

**Special Meeting  
October 16, 2006  
5:34 p.m.**

The Board of Directors of the San Benito County Water District convened in special session at 5:34 p.m. at 30 Mansfield Road, Hollister, CA. Board Members present were: President John Tobias, Vice-President Bob Swanson, Directors Ken Perry, Sonny Flores and Frank Bettencourt. Also present were: District Manager/Engineer John S. Gregg, Deputy District Engineer Jeff Cattaneo, District Counsel David E. Pipal, Special Counsel Janet Goldsmith, Administration and Finance Manager Shelley Giancola, and Office Specialist II Barbara L. Mauro.

**CALL TO ORDER**

**a. Pledge of Allegiance to the Flag.**

As President Tobias would be late, Vice President Swanson led the Pledge of Allegiance to the Flag.

**AGENDA**

**1. Presentation and Review of USBR Amendatory and Renewal Contracts and Agreement with Santa Clara Valley Water District for Repayment of San Felipe Division Facilities.**

Mr. Gregg reported this process has been ongoing for approximately ten years. The negotiations have concluded; the District gave input and was overseen by our Ad Hoc Committee. Mr. Gregg reported all that remains are a few minor items between the District and Santa Clara Valley Water District. Mr. Gregg stated this action is from the CVPIA which requires contractors either to conform to their renewal contract or continue with the existing contracts and the "hammer clause" would apply which is 1 ½ times the current environmental restoration charge. The Hammer Clause payments are not credited to the current obligation but go directly to the treasury. Mr. Gregg stated that under the current rates, that would be about \$400,000.00 per year. In 1997, the District entered in a binding agreement to negotiate and sign a renewal contract. Mr. Gregg stated that if the District does not renew the contract; the hammer clause would be in effect not only forward but retroactively from October 1997. The retroactive amount would be approximately \$2.5 million. Ms. Goldsmith stated that this amount does not include negotiation or environmental costs. Mr. Gregg reported there is an issue regarding the interest rate on M & I Capital. The Bureau has a fixed rate of 5%, but has stated that if repayment is agreed upon, the Bureau will continue with the rate of 3.5%. Mr. Gregg continued that fixing the capital repayment. It will keep it in place through 2036. The Bureau rates include a cost of service, with a capital component, however; by entering into a capital repayment plan, it will remove that component from the cost of service. Mr.

Gregg stated this is important for the District to be competitive with other contractors. Ms. Goldsmith gave a summary of the three contracts: the Bilateral Agreement with the Santa Clara Valley Water District, the Second Amendment to the Existing CVP Contract and the CVP Renewal Contract. Regarding the Second Amendment, Ms. Goldsmith detailed the tiered pricing, the renewal terms, conservation and metering as they related to the CVPIA policies. Also, Ms. Goldsmith discussed the shortage provision, the M & I preference policy and the calculation of shortages. With this new contract, there should be greater coordination and consultation between the USBR and the contractors. Vice President Swanson asked about the allocation for Ag and M & I and Ms. Goldsmith stated there will no longer be a split allocation.

Regarding the San Felipe Division, when and how repayment would be handled was discussed. Ms. Goldsmith stated the repayment would be on a stepped repayment process, with a deferment of payment for uncommitted capacity until 2027. Pajaro Valley Water District's allocation is 13%, but currently it is split between SBCWD and SCVWD. If Pajaro should choose to participate, this amount can be recaptured by the two districts. Ms. Goldsmith stated a Joint Service Area between our District and Santa Clara Valley Water District was agreed on by the USBR. A very important item was the right to revert back to our existing contract if the renewal contract is invalidated by the court. The District's current contract expires in 2027. Ms. Goldsmith stated the new contract gives the District the right to recover capital and O & M from third party users and there is also a language variation regarding metering.

At the District Level, Ms. Goldsmith reported the District's conservation was acknowledged and also the USBR will not assert its right to reclaimed water that remains within the District's boundary. Currently, our contract has 19 years left; the new contract would be for 25 years from execution with one 25 year renewal. Vice President Swanson asked about calculation of shortages going forward and Ms. Goldsmith stated it would be based on historical usage. Mr. Gregg stated that M & I would be determined by a percent of historical use and Ag is the portion not scheduled as M & I. Ms. Goldsmith reported that M & I is redefined in the new contract. Mr. Gregg stated that under the new contract, all parcels of 5 acres or less will be M & I water unless the customer can prove they have a commercial agricultural operation to the Bureau of Reclamation. Director Bettencourt asked about livestock and Mr. Gregg stated if it were over 5 acres it would be agricultural and if less than 5 acres it would be M & I, unless that customer proved otherwise to the Bureau. President Tobias asked why the District gave up the ag allocation and Ms. Goldsmith stated we did not have a choice, per the Bureau.

Ms. Goldsmith stated under the new contract, the pricing will be the first 80% at the contract rate, the next 10% would be a combination of the contract rate and full cost rate and the last 10% would be at a full cost rate. President

Tobias asked if in the future, the District chose not to take their full allocated amount, would that be a problem and Ms. Goldsmith stated no. Ms. Goldsmith stated the contract service area will be Zone 6; however Mr. Gregg reported that the District can expand Zone 6. Also, Ms. Goldsmith reported that the District will have to show that it used as much CVP water as it purchased.

Ms. Goldsmith continued with the Bilateral Agreement between the District and Santa Clara Valley Water District. In regards to repayment, the cost increases for the District and decreases for SCVWD. Ms. Goldsmith stated three major areas that make this agreement more equitable for the District; Repayment Adjustments, Maintenance and Technical Assistance (200 hours per year/ at no cost from SCVWD). Ms. Goldsmith stated that the District would accrue interest after 2026 and the amount will need to be paid by 2036. An independent consultant will be asked to complete an asset evaluation, and have periodic meetings with staff and committees to review this information. Ms. Goldsmith stated this consultant will also develop plans for the funding of the required maintenance. This consultant will begin 6 months after execution of the agreement and is to be concluded within 30 months of the agreement. Ms. Goldsmith reported that the facilities are owned by the United States and all capital work is prohibited to be performed by private parties or by the districts, which is not a good position for any district to be in. Mr. Gregg referenced Gatsby #34, regarding maintenance of capital facilities. This process sets up an assessment every three years, with a report going before the Board of Directors, so they can review these facilities to see that they are being maintained at the appropriate level and if not, either change the service level or have a plan to get to that point. President Tobias about the restricted funds and Ms. Goldsmith stated that each district would hold their own restricted funds. President Tobias asked how the District would know if Santa Clara was holding their district's restricted funds and Mr. Gregg stated it would show both in their budget and their audit. Ms. Goldsmith stated that SCVWD will provide SBCWD with a copy of their draft budget for the District's review and comment. Mr. Gregg discussed the maintenance; SCVWD is not maintaining their pumps properly, as one of their senior maintenance personnel admitted.

Ms. Goldsmith continued with discussion on San Justo. As part of this agreement, SCVWD has agreed to allow SBCWD to use more than 22% at peak times for up to 10 years or until San Justo's issues are resolved, but this time frame may also be extended. Mr. Gregg stated that over and above the maintenance, repair and replacement fund, there would be a fund for emergency, extraordinary maintenance or rate stabilization. Director Perry asked if the capacity is in stone and Mr. Gregg stated that it not less than 115 cubic feet per second.

Ms. Goldsmith stated that the Second Amendment needs to be released for public comment for a period of 60 days, with approval from the District. After the execution of the Second Amendment and the Renewal Agreement, there will need to be a validation action taken. Ms. Goldsmith stated the District would file the action, publish a notice and it is usually granted a default judgment. The Renewal Contract and the Second Amendment will not be validated at the same time. The Renewal will need to wait for documentation regarding the Green Sturgeon and the conditions in the Delta.

The Bilateral Agreement will need an initial assessment and no validation action will be needed, as it is a new agreement, per Ms. Goldsmith. Vice President Swanson asked Mr. Pipal if he was o.k. with the contracts/agreement and stated yes after some of his concerns had been answered. Director Perry asked the Board if they were clear that SBCWD will be taking over financial responsibility for San Justo in regards to its maintenance.

Mr. Gregg reported on the negotiations with SCVWD. Concessions were offered to SBCWD by SCVWD for this agreement. Regarding Reach 1, it is shared with SCVWD at 78% and SBCWD at 22%. Regarding Reach 2 and 3, SCVWD is 100%. Hollister Conduit and San Justo will be 100% by SBCWD. Mr. Gregg reported that currently the District's responsibility at Santa Clara facilities, such as Coyote Pumping Station and the Santa Clara Tunnel is 18.8%, and they are not at proper maintenance levels. Under this new agreement, our responsibility at these facilities will be removed.

Mr. Gregg reported that during negotiations with the Bureau, with regard to repayment, the Bureau was asked if the two districts could come to an agreement on what these figures would be and the Bureau agreed to this. The Capital Cost and Repayment Issues with SCVWD have been resolved, according to Mr. Gregg. SCVWD is pretty intent on making the adjustments at the facilities, including getting away from San Justo. However, the District will be allowed additional capacity at Reach 1 as well as at least 115 cfs until San Justo's storage capacity limitations are removed.

Mr. Gregg, as an example, cited the under drains at San Justo are collapsing. It is not a safety issue, but ought to be corrected. Initial estimate was \$200,000.00 and a recent amount was \$3,300,000.00! This difference can be attributed to the fact that the Bureau does not go out to competitive bid, but uses preferential procurement.

Regarding the current contract, Mr. Gregg stated some of the existing risks, such as the 5.3 interest on M & I, is a \$4,000,000.00 item. Also, not renewing would hamper our working relationships with USBR and SCVWD. Obtaining additional capacity during peak flows would also be difficult, per Mr. Gregg.

Mr. Gregg reported the next step in the process would be review by the Board, however, with this overview; the Board has the option to release these contracts for public review at this time. Ms. Goldsmith stated a release for public review is not binding, and the Board can continue to review these contracts. Also, Ms. Goldsmith reported that SCVWD is anxious to proceed and the Bureau will not release one district's contract without the other.

**2. Consider Authorizing USBR to Release Contracts for Public Review**

Upon a motion made by Director Perry and seconded by Director Bettencourt, the Board of Directors of the San Benito County Water District Authorizes Special Counsel to Write a Letter to the United States Bureau of Reclamation Authorizing Them to Put The Second Amendatory Contract and the Renewal Contract out for Public Review and was unanimously passed.

Vice President Swanson asked to be clear on the issue of San Justo. If there is a major operation at San Justo, who is responsible? As per Ms. Goldsmith, the Bureau will do the repair and require a contract in advance from SBCWD. The District will be responsible for 100% of the cost. President Tobias asked if we would be able to do the repair in house, and Ms. Goldsmith stated at this point, no. Mr. Gregg stated that in June, CVP wide, the accounting department concluded that all capital items could only be done by the Bureau of Reclamation and he has not heard differently. Ms. Goldsmith stated that the legal interpretation is inflexible at this point. Vice President Swanson asked how it is determined what is/isn't capital and Mr. Gregg reported it applies to everything associated with the Hollister Conduit. Mr. Gregg stated that anything on federal property would mean it would fall under that category. Vice President Swanson stated the past position of the District and the Board has been to **not** take over San Justo. However, he feels that this is not a bad deal. Director Perry stated it would be better if we could keep the Bureau out of maintenance and fix the equipment ourselves. Also, we will no longer be repairing SCVWD equipment and in turn, SCVWD will be allowing the District more capacity from the Hollister Conduit. Ms. Goldsmith stated moving forward would be good for the District, with ultimately owning the facilities and maintaining them. Mr. Gregg stated that the goal of owning facilities would be a good thing.

Director Perry stated the negotiations with our District and SCVWD were difficult, but professional, unlike other agencies he has worked with. Director Bettencourt, as a member of the Ad Hoc Committee, would like to see this go forward. President Tobias thanked both John Gregg and Jan Goldsmith for their efforts in these negotiations.

**ADJOURNMENT**

There being no further business, the meeting was adjourning at 7:30 p.m.

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*Minutes were approved at the October 25, 2006, Regular Board meeting and signed by the presiding board member.*

**/s/John Tobias**  
**John Tobias, President**

**/s/Barbara Mauro**  
**Barbara Mauro, Board Secretary**

