MINUTES OF THE BOARD OF DIRECTORS
ZONE 7 CORRECTED
ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

REGULAR MEETING

February 19, 2014

The following were present:

DIRECTORS: SANDS FIGUERS
JOHN GRECI
A J MACHAEVICH
SARAH PALMER
RICHARD QUIGLEY
ANGELA RAMIREZ HOLMES
BILL STEVENS

DIRECTORS ABSENT: NONE

ZONE 7 STAFF: JILL DUERIG, GENERAL MANAGER
KURT ARENDS, ASSISTANT GENERAL MANAGER, ENGINEERING
TOM HUGHES, ASSISTANT GENERAL MANAGER, ADMINISTRATION
CAROL MAHONEY, MANAGER, INTEGRATED PLANNING
COLLEEN WINEY, ASSISTANT GEOLOGIST, GROUNDWATER
JUDY RECTOR, BOARD SECRETARY

COUNSEL: DAVID ALADJEM, DOWNEY BRAND

The Board went into closed session at 6:30 p.m.

Item 1 - Closed Session

(a) Conference with Legal Counsel -- Initiation of litigation pursuant to Gov't Code Section 54956.9(d)(4): 2 cases.

(b) Conference with Legal Counsel -- Significant exposure to litigation pursuant to Gov't Code Section 54956.9(d) (2): 2 cases

(c) Conference with Legal Counsel -- Potential litigation pursuant to Gov't Code section 54956.9(d) (3): 1 case.

(d) Conference with Labor Negotiators:
Agency Negotiator: G.F. Duerig
Employee Organizations: Alameda County Management Employees Association; Alameda County Building and Construction Trades Council, Local 342, AFL-CIO; International Federation of Professional and Technical Engineers, Local 21, AFL-CIO; Local 1021 of the Service Employees International Union, CTW; Unrepresented Management.

Item 2 - Open Session and Report Out of Closed Session

The Board came out of Closed Session at 7:10 p.m.   General Counsel David Aladjem reported that no reportable action was taken in closed session.

Item 3 - Call Meeting to Order

President Stevens called the meeting to order at 7:14 p.m.

Item 4 - Pledge of Allegiance

President Stevens led a salute to the flag.

Item 5 - Citizens Forum - None.

Item 6 - Minutes of the Regular Meeting of January 15, 2014 and the Special Meeting of January 29, 2014

Director Ramirez Holmes moved and Director Palmer seconded the motion to approve the minutes of January 15, 2014. The minutes were approved by a 7-0 voice vote.

Director Ramirez Holmes submitted corrections for the Special Meeting of January 29, 2014, to Board Secretary Judy Rector in advance of the meeting and revised minutes were available to the Board and public.

Director Ramirez Holmes moved and Director Greci seconded the motion to approve the amended minutes of January 29, 2014. The minutes were approved by a 7-0 voice vote.

Item 7 - Consent Calendar

Director Quigley moved for approval of Consent Items 7 (a), 7 (b) and 7 (c) and Director Palmer seconded the motion which was approved by a voice vote of 6-0-1 with Director Figuers absent.

Resolution No. 14-4343	The Board amended the Conflict of Interest Code. (Item 7a)
Resolution No. 14-4344	Authorized the General Manager to negotiate and execute the Rate Agreement for the Astoria II Solar Project and future agreements to continue to receiving PWRPA power. (Item 7b)
Resolution No. 14-4345	Approved one unfunded position of Junior/Assistant Engineer/Geologist, Zone 7. (Item 7c)

Item 8 - Staffing Update:

New Employee Introductions: Ms. Duerig welcomed two new employees to Zone 7. Jerry Harris, Water Resources Technician 1, works in Maintenance. Gene Briones, Water Resources Technician 1, in Facilities Engineering. The Board applauded both new employees.

December Employee of the Month Recognition: Ms. Duerig announced that JaVia Green, Staff Analyst in the Financial & Systems Services section, is the December Employee of the Month. Ms. Green was also the November 2011 Employee of the Month so this is the second time she has been nominated. The Board applauded her in recognition of her value to Zone 7.

Congratulations to Retiree: Ms. Duerig announced that Jack Fong, Associate Civil Engineer, retired on February 1, 2014, after 30 years of service. The Board applauded him in absentia.

Director Quigley moved for approval and Director Palmer seconded the motion commending and thanking Mr. Fong for his public service. The motion was passed with a voice vote of 7-0.

Resolution No. 14-4346 Retirement of Jack Lowe Fong, Associate Civil Engineer. (Item 8)

Item 9 - Chain of Lakes Well No. 5 - Hearing on the Resolution of Necessity Declaring the Public Necessity for Acquisition of Property Interests from Alameda County APNs 904-1-2-5 and 904-1-7-18 and Directing the Filing of Eminent Domain Proceedings

Carol Mahoney, Integrated Planning Manager, gave an overview of the process of the proposed Resolution of Necessity (RON), background information and facts. The project, Chain of Lakes Well No. 5, is owned by Pleasanton Gravel Company, near Zone 7's Chain of Lakes Wells Nos.1 and 2, and the property is currently vacant. The procedure for the public hearing and the Resolution of Necessity (RON) is: a) the property owner receives a notice of the hearing; b) a staff presentation that includes the legal requirements is heard; c) a project overview and property details as provided; d) the Board has a question-and-answer period and there is a presentation if requested by the property owner; and e) the Board votes on the Resolution with a 2/3 vote required for adoption. The four required findings for the exercise of power and adoption of a RON are as follows:

Finding 1 - The public interest and necessity require the project. The Board declared a state of drought emergency and approved the Drought Emergency Response Plan. The Emergency Response Plan calls for Chain of Lakes No. 5 to be completed and operational by August 2014. The local groundwater basin is critically important during a drought. Well No. 5 is projected to produce 1 to 2 million gallons per day or 20% net of the total projected shortfall. Constructing the well immediately will help reduce potential water shortages. The proposed property is necessary to construct, maintain and operate Well No. 5.

Finding 2 - The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury. The proposed acquisition is limited in scope and necessary for the construction of the project and the long term operation and maintenance of the well and associated pumping plant facility. The proposed location of the project is vacant and no one will be displaced by the project.

Finding 3 - The property interests are necessary for the proposed project. Proposed acquisition is necessary for the project on vacant land. The pipeline between existing Chain of Lakes Well No. 1 treatment facility and the proposed site is already in place.

Finding 4 - The Project is an emergency project, and is necessary either to protect or preserve health, safety, welfare or property. The Drought Emergency Response Plan adopted on January 29, 2014, calls for the proposed well to be operational by August 2014 in order to reduce projected water shortages in the Livermore-Amador Valley this year. In order to complete the project on time, Zone 7 needs immediate possession of the property.

Director Greci said this well has been on the Well Master Plan schedule for a long time. He stated that the Board cannot meet our mission and goals of Zone 7 unless we do this project, and it will be done in a fair and expedited manner.

Director Ramirez Holmes asked if a purchase offer was made to the owner. General Counsel David Aladjem confirmed that an offer for $75,000 was made on February 4, 2014, but there had not been a response. A letter from the land owner's counsel, Arnold & Porter LLP, detailed three concerns that were subsequently addressed in a response letter from Mr. Arends:

- The first concern involved Zone 7 drilling a well on its property to determine if a well on Pleasanton Gravel's (PGC's) property is feasible. Mr. Arends responded that Zone 7 is not installing a well on its property; it is drilling an exploratory boring to determine underground geology to assist in the design and development of the well. Zone 7's property is not large enough for the construction, operation and maintenance of the other facilities necessary for a production facility and Zone 7 needs to acquire the land from PGC for the proposed well site.

- The second concern involved permanently taking the property through eminent domain. PGC feels it is not necessary because a temporary taking will meet Zone 7's present needs for a temporary emergency due to the severe drought. The drought presumably will end and Zone 7 will not need the groundwater production well. Mr. Arends responded that the well was identified in the Well Master Plan and EIR completed in 2005 and the construction of this well has been included in the Capital Improvements Plan for a number of years. The well is not only for the current drought emergency but also to meet Zone 7's permanent long-term water needs.

- The third concern is that the $75,000 offer undervalues the property based on not accounting for the value of PGC's right to use the groundwater, PGC's oil and gas rights are potentially valuable and an oil and gas well would be precluded by the proposed water well, and the proposed taking would impair substantially more than 1.26 acres. A suggestion was made that if a test well site is not suitable, PGC is prepared to negotiate a short-term, fair market lease that enables Zone 7 to operate a well during the drought. Mr. Arends' response was that Zone 7 believes the fair market value of the land includes the rights to groundwater and the rights to oil and gas. Zone 7 staff believes that the proposed well can be constructed, operated and maintained without causing interference with PGC's activities on its adjacent property.

Director Ramirez Holmes asked if and how the property owner was noticed about this Board meeting? Mr. Aladjem replied that, as part of the Notice Language in the Code, the property owner was noticed in the February 4, 2014, letter and informed when there would be a hearing.

Ms. Mahoney noted additional letters in her initial remarks and reported that Zone 7 had been given a plat and legal which is the next step in getting an appraisal. Mr. Aladjem clarified that the plat and legal had been ordered from the surveyors and the results were given to Zone 7 the day of this board meeting.

President Stevens asked for public comments and, finding none, closed the public hearing. Director Quigley moved and Director Palmer seconded the motion which was approved by a roll call vote of 7-0.

Resolution No. 14-4348 The Board of Directors authorized and empowered legal counsel to acquire the property interests by such proceedings as necessary; deposit the probable amount of compensation; and apply to the court for an order permitting Zone 7 to take possession of the Property.

Item 10 - Chain of Lakes Preliminary Lake Use Evaluation - Draft Report and Near-Term Recommendations

Colleen Winey, Assistant Geologist in the Groundwater Section, presented to the Board the highlights of the Report and Near-Term Recommendations. A timeline showed the progress made over the past year when staff developed a list of potential lake uses and an evaluation of criteria and methodology to do the evaluation. Input came from the Water Resources Committee, retailers, the Liaison Committee, members of the public and the Zone 7 Board. The purpose of the Evaluation was to identify potential uses for the lakes and suitability of individual lakes for the respective uses. The Evaluation also identified any conflicting proposed uses and a framework for evaluating specific projects that may come to the Board as the lakes are transferred to Zone 7 ownership, for example the East Pleasanton Specific Plan. Another purpose of the Evaluation was to communicate uses by Zone 7 for the Chain of Lakes to other agencies and the public. The changes to the use of the lakes in the next 20 to 50 years can be updated along with changes in water management.

Key assumptions were made during the evaluation including identified uses, primary and secondary uses, and an evaluation of "As Is" lakes in their existing condition versus the expected condition of lakes at the time of transfer. A summary of results and use compatibility were also included. The recommended action was for the Board to receive public comments, accept the draft report and approve near-term recommendations for Lakes I, H, and Cope.

Ms. Duerig told the Board that a letter from Dublin San Ramon Services District (DSRSD) had been received reminding Zone 7 of the provisions of the Memorandum of Understanding (MOU) with them to consider recycled water storage alternatives. Lake F has been identified as potentially the most suitable for recycled water storage but it is not a part of the near-term recommendations because it is not on the horizon to come to Zone 7 within the next few years. It is part of the overall lake use plan so Zone 7 has followed the MOU with DSRSD.

~~No comments from the public.~~

Director Ramirez Holmes asked about the letter provided to the Board and public from Allen Matkins Leck Gamble Mallory & Natsis LLP. Ms. Duerig said the letter was from legal counsel for Rhodes & Jamieson and others regarding recycled water storage and concerns addressed in the report. Director Ramirez Holmes then asked if those attorneys saw the final draft and Mr. Aladjem read the sentence contained in the letter: "We therefore object to any Preliminary Lake Use Evaluation suggesting that recycled water storage could be a 'primary' use of any lake on or near out clients' property or in the Chain of Lakes." Since recycled water storage is not a primary use, it was a concern they raised perhaps because they had not seen the report, but that concern has been addressed.

Since Cope Lake is the most suitable for flood control, and questions were brought up at the Water Resources Committee, Director Ramirez Holmes wanted to confirm that Zone 7 considers it one of the primary uses for Cope Lake. Ms. Winey confirmed that Cope Lake scored the highest for stormwater detention.

Ms. Duerig clarified that when the "draft" is accepted by the Board, it will become the "final" report. President Stevens noted that the Plan will continue to evolve and Director Ramirez Holmes confirmed that as lakes are turned over, uses will be discussed again. Ms. Winey agreed that plans could change in the future but this addresses the near-term recommendations.

Director Quigley asked if other recreational entities had commented on the evaluation of future uses. Ms. Duerig noted that a joint staff meeting is scheduled with East Bay Regional Park District, Livermore Area Recreation Park District and Tri-Valley Conservancy. A Liaison Committee meeting with Board members is in the process of being scheduled. Ms. Duerig also stressed that this is a living document and that the recommendation is to accept the report but if change is needed, it can be changed. Preliminary recommendations are two-fold: 1) Zone 7 can interface with the East Pleasanton Specific Plan; and 2) Zone 7 has a tool for evaluating uses if change is needed.

Director Palmer pointed out that the report states "Preliminary Lake Use Evaluation" and that it is preliminary and a framework to use in developing policies in the future.

Director Figuers expressed concerns that protecting or enhancing habitat could result in long-term obligations limiting water management flexibility. Mr. Aladjem reassured him that new obligations were unlikely.

Director Quigley said that because this document is a living document for the future, it gives other agencies an opportunity to collaborate on funding or being involved in projects which benefit the community. He feels any wording about 80% of the water being imported and any mention of urban runoff explaining where the water comes from for the Chain of Lakes is an important element not contained in the Evaluation.

Director Machaevich said there are a lot of areas that could be changed in the future because it is an evaluation and a good use of the public's money to know what Zone 7 is planning on doing. He urged the Board to adopt this Plan.

Public Comments:

Jennifer Jimenez Jamieson, representing Pleasanton Gravel, said that their letter had not been addressed just because recycled water was not being considered as a primary use but only as a secondary use, and all of Zone 7's primary uses are not compatible with recycled water. If Zone 7 puts recycled water in a certain place, they can't do any of the primary uses. She wanted to make it clear that they object to having recycled water as a primary and as a secondary use.

Joe Cunningham, representing Valley Trails Homeowners Association, an area which borders the Mocho, said that this evaluation for Chain of Lakes does fit in with regional storage of stormwater.

Director Palmer moved for approval of the resolution and Director Quigley seconded the motion. The motion passed with a roll call vote of 7-0.

Resolution No. 14-4347	Accept the "Preliminary Lake Use Evaluation for the Chain of Lakes" and adopts proposed near-term recommendations for Lakes H, I, and Cope Lake.

Item 11 - Committees - Water Resources Committee, January 13, 2014 - notes

Item 12 - Reports - Directors

a. Verbal comments by President

b. Written report by Director Quigley

c. Other Directors' Verbal Reports

Director Ramirez Holmes thanked Zone 7 and DSRSD staff for setting up the California Water Action Plan event with Secretary of Natural Resources John Laird on January 30. She also attended the drought emergency meeting at DSRSD on February 4 and complimented Zone 7's Dr. Amparo Flores' presentation. On February 13th she attended attended Supervisor Miley's Pleasanton Advisory Committee. A future committee meeting on water may be planned as there is also a new Alameda County Creeks Ordinance. She attended the Elected Women Officials' Lunch. She also viewed the California Special Districts Association's webinar on Understanding Board Member and District Liability Issues.

Director Palmer had about 15 of her students attend the California Water Action Plan event with Secretary Laird and thought it was very beneficial for them. She also attended the Elected Women Officials' Lunch.

Director Figuers reported that he had attended the ACWA Groundwater Committee meeting in Sacramento and it was the best meeting he had attended in 20 years. He summarized the questions asked at the ACWA Groundwater Committee and the information shared.

Director Quigley noted the upcoming Region 5 Event "Working Together in Dry Times" on March 23-24 at the Seacliff Inn in Santa Cruz.

Item 13 - Items for Future Agenda - Directors

Item 14 - Staff Reports (Information items.)

a. General Manager's Report
b. Communications Outreach Activities
c. Legislative Update
d. Monthly Budget Report
e. Drought Update
f. Verbal Reports

Ms. Duerig pointed out the new staff report, Drought Update, which will continue throughout the drought emergency and is a status report on current conditions and emergency projects. More consultants will likely be brought in to assist existing staff members that are overextended.

Director Ramirez Holmes asked if the costs for the consultants were coming out of the amounts the Board authorized for emergency projects. Ms. Duerig responded that consultant costs were included in the design-build cost of emergency projects; however a small consultant contract was put together to provide oversight to the existing Project engineers and not factored in for the three existing projects.

Director Ramirez Holmes mentioned the upcoming forum for the League of Women Voters and Sierra Club on February 20th because Ms. Duerig is on the panel. It is a BDCP informational item, not a debate, with one other panelist pro-Delta improvements and two opponents.

The board went back into closed session at 8:30 p.m.

Item 15 - Closed Session - continued

Item 16 - Open Session and Report Out of Closed Session

The Board came out of Closed Session at 9:12 p.m.

Director Palmer moved and Director Ramirez Holmes seconded a motion approving Resolution 14-4349 which was then passed by a voice vote of 7-0.

Resolution No. 14-4349	Authorized the General Manager to surplus County property.

Director Palmer moved and Director Ramirez Holmes seconded a motion approving Resolution 14-4350 which was then passed by a voice vote of 7-0.

Resolution No. 14-4350	Authorized the General Manager to purchase Union Pacific Railroad property offered for sale.

Item 17 - Adjournment

The meeting was adjourned at 9:20 p.m.