



# BOARD OF DIRECTORS REGULAR MEETING STUDY SESSION MINUTES

Thursday, February 13, 2025 at 3:00 PM

66575 Second St, Desert Hot Springs, CA AND/OR Via Teleconference

## CALL TO ORDER

President Sewell called the meeting to order at 3:00 PM

## ROLL CALL

**BOARD MEMBERS PRESENT:** President Ivan Sewell, Vice President Robert Griffith, Director Russ Martin, Director Amber Duff, Director Ted Mayrhofen

**STAFF MEMBERS PRESENT:** Brian Macy, Marion Champion, Kurt Kettenacker, Danny Friend, Eric Weck, Oriana Hoffert, Amanda Lucas, Arthur Caprera, April Scott, Claudia Lopez, David Barraza, Theresa Murphy, Will Whitten, Dori Petee

## RULES OF PROCEDURE

**Rules of Procedure were read by General Counsel John Pinkney.**

*All noticed meetings are conducted using Rosenberg's Rules of Order as a procedural guideline. Directors should refrain from responding directly to public comments at meetings of the Board. The Board President will refer matters raised during public comment to the General Manager for follow-up when appropriate. Occasionally, a prompt response may be offered when an obvious answer resolution is available provided this is done in compliance with the Brown Act. Directors should refrain from debating or making decisions in response to public comments. The President of the Board presides at all meetings and decides all points of order and procedure during meetings. The President is responsible for maintenance and decorum at all Board meetings. No person shall be allowed to speak who has not first been recognized by the President. All questions and remarks should be addressed to the President as the presiding officer. No member of the Board should speak more than once about any one subject until every other member on the Board wishing to speak on the subject shall have been given the opportunity to speak. No Board member shall interfere with the orderly progress of a Board meeting. In order to ensure the orderly progress of Board meetings the Board President regulates the amount of time to be dedicated to a particular agenda item."*

## PUBLIC INPUT

No public input

President Sewell announced a change in the order of the agenda. The following discussion items will be addressed now.

## DISCUSSION ITEMS

### **DWA ~ MISSION CREEK BASIN REPLENISHMENT ASSESSMENT CHARGE REPORT**

Ester Sainz of Desert Water Agency (DWA) updated the Board on the Mission Creek Basin Replenishment Assessment Charge.

The discussion covered several key topics, including debt and the State Water Project, Table A-amounts and deliveries, area of benefit variances and credits, and Tropical Storm Hillary. Desert Water

Agency (DWA) does not have federal infrastructure debt but has state water project debt managed by the California Department of Water Resources (DWR). The 2025 statement of charges for DWA includes capital charges of approximately \$6.9 million, minimum operation, maintenance, power, and replacement (OMNR) charges of \$11 million, and variable OMNR charges of \$5.6 million. DWA and other state water project contractors negotiated a contract extension from 2035 to 2085, allowing for continued operation, maintenance, and improvement of state water project facilities. The contract extension does not provide additional water allocation to DWA or Coachella Valley Water District (CVWD). DWA's current Table A allocation is 55,750 acre-feet per year.

The state water project tax is used for capital and minimum OMNR costs associated with the state water project and is collected proportionally to property value. The replenishment assessment charge funds DWA's groundwater replenishment program. Mission Springs Water District paid \$18.5 million in replenishment assessment charges from 2002 to December 2024. Tropical Storm Hillary damaged DWA's Mission Creek recharge facilities, which were repaired at a cost of \$34,0008. DWA resumed water deliveries on July 1, 2024, and brought the basins into balance by December 2024.

### **FEDERAL AFFAIRS UPDATE**

Laura Morgan Kessler of Carpi and Clay presented a Federal Update to the Board. She began with an update from Washington, highlighting the recent activities since Donald Trump was sworn in as the 47th president of the United States. The Senate has been working quickly to confirm his cabinet secretaries and agency heads, with 11 confirmations to date, including the Department of Energy, the Department of the Interior, and the EPA. President Trump's first few days in office were marked by a flurry of executive actions, with 46 presidential actions issued on his first day alone. These actions focused on various issues, including the federal workforce, government modernization, energy, the environment, and immigration.

A significant topic discussed was the Trump Administration's attempt to freeze all grant and loan funding, which caused confusion and concern in Washington. The White House Office of Management and Budget issued a memo directing federal agencies to review grants and loans, leading to a temporary injunction blocking the proposed freeze. Despite the memo's recession, confusion persisted, resulting in legal actions and temporary orders.

The meeting also covered the upcoming fiscal year 2025 appropriations bills, with three options on the table to avoid a government shutdown: passing all 12 appropriations bills, another short-term continuing resolution, or a year-long continuing resolution. The discussion included the potential legal challenge to the Empowerment Control Act, which limits the president's ability to withhold or delay the expenditure of funds appropriated by Congress.

Lastly, budget reconciliation was addressed, explaining its significance in passing laws that impact the federal budget more quickly and with fewer obstacles.

## EMPLOYEE RECOGNITION

### HUMAN RESOURCES REPORT

This item will be fully recognized on Tuesday, February 18th.

### ACTION ITEMS

#### **PUBLIC HEARING ~ ORDINANCE 2025-01 ~ ESTABLISHING A PROCEDURE FOR PROPERTY OWNER OBJECTIONS TO PROPOSED WATER/SEWER FEES OR SPECIAL ASSESSMENTS**

It is recommended that the Board of Directors adopt Ordinance No. 2025-01, establishing a procedure for property owner objections to proposed water/sewer fees of special assessments.

Assistant General Manager Marion Champion presented. This item will be a public hearing on Tuesday, and this presentation will be given again during that hearing. Ordinance 2025 -1 establishes the procedure for property owner objections to proposed water and sewer fees or special assessments. Ms. Champion provided an overview of the ordinance based on Assembly Bill 2257. This bill addresses the implementation of an objection procedure to the Proposition 218 process. Proposition 218 has been a source of uncertainty and legal challenges for agencies, and AB 2257 aims to provide a clear and defensible framework for water agencies to follow. The ordinance establishes a formal objection procedure parallels Proposition 218 protest hearings or special assessment ballots. The goal is to streamline the administrative process and reduce potential litigation costs. The six-step process includes adopting an ordinance, providing notice, collecting objections, preparing a document responding to objections, holding a public hearing, and adopting the rates. This process is modeled on the California Environmental Quality Act (CEQA) process. The timeline for this process has been vetted by other agencies and is designed to mitigate the risks associated with Proposition 218 lawsuits.

#### **ADOPTION OF MSWD ARTIFICIAL INTELLIGENCE POLICY NO. 2025-01**

It is recommended that the Board of Directors adopt the MSWD Artificial Intelligence Policy No. 2025-01.

Assistant General Manager Marion Champion presented the draft artificial intelligence (AI) policy. The policy aims to provide clear guidance for the ethical use of AI tools within MSWD, recognizing AI technology's rapid advancement and integration into daily functions. The policy seeks to enhance efficiency, foster innovation, and support decision-making processes while safeguarding the privacy of customers and employees. The key points of the policy include extending its application to all employees, contractors, and partners, defining prohibited uses of AI, and incorporating AI usage guidelines into contract templates. The policy emphasizes that AI should aid in decision-making rather than make decisions independently. The discussion also highlighted the importance of transparency, security, and responsible use of AI. The need for employee training was addressed.

#### **AWARD OF CONTRACT TO BORDEN EXCAVATING INC. FOR GQPP AD-18 AREA D-3 SEWER CONSTRUCTION AND WATER LINE REPLACEMENT PROJECT AND CAPITAL BUDGET AUGMENTATION**

It is recommended that the General Manager be authorized to award a contract for the GQPP AD-18 Area D-3 Sewer Construction and Water Line Replacement Project to the lowest responsible bidder,

Borden Excavating, Inc., in the amount of \$5,252,252, plus a 10% contingency (total \$5,777,477.20), augment the capital improvement budget amount to \$1,820,622.20 for Job No. 11876, and to do all things necessary to complete the project, including but not limited to preparation and filing of a Notice of Exemption to comply with CEQA requirements.

General Manager Macy noted that the Board initially heard this discussion at the board workshop. Engineering Manager Eric Weck continued the presentation, focusing on the potential higher-than-anticipated bids compared to the engineer's estimate. The board discussed possibly reducing the project scope to certain streets if necessary. The project involves moving water mains from rear yard easements to the roadway to improve fire flow and reduce maintenance risks. The bids for the project came in higher than expected, leading to a detailed review of the costs and funding sources. The sewer and water utilities will be installed sequentially, with paving costs allocated to both projects. The total project cost is approximately \$3.2 million, with a budget deficit of \$871,0006. The board considered various funding options to cover the shortfall, including grants and connection fees. The discussion also touched on the potential impact on ratepayers and the need for a policy decision on subsidizing the project. The Board discussed and asked questions, addressing concerns about grant funding, project timing, and coordination with the city for code enforcement.

#### **BOARD ACCEPTANCE OF A CONTRACT CHANGE ORDER WITH JF SHEA FOR THE CONSTRUCTION OF THE NANCY WRIGHT REGIONAL WASTEWATER RECLAMATION FACILITY**

It is recommended that the General Manager be authorized to execute a contract change order with J.F. Shea Construction, Inc. for additional costs due to unforeseen tasks and field issues during construction of the Nancy Wright Regional Water Reclamation Facility in the amount of \$1,698,569.00.

Steve Ledbetter of TKE presented this item. He began by discussing previous workshops and board meetings regarding the change order negotiations with the contractor. Staff met with the contractor to negotiate and reduce the change order, but the contractor was firm on their numbers. The construction management team, TKE, worked with the contractor to respond to the board's questions presented in a memo. The presentation covered various aspects, including the original and negotiated costs of change orders, the impact of sensitive species surveys, and the negotiation process for earthwork quantities and markups. The board discussed the importance of adhering to contract specifications and the challenges faced due to supply chain disruptions and adverse weather conditions. The meeting also highlighted the need for clear communication, transparency in handling change orders, and the importance of being fiscally responsible while protecting the community's interests.

#### **DISCUSSION ITEMS**

##### **CRITICAL SERVICES CENTER AND ADMINISTRATION BUILDING UPDATE**

##### **GROUNDWATER PROTECTION PROGRAM UPDATE**

**CONSENT AGENDA**

*Consent agenda items are expected to be routine and non-controversial, to be acted upon by the Board at one time, without discussion. If a member would like an item to be handled separately, it will be removed from the Consent Agenda for separate action.*

**APPROVAL OF MINUTES**

It is recommended to approve the minutes as follows:

January 14, 2025 - Special Meeting Workshop

January 16, 2025 - Study Session

January 21, 2025 - Board Meeting

**REGISTER OF DEMANDS**

The register of demands totaling \$2,442,025.05

**REPORTS****DIRECTOR'S REPORTS**

All Director reports will be given on Tuesday.

**GENERAL MANAGER'S REPORT**

Included in this report are the following oral reports: Oral reports will be given on Tuesday.

A. Finance Report

B. Public Affairs Report

**COMMENTS****DISTRICT COUNSEL COMMENTS**

General Counsel announced another attorney would be appearing in his place at Tuesday's meeting, and the Board will convene into closed session.

**DIRECTOR COMMENTS AND REQUESTS FOR FUTURE AGENDA ITEMS**

1. General Comments
2. Requests for Future Agenda Items
3. Requests for Future Meetings

Director Mayrhofen asked Director Duff about her attendance at a CVCAN meeting where he is the alternate. She stated she did not attend because it was a networking event and not a meeting, and she did not think to ask the alternate to participate in that type of event. This sparked a discussion about who is assigned to what meeting and noted this needs to be discussed further. Director Mayrhofen pointed out he has been reviewing the meeting minutes and would like to discuss them with the Board Secretary (the General Manager).

President Sewell emphasized that every meeting includes a review of the consent agenda and any issues about minutes should be brought up during this time. Regarding the Affiliates list, he mentioned that it is clear and does not require further clarification. Additionally, he noted that no specific

clarification was provided about CVCAN meetings. He advised that you should inform your alternate if you cannot attend a meeting.

Director Martin noted he does not want to underestimate the value of meetings, whether they are networking events or meetings. He also noted that all Directors should report on meetings they attend whether they are paid for them or not.

**ADJOURN**

With no further business, President Sewell adjourned the meeting at 5:48 PM

Respectfully submitted,

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Dori Petee  
Executive Assistant