

MINUTES OF A REGULAR MEETING
Of the
CACHUMA OPERATION & MAINTENANCE BOARD
Held at the
Cachuma Operation & Maintenance Board Office
3301 Laurel Canyon Road, Santa Barbara, CA
Monday, October 26, 2009

1. Call to Order, Roll Call

The meeting was called to order at 2:41 p.m. by President Williams who chaired the meeting. Those in attendance were:

Directors present:

Das Williams	City of Santa Barbara
Bob Lieberknecht	Carpinteria Valley Water District
Jan Abel	Montecito Water District
Lauren Hanson	Goleta Water District
Lee Bettencourt	SYR Conservation Dist ID#1

Others present:

Kate Rees	William Hair
Bill Ferguson	Gary Kvistad
Janet Gingras	Emily Hutton
Tom Mosby	Chip Wullbrandt
Charles Hamilton	Chris Dahlstrom
Fran Farina	Rebecca Bjork
Tim Robinson	Alex Keuper
Doug Brown	Ben Preston
Jack Rusky	Bert Bertrando
Matt Blois	

2. Public Comment

There were no comments from the public.

3. Consent Agenda

- a. **Minutes:**
September 28, 2009 Regular Board Meeting
- b. **Investment Funds**
Financial Reports
Investment Report
- c. **Payment of Claims**

Director Lieberknecht made a correction to the minutes, Item #7 second paragraph last line should read “replacing Item three with;”

Director Williams moved to approve the consent agenda as amended, seconded by Director Abel. Director Bettencourt questioned the time that the Board took action on the FY 08/09 Audit, and stated that the action took place prior to the noticed starting time. Counsel Bill Hair explained that the start time on the COMB agenda is approximate, that so there was no Brown Act violation concerning the time that the Board considered the audit. The motion passed 7/0/0.

4. Reports From the Manager

a. Member Unit Letter Agreement Regarding 2008 Spill Water Accounting

Ms. Rees reported that the Member Unit managers had reached agreement on ID#1 receiving free spill water from the 2008 spill. Included in the board packet is the signed letter agreement for the 2008 spill year only. Based on this agreement, COMB staff prepared the water use reports from September 2008 through September 2009 and provided them to the Bureau of Reclamation. This will resolve the non-compliance notices issued by Reclamation to COMB for water years 2008 and 2009. Ms. Rees encouraged the Member Unit General Managers to continue discussing how to reach a permanent agreement for the surplus spill water prior to the reservoir spilling again potentially this winter.

b. Cachuma Water Reports from September 2008 to Present

These reports were included in the board packet.

c. Operations Report

The Operations Report for September was included in the board packet.

d. 2008 Surcharge Accounting

Ms. Rees included the surcharge table in the board packet. The fish releases have continued through October, as the Board authorized, to prevent fish stranding. Releases will continue at least through the first of November, and continued releases will be assessed at that time. Target flow releases to date total about 9,274 acre feet, which includes 5,100 acre feet provided from project yield and 3,200 acre feet from surcharge.

e. Jesusita Fire Activities

Ms. Rees reported that the dead trees due to the fire in the Lauro Reservoir watershed are currently being removed. Our insurance claim with JPIA for the fire damage will cover this work.

f. Cachuma Reservoir Current Conditions

Date 10/26/2009

Lake Elevation	732.63 feet
Storage	139,816 acre feet
Rain (for the month to date)	2.20 inches
Rain YTD (for the season to date)	(not reported) inches

Fish Release-Hilton	16 acre feet per day
Month to Date Fish Release	525 acre feet
Month to Date Spill	0 acre feet
Year to Date Spill	0 acre feet

5. COMB Capital Improvement Program

a. SCC/Upper Reach Reliability Project

1) Project Status Report

The project status report was included in the board packet. Ms. Rees said that we are waiting for a few permits for the 2nd Pipeline Project that should be received shortly.

2) Public Records Act Request from W.A. Rasic Construction

Ms. Rees reported that COMB had received a Request for Public Records from W.A. Rasic Construction. The letter was included in the board packet as was the response letter from COMB's General Counsel acknowledging receipt of their request.

b. Mission Creek Pipeline and Fish Passage Project

1) Project Status Report

A project status report for the Mission Creek Pipeline and Fish Passage Project was included in the board packet.

Director Lieberknecht asked if there was a cost estimate for going over the creek instead of burying the pipeline in the creek. Ms. Rees said that an above ground pipeline had been considered as one of the options, but that she would have to check on whether a cost estimate had been done for that option, as it was not the best option identified by AECOM. She did not believe a cost estimate had been prepared for any other option except the engineer's recommended pipeline repair in the creekbed.

Tom Mosby requested the Mission Creek Pipeline Project engineering plans and specs be provided to the Member Unit General Managers for review and comment prior to the project going out for bid. Ms. Rees agreed to provide them.

6. Discussion of 2009 Revenue Bond Documents, Joint Participation Agreements, Contribution Agreements, and Related Indemnification Agreements to Fund COMB Capital Improvement Projects

a. CIP Bond/Contribution Agreement/ Revised Schedule

The schedule in the board packet was current the day the board packet was completed, but has since changed.

Director Bettencourt said that ID #1 would be discussing this item at its November 17th meeting and should be added to the schedule.

b. Revised 2009 Project List - Exhibit B to Joint Participation Agreement and Exhibit A to Contribution Agreement

Ms. Rees highlighted the language in the Joint Participation Agreement and COMB's Official Statement regarding substituting CIP projects from the comprehensive CIP list if needed. Exhibit B of the Official Statement has a much longer list of CIP projects than Exhibit A of the Contribution Agreements for MWD and CVWD, which includes only seven priority projects. She emphasized the need for COMB to have some flexibility to substitute projects if needed and recommended leaving that language to that effect in the Joint Participation and Contribution Agreements.

Chip Wullbrandt, General Counsel for MWD, explained that MWD intended to limit its funding participation to the 2009 Project list of seven priority projects, not to a specific dollar amount. MWD will be a cash participant and has agreed that they will pay their share of all the projects on the list up to a not to exceed dollar amount. If there are additional CIP projects that the Member Units wish MWD to participate in, the MWD Board will consider them as separate future actions.

Ms. Rees stated that ID#1 objected to the language in COMB's Preliminary Official Statement regarding references to substituting CIP projects. As stated above, she indicated COMB needed this flexibility in the event one of the projects could not be constructed. Mr. Kvistad reported that this was no longer an issue for ID#1 as long as ID#1 was fully indemnified. Mr. Kvistad thought that the ID#1 Board would agree to the substitution language remaining in the Official Statement.

c. Status of Member Units' Approval of COMB Bond, Joint Participation Agreements, Contribution Agreements

Ms. Rees requested that each Director report on the status of their individual Board's approval of the COMB bond or other funding mechanism for the 2009 Project.

Director Williams reported that the City Council had approved the COMB Bond and the Joint Participation Agreement.

Director Abel reported that MWD had approved a Contribution Agreement for cash funding its share of the suite of projects in the 2009 Project, approved an Indemnification Agreement for MWD, and that she had received consensus from her Board to approve the COMB bond.

Director Lieberknecht reported that CVWD had approved self financing its share of the 2nd Pipeline Project from its reserves, but will consider funding the other CIP projects on a project by project basis. Director Lieberknecht submitted a letter to the COMB Board summarizing CVWD's decision. The letter also emphasized 1) the need for a balanced prioritization of COMB projects; 2) the inclusion of non-Project users in Cachuma cost sharing; and 3) the need for a peak demand management protocol for the South Coast member agencies. These were all issues COMB agreed to address in its Resolution 496. Ms. Rees stated that it

was her understanding that CVWD had approved self funding all of the priority projects, not just the 2nd Pipeline Project.

Director Hanson reported that the GWD Board expressed support of financing the seven priority projects, but that the list did not address the topic of substitution projects. The Board expressed its desire to fully or partially bond for its share of the suite of projects in the 2009 Project, contingent upon some clarifications regarding CVWD's action. The GWD Board has not definitively stated if it will bond for the entire suite of projects or partially bond for the 2nd Pipeline Project and self fund the remaining projects.

Director Bettencourt reported that ID#1 is prepared to approve the COMB bond as long as the indemnification agreement for ID#1 is in place.

Doug Brown, bond counsel, stated that there had been different impressions of the outcome of the CVWD October 23rd meeting. Some of the confusion stems from the Contribution Agreement before them which had a list of seven projects. However the language in the staff report suggested that the Board was approving only the 2nd Pipeline Project. Mr. Brown stated that the motion approved was to approve the Resolution attached to the Contribution Agreement, which included the entire suite of projects. The confusion arose because of a contradiction between the Contribution Agreement, that has a project list of seven projects, and CVWD's option seven which was to approve only the funding of the 2nd Pipeline Project

Mr. Hamilton said there is a need for CVWD to schedule another meeting to sort through the details more carefully and reconsider the action his Board took on October 23rd. Mr. Hamilton stated that the CVWD Board has some concerns regarding COMB addressing that the 3 items outlined in their letter. Director Williams confirmed the commitment of the COMB Board to follow through with the intentions as set forth in COMB Resolution No. 496.

Director Williams took public comments at this time concerning this item.

Bert Bertrando, GWD Board President spoke about his concerns on the three conditions listed in the CVWD letter.

Jack Rusky, farmer from Goleta, spoke concerning the three items listed in the CVWD letter.

After discussion concerning the project priority list President Williams reviewed the list with the Board. They were all in agreement with the project list and the priority ranking as listed in Exhibit A.

d. Status of Approval of Indemnification Agreements

Ms. Rees reported on the Indemnification Agreements. MWD has a separate agreement with COMB that references its Contribution Agreement. CVWD will approve the appropriate Indemnification Agreements depending on the outcome of its special meeting. ID#1 has approved an Indemnification Agreement but it be revised based on which agencies bond for the CIP projects.

President Williams suggested that this be discussed and resolved during the attorney meeting following the COMB Board meeting.

e. **Schedule COMB Special Board Meeting for Approval of Bond Documents, Contribution Agreements, and Indemnification Agreements**

Due to the meeting schedules of the Member Units, it was determined that COMB's action to approve the bond documents could not occur prior to the next regular Board meeting on November 23rd. President Williams requested that staff remain in contact with CVWD, and if another Joint Board meeting between COMB and CVWD would expedite the decision, a joint meeting should be scheduled.

7. Consider Approval of Change Orders for El Jaro Creek Cross Creek Ranch Fish Passage Project

Tim Robinson gave a presentation on the El Jaro Creek Cross Creek Ranch Fish Passage Project. Dr. Robinson indicated that he anticipates a total of four change orders for this project. The first change order was approved at the September 28th Board meeting for additional rock-slope-protection for \$15,120. The second change order is for additional concrete for the southern wing slab on the low flow crossing for \$12,523. The third change order is to cover the cost for removal and disposal of previously unknown buried bridge pilings for \$9,315. The fourth change order would be for a small amount of additional concrete for the north approach road coming onto the low flow crossing, which is estimated to be less than \$5,000. Mr. Robinson provided a financial report for the project in the board packet.

Director Abel asked if any of these change orders could have been anticipated during the design phase. Mr. Robinson replied that change orders one and two probably should have been anticipated, and change orders three and four could not have been anticipated. She stressed that the ad hoc fish project committee should have full input before a project goes to bid to insure a good design.

President Williams pointed out that the project will be completed under budget and that the total change orders were still well below the 10% contingency.

Director Bettencourt asked what the liability of the design engineer would be. Counsel Bill Hair said if the engineer designed the project according to the standards of the industry, they were not negligent in missing these things so there is no liability.

Director Williams moved to approve Change Order #2 in the amount of \$12,523 and Change Order #3 in the amount of \$9,315 and authorized approval of Change Order #4 for \$5,000 or less, seconded by Director Abel, passed 6/1/0, Director Bettencourt voted no.

8. Consider Approval of COMB Change Work Order Policy

Ms. Rees presented a revised Change Order Policy that included changes suggested by the Board, and reviewed these changes with the Board. After Board discussion, additional changes to the policy were suggested, and the Board decided the draft policy should come back to the Board for approval at the November Board meeting.

9. Consider Authorization for COMB General Counsel to Prepare Written Legal Opinion Regarding Biological Opinion Activities

President Williams reminded the Board that at the September 23, 2009 COMB Board meeting, Director Bettencourt requested that an item be placed on the October meeting agenda to request that Mr. Hair prepare a written legal opinion on why implementation of the Cachuma Project Biological Opinion (BO) activities are not related to water rights.

Director Abel stated that requesting letters like this incurs a cost and it was not clear what the purpose of this letter was. Director Bettencourt responded that if the BO projects are water rights issues, then COMB should not be involved with those projects as COMB does not deal with water rights issues; CCRB was established for that purpose.

Chip Wullbrandt was of the opinion the question to be answered was if implementation of those projects by COMB would trigger the water rights unanimous consent requirement in COMB's Joint Powers Agreement (JPA). He felt the purpose of this letter would be to determine if COMB would be prohibited from carrying out those projects without unanimous consent.

Gary Kvistad agreed with this opinion, and suggested that he and Mr. Wullbrandt assist Mr. Hair in formulating the question to be answered. He said from ID #1's perspective, they wanted to make sure that that COMB is acting appropriately within the confines of the JPA.

Director Bettencourt moved to have a legal opinion written by COMB General Counsel on whether or not BO projects are related to water rights issues, and how it applies to the COMB JPA, seconded by Director Williams. Director Abel questioned the wording of the motion. Director Williams reworded the motion to say, authorize Mr. Hair to write a letter addressing this issue as he sees fit, and is advised of the question by Mr. Wullbrandt and Mr. Kvistad, seconded by Director Bettencourt, passed 7/0/0.

10. Status of ID No. 1 Approval of MOU Among COMB, CCRB, and ID No. 1 For Funding and Construction of El Jaro Creek Cross Creek Ranch Fish Passage Project

This was reported on during the CCRB meeting and there was nothing more to add. ID#1 has not approved the MOU to date.

11. Quagga Mussel Ad Hoc Committee Report

Director Hanson reported on a meeting that she and Rebecca Bjork had with County Supervisors Salud Carbajal and Doreen Farr, and Assistant County CEO, Teri Maus-Nisich. They discussed the various quagga mussel policies in place at Lake Casitas and suggested the possibility of a joint regional approach of working with the County Park Department regarding the quagga mussel protocols at Lake Cachuma.

Director Abel asked Ms. Rees whether or not her question regarding clarification on the County Park's sampling report had been investigated. Ms. Rees reported that the clarification has not yet been investigated but that she would have an answer for the next Board meeting.

12. Proposition 50 and Proposition 84 Activities

Ms. Rees reported that the State Water Resources Control Board is concerned about the delay in COMB approving matching funding for the 2nd Pipeline Project, and asked to be informed as soon as funding is in place for the project.

She also reported that there have been many meetings for the Prop 84 process. They participating partners are developing a comprehensive project list for the region. She anticipated that a revised MOU for administration for the Prop 84 process will come to the Board for approval in November.

13. Directors' Request for Agenda Items for the Next Meeting

There were no requests from the Directors'.

14. Meeting Schedule

The next regular Board meeting will be held November 23, 2009 following the 2:15 p.m. CCRB regular Board meeting, at the COMB office.

The Agendas and Board Packets are available on the COMB website, www.cachuma-board.org

15. COMB Adjournment

There being no further business, the meeting was adjourned at 5:10 p.m.

Respectfully submitted,

Kate Rees, Secretary of the Board

APPROVED:

Das Williams, President