

MINUTES OF THE REGULAR MEETING OF THE
BOARD OF DIRECTORS OF
VISTA IRRIGATION DISTRICT

May 21, 2008

A Regular Meeting of the Board of Directors of Vista Irrigation District was held on Wednesday, May 21, 2008, at the offices of the District, 1391 Engineer Street, Vista, California.

1. CALL TO ORDER

President MacKenzie called the meeting to order at 8:30 a.m.

2. ROLL CALL

Directors present: MacKenzie, Dorey, Mendez, and Williams.

Directors absent: Jewell

Staff present: Roy Coox, General Manager; Lisa Soto, Secretary of the Board; Eldon Boone, Assistant General Manager; Don Smith, Director of Water Resources; Ken Bouchard, Director of Facilities, Brian Smith, Director of Engineering, Marlene Kelleher, Finance Manager, Jim Black, Human Resources Manager, Sherry Thorpe, Safety and Risk Manager, Brent Reyes, Public Education Assistant; and Marian Schmidt, Administrative Assistant.

Other attendees: Melanie Poturica, Liebert Cassidy Whitmore, Poster Contest winners, Stephanie Skipper, Emma Rodriguez, and Tanner James Epp, and their families.

3. PLEDGE OF ALLEGIANCE

Director Dorey led the pledge of allegiance.

4. APPROVAL OF AGENDA

08-05-64	<i>Upon motion by Director Dorey, seconded by Director Mendez and unanimously carried, the Board of Directors approved the agenda as presented.</i>
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5. PUBLIC COMMENT TIME

No public comments were presented on items not appearing on the agenda.

6. CONSENT CALENDAR

President MacKenzie indicated that she had a few questions concerning Consent Calendar Item D. She suggested that Item D be pulled from the Consent Calendar and moved to follow Item 16 of the agenda.

08-05-65 *Upon motion by Director Mendez, seconded by Director Williams and unanimously carried, the Board of Directors approved Consent Calendar Items A, B, C, E, F, and G, including Resolution No. 08-22 approving disbursements.*

A. Final road repair on Bella Vista Drive and Cherimoya Drive

See staff report attached hereto as Exhibit A-1. Staff recommended and the Board approved the authorization to proceed with paving Bella Vista Drive, El Corto Drive and Cherimoya Drive to the lowest responsive bidder, Joe's Paving Inc., in order to complete the project (WOD-2172).

B. Annual patch paving contract

See staff report attached hereto as Exhibit A-2. Staff recommended and the Board approved the bid for asphalt repair, cold planing and capping from Fuller Paving & Development, Inc. to perform the District's patch paving of small excavations under 350 sq. ft. for the 2008-09 fiscal year.

C. District auditing services

See staff report attached hereto as Exhibit A-3. Staff recommended and the Board accepted the proposal by Mayer Hoffman McCann P.C. for three years of auditing services, with the option to extend on a year-by-year basis for two additional years.

E. Minutes of Fiscal Policy Committee meeting on 4/28/08 and Water Sustainability Committee meeting on 4/29/08

The Board noted and filed the 4/28/08 minutes of the Fiscal Policy Committee meeting and the 4/29/08 minutes of the Water Sustainability Committee meeting as presented.

F. Minutes of Board of Directors meeting on April 30, May 1, and May 4, 2008

The minutes of April 30, May 1, and May 4, 2008 were approved as presented.

G. Resolution ratifying check disbursements

RESOLUTION NO. 08-22

BE IT RESOLVED, that the Board of Directors of Vista Irrigation District does hereby approve checks numbered 32493 through 32659 drawn on the Union Bank of California totaling \$837,329.88.

FURTHER RESOLVED that the Board of Directors does hereby authorize the execution of the checks by the appropriate officers of the District.

PASSED AND ADOPTED by the following roll call vote of the Board of Directors of Vista Irrigation District this 21st day of May 2008.

AYES: Directors Mendez, MacKenzie, Dorey, and Williams
NOES: None
ABSTAIN: None
ABSENT: Director Jewell

7. WATER AWARENESS POSTER CONTEST

See staff report attached hereto as Exhibit B.

President MacKenzie presented awards to the poster contest winners as follows: Stephanie Skipper of Faith Lutheran School received the first place prize of \$100; Emma Rodriguez of Grapevine Elementary received the second place prize of \$50; and, Tanner James Epp received the third place prize of \$25. Photos were taken, and President MacKenzie thanked the children for their participation.

The children, their families, and Mr. Brent Reyes left the meeting at this time.

8. CLAIM FOR DAMAGES

See staff report attached hereto as Exhibit C.

General Manager, Roy Coox pointed out that this claim had recently been presented to the Board as an informational item. He indicated that at that time the District's insurance provider, ACWA Joint Powers Insurance Authority (ACWA/JPIA) concurred that the claim be returned to the claimant as having been filed after the statutory time limit. Since then, ACWA/JPIA has re-evaluated the claim, and based on new information, they have recommended that the District reject the claim on its merits rather than the previous administrative denial. Mr. Coox pointed out that a closed session item was next on the agenda if the Board wished to discuss the matter further.

9. CLOSED SESSION FOR CONFERENCE WITH LEGAL COUNSEL

President MacKenzie adjourned the meeting to closed session at 8:42 a.m. for a Conference with legal counsel to discuss the following liability claim pursuant to Government Code section 54956.95:

Claimant: Shannon Molloy Scott; Agency claimed against: Vista Irrigation District

The meeting reconvened in open session at 8:49 a.m. President MacKenzie declared that no reportable action had been taken.

At this time, President MacKenzie directed that the Board revisit agenda Item 8.

8. CLAIM FOR DAMAGES

See staff report attached hereto as Exhibit C.

08-05-66 *Upon motion by Director Williams, seconded by Director Mendez and unanimously carried, the Board of Directors rejected the claim of Shannon Molloy Scott in its entirety.*

The Board room was cleared for the following closed session item, except for General Manager, Roy Coox; Legal Counsel, Melanie Poturica; and Human Resources Manager, Jim Black.

10. CLOSED SESSION FOR CONFERENCE WITH LEGAL COUNSEL

President MacKenzie adjourned the meeting to closed session at 8:50 a.m. for a conference with legal counsel to discuss the following anticipated litigation:

- A. Significant exposure to litigation pursuant to subdivision (b) of Government Code section 54956.9 – two cases.
- B. Initiation of litigation pursuant to subdivision (c) of Government Code section 54956.9 – two cases.

The meeting reconvened in open session at 9:50 a.m. President MacKenzie declared that no reportable action was taken.

A brief break taken from 9:50 a.m. to 10:02 a.m.

Upon return from break, present in the audience were staff members, Messrs. Ken Bouchard, Brian Smith, Don Smith, and Brent Reyes, and Ms. Marlene Kelleher.

11. FINANCIAL REPORT FOR NINE MONTHS ENDED MARCH 31, 2008

See staff report attached hereto as Exhibit D.

Ms. Marlene Kelleher presented an overview of the Financial Report for the nine months ended March 31, 2008. The Board discussed whether or not the 50-year rolling average was the best way to predict future available local water. The Board discussed whether the rolling average would be more accurate if it covered a shorter period. President MacKenzie directed that staff study this question and present its findings to the Fiscal Policy Committee.

With regard to the special reports that were prepared in addition to the Financial Report, the Board indicated that it would like staff to continue to include the Legal Expenses report as long as these expenses continue to be significant and out of the ordinary. The Board further directed that the Variable Property Revenues report be presented in the format used in this report, on a quarterly basis. In addition, staff was directed to provide annually a more detailed listing all the current leases and license agreements.

12. FISCAL YEAR 2008 BUDGET

See staff report attached hereto as Exhibit E.

Mr. Coox stated that based on current economic conditions, and in response to direction given by the Fiscal Policy Committee and the Board, staff has strived to hold the line on this year's budget. Mr. Coox reported that staff worked very hard to cut over a million dollars from the preliminary budget. He commended staff for coming together and sharing in the cuts and he assured that no cuts were made to the extent that they will compromise the integrity of the District's operations or the safety of the employees. He added that most of the projects cut from the budget were deferred to a later date, and will eventually need to be done. President MacKenzie and the Board members complimented staff on the admirable job done on the budget.

President MacKenzie stated that at the CSDA Legislative Days event she recently attended she spoke with a number of Legislators, and she learned that soon the District could lose its property tax revenue. The State will be out of money between August 15, 2008 and September 15, 2008, depending on whose analysis is correct, if they do not have an approved budget. Since they can no longer borrow against it, they will be taking the property tax money from enterprise districts. President MacKenzie suggested that in the next couple of months, division heads start to look at alternative ways to make up that money, just in case it is taken away by the State.

08-05-67 *Upon motion by Director Dorey, seconded by Director Mendez and unanimously carried, the Board of Directors approved the Fiscal Year 2009 Budget as presented.*

Ms. Kelleher and Mr. Brian Smith left the meeting.

13. **DRAFT DROUGHT RESPONSE RESOLUTION**

See staff report attached hereto as Exhibit F.

President MacKenzie stated that once the Board has discussed the draft resolution and made any desired revisions, she would like it to be posted on the District's website, and for staff to make a concerted effort to get the draft the City of Vista City Manager, the Director of Parks, and to the Vista Unified School District, and other interested parties and ask for comments back.

Mr. Coox stated that the draft resolution adopted by the Water Authority Board was the result of a lot of the work done by the VID Board the previous fall. He added that it is also the result of VID prodding the Water Authority to move forward with the creation of a model ordinance/resolution for the region. The Water Authority assembled a Drought Response Workgroup to create the model, and a great deal of the draft language came from the VID draft ordinance. The goal was for the individual agencies to adopt ordinance/resolutions based on the model, keeping the major points consistent through out the region, while at the same time, being able to make minor adjustments to suit the individual agencies. Mr. Coox said that one thing the group wanted to include in the model, which he lobbied against, was the hardship variance. Mr. Coox stated that he shared with the group that the District has experience in this area in the form of allocations during the drought of the 1990s, and virtually every situation was a case for variance, to the point where the District was over-allocated. Mr. Coox stated that this is why Section 10.0 of the draft before the Board entitled "Hardship Variance" was stricken. The Board discussed hardship variances and allocations and the consensus was to leave the language out of the District's resolution.

Mr. Coox stated that staff would like to have legal counsel review the new Section 10 of the draft entitled "Non-compliance and fees". Mr. Coox said staff had received a legal opinion from Glenn Wright, Jacobs, and Schell in the past regarding penalties and/or fines. The opinion was that an irrigation district could not call certain fees "penalties" or "fines", and that the fees must have a nexus to the actual cost recovery. Mr. Coox said that he has discussed this with other irrigation districts and they are not necessarily of the same opinion. Mr. Coox said that after that is reviewed and clarified by legal counsel, staff would like to bring the draft back to the Board again.

The Board directed that staff seek the advice of legal counsel concerning penalties and fees, and also seek an opinion on the District's ability to lock meters as part of the penalty process. President MacKenzie directed that staff present the draft again on June 4, or as soon as the legal opinions are received. Then, if the Board is all in agreement with the draft, the next step will be to hold a workshop for public input on June 18 and also to call for a public hearing on that date.

Mr. Bouchard left the meeting at this time.

14. FUTURE COUNSEL REPRESENTATION

See staff report attached hereto as Exhibit G.

Mr. Coox provided an overview of his recommendation, as detailed in the staff report. Mr. Coox added that he would like for staff to still retain the right to utilize counsel in specialty areas, such as Liebert Cassidy Whitmore for labor law, and Daley and Heft for large construction litigation and large claims against the District. Mr. Coox commented that keeping the recent model in place of getting representation when needed from people in their specialty areas has served the District well, and he believes that it would be best to continue that model. General Counsel would be the first point of contact, and other expertise would be sought as appropriate.

President MacKenzie pointed out that currently, legal counsel is shown on the District's organizational chart. There was consensus among the Board members in agreement with staff's recommendation that General Counsel and Special Counsel Services both be sought on a contract basis. President MacKenzie suggested that the organizational chart be corrected to reflect this change.

08-05-68	<i>Upon motion by Director Williams, seconded by Director Dorey and unanimously carried, the Board of Directors approved the execution of an agreement with Liebert Cassidy Whitmore for interim General Counsel Services for the District and authorized the development of Requests for Proposal for both General Counsel and Special Counsel Services on a contract basis.</i>
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15. STATUS OF SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT

See staff report attached hereto as Exhibit H.

Mr. Coox stated that staff is moving forward to try and meet the FERC deadline of June 30 to finalize the settlement agreement. Mr. Coox said that if an agreement does, by chance, happen to be on the table for consideration prior to June 30, the District could still be in the process of seeking Special Counsel at that time. Mr. Coox advised that the District, in this situation, may need someone in the interim to review this type of document. Director Williams requested a detailed list of issues, the positions, and the differences. Mr. Coox stated that the biggest issues for the District are the ability to maintain rights to the Warner Ranch property and the water rights. Mr. Don Smith added that the Bands' response to the District's revisions to a draft agreement had just been received the previous day, and staff had not had a chance yet to digest it and think about what the District's position should be. Mr. Smith added that this information would be made available to the Board as soon as staff can compile it.

Director Mendez and Director Williams reported on their recent meetings with the Indian Bands in Palm Springs. President MacKenzie suggested that the Board invite Ron Packard to a future Board meeting to give an overview of how the negotiations are going from his perspective. The Board concurred that this would be a good idea. Mr. Coox said staff would issue the invitation.

Director of Water Resources, Don Smith provided clarification regarding environmental concerns as they relate to the June 30 deadline stating that these issues with other resource agencies are not expected to be resolved by June 30. He added that the FERC deadline requires that the three parties have a tentative agreement signed by that date.

Director Dorey asked what will happen if the June 30 deadline is not met. Mr. Smith responded that the belief is that no more forgiveness will be given by FERC, and that FERC will most likely excuse the District's pending application for license. Mr. Smith stated that what would then allow the District to continue to generate power, maintain right of ways, etc. would be the annual license. Mr. Smith added that it would be questionable whether FERC would renew the annual license when it expires.

President MacKenzie requested, and Mr. Don Smith provided an update concerning the status of Devine Tarbell and Associates.

Mr. Coox stated that as the Board knows, Mr. Kent Foster provides the District consulting services on the Indian matter for the District pro bono, asking only to be reimbursed for his expenses. Mr. Coox said that there is no formal agreement to this effect, just an informal email. Mr. Coox requested concurrence from the Board to formalize the agreement with Kent Foster in writing, keeping the same terms. The Board agreed, and authorized him to proceed. Mr. Coox said he will formalize the agreement and bring it back to the Board.

16. STRATEGIC PLANNING WORKSHOP SCHEDULE

See staff report attached hereto as Exhibit I.

The Board discussed possible dates to reschedule the June 24 Board workshop, and decided on July 14 or July 15, depending on Facilitator Bob Rauch's schedule.

6.D. DISTRICT OFFICE LANDSCAPE UPDATE

See staff report attached hereto as Exhibit A-4.

President MacKenzie requested clarification on the conceptual plans for this project. She recalled that the Board's concept was to have artificial turf, eco zones, hydro zones, etc. and she did not see any of this in the information provided for Phase 1. Mr. Coox responded that the Board's concept was provided to the landscape architect. Based on the topography, slopes, and configuration of the front area, the architect thought that the Board's concept would be better placed in the other two areas of the project. Mr. Brent Reyes stated that Howard and Associates' concept was to use the area in front of the building to demonstrate water wise commercial landscaping. In the areas leading to and around the monument, which is a bit more level, different themes such as Southwestern, Mediterranean, or Nifty Fifty, will demonstrate what residential customers can incorporate into their own yards.

President MacKenzie noted that the trees used in the plans are 24" and 36" boxed trees. She commented that these are very expensive trees. She advised that since nurseries sometimes place trees in containers larger than the trees warrant, the landscape architect should designate the trees' height and trunk diameter to assure the proper value is received.

The Board received clarification regarding the reconfiguration of the irrigation system, amendment of the soil and maintenance. President MacKenzie directed that staff work with the Public Relations Committee on the overall concept and maintenance issues, and then bring that information back to the Board.

08-05-69

Upon motion by Director Dorey, seconded by Director Mendez and unanimously carried, the Board of Directors authorized the General Manager to enter into an agreement for the installation of landscape improvements in front of the District office to the low bidder up to the estimated construction cost of \$32,400.

17. MATTERS PERTAINING TO THE ACTIVITIES OF THE SAN DIEGO COUNTY WATER AUTHORITY

Director Williams stated that there have not been any Water Authority meetings since his last report, so he had nothing to report.

18. REPORTS ON MEETINGS AND EVENTS ATTENDED BY DIRECTORS, AND AUTHORIZATION FOR DIRECTOR ATTENDANCE AT UPCOMING MEETINGS AND EVENTS

See staff report attached hereto as Exhibit J.

Director Dorey reported that he attended a Groundwater Resources Association meeting in San Juan Capistrano where the Dana Point Desalination and Reclamation operations were discussed. He also attended the Council of Water Utilities meeting the previous morning where Ric De Leon, of the Metropolitan Water District gave an update on quagga mussels. Director Dorey stated that he attended the ACWA Spring Conference, and he announced that he was not elected to the ACWA/JPIA Executive Committee, though he heard lots of encouraging comments. Assistant General Manager, Eldon Boone commented that all three of the positions that were filled on the ACWA/JPIA Executive Committee were filled by incumbents.

President MacKenzie stated that she attended the CSDA quarterly meeting on May 15, where scholarship presentations were made. She also attended the CSDA Legislative Days event on May 12, where Dan Walters of the Sacramento Bee made interesting comments regarding the difficulties in getting things done within the California governmental structure. On May 13, President MacKenzie attended the CSDA Board meeting. President MacKenzie reported that after the recent resignation of the CSDA Treasurer, she was elected Treasurer. The Board congratulated President MacKenzie on her new position.

President MacKenzie reported that she attended an ACWA Region 10 meeting where Tim Quinn, Executive Director spoke about ACWA's public relations budget and dues structures. At the ACWA Spring Conference she attended an Ethics Class which was put of in part by Liebert Cassidy Whitmore. President MacKenzie requested to memorialize for the record the following items of interest for elected officials:

- Compensation can not be retroactive, so bonuses are not legal unless it's written into contract
- Charitable contributions violate rules because of agencies' public purpose
- It is ethically required for General Counsel to inform the Board if separate counsel is needed when negotiating contracts
- FPPC requires that gifts over \$50 must be reported
- FPPC prohibits acceptance of gifts over \$390
- An elected official may not accept anything that is not available to the general public
- Sponsored trips must be reported
- Allowances for items such as cars and cell phones are not allowed because they can not be considered actual and necessary and the actual use can not be proven, but an elected official

may be reimbursed for using his or her personal property (such as cell phone) if the use is documented (such as on a cell phone bill)

- When responding to email—do not hit “reply all”
- A board member may attend a Board meeting by teleconference as long as it is posted properly and a quorum of the Board must be in the service area
- According to the Freedom of Information Act, the budget, the audit, and Form 700 Statements of Economic Interests must be made available immediately upon request

Director Williams reported on his attendance at the ACWA Spring Conference. He commented briefly about talks he heard on quagga mussels, solar energy, and the peripheral canal.

President MacKenzie advised that the CSDA Annual Conference is coming up September 22-25, 2008 at Hyatt Regency in Irvine. She encouraged attendance.

19. ITEMS FOR FUTURE AGENDAS AND/OR PRESS RELEASES

See staff report attached hereto as Exhibit K.

None were presented.

20. DIRECTOR COMMENTS

None were presented.

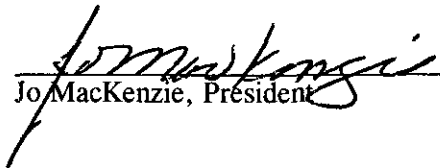
21. COMMENTS BY GENERAL MANAGER

Mr. Coox informed the Board that the North County Industrial Park has applied for and received a \$5,000 Smart Landscape Program grant. They will be upgrading their controllers and sprinkler heads throughout the industrial park.

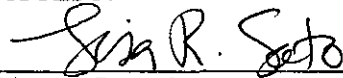
Mr. Coox reported that with Interim Agricultural Water Program (IAWP) in full swing, and staff has been spending a lot of time with these particular customers helping them in dealing with their allocations and requests for variances, etc. Mr. Coox advised that the Board will likely hear more about this in the future. President MacKenzie requested clarification regarding flow restrictors, to which Mr. Boone responded. President MacKenzie requested that with summer months approaching, as more flow restrictors are issued, the Board be made aware of flow restrictors issued in their division. Mr. Boone responded that staff intends to include a section in future division reports concerning IAWP issues.

22. ADJOURNMENT

There being no further business to come before the Board, President MacKenzie adjourned the meeting at 1:09 p.m.


Jo MacKenzie, President

ATTEST:



Lisa R. Soto, Secretary
Board of Directors
VISTA IRRIGATION DISTRICT