

VALLEY CENTER MUNICIPAL WATER DISTRICT

MINUTES

Regular Meeting of the Board of Directors

Monday, September 18, 2023 – 2:00 P.M.

The Valley Center Municipal Water District Board of Directors' meeting was called to order by President Polito at 2:01 PM. In the Board Room at 29300 Valley Center Rd.; Valley Center, CA 92082. Additionally, the Board Meeting was livestreamed for those who wish to observe remotely.

ROLL CALL:

Board Members Present: *President Polito, Vice President Ferro, Director Smith, and Director Ness.*

Board Members Absent: *Director Holtz*

Staff Members Present: *General Manager Arant, District Engineer Grabbe, Director of IT Pilve, Director of Finance & Administration Pugh, Director of Operations and Facilities Lovelady, Manager of Accounting Velasquez, Senior Engineer Lyuber, Project Manager Carrillo, Board Secretary Peraino, General Counsel de Sousa, and Federal Consultant Howells (HGR) present in-person.*

PUBLIC COMMENT(S):

President Polito established for the record the process by which public comments are received by the Board; this process was also described in the Agenda for the meeting.

CONSENT CALENDAR ITEM(S):

1. **Minutes of the Regular Board Meeting Held Tuesday, September 5, 2023;**
2. **Bid Results and Approval of PO #115791 for Purchase of One New Service Truck Body;**
3. **Bid Results and Approval of PO #115792 for Purchase of One New Service Truck Body;**
4. **Resolution No. 2023-33 Approving the First Amendment to the Communication Site License Agreement with New Cingular Wireless PCS, LLC for Use of Rincon Reservoir;**
5. **Audit Demands for Check Nos. 166923 – 167141 from August 11 – September 7, 2023 and Wire Disbursements for the Month Ending August 31, 2023; and**
6. **Treasurer's Report for Month Ending July 31, 2023.**

Action: Upon motion by Smith, seconded by Ness; and carried with four (4) affirmative votes, the previously listed consent calendar items were approved.

CUSTOMER APPEALS:

7. **Consider Customer Appeal Requiring Owner to Pay Tenant's Bill:**

The Director of Finance and Administration Mr. Pugh, explained that the District received a letter dated July 20, 2023, from Ms. Enciso, stating that she has made District staff aware that the tenants on the property are going through an eviction process and that they are not paying their bills. Mr. Pugh reviewed the billing protest by the customer questioning why payment for past due account balance on her tenant's account is her responsibility when the tenant moves out of the premises and leaves an outstanding balance due.

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Upon receiving Ms. Enciso's refund request, staff sent a denial letter detailing the responsibility for the outstanding balance, reminding the customer that authorization was given to the District to open an account in the tenant's name when Ms. Enciso signed the "Owner Authorization for Billing" on June 8, 2021. The authorization clearly states that the owner is liable for any billing uncollected from the renter/tenant/lessee according to California State Water Code Sections 71618, 72100, and 72101.

The unpaid account balance left by the tenant was \$552.34. However, the District offered a credit for the penalty and delinquency charges of \$70.45, as well as a credit for the local commodity charge of \$33.92. This left an unpaid balance of \$447.97.

Staff received an email from Ms. Enciso dated August 7, 2023, requesting to be heard by the Board to appeal the charges in question (noting that Ms. Enciso was not present to address the Board). Staff recommended the Board deny Ms. Enciso's appeal to not be responsible for the unpaid outstanding balance left by her tenant after moving out of the premises.

Action: Upon motion by Ferro, seconded by Ness; motion to approve staff's recommendation to deny the customer appeal was approved with four (4) affirmative votes.

8. Consider Customer Appeal of Billing Adjustment Due to a Leak on the Property:

The Director of Finance and Administration Mr. Pugh, explained that the District received a letter dated August 4, 2023, from Mr. Gallivan, appealing to the District due to a water line break and leak. Mr. Gallivan is asking that the charges be eliminated or reduced for the period of from June 16 through July 17, 2023, which totaled \$42,992.37 for 7,057 units of water. In summary, Mr. Gallivan's appeal stated that "The leaking pipe was on a neighbor's property, buried deep underground. The water was gushing straight downhill through the soil and draining into a creek. The leak was totally undetectable to us or our neighbor. We had no idea". It also stated that "we just did not understand or comprehend the magnitude of the notices being sent to us".

In the District's review of the account in question, it was noted that the Gallivan account signed up with our WaterSmart service in September of 2022 and that the account was set up with "High Use Notifications". The High Use Notifications are emails that are sent out when usage is 2 times the typical seasonal use or 114 gallons per day. Mr. Pugh reminded the Board that the purpose of the WaterSmart application is to notify users that there is a possible problem on their property. On June 29, 2023, during the billing period in question, email notifications began being sent out to the email account of record on Mr. Gallivan's account. The first email indicated that the water usage on June 29, 2023 was 8,564 gallons (or 59.1 times higher than normal). Ten additional emails were also sent during the billing timeframe, all indicating usage higher than normal. The WaterSmart application also indicated that on July 12, 2023, someone logged into the application and shows that multiple High Use Notifications were sent out to the Gallivan's email with no apparent response.

Staff denied the Gallivan's appeal, but stated that no penalty or delinquency charge are being charged to the Gallivan's account. In addition, the District offered to remove the local VCMWD Commodity Charge of \$4,433.23. Staff recommended crediting the \$4,433.23 VCMWD Commodity Charge and setting up the remainder of the outstanding balance, \$38,559.14, on a three-year payment plan.

Action: Upon motion by Smith, seconded by Ferro; motion to approve the staff's recommendation to deny the customer appeal, with an added request for staff to arrange a five (5) year payment plan and investigate WaterSmart leak notification capabilities was approved with four (4) affirmative votes.

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ACTION ITEM(S):

9. Status Update on the Transfer of Wastewater Capacity for the Butterfield Trails Subdivision:

District Engineer Grabbe presented the results of the follow-up discussions with District's General Counsel and the County of San Diego regarding the transfer of Butterfield Trails Wastewater Capacity. At the September 5th Board Meeting, Mr. Hilbig stated his preference for Option 3, which consisted of the Transfer of the Butterfield Trails Capacity to the District in exchange for the Accrued Equity in the Capacity (roughly \$1M). Butterfield Trails has a Sewer Capacity Allocation of 71 EDUs, reminded Mr. Grabbe. This represents an Annual Assessment of \$121,500 for AD 2012-1 debt service and administration expenses (\$82,500) and sewer standby fee (\$39,000), bringing the total funding requirement to \$1.67M over the remaining term of the loan.

Since the September 5th Board Meeting, staff met with the County of San Diego and Mr. Hilbig, in which the County indicated they were interested in retaining some, or possibly all of the capacity, and were agreeable to leaving the assessment lien in place, financially securing the retained capacity.

Mr. Grabbe reviewed the next steps, stating that once the County determines the level of capacity to retain, staff and general counsel can draft an agreement with Butterfield Trails, LLC for the transfer of the balance of the capacity, in exchange for relinquishing of the accrued equity in the capacity to the District. The capacity transfer facilitates the development of a public community park for the benefit of the Valley Center residents and the accrued equity will ultimately offset the additional interest and standby fee expense the District takes on in this transaction.

The Board heard public comment from Mr. Wayne Hilbig who thanked the District and was available for Board questions. Mr. Grabbe concluded his presentation with a request for the Board's authorization to complete and execute an agreement with Butterfield Trails, LLC. for the transfer of up to 70 EDUs to the District's Lilac Road Property (subject to oversight and final approval by the District's General Counsel).

Action: Upon motion by Ferro, seconded by Smith; motion to approve staff's recommendation to provide authorization to the G.M. to proceed with negotiations to complete and execute an agreement with Butterfield Trails, LLC. for the transfer of up to 70 EDUs of wastewater capacity to the District's Lilac Road property, subject to oversight and final approval by the District's General Counsel, was approved with four (4) affirmative votes.

10. Resolution No. 2023-34, Approving Change Order #5 to the Construction Contract with Cass Arrietta for the Lilac Road Pipeline Upsizing Project and to Inform the Board of Amendment No. 1 to Task Order No. 4 to the As-Needed Professional Services Agreement:

Project Manager Carrillo provided an overview of the project, consisting of the replacement of approximately 6,000 linear feet of 6-inch Asbestos Concrete "AC" with 4,200 linear feet of 8-inch PVC and 1,800 linear feet of 12-inch PVC. Background on the initial contract and the previous change orders issued thus far was given. Cass-Arrieta ("Cass") was awarded the construction contract on Oct. 4, 2022, with a bid of \$2,364,994.50. The District previously approved 4 change orders totaling approximately \$70,850.61, and a total time extension of 48 calendar days.

Mr. Carrillo reviewed for the Board the previous Changes Orders that were issued for the project. Change Order No. 5 consisted of the following three Change Order Requests (COR):

COR 1: Stabilize the trench subgrade due to excessive unanticipated groundwater;

COR 2: Rock allowance overage; and

COR 3: Design clarification and changes with a total cost of \$60,339.10 and an additional seventeen (17) calendars days.

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The total cost of Change Order No. 5 was \$60,399.10, and included an additional seventeen (17) calendar days of contract time. The additional cost of this change order resulted in the cumulative change order cost exceeding \$50,000, which requires Board approval.

The second part of Mr. Carrillo's presentation was informational in nature. The District entered an As-Needed Professional Services Agreement with Nova Services ("Nova") in 2020 for Geotechnical Engineering Services. Nova was subsequently issued Task Order No. 4 to provide geotechnical services in the amount of \$43,320. Staff requested Nova submit a proposal for the additional geotechnical services needed to complete the project based on the contractor's progress and proposed completion schedule. Nova's proposal in the amount of \$19,962 appears reasonable and consistent with the hourly rates and time needed for the contractor to complete the project. The amendment brought the total authorized amount for this task order to \$63,282.

Mr. Carrillo stated that there are sufficient funds in the project contingencies to pay for Cass's Change Order No. 5 and Amendment 1 to Nova Services. Staff recommended the Board Adopt Resolution No. 2023-34 approving Change Order No. 5 in the amount of \$60,339, bringing the new contract total to \$2,496,184.21 and adding 17 calendar days to the contract time moving the completion date to February 11, 2024.

Action: Upon motion by Smith, seconded by Ness; motion to approve the following Resolution passed with four (4) affirmative votes:

RESOLUTION NO. 2023-34

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CENTER
MUNICIPAL WATER DISTRICT APPROVING CHANGE ORDER NO. 5 TO THE CONTRACT
WITH CASS ARRIETA FOR THE LILAC ROAD PIPELINE UPSIZING PROJECT
[PROJECT NO. 01-06-78-51417]**

Was adopted by the following vote, to wit:

AYES: *Directors Polito, Ferro, Smith, and Ness*
NOES: *None*
ABSENT: *Director Holtz*

11. Resolution No. 2023-35, Approving Change Order No. 1 to the Construction Contract with Orion Construction Corporation for the North County Emergency Storage Project – Valley Center Improvements & 14-inch Replacement and Relocation:

Senior Engineer Lyuber provided background information on the North County Emergency Storage Project (NCESP) – Valley Center Improvements & 14-inch Replacement and Relocation scope, stating the construction contract consisted of two bid schedules: Schedule A: NCESP Improvements (funded by the SDCWA) and Schedule B: 14-inch Replacement and Relocation (funded through the District's CIP budget). The contractor mobilized in July 2023 and has completed the potholing and surveying. The equipment and material submittals are ongoing, with the meter relocations in progress and the 14-inch pipe support pile installation is in progress.

Staff summarized the six-part change order request, stating that Change Order No. 1 affects the scope of the NCESP Improvements only with an addition of \$77,743 and no time impact. The change order is comprised of the Lilac Pala Pump Station discharge flange pressure class change in the amount of \$28,204 and the upgrade of two generators to CK Power for \$43,741. and four other minor items totaling \$5,798. SDCWA staff had previously reviewed and approved the change order for funding.

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Staff recommended the Board adopt Resolution No. 2023-35 approving Change Order No. 1 with Orion Construction Corp. in the amount of \$77,743 for the North County Emergency Storage Project – Valley Center Improvements & 14-inch Replacement and Relocation Project, for a new contract amount of \$8,873M. The contract completion date is scheduled for December 29, 2024.

Action: Upon motion by Smith, seconded by Ness; motion to approve the following Resolution passed with four (4) affirmative votes:

RESOLUTION NO. 2023-35

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CENTER
MUNICIPAL WATER DISTRICT APPROVING CHANGE ORDER NO. 1 TO THE
CONSTRUCTION CONTRACT WITH ORION CONSTRUCTION CORP., INC. FOR
THE NORTH COUNTY EMERGENCY STORAGE PROJECT VALLEY CENTER
IMPROVEMENTS AND 14-INCH REPLACEMENT & RELOCATION
[ACCOUNT NOS. 01-00-00-18045 & 01-06-78-51200]**

Was adopted by the following vote, to wit:

AYES: *Directors Polito, Ferro, Smith, and Ness*
NOES: *None*
ABSENT: *Director Holtz*

GENERAL MANAGER'S ITEM(S):

12. San Diego County Water Authority Board Meeting Summary:

San Diego County Water Authority Board Meeting Summary for August 24, 2023 was provided.

Action: Informational item only, no action required.

13. General Information:

A review of General Informational items was reported on by General Manager Arant.

Action: Informational item only, no action required.

DISTRICT GENERAL COUNSEL'S ITEM(S):

None

BOARD OF DIRECTORS' AB1234 REPORTS ON MEETINGS ATTENDED:

Director Smith attended the LAFCO Special District's Advisory Committee Meeting on Sept. 15, 2023.

BOARD OF DIRECTORS' AGENDA:

14. Water and Wastewater Professionals Appreciation Week, October 7 – 15, 2023:

General Manager Arant started his presentation with a "thank you" to staff, proposing the adoption of Resolution No. 2023-36, recognizing the week of October 7 through 15, 2023 as

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Water and Wastewater Professionals Week. This resolution officially recognizes the commitment, dedication, and contribution of water and wastewater professionals statewide and here in Valley Center.

Action: Upon motion by Ferro, seconded by Ness; the following Resolution was approved with four (4) affirmative votes:

RESOLUTION NO. 2023-36

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CENTER
MUNICIPAL WATER DISTRICT PROCLAIMING OCTOBER 7 – 15, 2023
AS WATER AND WASTEWATER PROFESSIONALS APPRECIATION WEEK**

Was adopted by the following vote, to wit:

AYES: *Directors Polito, Ferro, Smith, and Ness*
NOES: *None*
ABSENT: *Director Holtz*

15. Director Smith's Request to Speak in Public on Behalf of the Board:

At the previous Board Meeting, Director Smith requested to have an item placed on the agenda regarding speaking in the community on issues the Board has acted on. General Counsel de Sousa noted that members of the Board may state on record what the position of the Board was, but suggested it be made clear that they are attending of their own volition and in their private capacity (not on behalf of the Board), and that they just communicate what the Board's position was.

Action: After brief discussion, Director Smith requested no action be taken.

CLOSED SESSION ITEM(S):

None

ADJOURNMENT:

Action: Upon motion by Ferro, seconded by Ness; motion to adjourn passed with four (4) affirmative votes, the regular meeting of the Board of Directors was adjourned at 3:57 PM.

ATTEST:

ATTEST:

Robert A. Polito, President

Kirsten N. Peraino, Secretary

Approved at a regularly scheduled Board Meeting on Monday, October 2, 2023