



BOARD OF DIRECTORS MEETING

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# MINUTES

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**CLOSED SESSION AND REGULAR MEETING  
TUESDAY, SEPTEMBER 12, 2023  
11:00 AM**

(Paragraph numbers coincide with agenda item numbers)

**1. CALL TO ORDER/ROLL CALL:**

A Closed Session and Regular Meeting of the Santa Clara Valley Water District (Valley Water) Board of Directors was called to order in the Valley Water Headquarters Building Boardroom at 5700 Almaden Expressway, San Jose, California, and by Zoom teleconference, at 11:00 a.m.

1.1. Roll Call.

Board members in attendance were Jim Beall, Rebecca Eisenberg, Tony Estremera, Nai Hsueh, Barbara F. Keegan, Richard P. Santos, and John L. Varela, Chairperson presiding, constituting a quorum of the Board.

Staff members in attendance were R. Callender, Chief Executive Officer, C. Orellana, District Counsel, M. King, Clerk, Board of Directors, J. Aranda, E. Aryee, A. Baker, L. Bankosh, J. Bourgeois, T. Chinte, J. Codianne, R. Gibson, A. Gordon, C. Hakes, B. Hopper, C. Lawson, R. McCarter, P. McElroy, T. Ndah, D. Rocha, D. Taylor, G. Williams, B. Yerrapotu, and T. Yoke.

**2. 11:00 AM - CLOSED SESSION:**

Chairperson Varela confirmed that the Board would adjourn to Closed Session for consideration of Items 2.1 and 2.2.

2.1. CLOSED SESSION  
CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
Pursuant to Government Code Section 54956.9(d)(1)  
Stop the Pacheco Dam Project Coalition v. Santa Clara Valley Water District  
(Santa Clara Co. Superior Court, Case No. 22CV399384)

2.2. CLOSED SESSION  
PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Pursuant to Government Code Section 54957(b)(1)  
Titles: CEO, District Counsel, and Clerk of the Board

2.3. District Counsel Report on Closed Session.

Upon return to Open Session, the same Board members and staff were present.

Carlos Orellana, District Counsel, reported that in regard to Item 2.1, the Board met in Closed Session with all members participating and gave direction to staff; and in regard to Item 2.2, Chair Varela reported that the Board met in Closed Session with all members participating, and took no reportable action.

**3. 1:00 PM - TIME CERTAIN**

3.1. Pledge of Allegiance/National Anthem.

Director Santos requested participation in a moment of silence in remembrance of September 11, 2001, and led all present in reciting the Pledge of Allegiance.

3.2. Orders of the Day.

Chairperson Varela confirmed that there were no changes to the Orders of the Day.

3.3. Time Open for Public Comment on any Item not on the Agenda.

Chairperson Varela declared time open for public comment on any item not on the agenda. There was no one present who wished to speak.

3.4. Consider the August 10, 2023, Board Policy and Planning Committee Recommendation to Review the Board of Director Code of Ethics and Conduct Policy, Discuss Director Eisenberg's Objection to Language in Section 2: Board Members' Conduct with Valley Water Staff and Adopt the Policy.

Recommendation: Consider the August 10, 2023, Board Policy and Planning Committee Recommendation to:

- A. Review the Valley Water Board of Director Code of Ethics and Conduct Policy (Policy), Discuss Director Eisenberg's objection to language in Section 2: Board Members' Conduct with Valley Water Staff and Adopt the Policy; and
- B. If the Policy is adopted, staff requests Board approval to revise the relevant Board Governance Policies, to remove identified language.

Director Hsueh reviewed the information on this item per the attached Board Agenda Memo.

Aram James, of undisclosed residency, expressed concern regarding the Board of Director Code of Ethics and Conduct Policy and objected to the language in Section 2: Board Members' Conduct with Valley Water staff.

Jethroe Moore, of undisclosed residency, expressed support regarding the proposed language updates and requested the Board adopt them.

Motion: Adopt the Board of Director Code of Ethics and Conduct Policy, as presented.

Move to Adopt: Tony Estremera  
Second: Nai Hsueh  
Yeas: Jim Beall, Tony Estremera, Nai Hsueh, Barbara F. Keegan, Richard Santos, John L. Varela  
Nays: Rebecca Eisenberg  
Abstains: None  
Recuses: None  
Absent: None  
Summary: 6 Yeas; 1 Nays; 0 Abstains; 0 Absent.

The Yeas have it, and the motion passed.

Director Eisenberg explained that they voted in opposition to the item because they object to the new language incorporated into the Code of Conduct.

## **REGULAR AGENDA:**

### **4. CONSENT CALENDAR:**

Chairperson Varela removed Item 4.9 from the Consent Calendar and continued the Item to a future Board meeting, and the Board considered Consent Calendar Items 4.1 through 4.8 and 4.10 through 4.12 under one motion.

- 4.1. Adopt a Resolution Declaring September 15, through October 15, 2023, as Chicano/Hispanic/Latino Heritage Month.

Recommendation: Adopt the Resolution DECLARING SEPTEMBER 15 THROUGH OCTOBER 15, 2023, AS CHICANO/HISPANIC/LATINO HERITAGE MONTH.

- 4.2. Adopt a Resolution Declaring September 23, 2023, as California Coastal Cleanup Day in Santa Clara County.

Recommendation: Adopt the Resolution DECLARING SEPTEMBER 23, 2023, AS CALIFORNIA COASTAL CLEANUP DAY IN SANTA CLARA COUNTY.

- 4.3. Adopt a Resolution Proclaiming September 2023, as National Preparedness Month.

Recommendation: Adopt the Resolution PROCLAIMING SEPTEMBER 2023, AS NATIONAL PREPAREDNESS MONTH.

- 4.4. Approve the Board of Directors' Quarterly Expense Report for the Quarter Ending June 30, 2023.

Recommendation:   A. Review the Board of Directors' Quarterly Expense Report for the Quarter Ending June 30, 2023; and  
                          B. Approve the report if the reimbursements comply with Board Policy.

- 4.5. Approve the License Agreement No. A4891X, with Hummingbird Energy Storage, LLC and the Consent Agreement No. A4892X, with both Hummingbird Energy Storage, LLC and First-Citizens Bank & Trust Company for a Consent Agreement for the Hummingbird Energy Storage Project, (San Jose, Unincorporated, District 1).

Recommendation:   A. Consider the potential environmental effects of the Hummingbird Energy Storage Project as described in the lead agency's Initial Study/Mitigated Negative Declaration (IS/MND) for the Hummingbird Energy Storage Project and Addendum to the IS/MND;  
                          B. Adopt the attached resolution MAKING RESPONSIBLE AGENCY FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO RELY ON THE INITIAL STUDY/MITIGATED NEGATIVE DECLARATION AND ADDENDUM PREPARED BY THE LEAD AGENCY TO GRANT APPROVAL OF A LICENSE AND CONSENT AGREEMENT WITH HUMMINGBIRD ENERGY STORAGE, LLC and adopt Valley Water's Mitigation Monitoring and Reporting Program for the Project and authorize and direct the Chief Executive Officer or his designee to execute any such documents and to perform any such acts as may be necessary or appropriate to accomplish the intent of this resolution;  
                          C. Approve the License Agreement with Hummingbird Energy Storage, LLC for the Hummingbird Energy Storage Project; and  
                          D. Approve the Consent Agreement with Hummingbird Energy Storage, LLC and First-Citizens Bank & Trust Company.

- 4.6. Approve the Request for Sponsorship of the Bay Area Council Foundation's California Resilience Challenge, 2023.

Recommendation:   A. Receive information of the Bay Area Council's Foundation's California Resilience Challenge; and  
                          B. Approve the request for sponsorship in the amount of \$200,000.

- 4.7. Accept the Work as Complete and Direct the Clerk to File the Notice of Completion of Contract and Acceptance of Work for the Almaden Valley Pipeline Inspection and Rehabilitation Project, Mountain Cascade, Inc., Project No. 95084002, Contract No. C0685 (San Jose and Unincorporated Santa Clara County, Districts 1 and 7).

Recommendation: A. Accept the work on the Almaden Valley Pipeline Inspection and Rehabilitation Project, Mountain Cascade, Inc., Project No. 95084002, Contract No. C0685 as complete; and  
B. Direct the Clerk of the Board to sign the Notice of Completion of Contract and Acceptance of Work and submit for recording to the Santa Clara County Clerk-Recorder.

- 4.8. Receive the Audit Report of the Water Utility Enterprise Funds for the Fiscal Year Ended June 30, 2022.

Recommendation: Receive the audit report of the Water Utility Enterprise funds for the fiscal year ended June 30, 2022.

- 4.9. Denial of Well Owner Request to Modify Groundwater Benefit Zone W-2 to Exclude Well 07S02E08R003.

Recommendation: Deny the well owner's request to modify Groundwater Benefit Zone W-2 to exclude well 07S02E08R003.

- 4.10. Denial of Well Owner Request to Modify Groundwater Benefit Zone W-5 to Exclude Well 09S03E15B004.

Recommendation: Deny the well owner's request to modify Groundwater Benefit Zone W-5 to exclude well 09S03E15B004.

- 4.11. Update on the Atmospheric River Emergency and Determination that the Emergency Conditions Continue to Constitute an Emergency.

Recommendation: Determine by a four-fifths vote of the Board that there is a need to continue the emergency action declared by the Chief Executive Officer (CEO) on March 9, 2023, pursuant to California Public Contract Code §22050 to address the flood emergency.

- 4.12. Accept the CEO Bulletin for the Weeks of August 18 through September 7, 2023.

Recommendation: Accept the CEO Bulletin.

Motion: Approve Consent Calendar Items 4.1 through 4.8, and 4.10 through 4.12, under one motion as follows: adopt Resolution Nos. 23-79, DECLARING SEPTEMBER 15 THROUGH OCTOBER 15, 2023, AS CHICANO/HISPANIC/LATINO HERITAGE MONTH, 23-80, DECLARING SEPTEMBER 23, 2023, AS CALIFORNIA COASTAL CLEANUP DAY IN SANTA CLARA COUNTY, and 23-81, PROCLAIMING

SEPTEMBER 2023, AS NATIONAL PREPAREDNESS MONTH, by roll call vote, as contained in Items 4.1 through 4.3; approve the Board of Directors' Quarterly Expense Report for the Quarter Ending June 30, 2023, as contained in Item 4.4; adopt Resolution No. 23-82, MAKING RESPONSIBLE AGENCY FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO RELY ON THE INITIAL STUDY/MITIGATED NEGATIVE DECLARATION AND ADDENDUM PREPARED BY THE LEAD AGENCY TO GRANT APPROVAL OF A LICENSE AND CONSENT AGREEMENT WITH HUMMINGBIRD ENERGY STORAGE, LLC, approve the License Agreement with Hummingbird Energy Storage, LLC for the Hummingbird Energy Storage Project, and approve the Consent Agreement with Hummingbird Energy Storage, LLC and First-Citizens Bank & Trust Company, by roll call vote, as contained in Item 4.5; approve the request for sponsorship of the Bay Area Council Foundation's California Resilience Challenge, 2023 in the amount of \$200,000; as contained in Item 4.6; accept the work as complete and direct the Clerk to file the Notice of Completion of Contract and Acceptance of Work for the Almaden Valley Pipeline Inspection and Rehabilitation Project, Mountain Cascade, Inc., as contained in Item 4.7; receive the Audit Report of the Water Utility Enterprise Funds for the Fiscal Year Ended June 30, 2022, as contained in Item 4.8; denial of Well Owner Request to Modify Groundwater Benefit Zone W-5 to Exclude Well 09S03E15B004, as contained in Item 4.10; determine by a four-fifths vote of the Board that there is a need to continue the emergency action declared by the Chief Executive Officer (CEO) on March 9, 2023, pursuant to California Public Contract Code §22050 to address the flood emergency, by roll call vote, as contained in Item 4.11; and accept the CEO bulletin, as contained in Item 4.12.

Move to Approve:	Tony Estremera
Second:	Richard Santos
Yeas:	Jim Beall, Tony Estremera, Nai Hsueh, Barbara F. Keegan, Richard Santos, John L. Varela
Nays:	None
Abstains:	Rebecca Eisenberg
Recuses:	None
Absent:	None
Summary:	6 Yeas; 0 Nays; 1 Abstains; 0 Absent.

The Yeas have it, and the motion passed.

Chairperson Varela confirmed that Item 4.9 would be continued to a future meeting.

**5. BOARD OF DIRECTORS:**

- 5.1. Consider the August 10, 2023, Board Policy and Planning Committee Recommendation to Consider Supporting Each Santa Clara Valley Water District Board of Director Candidate with Their Statements Fees by Providing Financial Reimbursement of 50% or More, as the Board May Determine.

Recommendation: Consider recommendations resulting from the August 10, 2023, Board Policy Planning Committee meeting to:

- A. Consider Supporting Each Santa Clara Valley Water District Board of Director Candidate with Their Statements Fees by Providing Financial Reimbursement of 50% or More, as the Board May Determine; and/or
- B. Provide feedback and recommendations to staff as necessary.

The Board considered this Item without a staff presentation.

Motion: Support each Santa Clara Valley Water District Board of Director Candidate with their statement fees by providing a financial reimbursement of 50%.

Move to Accept: Tony Estremera  
Second: Nai Hsueh

Director Eisenberg offered the following substitute motion.

Motion: Support each Santa Clara Valley Water District Board of Director Candidate with their statement fees by providing a financial reimbursement of 100%.

Move to Accept: Rebecca Eisenberg  
Second: Barbara F. Keegan  
Yeas: Rebecca Eisenberg, Barbara F. Keegan  
Nays: Jim Beall, Tony Estremera, Nai Hsueh, Richard Santos, John L. Varela  
Abstains: None  
Recuses: None  
Absent: None  
Summary: 2 Yeas; 5 Nays; 0 Abstains; 0 Absent.

The Nays have it, and the motion failed.

Chairperson Varela returned to the original motion.

Motion: Support each Santa Clara Valley Water District Board of Director Candidate with their statement fees by providing a financial reimbursement of 50%.

Move to Accept: Tony Estremera  
Second: Nai Hsueh  
Yeas: Jim Beall, Rebecca Eisenberg, Tony Estremera, Nai Hsueh, Barbara F. Keegan, Richard Santos, John L. Varela

Nays: None  
Abstains: None  
Recuses: None  
Absent: None  
Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

The Yeas have it, and the motion passed.

5.2. Board Committee Reports.

The Board reviewed the information on the August 14, 2023, Environmental Creek Cleanup Committee, August 18, 2023, Water Storage Exploratory Committee, August 21, 2023, Environmental and Water Resources Committee, August 23, 2023, Youth Commission Committee, August 23, 2023, Water Commission Committee, and the August 28, 2023, Water Conservation and Demand meeting summaries and agendas, as contained in Handouts 5.2-A through 5.2-F, respectively; and noted the information without formal action. Copies of the Handouts were distributed to the Board and made available to the public.

The Board noted the information without formal action.

**6. WATER UTILITY ENTERPRISE:**

6.1. Adopt a Resolution Setting Requirements for Metering of Wells in All Valley Water Groundwater Benefit Zones.

Recommendation: Adopt the Resolution SETTING REQUIREMENTS FOR METERING OF WELL PRODUCTION IN GROUNDWATER PRODUCTION ZONES OF SANTA CLARA VALLEY WATER DISTRICT.

The Board considered this Item without a staff presentation.

Motion: Adopt Resolution No. 23-83, SETTING REQUIREMENTS FOR METERING OF WELL PRODUCTION IN GROUNDWATER PRODUCTION ZONES OF SANTA CLARA VALLEY WATER DISTRICT, by roll call vote.

Move to Adopt: Tony Estremera  
Second: Richard Santos  
Yeas: Jim Beall, Tony Estremera, Nai Hsueh, Barbara F. Keegan, Richard Santos, John L. Varela  
Nays: None  
Abstains: Rebecca Eisenberg  
Recuses: None  
Absent: None  
Summary: 6 Yeas; 0 Nays; 1 Abstains; 0 Absent.

The Yeas have it, and the motion passed.



**7. WATERSHEDS:**

None.

**8. ASSISTANT CHIEF EXECUTIVE OFFICER:**

8.1. Receive Report of Bids, Ratify Addenda, Approve the Contingency Fund, and Award the Construction Contract to AES Industrial for the Anderson Dam Seismic Retrofit Project, Federal Energy Regulatory Commission Order Compliance Project, Coyote Creek Stream Augmentation Fish Protection Measure, Chillers Plant Project, Project No. 91864008, Contract No. C0701, in the Amount of \$5,363,943.56 (Morgan Hill, District 1).

Recommendation:   A. Ratify Addenda No. 1 through 4 to the Contract Documents for the Coyote Creek Stream Augmentation Fish Protection Measure Chillers Plant Project (Project);  
                          B. Award the Contract to AES Industrial, located in San Leandro, CA in the sum of \$5,363,943.56; and  
                          C. Approve a contingency sum of \$804,591.53 and authorize the Chief Executive Officer or designee to approve individual change orders up to the designated amount.

The Board considered this item without a staff presentation.

Move to Approve:   Richard Santos  
Second:             Tony Estremera  
Yeas:                Jim Beall, Tony Estremera, Nai Hsueh,  
                          Barbara F. Keegan, Richard Santos, John L. Varela  
Nays:                Rebecca Eisenberg  
Abstains:           None  
Recuses:            None  
Absent:             None  
Summary:            6 Yeas; 1 Nays; 0 Abstains; 0 Absent.

The Yeas have it, and the motion passed.

**9. EXTERNAL AFFAIRS:**

None.

**10. CHIEF EXECUTIVE OFFICER:**

10.1. CEO and Chiefs' Reports.

Rachael Gibson, Chief of External Affairs, reviewed the attached Office of Communications Activities Summary. Christopher Hakes, Chief Operating Officer, reviewed the attached Watersheds Operations and Maintenance Report, identified as Handouts 10.1-A and 10.1-B, respectively, herein. Copies of the Handouts were distributed to the Board and made available to the public.

Tina Yoke, Chief Operating Officer, introduced Cecil Lawson as the new Deputy of Informational Technology.

**11. ADMINISTRATION:**

None.

**12. DISTRICT COUNSEL:**

None.

**13. REPORTS/ANNOUNCEMENTS AND OTHER MATTERS:**

13.1. Board Member Reports/Announcements.

None.

13.2 Proposed Future Board Member Agenda Items.

Director Estremera stated that during the consideration of Item 3.4, several issues were brought up by board members. He requested, with the Board's consensus, that staff bring the following to the full Board for consideration and direction by the September 26, 2023 Board meeting:

- Recommendation to adopt "Robert's" or "Rosenberg's" Rules of Order;
- Consider implementing time limits on item discussions; and
- The germaneness of issues under discussion.

Director Eisenberg requested that the Board Policy and Planning Committee explore the obligations and duties of the Chair and bring an informational item to the full Board at a future meeting.

13.3. Clerk Review and Clarification of Board Requests.

Michele King, Clerk, Board of Directors, confirmed that there were no new Board Member Requests.

**14. ADJOURN:**

- 14.1 Adjourn to the 11:00 a.m. Special Meeting on September 19, 2023, in the Santa Clara Valley Water District Headquarters Building Boardroom, 5700 Almaden Expressway, San Jose, California, and via Zoom teleconference.

Chairperson Varela adjourned the meeting at 2:35 p.m., to the 11:00 a.m. Special Meeting on September 19, 2023, in the Santa Clara Valley Water District Headquarters Building Boardroom, 5700 Almaden Expressway, San Jose, California, and via Zoom teleconference.

Michele L. King, CMC  
Clerk, Board of Directors

Approved:

Date:

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