

**DUBLIN SAN RAMON SERVICES DISTRICT
MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS**

March 19, 2015

A special meeting of the Board of Directors was called to order at 5:40 p.m. by President Edward R. Duarte. Boardmembers present: President Edward R. Duarte, Vice President D.L. (Pat) Howard, Director Richard M. Halket, Director Dawn L. Benson, and Director Georgean M. Vonheeder-Leopold. District staff present: Bert Michalczyk, General Manager; Dan McIntyre, Engineering Services Manager; John Archer, Administrative Services Manager/Treasurer; Dan Gallagher, Operations Manager; Carl P.A. Nelson, General Counsel; and Nancy Gamble Hatfield, District Secretary.

1. CALL TO ORDER
2. PLEDGE TO THE FLAG
3. ROLL CALL - Members: Benson, Duarte, Halket, Howard, Vonheeder-Leopold
4. PUBLIC COMMENT (MEETING OPEN TO THE PUBLIC) – 5:41 p.m.

Speaker: Zone 7 General Manager Jill Duerig – Ms. Duerig stated she and Zone 7 President Greci were present tonight and available to answer questions the Board may have. She asked to confirm that the DSRSD Board had received copies of the March 18, 2015 letter sent this morning from Zone 7 President Greci to General Manager Michalczyk with a subject titled, “Possible Waiving Objection to EBMUD – Yuba Water Acquisition.”

Speaker: Zone 7 President John Greci – Mr. Greci commented he was present this evening to answer any questions from the Board including those they might have about the letter referred to by Ms. Duerig. He expressed his hope to answer any unresolved questions so that DSRSD and Zone 7 can work together in an amiable manner for the entire valley. He noted there was no open session item for this discussion so he was offering his thoughts under Public Comment.

General Manager Michalczyk reported since the Agenda for this meeting was posted yesterday, information was received regarding the Yuba County Water Agency-EBMUD-DSRSD water transfer in the form of a letter from President Greci of the Zone 7 Board of Directors to Mr. Michalczyk concerning that water transfer and that Mr. Greci and Zone 7 General Manager Duerig would attend this meeting to discuss and explain the letter.

Mr. Michalczyk stated that together with District General Counsel the new information requires the Board to take immediate action and discuss in open session certain matters, as permitted by subdivision (a)(2) of Government Code section 54954.2.

Mr. Michalczyk stated that under Government Code section 54954.2 (b)(2), a motion and four affirmative votes are necessary for the Board to add the open session item to the

Agenda. The title of the item would be, “*Consider Response to Letter dated March 18, 2015 from President John Greci to General Manager Bert Michalczyk, with a Subject of Possible Waiving of Objection to EBMUD-Yuba Water Acquisition.*”

Director Benson MOVED to ADD an Agenda item for placement both before and after Closed Session Item 5A titled, “*Consider Response to Letter dated March 18, 2015 from President John Greci to General Manager Bert Michalczyk, with a Subject of Possible Waiving of Objection to EBMUD-Yuba Water Acquisition.*” Director Vonheeder-Leopold SECONDED the MOTION.

President Duarte called for the vote.

The MOTION CARRIED with FIVE AYES.

ADDED ITEM – *Consider Response to Letter dated March 18, 2015 from President John Greci to General Manager Bert Michalczyk, with a Subject of Possible Waiving of Objection to EBMUD-Yuba Water Acquisition*

Director Vonheeder-Leopold asked either Mr. Greci or Ms. Duerig to explain how the Zone intended to meet 100% of the District’s water demand in 2015.

Zone 7 General Manager Jill Duerig commented that it has always been the intent of Zone 7 to do what it can to meet 100% demands. She reviewed that last year the Zone was facing a 0% allocation and the possibility of the failure of the Delta. The local emergency was declared at the end of January 2014. She stated this year is a very different water picture with opportunities for water transfers and purchases. She mentioned the Zone participates in the Yuba Accord, multi-year pooling program, and Semitropic and Cowelo water storage banks. They are also able to take advantage of carry-over water in the State Water Project (SWP) of around 9,000 to 10,000 AF. Ms. Duerig stated that preliminarily the Zone believes it will have no trouble meeting demands and may even have some left over water. She mentioned the numbers will not be finalized until April 16, 2015.

Director Halket discussed the latest official review of the state’s water supply report. He expressed his surprise at the Zone being able to close the water gaps. He asked how Zone 7 will make up any water deficits.

Ms. Duerig reiterated that statewide the water picture is different but that Zone 7 can provide all of the District’s needs it is asking for.

President Duarte asked Ms. Duerig if she was saying that the terms of the original contract would be met.

Ms. Duerig answered affirmatively that it is Zone 7’s current projection to do so—but that will not be confirmed until April 16, 2015.

President Duarte asked what will happen if the April 16, 2015 sustainability report does not allow for Zone 7 to provide 100% of the water. He asked how much water the District would then receive. He also asked if this situation would free up the District to purchase water elsewhere.

Ms. Duerig stated under the terms of the contract, yes it would.

Director Benson stated she would not attend Closed Session Items 5.B and 5.C to avoid any appearance that she is participating in any discussions, decisions, or voting on the approved DSRSD water supply contract with EBMUD and to ensure that she neither influence nor attempt to influence another member of the DSRSD Board regarding any matters pertinent to the contract consistent with the applicable provisions of the Government Code because she is a salaried employee of EBMUD.

5. CLOSED SESSION

At 5:54 p.m. the Board went into Closed Session 5.A. President Duarte announced that Engineering Services Manager Dan McIntyre would also attend Closed Session Item 5.C when it is held.

A. Conference with Legal Counsel – Anticipated Litigation. Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9: Two potential cases.

6. REPORT FROM CLOSED SESSION

At 6:17 p.m. the Board came out of Closed Session 5.A. President Duarte announced that there was no reportable action taken on Item 5.A.

ADDED ITEM – *Consider Response to Letter dated March 18, 2015 from President John Greci to General Manager Bert Michalczyk, with a Subject of Possible Waiving of Objection to EBMUD-Yuba Water Acquisition*

Director Benson asked whom Zone 7 was working with for the various water transfers for the multi-year pool.

Zone 7 General Manager Duerig stated that this is coordinated through the Department of Water Resources (DWR) who works with the 29 state water contractors to find willing sellers and buyers. Zone 7 also participates in the Yuba Accord but through the DWR. They don't have a direct contact with Yuba.

Ms. Duerig stated that Zone 7 Director Bill Stevens had joined the meeting and was in the audience.

Director Benson asked how much water Zone 7 was requesting from Yuba or DWR in 2015.

Ms. Duerig commented that it was about 3,000 AF.

Director Vonheeder-Leopold asked Ms. Duerig to give the Board a rough estimate of how much acre feet of water Zone 7 had in storage in Semitropic, Del Valle, Cowelo, and groundwater.

Ms. Duerig stated she did not have exact figures but knew there was enough to provide 100% of the water requested from the District. She also noted that in 2014 a 29% conservation level was achieved when only 25% was actually requested. This provided additional carry-over water.

Director Halket stated that the groundwater basin should not be overstressed solely to allow Zone 7 to meet the District's 2015 request; he knows the groundwater basin was hit very hard last year.

Ms. Duerig stated that in 2014 the groundwater basin was not used as much as believed and preliminarily this year only 10,000 AF might have to be pumped. However, she stated that she did not have the exact number. She stated there was no stressing at all of the groundwater basin last year and stored water was returned to Semitropic and Cowelo. Ms. Duerig stated Zone 7 has not taken the groundwater levels to make the estimates of storage yet.

Director Benson asked, with regard to contracts Zone 7 has with Yuba and DWR, what is the timeframe for Zone 7 obtaining the water under those contracts.

Ms. Duerig stated the contract with Yuba is a multi-year contract and was signed in fall 2014 with an approximately five-year extension and the DWR multi-year pooling program is a two-year program that was approved by the Zone 7 board in February 2015.

Director Benson asked Ms. Duerig when the water will be forthcoming.

Ms. Duerig stated that until the DWR multi-year pool allocation is finalized, none of the State Water Project contractors will know how much water they will receive. She stated that while Zone 7 put in a request for 3,000 AF, they may only receive 1,500-2,000 AF. She stated that Zone 7 is assuming they would only receive half of what was requested from the multi-year pool. She stated that Zone 7 also put in a request to initiate the analysis for the Byron-Bethany Irrigation District transfer. Zone 7 has had trouble the past couple of years getting those approved. She stated Zone 7 is being conservative because they are assuming no stressing of the groundwater basin, no receipt of Byron-Bethany Irrigation District water, and only half of the requested multi-year pool water.

Director Vonheeder-Leopold asked if Zone 7 was planning to use any of the water for recharge of the groundwater.

Ms. Duerig stated yes there was some of that included. However, she does not know exact numbers. She stated this information is very preliminary and those are the kinds of things that change a lot as Zone 7 starts to see how the demands and availability shape up.

Director Benson asked when the DWR will make the final decisions on allocation.

Ms. Duerig stated one of the reasons Zone 7 does the April sustainability report no earlier than their April board meeting is because the final allocation is usually given in early April.

Director Vonheeder-Leopold asked if this is the usual schedule.

Ms. Duerig stated that in less critical water years the Zone's sustainability report is often prepared in May or June just to go through the exercise for the water outlook for the next five years. However, this year and last year, Zone 7 has prepared the report as early as possible.

5. CLOSED SESSION

At 6:26 p.m. the Board returned to Closed Session 5.A.

A. Conference with Legal Counsel – Anticipated Litigation. Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9: Two potential cases.

6. REPORT FROM CLOSED SESSION

At 6:45 p.m. the Board came out of Closed Session 5.A. President Duarte announced that there was no reportable action taken on Item 5.A.

ADDED ITEM – *Consider Response to Letter dated March 18, 2015 from President John Greci to General Manager Bert Michalczyk, with a Subject of Possible Waiving of Objection to EBMUD-Yuba Water Acquisition*
(continued)

President Duarte stated in response to the Zone 7 letter dated March 18, 2015, the District Board is in conceptual agreement, but wishes to offer several points in the spirit of cooperation that will be more detailed in an expanded version in a forthcoming letter. He explained if Zone 7 will support the diversion of water from Yuba to EBMUD, totally at the District's expense, the District would be willing to take delivery of the water into the District's system under the terms of the existing contract. Having that water would be an insurance policy against any unforeseen developments that might happen later in the year. If that is acceptable to Zone 7, then the District Board would accept Zone 7's offer to waive their objections, but DSRSD wants Zone 7 to immediately communicate to the Bureau of Reclamation (BOR) that a state of an emergency still exists in the Tri-Valley. In summary, the District would be willing to divert and pay for the water and allow that water to be essentially controlled by Zone 7, which could then decide when and how the water would be used.

Zone 7 General Manager Duerig stated that a counter-proposal would have to be taken back to the Zone 7 board because they only have the authority contained in the letter from President Greci to Mr. Michalczyk. She stated the Zone's next meeting is a month away and the likelihood of scheduling a special board meeting before then is unknown.

Zone 7 President Greci stated he would try to expedite the scheduling of a special board meeting so as to be able to respond to the District as soon thereafter as possible.

Director Halket stated that his concern was with that timing. He stated the latest information from the BOR is that the Zone 7 objections must be resolved before the end of the business day Friday, March 20, 2015 in order to allow the transfer to proceed. Director Halket asked Ms. Duerig if she could use her contacts at the BOR to communicate with them directly.

Ms. Duerig stated that General Manager Michalczyk must sign the letter tonight but that she could try to make some calls tomorrow to the BOR. Even so, that might not provide the District's desired outcome with the BOR. She stated that if the District Board needed something in hand by the close of this meeting, she only had authority to do what was contained in the March 18, 2015 letter provided to Mr. Michalczyk this morning. Additionally, she stated that a special Zone 7 board meeting could not be scheduled quickly enough.

Mr. Michalczyk explained that what the District Board was proposing was acceptance of the Zone 7 letter to waive objections to transfer the water from EBMUD into the District's service area and that the District would not take delivery of the water until approved by Zone 7. He stated that the District was only asking Zone 7 to waive their objections to transfer water to EBMUD. He reiterated that delivery to the District would not occur until permitted by Zone 7.

Ms. Duerig again stated she could send a letter to the BOR once the Zone 7 letter is signed by the District General Manager. However, she stated there was no Zone 7 board authority regarding any other additional proposed principles or caveats beyond the letter transmitted to Mr. Michalczyk.

Mr. Michalczyk clarified that he did not think the District was asking for anything more.

Mr. Greci asked if Mr. Michalczyk was saying that the District would not draw water from Yuba unless Zone 7 approved it.

Mr. Michalczyk clarified that the proposal was that water would be moved from Yuba to EBMUD and then stored at EBMUD until Zone 7 provided authorization to move the water elsewhere.

Mr. Greci emphasized the importance of Zone 7 not incurring any financial loss as a result of obtaining the Yuba-EBMUD transfer water even while the District would receive 100% of its water allocation request from Zone 7.

Director Vonheeder-Leopold stated that under the District proposal, and in her view, the water could even be used to recharge the groundwater, if need be.

Mr. Michalczyk stated in exchange for signing the Zone 7 March 18, 2015 letter, the District needs a letter sent tomorrow from Zone 7 to the BOR saying the objections raised by Zone 7 to the Yuba-EBMUD water transfer were removed and the community drought emergency still exists.

Mr. Greci stated that, as one director out of seven, Mr. Michalczyk's proposal sounded good. He stated that the Zone 7 board had a healthy discussion the previous evening with a goal to not incur any financial loss to the Zone. He stated that the Zone 7 board has expressed concern about retail agencies starting a trend to go elsewhere and obtain water without working through those details in conjunction with Zone 7 because it is Zone 7's responsibility as the water wholesaler. He stated Zone 7 is willing to work with the District and other agencies. The original provisions of the contract were established to protect all ratepayers in the Valley and protect Zone 7 from potentially incurring financial losses. Mr. Greci mentioned he did not understand why the District would obtain water from elsewhere that would cost more when Zone 7 could provide 100% of the water requested at half the cost.

Director Vonheeder-Leopold stated that Zone 7 seems to be assuming the District will be able to have the desired amount of water but the District Board and staff are thinking possibly this water may not actually be available.

Mr. Michalczyk stated the additional water from Yuba-EBMUD would serve as an insurance policy and protect the District from something unexpected happening and the District Board is willing to pay for the Yuba-EBMUD water.

Ms. Duerig stated that if the General Manager was willing to sign the March 18, 2015 Zone 7 letter without any caveats and no extra principles, then she would be authorized to send the letter lifting her objections and she would not send directly to the BOR, but rather to the District with a copy to the BOR.

Mr. Michalczyk stated he would need Board authorization to either send a separate District letter to Zone 7 or to sign the March 18, 2015 letter from Zone 7 as is.

Director Vonheeder-Leopold stated she would feel more comfortable to send a separate letter to Zone 7.

V.P. Howard stated he believes the Board needs to direct Mr. Michalczyk to sign the Zone 7 letter and also lay out the Board's request.

Zone 7 Director Bill Stevens addressed the Board and commented the Zone 7 board wants to work with the District. He suggested it might be better for staff to work together and get water next year. He mentioned getting water is a good thing for the Valley and

everybody. He stated because of the imposed BOR deadline, the Zone cannot help the District right now.

Director Vonheeder-Leopold stated that the District found water and that this was acceptable to Zone 7. She stated she agreed with the provisions of the March 18, 2015 letter.

Ms. Duerig stated that once the March 18, 2015 letter is signed, she will move forward with a letter to the BOR stating Zone 7 no longer objects to the transfer.

Director Vonheeder-Leopold mentioned the importance of the letter and its timing.

V.P. Howard concurred the March 18, 2015 letter calls for Ms. Duerig to send a letter to the BOR if the District signs the March 18, 2015 letter.

Mr. Michalczyk clarified the letter must state that Zone 7 lifts its objections to the Yuba-EBMUD water acquisition and there still exists a State of Emergency related to the drought.

Director Halket asked General Counsel Nelson to give his opinion about directing the General Manager to sign the March 18, 2015 letter from Zone 7.

General Counsel Nelson stated that when he reads the water supply contract with Zone 7, he believes there are several provisions that entitle the District to purchase water from sources other than Zone 7 and there are a variety of these situations listed, e.g., water quality emergency, water quantity emergency, fire emergency, inability to serve quantity of treated water necessary to satisfy the requirements of the contractor, etc. However, the District has an obligation to pay the Zone 7 specified fixed costs that the Zone would incur and otherwise been able to recoup from water sales. The March 18, 2015 letter provides a slightly different approach and says the District will pay the fixed and variable costs and is a little different than what is in the water supply contract.

V.P. Howard stated his view that the March 18, 2015 letter was limited in scope.

Director Halket expressed his hope that when Zone 7 stated they hoped to provide the District with 100% of the water requested, that this was meant to mean they would provide 100% of the water requested and not a lesser amount for imposed conservation. He suggested the Board direct General Manager Michalczyk to sign the March 18, 2015 Zone 7 letter as is, have Zone 7 write their letter to the BOR then get the Yuba water to EBMUD and hold the water for the time being.

Director Vonheeder-Leopold asked how long EBMUD will hold the District's Yuba water in their system.

Operations Manager Gallagher responded the water can contractually be held by EBMUD through October 31, 2015.

Director Halket MOVED to authorize the General Manager to sign and return the Zone 7 March 18, 2015 letter as is and work with Zone 7 staff to draft the appropriate language for the called-for Zone 7 letter and have all this completed by the end of the business day Friday, March 20, 2015. V.P. Howard SECONDED the MOTION, which CARRIED with FIVE AYES.

5. CLOSED SESSION

At 7:13 p.m. the Board returned to Closed Session 5A.

- A. Conference with Legal Counsel – Anticipated Litigation. Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9: Two potential cases.
- B. NOT HELD - Conference with Legal Counsel – Anticipated Litigation. Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9
- C. NOT HELD - Conference with Real Property Negotiator-Pursuant to Government Code Section 54956.8
Property: Potential Water Supply Contract
Agency Negotiators: Bert Michalczyk, General Manager
Dan Gallagher, Operations Manager
John Archer, Administrative Services Manager
Carl P.A. Nelson, General Counsel
Robert B. Maddow, Assistant General Counsel
Negotiating Parties: East Bay Municipal Utility District and Yuba County Water Agency
Under Negotiation: Price and Terms

6. REPORT FROM CLOSED SESSION

At 7:24 p.m. the Board came out of Closed Session 5A. President Duarte announced that there was no reportable action and that the Board did not hold Closed Sessions 5B or 5C.

7. ADJOURNMENT

President Duarte adjourned the meeting at 7:25 p.m.

Submitted by,

Nancy Gamble Hatfield
District Secretary