

## MINUTES OF REGULAR MEETING – MAY 11, 2009

The regular meeting of the Board of Directors of the Irvine Ranch Water District (IRWD) was called to order at 5:00 p.m. by President Reinhart on May 11, 2009 in the District office, 15600 Sand Canyon Avenue, Irvine, California.

Directors Present: Matheis, Reinhart, Withers, Swan, and LaMar.

Directors Absent: None.

Also Present: General Manager Jones, Assistant General Manager Cook, Director of Engineering and Construction Burton, Director of Planning, Water Resources and Environmental Quality Heiertz, Director of Finance Cherney, Secretary Bonkowski, Legal Counsel Arneson, Mr. Jim Reed, Mr. Bruce Newell, Mr. Jeff Stanearth, Mr. Steve Malloy, Mr. Rob Jacobson, Mr. Paul Weghorst, Mr. Dave Lochridge, Mr. Jim Carter, and other members of the public and staff.

### COMMUNICATIONS TO THE BOARD

Oral Communications: 1) Mrs. Joan Irvine Smith addressed the Board of Directors with respect to the Dyer Road Wellfield. Mrs. Smith said it was her understanding that currently wells 5, C-8, C-9, 10, 15, 16 and 17 are in operation in accordance with the District's annual pumping plan. Wells 14 and 18 will operate a portion of the week. Wells 1, 2, 3, 4, 6, 7, 11, 12, and 13 are inactive. The District's planned pumping for May is 2,690 acre-feet. This was confirmed by Mr. Jones, General Manager of the District.

With respect to the Orange County Basin Groundwater Conjunctive Use Program being coordinated by Municipal Water District of Orange County (MWDOC) and Orange County Water District (OCWD), a Notice of Completion was approved by the OCWD Board of Directors on March 19, 2008. Metropolitan Water District has given notice to OCWD that it will begin extracting a portion (i.e. 22,000 acre-feet) of its 48,500 acre-feet in storage beginning in fiscal year 2008-09. It is expected that an additional 22,000 acre-feet will be extracted in FY 2009-10. The extraction is being performed by agencies that constructed conjunctive use wells under this program. IRWD is not a participant. This was confirmed by Mr. Jones.

With respect to the OCWD annexation of certain IRWD lands, OCWD staff is evaluating IRWD's most current projections of the amount and general location of its future groundwater production for inclusion in OCWD's proposed update of the Long-Term Facilities Plan and Annexation Environmental Impact Report. OCWD has taken no further actions with respect to the annexation. At OCWD's request, IRWD staff has provided additional future groundwater production scenarios with annexation. This was confirmed by Mr. Jones.

With respect to the Groundwater Emergency Service Plan, IRWD has an agreement in place with various south Orange County water agencies, MWDOC and OCWD, to produce additional groundwater for use within IRWD and transfer imported water from IRWD to South County in case of emergencies. IRWD has approved the operating agreement with certain south Orange County

water agencies to fund the interconnection facilities needed to affect the emergency transfer of water. MWDOC and OCWD have also both approved the operating agreement. This was confirmed by Mr. Jones.

ITEMS TOO LATE TO BE AGENDIZED – None.

PRESENTATION

SCIENCE FAIR WINNERS

Ms. Cheryl Woolard presented awards to local students for their water-related projects entered in the Irvine Unified School District Science Fair.

RECESS AND RECONVENE

President Reinhart declared a recess at 5:19 p.m. The meeting was reconvened at 5:21 p.m. with all Directors present.

CONSENT CALENDAR

General Manager Jones asked that Item No. 5 be moved to the Action Calendar as additions are required on meetings and events for one of the Board of Directors. On MOTION by Matheis, seconded and unanimously carried, CONSENT CALENDAR ITEMS 4, 6 AND 7 WERE APPROVED AS FOLLOWS:

4. MINUTES OF BOARD MEETING

Recommendation: That the minutes of the April 27, 2009 Regular Board meeting be approved as presented.

6. RATTLESNAKE RESERVOIR TOXICITY EVALUATION PROGRAM

Recommendation: That the Board authorize the addition of project 30332 to the Fiscal Year 2008-09 Capital Budget; approve an Expenditure Authorization for project 30332 for \$143,000; and authorize the General Manager to execute a Professional Services Agreement with MBC Applied Environmental Sciences in the amount of \$98,707 to perform a toxicity study at the Rattlesnake Reservoir.

7. LETTER OF CREDIT EXTENSIONS FOR 1993 AND 1995 BOND ISSUES  
RESOLUTION AUTHORIZING SIGNATORIES

Recommendation: That the Board adopt the following resolution by title authorizing certain actions in connection with extensions of letters of credit (consolidated series 1993 and 1995).

RESOLUTION NO. 2009-17

RESOLUTION OF THE BOARD OF DIRECTORS OF  
THE IRVINE RANCH WATER DISTRICT AUTHORIZING  
CERTAIN ACTIONS IN CONNECTION WITH EXTENSIONS  
OF LETTERS OF CREDIT (CONSOLIDATED SERIES 1993 AND 1995)

ACTION CALENDAR

RATIFY/APPROVE BOARD OF DIRECTORS' ATTENDANCE AT MEETINGS AND EVENTS

General Manager Jones asked that the Orange County Water Summit on May 15 and the UCI Irvine's Women's in Water Seminar on May 13 be added to Director Matheis' meetings and events. On MOTION by Matheis, seconded and unanimously carried, THE BOARD RATIFIED AND APPROVED MEETINGS AND EVENTS FOR STEVEN LAMAR, MARY AILEEN MATHEIS, DOUG REINHART, PEER SWAN AND JOHN WITHERS AS AMENDED.

POLLUTION INSURANCE RENEWAL – IRVINE DESALTER PROJECT

Director of Finance Cherney reported that the Settlement Agreement among the Settling Federal Agencies, Orange County Water District (OCWD) and Irvine Ranch Water District (IRWD) in regard to the former Marine Corps Air Station El Toro Groundwater Remediation (Settlement Agreement) requires IRWD/OCWD to acquire pollution insurance in the minimum amount of \$20 million that reasonably covers risk concerning the Irvine Desalter Project (IDP) and to maintain such insurance for 40 years unless commercially impracticable. In addition, the Settlement Agreement provides \$5.25 million to reimburse IRWD/OCWD for the following: 1) pollution insurance; 2) claims/deductibles related to hazardous, substances, pollutants, or contaminants (pollutants)' 3) additional project costs incurred to respond to release of pollutants that are previously unknown, exceed known levels, or are subject to more stringent Federal or State standards; 4) unanticipated repair/replacement beyond ordinary maintenance and repair; and 5) new groundwater monitoring wells.

Ms. Cherney said that in May 2006, the District acquired a three year Pollution Insurance policy from XL meeting requirements of the Settlement Agreement for a premium of \$451,281 including taxes and fees which will expire on May 23, 2009. Metro/Risk, Inc., IRWD's broker of record for this policy, approached the eight major carriers that provide pollution coverage for a competitive remarketing of the expiring coverage. The remarketing resulted in a single response from XL which provides for \$20 million of coverage for third party liability, \$250,000 deductible, and a three-year term at a premium of \$342,614.10 which represents a reduction in premiums of \$108,667 or 24% from the prior policy.

Vice President Swan reported that this item was reviewed and approved by the Finance and Personnel Committee on May 5, 2009. Following discussion, on MOTION BY SWAN, seconded and unanimously carried, THE BOARD APPROVED THE THREE-YEAR INSURANCE RENEWAL FOR THE IRVINE DESALTER PROJECT IN AN AMOUNT NOT TO EXCEED \$324,614.10 AND AUTHORIZED THE GENERAL MANAGER TO EXECUTE ANY DOCUMENTS NECESSARY TO BIND SUCH COVERAGE.

MICHELSON WATER RECLAMATION PLANT TERTIARY TREATMENT FACILITY REHABILITATION PHASE 2 CONSTRUCTION AWARD

General Manager Jones reported that the Michelson Water Reclamation Plant (MWRP) Tertiary Treatment Facility Rehabilitation Phase 2 project will repair the filter under drains, cracked and spalled concrete; provide a protective coating on the interior side walls of each filter cell, and replace filter media to improve the reliability and performance of the existing facility.

Director of Engineering Burton reported that in April 2009, Cho Design Consultants completed the design for Phase 2 and the project went out to construction bid to a select bid list of eight contractors. Mr. Burton said that on April 29, 2009, the bid opening was held and five of the contractors submitted bids. The apparent low bidder was ERS Industrial Services, Inc. with a low bid of \$914,489.08. The engineer's estimate was \$807,100, approximately 13 percent below the low bid. He said that the low engineer's estimate was due to an underestimation of the level of effort required to apply the elastomeric polyurethane coating in the confined filter cell workspace.

On MOTION by Matheis, seconded and unanimously carried, THE BOARD APPROVED A BUDGET INCREASE FOR PROJECT 20749 BY \$412,500, FROM \$308,000 TO \$720,500; APPROVED EXPENDITURE AUTHORIZATIONS FOR PROJECT 20749 IN THE AMOUNT OF \$720,500, AND FOR PROJECT 30283 IN THE AMOUNT OF \$352,000; AND AUTHORIZED THE GENERAL MANAGER TO EXECUTE A CONTRACT WITH ERS INDUSTRIAL SERVICES, INC. IN THE AMOUNT OF \$914,489.08 FOR THE MICHELSON WATER RECLAMATION PLANT REHABILITATION PHASE 2, PROJECTS 20749 AND 30283.

IRWD HEADQUARTERS HVAC CONTROL SYSTEM REPLACEMENT CONSTRUCTION AWARD

General Manager Jones reported that the project involves upgrading of the IRWD Headquarters building Heating Ventilation Air Conditioning (HVAC) control system. The existing control system is obsolete and does not allow for zone control, allowing certain areas to be too warm and other areas to be too cold. The existing controls will be replaced with new Building Automation and Control Networks (BACNet) compliant direct digital controls. The building air handlers will be retrofitted with electric actuators to control all of the dampers for outside air, return air, and mixed air.

Director of Engineering Burton reported that in April 2009, the project was advertised for bid to a select list of four contractors including Johnson Controls, Inc., RAM Air Engineering, Control Technology, Inc., and Air Control Systems, Inc. Mr. Burton said that a pre-bid meeting was held on April 22, 2009 which was attended by all four contractors on the select bid list. He said that the bid

opening was held on April 30, 2009 with two bids received. Johnson Controls' bid was in the amount of \$391,845 and RAM Air Engineering's bid was in the amount of \$235,000. The engineer's estimate was \$209,000. He said that staff discovered irregularities with both bids received. RAM Air Engineering's bid had a mathematical error in the total bid amount with a \$300 discrepancy and did not acknowledge receipt of a single addendum to the bid documents. Johnson Controls' bid included an alternative proposal with an additional description of the required scope, percentages in lieu of unit prices and lump sum amounts on the Bid Form, and incomplete non-collusion affidavit. He said that staff conferred with legal counsel and concurred that there is a sufficient basis for a factual finding by the Board that the irregularities in RAM Air Engineering's bid did not affect the bid amount or give the bidder a competitive advantage over the other bidder. The mathematical error in RAM Air Engineering's bid was of a type that can be corrected by the District under the bid instructions and even though the single bid addendum was not acknowledged by RAM Air, it did not modify the scope of work or affect the bid amount. Therefore, the irregularities may be waived. He said that based on staff's recommendation to award the contract to RAM Air, Johnson Control's bid irregularities have not been further analyzed as to whether they can be waived. However, Johnson Control's irregularities appear to raise some issues that could preclude waiver such as an alternative proposal, additional description of the scope, and irregularities with the non-collusion affidavit.

Mr. Burton said that staff recommends waiving the minor irregularities with RAM Air Engineering's bid and awarding the construction contract to the apparent low bidder, RAM Air Engineering in the amount of \$235,300, and rejecting Johnson Control's bid.

On MOTION by Matheis, seconded and unanimously carried, THE BOARD APPROVED EXPENDITURE AUTHORIZATIONS FOR \$137,500, \$128,700, AND \$23,700 FOR PROJECTS 11074, 21074, AND 31074; FOUND THAT THE IRREGULARITIES IN THE BID FROM RAM AIR ENGINEERING, INC. DID NOT AFFECT THE BID AMOUNT OR GIVE THE BIDDER A COMPETITIVE ADVANTAGE OVER OTHER BIDDERS AND WAIVE THE IRREGULARITIES; AND AUTHORIZED THE GENERAL MANAGER TO EXECUTE A CONTRACT WITH RAM AIR ENGINEERING, INC. FOR \$235,300 FOR THE IRWD HEADQUARTERS HVAC CONTROL SYSTEM REPLACEMENT PROJECT, PROJECTS 11074, 21074, 31074

#### GENERAL MANAGER'S REPORT

General Manager Jones reported of the possibility that the May 19<sup>th</sup> ballot initiatives may not be successful, and that one of the options to address the budget shortfall would be for the State to borrow \$2 billion in property taxes from local governments. He said that we could expect a suspension of Proposition 1A which prohibited taking local property taxes if the Governor proclaims a significant state fiscal hardship. He said that he will have staff prepare calculations of this scenario, and provide an update to the Board.

#### DIRECTORS' COMMENTS

Director LaMar reported on his attendance at: 1) Special Districts of Orange County quarterly meeting; 2) WACO; 3) IRWD's resident tour; 4) and NWRI meetings.

Director Withers reported on his attendance at: 1) NWRI Operations Committee where they are making sure that the research programs are in alignment with the sponsors. He said that he will provide a copy of its budget to the Board for review; and 2) Inland Empire Utilities Agency/OCWD meeting relative to a joint venture biosolids project. He said that he will be attending a LAFCO meeting this week. He also said that there are four or five historical houses in Laguna Beach that are looking for someone to save, and are currently being parked on Laguna Canyon Road.

Director Matheis reported that she attended the Lake Forest City Council meeting last week where IRWD, El Toro Water District, and Trabuco Canyon Water District provided a presentation on the water supply.

Vice President Swan reported on his attendance at Newport Watershed Executive Committee meeting and SAWPA. He said that the County did not have sufficient funding to install a trash boom over the San Diego Creek, and suggested that IRWD reinstall the post and our old boom prior to the next rainy season. He also commented that volunteers should form a project to determine the sources of trash in the creek. Mr. Swan further reported on his attendance at: 1) CASA in northern California and, 2) Newport Chamber Legislative Committee. He said that ACWA will be looking for nominations for offices at Region X and would like IRWD to prepare a resolution some time in June recommending his nomination for Board Chairman.

President Reinhart reported on his attendance at: 1) WACO, and 2) MWDOC's Board workshop. Following discussion of MWD suspension of the rebate program until next fiscal year, staff will investigate the possibility of IRWD rebating IRWD customers for their purchases.

#### CLOSED SESSION

President Reinhart said that a Closed Session would be held with legal counsel relative to: anticipated litigation (Government Code Section 54956.9(b) – significant exposure to litigation (one potential case). He also said that a Closed Session would be held with labor negotiator pursuant to (Government Code Section 54957.6). Agency Designated representative: Douglas Reinhart, Unrepresented employee: Paul D. Jones II.

#### OPEN SESSION

Following the Closed Session, the meeting was reconvened with Matheis, Reinhart, Swan, and Withers present. No action was reported on the first closed session item. On the second item, President Reinhart reported that in Closed Session the Board reviewed and instructed the designated representative concerning the General Manager's compensation, and noted that his performance exceeded expectations since March 2008. He reported that agreement was reached concerning proposed compensation changes, and on MOTION by Matheis, seconded and unanimously carried, **THE GENERAL MANAGER WAS GRANTED AN INCREASE EQUIVALENT TO 4.2% OF HIS CURRENT BASE SALARY FOR DIRECT CONTRIBUTION BY THE DISTRICT TO HIS EXECUTIVE DEFERRED COMPENSATION PROGRAM, AND THE BOARD ALSO GRANTED HIM A PERFORMANCE AWARD EQUAL TO 11.25% OF HIS CURRENT BASE SALARY.**

ADJOURNMENT

The meeting was adjourned in Carl Ballard's honor sending him best wishes for a speedy recovery from today's surgery.

APPROVED and SIGNED this 26th day of May, 2009.

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President, IRVINE RANCH WATER DISTRICT

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Secretary, IRVINE RANCH WATER DISTRICT

APPROVED AS TO FORM:

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Legal Counsel - Bowie, Arneson, Wiles & Giannone