

MINUTES OF THE BOARD OF DIRECTORS
ZONE 7
ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

REGULAR MEETING
April 16, 2008

President Stevens called the regular meeting to order at 7 p.m., with a salute to the flag. The following were present:

DIRECTORS: JOHN GRECI
JAMES CONCANNON
STEPHEN KALTHOFF
JAMES KOHNEN
SARAH PALMER
RICHARD QUIGLEY
BILL STEVENS

DIRECTORS ABSENT: NONE

ZONE 7 STAFF: JILL DUERIG, GENERAL MANAGER
AMY NAAMANI, GENERAL COUNSEL
KURT ARENDS, ASSISTANT GENERAL MANAGER, ENGINEERING
VINCE WONG, ASSISTANT GENERAL MANAGER, OPERATIONS
JOHN YUE, ASSISTANT GENERAL MANAGER, FINANCE & BUSINESS SERVICES
MATT KATEN, PRINCIPAL ENGINEER, GROUNDWATER SECTION
DENNIS GAMBS, PRINCIPAL ENGINEER
RICH PUTICH, ASSOCIATE ENGINEER, WATER SUPPLY ENGINEERING
ATHENA WATSON, ASSOCIATE ENGINEER, WATER SUPPLY ENGINEERING
BONI BREWER, PUBLIC INFORMATION OFFICER
BARBARA MORSE, BOARD SECRETARY

Item 2—Presentations by Science and Engineering Fair Awardees

Ms. Brewer gave a brief background on the Tri-Valley Science & Engineering Fair, held on March 5 at the Robert Livermore Community Center and sponsored by the Lawrence Livermore National Laboratory. The annual fair is geared towards high school and middle school students and attracts entries on everything from environmental science to medicine to computer science. As in past years, two Zone 7 staff members volunteered to participate as judges of water-related projects. This year's judges were Karen Newton and Cheryl Dizon.

In order to recognize the great work these students did in their research and to congratulate them in a public setting, the students selected by Zone 7 staff to receive awards for their water-related projects were in attendance to make short presentations on their projects.

Junior Water Award:

Jillian Alexander, Pine Valley Middle School in San Ramon, for her study entitled, "How Clear is Your Water?"

Senior Water Award:

Donald Golinveaux, San Ramon Valley High, for his study, "Ozone Absorption Rates."

Senior Water Team Award:

Joseph Kim, Andrew Koth and Neel Patel, Foothill High School in Pleasanton, for their project, “A Study of Arroyo Del Valle Vegetation, Hydrologic Features and Water Quality during Release Events.” (Andrew Koth was out of town and unable to attend the meeting.)

President Stevens thanked the students for their presentations.

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The Board then went into closed session.

Item 3—CLOSED SESSION—7:15 p.m.

- a) Conference with Legal Counsel - Existing litigation pursuant to Subdivision (a) of Government Code Section 54956.9: 6 cases

Watershed Enforcers v. California Department of Water Resources et al., Alameda County Superior Court Case No: RG06292124

Alameda County Flood Control & Water Conservation District, Zone 7, et al. vs. Sacramento Regional County Sanitation District, et al; Sacramento County Superior Court Case No: 05CS00908

Alameda County Flood Control & Water Conservation District, Zone 7 v. Land Factors, Inc. et al. Alameda County Superior Court Case No. VG06293120

Alameda County Flood Control & Water Conservation District, Zone 7 v. Robert Vieux, et al Alameda County Superior Court Case No. VG06292839

Alameda County Flood Control & Water Conservation District, Zone 7 v. Western Pacific, et al Alameda County Superior Court Case No. VG06293188

Alameda County Flood Control & Water Conservation District, Zone 7 v. McNealy and Fragulia, et al Alameda County Superior Court Case No. VG06293136

- b) Conference with Legal Counsel –Significant exposure to litigation pursuant to Subdivision (b) of Government Code Section 54956.9: 3 cases
- c) Government Code Section 549547: Public Employee Performance Evaluation
Title: General Manager

Item 4—Open Session and Report Out of Closed Session—8:20 p.m.

President Stevens reconvened the Board in Open Session.

Ms. Naamani made the following report out of Closed Session:

- 1) By unanimous vote, the Board of Directors authorized and ratified the filing of a cross-appeal in the case of Alameda County Flood Control & Water Conservation District, Zone 7 v. Sacramento Regional County Sanitation District, et al.

2) By unanimous vote, the Board of Directors authorized settlement in the matter of Alameda County Flood Control & Water Conservation District, Zone 7 v. Robert Vieux, et al. and to acquire property for \$47,500.00.

3) By unanimous vote, the Board of Directors authorized settlement in the matter of Alameda County Flood Control & Water Conservation District, Zone 7 v. Western Pacific, et al. and to acquire property for \$70,000.00.

Item 5—Citizens Forum—No comments.

Item 6—Minutes of Regular Meeting of March 19, 2008

On a motion by Director Palmer with second by Director Concannon, the Board approved the minutes of the regular meeting of March 19, 2008.

Item 7—Consent Calendar

Director Kalthoff moved for the approval of consent Items 5a – 5d. The motion was seconded by Director Quigley, and the following resolutions were approved by a vote of 7-0.

Resolution No. 08-3145 Approving Contract Amendment No. 4 with Meyers, Nave, Riback, Silver & Wilson for Property Acquisition Services for the Altamont Water Treatment Plant and Pipeline Project in the amount of \$400,000 for a total not-to-exceed amount of \$1,394,000. (Item no. 7a)

Resolution No. 08-3146 Approving Amendment No. 3 to Professional Services Agreement with Wunderlich-Malec Engineering for SCADA Systems Maintenance in the amount of \$45,000 for a new not-to-exceed amount of \$197,250 for FY 2007-08. (Item no. 7b)

Resolution No. 08-3147 Declaring May as Water Awareness Month. (Item no. 7c)

Resolution No. 08-3148 Approving request of Director Kohnen to attend 2008 Special Districts Legislative Day, May 12, 2008, Sacramento, California, and authorizing reimbursement of actual and necessary expenses associated with attendance at this event. (Item no. 7d)

Item 8—Staffing Updates: None to report this month.

Item 9—Award of Contract for the Altamont Pipeline Project, Livermore Reach, Project No. 182-08

The Board heard an introduction and background report on the project from Project Engineer, Mr. Rich Putich. He began with a virtual flyover of the Altamont projects: Altamont Water Treatment Plant; Altamont Pipeline Project, County Reach; and the Altamont Pipeline Project, Livermore Reach. He then proceeded to a bid history of the Altamont Pipeline Project, Livermore Reach, an analysis of the bids opened on March 25 and, finally, staff recommendations.

Recent bidding history

- December 2007 bid opening for the 11-mile “Altamont Pipeline Project.”
- January 2008 Zone 7 Board rejected all bids and authorized project changes.
- The Project was changed from approximately 11 miles to 5 miles. The original project had an engineers estimate of approximately \$51 million, whereas the new project has an engineers estimate of approximately \$27 million. The plans, specifications, contractor qualifications, and cost estimates were all changed to conform to the new project known as the “Altamont Pipeline Project, Livermore Reach.”
- The new Altamont Pipeline Project, Livermore Reach, which will run from South Vasco Road to the vicinity of Kitty Hawk Road/Airway Boulevard, is needed to meet the immediate need to provide water supply and reliability to Livermore independent of the larger Altamont Water Treatment Plant and Pipeline Project. This is not true of the Altamont Pipeline Project, County Reach, which has no function independent of the new plant and will, therefore, be constructed on a schedule compatible with the plant construction.
- The new Altamont Pipeline Project Livermore Reach Project was advertised for bid in February 2008.

Project advertised February 2008—bids opened March 25 at 2:00 p.m.

Bid Day Results

| | | |
|----|--------------------------|--------------|
| 1. | Ghilotti Construction | \$18,337,250 |
| 2. | Mountain Cascade | \$21,687,077 |
| 3. | Ranger Pipeline | \$22,800,078 |
| 4. | S. J. Louis Construction | \$25,032,008 |

Engineers estimate = \$26,818,625

Results of Bid Analysis

| | | |
|----|--------------------------|------------------|
| | Ghilotti Construction | *Non-responsible |
| | Mountain Cascade | *Non-responsible |
| 1. | Ranger Pipeline | *\$22,800,078 |
| 2. | S. J. Louis Construction | \$25,032,008 |

*Ghilotti: Did not meet minimum qualifications.

*Mountain Cascade: Math errors making bid materially different.

***Ranger Pipeline: Lowest responsive and responsible bidder.**

Recommended Actions

- Authorize the project, Altamont Pipeline Livermore Reach.
- Approve plans, specifications, and addendum.

- Find and reject the bid of Ghilotti Construction as non-responsible.
- Find and reject the bid of Mountain Cascade as non-responsive.
- Accept and award a contract to Ranger Pipeline as the lowest responsive and responsible bidder for the bid amount of \$22,800,078.
- Authorize the General Manager to prepare the contract and bond forms for review and approval by the General Counsel.
- Authorize the General Manager to execute the Contract with Ranger Pipeline.
- Authorize the General Manager to issue change orders as and when required by the contract for an amount not-to-exceed \$2,280,000 (10% of bid amount).

President Stevens asked for comments or questions from the Board. There were none.

President Stevens asked for comments from the audience. He asked that speakers come to the podium to address the Board and to state their name and the company they represent.

Messrs. John Busby and Bob Rosin indicated that they wanted to speak.

Mr. Busby stated that he was the attorney representing Mountain Cascade, and he was present to talk about his client's thoughts on the recommendations.

Mr. Bob Rosin stated that he was the attorney representing Ranger Pipelines. He wanted to make a statement in support of the staff recommendation regarding the award.

Since he represented the protesting bidder, Mr. Busby was first to speak.

Mr. John Busby, Attorney at Law, representing Mountain Cascade made the following statement on behalf of his client:

“On the bid date of March 25, there were four bidders, and you've seen the bid results. Mountain Cascade was \$21,687,000. That was the second bid. The Ghilotti bid apparently was non-responsible because the Ghilotti Company did not have the experience to do this job for you. My client does have the experience. There were some math errors in my client's bid but those math errors are easily resolved by the instructions that are contained in the contract specifications. Those specifications read: ‘Discrepancies between the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.’ And, lastly, and this is the important part for your consideration tonight. It's the last piece of instruction that is given. ‘Discrepancies between written words and figures will be resolved in favor of the words.’ Now, that is important because at the conclusion of the bid the bidder was required to write the amount of the bid in words, and we did that. And our bid was written ‘Twenty-one Million Six Hundred and Eighty-seven Thousand Dollars.’ And according to your instructions that is the definitive measure of what our bid was.

“Now, we put the district on notice that there were some math errors in our bid. We wrote a letter explaining, and we said we’re not claiming bid relief; we’re not claiming a clerical error. We don’t need any relief because the instructions are very clear. We thereafter filed a protest regarding the Ghilotti bid and a protest regarding the Ranger bid, and we received a response from the District Counsel. I want to address the points that were raised in that response tonight.

“The first response was that Mountain Cascade’s bid because it contained some math errors was non-responsive. We don’t understand how that could possibly be because we didn’t ask for bid relief, and the instructions on how to interpret the bid are right here in your own specifications. So we don’t believe that our bid was the least bit non-responsive, and we think that finding is wrong. We would ask you to not adopt that finding tonight. Additionally, we were told that our protest of the Ranger bid, No. 1 was invalid because since our bid was nonresponsive, we were not entitled to file protests. We take issue with that. But beyond that, a little history on the Ranger bid.

“As you know, this project was bid back in December. As we all know, this pipeline involves exactly the same work, just a little bit less of it than the job that was bid in December. The December job included both the county reach and the reach that we’re here to talk about tonight. The work is the same work, and that is important because under California law when a bidder seeks bid relief because he made a mistake in his bid, and a public agency allows him to withdraw his bid without forfeiting his security, bid bond, then that bidder is prevented by California law from bidding on that work again. And that is what we’re here to talk about tonight because I believe that California law is very clear. Public Contract Code 5105 tells this board that you are not allowed to accept a bid from a bidder to whom you have granted bid relief. And on December 18, Ranger submitted a bid that contained clerical errors, and they contacted you, and they said we have errors in our bid; we want bid relief. We are entitled to bid relief under state law, and your staff did a review and came out with a proposal that the bid relief should be granted. And this board—and I’ve read the minutes—this board approved granting Ranger bid relief. Up on the board earlier it said that all bids were rejected but, in fact, you granted Ranger bid relief. It’s in your minutes, and once you grant Ranger bid relief, you’re prevented by California law from even accepting a bid for the same work. Now you’re going to hear from Ranger’s lawyer, and he’s going to tell you that this is not the same job, and that’s the subject of the dispute. And quite frankly if we can’t resolve the dispute, we’re going to seek some judicial relief. We’re going to seek an interpretation from a court as to whether this is the same work or not and I believe it is. I think we all know that it is.

“Now, one of the reasons in addition to the fact that Mountain’s bid was deemed non-responsive—one of the reasons that our protest against the Ranger bid was not given any validity by the District staff was because it was sent in at 4:30 instead of 3:30. And, well, you know, that’s true. It was sent in an hour after the instructions. But I don’t think that is the least bit important for your decision here tonight. And, I don’t think that because you’re required to conform to California law. The real issue here is whether this job is the same job that went out to bid in December. And, I would submit to you that it is the same work. And therefore if you award the bid to Ranger tonight I believe you are committing an *ultra vires* act, that’s an act in violation of state law, and that’s the act that we’re going to challenge if that’s what occurs here tonight.

“I would suggest to you that, in fact, the district has two legitimate choices this evening. The first choice is to award the contract to the lowest responsible, responsive bidder, and that’s Mountain Cascade according to your own instructions to bidders as to what will occur if there is a discrepancy in the numbers and the words. You can award it to Mountain Cascade. The other thing you can do, of course, is you can reject all bids. But I believe those are the only two legitimate choices that you have this evening. So I’m here to ask you to consider your obligations under state law and either reject all bids or award this contract to Mountain Cascade but recognize that the bid of Ranger Pipeline is a bid that should never have been accepted. Thank you very much.”

President Stevens thanked Mr. Busby for his comments.

Mr. Bob Rosin, Attorney for Ranger Pipelines made the following statement

“I’m not here to threaten anybody with lawsuits. That’s not, I don’t believe, the appropriate role of counsel appearing at a board meeting like this. Nor do I believe that Mountain Cascade can properly threaten a lawsuit in this situation. As you’ve heard from Mountain Cascade itself, it submitted a bid protest that was late, and California law is pretty clear on that point that if the bid protest is late, the bid protester is out of luck. I won’t presume that every court will follow the law but that is California law. So at this point, I need to address the issues with regard to standing. California law, again, is clear. If somebody does not have a responsive bid they cannot submit a protest. The issue here is whether the bid submitted by Mountain Cascade has errors that are apparent from the face of the bid that could allow them to claim that they made a mistake. They don’t have to ask for that relief under the Valley

Crest case. It is enough that the errors simply appear on the face. Because it gives whoever submitted that bid a free peek at what everybody else bid, and it can decide, ‘gee, I left too much money on the table; I’m going to withdraw my bid.’ You could even come up with a contractor who is very coy and does this deliberately. I’ve heard people say that can happen. I’ve never seen it myself but the mere fact that the bid contained that apparent error on the face allowed them to get that free peek and, therefore, rendered the bid non-responsive. That doesn’t mean you have to reject their bid but it does give you the right to reject their bid and simply because it is non-responsive they have no standing to take you to court. Let’s assume they even decided to take you to court. What would happen there? Well, under the Kajima case, the California Supreme Court said a protesting bidder, even if they have a complete right to protest and are correct, gets what? Their bid cost. They don’t get attorneys fees; they don’t get lost profits; they don’t get damages. Bid costs on a job like this probably are insignificant compared to the cost of going to court on the issue.

“And then let’s talk about the basis for the protest by Mountain Cascade. We had a \$51+ million job that was cut considerably down. The other portion is not being awarded in the same time period. To make this project work better, one of the reaches was modified significantly. I believe there is over 320 lineal feet of pipe under a difficult crossing area with other utilities involved, substantial change. Many other changes were required, the plans were revised. So this isn’t the same job. It’s \$30 million worth of a different job, and the qualifications were revised to reflect that fact. Instead of having somebody who’s able to perform a \$51 million job, you opened it up to bidders who were able to do a \$20 million to \$30 million job. So we submit that no one in their right mind could believe that these are the same job. Let’s compare this to the one legal case that exists on this subject. In that case, it was a school project that had an administration building, a music building, five classrooms and five portable classrooms. The only thing that was changed between the first and the second bid was in the second bid they gave the contractor the option of saying what kind of flooring he wanted to put in. As an added, it involved a few hundred dollars probably back in the 80’s when that case came out. So completely different situation--instead of having the same bid that goes out twice with a minor modification, we have a completely different project, and so when we talk about who’s responsive and who’s responsible and who has the lowest bid, we also have to take into account how the contract documents read. We have a different belief as to how you read the section that Mr. Busby just quoted you. We believe, along with staff, that if you read that section, it tells you that the bid from Mountain Cascade was actually \$49 million which makes them about \$27 million high. Certainly, there’s an argument about whether they could have withdrawn their bid for a mistake under the circumstances.

So in the end we end up with a situation where we have a non-responsible bidder, that's Ghilotti; we have a non-responsive bidder, that's Mountain Cascade, and the lowest responsible, responsive bidder is Ranger Pipelines. We have with us tonight two gentlemen who estimated the job. They can answer questions about the substance. Staff can talk to you about the differences between the two jobs in December and in March. With that being said, we respectfully request the contract be awarded to Ranger as the lowest responsive bidder.”

President Stevens thanked Mr. Rosin for his comments.

President Stevens asked if there were any more comments from the audience. There were none.

President Stevens asked if there was any more discussion from the Board. There was none.

Director Kalthoff moved for the adoption of Resolution No. 08-3149 to:

- Authorize the project;
- Approve plans, specifications, and addendum;
- Find and reject the bid of Ghilotti Construction as non-responsible;
- Find and reject the bid of Mountain Cascade as non-responsive;
- Accept and award a contract to Ranger Pipeline as the lowest responsive and responsible bidder for the bid amount of \$22,800,078;
- Authorize the General Manager to prepare the contract and bond forms for review and approval by the General Counsel;
- Authorize the General Manager to execute the Contract with Ranger Pipeline; and
- Authorize the General Manager to issue change orders as and when required by the contract for an amount not-to-exceed \$2,280,000 (10% of bid amount).

The motion was seconded by Director Quigley and passed by a vote of 7-0.

Item 10—Construction Support Agreements for the Altamont Pipeline, Livermore Reach

Mr. Putich reviewed the four construction support agreements which are before the Board tonight. These four contractors will provide support services during the construction of the Altamont Pipeline Project Livermore Reach:

| | | |
|--------------------------------|-------------------------|-------------|
| Harris & Associates | Construction Management | \$2,985,000 |
|--------------------------------|-------------------------|-------------|

Services provided by Harris & Associates during the Construction Phase will include but are not limited to:

- Assistance with on-site community outreach.
- Construction Contract Administration.
- On-Site Construction Observation and Inspection.
- Progress Meetings Facilitation and Project Coordination.
- Assistance with Project Cost Control and Change Orders.

- Assistance with Dispute Resolution
- Post Construction Assistance

CH2M Hill Construction Engineering Support \$998,000

Services provided by CH2M Hill during the Construction Phase will include but are not limited to:

- Attend Pre-Construction conference.
- Provide additional design services as needed.
- Attend regular progress meetings and other ad hoc site meetings as needed.
- Design Team visits as needed.
- Review of shop drawings and submittals.
- Review requests for information (RFI) concerning the design.
- Assist in the review of contractor requested changes.
- Assist in startup activities.
- Provide record drawings.

ICF Jones & Stokes Public Outreach & Environmental Services \$260,000

Services provided by ICF Jones & Stokes during the Construction Phase will include but are not limited to:

- Support Zone 7 and coordinate the environmental compliance activities between the general contractor and the Zone 7 construction management team;
- Coordinate with the construction management consultant in providing outreach support to the public and businesses along the pipeline alignment.

Consolidated Engineering Materials Testing & Specialty Inspections \$93,000

Services provided by Consolidated Engineering during the Construction Phase will include but are not limited to:

- Attend the pre-construction meetings.
- Provide any consultation requested.
- Provide materials testing for construction materials (e.g., including, but not limited to, soils, aggregate base, asphalt concrete, concrete, steel, shotcrete, coatings).
- Provide special inspections of contractors' work (e.g., including but not limited to AC inspection, welding).
- Provide specialized testing, inspection or analysis (e.g., including but not limited to forensic, failure or investigation analysis).
- Prepare written documentation clearly labeling whether the construction testing or materials testing has passed as related to contract documents (e.g., daily field activity reports, weekly reports reviewed by licensed engineers, laboratory test results).
- Attend construction meetings, as needed.

There were no questions or comments.

Director Greci moved for the adoption of Resolution No. 08-3150 approving a consultant services agreement in the amount of \$2,985,000 (includes a 10% contingency) with Harris & Associates for

construction management services in connection with the Altamont Pipeline, Livermore Reach. The motion was seconded by Director Kalthoff and passed by a vote of 7-0.

Director Kalthoff moved for the adoption of Resolution No. 08-3151 approving a consultant services agreement in the amount of \$998,000 (includes a 10% contingency) with CH2M Hill for construction engineering support services in connection with the Altamont Pipeline, Livermore Reach. The motion was seconded by Director Greci and passed by a vote of 7-0.

Director Greci moved for the adoption of Resolution No. 08-3152 approving a consultant services agreement in the amount of \$260,000 (includes a 10% contingency) with ICF Jones & Stokes for public outreach and environmental services in connection with the Altamont Pipeline, Livermore Reach. The motion was seconded by Director Palmer and passed by a vote of 6-1. Director Kohnen voted no.

Director Kalthoff moved for the adoption of Resolution No. 08-3153 approving a consultant services agreement in the amount of \$93,000 (includes a 10% contingency) with Consolidated Engineering Lab for materials testing and specialty inspections services in connection with the Altamont Pipeline, Livermore Reach. The motion was seconded by Director Palmer and passed by a vote of 7-0.

Item 11—Development Impact Fee Report/Ordinance

Ms. Duerig advised that this item is being continued to a meeting between now and July in order to allow more input and discussion with the cities. Letters have been received from the three cities requesting a continuance to allow the city staffs to meet with Zone 7. We are at this time recommending that this item be continued, and we will bring it back sometime between now and the July board meeting to allow the staff's from Zone 7, the cities and any other interested parties to get together for more dialogue on the proposed new ordinance.

President Stevens asked for audience comment.

Ms. Janet Lockhart, Mayor of Dublin, apologized for not providing comments sooner and not passing on to the Dublin Council the ideas and concerns and issues that were coming forward with the Zone 7 plans. She stated that over the past few days since she's found out more about the importance of this item she's put down her thoughts on paper about the process that has been gone through and where things stand at this time, and she would like to relay those thoughts to the Board.

She stated that in her comments tonight on the Flood Protection & Storm Water Drainage Development Impact Fee Ordinance, she was representing the City of Dublin but those comments are most likely shared by the Cities of Livermore and Pleasanton.

While the cities do understand and support Zone 7's efforts to provide flood control for the region, we strongly feel that it cannot unfairly place the burden of a solution on the remaining new development in the region.

She then presented some history which may help point out the gaps that allowed this information to slip by the cities.

- May 16, 2007 meeting that included City staff.
- June 26, 2007 meeting.

- Nov 15, 2007 meeting where the discussion centered on amending the fee to help pay for some of the improvements. The use of a ballot measure or bond to help pay for the cost of the improvements was also discussed. A specific fee increase was not discussed at that meeting—at least to her staff’s recollection.
- A fourth meeting was deferred until the cost for a 5- and 10-year CIP was developed.

Mayor Lockhart stated that her staff believes, and she agrees with them, “that stakeholder participation logically includes the discussion of the proposed fee increases and impacts. These were not discussed at any of the stakeholder meetings; nor were the stakeholders given copies of the public notice for the adoption of the new fee.

“Preliminary review of the fee study does not show the methodology used to apportion the needed improvements. The fee increase seems to be severe for the remaining impervious surface generated by new development. Consequently, we recommend a full review of the report and discussions about AB 1600 compliance and apportioning improvement liability to new development.

“Concerns expressed by Dr. Kohnen resonate greatly in the Valley’s cities. In these tough economic times we cannot afford to greatly burden those interested in investing in our communities with the total responsibility for flood control—at least not a project on this magnitude.

“When do we discuss the big picture of our region and the enormous impact of a static economy will have on it? When do we start putting the pieces of all of our agencies’ decisions on fees together so we can see if we can actually sustain them in our Valley? I suggest that the time is now and this issue be the first.

“I’ll support any opportunity to start that dialogue and look at this flood control issue along with the myriad of other issues affecting our Valley. I would like to hear more discussion about spreading the cost of flood control over all who benefit from a strong plan.

“I appreciate your General Manager’s suggestion, and suggest that you please take time to educate our communities and build a plan that we can all understand and support. Thank you.”

President Stevens thanked Mayor Lockhart for her comments.

There were no further comments from the audience.

President Stevens noted that letters from the three cities have been distributed to the Board.

This item was continued to a future meeting.

Item 12—Amendment to Consulting Services Agreement with ECO:LOGIC Engineering for Design Services for the Well Master Plan Wells and Pipeline—Phase 1

Mr. Arends advised that a change order that provided for additional drilling and well development was approved for this project at the January 16, 2008 meeting.

The Board then heard Ms. Athena Watson, Project Manager, give a brief update on the success of that work. In short, the additional work which was authorized in January contributed to the increase to a total production capacity to 6,000 gpm or 8.6 mg/day from the wells.

Mr. Arends continued by saying that the amendment before the Board tonight is for additional construction management services, i.e., inspection, data collection and analysis provided by ECO:LOGIC which was required as a result of the additional drilling development.

- Additionally, Zone 7 requested additional design and analysis tasks from ECO:LOGIC during the design phase of the project.
- ECO:LOGIC's estimate for providing these additional services is \$346,000, exceeding the existing Board-approved contract amount plus contingency.
- Staff recommends adoption of the attached resolution authorizing the General Manager to execute a contract amendment increasing the total Board-approved amount by \$346,000 for a new total authorized not-to-exceed contract amount of \$1,671,000.

Director Quigley moved for the adoption of Resolution No. 08-3154 approving Amendment No. 1 to the consulting services contract with ECO:LOGIC Engineering for design services in connection with the Well Master Plan Wells and Pipeline—Phase 1. The motion was seconded by Director Greci and passed by a vote of 7-0.

Ms. Duerig complemented staff for their work on this project which resulted in increased capacity from these two wells.

Item 13—Authorization for Commercial Septic Tank System, Las Positas Vineyards, 508 Kalthoff Common, Livermore (Case No. 08-059)

The Board heard a presentation by Mr. Katen on the application for a new commercial use of a septic tank system on an undeveloped 20-acre parcel located at 508 Kalthoff Common, in South Livermore (APN 099-1343-036-00). The applicant is Maier Winery, LLC, dba Las Positas Vineyards. Ms. Lisa Maier is present to answer any questions the Board may have regarding this project.

- The proposed commercial use is for a winery and related activities, including, winemaking, wine tasting and sales, and occasional special events. No onsite commercial food preparation activities are planned. Additionally, a single-family residence will share the site with the winery.
- Zone 7 Resolution 1165 prohibits the use of septic tanks for new commercial developments unless an exception is granted by the Board of Directors. Zone 7 policy also restricts onsite wastewater loading from any new development to a maximum density of one rural residential equivalence (1 RRE) per 5 acres.
- The proposed project will result in an estimated onsite wastewater loading of 1.6 RRE on 20 acres, or 0.41 RRE per 5 acres.
- Other factors:
 - There is no community sewer system available.
 - No storage or use of hazardous materials is planned.

- There is no significant risk for groundwater contamination given the project location in the Livermore uplands which is outside of the central groundwater basin.
- Upon review of this project using the Board-approved septic system decision tree process, staff recommends approval of this new commercial septic system use on the basis that the project complies with Zone 7 Resolution 1165 requirements for approval:
 - The onsite wastewater loading is less than 1 RRE per 5 acres.
 - The nature of the wastewater is the same as rural residential wastewater.

The staff recommendation is to approve the application with the following conditions:

1. Zone 7's approval is contingent on County Environmental Health Department's approval and oversight during the construction, operation and maintenance of the system.
2. No wastewater disposal, other than that specifically approved herewith, is allowed without prior approval by the Zone 7 Water Agency.
3. When a public sewer is extended to within 200 feet of any onsite dwelling, the onsite wastewater treatment system shall be abandoned, and all building sewers shall be connected to the public sewer.

In response to a question from President Stevens, Mr. Katen confirmed that the County has adopted a new well ordinance, and Zone 7 reviewed and provided input during its development.

Director Greci commented that it appeared the decision tree has been followed, and the project meets the criteria for approval.

Director Greci moved for the adoption of Resolution No. 08-3154 approving Las Positas Vineyards' new commercial use of a septic system for their winery at 508 Kalthoff Common, Livermore, in accordance with Resolution 1165. The motion was seconded by Director Quigley and passed by a vote of 6-0-1. Director Kalthoff abstained.

Item 14—Consideration of Action to Increase the Compensation of Members of the Board of Directors of Zone 7 of Alameda County Flood Control and Water Conservation District

Ms. Duerig advised that this item has been placed on the agenda to give the Board an opportunity to review their compensation. According to the "Zone 7 Board of Directors' Compensation and Expense Reimbursement Policy" adopted on March 15, 2006, a review of the Board's compensation is conducted on a biennial basis.

- The Board's current compensation, which has been in effect since June 19, 2005, is \$153.00 per meeting, with a maximum of four meetings per month.
- A survey has been completed of comparable water agencies' boards of directors, and the average is \$159 per meeting.
- The annual Consumer Price Index (CPI) increase for the Oakland-San Francisco-San Jose area for 2006 was 3.2% and 2007 was 3.3%.

Ms. Duerig continued saying that based on these results, the Board has several options to consider and then provide direction to staff:

- Option one is to set a public hearing and discuss a change in the compensation received by Directors. The change could be based on the mean of the compensation survey and/or the CPI.
- Option two is to maintain the compensation at the current \$153 per meeting.

In response to a question, Ms. Duerig stated that the law is very specific regarding the maximum allowable increase—5%.

At this point, various suggestions were made on how to proceed, e.g., leaving the salary at the current level; using an average; going with an increase equal to the CPI.

Ms. Duerig noted that the average of the salary survey was \$159 per meeting which is roughly a 3% increase which corresponds to the increase in the CPI.

President Stevens suggested proceeding with an increase to \$159 for the next two years.

There was consensus to proceed per Director Stevens' suggestion.

Director Quigley commented that board members don't do this job for the money.

Ms. Duerig confirmed the direction given is for a public hearing to be held at the May 21, 2008 board meeting and then action be considered by the Board to increase the compensation to \$159 per meeting for Fiscal Years 2008-09 and 2009-10. The maximum number of meetings per month for which any director may be compensated remains at four.

This item will appear on the May 21, 2008 agenda for a public hearing and board action.

Item 15—Solar Power Purchase Agreement for Electricity at Del Valle Water Treatment Plant

The Board heard a description of the proposed project and a presentation on this item from Mr. Gambs.

- Zone 7 is considering a Power Purchase Agreement (PPA) as a means by which solar power would be supplied to Del Valle Water Treatment Plant.
- The project (photovoltaic system) would be located on approximately 2 acres on the sloped area above the treatment plant parking lot. This open space is not used or planned for any use by Zone 7 and is available for the project.
- A PPA has been negotiated with Renewable Technologies Inc. (RTI), under which RTI will design, install, operate, maintain and own the approximately 300 kilowatts photovoltaic electric generation system.
- Terms of the PPA:
 - Zone 7 would grant a license to RTI for use of a portion of its treatment plant property as a site for the photovoltaic system
 - Zone 7 would agree to purchase all the electricity produced by the system at an initial rate of \$0.125 per kilowatt hour increasing annually at 3.5% over a 20 year term.

- The PPA provides for RTI's utilization of California Solar Initiative rebates and federal tax incentives and does not require upfront capital costs from Zone 7.
- The estimated reduction in energy cost for the first year is approximately \$16,000 from the 300 kW system.
- Additional benefits:
 - The project will stabilize energy costs at DVWTP.
 - Renewable energy credits accrue to Zone 7.
 - Environmental benefits from a reduction in greenhouse gases includes the elimination of approximately half a million pounds of CO₂.
- Schedule:
 - CEQA (negative declaration) and the engineering would be completed by August;
 - Construction completed by December;
 - Testing and startup in January 2009.
- In order for public agencies to obtain alternate energy supply sources, California Government Code Section 4217 requires that the terms of the agreement be in the best interests of the public agency and that a public hearing be held at a regularly scheduled meeting which has been publicly noticed at least two weeks in advance. The governing body must make the following findings:

- 1) That the anticipated cost to the public agency for electrical energy provided by the energy conservation facility under the contract will be less than the anticipated marginal cost to the public agency of electrical energy that would have been consumed by the public agency in the absence of those purchases.

The Cost Analysis mentioned earlier indicated that the cost of the solar energy is less than the marginal cost of electricity from PG&E.

- 2) That the difference, if any, between the fair rental value for the real property subject to the facility ground lease and the agreed rent, is anticipated to be offset by below-market energy purchases or other benefits provided under the energy service contract.

The benefits provided to Zone 7 under the PPA compensate for the Power Provider's use of the site for the project. The planned site is open space and is not used nor does it have any planned use by Zone 7.

All public noticing requirements have been met.

Mr. Gambs finished the presentation by stating that the staff recommendation is for the Board to approve the PPA and to authorize the General Manager to finalize the terms and then sign the agreement.

Questions/comments:

Mr. Gambs introduced Mr. Gary DeVany, Vice-President of Renewable Technologies, Inc. (RTI), who was present to answer questions.

In response to a question from Director Stevens regarding glare or reflection off of the panels, Mr. Gambs advised that solar panels are not reflective. Additionally, Director Kalthoff commented that the proposed site is higher than the surrounding area.

In response to a comment from Director Kalthoff, Ms. Duerig confirmed that it is projected that it is estimated that over the 20 years term of the PPA Zone 7 will save approximately \$80,000 on our PG&E bill for the Del Valle WTP. That is based on conservative assumptions of PG&E rate increases, so the savings could be higher.

In response to Director Greci's question regarding the bids, Mr. Gambs stated that RFPs for this project were sent to over 20 firms. From that group, nine proposals were received, and staff pared that down to a short list of three firms for interviews and presentations. The short list was based on an economic evaluation of the rates and escalation factors submitted.

In response to Director Palmer's question about differences in the efficiency of various types of panels, Mr. Gambs responded that the efficiency of the panels does not vary by much. The efficiency is a result of their ability to rotate and follow the sun.

Mr. DeVany, RTI, stated that the panels to be used in this project are the most efficient and modern on the market. It is in the best interest of RTI to use the most efficient model because it will increase the amount of power generated by the project.

Commenting that the panel industry is growing rapidly, Director Greci asked if the panels could be replaced if something more efficient is developed.

Mr. DeVany responded that the PPA does not address that; however, it would be negotiable. There may be an expense involved.

In response to a question about who gets the tax credit, Mr. DeVany responded that his firm, RTI, gets it. Zone 7 is a public entity and does not pay taxes.

Director Quigley stated he was excited to be getting started on this project. Del Valle WTP is a good site for the proposed project. There may be more opportunities with the planned larger Altamont WTP, and this first installation will give us a head start and provide data for a potentially bigger project at ATWP.

Director Kohnen agreed and stated that this is a step in the right direction, and it is essential that we proceed.

Director Kohnen moved for the adoption of Resolution No. 08-3156 to:

- 1) Make the findings in conformance with Government Code section 4217.12;
- 2) Authorize the General Manager to finalize terms and conditions and to execute said Power Purchase Agreement with Renewable Technologies Inc., to provide solar energy at a not-to-exceed initial price of \$0.125/kWh with a maximum 3.5% annual escalation factor.

The motion was seconded by Director Quigley and passed by a vote of 7-0.

Item 16—Committees

a. Ad hoc Committee on General Manager Performance Evaluation Process: April 9, 2008

Director Kohnen stated that this committee met to come up with a process by which to evaluate the General Manager. There was consensus that we should follow the contract. There is a fixed increase in place; however, there is a merit increase to consider. We have asked that the Board be sent the following information before the May board meeting: goals and objectives of the General Manager and job description.

Ms. Naamani stated that in addition to the goals and objectives memo, the Directors will also receive a standardized rating sheet. As discussed in the committee meeting, the criteria for performance will be based on the goals and objectives and how well they were met. She cautioned that this information should not be discussed until the Closed Session on May 21. This information will be mailed within a week.

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Director Kohnen suggested using the board’s City Liaison Committee to meet with the three city councils to pass on information regarding the SMMP projects. He felt this would be an open, transparent way to ensuring that everyone has the same information.

Ms. Duerig stated that she felt that this was more appropriately handled at the staff level which is how we have been proceeding. The staffs of the cities should be communicating the information with their electeds. In addition to individual meetings, we have also used the website to post information and meeting minutes.

Director Kohnen did not feel these methods worked and that we need another mechanism to get the word out to our constituents and the cities. The SMMP website is not working for this.

Director Quigley agreed. He noted that he has been involved in the SMMP stakeholder meetings, and he agreed that there is a possible transparency problem in that the information does not get passed on by the staffs to the elected level.

Noting that she had received letters from each of the cities, Ms. Duerig commented that we now have a contact person that we will rely upon to pass on information to the appropriate level. The important thing is that the information get transferred. She believed this would be more efficient than setting up liaison committee meetings with each of the cities, which would be very time consuming. However, she indicated that she would offer liaison committee meetings to each of the cities in follow-up correspondence and determine their interest in pursuing such meetings.

Item 17—Items for Future Agendas—Directors

Director Kohnen advised that he had received a letter from Attorney Pete MacDonald offering more information on a particular orphan parcel that the Board has discussed in Closed Session.

President Stevens stated the Board could not talk about that now since it was a Closed Session item.

Ms. Naamani agreed that matters involving real property negotiations should be discussed in closed session. She further stated that the Board has previously considered this matter and there was no interest in proceeding in any way. Because of that decision, she considered this matter closed.

Director Kohnen commented that apparently Mr. MacDonald thinks it is still open.

Ms. Naamani stated that she would follow up with Mr. MacDonald and decide whether it is appropriate to agendaize this matter again.

Item 18—Reports—Directors

There were no reports.

Item 19—Staff Reports (Information items. No action taken.)

- a. General Manager's Report
- b. Recent & Upcoming Public Outreach Activities
- c. StreamWISE Project Status Report
- d. 2007 Water Quality Management Program Annual Report
- e. Bay Delta Conservation Plan—Fiscal Update
- f. Verbal Reports

Upcoming Board Schedule

There is no need for a special meeting this month.

- a. Regular Board Meeting: May 21, 2008, 7:00 p.m.

There was no further business and the meeting was adjourned at 9:50 p.m.