

**MINUTES OF THE REGULAR BOARD MEETING
OF THE BOARD OF DIRECTORS OF THE
RAINBOW MUNICIPAL WATER DISTRICT
MARCH 22, 2016**

1. **CALL TO ORDER** - The Regular Meeting of the Board of Directors of the Rainbow Municipal Water District on March 22, 2016 was called to order by Vice President Walker at 1:00 p.m. in the Board Room of the District, 3707 Old Highway 395, Fallbrook, CA 92028. Vice President Walker presiding.

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL:**

Present: Director Walker
Director Brazier
Director Stewart
Director Bigley

Absent: Director Sanford

Also Present: General Manager Kennedy
Executive Assistant/Board Secretary Washburn
Legal Counsel Stender
Finance Manager Martinez
Acting Operations Manager Maccarrone
Engineering Manager Kirkpatrick
Superintendent Zuniga
Administrative Analyst Gray
Meter Services Crew Leader Diaz

Eight members of the public were present for Open Session.

4. **ADDITIONS/AMENDMENTS TO THE AGENDA (Government Code §54954.2)**

There were no changes to the agenda.

5. **ORAL/WRITTEN COMMUNICATIONS FROM THE PUBLIC
OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE BOARD REGARDING
ITEMS NOT ON THIS AGENDA (Government Code § 54954.2).**

Jeanne Meadow asked for a clarification on the water availability charge recently published in the newspaper. Mr. Kennedy explained this was for Improvement District 1 which covers the entire district and is adopted each year by the Board. He noted the revenue comes from property taxes and are tracked separately.

(*) - Asterisk indicates a report is attached.

6. ANNIVERSARY ACKNOWLEDGEMENT

A. Victor Veenstra (15 Years)

Mr. Kennedy announced Victor Veenstra was celebrating 15 years with RMWD where he started in 2001 as a Utility Worker I and has been a Utility Worker II for quite some time. He noted Mr. Veenstra was a member of RMWD's Certified Confined Space Rescue Team as well as holds several certifications. He presented Mr. Veenstra with a plaque and check in recognition of his tenure with RMWD.

***7. APPROVAL OF MINUTES**

A. February 23, 2016 - Regular Board Meeting

Action:

Moved by Director Brazier to approve the minutes of the regular Board meeting of February 23, 2016. Seconded by Director Bigley.

After consideration, the motion CARRIED by the following vote:

AYES: Directors Bigley, Brazier, Stewart and Walker
NOES: None
ABSTAINED: None
ABSENT: Director Sanford

8. BOARD OF DIRECTORS' COMMENTS/REPORTS

Directors' comments are comments by Directors concerning District business, which may be of interest to the Board. This is placed on the agenda to enable individual Board members to convey information to the Board and to the public. There is to be no discussion or action taken by the Board of Directors unless the item is noticed as part of the meeting agenda.

A. President's Report (Director Sanford)

Vice President Walker welcomed Directors Bigley and Stewart to the RMWD Board.

B. Representative Report (Appointed Representative)

1. SDCWA

a. Summary of Formal Board of Directors' Meeting February 25, 2016

Mr. Kennedy talked about the summary of the formal board meeting provided. He stated the focus has been on MWD giving out information about their proposed changes to their rate structure; part of which includes a fixed charge for treatment services which will be pegged this charge based on consumption from 1997-2008. He noted this puts SDCWA in a bad spot due to the fact there was a great deal more MWD water back then. He added MWD was also doubling down on the rate structure that was found to be illegal by the courts last year. He pointed out the bad news is that is looking as though San Diego will face a 12% increase over which RMWD will have no control. He mentioned SDCWA and RMWD's representatives will argue as hard as they can as to the passage of these rates; however, one problem is that MWD held their rate hearings in early March without their cost of service study which could end up in another lawsuit. He stated SDCWA was actively talking about ways to get away from using MWD water and finding other resources.

(*) - Asterisk indicates a report is attached.

2. CSDA

Mr. Kennedy stated there is going to be CSDA conferences coming up which he and President Sanford will be attending. He mentioned there was a Special District Leadership Academy conference he encouraged all RMWD Board Members to attend in order to assist the District in achieving the District of Distinction award. He also pointed CSDA nominations will be discussed later in this meeting.

3. LAFCO

- a. 2015-2016 Special Districts Mailed-Ballot Election Results
- b. Election to the LAFCO's Special Districts Advisory Committee Notification

Mr. Kennedy announced President Sanford did very well in the elections which has forced a runoff election.

4. San Luis Rey Watershed Council

Vice President Walker noted the Council will meet next week.

5. Santa Margarita Watershed Council

There was no report given.

C. Meeting, Workshop, Committee, Seminar, Etc. Reports by Directors (AB1234)

There were no reports given.

D. Directors Comments

Director Stewart said it was nice to be here.

***9. COMMITTEE REPORTS (Approved Minutes have been attached for reference only.)**

A. Budget and Finance Committee

- 1. February 9, 2016 Minutes

Mr. Stitle reported the committee has started on the budget process for the upcoming year.

B. Communications Committee

- 1. January 11, 2016 Minutes
- 2. February 1, 2016 Minutes

There was no report given.

C. Engineering Committee

- 1. January 6, 2016
- 2. February 3, 2016

(*) - Asterisk indicates a report is attached.

Mrs. Kirkpatrick announced the committee selected officers with Harry Stitle becoming the Vice Chairperson and Tim Prince continue to serve as the Committee Chairperson. She reported the committee was reviewing the Master Plan and Standards. Mr. Kennedy added the committee agreed to release the CIP numbers to the Finance Manager for the budget process.

***10 CONSENT CALENDAR**

A. DISCUSSION AND POSSIBLE ACTION TO APPROVE RESOLUTION NO. 16-08 COMMENDING JACK GRIFFITHS FOR HIS SERVICE ON THE BOARD OF DIRECTORS

B. DISCUSSION AND POSSIBLE ACTION REGARDING REQUEST TO DEFER PROPERTY OWNED BY MICHAEL AND VICTORIE DARNLEY FROM CHARGES FOR WATER AVAILABILITY AND IMPROVEMENT DISTRICT ASSESSMENTS

C. DISCUSSION AND POSSIBLE ACTION TO APPROVE ORDINANCE NO. 16-05 AMENDING AND UPDATING ADMINISTRATIVE CODE SECTIONS 5.01 AND 8.03

This item was pulled from the Consent Calendar and added to Board Action Items due to there being modifications made since the preparation of the agenda packet.

D. DISCUSSION AND POSSIBLE ACTION TO ADOPT ORDINANCE NO. 16-04 AMENDING AND UPDATING RMWD ADMINISTRATIVE CODE SECTION 1.02.020 – CONFLICT OF INTEREST CODE

Action:

Moved by Director Stewart to pull Item 10C from the Consent Calendar. Seconded by Director Brazier.

After consideration, the motion CARRIED by the following vote:

AYES: Directors Bigley, Brazier, Stewart, and Walker
NOES: None
ABSTAINED: None
ABSENT: Director Sanford

Action:

Moved by Director Brazier to approve the remaining consent calendar Items #10A, #10B, and #10D. Director Stewart.

After consideration, the motion CARRIED by the following vote:

AYES: Directors Bigley, Brazier, Stewart, and Walker
NOES: None
ABSTAINED: None
ABSENT: Director Sanford

(*) - Asterisk indicates a report is attached.

BOARD ACTION ITEMS

10C. DISCUSSION AND POSSIBLE ACTION TO APPROVE ORDINANCE NO. 16-05 AMENDING AND UPDATING ADMINISTRATIVE CODE SECTIONS 5.01, 8.03, 8.06, and 8.11

Mr. Kennedy explained the proposed changes to the respective Administrative Code sections including the revisions to additional sections that arose after the agenda packet was distributed.

Mr. Kennedy elaborated on Section 8.06 related to what happens should a customer want to remove water service entirely as opposed to having their meter remain locked off. He reviewed the proposed changes including that should a customer decide to remove their meter, an MOU must be signed with RMWD and they must agree to forfeit their right to the capacity.

Director Brazier referenced Page #10C-4 noting the language seemed to indicate the Budget and Finance committee has independent authority to make moves when according to Section 2.09 of the Administrative Code, committees are advisory only. Mr. Kennedy agreed to change the proposed language to read the committee will review internal controls and advise the Board on adoption of appropriate policies.

Director Brazier also pointed out “made be made” should be “may be made” on Page 10C-6.

Action:

Moved by Director Brazier to adopt Ordinance No. 16-05 amending and updating Administrative Code Sections 5.01, 8.03, 8.06, and 8.11 with the proposed changes. Seconded by Director Stewart.

After consideration, the motion CARRIED by the following vote:

AYES: Directors Bigley, Brazier, Stewart, and Walker
NOES: None
ABSTAINED: None
ABSENT: Director Sanford

***11. DISCUSSION AND POSSIBLE ACTION ON ORDINANCE NO. 16-06 RELATED TO WATER METER DOWNSIZING AND LIMITED TERM FIXED FEE ABATEMENT PROGRAM**

Mr. Kennedy gave a synopsis on what the Board would be considering with this item. He noted after discussions with Legal Counsel and the rate consultant it was determined the discounts RMWD was applying to fixed charges for locked off meters were inconsistent with the rules related to Proposition 218.

Mr. Kennedy explained the policy before the Board today was to consider opening up a period of time from now until the beginning of June to allow customers an opportunity to downsize their meters as well as receive a credit back of the difference between the two costs going back to the beginning of the rate change. He stated if this is approved by the Board of Directors, a letter will be mailed to all those customers who meet the criteria RMWD would have for low consumption and would be willing to forfeit their right to the capacity of the larger meter.

Legal Counsel echoed Mr. Kennedy’s comments about the legal requirements involved with the Paland vs. Brooktrails case which says a district cannot establish different fees based on

(*) - Asterisk indicates a report is attached.

whether or not a meter is active or inactive due to the fact the service is immediately available to the parcel. She pointed out RMWD had a rate study conducted as well as held public hearings required under Proposition 218 providing an opportunity for protest and public comment. She stated if RMWD were to continue to offer different rates for inactive connections, it could be challenged as an illegal standby charge under Proposition 218 subjecting the District to potential lawsuits and liabilities.

Sonja Whally stated she has a 1" locked off meter. She questioned the approval to increase fees for locked off meters per Proposition 218; however, the Proposition 218 states the first requirement is that the revenues derived from the property related fee or charge must not exceed the funds required to provide the property related service. She stated there is no service, maintenance, and water usage; therefore, she wanted to know how the Board came up with the formula to raise her fee 500% from one month to the next. She also pointed out Proposition 218 allows for available remedies. She requested for a remedy that reduces her fees. Mr. Kennedy explained the Paland case clarified this matter in that it is illegal for the District to have a separate charge for locked off meters. Ms. Whally asked for this matter to be reconsidered.

Ann Leatherbury mentioned she has been in RMWD since 1958 and expressed concern regarding her bill increasing by 800% for her 3" meter as addressed in the letter her husband sent to and was distributed to the Board. She requested a copy of the Paland case. She explained her circumstances associated with her property and asked how RMWD substantiated the increase. Mr. Kennedy stated he sent the link to the Cost of Service Study on which this whole fee structure was based to Mr. Leatherbury. He pointed out this study was with specific intent of being in compliance with 218 and the San Juan Capistrano case as well as minimize the most impact on the majority of customers.

Mrs. Leatherbury stated although she respected the idea of downsizing; however, this becomes an inverse condemnation of her property. She accused RMWD of penalizing long time landowners with this downsizing and questioned whether this benefits RMWD. Mr. Kennedy stated these were all valid points and although the decision was not made lightly, it was really about cost of service. Discussion followed.

Legal Counsel read aloud from the Paland case which we offered to make available on the RMWD website.

Mrs. Leatherbury asked for some sort of reasonable recourse that was more than citing case law and consultant studies. She also asked to be shown the costs of changing out a meter versus the cost of just leaving an old water meter in the ground and reading it every month. She thanked everyone for listening to her concerns.

Director Brazier asked Legal Counsel to clarify that under Proposition 218 whether RMWD was declared to have been doing the wrong thing since 2009. It was confirmed RMWD should have been charging the higher rates all along; therefore it would not be an increase but rather a reversion to what it should have been all along. Legal Counsel explained the rate study did result in an increase in the fixed fees; however, the issue under Paland is that RMWD cannot use whether a meter is locked off as a determination for what rate it will charge. She emphasized this just cannot be a factor in the rate setting.

Mr. Kennedy assured there was no targeting involved in the Cost of Service Study process.

Director Stewart stated RMWD cannot be the only original agricultural district evolving into residential water district that exists; therefore, he wanted to know if Mr. Kennedy was aware if those other agencies were coming to the same exact conclusion with respect to this case and Proposition 218. Mr. Kennedy explained as those other agencies go through their rate study, they will most likely be advised to look at this closer. Legal Counsel added if a district has done a rate study since this case came out, those agencies should be removing any differential based on whether or not a meter is locked off if they want to comply. Director Stewart asked if there were any agencies that disagree with this matter and have adopted a different posture regardless of the Paland case. Mr. Kennedy noted the court case was pretty clear and after discussing this case in great detail it was decided districts cannot do this and remain in compliance with Proposition 218 and without putting the agency at risk of a lawsuit.

Discussion continued.

Vice President Walker clarified when RMWD looked at the rate structure study, there were fixed costs and variable costs associated with the water. He explained the primary focus of the discussion has been the legality of RMWD's situation which needed to be remedied to have a more equitable way of accounting for fixed costs versus the water itself and bring those costs into alignment with state law. He encouraged Mrs. Leatherbury to review Raftelis' Cost of Service Study. He noted the purpose today was for RMWD to try to do what it can to remedy the situation as well as make the transition easier.

Legal Counsel pointed out "this credit will be applied starting on the January 2016 bill up to and including the bill period when the downsizing is approved" should be deleted in Ordinance No. 16-06 due to redundancy.

Director Brazier noted the Board approved the Raftelis study in large part to increase fairness. Mr. Stitle added it was also to determine the actual fixed costs.

Mr. Kennedy reviewed the four requirements for allow for meter downsizing. He noted the program deadline is June, 2016. He stated there would be a letter sent out to all the customers with locked off meters should the Board approve Ordinance 16-06 and the Memorandum of Understanding – Meter Downsize Request form will be posted on the website within 24 hours.

Action:

Moved by Director Brazier to approve Ordinance No. 16-06 as amended. Seconded by Director Stewart.

After consideration, the motion CARRIED by the following vote:

AYES:	Directors Bigley, Brazier, Stewart, and Bigley
NOES:	None
ABSTAINED:	None
ABSENT:	Director Sanford

***12 DISCUSSION AND POSSIBLE ACTION TO APPROVE A VARIANCE FROM THE DISTRICT'S STANDARD SPECIFICATIONS AND ALLOW A CUSTOMER TO INSTALL TWO SERVICES USING THE SAME LATERAL**

Mr. Mahr addressed the Board noting he has met with the Engineering Committee, Mr. Kennedy and President Sanford. He expressed concern with the 600% increase in cost he has experienced and how he thinks what is happening is unfair and not right. He noted he has decided to downsize to two 1" meters for his two parcels off the same existing lateral. He said he does not want to incur any charges associated with the addition of the two meters; however, he will now pay \$2,600 as opposed to \$700 per year for the two locked off meters. He requested RMWD pay to have the two 1" meters installed off the existing lateral as well as connection to the backflow device that will remain in place.

Mr. Kennedy explained the primary request for a variance was to not require Mr. Mahr to hire a contractor to install the second lateral, but not to propose to the Board that RMWD pay for the costs associated with the work involved to change the meters out. He said unless the Board wants to direct staff to do otherwise, waiving any fees associated with the change out has not been considered.

Legal Counsel noted the District does have discretion to grant a variance; however, there was always a potential for liability for a gift of public funds when a variance is granted.

Director Brazier asked for clarification on the requirement for backflow devices. Mr. Kennedy clarified the current ordinance does not require a backflow device for locked off meters; however, RMWD cannot turn it back on until a device is installed. He said once a locked off meter is turned back on, staff will make sure there is a backflow device in place before reactivating the meter on for those properties that require the device.

Legal Counsel explained this variance specifically addressed the engineering requirements. She said if the costs are justifiably part of the O&M, then there would be no risk of a gift of public funds issue; however, if it is not justifiable from an engineering perspective and RMWD was waiving fees that would otherwise be charged other ratepayers, there was a potential risk. She cautioned RMWD wants to be consistent on how it treats all ratepayers. Mr. Kennedy stated the internal analysis was for the second meter was that the customer should pay the costs and labor fees due to the fact it was a whole new service just as any other customer would be required to pay. He noted this was not a practice staff intends to bring back on a regular occasion for this type of situation; therefore, the recommendation was not waive all costs. He noted the estimate of costs would be approximately \$500.

Mr. Mahr reiterated he now pays \$2,600 per year to RMWD for locked off water meters after the installation; therefore, he only thinks it is fair that he does not have to pay the cost. He asked for clarification that he was paying \$62 from January until the installation of the new meters. Mr. Kennedy said he would be paying the new fixed charges and once the process is complete, RMWD will calculate the new numbers and determine whether Mr. Mahr would receive a credit or a bill to make up the difference. Discussion ensued.

Vice President Walker asked Legal Counsel if RMWD were to absorb the costs under the circumstances that downsizing is a one-time brought on by this new rate structure, would the District be at risk. Legal Counsel answered it would be a risk if the District does agree to waive the cost; however, there was no risk in the variance before the Board for consideration.

(*) - Asterisk indicates a report is attached.

Legal Counsel explained although it was not substantial liability in one instance; however, but if RMWD is treating ratepayers inconsistently it would be a problem. She reiterated there was no legal risk for granting the variance of not installing the second lateral, but there is some minimal risk if RMWD chooses to waive the cost associated with installing the second meter. Mr. Kennedy reiterated he did not propose waiving those costs.

It was noted Mr. Mahr's cost would be approximately \$400-\$500 versus \$5,000-\$6,000 to provide service to the second location.

Action:

Moved by Director Stewart to approve the variance. Seconded by Director Brazier.

After consideration, the motion CARRIED by the following vote:

AYES: Directors Bigley, Brazier, Stewart, and Walker
NOES: None
ABSTAINED: None
ABSENT: Director Sanford

Mr. Mahr asked for clarification regarding his costs. Mr. Kennedy said the cost associated with the one meter and one box will be paid for by RMWD, but the cost associated with the putting in the second box Mr. Mahr will need to pay for which Mr. Maccarrone will put together a detailed cost estimate.

Mr. Mahr asked about reimbursement of the differential between the smaller and larger meter. Mr. Kennedy explained this applied to the fixed fees (Item #11) where the Board approved a policy where if customer downsize, RMWD would waive the new fees back to January. It was noted a 2" meter with full capacity fees currently costs \$61,907 plus installation charges and a 1" costs \$22,102 plus cost of installation.

***13. DISCUSSION AND POSSIBLE ACTION TO AWARD A PROFESSIONAL SERVICES CONTRACT TO PREPARE THE WATER AND WASTEWATER ASSET COST AND CAPACITY FEE STUDY**

Mr. Kennedy pointed out there were only two responses to the widely distributed request for proposals. He noted the asset valuation on RMWD's ledgers is undervalued as to what the real assets values are by quite a bit. Discussion ensued regarding depreciation expense.

Vice President Walker expressed concern that staff must be aware of consultants stacking their proposals. He stated as long as the team was the best to properly conduct the work regardless of where they reside; however, they must be engaged.

Action:

Moved by Director Brazier to authorize staff to negotiate the contract. Seconded by Director Stewart.

After consideration, the motion CARRIED by the following vote:

AYES: Directors Bigley, Brazier, Stewart, and Walker
NOES: None
ABSTAINED: None
ABSENT: Director Sanford

***14. DISCUSSION AND POSSIBLE ACTION REGARDING EXECUTION OF A SECOND AMENDMENT TO JOINT AGREEMENT TO IMPROVE SUBDIVISION, JOINT LIEN CONTRACT AND HOLDING AGREEMENT FOR SAN DIEGO TRACT NO. 5012-1**

Legal Counsel suggested this item be delayed.

It was confirmed the waterline does not exist at this time.

There was no action taken.

***15. DISCUSSION AND POSSIBLE ACTION ACCEPTING THE AUDIT REPORT FOR FISCAL YEAR ENDING JUNE 30, 2015**

Mr. Kennedy pointed out although the audit was provided to the Board for review last year, it had not been formally accepted and filed.

Action:

Moved by Director Brazier to accept the audit report. Seconded by Director Bigley.

After consideration, the motion CARRIED by the following vote:

AYES: Directors Bigley, Brazier, Stewart, and Walker
NOES: None
ABSTAINED: None
ABSENT: Directors Sanford

***16. DISCUSSION AND POSSIBLE ACTION REGARDING CSDA BOARD OF DIRECTORS CALL FOR NOMINATIONS, SEAT B**

Vice President Walker called for nominations. There were none.

***17. RECEIVE AND FILE INFORMATION AND FINANCIAL ITEMS FOR JANUARY/FEBRUARY 2016**

A. General Manager Comments

1. Meetings, Conferences and Seminar Calendar

B. Communications

1. Ratepayer Letters
2. Fallbrook Food Pantry
3. Rescission of Conservation Order

C. Construction & Maintenance Comments

1. Construction and Maintenance Report
2. Valve Maintenance Report

(*) - Asterisk indicates a report is attached.

- 3. Garage/Shop Repair
- D. Water Operations Comments**
 - 1. Water Operations Report
 - 2. Electrical/Telemetry Report
- E. Wastewater Comments**
 - 1. Wastewater Report
- F. Operations Comments**
 - 1. Water Quality Report
 - 2. Cross Connection Control Program Report
- G. Engineering Comments**
 - 1. Engineering Report
- H. Customer Service Comments**
 - 1. Field Customer Service Report
 - 2. Meters Report
- I. Safety Comments**
 - 1. Safety Report
- J. Human Resources Comments**
 - 1. Property/Liability and Workers' Compensation Longevity Distribution
- K. Finance Manager Comments**
 - 1. Interim Financial Statement - January
 - 2. Visa Breakdown
 - 3. Directors' Expense-January
 - 4. Check Register
 - 5. Water Usage Report-January
 - 6. RMWD Sewer Equivalent Dwelling Units (EDU's) Status

Mr. Kennedy made mention of communications provided including the rescission of the Conservation Order. He also talked about the need to increase security at the outdoor pump stations.

Action:

Moved by Director Brazier to receive and file information and financial items for January/February 2016. Seconded by Director Stewart.

After consideration, the motion CARRIED by the following vote:

AYES: Directors Bigley, Brazier, Stewart, and Walker
NOES: None
ABSTAINED: None
ABSENT: Director Sanford

18. LIST OF SUGGESTED AGENDA ITEMS FOR THE NEXT REGULAR BOARD MEETING

It was noted Item #14 would be on the agenda if available as well as discussion regarding electronic agenda packets and Robert's Rules of Order.

Mr. Kennedy mentioned Board Member pictures would be taken at the April 26, 2016 Board meeting.

(*) - Asterisk indicates a report is attached.

19. ADJOURNMENT - To Tuesday, April 26, 2016 at 1:00 p.m.

The meeting was adjourned with a motion made by Director Walker to a regular meeting on April 26, 2016 at 1:00 p.m.

The meeting was adjourned at 2:56 p.m.

Tory Walker, Board Vice President

Dawn M. Washburn, Board Secretary

(*) - Asterisk indicates a report is attached.