

**MINUTES OF THE REGULAR MEETING
OF THE BOARD OF DIRECTORS OF THE
MOULTON NIGUEL WATER DISTRICT**

SEPTEMBER 15, 2011

A Regular Meeting of the Board of Directors of the Moulton Niguel Water District was held at the District offices, 27500 La Paz Road, Laguna Niguel, California, at 5:30 p.m. on Thursday, September 15, 2011. There were present and participating:

DIRECTORS

LARRY MCKENNEY	President
SCOTT COLTON	Director
RICHARD S. FIORE	Director
DON FROELICH	Vice President
GARY R. KURTZ	Director (Via Teleconference)
LARRY R. LIZOTTE	Director
BRIAN PROBOLSKY	Vice President

Also present and participating were:

STAFF MEMBERS, LEGAL COUNSEL

ROBERT C. GUMERMAN	General Manager
CHARLES J. ROY	Director of Customer Service
MATT COLLINGS	Director of Engineering & Operations
DAVID CAIN	Director of Finance/Treasurer
PAT GIANNONE	Bowie, Arneson, Wiles & Giannone
NANCY DESAI	MNWD
KELLY WINSOR	MNWD
ROBYN EPPSTEIN	MNWD
GREGG HOOPER	MNWD
JOLINE MUNOZ	MNWD
LESLIE GRAY	Board Secretary

PUBLIC MEMBERS

KAREN LANGER	Resident
RON LANGER	Resident
JOHN REID	Resident
GREG MAYS	Resident
DON PATTERSON	Resident
STEVE MAGDZIAK	Resident
JAY PAMER	Resident
ROBERT PAMER	Resident

PUBLIC MEMBERS, continued

MICHAEL PAMER

Resident

SUSAN HINMAN

MWDOC Director

KIMO LOOK

Project Partners

Absent was:

There were no absences.

President Larry McKenney presided and Leslie Gray recorded the minutes of the meeting. Director Gary Kurtz reported that everything was properly posted at the teleconferencing site from which he is calling and that the site is accessible to the public, including persons who are disabled. President McKenney then led the Pledge of Allegiance.

PUBLIC COMMENTS

- The Board requested Mr. Charles Roy to report back at the next Engineering & Operations Board Meeting regarding the new meters installed at the South Peak development.

ACTION ITEMS/CONSENT CALENDAR ITEMS

- The Board approved Consent Calendar Items 15 through 18, and 20 through 23 as presented.

Consent Calendar Item 19 –Sewage Lift Station Back-Up Pumps and/or Motors,

Miscellaneous Contracts

- The Board of Directors approved an expense authorization of \$239,500.

ENGINEERING & OPERATIONS/LEGAL MATTERS:

La Paz Road Recycled Water Bridge Crossing, Contract 2010.013

- The Board of Directors approved a project expense of \$115,000.
- The Board of Directors approved the agreement between the City of Mission Viejo and MNWD for installation of District recycled water pipeline with the La Paz Widening Project and authorized execution of the agreement by the General Manager, subject to non-substantive changes approved by the Director of Engineering & Operations and Legal Counsel.

MINUTE APPROVAL

APPROVAL OF MINUTES OF REGULAR MEETING OF AUGUST 18, 2011 AND
SPECIAL MEETING OF AUGUST 19, 2011

MOTION MADE BY DIRECTOR FROELICH AND SECONDED BY DIRECTOR COLTON, THE BOARD OF DIRECTORS APPROVED THE MINUTES OF THE REGULAR BOARD OF DIRECTORS MEETING OF AUGUST 18, 2011 AND THE SPECIAL MEETING OF AUGUST 19, 2011 AS PRESENTED BY THE FOLLOWING ROLL CALL VOTE: AYES: LIZOTTE, FROELICH, MCKENNEY, COLTON, FIORE, KURTZ; NOES: NONE; ABSTAIN: NONE; ABSENT: PROBOLSKY.

PUBLIC COMMENTS

President McKenney opened the Public Comments portion of the meeting and asked if there were any public comments. Mrs. Susan Hinman, Director of Division 7 of MWDOC requested to speak. Mrs. Hinman reported on a myriad of events happening at MWDOC and throughout the state.

Director Probolsky arrived at 5:45 p.m.

Mr. John Reid was then invited to address the Board of Directors. Mr. Reid stated that his water bill increased five times the normal amount. He encouraged the Board of Directors to reconsider the rate increase at this time. President McKenney stated there was a rate increase effective June 1, 2011 and a new rate structure was put in place effective July 1, 2011, which charges customers for their higher usage and encourages conservation. President McKenney suggested that Mr. Reid contact the Customer Service Department, namely Mr. Charles Roy, to review his water bill as there could be an anomaly and a correction may be necessary. President McKenney invited Mr. Reid to come back to the Board if the Customer Service Department was unable to adjust his bill.

Mr. Greg Mays was next to address the Board of Directors. Mr. Mays asked what role the Board of Directors has on rate increases and what authority do they have to raise rates? President McKenney explained the process of how each Board Member is publicly elected, and explained that during rate increases, the District adheres to the Proposition 218 protocol and hearing process, and added that there were numerous public outreach methods for reaching the public relative to the rate increase and new water rate structure. It was noted that Moulton Niguel Water District has the lowest water rates in

south county as long as a customer stays within their allocation. Mr. Lizotte stated for the record that he voted against the rate increase in May 2009 and the WBBRS in April 2011. President McKenney encouraged Mr. Mays to speak with Mr. Roy to review his water consumption.

Mr. Don Patterson was then invited to address the Board of Directors. Mr. Patterson stated that he lives in the South Peak development in Laguna Niguel and that new meters were recently installed and he questions whether they were not calibrated correctly or perhaps there is a glitch with the billing system. Mr. Patterson's noted his bill stated his average daily usage increased by 339%. President McKenney again encouraged Mr. Patterson to speak with Mr. Roy for review of his bill as there may be a problem with the billing computation. If not, he encouraged Mr. Patterson to return to the next Board Meeting to further address the issue.

President McKenney asked if there were any other public comments. Mr. Steve Magdziak asked to speak. Mr. Magdziak stated that he knows someone who operates a cleaning business out of their home. Their laundry has increased and so has their bill. Mr. Magdziak inquired who decides when the water rates increase? President McKenney responded that the District's decision to implement the water-based budget rate structure was driven by the need for the community to conserve water and the State of California has directed all consumers to conserve 20% of water by the year 2020. President McKenney also stated that being efficient does not equate to operating a commercial business out of a residence. A variance can be granted by the Customer Service Department and suggested Mr. Magdziak contact Mr. Roy.

Hearing no further public comments, President McKenney closed the Public Comments portion of the meeting.

PRESIDENT'S REPORT

President McKenney reported that the Southern California Water Committee (SCWC) Annual Meeting falls on the November 17, 2011 MNWD Board Meeting. President McKenney is on the Board of Trustees of SCWC and he stressed the importance of the Board Members also attending this important meeting and suggested

that the November 17, 2011 Board Meeting time be changed to 9:00 a.m., to accommodate those wishing to attend the 4:00 p.m. SCWC meeting. The Board concurred with his recommendation and noted that this meeting will now become a Special Meeting due to the time change. The change in meeting time will be published on the District website.

BOARD REPORTS

No Board Reports were presented.

GENERAL MANAGER'S REPORT

Dr. Gumerman reported on numerous projects, namely the South Orange County Wastewater Authority (SOCWA); the Chiquita Water Reclamation Plant Biosolids Project; the Nine South County Agencies' Meeting on August 24, 2011; and the California Utility Executives Management Foundation Conference.

HR 1340 (Young – FL)

President McKenney explained that this bill will allow water agencies to post their Annual Consumer Confidence Reports on their websites in lieu of mailing them to their customers. This option would only be available to agencies that did not experience any violations during the reporting period. Customers would still have the option to request a mailed copy of the report.

MOTION MADE BY DIRECTOR PROBOLSKY AND SECONDED BY DIRECTOR FIORE, THE BOARD OF DIRECTORS GAVE ITS SUPPORT OF HR 1340 (YOUNG – FL) AND AUTHORIZED THE BOARD PRESIDENT TO SEND A LETTER OF SUPPORT WHEN REQUESTED, BY THE FOLLOWING ROLL CALL VOTE: AYES: LIZOTTE, FROELICH, MCKENNEY, COLTON, FIORE, PROBOLSKY, KURTZ; NOES: NONE; ABSTAIN: NONE.

SB 293

President McKenney stated that he would like to add SB 293 as a late item to the agenda that came to his attention following the posting of the agenda as a result of a request by the California Special Districts Association (CSDA) to its members to send

veto requests to the Governor. SB 293 limits retentions on public projects to five percent, down from the current ten percent standard, shifting costs and burdens to special districts.

MOTION MADE BY DIRECTOR MCKENNEY AND SECONDED BY DIRECTOR PROBOLSKY, THE BOARD OF DIRECTORS APPROVED ADDING SB 293 AS A LATE ITEM TO THE AGENDA BASED ON THE FACTS AND CIRCUMSTANCES DESCRIBED BY PRESIDENT MCKENNEY FOR DISCUSSION BY THE FOLLOWING ROLL CALL VOTE: AYES: LIZOTTE, FROELICH, MCKENNEY, COLTON, FIORE, PROBOLSKY, KURTZ; NOES: NONE; ABSTAIN: NONE.

President McKenney asked that the Board of Directors concur that SB 293 be vetoed by the Governor and authorize the General Manager to write a veto request letter to Governor Jerry Brown expressing the Board's position.

MOTION MADE BY DIRECTOR MCKENNEY AND SECONDED BY DIRECTOR FIORE, THE BOARD OF DIRECTORS EXPRESSED THEIR OPPOSITION OF SB 293 AND AUTHORIZED THE GENERAL MANAGER TO WRITE A VETO REQUEST LETTER TO GOVERNOR JERRY BROWN BY THE FOLLOWING ROLL CALL VOTE: AYES: LIZOTTE, FROELICH, MCKENNEY, COLTON, FIORE, PROBOLSKY, KURTZ; NOES: NONE; ABSTAIN: NONE.

Water Efficiency Fund

A lengthy discussion ensued relative to the Water Efficiency Fund and how to utilize the funds collected by giving customers either credits, a rebate check, or a hybrid approach of a choice of either for the subsidy of water efficiency devices.

The Board had requested Mr. Cain at yesterday's Finance & IT Board Meeting to report back as to how much it will cost the District to issue a refund check to a customer. Mr. Cain replied that during his brief cursory review, it will cost approximately \$30.00 per check.

Staff will bring this item back next month for a decision on giving customers a credit, rebate check, or a choice, plus formal adoption of a resolution approving the subsidy amounts for water efficiency devices, and a budget appropriation.

Policy on Outside Agency Bill Inserts

Dr. Gumerman stated that his draft Policy on this item was discussed yesterday at the Finance & IT Board Meeting. His recommendation is that no outside agency bill inserts be allowed in the water bills. President McKenney noted that the recommended action stated in the agenda is for the Board of Directors to give staff "direction" with no formal direction of implementing the Policy. Therefore, a motion to discuss the item was made as follows:

MOTION MADE BY DIRECTOR LIZOTTE AND SECONDED BY DIRECTOR FIORE, THE BOARD OF DIRECTORS CONCUR WITH THE GENERAL MANAGER'S RECOMMENDATION THAT NO OUTSIDE AGENCY BILL INSERTS BE ALLOWED WITHIN THE WATER BILLS.

Director Probolsky stated he does not support the motion; however, he would support the proposed Policy with one change in Item No. 1 to add the words "*or official action*" to the end of the sentence.

Director Fiore called for the question and asked to take a vote.

ROLL CALL VOTE: AYES: LIZOTTE, FROELICH, MCKENNEY, COLTON, FIORE; NOES: KURTZ, PROBOLSKY; ABSTAIN: NONE.

CONSENT ITEMS

President McKenney asked if there were any items the Directors would like to pull off the Consent Calendar and Director Probolsky requested that Item 19 be pulled for discussion. President McKenney reported that he would entertain a motion to approve the balance of the Consent Calendar.

MOTION MADE BY DIRECTOR FIORE AND SECONDED BY DIRECTOR KURTZ, THE BOARD OF DIRECTORS APPROVED CONSENT ITEMS 15 THROUGH 18, AND ITEMS 20 THROUGH 23 AS PRESENTED, WHICH ITEMS ARE INCORPORATED HEREIN BY THIS REFERENCE, BY THE FOLLOWING ROLL CALL VOTE: AYES: KURTZ, LIZOTTE, FROELICH, MCKENNEY, COLTON, FIORE, PROBOLSKY; NOES: NONE; ABSTAIN: NONE.

Consent Calendar Item 19 – Sewage Lift Station Back-Up Pumps and/or Motors,

Miscellaneous Contracts

Director Probolsky reported that he asked to pull this item as it was a fairly large item to be included under the consent calendar. He stated he was in favor of this item and felt it was an “insurance policy” for the District to have back-up pumps and motors in case of an emergency.

MOTION DULY MADE BY DIRECTOR PROBOLSKY AND SECONDED BY DIRECTOR FIORE, THE BOARD OF DIRECTORS APPROVED A TOTAL EXPENSE AUTHORIZATION OF \$239,500 TO BE ALLOCATED TO EACH OF THE ASSOCIATED CONTRACT NUMBERS AS FOLLOWS: 2011.046 = \$70,000; 2011.047 = \$4,500; 2011.048 = \$16,000; 2011.049 = \$17,000; 2011.50 = \$51,000; 2011.52 = \$15,000; AND 2011.053 = \$66,000, BY THE FOLLOWING ROLL CALL VOTE: AYES, KURTZ, LIZOTTE, FROELICH, MCKENNEY, COLTON, FIORE, PROBOLSKY; NOES: NONE; ABSTAIN: NONE.

President McKenney stated that it would be a good idea if this was documented for the future should the District incur a sewage spill as the Regional Water Quality Control Board would be informed of the District being proactive.

ENGINEERING & OPERATIONS MATTERS:

La Paz Recycled Water Bridge Crossing, Contract No. 2010.013

Dr. Gumerman stated that Mr. Collings was successful in having the City of Mission Viejo contract lowered by \$4,000 or 5% from \$93,000 to \$89,000.

MOTION DULY MADE BY DIRECTOR FROELICH AND SECONDED BY DIRECTOR LIZOTTE, THE BOARD OF DIRECTORS APPROVED A PROJECT EXPENSE AUTHORIZATION OF \$115,000.

Further discussion ensued relative to this project and it was agreed by the Board of Directors that both Items 24 and 26 be approved by one motion as both items were related to the same project, including the proposed agreement with the City of Mission Viejo for installation of the District recycled water pipeline.

MOTION AMENDED BY DIRECTOR FROELICH AND SECONDED BY DIRECTOR FIORE, THE BOARD OF DIRECTORS APPROVED A PROJECT EXPENSE AUTHORIZATION OF \$115,000 FOR THE LA PAZ ROAD RECYCLED WATER BRIDGE CROSSING, CONTRACT 2010.013 AND THE AGREEMENT BETWEEN CITY OF MISSION VIEJO AND MNWD FOR INSTALLATION OF DISTRICT RECYCLED WATER PIPELINE WITH LA PAZ WIDENING PROJECT AND AUTHORIZE EXECUTION OF THE

AGREEMENT BY THE GENERAL MANAGER SUBJECT TO NON-SUBSTANTIVE CHANGES APPROVED BY THE DIRECTOR OF ENGINEERING & OPERATIONS AND LEGAL COUNSEL BY THE FOLLOWING ROLL CALL VOTE: AYES, KURTZ, LIZOTTE, FROELICH, MCKENNEY, COLTON, FIORE, PROBOLSKY; NOES: NONE; ABSTAIN: NONE.

Late Items

President McKenney asked if there were any late items to come before the Board. There were none.

Closed Session Pursuant to Government Code Section 54956.96(a) (l) and (b)

President McKenney reported that pursuant to Government Code Section 54956.9(a)(l) and (b), a Closed Session would be conducted to confer regarding existing litigation of the South Orange County Wastewater Authority: two cases:

South Orange County Wastewater Authority, South Coast Water District vs. San Diego Regional Water Quality Control Board, Petition for Writ of Mandate (LASC Case, filed 8-18-2011) [Region 9 Failure to Modify San Juan Outfall NPDES Permit re SCWD Groundwater Recovery Facility];

South Orange County Wastewater Authority, South Coast Water District vs. San Diego Regional Water Quality Control Board, Petition for Writ of Mandate (LASC Case) [\$204,000 Mandatory Minimum Penalties for SCWD Groundwater Recovery Facility discharge under San Juan Outfall NPDES Permit]; and

South Orange County Wastewater Authority v. City of Dana Point, Makar Properties LLC (2011) 196 Cal. App. 4th 1604

Closed Session Pursuant to Government Code Section 54956.9

President McKenney reported that pursuant to Government Code Section 54945.9, a Closed Session will be conducted to conference on *United States, the States of California, Delaware, Florida, Illinois, Indiana, Nevada, New Mexico, New York, and Tennessee, the Commonwealth of Massachusetts and Virginia, and the District of Columbia ex rel. John Hendrix vs. J-M Manufacturing Company, Inc., d/b/a JM Eagle, a Delaware corporation, and Formosa Plastics Corporation, U.S.A., a Delaware corporation*: Federal and State court cases [“JM Pipe Matter”].

Director Kurtz then ended his teleconference pursuant to the District's Policy and Procedure for Board Meeting Teleconferencing, Section 3.

The Board briefly paused and adjourned to Closed Session at 8:00 p.m.

The Closed Sessions were adjourned at 8:38 p.m. and the open session of the Board was reconvened. President McKenney stated there were no reportable actions regarding either Closed Session.

ADJOURNMENT

Thereafter, the Regular Meeting of the Board of Directors of the Moulton Niguel Water District was adjourned at 8:40 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Leslie C. Gray". The signature is written in a cursive style with a large, looping initial "L".

Leslie C. Gray
Board Secretary