

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT
BOARD OF DIRECTORS MEETING

MINUTES OF November 10, 2015
1:30 P.M.

President Corneille called the Board Meeting of the Board of Directors to order at 1:30 p.m. All present stood for the pledge of allegiance, led by President Corneille.

ROLL CALL:

BOARD MEMBERS PRESENT:

Richard Corneille, President
Melody McDonald, Vice President (Arrived at 1:36 P.M.)
David E. Raley, Director
Manuel Aranda, Director
John Longville, Director

BOARD MEMBERS ABSENT:

None

GENERAL COUNSEL PRESENT:

David Cosgrove, Rutan & Tucker, LLP

STAFF PRESENT:

Daniel Cozad, General Manager
Jeff Beehler, Land Resources Manager
Angie Quiroga, Administrative Services Specialist

GUESTS PRESENT:

Christine Jones, CEMEX
John Withers, California Strategies
Jan Leja, Congressman Cook's representative

1. PUBLIC PARTICIPATION

President Corneille announced this as the time for any persons present, who so desire, to make an oral presentation to the Board of Directors. Hearing none, the meeting continued with published agenda items.

2. ADDITIONS/DELETIONS TO AGENDA

There were none.

3. CONSENT CALENDAR

It was moved by Director Aranda and seconded by President Corneille to approve all Consent Calendar Items, A: Board Minutes, October 14, 2015 and Item B: Expenditure Report, October 2015. The motion carried 4-0 with all Directors present voting in the affirmative and Vice President McDonald noted absent from the vote.

President Corneille: Yes
Vice President McDonald: Absent
Director Longville: Yes
Director Raley: Yes
Director Aranda: Yes

4. COMMITTEE REPORTS/ACTION ITEMS

A. UNAUDITED FINANCIAL REPORTS, OCTOBER 2015

Mr. Cozad stated that there were no specific comments on the report but to remind the Board of the upcoming Finance and Administration Committee meeting on November 16, 2015. The outcome from the meeting will be considered at the December 9, 2015 Board meeting. All areas are proceeding as budgeted.

It was moved by Director Aranda and seconded by Director Longville to approve the Unaudited Financials for October 2015. The motion carried 4-0 with all Directors present voting in the affirmative and Vice President McDonald noted absent from the vote.

President Corneille: Yes
Vice President McDonald: Absent
Director Longville: Yes
Director Raley: Yes
Director Aranda: Yes

B. COST ANALYSIS REVIEW FOR OUTSIDE COMMITTEE MEETINGS

President Corneille introduced this item for discussion. Mr. Cozad indicated on Package Page 28 staff provided a spreadsheet of outside committee meeting costs, broken down for each appointed meeting, Board member, and including the average/total meeting costs. The per diem for meetings are the primary driver of most meeting costs with the exception of those that require longer distance travel. This item was received and filed without comment.

C. LAFCO SPHERE OF INFLUENCE APPROVAL DISCUSSION

Mr. Cozad directed Board members to Package Page 29 for the summary of activities that led to LAFCO's Sphere of Influence (SOI) decision. The District has received a final official copy of the legal description of sphere. The existing divisions and boundary can be found on Package Page 30. Mr. Cozad noted some partners have already questioned the size of the sphere. Mr. Cozad

was able to reassure our partners that we plan to use the Groundwater Sustainability Counsel (GSC) to assess, screen, and evaluate any requests that might be made to annex or enlarge the District's boundary. President Corneille asked if there was a need for a motion to have a policy of the Board to support the GSC and work with the GSC in relation with any enlargement or annexation of the District. John Withers from California Strategies congratulated the District and the efforts of Mr. Cozad and David Cosgrove for their efforts and strongly believes LAFCO made the right decision in not consolidating the District with Valley District years ago. He believes what the District has done will serve the valley well for years to come being an example of effective special district governance. The Board concurred.

It was moved by Director Longville and seconded by Vice President McDonald to approve working with the GSC in relation to any enlargement and/or annexation of the District. The motion carried 5-0 with all Directors present voting in the affirmative.

**President Corneille: Yes
Vice President McDonald: Yes
Director Longville: Yes
Director Raley: Yes
Director Aranda: Yes**

D. REDLANDS AGGREGATE LEASE ASSUMPTION BY CEMEX

Mr. Cozad introduced Package Page 31: Staff's Assessment, Package Page 32: the letter received from CEMEX requesting the District's concurrence, and Package Page 33: the Redlands-Aggregate lease from 1984. He briefly explained that CEMEX had been operating on the Redlands-Aggregate lease site until they ceased mining; the agreement was to mine and they coordinated a payment on both royalties. CEMEX now has initial agreement to assume that lease. The Lease agreement requires the District to concur in the assumption of leases. President Corneille noted that the lease is for 35 years and the current term ends in 2019; he ensured Ms. Christine Jones was aware the District will need a new lease at that time. Mr. Cosgrove confirmed that the requirement of the lease is for the District to approve of the assignment beforehand in writing. The Board is to consent to the transfer of the lease unless there is basis for objection.

It was moved by President Corneille and seconded by Director Longville to approve the Redlands-Aggregate lease assumption by CEMEX. The motion carried 5-0 with all Directors present voting in the affirmative.

**President Corneille: Yes
Vice President McDonald: Yes
Director Longville: Yes
Director Raley: Yes
Director Aranda: Yes**

E. AGREEMENT WITH BUREAU OF LAND MANAGEMENT TO INITIATE A LAND EXCHANGE

Mr. Cozad explained that many years ago the District executed an agreement with BLM but a new agreement is now needed because some parcels were changed and a new parcel was added. An entirely new agreement is presented for approval, but about 75% of the work is already completed. President Corneille referenced Package Pages 53-57 (Exhibit A and Exhibit B), asking about the stated values where Federal Lands are \$14,700 per acre and non-Federal Lands are \$15,500 per acre. Mr. Cosgrove confirmed it is historical information from the prior appraisal and explained whoever is receiving the higher-valued land has to make an equalization payment of up to 25% to the party that is transferring the more valuable land. In order to facilitate the Wash Plan completion, the legislation that will be considered by Congress states the District will waive that payment for the Federal government. It essentially works as a guarantee to the Federal government that they will receive land that is more valuable than what they are exchanging or they will not have to pay the equalization payment.

President Corneille noted there are \$45,000 worth of expenditures to complete the land exchange and asked whether this was in the budget. Mr. Cozad responded in the affirmative and confirmed that the appraisal is the largest fee at \$30,000. Jan Leja, District Representative of Congressman Paul Cook's shared that they will introduce the legislation before the end of the year, probably within the next couple of weeks. It could then be taken up around the end of January or in February 2016. Congressman Cook and Congressman Aguilar will be co-authors. Director Longville asked whether it will be incorporated into another bill. Ms. Leja responded that there is a new speaker with different rules so they will be working through the new process.

It was moved by Director Raley and seconded by Director Longville to approve the agreement with the Bureau of Land Management to Initiate a Land Exchange. The motion carried 5-0 with all Directors present voting in the affirmative.

**President Corneille: Yes
Vice President McDonald: Yes
Director Longville: Yes
Director Raley: Yes
Director Aranda: Yes**

F. AGREEMENT WITH CALFIRE FOR BRUSH CLEARING CREW

Mr. Cozad presented the agreement as one of the first Wash Plan implementation items. He reminded the Board of Mr. Beehler's discussion of working with CALFIRE for the purposes of reducing the invasive grass and brush related to the Wash Plan. However, through this agreement they can work on projects that will help the District reduce brush areas, like canals and above the Cuttle Weir intake. The 13-17 member inmate crews are managed by CALFIRE under agreement with the prison system. They are work-released and supervised inmates. District counsel reviewed and had a section added for the oversight, security, and supervision of the crews. The draft of the agreement with this inclusion can be found on Package Page 63 Section D. The cost to the District for a crew is about \$200 per day. The crews will do preventive clearing for fire and flood preventions. President Corneille noted County Flood also uses the same inmate crews. Ms. Leja stated she has been involved with the use of these crews and they do a good job.

It was moved by Vice President McDonald and seconded by President Corneille to approve the agreement with CALFIRE for a brush clearing crew. The motion carried 5-0 with all Directors present voting in the affirmative.

**President Corneille: Yes
Vice President McDonald: Yes
Director Longville: Yes
Director Raley: Yes
Director Aranda: Yes**

G. TEMPORARY PART TIME ASSISTANT ENGINEER POSITION

Mr. Cozad responded to questions related to this item. Director Raley inquired about the length of the temporary position. Mr. Cozad responded the intention is for it to be less than one calendar year in any given appointment. Work performed will be charged to the applicable fund: Wash Plan, Land Resources, etc. The position will pay about \$25 per hour. Benefits do not apply for part-time except for sick pay. Employee status is to be treated as would be done with an intern position.

It was moved by Director Longville and seconded by Vice President McDonald to approve a temporary part-time assistant engineer position. The motion carried 5-0 with all Directors present voting in the affirmative.

**President Corneille: Yes
Vice President McDonald: Yes
Director Longville: Yes
Director Raley: Yes
Director Aranda: Yes**

H. WASH PLAN IMPLEMENTATION STRUCTURE AND ORGANIZATION

Mr. Cozad provided a PowerPoint slide presentation. He reminded the Board of the policy principles for implementation of the Wash Plan that the Task Force and Board approved at the September meetings. The Board Ad Hoc committee has worked with staff on the element of the principals. Each option in all three roles is marked for ability and likelihood of working out to satisfy the principals. Mr. Cozad stated a JPA is highly unlikely due to the District not having a power-in-common similar to those of IERCD's that are recognized by LAFCO. Under investment management, the District must find someone to invest the \$10 million endowment at an interest rate of 4% or greater. Although it is possible to get a 4% return, it is not possible under the government code investment restrictions on the District. Endowments are long term investments so a community foundation or a non-profit can invest, but not a government entity. Mr. Cozad continued noting the District owns a majority of the land with more land soon to-be owned. BLM will also own some of the land and be able to do management. Mr. Cozad suggested the District could have other entities perform elements of management. He then listed the governance roles and options, exemplifying three possible entities that could provide the other elements needed: (1) an existing non-profit land trust 501(c)3, (2) create a new non-

profit trust 501(c)3, or (3) the IERCD has LAFCO authority, can contract, and is certified to hold easements. He stated that either a single option can be chosen or the Board can choose a combination of options.

District staff worked with the Ad Hoc Committee to identify the agreement elements that would be necessary to hold the endowment. Director Raley asked what the fee would be if IERCD were to agree to hold the contract and easements. Mr. Cozad stated if IERCD holds the easements they are also responsible for reporting how the work is being done and they would have a percentage of the endowment proceeds. Mr. Cozad then reviewed roles, steps, and pros and cons for the different options. He noted that the District holding the endowments and easements may not be possible in the short term. The District could have to (1) clarify its authority in state law, (2) revise state law to be able to hold easements, (3) revise state law to allow public agencies to invest in endowments to achieve a higher yield, (4) apply to CDFW for certification, and (5) hire an endowment manager. Mr. Cozad asked for the Board's opinion on the different approaches. Director Aranda suggested using IERCD would not provide adequate control. Vice President McDonald asked how to maintain control and about the reputation of established land trusts. Mr. Cozad responded that some are very good and others not as good. Vice President McDonald stated a preference for avoiding LAFCO, due to the time involved. Mr. Cosgrove noted the law has changed since the Wash Plan was initially conceived, with a number of regulatory and legal hurdles having been added. He believes the District would not be able to complete the Wash Plan in the timeframe requested by Wash Plan participants with the use of LAFCO. From a practical standpoint, the District may want to contract with IERCD and still hold the money and management, but not have a JPA with them in order alleviate the need for LAFCO timelines. Additionally, a 501(c) 3 provides more options in terms of management, but it would likely be subject to the Brown Act and FPPC requirements. Vice President McDonald asked why the District Board cannot be the Board for the non-profit option. Mr. Cozad responded that the IRS mandates that there has to be diversity in the Board. It may have been possible in the past, but new Boards are not approved with identical membership. Discussion ensued. President Corneille asked what the time frame is before an option is required to be in effect. Mr. Cozad responded that there should be a biological opinion by March or April 2016, so approximately 90 to 120 days. President Corneille believes the new non-profit trust looks like the best option, as it provides the District the most control. He dislikes the existing non-profit land trust option because of the risk of losing control. Mr. Cozad suggested for the new non-profit Board to only have two District Board members in order to prevent a District Board quorum. He added the District should do the initial work on the new non-profit and work diligently on the agreements needed with the non-profit the District forms or with an existing non-profit. Director Longville indicated an early interest for membership in the new Board. Vice President McDonald requested a list of the entities approved to hold easements and endowments.

It was moved by Director Raley and seconded by Director Aranda to approve work on a new non-profit land trust and its respective agreements. The motion carried 5-0 with all Directors present voting in the affirmative.

**President Corneille: Yes
Vice President McDonald: Yes
Director Longville: Yes
Director Raley: Yes
Director Aranda: Yes**

I. UNITED WATER CONSERVATION DISTRICT AMICUS BRIEF

Mr. Cosgrove provided the memorandum explaining the City of San Buenaventura vs. United Water Conservation District court case. The United Water Conservation District enacted groundwater charges under the same organic act that the District uses. President Corneille requested a Board discussion, as this is money invested into another agency that may not need the support, and noted that he is not in favor. David Cosgrove calculated about 60 hours of time to put together an amicus brief. Director Longville asked Mr. Cosgrove what the financial impact would be on the District if UWCD loses the case, because ultimately the District would be losing that same authority. Mr. Cosgrove responded that the District's biggest common issue is the Proposition 218 requirements, specifically majority protest. Mr. Cosgrove added that he shares a lot of President Corneille's observations, expressing his uncertainty of whether the District would add much dimension to the litigation. However, sometimes allowing the courts to see that others are involved helps in expanding their minds to the broader application of the Court's decision. Mr. Cosgrove explained that an amicus brief is submitted by a party that is affected by the issues that are subject to the litigation, but are not directly a party of it. An amicus brings in broader policy perspectives and discusses legal impacts; they are written to influence the court. Director Longville asked whether the District could get by with a less substantive amicus brief that would require less time. Mr. Cosgrove responded that it is a barebones budget and if it is going to be done, it should be done right.

It was moved by Director Longville and seconded by Director Raley to approve District staff writing an amicus brief. The motion carried 4-1 with President Corneille voting against.

**President Corneille: No
Vice President McDonald: Yes
Director Longville: Yes
Director Raley: Yes
Director Aranda: Yes**

J. SPONSORSHIP OF SAN BERNARDINO COUNTY SPECIAL DISTRICTS ASSOCIATION DINNER IN 2016

Director Aranda requested this item and stated as a member of the Board of the Special Districts Association whose goal is to have meetings that appeal to their members. The last meeting the District sponsored was well appreciated and the Special Districts Board asked whether the District would sponsor in March 2016. President Corneille supports the District sponsoring a meeting every other year. Mr. Cozad added the Groundwater Sustainability Counsel is far enough along that this may be a timely opportunity to discuss that. Staff suggested sponsoring in September or October as an alternative due to limited staffing and March being in the middle of the busiest time for the District.

It was moved by Director Aranda and seconded by President Corneille to approve sponsoring a San Bernardino County Special Districts Association Dinner in either September or October 2016. The motion carried 5-0 with all Directors present voting in the affirmative.

President Corneille: Yes
Vice President McDonald: Yes
Director Longville: Yes
Director Raley: Yes
Director Aranda: Yes

5. INFORMATION ITEMS

A. BOARD COMMITTEE REPORTS-WITHOUT ACTION

There were none.

B. WASH PLAN REPORT

Director Raley presented an Environmental Leadership Award plaque received from the Riverside Land Conservancy acknowledging the work of the Wash Plan Committee. Mr. Beehler thanked the Board for approving the Agreement to initiate the land transfer. The legislation grants BLM the authority to work on the land transfer and BLM will be working on the administrative part with the District. Mr. Beehler then presented the Wash Plan flow chart and stated there are comments back from the solicitor. Comments on the HCP from FWS are still coming in even though it was sent to their solicitor. The District has addressed all comments and will be meeting with FWS and the consultant on Thursday in San Diego. The District should be on track to have a complete HCP document in December. The Task Force asked for comments on avoidance and minimization measures and the comments were incorporated. The legislation is moving forward. The San Manuel Band of Indians should have the MOA agreement signed and returned to the Board in the near future. President Corneille read a news article regarding a grant for the Orange Street Trail System and asked who the grant is from and whether it has a timeframe. Mr. Beehler responded that the grant covered work is in the Wash Plan and should meet the grant timeframe.

C. GENERAL MANAGER'S REPORT AND MONTHLY RECHARGE REPORT

Mr. Cozad directed members to the General Manager's Report on Package Pages 85-87. Both SBC Flood Control and District staff are doing a lot of work preparing for El Niño rains. The District is also working with the City of Redlands and aggregate management firms. Muñoz Construction was notified that their lease will not be renewed for the area near Mill Creek. The District will issue the City of Redlands an access permit to repair an uncovered pipeline. The SBVWCD family has had an addition, Athena's new baby Josiah James. CEMEX has some concrete that needs to be crushed as a part of projects but the lease is silent on whether that is possible. It's been done in the past, so it is not a significant new activity, but they have not done that in this area before so they are informing the District. CEMEX is also moving a trailer that is attached to existing utilities. Mr. Cosgrove stated the District needs to start monitoring the material being moved, but the current letter (Action Item D) does not present any legal issues.

D. FUTURE AGENDA ITEMS & STAFF TASKS

In response to questions, Mr. Cozad provided a brief update on Plunge Creek. There was a conference call with the regulatory community on the actions at Plunge Creek with very good participation from FWS and CDFWS. The District received some feedback and agreed to 30 days for comments to be received. President Corneille requested having an Operations Committee Meeting after the ACWA Fall Conference.

6. MONTHLY BOARD MEMBER COMMITTEE ACTIVITY REPORTS, AND/OR COMMENTS BY BOARD MEMBERS

Director Aranda is on the Professional Development committee for the Special Districts Association. A phone conference was scheduled but, unfortunately, the District office phone system was down during the scheduled time. Director Aranda requested payment for the meeting, which brought no objection.

Director Raley attended the Riverside Land Conservancy event for the award he presented. He also attended the Redlands Rise and Shine where they discussed a new ordinance to prevent homeless camping in downtown Redlands. The City Fire Department is also preparing for El Niño and is handing out sand bags at the fire station.

Director Longville attended the Special Districts Dinner and LAFCO hearing.

Vice President McDonald attended the Special Districts Dinner and the SBVMWD District meetings on November 3rd and October 20th. SBVMWD approved a loan agreement with the City of San Bernardino and approved a voting-delegate for the ACWA Conference. At the October 20th SBVMWD meeting awarded contracts for the active recharge project and funded the Santa Ana Sucker Translocation Plan. The December 1st SBVMWD meeting was cancelled. She also attended JPIA meetings on October 5th, 6th, and 30th. JPIA is rebranding to reduce confusion between ACWA and JPIA.

President Corneille attended the LAFCO hearing regarding Sphere of Influence.

7. UPCOMING MEETINGS

President Corneille requested for former Board members to be invited to the annual holiday luncheon after the meeting on December 9th. The 2016 Board Meeting Calendar is to be reviewed at the next Board Meeting; changes in consideration are March and April meetings.

It was moved by President Corneille and seconded by Director Aranda to approve Vice President Melody McDonald as the District's representative for the ACWA election. The motion carried 5-0 with all Directors present voting in the affirmative.

**President Corneille: Yes
Vice President McDonald: Yes
Director Longville: Yes
Director Raley: Yes
Director Aranda: Yes**

8. ADJOURN MEETING

It was moved by Director Raley and seconded by Director Aranda to adjourn. The motion carried 5-0 with all Directors present voting in the affirmative.

President Corneille: Yes
Vice President McDonald: Yes
Director Longville: Yes
Director Raley: Yes
Director Aranda: Yes

At 3:55 p.m. the meeting adjourned to the next regular Board Meeting scheduled for December 9, 2015 at 9:30 a.m. at District Headquarters, 1630 W. Redlands Blvd., Redlands, CA.



Daniel B. Cozad
General Manager