

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

June 9, 2008

An Adjourned Meeting of the Board of Directors of Vista Irrigation District was held on Monday, June 9, 2008, at the offices of the District, 1391 Engineer Street, Vista, California.

1. CALL TO ORDER

President MacKenzie called the meeting to order at 1:00 p.m.

2. ROLL CALL

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

Directors absent: None

Staff present: Roy Coox, General Manager; Lisa Soto, Secretary of the Board; Brett Hodgkiss, Administrative Services Manager; Don Smith, Director of Water Resources; and Marian Schmidt, Administrative Assistant.

Other attendees: Judith Islas, Leibert Cassidy Whitmore

3. PLEDGE OF ALLEGIANCE

Director Dorey led the pledge of allegiance.

4. APPROVAL OF AGENDA

08-06-80	<i>Upon motion by Director Mendez, seconded by Director Dorey and unanimously carried, the Board of Directors approved the agenda as presented.</i>
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5. PUBLIC COMMENT TIME

Legal Counsel Melanie Poturica introduced her colleague Judith Islas. Ms. Poturica explained that there will be a few Board meetings at which she will not be present. She said that Ms. Islas is Of Counsel to her firm, Liebert Cassidy Whitmore, and she will fill in for Ms. Poturica in her absence.

6. DRAFT DROUGHT RESPONSE RESOLUTION

See staff report attached hereto.

General Manager Roy Coox stated that there had been a question on the final section of the resolution concerning enforcement in the form of penalties. Mr. Coox said that VID had been advised by past legal counsel that an irrigation district does not have the right to impose fines or penalties, but could impose administrative fees. Another question was whether VID could terminate service as a consequence of non-compliance with the drought or conservation policies. To that end, staff obtained a new legal opinion from the attorneys at Liebert Cassidy Whitmore, and staff has modified the Resolution to reflect the new opinion.

Administrative Services Manager Brett Hodgkiss stated that the new legal opinion agreed with the past opinion—that an irrigation district could not assess fines or penalties, but could impose fees, provided that there is a nexus between the fee and the District’s actual associated costs. Mr. Hodgkiss advised that staff modified section 10.C to reflect this opinion, using the fees that were adopted earlier this year.

On the second question regarding locking service as a consequence of non-compliance, the District can lock off service during a *Water Code section 350*, also known as a “water emergency”. Stage 4 of the Draft Resolution is where a *Water Code section 350* “water emergency” would be declared.

The Board discussed the current fees, which have not been changed since 1995. The question was posed whether these fees are subject to Proposition 218. Mr. Coox responded that he did not believe these fees to be subject to Prop 218, but if the District were to wish to adopt a conservation based tiered rate structure, this would be subject to Prop 218 procedures.

Director Jewell was concerned that there was no provision for an appeal process in the resolution. He thought that without an appeal proceeding, the entire resolution could fail because of due process. Director Jewell suggested that the “request for variance” section was probably included in the model ordinance for this reason. He said that the resolution, without that section, leaves itself open to arbitrary and capricious action. The Board asked legal counsel for her opinion. Ms. Poturica said that she was not sure that the elimination of the hardship variance left the resolution without an appeal process. Mr. Hodgkiss stated that the existing Rules and Regulations document does contain an appeal structure for water bills. He added that the fees which reside in the Rules and Regulations, and which are included by reference in this resolution, would be added to the water bill as a surcharge.

Director Jewell also expressed concerns that the draft Resolution conflicts with previous ordinances of the District. Mr. Hodgkiss explained staff’s plans for how to deal with this issue, which will include adopting new resolutions to repeal Ordinance 01-01 and 02-01, and adopting new resolutions that deal with the Interim Agricultural Water Program and conservation separately. Mr. Hodgkiss added that he did check with legal counsel and was told that a resolution can repeal an ordinance.

The Board directed that the appeal process and the applicable fee, which currently are both included in the Resolution by reference to the Rules and Regulations, be added to the body of the draft Resolution. The Board expressed that it would like the Resolution to be a stand-alone document with no references to other documents. Once adopted, the Board directed that the Resolution be included in the Rules and Regulations.

The Board discussed the fact that the fees are outdated, and whether or not it wished to consider adjusting the fees at a future Public Hearing. Legal Counsel Poturica said that she would like to research, just to be certain, that the fees were not subject to Prop 218. The Board asked that she do so, and let staff know.

The Board discussed whether it had consensus that the draft Resolution was ready for public review. Director Jewell noted that conflicts still remained between the draft Resolution and the Urban Water Management Plan. The Board and staff discussed how to appropriately resolve these conflicts. Legal Counsel Poturica stated she would be available to assist staff with wording to repeal documents and resolve these issues.

08-06-81 *Upon motion by Director Dorey, seconded by Director Mendez and unanimously carried, the Board of Directors approved the Draft Drought Response Resolution with the noted revisions, to be brought back for further review by the Board at the 6/18/08 Board meeting.*

The Board discussed the timing of the steps involved with the ultimate adoption of the Resolution. The Board discussed publicizing the Public Hearing on the water bills. The Board directed staff to prepare a recommended timeline for the Public Workshop, the Call for Public Hearing, and ultimately the Public Hearing itself. The Board indicated that it would prefer to have the Public Hearing in the evening and the Workshop during the day.

President MacKenzie asked Legal Counsel Poturica if the Board decided to make substantial changes to the Resolution based on input from the public at the Public Hearing, if the Board could adopt the Resolution with those changes at the same Hearing. Ms. Poturica replied that the Board could make changes and adopt the Resolution all in the same Hearing.

A brief break was taken from 2:10 p.m. to 2:20 p.m.

Upon return from break, President MacKenzie suggested that agenda Item 9 be taken out of order at this time.

9. CLOSED SESSION FOR CONFERENCE WITH LEGAL COUNSEL

President MacKenzie adjourned the meeting to closed session at 2:21 p.m. for a conference with legal counsel to discuss the following pending litigation:

A. San Luis Rey Indian Water Rights Settlement per Govt. Code section 54956.9(a).

The meeting reconvened in open session at 4:43 p.m. President MacKenzie declared that no reportable action had been taken.

7. DIRECTOR COMMENTS

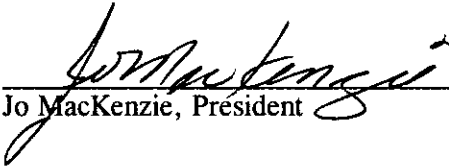
President MacKenzie stated that Director Jewell was developing an outline for a Board Policy Manual, which would be presented as part of the next Board agenda.

8. COMMENTS BY GENERAL MANAGER

None were presented.


8. ADJOURNMENT

There being no further business to come before the Board, at 4:44 p.m., President MacKenzie adjourned the meeting to June 18, 2008.



Jo MacKenzie, President

ATTEST:



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