

**SCOTTS VALLEY WATER DISTRICT  
MINUTES OF THE  
REGULAR BOARD MEETING  
DECEMBER 10, 2009**

**SCOTTS VALLEY WATER DISTRICT  
BOARD ROOM, 2 CIVIC CENTER DRIVE  
SCOTTS VALLEY, CALIFORNIA**

1. CONVENE MEETING

Item 1.1 President Perri called the meeting to order at 7:00 p.m.

ROLL CALL

Present: Directors Kassis, Miller, Hodgkin, Kannegaard, Perri

Absent: None

Item 1.2 Pledge of Allegiance and Invocation

Director Kassis led the Pledge of Allegiance and Invocation.

Item 1.3 Closed Session Report:

General Manager McNiesh reported that the Board met in closed session on a real property matter; no reportable action was taken.

Item 1.4 Approval of Minutes from the Regular Board Meeting of November 12, 2009.

Director Hodgkin moved, seconded by Director Miller, to approve Minutes from the Regular Board Meeting of November 12, 2009, as presented. Motion carried unanimously.

Item 1.5 Election of 2010 Board President and Vice President

Director Hodgkin nominated Chris Perri for President and Ken Kannegaard for Vice President.

Director Hodgkin moved that nominations be closed. Motion seconded by Director Miller. Motion carried unanimously.

Director Perri was unanimously elected President of the Board and Director Kannegaard was unanimously elected Vice President.

ADDITIONS/DELETIONS TO THE REGULAR AGENDA: None

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA: None

## 2. PUBLIC HEARINGS AND PRESENTATIONS

### Item 2.1 Receive Public Comments and Consider Taking a District Position on Senate Bill 211 to Enable Establishment of a Countywide Open Space District

President Perri advised that an ad-hoc committee had formed, made up of SVWD Directors Miller and Kannegaard and City Council Members Lind and Bustichi.

General Manager McNiesh said staff has no additional information to contribute at this time; agenda packet has a brief staff report with a recommendation to maintain a neutral or wait-and-see position pending further developments.

Board concurred to hear comments from the audience before making individual Director comments. President Perri opened the public hearing.

Terry Corwin, executive director of Land Trust of Santa Cruz County, addressed the Board advising that she met with Scotts Valley City Manager Ando and Council Member Lind this week; initial discussion was productive; she looks forward to further constructive dialog; she said some speakers tonight will provide insight regarding the value and functioning of open space districts; she asked people in audience who support SB211 to raise their hands; a large number responded by raising their hands.

Rachel Anne Goodman, representative of Assemblymember Bill Monning, coauthor of SB 211, read a letter from Mr. Monning regarding the importance of preserving open space; she advised of possible matching grants for land acquisition and of potential role of an open space district in providing land stewardship; she said 2012 is the earliest a vote to form the district would be on the ballot; the financing mechanism for the district would require a 2/3 vote; she encouraged questions and contacting the Assemblymember's office for more information; urged support.

David Sanguinetti, Scotts Valley Parks Commissioner and local resident, said he has worked 30 years with Midpeninsula Regional Open Space District (MPROSD) in San Mateo and Santa Clara counties; he spoke in favor, asking the Board not to oppose SB 211 and instead let the voters decide; MPROSD has worked well over the years with both Santa Clara Valley Water District (SCVWD) and San Jose Water Company (SJWC); when MPROSD formed, it went through LAFCO process because multiple counties were affected; he recommended MPROSD website for additional information on open space districts.

John Fulkowski, resident of Scotts Valley, works for Santa Clara County Parks Department; his organization has worked well with SCVWD and

SJWC; he sees the proposal as a benefit to protect watersheds; he commented on the opportunity for leveraging partnerships, need for a local agency with the responsibility to manage open space in the county, and importance of stable local funding for open space and park purposes.

Mike Ulwelling, resident of Scotts Valley, asked Board to think ahead 50 to 100 years; suggested it would only get harder to put land in reserve; urged support.

Carol Kelly, resident of Scotts Valley and retired biology instructor, stated she sees opportunities for collaboration between the water district and the proposed open space district; urged support and letting voters decide the issue.

Dene Bustichi, resident of Scotts Valley and Council Member, urged opposition to SB 211 in its current form; recommended seeking language that protects SVWD interests for the future; stated City is concerned about potentially losing tax revenues and land use decision authority; agreed on the need to vote, but argued that SB 211 would substitute a legislative approach in place of a ballot initiative; criticized SB 211 as vague, potentially as dangerous for what it doesn't say as what it does say; said the City is working on language for revising the current bill; noted he and other SB 211 opponents also like open space, and in fact there's much open space already preserved in Scotts Valley.

Bob Thomas, retired businessman of family-owned business and founding member of Santa Cruz County Senior Alliance, stated SB 211 would lead to higher sales taxes; seniors cannot afford higher sales taxes; encouraged Board to oppose SB 211.

Peter Douglas, born and raised in Scotts Valley, spoke in favor of SB 211; stated tourism related to an open space district would be an economic engine for the community; he sees need for a local agency to oversee parks and open space in the Scotts Valley area.

President Perri closed the public hearing and thanked everyone for their comments.

Director Miller reported on the activities of the ad-hoc SVWD and City committee; he said the committee has no recommendation as yet; from his perspective, SB 211 needs to provide that land acquisitions are consistent with underlying zoning, protect water districts in locating wells and other water facilities on open space lands, and provide for open space district oversight to ensure satisfactory property maintenance.

Director Kannegaard thanked Council Members Lind and Bustichi for making time for the ad-hoc committee to meet; added the ad-hoc committee is concerned there are important items missing from SB211; SVWD and City would like to see these included before supporting the

bill; his concern about SB211, the way it is currently written, is that it could over-ride SVWD Board in doing what's best for residents of Scotts Valley.

President Perri said he is for the concept of creating and maintaining open space; expressed appreciation for the public comments regarding cooperation between water and open space districts; personally, he has been involved in helping create open space in Scotts Valley; he recounted recent SVWD experience with Glenwood Preserve proposal; SVWD offered Land Trust an opportunity to work together on a combined well and open space project at the Glenwood preserve, but Land Trust said no thank you; he stated he could possibly support an amended SB 211, but not the bill in its current form.

Terry Corwin characterized the Glenwood incident differently; it was unsuccessful because there were potential issues related to endangered species and the Land Trust's contractual obligations; she was of the opinion SVWD was no longer interested in pursuing this project at the Glenwood site.

General Manager McNiesh confirmed that SVWD has since developed another plan for the same project that does not involve the Glenwood site; said his recollection was SVWD had been informed a well was a possibility, but the water treatment plant part of the proposal would be unacceptable to the Land Trust Board.

Director Hodgkin said he is a certified park operator; advised some of the details look dangerous, the way SB211 is currently written.

Director Kannegaard moved that SVWD oppose SB211 in its current form. Director Miller seconded the motion. Motion carried unanimously.

President Perri said hopes there will be continuing constructive dialog on this issue and the ad-hoc committee will continue to work together to come up with alternative language for improving SB 211.

3. CONSENT AGENDA:

- Item 3.1 Review and Accept for Filing "Water Replenishment Impact Fee Annual Report, Fiscal Year 2008-2009"
- Item 3.2 Approve Final Payment in Amount of \$18,484 to McGuire and Hester and Authorize Filing Notice of Completion for Recycled Water Distribution System Extension Projects

Director Miller moved, seconded by Director Hodgkin, to approve the Consent Agenda, as presented. Motion carried unanimously.

4. ITEMS REMOVED FROM CONSENT AGENDA: None

5. DIRECTOR'S AGENDA ITEMS

Item 5.1 Individual Director Reports

Director Hodgin reported that General Manager McNiesh and he were the only two from SVWD who attended the AWCA conference. He attended many interesting meetings, brought back ACWA-JPIA manuals for the District office; ACWA-JPIA seems to be financially healthy; it is selling its old building and moving into a new one, with no cost impact. He handed out to Board members and staff items that he had brought back from the conference.

General Manager McNiesh said there was considerable discussion at the conference about the upcoming statewide water bond and related water legislation; stated he intends to evaluate bond details to be able to recommend whether and how SVWD might benefit from its passage.

Item 5.2 ACWA Update: None

Item 5.3 Anticipated Directors' Expenses: None

Item 5.4 Board Priority List: No discussion.

6. COMMITTEE REPORTS:

Item 6.1 Business Administration Committee

6.1.1 Consider Approval of Draft Ordinance No. 151-10 Protest Procedures

General Manager McNiesh advised that at its last meeting the Board reviewed a draft ordinance setting rates for the next three years; the next item to be considered is the protest process procedures; two changes have been made in the draft procedures since last month; first, identifying the rate protest officer as the District Secretary; second, changing the provision that the District could dispense with a protest vote count if number of protest votes is small and replacing it with the requirement that votes be counted no matter the number of votes, but allowing that the precise vote count could be deferred to the following day; the latter change was recommended by Attorney Bosso; staff recommends approval of the protest procedures as presented.

Director Hodgin moved, seconded by Director Kannegaard, to approve Draft Ordinance No. 151-10 Protest Procedures. Motion carried unanimously.

6.1.2 Heritage Parks Association (Monte Fiore) Annexation Request

General Manager McNiesh advised that Frank Kertai from Heritage Parks Association is here to support the annexation request; he provided Board members and public with hard copies of recent email correspondence; reported that staff has worked through 15 years worth of documents and found nothing in this investigation supports that Heritage Parks was

promised annexation, is entitled to special consideration, or has overpaid in any way; in short, no reason for special consideration was found; he noted that Attorney John Gallagher is standing in for Attorney Bosso tonight and will have comments on an August 31, 2009, letter submitted by Heritage Parks's attorney, Anthony Condotti.

Attorney Gallagher said the potential challenge raised in Mr. Condotti's letter is well past the 120-day statute of limitations for an ordinance like this; 120 days started when ordinance was passed years ago.

Anthony Condotti addressed the Board, stating that the significant point of his letter is that an annexation fee must be limited to recovery of reasonable cost of service; he argued the annexation fee of \$50 per acre per year does not satisfy this legal requirement.

Director Perri observed that since Heritage Parks and other Gateway South properties do not pay property tax to the District, and would not property tax were they annexed, they are actually paying less for water than in-District customers under current circumstances; explained Heritage Park pays 150% of the in-District meter service charge; that is the only supplement they pay; they are actually getting a great deal; the annexation fee is to make up for the taxes those properties have not paid to the District.

Director Miller provided a historical perspective; annexation fee of \$50 per acre per year was established in anticipation of another large proposed annexation with an existing water system in disrepair; SVWD anticipated having to repair this system.

There was discussion by the Board regarding the adequacy of the water system at Heritage Parks for purposes of annexation; whether annexation fees should be waived in light of the District's role in design approval of the water system; fairness of Heritage Parks customers getting a more favorable water rate than in-District customers; LAFCO's role in prior Heritage Parks annexation efforts over the years; past water meter fees; formation of assessment districts; how the amount paid by Heritage Parks customers for additional meter service charges compares against what they would be paying in property taxes if originally part of the District.

Frank Kertai addressed the Board regarding fees already paid by Heritage Parks for purchase of water meters and costs of constructing the water system necessary to serve the development.

General Manager McNiesh advised the District's rates for out-of-District customers had changed after Heritage Parks was constructed; previously there was 50% premium on both meter service charges and water rates; now the premium is just on the meter service charge meter; he had not been able to find clear documentation why this change was made. He added staff would not recommend waiving the annexation fee because of Heritage Parks's prior investment in its water system; staff today, whatever determinations have been made in the past, would want to see

a number of improvements including storage on the ridge for better fire protection.

Director Miller requested to receive, at the next Board meeting, a staff calculation of what the costs and annexation fees would be, based on the letter of the law.

Attorney Gallagher advised not to amend the ordinance unless deemed absolutely critical to do so; amending would remove the current statute of limitations protection; he noted that Section 4.20 regarding the method of calculating the fees says “shall” which is mandatory; Sections 4.21 and 4.22 providing for possible adjustments to the calculated fee say “may” which is discretionary.

Mr. Kertai asked the Board to give him an annexation fee number to take to the homeowners association for consideration; declined the Board’s suggestion that he make a proposal to the Board that fairly reflected the Board’s expressed concerns.

General Manager McNiesh offered that staff could calculate the annexation fee as set forth in Section 4.20, determine a rough cost for storage and other recommended improvements to the Heritage Parks water system, and provide this information as a basis for the Board to consider reducing the calculated annexation fee per Section 4.21. The Board concurred on this approach.

#### 6.1.3 Customer Billing Corrections

General Manager McNiesh reported that no additional problems had been identified; advised that most affected accounts have been paid in full or have payment plans; three large ones will be repaid through savings from converting to recycled water; unresolved accounts consist of: four smaller balances due which will be added to the next regular bill and five larger balances due which will require additional discussion and negotiation; one of these will be considered in closed session tonight.

Item 6.2 Water Resources Committee: Did not meet this past month.

Item 6.3 Facilities Engineering Committee

#### 6.3.1 Consider Award of Orchard Run Water Treatment Plant Contractor Pump Station Recoating Project to Lowest Responsive Bidder

Assistant General Manager/Operations Manager O’Brien said the District held the bid opening; the low bid was \$36,000 from F. D. Thomas, Inc.; he explained why the bids came in slightly higher than expected; advised that there might be change orders once the job is opened up; stated staff recommends acceptance.

General Manager McNiesh added that this project was discussed at the last Board meeting with a \$60,000 budget including several tasks, the

most substantial task being recoating, which was originally estimated at \$30,000; the \$60,000 figure remains the overall project budget estimate; F. D. Thomas, Inc., has been determined a responsible bidder.

Director Miller moved, seconded by Director Hodgin, to approve low bid. Motion carried unanimously.

6.3.2 Consider Approval of “Final Recycled Water Facilities Planning Report” Prepared by Kennedy/Jenks Consultants

Director Miller moved, seconded by Director Perri, to approve final report. Motion carried unanimously.

General Manager McNiesh advised that there is a label to put on the report changing the name from “Final Facilities Planning Report” to “Final Recycled Water Facilities Planning Report.”

6.3.3 Consider Approval of “Water Replenishment Impact Fee and Connection Fee Update” Prepared by Bartle Wells Associates

General Manager McNiesh reported the committee discussed method of calculating the connection fee; this fee is intended as the buy-in to the existing potable water system; consultant Bartle Wells advised of two alternate approaches in calculating fee; both are common and acceptable; one method values the existing system based on full replacement value; the other bases it on the system’s depreciated value; previous recommendation and discussions have used full replacement value method; committee’s discussion was whether that is the appropriate approach to take.

Accounting Manager Catalano responded to questions from Director Miller regarding accuracy of full replacement and depreciated values shown in the Bartle Wells report.

Director Miller moved, seconded by Director Perri, to approve report as written. Motion carried unanimously.

6.3.4 Pasatiempo Recycled Water Exchange Project

President Perri advised that the draft report will be coming out in January.

General Manager McNiesh said staff will schedule a Facilities Engineering Committee meeting as soon as the report is received.

7. STAFF REPORTS

Item 7.1 Accounting/Customer Service Reports

Accounting Manager Catalano advised that September and October reports were in the agenda packet.

Item 7.2 Operational Reports

Assistant General Manager/Operations Manager O'Brien said he had nothing more to report.

Item 7.3 General Manager's Report

General Manager McNiesh said he had nothing extra to add to his written report.

Item 7.4 Attorney's Report:

Attorney Gallagher had no report.

8. DIRECTOR'S COMMENTS ON ITEMS NOT ON THE AGENDA: None

9. MISCELLANEOUS CORRESPONDENCE: None

10. CLOSED SESSION:

Item 10.1 Pursuant to Government Code Section 54956.8  
Conference with Real Property Negotiator  
Property: Portion of Lehigh Hanson Quarry (APN 067-021-21)  
Agency Negotiator: General Manager  
Negotiating Parties: SVWD, Kaiser Sand & Gravel Company  
Under Negotiation: Price and Terms of Payment

Item 10.2 Pursuant to Government Code 54956.9(b)  
Conference with Legal Counsel – Anticipated Litigation  
Significant Exposure to Litigation: One (1) Case

Item 10.3 Pursuant to Government Code 54957  
Public Employment Performance Evaluation  
Assistant General Manager/Operations Manager

The Board went in to Closed Session at 10:00 p.m. with General Manager McNiesh, Assistant General Manager/Operations Manager O'Brien and Attorney Gallagher in attendance. The Board reconvened in Open Session at 10:40 p.m.

11. CLOSED SESSION REPORT AND ACTIONS ON MATTER(S) CONSIDERED IN CLOSED SESSION

Item 11.1 Consider Approval of Revised Memorandum of Understanding re: Position of District Assistant General Manager/Operations Manager

Director Miller moved, seconded by Director Hodgins, approval of modification of Assistant General Manager/Operations Manager Memorandum of Understanding providing for two additional days of annual management leave. Motion carried unanimously.

12. ADJOURNMENT

Director Kassis moved, seconded by Director Kannegaard, to adjourn at 10:45 p.m. Motion carried unanimously.

Respectfully submitted,

/s/ Deborah L. Hazen  
Deborah L. Hazen, District Secretary

Approved: January 14, 2010