

SAN ANTONIO WATER COMPANY
MINUTES OF THE SAN ANTONIO WATER COMPANY
Tuesday, September 18, 2012

An open meeting of the Board of Directors of the San Antonio Water Company (SAWCo) was called to order at 5:00 p.m. on the above date at the Upland City Hall Council Chambers, 460 North Euclid Avenue, Upland, California. Directors present were Tom Thomas, Will Elliott, Ken Willis, Sue Sundell, John Gerardi, Glenn Bozar, and Bob Cable. Also in attendance were SAWCo's General Manager Charles Moorrees, Assistant Manager of Administration and Finance Teri Layton, City of Upland Public Works Director Rosemary Hoerning, Tim Mim Mack from the City of Ontario and shareholder John Navarro. Director Thomas presided.

- Salute to the Flag
- 1. Recognitions & Presentations: Mr. Moorrees reported on the Williams Fire that took place on September 5th. The United States Forest Service (USFS) had their staging area on the San Antonio Dam and took water from SAWCo's hydrant to fill aircrafts with water to fight the fire. Water was taken from September 5th to September 10th. An estimated amount of 225,000 gallons (0.6 acre feet) was utilized.
- 2. Additions-Deletions to the Agenda: None.
- 3. Shareholder-Public Testimony: None.
- 4. Consent Calendar Items:
 - A. Approval of Board Meeting Minutes
Regular Meeting Minutes of August 21, 2012.
 - B. Planning, Resources, and Operations Committee (PROC) Meeting Minutes
No meeting minutes to approve.
 - C. Administration and Finance Committee (AFC) Meeting Minutes
Approve meeting minutes of June 12, 2012.
 - D. Financial Statement
Income Statement and Balance Sheet for July 31, 2012 and year-to-date.
 - E. Investment Activity Report
Monthly Report of Investments Activity
 - F. Water Production
Bi-Monthly water production [Jan/Feb, Mar/Apr, May/June, July/Aug, Sept/Oct, Nov/Dec]
 - G. Prominent Issues Update
Status summaries on certain on-going active Issues.
 - H. Projects and Operations Update
Status summaries on projects and operations matters.
 - I. Groundwater Level patterns [Quarterly in April, July, October & January]
Tracking patterns of groundwater elevations relative to ground surface.
 - J. Correspondence of Interest
 - Letter Agreement to Convey Water to CVWD.

Director Willis moved and Director Elliott seconded to approve the Consent Calendar Items as presented. Motion carried.

- 5. Board Committee – Delegate Report:
 - A. **PVPA Representative's Report** – Director Thomas reported that PVPA is beginning to see some of the reimbursement money from the Federal Emergency Management Association (FEMA) for the repairs to the berms. The City of Claremont has been working on expanding the parking lot for the Claremont Hills Wilderness Park on Thompson Creek property. Los Angeles County gave the city a grant to build the parking lot but the Los Angeles County Flood Control states they have an easement over the entire property and need to review the project. An over-use study will also be

conducted to figure how many people the park can handle, the parking, and the impact on the neighborhood.

B. **Six Basins Representative Report** – Mr. Moorrees reported that there was an Advisory Committee meeting on August 26th. Items discussed were the notification requirements for groundwater production facilities. At the strategic planning workshop Wildermuth Environmental, Inc. (WEI) informed the committee that there were some costs incurred over the budgeted amount. Options, such as use the remaining funds to complete Phase I of the project or budget \$90,000 for the next calendar year, were discussed. Mr. Moorrees questioned why the existing Camp, Dresser, and McKee (CDM) model wasn't used and simply modified. After the Six Basins meeting, Mr. Moorrees spoke with Samantha with regards to this and she stated that it is because the original was done for PVPA in 1993 and then updated and calibrated to the current one used by CDM. Also, the current model is proprietary and not public domain. The conclusion was that a new model was needed to be developed to produce a reliable tool.

C. **Chino Basin Representative Report** – Mr. Moorrees stated that there is an Appropriative Pool meeting on September 13th. The new general manager/chief executive officer Peter Kavounas chaired the meeting with the assistance of Ken Jenske the previous acting general manager. There was a cost sharing agreement between the watermaster and Inland Empire Utilities Agency (IEUA) for the Prado Basin Habitat Sustainability Program which was part of the Peace Agreement. The agreement will go in front of the Advisory Committee later in the week. The CSI settlement agreement for Paragraph 31 motion and the hearing on the CSI Paragraph 15 motion were discussed in legal reports. A closed session meeting took place with the Appropriative Pool members to discuss the annual assessment of attorney fees for the Appropriative Pool. There is legal counsel for the watermaster but not separately for the Appropriative Pool. To date John Shatz has been serving as legal counsel for the Appropriative Pool.

Director Willis questioned whether Mr. Moorrees has had the opportunity to meet with the new CEO Peter Kavounas. Mr. Moorrees stated that he spoke with him briefly during the last recharge master plan update about the rights for agencies to recharge water. Mr. Kavounas was formerly with Glendale Water and Los Angeles Department of Water and Power.

D. **Administration and Finance Committee (AFC) Chairman's Report** – Director Sundell stated the important items discussed are already on the agenda.

E. **Planning, Resources, & Operations Committee (PROC) Chairman's Report** – No meeting to report.

6. General Manager's Report:

A. **Temporary water service to CVWD** – Mr. Moorrees stated that earlier in the month he received an urgent request from Cucamonga Valley Water District (CVWD) for water delivery due to some of CVWD's wells reaching the maximum levels of contamination and the need for water to blend with it. Staff met with CVWD's representative as well as the City of Upland and established a "wheeling" arrangement to deliver water from SAWCo to CVWD's Sapphire Plant where the City of Upland has a connection through the City's system. Letter agreements were included in the Board Packet Item 4J. The majority of the water will be delivered at SAWCo's tier rate to CVWD with CVWD paying the "wheeling" fee to the City of Upland. CVWD began taking water on September 4th and will continue to do so until September 21st. A minor problem with Well 16 caused water not to flow for a short period of time but the problem has been corrected.

B. **CORO Conference/Sponsorship – "Take Control of Our Water Future"** – Mr. Moorrees reminded the Board of their attendance at last years' CORO conference. This years' summer conference schedule was placed on each Board members dais. It is to take place on October 11th at the JW Marriott in Los Angeles. The AFC recommended the Board approve sponsoring the event not to exceed \$2,500 as a bronze sponsor which will provide for five Board members to attend.

Mr. Moorrees recommended the Board agree with the AFC's recommendation to attend the Coro conference and sponsorship not to exceed \$2,500 toward the event.

Director Elliott questioned what SAWCo planned to get out of the conference; what would they bring back that was of value. Director Sundell stated that last year was her first year attending the conference and she found the information useful especially on a state wide perspective and the speakers to be of very high quality.

Director Sundell moved and Director Willis seconded to attend and sponsor the CORO event in the amount of \$2,500. Motion carried.

- C. **Comparative Income Statement** – Mr. Moorrees reported that earlier in the year Director Elliott requested a comparison statement of SAWCo's finances which would compare last years' figures and current month to month figures. A Comparative Income Statement was included in the Board packet. Mr. Moorrees inquired as to whether or not the Board wished to replace the existing Income Statement which is included every month in the Board packets with the new Comparative Income Statement.

There was consensus on the Board to replace the Income Statement with the Comparative Income Statement in the monthly Board packets.

- D. **Ontario Purchase Agreement** – Mr. Moorrees stated that this item had been presented to the PROC earlier in the year. SAWCo has an inactive booster line in San Antonio Avenue that crosses the 10 freeway within a casing. Previously, IEUA had been looking at utilizing the line for recycled water but their plans changed. Currently, the City of Ontario has shown interest in purchasing this casing. Staff was asked to determine the cost involved in installing a new casing. SAWCo's contractor and the City of Ontario's engineer both came to figures around \$90,000. City of Ontario has made an offer of \$50,000 to purchase this casing from SAWCo. The PROC felt it to be a fair price and recommended the Board approve the purchase.

Mr. Moorrees recommended the Board agree with the PROC recommendation to approve the sale of the cement cased booster line located in San Antonio Avenue from 4th Street in Ontario to the railroad track in Upland.

Director Elliott moved and Director Willis seconded to approve the sale of the cement cased booster line in San Antonio Avenue to the City of Ontario for \$50,000. Motion carried with Director Thomas abstaining.

- E. **Amend the By-Laws to include the General Manager's role** – Mr. Moorrees reported that there is no mention of a general manager in the company by-laws. Historically, the company has operated with the Board electing a general manager within the presiding Board members. That general manager would act as a messenger between the Board and the superintendent. In 1930's there was revision to corporation law which was cause for updating the company bylaws. Information on how the company is run has not been updated in the bylaws since that time. There is no information with respect to the general manager's duties and identifies the president as operating the company.

Two options were presented to the AFC to rectify the issue. The first option was to follow what it currently states in the by-laws which is to elect a chairman. The second option, which the AFC recommended, was to revise the existing Section 5.07 under the president's description to strike out the verbiage "shall be the Chief Executive Officer of the Corporation and", "subject to the control of the Board of Directors", "direction, and control", and "the business and" and include the verbiage "other than as vested in other Officers". Also included in the second option was adding a Section 5.11 which would state "The General Manager shall be the Chief Executive Officer of the

Corporation and shall, subject to the control of the Board of Directors, and the general supervision of the President, have general supervision, direction and control of the business”.

Mr. Moorrees recommended the Board approve the AFC recommendation to amend the bylaws to include the General Manager’s role as presented.

Director Gerardi questioned including the portion that states the General Manager is under the general supervision of the President. Mr. Moorrees replied that the current bylaws state that the President has general supervision over the officers of the Board as well. Including the General Manager was just for continuity. Director Sundell stated she had the same confusion over the same wording. She felt the language was not clear and needed to be revised for clarity.

Director Elliott recommended the item be sent back to the AFC for revision. Director Sundell seconded the motion.

Director Thomas suggested changing the date of the next AFC meeting to take place prior to the October Board meeting. If necessary, e-mails refining the wording can be done prior to the AFC meeting to accelerate the process. No further comment was made about changing the date of the next AFC meeting.

Motion carried with Director Cable opposing because he had no problem with the proposed amendment as written.

F. **Legal Audit** – Mr. Moorrees reminded the Board that last year, Director Brian Brandt offered to audit SAWCo’s legal files from special counsel (Nossaman, LLP) litigation with Mr. Paul Ridgeway. Although no longer on the Board, Mr. Brandt presented the results of his audit to the AFC on August 28, 2012. Mr. Brandt focused on two areas of concern; one was the Case Management Conference and the other was Form Interrogatories. Mr. Brandt indicated the Case Management Conference required completion of a standard form and in his opinion would not take more than an hour to complete. The total amount billed by Nossaman for completing this form was \$15,980.85. Appearing at the court could have been done with a “Court Call” at a cost of \$70, Nossaman’s bill was \$1458 for a total of \$17,438.85.

Mr. Moorrees stated that the Ridgeway case was not an easy one. Mr. Ridgeway dodged back and forth from one issue to the next. It only ended when Mr. Ridgeway applied for a diversion from the State Water Resources Control Board (SWRCB) and received a letter from them stating that it was a fully appropriated stream and any continued diversion would cost him \$500 per day.

With regard to the Form Interrogatories; Nossaman charged 6.40 hours at a cost of \$2,275.20 for the task. In Mr. Brandt’s opinion, this task should have taken no more than 10 minutes.

Once receiving this information the AFC asked staff to look into agencies that provide legal auditing services. Mr. Moorrees contacted an association called the National Association of Legal Fee Analysis (NALFA) located in Chicago with several branches throughout the United States. They provide services such as review of monthly billing or post audits. The cost would be 15% to 25% of the amount being billed by special counsel.

Mr. Moorrees questioned if there would be any cost savings in hiring a legal auditor. The only cases that special counsel is dealing with currently are the USFS and the Cucamonga Judgment. He also stressed the importance of having a competent water rights attorney such as Fred Fudacz for possible litigation.

Mr. Moorrees presented three options for the Board to consider: 1) A delegation of the Board to sit down with special counsel to go over the bill and billing guidelines; 2) Gather quotes from some reputable legal auditing firms to establish guidelines for billing and to start a proactive approach for legal billing and/or 3) Post audit the accounts when they exceed a specific amount.

Mr. Moorrees recommended the Board consider the AFC recommendation to engage with a Legal Audit Firm and provide direction to staff as appropriate.

Director Gerardi needed clarification on whether the AFC suggested it was advisable to meet with special counsel to respond to the level of billing. Mr. Moorrees replied that it was not the suggestion of the committee but he felt that it would be the right thing to do which is why he is suggesting it. Director Gerardi stated that based upon an interview with special counsel he felt SAWCo would get a better handle on whether or not they can do the necessary monitoring to keep legal fees contained or that it is at a level of complexity that they may need a consultant to assist in it.

Director Elliott stated that he felt the high bill was not something that was an ongoing issue. He commented that there are a number of ways now to speed up the work done by lawyers however they continue to bill as they did previous to the advancements in technology. If any fierce legal action was going to be taken he thought it might be a good idea to look into getting an auditor. At this time though, he felt this issue to be an anomaly and felt that nothing needed to be done at this time.

Director Gerardi inquired with Director Elliott whether he was willing to forego meeting with the attorney to discuss the bill. Director Elliott felt it was a great idea to sit down to go over the bill, however, his past experience in doing so never amounted to anything.

Director Thomas questioned whether it might be a good idea to take it back to the AFC to review the Board comments and see whether or not they could come up with a course of action.

Mr. Moorrees felt a meeting with special counsel might be beneficial for the newer members of the Board who are not familiar with him.

Director Bozar commented that at the AFC meeting it was discussed how to approach the issue with Nossaman. Director Cable agreed that the committee discussed having a conversation with special counsel but explained that he is ignorant to legal terminology and that is where hiring a legal audit firm came into play. He felt that SAWCo wasn't going to be reimbursed any monies but thought it might be a good idea to have a meeting with special counsel to advise him that there are questions on his billing and that there is consideration of hiring a legal auditing firm.

Director Thomas inquired as whether or not to take it back to the committee for further review. If they wish to meet with special counsel they would have approval to do so but Board action would be required to hire a legal auditing firm.

Director Sundell suggested that in the future it may be helpful to include in contract documents the verbiage that billings are subject to legal auditing.

There was consensus on the Board to bring the item back to the AFC with a meeting with special counsel approved if necessary but permission to hire a legal auditing firm to be taken back to the Board for approval.

G. Project Status Report –

- **Well 25A-Drilling** – The well drilling is complete. The equipment is in. The site was graded this week. Project should be completed in early October. There have been some cost overruns which will be presented to the PROC for additional appropriation of funds.
- **Cucamonga Basin – Desilting project at crosswalls** – TKE Engineering is developing a site plan and will review it with the City of Upland next week. The bird study is complete. Once the site plan is approved work will begin.

- **Water Rights Investigation-Activity** – Michael Gagan will follow up with SWRCB. Nossaman will be researching other ranger districts to see how they are dealing with water rights and delivery to cabins.
- **Res 6 – Interior/Exterior Recoating** – The exterior is being coated. Interior sand blasting has been completed. Project should be completed by the end of the following week.
- **WFA Pipeline Connection** – Department of Public Health (DPH) and Water Facilities Authority (WFA) met with staff. Approval was received to drop water from the new well into WFA's finished reservoir to begin delivery to WFA as soon as the well is operational and the pipeline and meter are installed.
- **Office Carport** – The carport roofing has been completed. Pictures of the roof were shown.
- **Forebay Improvements** – The specifications were received and reviewed by staff. Waiting on response from the project engineer.

7. Director's Comments and Future Agenda Items: Director Elliott inquired as to why the Tunnel Rehabilitation was on hold. Mr. Moorrees replied that it was on hold because it needs to be coordinated with the Forebay project. Once the diversions are put in for the Forebay the Tunnel can then be cleaned out and lined. It cannot be done until diversions are created.

Director Willis wondered if Mr. Moorrees had received any information on the projected winter weather. Mr. Moorrees was informed that a lot of wet weather was expected with an El Nino event predicted.

Adjournment: There being no further business, Director Thomas declared the meeting adjourned at 5:50 p.m.

Future Meetings:

- The next regular Board Meeting will be on Tuesday, October 16, 2012 at 5 p.m.

Assistant Secretary
Charles Moorrees