

**NORTH MARIN WATER DISTRICT
MINUTES OF REGULAR MEETING
OF THE BOARD OF DIRECTORS
October 4, 2005**

CALL TO ORDER

Vice-President Schoonover called the regular meeting of the Board of Directors of North Marin Water District to order at 7:30 p.m. at the District headquarters and the agenda was accepted as presented. Present were Directors Rick Fraites, Steve Petterle, Dennis Rodoni and John Schoonover. Also, present were General Manager Chris DeGabriele, Secretary Renee Roberts, Auditor-Controller David L. Bentley and Chief Engineer Drew McIntyre. President Jack Baker was absent.

District employees Robert Clark (Facilities Maintenance Superintendent), Mike McMaster (Operations Superintendent), Dianne Landeros (Senior Accountant), District Legal Counsel Jeffrey Polisner, Gary Porter of Porter and Company, Bill Bunce of Black Point Partnership, Lori Frugoli of Novato Horsemen, Patricia Menadier, Stewart Brand and Ryan Phelan were in the audience.

CLOSED SESSION:

Vice-President Schoonover immediately adjourned the Board into closed session for:

- (1) Conference with Real Property Negotiators (Chris DeGabriele and Jeffrey Polisner), regarding StoneTree Golf Course, Novato (Government Code 54956.8); and
- (2) Public employee(s) appointment, Government Code Section 54957.

OPEN SESSION:

Upon returning to regular session at 8:12 p.m., Vice-President Schoonover reported that the Board took no action during the closed session and direction had been given to staff.

MINUTES

On motion of Director Fraites, seconded by Director Rodoni and unanimously carried by those Directors present, the Board approved the minutes from the previous meeting as mailed.

GENERAL MANAGER'S REPORT

Urban Water Management Plan

Mr. DeGabriele reported that staff has been working with the Sonoma County Water Agency's consultant on the District's Urban Water Management Plan (UMWP), specifically on demand projection. He stated that the UWMP will include NMWD's Novato Water Shortage

Contingency Plan and it was important for the Board to review the Water Shortage Contingency Plan which will be agendized at a future meeting.

Stolen Vehicle

Mr. DeGabriele reported to the Board that Vehicle 23, that was reported stolen, has been recovered and that there is no evidence leading to the identification of the perpetrator. He said that there was an unsuccessful attempt to burn the vehicle and that now the vehicle is being made ready for auction.

Stafford Treatment Plant

Mr. DeGabriele stated that there will be no water production in October from Stafford Treatment Plant. He stated that the media replacement is progressing slower than expected, and that Harris & Associates will be at the next meeting to provide an update to the Board.

Realtor Complaint

The General Manager reported that the District's complaint against the West Marin realtor involved in the District purchase of a house in Pt. Reyes has been scheduled for a hearing on November 2, 2005.

Russian Visitors

Mr. DeGabriele reported that a contingent of Russian engineers and builders visited the District on September 26 and that he, Mr. Bentley and Mr. McIntyre explained the District's operations.

OPEN TIME:

Vice-President Schoonover asked if anyone in the audience or staff wished to bring up an item not on the agenda and there was no response.

CONSENT CALENDAR:

On motion of Director Petterle, seconded by Director Fraites and unanimously carried by those Directors present, the Consent Calendar was approved.

WATER AGREEMENT - VILLAGE AT NOVATO – PHASE 1

The agreement is for the proposed Village at Novato (Phase I) project located on a 3.76 acre site at the northeastern corner of Olive Avenue and Redwood Boulevard and includes converting the former Green Mark Building to a 4-unit commercial building.

The Board approved Resolution 05-36 entitled "Authorization of Execution of Water Service Facilities Construction Agreement with Novato Gateway, LLC."

CONSENT – APPROVE AUTHORIZE GENERAL MANAGER APPROVE WATERLINE TEXT

The Board was provided with a draft of the Fall 2005 *Water Line* text and layout, highlighting a washer giveaway coupon, a flapper replacement coupon, conservation program marketing, a message from the General Manager and a pipe freeze alert.

The Board authorized the General Manager to approve text and design of the *Water Line*, Volume 6, Issue 13, to be disbursed in October 2005.

CONSENT – APPROVE BI-MONTHLY MINIMUM CHARGE TERMINOLOGY CHANGE

The Board approved the change of "Minimum Charge" to "Service Charge" on the District's water bills effective December 1, 2005.

CONSENT - APPROVE DISBURSEMENTS

The Board authorized payroll and accounts payable vouchers totaling \$372,666.96 and estimated overheaded payroll for October of \$263,000.

ACTION CALENDAR

WATER AGREEMENT AMENDMENT – GAMBONINI TRUST

Mr. McIntyre stated that the subject water agreement amendment was presented to the Board on September 20, 2005 and at that time the Board asked questions that are being answered at tonight's meeting. He stated that, in answer to the question whether this amended agreement required LAFCo approval, LAFCo's Executive Director, Peter Banning, confirmed that the new amended agreement would not require LAFCo review or action.

Mr. McIntyre stated that District legal counsel was requested to clarify the District's obligation to serve a new customer with a new meter should one of the subject parcels be further subdivided with no total water usage change. Mr. McIntyre reported that Mr. Maddow stated that there is no provision in District regulations which would require the District to grant any future requests and that Mr. Maddow commented that the original agreement with Menadier, or this amendment, does not set a precedent for future water service since the obligation to serve does not apply to properties outside the District service territory.

Mr. McIntyre provided the Board with a map and table of properties along the Highway 101 corridor that have outside water service agreements approved by the Board and identified properties that had requested water service from North Marin.

Patricia Menadier reviewed the series of events that led up to this request for the amendment to the original agreement. She stated that in order for her to keep a portion of the family property, she is selling the second parcel to satisfy loans needed to buy out family members. She stated that the second meter is for water serving the second parcel.

Stewart Brand addressed the Board and stated that he and his wife, Ryan Phelan, are the buyers of the parcel and that they are a family of two who would be spending weekends on the property and that their water use would be within or less than the entitlement.

Director Rodoni stated that he is not comfortable authorizing this amendment to water service outside of District territory, noting that this is an unusual case and that water use would not increase; however, the District will be adding a new customer. He said that since the District is under an impairment condition that the District has an obligation to serve customers within the service territory, and it appears that the District has historically made exceptions to grant outside service requests and continues to expand water use outside the District service territory.

On motion of Director Petterle and seconded by Director Fraites, the Board authorized Resolution 05-37 entitled, "Authorization of Execution of Amendment No. 1 to High Pressure Water Service Facilities Construction Agreement Outside District Boundaries With Gambonini Trust by the following vote:

AYES: Directors Fraites, Petterle, Schoonover

NOES: Director Rodoni

ABSTAIN: None

ABSENT: Director Baker

REQUEST FOR EXEMPTION FROM CONSERVATION INCENTIVE RATE – DUFFY

Mr. Bentley reported that prior to tonight's meeting, Mr. Duffy requested that this item be removed from the agenda.

EXTENSION OF WATER SERVICE AGREEMENT EXECUTION DEADLINE – NOVATO HORSEMEN (648 BUGEIA LANE) (CLUB HOUSE, ARENA, AND RESIDENCE)

Mr. McIntyre stated that the water service agreement for the Novato Horsemen, Inc. was approved by the Board at the August 16, 2005 meeting and that the Novato Horsemen has requested an extension for execution of this agreement for another thirty days to allow more time for their membership to review and act on the agreement. He stated that the Novato Horsemen members are required to vote on expenditures of this amount.

On motion of Director Petterle and seconded by Director Fraites and unanimously carried by those Directors present, the Board approved an extension of the deadline for executing Water Service Agreement until November 15, 2005.

HUMAN RESOURCES RESPONSIBILITY CHANGE

Mr. Bentley reviewed for the Board that at the September 20, 2005 meeting the Board authorized management to explore the opportunity to develop Human Resources Administration capabilities in-house. He stated that management had arrived at a consensus to recruit from within an Accounting/Human Resources Manager to increase time and attention to human resources functions, as well as assume supervision of the Accounting staff and act as a backup support to the Auditor-Controller. He stated that the District is fortunate to have two very good candidates in the Accounting Department. Mr. Bentley stated that staff proposes to develop a job description, with Board concurrence, that would detail duties and expectations of the position, conduct interviews and provide training for the selected candidate.

Director Schoonover asked how extensive the training would be and Mr. Bentley replied that basic training would be conducted in-house and supplemented with training from outside sources.

On motion of Director Fraites, seconded by Director Rodoni and unanimously carried by those Directors present, the Board approved creation of an Accounting/Human Resources Manager position and authorized staff to recruit internally to fill the position.

RECYCLED WATER FACILITY AND PIPELINE PROJECT – REJECT CONSTRUCTION CONTRACT BIDS

Mr. McIntyre stated that because of the delays occurring with respect to the execution of the Recycled Water Agreement, and that because the apparent low bidder, Maggiora & Ghilotti, cannot hold their pricing any longer, an official acknowledgement of rejecting all construction bids by the Board is requested. He stated that the District requested the contractor to extend their bid for an additional 60 days, but that the contractor responded with a 30-day extension that ended on September 30, 2005. He stated that because prices are so volatile due to the recent hurricanes, the contractor cannot extend the bid another 30 days and since the District does not have a signed Water Service Agreement, the bids must be rejected. Mr. McIntyre said that after the Recycled Water Agreement is executed, the District will re-advertise the project. He said that these delays will cost the project and the applicant more money, but there is no other avenue at this time.

Mr. McIntyre stated that the pipeline extension to the Novato Fire Protection District component is a District budgeted item and that this component of serving other public agencies is a funding requirement of the SRF loan.

On motion by Director Rodoni, seconded by Director Petterle and unanimously carried by those Directors present, the Board rejected all bids opened on June 30, 2005 for the Recycled Water Facility and Pipeline Construction project.

BLACK POINT GOLF LINKS RECYCLED WATER USER AGREEMENT

Mr. DeGabriele reviewed the history leading up to tonight's request to approve the authorization of the Black Point Golf Links Recycled Water User Agreement. He stated that on August 10, 2005 the District issued a letter to Black Point Partnership outlining a path forward for concluding the Recycled Water Agreement and that approval by the Board was expected to occur at the September 13, 2005 Special Meeting and that the agreement would be executed by September 20, 2005 or water service to StoneTree Golf Course would be discontinued. He stated that Black Point Partnership could not meet the conventional performance guarantee and in a letter dated August 3, 2005, Black Point Partnership offered the StoneTree Golf Course as the performance guarantee. He stated that at the September 13th meeting, the Board authorized an extension of the deadline in order to complete the financial evaluation of Black Point Partnership and appraisal of StoneTree Golf Course, and that the Board would approve authorization of the Recycled Water Agreement at the October 4, 2005 meeting. He stated that after an independent appraisal of the property, and on advice of District legal counsel, the Board decided to not accept the property to insure financial security for the loan. Mr. DeGabriele stated that the agreement before the Board tonight is the same that was presented in the special meeting of September 13, 2005 as the second option using conventional language establishing a performance bond as the method for guaranteeing repayment of the project costs.

Mr. Bunce, Managing Partner of Black Point Partnership, stated he was disappointed that the appraisal reported that StoneTree Golf Course did not have adequate value to satisfy the District's requirement of performance guarantee. He stated that Black Point Partnership is working diligently with Bank of America to secure adequate financial guarantee for the project and will continue discussions with the General Manager and legal counsel of North Marin.

Mr. Polisner stated that the services of Cliff Davis, MAI, a highly regarded golf course appraiser in Northern California and very familiar with StoneTree Golf Course, was retained. He stated that Mr. Davis has examined the financial reports, visited the property and compared the property with similar properties and that in Mr. Davis' opinion, the fair market value of the property would not exceed \$10M. Mr. Polisner stated that he has recommended that a 70% loan to value would be a reasonable cushion to protect such an investment and that presently there is a \$7.8M

indebtedness in favor of Bank of America, and it would take significant subordination on the part of Bank of America to use the property as financial guarantee.

Director Rodoni recommended that the first sentence of Section 4.c of the agreement be amended to read, "Within 30 days of execution of this Agreement the Applicant shall post a performance bond *or other adequate form of collateral as approved by the District General Manager and Legal Counsel* in the amount of the Initial Charges and Estimated District Costs less Applicant Credits."

On motion of Director Rodoni, seconded by Director Fraites and carried by those Directors present, the Board approved Resolution No. 05-38 entitled, "Authorization of Execution of the Recycled Water Services Facilities Construction Agreement with Black Point Partnership, L.P." as amended.

On motion by Director Rodoni, seconded by Director Fraites and carried by those Directors present, the Board authorized the General Manager to curtail the Temporary Water Service to Black Point Golf Links at 12:01 a.m., October 5, 2005 until the agreement is signed.

INFORMATION ITEMS:

OUTSIDE AUDITOR'S 2005 REPORT AND MANAGEMENT LETTER

Mr. Bentley introduced Gary Porter, of Porter and Company and stated that Mr. Porter is here to present the Outside Auditor's Annual Audit Report and Management Letter to the Board. He also referred the Board to the enclosed booklet entitled, "Dollars and Sense: Financial Reporting and Management Guidelines for Public Water Agency Officials," which will give the Board information on what they need to know to review a financial audit. Mr. Bentley requested that any comments the Board may have on the audit be directed to him so that changes can be made before the final report is completed.

Dianne Landeros, District Senior Accountant, stated that the Management Letter prepared by Gary Porter states that Porter and Company did not find any audit deficiencies and that the District is in very good financial condition. She stated that the one recommendation from the audit was that the District accrue the minimum penalty amount assessed for the Oceana Marin effluent spill in May 2005 of \$7,500 rather than include this amount in this year's budget.

Gary Porter stated that the District's financial reports are very good and better than any other agencies' reports he has seen. He said that providing quarterly financial reports to the Board is adequate, but that the Accounting Department needs monthly reports for their own review.

Director Fraites congratulated the Auditor-Controller and the Accounting staff for a job well done.

SECURITY UPDATE

Mr. Clark provided the Board with a copy of a memorandum to all employees detailing instructions on increased security at the District corporate yard including procedures for visitor and vendor access to the corporation yard. The back yard gates are to be padlocked at 3:30 p.m. and the front gate padlocked at 5:00 p.m., and that traffic patterns through the gate into the yard is addressed and a 5 mph speed limit is required. He stated that since the yard access is being managed, the rear main office doors will be unlocked during office hours.

BACKFLOW PROGRAM STATUS REPORT

Mr. Clark stated that this year's backflow prevention program was very successful in complying with the Department of Health Services requirement by testing and repairing all backflow preventions devices on an annual basis. He noted that this year, additional District employees were trained in cross connection control and performed device testing. He stated that the District is responsible for 1,368 active devices, a 6% increase from the previous year.

WATER ADVISORY COMMITTEE MEETING AGENDA (10/3/05)

Mr. DeGabriele provided a summary of the Water Advisory Committee meeting that he attended October 3, 2005. He stated that Jake McKenzie distributed a generic resolution for support of the Ahwahnee Water Principles for Resource Efficient Land Use and that Mr. McKenzie requested that this resolution be presented to the contractors' Boards of Directors and that this will be done at a future meeting. He stated that one item of concern is the requirement that purple pipe be installed in new construction and remodeled buildings in anticipation of the future availability of recycled water because the pipe will be in the ground for some time before being used and its location may not be known, and it may be necessary to replace old, unused purple pipe at such time recycled water is available.

Mr. DeGabriele stated that he informed the WAC that the District voted to not approve the Restructured Agreement unless language changes were made regarding the option of the Sonoma County Water Agency to acquire the Potter Valley Project. He stated that there was much debate among the contractors and that Randy Poole advised that the SCWA board is not interested in modifying the Restructured Agreement until a recovery plan for Chinook salmon is developed. He said that Mr. Poole stated that no contractor has the ability to avoid system improvement costs and that the WAC had previously established the voting arrangement for the Potter Valley Project option. He stated that Mr. Poole also advised that the L/R/T2 funding would not go forward without

approval of the Restructured Agreement because it is now memorialized in the MOU and proposed to continue pursuant to the Restructured Agreement.

Mr. DeGabriele reported that Jake McKenzie had suggested that North Marin Water District Board member attend a WAC meeting to state its case regarding the Restructured Agreement, or have WAC members attend a NMWD Board meeting. He stated that he intends to talk to Mr. McKenzie and requested approval from the Board before doing so. The Board suggested to wait until other water contractors voted on the Restructured Agreement.

NORTH BAY WATERSHED ASSOCIATION MEETING AGENDA (10/7/05)

Mr. DeGabriele stated that the North Bay Watershed Association meeting is on Friday, October 7, 2005 and that Director Fraites will attend.

MISCELLANEOUS:

The Board received the following miscellaneous information: Review of Scheduled Agenda Items, Letter from Customer (Ferrari), Dollars and Sense: Financial Reporting and Management Guidelines for Public Water Agency Officials, District Response to Marin County – Giacomini Dairy Use Permit – Design Review Clearance (Outside Water Customer), Fiscal Year 2005 Year-End Close Adjustments.

The Board also received the following news articles: Bay Quality Suffering, Report Says (9/30), Lawmakers OK Overhaul of Endangered Species Act (9/30), Local Water Districts Are Overflowing with Gardening Advice (9/24), New Rules OK'd for Tomales Bay Water (9/22), New Water Plant Nears Startup (9/21), Thanks to NMWD (9/21), Russian Construction Managers Visiting City (9/21), British Scientist Praises California's Climate Goals (9/19).

Vice-President Schoonover adjourned the meeting at 9:45 p.m.

Submitted by

Renee Roberts
District Secretary