

MINUTES

**TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT  
SPECIAL MEETING OF THE BOARD OF DIRECTORS  
November 13, 2020 9:00 A.M.  
22901 Banducci Road, Tehachapi, CA 93561**

**ANNOUNCEMENT: THIS MEETING IS BEING CONDUCTED VIA TELECONFERENCE AS AUTHORIZED BY GOVERNOR GAVIN NEWSOM'S EXECUTIVE ORDER N-25-20. DIRECTORS AND THE PUBLIC ARE REQUESTED TO ATTEND VIA THE ZOOM MEETING APP. THE MEETING ID IS 597-332-8446. THE PASSWORD IS 1113SBM. NO PHYSICAL MEETING IS SCHEDULED AT THE DISTRICT BOARDROOM, 22901 BANDUCCI ROAD, TEHACHAPI, CA 93561.**

- Item 1. Call to Order and Roll Call**  
**Directors Present:** Hall (remote), Pack (remote), Schultz (remote), Zanutto (remote), Cassil arrived in person at 9:30 a.m.  
**Legal Counsel:** Robert Kuhs (remotely at 9:22 a.m.)  
**Staff in Attendance:** Catherine Adams (in person), Jon Curry (remote), LaMinda Madenwald (remote) and Tom Neisler (in person)
- Item 2. Announcement**  
 President Pack announced this meeting is being audio recorded, including all Board, Staff, and Public comments.
- Item 3. Flag Salute**  
 The Pledge of Allegiance was foregone.
- Item 4. Approval of Agenda**  
 Director Zanutto moved to approve the Agenda. Director Schultz seconded the motion and it was carried on the following vote: Ayes: Hall, Pack, Schultz, Zanutto; Noes: None; Abstain: None; Absent: Cassil.
- Item 5. Comments by any Party on Items of Interest and Within the Subject Matter Jurisdiction of the Legislative Body**  
 There were no comments made in person, via Zoom, or by email.
- Item 6. Update on Delta Conveyance Project Participation**  
 Mr. Neisler presented the following information based on what was available and disclosable at the time. Schedule- There is another TCCWD Special Board Meeting scheduled for Tuesday, November 17<sup>th</sup> at 9:00 a.m. The KCWA has directed that all Member Units provide information to the Agency no later than 3:00 p.m. on November 17, 2020. The KCWA Board of Directors will hold a Special Board Meeting on November 18<sup>th</sup> to approve the Agency's participation in the Delta Conveyance Project (DCP), including participation percentages from each Member Unit. They are requesting action on the 4-year funding agreement (planning and engineering), not full project participation. The overall estimated cost of the 4-year planning and engineering effort is \$340 million reduced from the previous \$385 million. The projected full cost of the project is \$15.9 billion (in 2020 dollars). The project approvals and entitlements are scheduled to be complete by mid-2024 and then construction would commence in 2025. Given the estimates to-date, the project should be complete and ready to deliver water sometime between the years 2038-2040. It's important to note, these decisions have to be made now, yet water conditions will be significantly different in the next 15-20 years when we will actually start to see water from this project. In looking back at Tehachapi over the last 15 years, a lot has changed, especially water demand.  
What KCWA Wants Authorized By The November 17<sup>th</sup> Deadline

1. Delta Conveyance Project Agreement in Principle and participation percentage.
2. Member Unit Funding Agreement. There is a workbook attached that includes the TCCWD participation percentage.
3. Delta Conveyance Design and Construction Authority Joint Powers Authority Agreement.

These documents were distributed to the Directors this morning. The KCWA is requesting Board action by letter or email. Mr. Neisler proposed responding by an email from him and that Board authorization be contingent on the information that is available at the time the Board makes that decision. There are still uncertain issues in some of these documents and there is no project authorized payment schedule for the full project nor accurate modeling or yield calculations. There is no hard number to fund these items for the next 4 years. The attorney-s had a joint call this morning working on the funding agreement. A new version of that agreement was just received via email.

DCP Agreement in Principle- He displayed the document dated April 30, 2020. This agreement is between DWR and the State Water Contractors (SWC). TCCWD is a subordinate as a participating Member Unit to the KCWA. Some of the SWCs have already indicated they will not be participating in the project. The participation level from other SWCs is anticipated to be 50% and that may go up or down before the Board acts next week. TCCWD's participation level and cost will not change, regardless of the other SWC's participation. The Metropolitan Water District will pick up the remaining participation percentages so their share will increase. Mr. Neisler understands the Board has not had much time to review this agreement and offered that they to call him with any questions as they go through it. He proposed the Board delay acting on any of these items until the Special Board Meeting on November 17<sup>th</sup>.

Director Zanutto asked for clarification on Objective 5 where it states Districts can opt out of the program after the 4-year agreement. Mr. Neisler stated that is true and it will be discussed further with the funding agreement.

Member Unit Funding Agreement- He displayed the version of this agreement he just received. This agreement indicates each Member Unit's participation in the project to the Agency. This will equate to the participation shares in the project. The attorneys are still drafting and wordsmithing this agreement. The two key issues with this agreement were that there was no cost cap or methodology for cost control and the issue of provisions for changing participation shares is still being discussed.

Mr. Kuhs joined the Board meeting after finishing up an attorneys meeting and provided current information. He described the agreement stating one of the discussions that has taken place was whether there will be a single agreement between the Member Units participating and the Agency, or have separate agreements for each Member Unit and the path that was decided on was a single agreement with the Agency. He referenced Article 3 and stated attorneys from two other agencies stated they wanted an option to pause after two years and reassess whether they wanted to continue paying the obligation based on the current progress of the project. The way that the Agency agreement with the State is structured, there is a two-year pause option for the Agency. In other words, they are committing to fund the planning and development for two years at a price that is set in their agreement and they will discuss going forward at the two-year break. Most Member Units want to have the same flexibility the Agency has to evaluate the progress being made and what the costs are.

Mr. Kuhs stated cost control concerns were discussed at the attorneys meeting and he is proposing TCCWD commits to the first two years and inputs those costs into the Exhibit B spreadsheet with years three and four left "to be determined". Wording was decided upon this morning that states nothing precludes any Member Unit from future negotiations to adjust their percentage in this participation

agreement. Mr. Kuhs stated that once the Funding Agreement revisions are finalized, it will be sent to KCWA for approval so there should be an executable document ready early next week. Mr. Neisler displayed Exhibit B; TCCWD costs for 2021- \$300,794.00, 2022- \$293,458.00. The costs will escalate significantly in years three and four; 2023- \$489,097.00, 2024- \$538,006.00. The total cost commitment for the 4-year agreement is \$1,621,355.00 with the reconsideration point after the first two years. All Statement of Charges amounts are paid out of the Ad-Valorem taxing account. In anticipation of a Delta Conveyance Project, for 2021, Mr. Neisler already figured the Statement of Charges would increase 40% so that was factored in when calculating the tax rate back in July. With this increase factored in and the surplus in the tax account, the District can fund the first two years of the DCP with little to no effect on the Ad-Valorem tax rate.

Director Zanutto asked for clarification on whether this District has the option to opt out after two years or if that was only for KCWA. Mr. Neisler clarified that the proposal is to condition this District's approval on having that opt out option after two years and provide Exhibit B to the Agency with only a two-year commitment filled in, leaving years 2023 and 2024 at zero.

President Pack expressed concern for increased costs in years three and four. Mr. Neisler explained that those are the projected costs that will occur in those years. The project is budgeted on a four-year cycle so as it gets closer to the approvals, there is more work and therefore more costs associated with those years. Mr. Kuhs stated that given the uncertainties with the project and the budget, paying less in the first two years gives the District time to solidify their commitment to the project.

Directors sought clarification on what costs are fixed and what the Metropolitan Water District's role will be. Mr. Neisler explained that the Metropolitan Water District will pick up what's left of the participation percentage, but not necessarily the cost. Even if other agencies drop out, the District's costs will remain fixed. If this District decides to opt out after two years, it would lose the money it's paid in, unless it was able to sell its participation percentage to another agency and recover some of the costs.

Director Schultz asked for details on what the Ad-Valorem tax rate is currently set at. Ms. Madenwald provided that with the 40% increase in cost built in, the total gross revenue required is \$4,961,000 and \$2,428,919 was moved from reserves leaving a total revenue required from the Ad-Valorem tax of \$2,381,195. Therefore, the tax rate was set at 0.050046%. The County requires the District set aside a significant amount of tax proceeds to be used for contested valuations and it typically ends up coming back to the District as a refund. When the refund is received, this creates a surplus in the account (by law it cannot be used for anything else), and this helps to keep the tax rates lower and more consistent.

President Pack sought clarification on the cost control issue and its resolution. Mr. Kuhs stated they raised the issue in earlier attorney meetings and in looking at KCWA's agreement with the State, their costs were going to be fixed, so Member Units conditioned their agreement on being able to have fixed costs as well.

Delta Conveyance Design and Construction Authority Joint Powers Authority Agreement- The Delta Conveyance Design and Construction Authority (DCA) is an entity that the State Water Contractors (SWC) requested be established to plan and manage the build of the project, cooperatively with DWR. DWR has never agreed to anything like this in the past, they have always assumed full responsibility for projects in the State Water Project. DWR has agreed to work with the DCA and KCWA will have a seat on the seven member Board of Directors. This will give the SWCs significant input into the design and construction of the project and that should help to control costs and keep the schedule in line. The DCA has been

functioning with the KCWA seat vacant because the Agency has not previously committed to participation, so this agreement will make their participation official. Mr. Kuhs stated the provision for compensation for the DCA Board of Directors bothers him because it states they are going to set their own salary. Presumptively, whoever the Agency appoints to that Board is already receiving a salary and it's worrisome to think the Metropolitan Water District is going to influence setting the salary for someone in Kern County and passing those costs on to the Member Units. Mr. Neisler offered that this issue can be mentioned along with the District's response to whether they authorize proceeding or not. Director Zanutto agreed with Mr. Kuhs that the possible double dipping of salaries needs to be looked into.

With all the documents being presented, Mr. Neisler suggested the Board take time to review them and reach out to him or Mr. Kuhs with any questions they may have. Once the funding agreement is finalized, Mr. Neisler will provide it to the Directors. He stated the Board can take action today, or at the Special Board Meeting scheduled for November 17<sup>th</sup>. The Agency is requiring answers and participation percentages be submitted no later than 3:00 p.m. on November 17<sup>th</sup>. He recommends the Board wait to take action so that their decision can be made with the most up-to-date information available. This information will be made available on the SharePoint drive as suggested by Director Schultz.

President Pack pointed out that the costs being discussed are just for the planning phase. Director Schultz asked if the District's share of the projected cost for the project is still around \$80 million and Mr. Neisler confirmed it is and that the period of financing should be between 40-60 years, but no one has been able to confirm that. The money will be borrowed as needed for different phases of the project; it will not be one large loan. Around 2025, the District would be obligated to begin paying the extra costs with its annual charges however, it will be at least 10 years before it will receive any additional water from the project. Unfortunately, there is no model of these costs available at this time, but it is something all agencies are concerned about and the Member Units will be pushing to have that information available within the first two years of the planning agreement. Remember, the \$15.9 billion estimate contains a 38% contingency, so these numbers are not completely accurate.

Without the DCP, the long term State Water Project allocation is estimated at 48%, yet this District needs 53% to meet current demands. That being said, the system cannot physically pump more than 10,000 AF or 53% in one year. In 2020, we only received 20% of our allocation and if next year is a dry year, we may be looking at restrictions, so this project is definitely needed for our District.

The Board decided to wait until the November 17<sup>th</sup> Special Board Meeting to act on these items.

**Item 7. Board of Directors Comments**

President Pack encouraged Directors to look over everything this weekend. He is still digesting all this information, but he is leaning towards the fact that these costs are quite high, and he isn't sure if the benefits are there.

Director Schultz commented to keep in mind the value of water.

**Item 8. Closed Session**

Closed Session was foregone as there was no information to discuss.

**Item 9. Return to Open Session**

No Closed Session was held.

**Item 10. Adjournment**

The meeting was adjourned at 10:26 a.m. on a motion made by Director Zanutto, seconded by Director Schultz and carried on the following vote: Ayes: Cassil, Hall, Pack, Schultz, Zanutto; Noes: None; Abstain: None; Absent: None.

  
Robert W. Schultz, Board President

  
Catherine Adams, Board Secretary



**CLOSED SESSION ITEM DESCRIPTIONS**

(Gov. Code § 54954.5)

**A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Gov. Code § 54956.8.)**

Description of Property: \_\_\_\_\_  
Proposed District Negotiator: \_\_\_\_\_  
Negotiating Parties: \_\_\_\_\_  
Subject of Conference: \_\_\_\_\_

**B. CONFERENCE WITH LEGAL COUNSEL (Gov. Code § 54956.9.)**

- 1. Existing Litigation: \_\_\_\_\_  
Name of Case: DWR v. All Persons Interested in Authorization of  
WaterFix Revenue Bonds et al.
- 2. Anticipated Litigation: \_\_\_\_\_  
Gov. Code § 54956.9 (b): \_\_\_\_\_  
Gov. Code § 54956.9 (c): \_\_\_\_\_

**C. PUBLIC EMPLOYEES (Gov. Code § 54957.)**

- 1. Appointment: \_\_\_\_\_  
Title: \_\_\_\_\_
- 2. Employment: \_\_\_\_\_  
Title: \_\_\_\_\_
- 3. Performance Evaluation: \_\_\_\_\_  
Title: \_\_\_\_\_
- 4. Discipline/Dismissal/Release: \_\_\_\_\_

**D. CONFERENCE WITH LABOR NEGOTIATOR (Gov. Code § 54957.6.)**

Agency Negotiator: \_\_\_\_\_  
Employee Organization: Not Applicable  
Unrepresented Employee: \_\_\_\_\_