



BOARD OF DIRECTORS MEETING

MINUTES

**CLOSED SESSION AND REGULAR MEETING
TUESDAY, NOVEMBER 10, 2020
11:00 AM**

(Paragraph numbers coincide with agenda item numbers)

1. CALL TO ORDER:

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, at 11:00 a.m.

1.1 Roll Call.

Board members in attendance were Tony Estremera, Nai Hsueh, and Richard P. Santos. Board members participating by teleconference were Barbara Keegan, Gary Kremen, and Linda J. LeZotte, constituting a quorum of the Board.

Director John L. Varela joined by teleconference as noted below.

Staff in attendance was M. King, Clerk, Board of Directors. Staff participating by teleconference were R. Callender, Chief Executive Officer, S. Yamamoto, District Counsel, J. Aranda, A. Baker, R. Blank, M. Cook, G. De La Piedra, A. Fulcher, R. Fuller, R. Gibson, V. Gin, C. Hakes, B. Hopper, L. Infante, H. McMahon, M. Meredith, Leslie Orta, M. Richardson, D. Taylor, S. Tippetts, B. Yerrapotu, and T. Yoke.

2. TIME CERTAIN:

11:00 AM

Chairperson Hsueh confirmed that the Board would adjourn to Closed Session for consideration of Items 2.1 through 2.4.

During Closed Session, Director Varela joined the meeting by teleconference.

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

- 2.1 CLOSED SESSION
CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION
Pursuant to Government Code Section 54956.9(d)(4) - Six Potential Cases
- 2.2 CLOSED SESSION
PUBLIC EMPLOYEE EMPLOYMENT
Pursuant to Government Code Section 54957(b)(1)
Title: District Counsel
- 2.3 CLOSED SESSION
CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1):
White, et al. v. SCVWD, et al. (Santa Clara Co. Superior Court, No. 18CV321600
(Lead))
- 2.4 CLOSED SESSION
CONFERENCE WITH LEGAL COUNSEL
CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Pursuant to Government Code Section 54956.8:
Setting Negotiation Parameters for Price and Terms of Payment for Acquiring
Property Interest in APN 015-32-042 and APN 015-32-043
Negotiators: Rick Callender, Melanie Richardson, Rechelle Blank, Eli Serrano,
Bill Magleby, Rachael Gibson, Don Rocha, Sunshine Julian
Other Negotiating Parties: City of San Jose

1:00 PM

- 2.5 District Counsel Report on Closed Session.

Chairperson Hsueh confirmed that the Board would resume Closed Session discussion on Item 2.2, after concluding Item 12.2.

Mr. Brian Hopper, Senior Assistant District Counsel, reported that in regard to Items 2.1 and 2.3, and Mr. Joe Aranda, Assistant District Counsel, reported that in regard to Item 2.4, the Board met in Closed Session with all members present and gave direction to staff.

- 2.6 Pledge of Allegiance/National Anthem.

Director Santos led all present in reciting the Pledge of Allegiance.

- 2.7 Orders of the Day.

Chairperson Hsueh confirmed that Item 3.1 would be removed from the Consent Calendar for individual consideration.

There were no other changes to the Orders of the Day.

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

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

Director LeZotte requested that, at the time that staff comes back with Open Session discussion on the status of the investigation into the complaint filed by Rev. Jethro Moore, San Jose Silicon Valley National Association for the Advancement of Colored People (NAACP) President, that they include a summary on the investigation timeline and actions taken to-date (Board Member Request No. R-20-0012).

3. CONSENT CALENDAR:

Chairperson Hsueh moved the agenda to Item 3.2, and the Board Considered Consent Calendar Items 3.2 through 3.6 under one motion.

3.2 Revision to 2020 Board Committee Appointment - San Luis and Delta-Mendota Water Authority, Division 4 - Board of Director Alternate and Delta Habitat Conservation and Conveyance Program Committee Alternate.

Recommendation: Approve the revised Board Committee Appointments for the San Luis and Delta-Mendota Water Authority (SLDMWA) Division 4 Board of Director Alternate and the Delta Habitat Conservation and Conveyance Program Committee Alternate.

3.3 Consider Membership Nomination for Committee Appointment to the Safe, Clean Water Independent Monitoring Committee.

Recommendation: Consider the membership appointment for Committee Appointment to the Safe, Clean Water Independent Monitoring Committee (SCW IMC).

3.4 Consider the October 21, 2020, Board Audit Committee Recommendation to Accept Audit Report of the Water Utility Enterprise Funds for the Fiscal Year Ended June 30, 2019.

Recommendation: A. Consider the October 21, 2020, Board Audit Committee Recommendation to accept the Audit Report of the Water Utility Enterprise Funds for the Fiscal Year ended June 30, 2019; and
B. Accept the Audit Report of the Water Utility Enterprise Funds for the Fiscal Year ended June 30, 2019.

3.5 Accept the CEO Bulletin for the Weeks of October 23 – November 5, 2020.

Recommendation: Accept the CEO Bulletin.

3.6 Approval of Minutes.

Recommendation: Approve the minutes.

Motion: Approve Consent Calendar Items 3.2 through 3.6, by one motion, as follows: approve the revised Board Committee appointments for the SLDMWA Division 4 Board of Director alternate, and the Delta Habitat Conservation and Conveyance Program Committee alternate, as contained in Item 3.2; approve the membership appointment to the SCW IMC, as contained in Item 3.3; accept the Audit Report of the Water Utility Enterprise Funds for the Fiscal Year ended June 30, 2019, as contained in Item 3.4; accept the CEO Bulletin, as contained in Item 3.5; and approve the minutes, as contained in Item 3.6.

Move to Approve: Richard P. Santos

Second: Tony Estremera

Yeas: Tony Estremera, Nai Hsueh, Barbara Keegan, Gary Kremen, Linda J. LeZotte, Richard P. Santos, John L. Varela

Nays: None

Abstains: None

Recuses: None

Absent: None

Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

Chairperson Hsueh returned the agenda to Item 3.1

3.1 Notice of Completion of Contract and Acceptance of Work for the Rinconada Water Treatment Plant Reliability Improvement Project, Balfour Beatty Infrastructure, Inc., Contractor, Project No. 93294057, Contract No. C0601 (Los Gatos) (District 7).

Recommendation: A. Accept the work on the Rinconada Water Treatment Plant Reliability Improvement Project, Project No. 93294057, Contract No. C0601 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.

Mr. Heath McMahon, Deputy Operating Officer, reviewed the information on this item, per the attached Board Agenda Memo.

Mr. Shawn Rosenberger, Meruelo Group of Companies President, explained that Meruelo Group was the parent company of Neal Electric Corporation, a subcontractor to the Rinconada Water Treatment Plant Reliability Improvement Project; discussed matters pertaining to an ongoing dispute between Neal Electric Corporation and Balfour Beatty Infrastructure, Inc.; and encouraged the

Board not to take the discretionary action of paying around the Stop Notices when a bond is provided, if they approve the Notice of Completion of Contract.

The Board directed staff to come back with a pros and cons analysis on approving the Notice of Completion and more information on the discretionary Bond matter described by Mr. Rosenberger; and continued the item to a future meeting.

REGULAR AGENDA:

4. BOARD OF DIRECTORS:

The Board considered Item 4.1 without a staff presentation.

- 4.1 Proposed Conversion of Santa Clara Valley Water District (Valley Water) Fish and Aquatic Habitat Collaborative Effort (FAHCE) Ad Hoc Committee to a Standing Board Committee.

Recommendation: Consider and approve the Fish and Aquatic Habitat Collaborative (FAHCE) Ad Hoc Committee's recommendations to:

- A. Convert the FAHCE Ad Hoc Committee to a Standing Board Committee;
- B. Expand the purpose of the Committee by adding a third purpose to identify and track progress of District and non-District activities that may affect the FAHCE Settlement Agreement and implementation; and
- C. Name the Standing Board Committee the "Stream Planning and Operations Committee".

Move to Approve: Linda J. LeZotte

Second: Tony Estremera

Yeas: Tony Estremera, Nai Hsueh, Barbara Keegan, Gary Kremen, Linda J. LeZotte, Richard P. Santos, John L. Varela

Nays: None

Abstains: None

Recuses: None

Absent: None

Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

- 4.2 Consider the October 21, 2020, Board Audit Committee Recommendation to Receive and Discuss the Final Audit Report and Management Response for the Real Estate Services Audit Conducted by TAP International, Inc.

Recommendation: Consider the October 21, 2020, Board Audit Committee recommendation to receive and discuss the Final Audit Report and Management Response for the Real Estate Services Audit conducted by TAP International, Inc.

Ms. Denise Callahan, TAP International President, reviewed the information on this item, per the attached Board Agenda Memo and per the corresponding presentation materials contained in Handout 4.2-A.

Motion: Accept the October 21, 2020, Board Audit Committee recommendation to receive and discuss the Final Audit Report and Management Response for the Real Estate Services Audit conducted by TAP International, Inc.

Move to Accept: Tony Estremera

Second: John L. Varela

Yeas: Tony Estremera, Nai Hsueh, Barbara Keegan, Gary Kremen, Linda J. LeZotte, Richard P. Santos, John L. Varela

Nays: None

Abstains: None

Recuses: None

Absent: None

Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

4.3 Board Committee Reports.

Chairperson Hsueh acknowledged receipt of the attached meeting summaries and agendas, identified as Handouts 4.3-A through 4.3-E, herein, and confirmed that the attached November 18, 2020 Youth Commission agenda contained in Handout 4.3-E had been mistakenly labeled on the Board's agenda as a November 18, 2020 Water Commission agenda. Copies of the Handouts were distributed to the Board and made available to the public.

Director Kremen confirmed that the Water Supply Exploratory Committee would present recommendations to the Board at the November 17, 2020 Special Meeting.

The Board noted the information without formal action.

4.4 Proposed Future Board Member Agenda Items.

Director Santos requested that staff come back with an item for Board discussion of its Governance Process concerning election of Board Chair and Board Vice Chair (Board Member Request No. R-20-0013).

5. **WATER UTILITY ENTERPRISE:**

None.

6. **WATERSHEDS:**

Ms. Rechelle Blank, Deputy Operating Officer, reviewed the information on Items 6.1 and 6.2, per the attached Board Agenda Memos.

- 6.1 Approve Amendment No. 3 to Agreement No. A3967A with Wood Rodgers, Inc. for Design Consultant Services for the Lower Penitencia Creek Improvements Project, Project No. 40334005, CAS No. 4680, Increasing the fee by \$455,132 for a Total Revised Not-to-exceed Fee of \$2,573,886 (Milpitas) (District 3).

Recommendation: Approve Amendment No. 3 to Agreement No. A3967A with Wood Rodgers, Inc. (Consultant), for design consultant services for the Lower Penitencia Creek Improvements Project, increasing the not-to-exceed fee by \$455,132 resulting in a revised total not-to-exceed amount of \$2,573,886 and extending the Agreement term.

Move to Approve : Richard P. Santos
Second: Tony Estremera
Yeas: Tony Estremera, Nai Hsueh, Barbara Keegan, Gary Kremen, Linda J. LeZotte, Richard P. Santos, John L. Varela
Nays: None
Abstains: None
Recuses: None
Absent: None
Summary: 7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

- 6.2 Consider the Initial Study and Mitigated Negative Declaration; Adopt the Resolutions (2) Making Responsible Agency Findings, and Authorizing Land Lot Line Adjustment and Exchange of Real Property; and Authorize the Chief Executive Officer to Execute the Joint Use Agreement and All Necessary Documents to Affect the Lot Line Adjustment and Real Property Exchange, with the City of Cupertino for the Regnart Creek Trail Project. (Cupertino) (District 5).

Recommendation: A. Consider the potential environmental effects of the project as discussed in the Initial Study and Mitigated Negative Declaration prepared by the City of Cupertino (City);
B. Adopt the resolution MAKING RESPONSIBLE AGENCY FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO RELY ON THE INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION PREPARED BY THE LEAD AGENCY (CITY OF CUPERTINO) FOR THE REGNART CREEK TRAIL PROJECT;
C. Approve and authorize the Chief Executive Officer (CEO) to execute the Joint Use Agreement between the City of Cupertino and the Santa Clara Valley Water District (Valley Water).
D. Adopt the resolution AUTHORIZING LOT LINE ADJUSTMENT AND EXCHANGE OF REAL PROPERTY WITH THE CITY OF CUPERTINO; and
E. Authorize the CEO to execute all necessary legal instruments to effect the lot line adjustment and real

property exchange with the City of Cupertino, including but not limited to a certificate of lot line adjustment, a quitclaim deed to the City of Cupertino, a certificate of acceptance for a quitclaim deed from the City of Cupertino, and all other documents reasonably necessary to carry out the intent of the resolution authorizing lot line adjustment and exchange of real property with the City of Cupertino.

Motion: Adopt Resolution No. 20-86, MAKING RESPONSIBLE AGENCY FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO RELY ON THE INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION PREPARED BY THE LEAD AGENCY (CITY OF CUPERTINO) FOR THE REGNART CREEK TRAIL PROJECT, by roll call vote; approve and authorize the CEO to execute the Joint Use Agreement; adopt Resolution No. 20-87, AUTHORIZING LOT LINE ADJUSTMENT AND EXCHANGE OF REAL PROPERTY WITH THE CITY OF CUPERTINO, by roll call vote; and authorize the CEO to execute all necessary legal instruments to effect the lot line adjustment and real property exchange, including but not limited to a certificate of lot line adjustment, a quitclaim deed, a certificate of acceptance for a quitclaim deed, and all other documents reasonably necessary to carry out the intent of the resolution.

Move to Adopt:	Tony Estremera
Second:	Nai Hsueh
Yeas:	Tony Estremera, Nai Hsueh, Barbara Keegan, Gary Kremen, Linda J. LeZotte, Richard P. Santos, John L. Varela
Nays:	None
Abstains:	None
Recuses:	None
Absent:	None
Summary:	7 Yeas; 0 Nays; 0 Abstains; 0 Absent.

7. ASSISTANT CHIEF EXECUTIVE OFFICER:

None.

8. EXTERNAL AFFAIRS:

None.

9. CHIEF EXECUTIVE OFFICER:

The Board considered Item 9.1 without a staff presentation.

- 9.1 Authorize the Chief Executive Officer to Apply for and Submit a Grant from the California Department of Water Resources; Adopt a Resolution Authorizing a Proposal for Funding and Designating a Representative to Execute an Agreement and Amendments; Authorize District Counsel to Execute Attorney's Certification; and Authorize the Chief Executive Officer or Designee to Sign and Submit Invoices and Requests for Reimbursement, and Provide Management Support Services, as Deemed Necessary and Appropriate, for the Lower Penitencia Creek Improvements Project, Project No. 40334005 (San Jose) (District 3).

- Recommendation:
- A. Authorize the Chief Executive Officer (CEO) or designee to execute and submit a grant application in the amount of \$9 million to the California Department of Water Resources (DWR) and if the grant is awarded, to execute the agreement and any amendments thereto, for the Lower Penitencia Creek Improvements Project (Project No. 40334005);
 - B. Adopt the resolution AUTHORIZING A PROPOSAL FOR FUNDING FROM THE DEPARTMENT OF WATER RESOURCES AND DESIGNATING A REPRESENTATIVE TO EXECUTE THE AGREEMENT AND ANY AMENDMENTS THERETO, FOR THE LOWER PENITENCIA CREEK IMPROVEMENTS PROJECT;
 - C. Authorize the District Counsel to execute the Attorney's Certification form required as part of the grant application;
 - D. Authorize the CEO or designee to submit the grant application by the deadline of November 20, 2020, while staff concurrently conducts an internal review of the grant terms and conditions. If the grant is awarded, and staff determines all terms and conditions can be met by Valley Water, a subsequent agenda item will be scheduled for Board approval to accept the grant;
 - E. Provided a grant agreement is entered into between Valley Water and DWR, delegate authority to the CEO or designee to sign and submit invoices and requests to DWR for grant fund reimbursements to be made pursuant to the Grant Agreement; and
 - F. Delegate to the CEO or designee such other authority as needed to provide management and support services required for performance of the work and administration pursuant to the grant agreement, as deemed necessary and appropriate.

- Motion:
- Authorize the CEO or designee to execute and submit a grant application in the amount of \$9 million to DWR and if the grant is awarded, to execute the agreement and any amendments thereto; adopt Resolution No. 20-88, AUTHORIZING A PROPOSAL FOR FUNDING FROM

THE DEPARTMENT OF WATER RESOURCES AND DESIGNATING A REPRESENTATIVE TO EXECUTE THE AGREEMENT AND ANY AMENDMENTS THERETO, FOR THE LOWER PENITENCIA CREEK IMPROVEMENTS PROJECT, by roll call vote; authorize District Counsel to execute the Attorney's Certification form; authorize the CEO or designee to submit the grant application; authorize the CEO or designee to sign and submit invoices and requests to DWR for grant fund reimbursements; and authorize the CEO or designee such other authority as needed to provide management and support services required for performance of the work and administration pursuant to the grant agreement, as deemed necessary and appropriate.

Move to Adopt:	Richard P. Santos
Second:	Tony Estremera
Yeas:	Tony Estremera, Nai Hsueh, Barbara Keegan, Gary Kremen, Linda J. LeZotte, Richard P. Santos
Nays:	None
Abstains:	None
Recuses:	None
Absent:	John L. Varela
Summary:	6 Yeas; 0 Nays; 0 Abstains; 1 Absent.

9.2 CEO and Chiefs' Report.

Mr. Rick Callender, Chief Executive Officer, advised the Board that pending final confirmation by the Santa Clara County Registrar of Voters, Valley Water's Safe, Clean Water and Natural Flood Protection Enhancement Measure, Ballot Measure S, had passed with 74.87 percent of Santa Clara County voters voting in favor of the item.

Mr. Aaron Baker, Chief Operating Officer, confirmed that recently reported water taste and odor quality issues had been resolved with no impact to water safety or delivery; and confirmed that routine electrical system testing and maintenance had been completed at the Santa Teresa Water Treatment Plant, also with no impact or interruption to water quality and delivery.

Ms. Tina Yoke, Chief Operating Officer, advised the Board that Valley Water had offered its Headquarters Campus parking area as a potential site for County of Santa Clara mobile COVID-19 testing.

Ms. Rachael Gibson, Acting Chief of External Affairs, reviewed the information contained in the attached Office of Communications and Office of Civic Engagement Updates, identified as Handouts 9.2-A and 9.2-B herein. Copies of the Handouts were distributed to the Board and made available to the public.

10. ADMINISTRATION:

None.

11. DISTRICT COUNSEL:

None.

12. ADJOURN:

12.1 Board Member Reports/Announcements.

Director Varela reported attending a Board Ethics training session; Water Supply Exploratory Committee (WSEC) and Association of California Water Agencies meetings; a World Water-Trade Tech North America event; and recent Valley Water Employee Town Hall and Board of Directors meetings.

Director Keegan reported attending the aforementioned Town Hall meeting and Board Ethics training; Delta Conveyance (DCA) Stakeholders, and DCA Stakeholder Committee Chairs' meetings; a Board Audit Committee preparatory meeting; and various meetings with staff.

Director Santos reported attending a Landscape Committee meeting; a Berryessa Citizens' Advisory Committee meeting; and various meetings with staff.

Director LeZotte reiterated her earlier request for staff to come back with action and timeline information on issues associated with the complaint received from Rev. Jethro Moore; and confirmed she would report out on her activities during the next regular Board meeting.

Chairperson Hsueh reported attending the aforementioned Board Ethics training and Landscape Committee meeting; a winter preparedness meeting; a meeting with the Executive Director of the San Francisquito Creek (SFC) Joint Powers Authority (JPA); a Capital Improvement Program Committee (CIP) meeting; and various meetings with staff.

Director Estremera reported attending the aforementioned Town Hall, WSEC, DCA Stakeholders, and CIP meetings; a Water Commission meeting; and various meetings with staff.

Director Kremen reported attending the aforementioned Executive Director of SFC JPA, and WSEC meetings; San Luis Delta-Mendota Water Authority and Los Vaqueros Reservoir JPA meetings; a briefing related to the Board's annual visit to Washington DC; and various meetings with staff.

12.2 Clerk Review and Clarification of Board Requests.

Ms. Michele King, Clerk, Board of Directors, read the new Board Member Requests into the record.

Chairperson Hsueh returned the agenda, and the Board resumed Closed Session discussion on Item 2.2.

2.2 CLOSED SESSION
PUBLIC EMPLOYEE EMPLOYMENT
Pursuant to Government Code Section 54957(b)(1)
Title: District Counsel

Upon completion of Closed Session, Directors Kremen, LeZotte, and Varela concluded their participation by teleconference and did not rejoin.

Upon return to Open Session, the same Board members, excluding Directors Kremen, LeZotte, and Varela, and staff, were present.

Chairperson Hsueh returned the Agenda to Item 2.5.

2.5 District Counsel Report on Closed Session.

Chairperson Hsueh reported that the Board met in Closed Session with all members present, and gave direction to the Board Chair.

Chairperson Hsueh returned the agenda to item 12.3.

12.3 Adjourn to Special Meeting at 1:00 p.m., on November 17, 2020, to be called to order in compliance with the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19, and the Governor's Executive Order N-29-20.

Chairperson Hsueh adjourned the meeting at 3:20 p.m., to the Special Meeting at 1:00 p.m., on November 17, 2020, to be called to order in compliance with the State Emergency Services Act, the Governor's Emergency Declaration related to COVID-19, and the Governor's Executive Order N-29-20.

Michele L. King, CMC
Clerk, Board of Directors

Approved:

Date: 01/12/2021