

**CONTRA COSTA WATER DISTRICT
BOARD OF DIRECTORS
SPECIAL MEETING
September 23, 2020**

MINUTES

CALL TO ORDER

President Borba called to order a special meeting of the Board of Directors of the Contra Costa Water District (CCWD) at 6:32 p.m., at 1331 Concord Avenue, Concord, the regular meeting place of the Board.

President Borba announced that the teleconference was being held pursuant to Governor Newsom's Executive Orders. The meeting facilitation procedure was provided.

SAFETY BRIEFING

Mr. Welch provided a COVID-19 safety briefing.

ROLL CALL

Directors Present:	Lisa M. Borba, President Connstance Holdaway, Vice President Ernesto A. Avila Bette Boatmun John A. Burgh
Directors Absent:	None
General Manager:	Stephen J. Welch
Legal Counsel:	Douglas E. Coty
District Secretary	Mary A. Neher
Executive Management Analyst	Jamie Elsberry

PLEDGE OF ALLEGIANCE

President Borba led the pledge of allegiance.

ADOPTION OF AGENDA

The Board adopted the agenda by rule.

PUBLIC COMMENT (Please observe a three-minute time limit)

President Borba asked for public comment. There were none.

DISCUSSION AND INFORMATION

1. Review and comment on the Phase 2 Los Vaqueros Reservoir Expansion Project (Project) governance formation to the extent required to finalize terms of agreement for Joint Powers Authority formation.

Assistant General Manager – Policy and External Affairs Marguerite Patil explained that she would address the topics raised by the Board at the August 12, 2020 special Board meeting and by the other Local Agency Partners (LAPs). The Bay Area Water Supply and Conservation Agency (BAWSCA) will participate in the Project through the San Francisco Public Utilities Commission (SFPUC). The five LAPs who have signed the Amendment No. 2 of the Multi-party agreement include Alameda County Water District, Grassland Water District, San Luis & Delta-Mendota Water Authority, Zone 7 Water Agency, and CCWD. A review of the agreements outside of the Joint Powers Authority (JPA) Agreement, which will be brought to the CCWD Board for review before execution, was provided.

CCWD and consultants will provide services directly to the JPA. CCWD would serve as the initial administrator after the JPA is formed. A review of the JPA Board consultant and/or staffing needs was provided, and the JPA Board will determine how to fulfil those needs. A discussion regarding the complex role of the JPA Water Supply Coordinator, formerly known as the JPA Watermaster, and who may provide those services to the JPA ensued.

CCWD plans to retain discretion on implementation of Project Labor Agreements (PLAs) for construction contracts administered by CCWD. East Bay Municipal Utility District (EBMUD) would retain discretion on how it would implement contracts it would administer. If the JPA were to administer contracts, the JPA Board would determine its contracting approach. The JPA Board would defer the contracting approach to the entity implementing the contract. The one facility that is not connected to an existing CCWD or EBMUD facility and that none of the LAPs have offered to lead is the Transfer-Bethany Pipeline. The Board stated for the record that it retains the discretion to use PLAs on contracts it administers. It was suggested for the JPA Agreement to include specific language to address set asides currently used by the individual LAPs. The LAP Boards will review the draft JPA Agreement policies over the next few months. Mr. Jim Ciampa, special legal counsel for the JPA formation, will lead the discussions with the LAP management and Boards. The group consensus for various JPA formation issues were reviewed for the Board to provide its feedback.

The CCWD Board concurred that JPA Board Directors could be either a director or senior manager of the member agency because of the various LAP board structures. An elected official would be removed from the JPA Board if they no longer sit on their member agency's Board. The importance for the person attending the JPA Board meeting to have the authority and knowledge to cast votes was discussed. The CCWD Board concerns regarding impacts to the JPA Board decision-making process due to JPA Board Director absences will be brought to the LAPs.

With regard to super-majority approval, the LAP group consensus to date is to have different levels of super-majority approval based upon the nature of the JPA's decision. The CCWD Board concurred with the group consensus. The CCWD Board requested a cost comparison for contracted staff, JPA employees, and a combination of both, which is to include the success or non-success of JPAs with different staffing sources. The CCWD Board requested that a unanimous vote by the JPA Board be required regarding the addition of JPA employees. CCWD would enter into a design and construction agreements(s) with the JPA and these agreements would address how to resolve changed conditions that may arise during dam construction that are potentially expensive to resolve. The JPA Agreement would include termination parameters. Once the bonds are issued by the JPA, the individual member agencies remain responsible for their portion of the debt.

The voting options for the JPA to consider initiation of litigation against another party were reviewed. The LAP group consensus to date is to require a unanimous vote to commence litigation. The CCWD Board concurred with the need for a unanimous vote for the JPA to initiate litigation and noted that this would not preclude initiation of litigation by and at the expense of a member agency or subset of agencies within the JPA. The JPA Agreement needs to include veto rights for both CCWD and EBMUD to protect the agencies from adverse and material effect. The language is under development, and the Board will be updated when there is more information. The Draft JPA Agreement includes a succinct reference to the LVE Board Principles that articulate the CCWD customer interests quite well. A discussion regarding the various water supplies and water rights of the LAPs ensued. The JPA Agreement and associated agreements are not subject to state approval. Once the statutory filing requirements have been met, the Secretary of State essentially stamps and files the JPA Agreement. The California Department of Water Resources does not have a seat on the JPA Board nor does it approve the JPA formation.

The special voting provisions applicable to CCWD and EBMUD were reviewed. The LAP group consensus is leaning toward not allowing CCWD and EBMUD to vote on their own agency's agreement with the JPA due to the financial interest in that contract. The LAP group is also considering similar restrictions for any of the partner agencies that may enter into an agreement with the JPA. EBMUD does not agree and has participated in other JPAs where it was permitted to vote on its agency's contract because when it is before the JPA Board its representative is wearing its JPA responsibilities hat. Additional research found both types of examples and further discussion is needed. More information will be provided to the CCWD Board.

The group consensus would limit the term for the JPA Board Chair at four, one-year terms with clarifying language that they would serve as an individual rather than as that individual's member agency serving as Chair.

CCWD is serving as the initial administrator for the JPA. The consensus of the LAP group to date is for the JPA Board to determine who will handle all or some of CCWD's current administrator responsibilities and the relationship between the JPA Administrator and JPA Executive Director once the Executive Director is selected.

With regard to upfront payments by members or pay as you go contributions, the LAP group is leaning toward having the JPA Agreement define the approach for calculating the reduced payment for a member that pays upfront rather than financing. A meeting will be scheduled for the financial work group to ensure the drafted provision addresses the prepayment issue. The tentative consensus is for the JPA Agreement to define an equitable allocation of unexpended funds and structure to repay such unexpended funds to avoid material adverse effect on JPA financial condition. The financial work group is reviewing the issue and will make sure the drafted provision adequately addresses the return issue. The CCWD Board asked to review this matter further when more information is available.

The LAP financial work group will review what fiscal year will be used for the JPA budgets, as it is not possible to line up with all JPA members' fiscal years. The financial work group is developing a back-up plan to address what happens if the JPA Board fails to adopt an operating budget and make a recommendation. The Board reviewed how the world was changing and that additional discussions were needed regarding the floors, as using a 2% increase could be higher than the cost of living and consumer price index. A discussion regarding the different budget approval processes across the LAPs ensued.

The JPA Agreement will include parameters on distribution of JPA assets and member contributions upon termination. The group consensus is that the JPA Board would need a unanimous approval to allow non-proportionate distributions to be made. A discussion ensued regarding the benefits and challenges of requiring unanimous votes.

With regard to participation in a retirement system, there is no consensus to date. The topic is left open to allow further input from the LAP boards and more information will be provided. The CCWD Board requested that it would require a unanimous vote.

If a member withdraws due to an additional “capital call” made for early funding, which would occur ahead of construction, the LAP group consensus to date is that the member would forego any monies already paid pre-construction to the JPA that would keep the status quo under the Multi-party Agreement now in place. The CCWD Board concurred with the LAP group.

Ms. Patil thanked the Board for its feedback. The LAP General Managers and legal work group will continue to work through policy issues. The legal work group continues to revise the JPA Agreement based upon input from CCWD and the LAPs. Additional updates will be brought to the Board when available. The CCWD Board will be provided an update on the governance formation on October 16, 2020 and November 4, 2020. The current schedule shows that the JPA Agreement will be brought to the CCWD Board on December 16, 2020 for its consideration.

Ms. Patil asked the Board for additional questions and comments.

Mr. Welch confirmed there would be various closed sessions scheduled as needed. A separate summary document will be provided to the Board regarding the various issues that will be provided before the October 16 Board study session.

President Borba asked for additional Board comments.

The Board noted that the JPA Board vote to accept a settlement offer needed to be defined and that a unanimous vote may not be required. The Board thanked Ms. Patil for the detailed presentation and expressed appreciation for the work done by staff to provide the level of information to the Board and to make it very understandable.

President Borba asked for public comment. Mr. Ciampa thanked the Board for its review and feedback. The Board provided valuable input that will be incorporated into the terms of the JPA Agreement as his firm moves forward over the next few weeks and gets feedback from other LAP Boards.

CLOSED SESSION

2. Conference with Real Property Negotiator pursuant to Government Code Section 54956.8; Property: Various Parcels comprising the Los Vaqueros Reservoir Expansion Project; CCWD Negotiator: General Manager; Negotiating Party: Various; Under Negotiation: Price and Terms of Payment for Water Storage and Conveyance Capacity.
3. Public Employee Performance Evaluation as allowed under Government Code Section 54957, Employee: General Manager.

At 8:30 p.m. President Borba announced that the Board would move into a closed session on two matters. The first matter regards real property negotiations, and there will be one additional attendee: Assistant General Manager – Policy and external Affairs Marguerite Patil. The second matter regards an employee performance evaluation, and the announcement of additional attendees is not required.

RECONVENE FROM CLOSED SESSION

4. Report out on closed session.

At 8:38 p.m. President Borba announced the Board did not take any reportable action on the matters before it during the closed session.

ADJOURNMENT

At 8:39 p.m. President Borba adjourned the meeting. The next meeting of the Board of Directors will be a regular meeting on October 7, 2020 commencing at 6:30 p.m. and will be held by teleconference.



Connstance Holdaway, Vice President, for
Lisa M. Borba, President

Attest:



Mary A. Meher, District Secretary