriations Committees and is now ready for Governor Schwarzenegger's approval or veto. Governor Schwarzenegger has told Legislative leaders that he wants a water bill package on his desk by midnight, Sunday, October 11 before he acts on the 700 bills, including SB 133, awaiting his signature. Mr. Piraino informed the Board that he will keep them apprised of the outcome of this situation.
- Update on September 30, 2009 Water Revenue Bond Refinancing – Mr. Piraino notified the Board that the Water Revenue Bonds were successfully refinanced on September 30, 2009 which resulted in a substantial savings for the District. Net present value is \$4 million dollars in and the District will save over \$500,000 per year over the next ten years in debt service costs.
- Mr. Piraino announced that District Counsel, Ray McDevitt of Hanson Bridgett will be retiring as of December 31, 2009 and he will be "Of Counsel" to the Hanson Bridgett firm after that time. Patrick Miyaki, also of Hanson Bridgett, will be formally assuming the role of District Counsel. A resolution honoring Mr. McDevitt for his service to the District will be forthcoming.
- Mr. Piraino also took the opportunity to address the Board as his tenure as General Manager ends. He thanked the Board for the opportunity to serve as General Manager for the last 12 years. He stated that he could not ask for a more supportive Board or staff over this time. Over the last 27 years Mr. Piraino has attended over 650 Board of Directors meetings where many issues have been addressed, problems have been resolved, projects have been completed and significant progress has been made on many

fronts. Mr. Piraino stated that he is leaving behind an excellent staff that is more than a match to deal with any future challenges that come their way.

Each Board member expressed their sincere gratitude for Mr. Piraino's service to the Board, the staff and the community.

8 – DIRECTOR'S COMMENTS AND/OR AGENDA ITEM REQUEST - None

There being no further business to come before the Board, President Gunther adjourned the meeting at 7:30 P.M.

Andrew Warren, Assistant District Secretary

Attest:

James G. Gunther, President