

MINUTES

TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT
REGULAR MEETING OF THE BOARD OF DIRECTORS
November 20, 2019 3:00 P.M.
22901 Banducci Road, Tehachapi, CA 93561

- Item 1. Call to Order and Roll Call**
Directors Present: Cassil, Hall, Pack, Schultz, Zanutto
Legal Counsel: Bernard Barmann
Staff in Attendance: Catherine Adams, LaMinda Madenwald and Tom Neisler
- Item 2. Flag Salute**
The Pledge of Allegiance was led by Director Zanutto.
- Item 3. Approval of Agenda**
Director Hall moved to approve the agenda. Director Cassil seconded the motion and it was carried on the following vote: Ayes: Cassil, Hall, Pack, Schultz, Zanutto; Noes: None; Abstain: None; Absent: None.
- Item 4. Comments by any Party on Items of Interest and Within the Subject Matter Jurisdiction of the Legislative Body**
Microphones and speakers were installed in the Board Room and Director Cassil asked if they were going to be live for this meeting. Mr. Neisler stated the hardware installation is complete, however the programming is scheduled for next week so they will not be live until the next Board meeting.
- Item 5. Consent Calendar - Consent items are considered routine and are intended to be acted upon as a single item, without discussion. During this portion of the meeting, the Consent Calendar will be read aloud. Prior to approval, the President will give the Board the opportunity to remove any item from the Consent Calendar to be discussed and voted on individually. The President will also give staff and the public the opportunity to request any item be discussed individually, in which case the President will determine whether the item will be removed from the Consent Calendar. The remaining calendar will be acted upon. Any removed items will then be heard and acted upon individually.**
- a. Approve Minutes of the Regular Board Meeting of October 16, 2019
 - b. Approve Financial Report and Payment of Bills

President Pack asked if there were any items the Board, staff or public would like to remove for discussion. Director Zanutto requested Item a. be removed.

Director Cassil moved to approve Item b. of the Consent Calendar. Director Hall seconded the motion and it was carried on the following vote: Ayes: Cassil, Hall, Pack, Schultz, Zanutto; Noes: None; Abstain: None; Absent: None.

Director Zanutto stated he removed Item a. in order to abstain from voting on approval of the Minutes as he was not in attendance at the last meeting. Director Schultz moved to approve Item a. of the Consent Calendar. Director Hall seconded the motion and it was carried on the following vote: Ayes: Cassil, Hall, Pack, Schultz; Noes: None; Abstain: Zanutto; Absent: None.

- Item 6. General Manager's Report**
Mr. Neisler reported on the following matters:
- The rain today marks the third latest start to the wet season on record.
 - The new Operations Manager will start on Monday, November 25th and the new Mechanic started on November 12th. He is quickly becoming part of the team.

- The Public Safety Power Shutdowns (PSPS) have been in the news and the District endured four electrical shutdowns. Operations were able to continue without any loss of production from power outages, however, at one point, operations were shutdown for unsafe working conditions due to high winds. During wind events, the turnout will get plugged with debris and employees have to manually clean it out and that particular day the winds were so strong, it became unsafe for employees to perform this task.
- During the power shutdowns, the District utilized emergency generators that operate under Air Pollution Control District Permits. There are facilities in the San Joaquin Air Pollution Control District (SJAPCD) and facilities in the Eastern Kern Air Pollution Control District (EKAPCD). The EKAPCD permit has a limit of 200 operating hours per year and the PSPS equated to over 165 hours on those facilities this year. The SJAPCD does not count emergency usage against the District's permitted hours so there has been no issue there.
- There have also been two distribution system failures to Pump Plants 2 and 3, due to a failure in the underground electrical lines so District generators had to run for another 30+ hours. With the length of both types of outages, the District has exceeded the permit limitation for the EKAPCD permit and staff has requested and was granted a variance, however, there will still be a variance fee of around \$2,000.
- The Air Pollution permits are issued per engine and there is a certain pollution load that can be disgorged into the atmosphere per engine. Under their calculated formula, that equates to 5,384 operating hours per engine and there are four engines in each plant. Due to some maintenance issues previously described to the Board, certain engines ran longer than others. There is one engine in Plant 3 that has exceeded the hour limit. The combined permit total for all four engines is over 21,500 hours and the actual operating hours of that plant are less than 16,000, yet because one engine ran over, a variance and fee are required. Mr. Neisler inquired about getting an aggregate total of hours allowed for each plant and was turned down.
- President Trump set aggressive deadlines for the Bureau of Reclamation who operates the Federal project to update the Federal BiOps for the operation of the Central Valley Project (CVP). Congressman Kevin McCarthy has been instrumental in the progress of these issues. He has conducted two meetings for local water managers in the last year and brought in the key decision makers to brief managers on what the Bureau of Reclamation is doing on the CVP. The District is a contractor under the State Water Project (SWP) not the CVP, however, the two systems need to operate hand in hand. Ernest Conant stated that the main obstacle of the implementation of the Federal BiOps is the State of California. The Federal Government recognizes that the State cooperating in this is a key component and it's critical that they work together. In addition to Congressman McCarthy, Senator Feinstein has been instrumental in getting these regulations approved. The Voluntary Settlement Agreements and the extension of the SWP contract both hinge upon the Federal BiOps so a lot is riding on it.
- The Delta Conveyance project is moving forward at the State level. The Agreement in Principle should be public by the end of December. Since last Thursday, there has been two closed door Member Unit Managers meetings and there is another one Friday. The TCCWD Board has indicated full participation in the Delta Conveyance project.
- The District has continued to operate the system with three engines through November 8th in an attempt to try to get to the 10,000 acre feet goal. With the weather shutdown and a maintenance issue that caused the system to fall back to two engines, operations will not be able to make that goal. The system will be shutdown completely on November 27th and will have pumped around 9,800 acre feet. Considering all the obstacles faced this year, Mr. Neisler is very proud of the team for getting that far.
- Discussions and meetings continue with the City of Tehachapi on the Indirect Potable Recharge Project.

-He attended numerous meetings this month; Smart Growth Tehachapi, SSCSD and BVCSD Board meetings, and an evening Stakeholders meeting all to discuss the Cummings Basin Adjudication, as well as an Annual WAKC meeting, and a JPIA Leadership Alumni planning roundtable.

-On October 28, an annual Risk Assessment was conducted by JPIA. There were only minor corrections noted and the District received the President's Special Recognition Award from JPIA for low loss ratios in both liability and property programs for the period of 2015-2018.

Director Cassil congratulated all staff on receiving the JPIA award; it takes team work to be safe and this is something to be proud of. Mr. Neisler thanked her on behalf of all staff.

Director Zanutto asked if Curtis Creel is still part of the Member Unit Managers meetings. Mr. Neisler stated his last day was September 30th, however they have asked him to stay into December.

Ms. Tina Cunningham asked which Pump Plant is in the EKAPCD and Mr. Neisler described that Plants 2, 3, and 4 are in the EKAPCD and Plant 1 is in SJAPCD.

Item 7. Adopt Resolution 13-19 in Recognition and Appreciation, Honoring Rodney Michael Upon His Retirement

Mr. Neisler stated the adoption of this Resolution will memorialize the acknowledgement of Rodney Michael's 25 years of exemplary service to the District. His career at the District began on August 2, 1994 and he has been a faithful and valuable employee. Rod's knowledge, experience and mechanical acumen have been instrumental to the growth of the District. He has helped resolve issues and manufactured solutions that did not seem possible. The engines are kept running all these years with no outside support that can be called on, and Rod was the go-to person when staff was stumped. His knowledge and mechanical instinct cannot be replaced. He will be sorely missed by Team TCCWD. Mr. Neisler extended his personal thanks to Rod for his contributions to the District and best wishes in his future endeavors.

President Pack read Resolution 13-19 aloud and the audience gave a round of applause.

Director Schultz moved to approve Resolution 13-19 In Recognition and Appreciation of Rodney Michael Honoring Him For His Dedicated Service To The Tehachapi-Cummings County Water District Upon His Retirement. Director Hall seconded the motion and it was carried on the following vote: Ayes: Cassil, Hall, Pack, Schultz, Zanutto; Noes: None; Abstain: None; Absent: None.

The Board presented Mr. Michael with a framed copy of the Resolution and he thanked everyone.

Item 8. Adopt Resolution 14-19 Authorizing Agreement with UMPQUA Bank to Participate in the CSDA Commercial Card Program

Ms. Madenwald stated that adoption of Resolution 14-19 will authorize the application for and issuance of UMPQUA Bank – CSDA credit cards for the General Manager, Business Manager and Operations Manager in accordance with the District's Purchasing Policy, Resolution 9-19, adopted on August 21, 2019. In August, the Board updated the Purchasing Policy, the credit card requirements, the controls in place for the use of credit cards in the Controls Policy, and credit card limits were discussed.

Now, in order to apply for a credit card, a Resolution of the Board is required to enter into an agreement. The CSDA offers a commercial card to members through UMPQUA Bank that has cash back. She obtained other commercial card offers from Bank of America and Bank of the West for comparison. She reviewed

the details of each card option (comparison chart in Staff Report) and staff determined the terms, rates, and benefits of the UMPQUA Bank card were superior.

Director Schultz wanted to clarify that “zero liability protection” under the fraud section meant that the District has no liability for fraudulent charges and Ms. Madenwald confirmed that his what she meant by that statement. Director Schultz asked if there are any ideas yet of what the 1% cash back will be used for. Ms. Madenwald stated it will come back as a payment to the District account once a year and it will just be credited to the Bank of the West account at that time. She suspects that staff would try to prorate that amount back against the expense accounts for the charges, but she has not discussed this with the GM. Mr. Neisler stated that currently they are charging a few thousand dollars a month on the card so if that added up to \$50,000 per year, the cash back would only be \$500 per year so it wouldn't be a significant amount. Director Schultz suggested that the cashback could be used for employee appreciation.

Director Hall asked for further explanation on how the current Bank of America card is failing. Ms. Madenwald described their lack of ability to resolve fraudulent charge issues in a timely manner. Mr. Neisler described the deficiencies in their transaction notifications and the frequent shutdowns due to fraud activity.

Director Cassil stated that currently all Board members are receiving a summary of the credit card charges and she appreciates that. She asked if there should be verbiage in Resolution 14-19 stating that the Board will receive this credit card summary on a monthly basis. Mr. Neisler clarified that the purpose of this Resolution is to satisfy UMPQUA that the Board has authorized staff to procure credit in the name of the District so this would not be the appropriate vehicle to do that. The most appropriate vehicle would be in the Purchasing Policy if she felt that was necessary. Director Cassil added that she agrees with the importance of having a card with good fraud tracking and limitations.

Director Schultz moved that the Board adopt Resolution 14-19, Authorizing Agreement with UMPQUA Bank to Participate in the CSDA Commercial Card Program. Director Hall seconded the motion and it was carried on the following vote: Ayes: Cassil, Hall, Pack, Schultz, Zanutto; Noes: None; Abstain: None; Absent: None.

Item 9. Approve Rate Increase for Legal Services from Kuhs & Parker, Attorneys at Law

Mr. Neisler stated this item is a request to the Board to accept and approve the proposed fee schedule as proposed by Kuhs & Parker, Attorneys at Law, to be effective December 1, 2019. Resolution 14-11 states, “The compensation of general counsel and special counsel will be set by the Board.” The requested hourly increase is included in Attachment B and the General Manager requests the Board approve the new rate. Kuhs & Parker's current hourly rate has been in effect since March 1, 2016.

Kuhs & Parker has served as the District's general counsel since 1982. They are familiar with operations, are fully engaged in the Cummings Basin Adjudication, and have provided consistent, valued counsel. TCCWD is their only client that is a Member Unit of KCWA, so this obviates any potential conflicts of interest. There currently is no agreement in place between the District and Kuhs & Parker, and therefore, this item additionally requests the execution of a Legal Services Agreement, Attachment B. With the agreement is a cover letter they have provided that compares the legal fees of other Districts in the area. They range from \$250 to \$295 per hour. (This request is to raise the rate from \$240 to \$275 per hour) Given the expertise of the attorneys and the long-standing relationship, Mr. Neisler believes that their requested fee increase is appropriate.

Director Zanutto asked Mr. Barmann if billable time starts when he leaves Bakersfield for a meeting like this. Mr. Barmann confirmed they do bill for travel time and that is why they only attend meetings when needed. Director Zanutto stated that when he was on the Board at BVCSO they used to pay their counsel a flat rate for meetings. Mr. Neisler stated he thought that was negotiated because their attorney comes from L.A.

Director Schultz asked if Mr. Barmann has seen over the last few years, the cost to operate as an attorney rise faster than the cost-of-living. Mr. Barmann stated they have not compared those costs and he wouldn't suspect so. They do make periodic capital investments and increase staff wages; however, they do not charge for any secretarial time. Their rates are not based on the cost of doing business, they are based on what their time as professionals is worth. Currently, the only thing attorneys can sell is their time and no one has figured out a better way to do it. Mr. Barmann explained that in the legal profession, an attorney can spend an hour and solve a \$10 million dollar problem or spend an hour and accomplish nothing, yet the cost is the same to the client. Director Schultz pointed out that although it is a 14% increase from the prior rate, when that is annualized, it's around 4% which does not seem out of line.

Director Cassil liked Director Schultz's comments and she appreciates the expertise Kuhs & Parker provides to the District.

Director Schultz moved that the Board authorize the execution of the Legal Services Agreement from Kuhs & Parker dated November 20, 2019 and approve the rate schedule included therein. Director Zanutto seconded the motion and it was carried on the following vote: Ayes: Cassil, Hall, Schultz, Zanutto; Noes: Pack; Abstain: None; Absent: None.

Item 10. Update on Cummings Valley Amended and Restated Judgment

Mr. Neisler stated since the last Board meeting, several events have taken place involving the Cummings Valley Amended and Restated Judgment. He reviewed seven items outlined in the Staff Report which include both SSCSD and BVCSO Board's approving a Resolution of Support for the Stipulation, staff conducted another Stakeholders meeting at the District office on October 22nd, and discussions/negotiations continue with SunSelect. To date, nine signed Stipulations have been received which includes Grimmway and SSCSD. Several other pumpers have indicated they will sign. The Ad-Hoc Committee met for a conference call with Reinhold Krahn of SunSelect and their attorneys on November 18th and it was a productive call. Mr. Neisler has had approximately 12 phone calls with pumpers who have indicated support but have not signed the Stipulation.

Director Zanutto asked if those pumpers called in or if Mr. Neisler reached out to them. Mr. Neisler stated that they called in to him and Director Zanutto was glad to hear they are calling in with questions.

Item 11. Update on Cummings Valley Westerly Recharge Project

Mr. Neisler stated that SSCSD's Board considered the District's purchase offer in their Closed Session and asked Mr. Neisler to come in and answer some questions. Subsequent to the meeting, Mr. Aranda submitted additional conditions to the purchase and those were discussed with the TCCWD Board in Closed Session at the October 16th meeting. The Board authorized their inclusion, so revisions to the documents were made by Mr. Barmann. The revised purchase offer, Grant Deed for property conveyance and easement, and Water Service and Pipeline agreement were transmitted to SSCSD. There still needs to be an easement prepared from TCCWD to SSCSD for a flushing line on the recharge pond property, but it needs to be determined where the line will go, and this will be taken care of during escrow. Once SSCSD signs the offer, with the Board's authorization, Mr. Neisler will instruct Mr. Barmann to open escrow. This will be discussed further in Closed Session.

Mr. Neisler spoke with Jeff Eklund about the Prop. 1 grant application and he has not received a status update from DWR. He still thinks there should be an update by the end of this year on our grant application status.

Item 12. Board of Directors Comments

Director Cassil stated that after listening to the General Manager's Report, she is wondering if the District should have an additional designated reserve fund for unpredictable weather event costs. There were costs in May because of the unexpected rain, and recently there is going to be a fee for the generators and so on. Possibly a separate fund from the Emergency Fund would help in these events. Mr. Neisler thanked her and felt that was a prudent comment. He explained that there have not been any costs incurred by these events that would have required him to come to the Board to use the Emergency Fund. The current balance in the Emergency Fund is \$380,000 and on top of that there is a Major Repairs and Overhaul Fund that is over \$1.5 million. There have not been any occurrences that have required use of either of those funds, everything has been covered in regular budgeted accounts. Those budgets are very conservative so even when the May rain costs were close to \$40,000, it was accommodated in the normal budget. If the Board does want to create an additional fund, the appropriate time to do that will be in the Mid-Year Budget review in January. With the Board's direction, he could put it on the agenda at that time.

President Pack explained his vote on Item 9, stating it is nothing personal, he just feels that lawyers make too much money.

Director Schultz commented that it was great to see everyone show up today and support Rodney Michael on his retirement. It is a testimony the comradery of the group and a family of people who have worked together for a long number of years. It was nice to see his appreciation and everyone who was obviously thankful to have him here. With that, he stated he knows it is difficult to consider spending tax dollars on employee appreciation and he thinks the 1% cash back from the UMPQUA credit card could be utilized for this. He feels it should be a consideration and doing things for employees helps to foster that comradery and relationship between employees and management. Lastly, the thanked the attorneys and stated they do a fantastic job.

Mr. Barmann expressed his appreciation for the opportunity for Kuhs & Parker to work with the District since 1982. Bill Kuhs started the relationship and Mr. Barmann has enjoyed the last 8 years working with the District.

Item 13. Adjourn to Closed Session

President to reference Closed Session items as presented on Agenda, then Board to adjourn to Closed Session

- a. In Accordance with Exhibit A Attached Hereto, Kern County Superior Court Case 97209, Tehachapi-Cummings County Water District, a Body Corporate and Politic vs. Frank Armstrong, et al.**
- b. In Accordance with Exhibit B Attached Hereto, DWR v. All Persons Interested in Authorization of WaterFix Revenue Bonds et al.**
- c. In Accordance with Exhibit C Attached Hereto, Conference with Real Property Negotiator (SSCSD)**

The Board went into Closed Session at 4:08 p.m.

Item 14. Return to Open Session

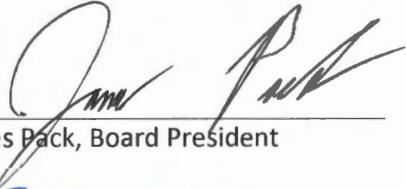
The Board returned to Open Session at 5:35 p.m.

Report Action Taken in Closed Session:

- a. No reportable action.
- b. No reportable action.
- c. The Board authorized the Vice President to sign the purchase agreement with Stallion Springs Community Services District.

Item 15. Adjournment

The meeting was adjourned at 5:37 p.m. on a motion made by Director Hall, seconded by President Pack and carried on the following vote: Ayes: Cassil, Hall, Pack, Schultz, Zanutto; Noes: None; Abstain: None; Absent: None.



James Pack, Board President



Catherine Adams, Board Secretary



**Tehachapi-Cummings
County Water District**

Our Water & Our Future

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: Case No. 97209
Name of Case: Tehachapi-Cummings County Water District
a Body Corporate and politic, vs. Frank Armstrong 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: _____



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(Gov. Code § 54954.5)

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Description of Property: _____
Proposed District Negotiator: _____
Negotiating Parties: _____
Subject of Conference: _____

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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): _____

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Agency Negotiator: _____
Employee Organization: Not Applicable
Unrepresented Employee: _____



CLOSED SESSION ITEM DESCRIPTIONS

(Gov. Code § 54954.5)

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

Description of Property:	<u>APNs 448-051-33-4, 448-051-34-2, 448-052-33-2</u>
Proposed District Negotiator:	<u>Tom Neisler, General Manager</u>
Negotiating Parties:	<u>Stallion Springs Community Services District</u>
Subject of Conference:	<u>Terms, Price and Conditions of Sale or Lease</u>

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

1. Existing Litigation: _____
 Name of Case: _____

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:	<u>Not Applicable</u>
Unrepresented Employee:	_____