

**MINUTES OF THE ENGINEERING AND OPERATIONS COMMITTEE MEETING  
OF THE RAINBOW MUNICIPAL WATER DISTRICT  
FEBRUARY 2, 2022**

1. **CALL TO ORDER** – The Engineering and Operations Committee Meeting of the Rainbow Municipal Water District on February 2, 2022 was called to order by Chairperson Nelson at 3:30 p.m. in the Board Room of the District, 3707 Old Highway 395, Fallbrook, CA 92028. *(This meeting was held with limited in-person attendance following County and State COVID guidelines as well as virtually.)* Chairperson Nelson presiding.

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL:**

**Present:** Member Brazier *(via teleconference)*, Member Marnett *(via teleconference)*, Member McKesson *(via video conference)*, Member Nelson *(via video conference)*, Member Gasca.

**Also Present:** Executive Assistant Washburn.

**Also Present Via Teleconference or Video Conference:**

General Manager Kennedy, Legal Counsel Duran-Brown, Alternate Largent, Operations Manager Gutierrez, Engineering and CIP Program Manager Williams, Association Engineer Powers, Project Manager Tamimi, Project Manager Parra, Project Manager Tamimi, Water Operations Supervisor Coffey, Information and Technology Manager Khattab, Information Systems Specialist Espino, Engineering Technician Rubio.

Three members of the public were present via teleconference or video conference.

4. **INSTRUCTIONS TO ALLOW PUBLIC COMMENT ON AGENDA ITEMS FROM THOSE ATTENDING THIS MEETING VIA TELECONFERENCE OR VIDEO CONFERENCE**

Mr. Nelson read aloud the instructions for those attending in person via teleconference or video conference.

5. **SEATING OF ALTERNATES**

There were no alternates seated.

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

Staff has requested adding an agenda item for the Lift Station 1 Replacement Project discussing the eminent domain process. There was no objection to this addition. It was added as Item #15A.

**7. PUBLIC COMMENT RELATING TO ITEMS NOT ON THE AGENDA (Limit 3 Minutes)**

Ms. Washburn noted Bob Roth, who served on this committee 8-10 years ago, contacted the District earlier in the day to express an interest in rejoining the committee and may be present to introduce himself to the committee. Mr. Nelson provided Mr. Roth with an opportunity to speak; however, it was unclear whether he was in attendance virtually.

Discussion went to Item #8.

Discussion returned from Item #13.

Mr. Nelson acknowledged Mr. Roth as a member of the audience. Mr. Roth introduced himself noting he served on the committee approximately ten years ago and was interested in rejoining should the committee be interested in his service. He briefed the committee on his background noting he has a lot of knowledge and would like to be of service to RMWD. He explained the reason he had resigned a few years ago was due to personal reasons.

Mr. Nelson asked what inspired him to seek reappointment. Mr. Roth said he read in the District newsletter that the committee was seeking members; therefore, he thought he notify the District of his interest in rejoining. Mr. Nelson encouraged Mr. Roth to observe this meeting and possibly a few more and then notify the committee if he is still interested in rejoining. Mr. Roth agreed and thanked the committee for their time.

Discussion went to Item #14.

**\*8. APPROVAL OF MINUTES**

**A. January 5, 2022**

***Motion:***

***To approve the minutes.***

***Action: Approve, Moved by Member McKesson, Seconded by Member Marnett.***

***Vote: Motion carried by unanimous roll call vote (summary: Ayes = 5).***

***Ayes: Member Brazier, Member Marnett, Member Nelson, Member Gasca, Member McKesson.***

Discussion went to Item #9.

**9. GENERAL MANAGER COMMENTS**

Mr. Kennedy had no additional comments.

Discussion went to Item #10.

**10. ENGINEERING AND CIP PROGRAM MANAGER COMMENTS**

Mr. Williams had no additional comments.

Discussion went to Item #11.

## 11. OPERATIONS MANAGER COMMENTS

Mr. Gutierrez briefed the committee on the recent unprecedented multiple line breaks that occurred on January 17<sup>th</sup>. He noted the external and internal crew members that assisted with these leaks will be formally recognized.

Mr. Gutierrez provided an update on the Water Service Upgrade Project Program noting the project was 95% complete and how there was good chance the vacuuming will be done in the next week.

Mr. Gutierrez reported SDCWA notified the District on January 26, 2022, that they have eminent failure on Pipeline 4 in RMWD's Division 1 and will be scheduling an emergency shutdown for February 8<sup>th</sup> to make repairs. He mentioned the steps being taken to ensure there is water in the tanks once connections are lost during this ten-day shutdown. Discussions ensued.

Discussion went to Item #12.

## 12. COMMITTEE MEMBER COMMENTS

There were no comments.

Discussion went to Item #13.

## 13. BOARD ACTION UPDATES

Mr. Williams reported the Board adopted a Resolution of Necessity to move forward with the eminent domain process for the proposed Hutton pump station site; however, there was a member of the public present who raised several concerns. Mr. Kennedy requested that a summary report be emailed to the committee members.

Discussion returned to Item #7.

## 14. DISCUSSION AND POSSIBLE ACTION TO APPOINT COMMITTEE OFFICERS (CHAIRPERSON AND VICE CHAIRPERSON)

Mr. Nelson stated it has been a pleasure and privilege to serve as the Chairperson; however, he was happy to relinquish the gavel and give another member the opportunity to share in the responsibility.

***Motion:***

***To nominate Flint Nelson to continue as Chairperson.***

***Action: Approve, Moved by Member Gasca, Seconded by Member Brazier.***

***Vote: Motion carried by unanimous roll call vote (summary: Ayes = 5).***

***Ayes: Member Brazier, Member Marnett, Member McKesson, Member Nelson, Member Gasca.***

***Motion:***

***To nominate Steve McKesson to serve as Vice Chairperson.***

***Action: Approve, Moved by Member Nelson, Seconded by Member Gasca.***

***Vote: Motion carried by unanimous roll call vote (summary: Ayes = 5).***

***Ayes: Member Brazier, Member Marnett, Member McKesson, Member Nelson, Member Gasca.***

*Discussion went to Item #15.*

**15. DISCUSSION AND POSSIBLE ACTION REGARDING COMMITTEE MEMBERSHIP**

Mr. Nelson stated he would whole-heartedly support the appointment of Julie Johnson to this committee. He mentioned Ms. Johnson's experience serving on the other RMWD standing committees.

***Motion:***

***The committee recommend to the Board that they appoint Julie Johnson as a member of this committee.***

***Action: Approve, Moved by Member Brazier, Seconded by Member McKesson.***

***Vote: Motion passed (summary: Ayes = 4, Noes = 0, Abstain = 1).***

***Ayes: Member Brazier, Member McKesson, Member Nelson, Member Gasca.***

***Abstain: Member Marnett.***

*Discussion went to Item #15A.*

**15A. DISCUSSION REGARDING THE EMINENT DOMAIN PROCESS**

Mr. Williams recalled the Board adopted Resolutions of Necessity for three easements on December 7, 2021. He pointed all these easements are necessary to convey the sewer from Citro Development to the Thoroughbred Lift Station and off North River Road to the City of Oceanside. He stated while the eminent domain process has started during which staff continues to negotiate with the three property owners; however, it was important for the District to file for early possession in March at the very latest to avoid delay. He noted Legal Counsel Duran-Brown, Mr. Tamimi, and Mr. Powers were on this call to assist with providing the committee with more detailed information.

Legal Counsel Duran-Brown introduced herself as special counsel with Nossaman that deals with real property matters. She explained the eminent domain process noting when a Resolution of Necessity is adopted, under the California Eminent Domain Law, there are six months to file an eminent domain action. She said generally it is during this time the parties work on to settle the case, reach a negotiated agreement with the property owner, or get an easement or whatever property interest is needed; however, more often than not actions do not need to take place while these six months are running. She pointed out in the case of the LS1 project for these three parcels in particular, when the contract was awarded to the contractor, there was a specific

revision included to allow RMWD time to try to acquire the easements needed of which one was received. She noted the contractor was provided with an outside date of nine months from the Notice to Proceed which should provide the District with enough time to acquire the easements, whether that occur through successful negotiations or the court. She explained each of the steps involved with filing for early possession as well as the lead ways that needs to be built into the process.

Legal Counsel Duran-Brown stated she had worked through the process backward and found it necessary to notify Mr. Kennedy and Mr. Williams there was a timing issue that eminent domain actions must be filed long before the Resolution of Necessity window runs out otherwise the District will fail to comply with its obligations to the contractor. She recommended while negotiations continue, it was important the Board understand the timing issues and see if the eminent domain actions can be filed in late February or early March 2022.

Legal Counsel Duran-Brown noted the Board will understandably be reluctant to move forward and file lawsuits against its ratepayers, but at the same time there are timing constraints that must be met thereby causing uncomfortable decisions to be made. She concluded with pointing out RMWD has to plan as though the property owners are not going to settle to meet its project contractual and timing obligations.

Mr. Williams reported he and Mr. Tamimi continue to negotiate with these property owners to determine the narrowest easement with which all parties would be comfortable.

Mr. Kennedy provided additional content noting the County agreeing to be sued.

Mr. Gasca inquired as to why would RMWD ever want to go through a process that requires legal documents that draws in lawyers and additional legal fees. Mr. Kennedy stated he has elevated this matter with the County.

Mr. Gasca stated it might be helpful to have some type of representation of the scheduled deadlines to help understand the critical path. Legal Counsel Duran-Brown displayed a draft milestone chart with the committee.

Mr. Williams pointed out staff has figures for these three easements if the committee would like to see those. He also stated staff was asking this committee to support staff in filing for early possession at the February Board meeting; therefore, staff was happy to answer any committee member questions.

Mr. McKesson inquired as to the risk and expense of missing the August 15, 2022 deadline. Mr. Kennedy stated the contractor will have something in their contract for liquidated damages for delays and such. Mr. Nelson said it would RMWD would be basically looking at a combination of owner cost delay and overhead. Mr. McKesson inquired as to the approximate cost. Mr. Williams stated given the magnitude of this project, it could be amount to tens of thousands of dollars. Mr. Kennedy noted the importance of reaching agreement with the property owners to avoid spending ratepayer money due to a delay over not being able to agree on minor details.

Mr. Tamimi provided an example of the extent of RMWD's flexibility and how staff is doing its best to accommodate and figure out solutions.

Mr. Nelson inquired as to why this was not done sooner knowing these easements were necessary for this project. Mr. Kennedy clarified the objective at the staff level is to never have to use eminent domain to acquire a property. He pointed out staff has been working on this matter from every angle for a very long time and that it was not until Legal Counsel brought it to staff's

attention that the District was running out of time it was realized there were no other alternatives for this alignment with the exception of placing it in the middle of the freeway.

Mr. Nelson explained he was trying to put himself in the position of a board member in that it sounds very urgent and sort of last minute; therefore, it may be helpful to lay out to the Board all that has taken place to date and why it was determined urgent. Mr. Kennedy clarified the Board has discussed this matter in great detail in Closed Session and how this was a procedural step that needed to occur. Discussion ensued regarding legal costs associated with this matter.

Mr. Gasca asked when these projects start will it be a shotgun start or waterfall as well as how the projects are ranked in order of priority. Mr. Williams stated the contractor would not be starting in any of these four areas per the contract and how in discussions with the contractor it has been found agreeable to keep the project moving with the contractor working out of sequence. Mr. Gasca asked if staff has adjusted the planned implementation of the different projects to provide the District with the most flexibility. Mr. Williams confirmed the matter currently being discussed was taken off the table until the details can be resolved and that the areas in which an easement is not required, the contractors will be allowed to continue to work.

***Motion:***

***That the committee recommend approval of the staff's request to proceed with the legal matters concerning eminent domain for these three sites.***

***Action: Approve, Moved by Member Nelson, Seconded by Member Marnett.***

***Vote: Motion carried by unanimous roll call vote (summary: Ayes = 5).***

***Ayes: Member Brazier, Member Marnett, Member McKesson, Member Nelson, Member Gasca.***

The committee and staff thanked Legal Counsel Duran-Brown for participating in this meeting and for the information she provided.

**Discussion went to Item #16.**

**16. WHOLESALE WATER EFFICIENCY PROJECTS**

Ms. Largent noted the purpose of this item was to include the committee in the evaluation of the need and funding decisions for wholesale water efficiency projects. She shared a presentation as she reviewed the information it contained. Discussions ensued.

Mr. Gasca inquired as to whether staff received any type estimates as to what type of impacts will be seen to the cost of components, material, and equipment and whether they have been factored into the model. Mr. Kennedy explained these were the current estimates provided by the engineers. Mr. Gasca asked how long these estimates would be valid. Mr. Williams stated these estimates would be good throughout 2022 and possibly most of 2023 at which time they would be revisited.

Discussions ensued.

Mr. Nelson suggested Mr. Williams shift the calendar out and see what can happen based on the manpower and other planning capabilities to determine if any costs need to be escalated as well as to verify the benefit stream when completion is declared. Mr. Williams agreed to work with Ms. Largent on this project.

Mr. Marnett stated he finds this to be all about the cost of money; therefore, it was important to lock the money in now and do it. Ms. Largent explained this was why she wanted to talk to the committee about this now while she is still looking for financing, so that once financing is secured the committee will already be familiar with the analysis and projects and a decision will only need to be made about the financing.

Discussion went to Item #17.

## **17. MID-YEAR BUDGET REVIEW**

Ms. Largent explained this was not an item that usually comes to this committee; however, in the interest of transparency, this item was being brought to this committee because of the capital changes as well as to show where the District is at in the budgeting. She shared a presentation on the mid-year budget adjustments that will be proposed at the February Board meeting.

Ms. Largent reviewed the operating budget adjustments including the impacts these would have on the operating fund budget projections. She also pointed out the adopted capital budget was \$15,810, 422 to which staff was proposing an adjustment in the amount of \$1,666,852 which was an 11% decrease adjusting this budget to \$14,143,570. She reviewed how this compares to last year, she shared the capital spending amounts for Fiscal Years 2019-21. She mentioned these proposed adjustments have been taken into account when preparing five-year projects.

Ms. Largent reviewed the wastewater proposed adjustments noting this was due to the moving of the project timeline.

Mr. McKesson inquired as to driver for the 13% increase in the capital budget over the prior two years. Ms. Largent stated it was significantly due to quite a bit more being spent on wastewater this year compared to prior years. Mr. Kennedy added some longtime members of this committee, budget projections for CIP spending has barely been met in past years; however, with the engineering team pushing projects out over the last couple of years shows things are picking up a bit. Ms. Largent noted she was pleased with the happy \$12 million and \$13 million spend over the last two years in that it looks better for the District in its planning as well as helps her to set rates accurately and have confidence in what is being asked for is what will actually be spent. Mr. McKesson agreed this does drive confidence and thanked Ms. Largent.

Discussion went to Item #18.

## **18. NOTICE OF COMPLETION FOR NORTH RIVER ROAD (ENGINEERING)**

Mr. Williams noted this notice will go to the Board for consideration at their February meeting and that staff was requesting the committee to act recommending Board approval.

Mr. Williams stated this project was complete with two change orders which resulted in a net reduction to the budget in the amount of \$29,568.

**Motion:**

**That this committee accept the staff's recommendation that the project be completed and recommend to the Board that they accept staff's recommendation.**

**Action: Approve, Moved by Member Nelson, Seconded by Member McKesson.**

**Vote: Motion carried by unanimous roll call vote (summary: Ayes = 5).**

**Ayes: Member Brazier, Member Marnett, Member McKesson, Member Nelson, Member Gasca.**

Discussion went to Item #19.

**19. REVIEW OF PROPOSED AMENDMENTS TO ADMINISTRATIVE CODE CHAPTERS 8.01, 8.03, 8.04, 8.11, AND 8.14 (ENGINEERING/FINANCE)**

Mr. Kennedy explained there are some extensive changes being proposed to several sections of the Administrative Code that staff would like the committee to review. He noted both redline and clean versions will be provided to the committee members very soon. He mentioned some of the changes have to do with a series of amendments necessary to reshape the processes and details.

Mr. Kennedy asked the committee to review the proposed changes once they are received and be prepared for a deeper dive on these items presented Items #19 and #20 at the March committee meeting.

Discussion went to Item #21.

**20. REVIEW OF PROPOSED AMENDMENTS TO ADMINISTRATIVE CODE CHAPTERS 9.04, 9.05, AND 9.07 (ENGINEERING)**

This item was deferred to March as part of Item #19.

**21. DISCUSSION REGARDING PROPOSED AMENDMENTS TO ADMINISTRATIVE CODE CHAPTER 8.20 - BACKFLOW (OPERATIONS)**

Mr. Gutierrez stated following along with Items #19 and #20, this item will be presented to the committee under separate cover and discussed at the March meeting.

Discussion went to Item #22.

**\*22. AS-NEEDED SERVICES EXPENDITURES SUMMARY**

Mr. Nelson inquired as to the two new engagements noting he was unclear on some of the numbers provided under the column title "Current Balance". Mr. Williams offered to meet with his team to ensure the report was calculating correctly.

Mr. Williams clarified the \$2,900 for Old Mission Road was to survey the County of San Diego parcel and the continued construction management was to cover inspection services when the District's inspector is out of the office.

Discussion went to Item #23.



**23. LIST OF SUGGESTED AGENDA ITEMS FOR THE NEXT SCHEDULED ENGINEERING AND OPERATIONS COMMITTEE MEETING**

It was noted proposed changes to Administrative Code Chapters 8.01, 8.03, 8.04, 8.11, 8.14, 8.20, 9.04, 9.05, and 9.07, review of the action taken for providing temporary pumps to handle the SDCWA shutdown, an update on the wholesale water efficiency projects item, and a Water Service Upgrade Project (WSUP) update should be on the next committee agenda.

Discussion went to Item #24.

**24. ADJOURNMENT**

*The meeting was adjourned by Chairperson Nelson.*

The meeting adjourned at 5:35 p.m.

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**Flint Nelson, Committee Chairperson**

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**Dawn M. Washburn, Board Secretary**