

**MINUTES OF THE
SPECIAL MEETING OF THE BOARD OF DIRECTORS
OTAY WATER DISTRICT
November 30, 2011**

1. The meeting was called to order by President Bonilla at 3:29 p.m.

2. ROLL CALL

Directors Present: Bonilla, Gonzalez, Croucher, Lopez and Robak

Director Absent: None

Staff Present: General Manager Mark Watton, Assistant General Manager of Administration and Finance German Alvarez, Assistant General Manager of Engineering and Water Operations Manny Magana, General Counsel Daniel Shinoff, Chief of Information Technology Geoff Stevens, Chief Financial Officer Joe Beachem, Chief of Engineering Rod Posada, Chief of Operations Pedro Porras, Chief of Administration Rom Sarno, District Secretary Susan Cruz and others per attached list.

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

A motion was made by Director Croucher, seconded by Director Lopez and carried with the following vote:

Ayes:	Directors Bonilla, Croucher, Gonzalez, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to approve the agenda.

5. PUBLIC PARTICIPATION – OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO SPEAK TO THE BOARD ON ANY SUBJECT MATTER WITHIN THE BOARD'S JURISDICTION BUT NOT AN ITEM ON TODAY'S AGENDA

No one wished to be heard.

ACTION ITEMS

6. REJECT BARNES CLAIM

Chief of Administration Rom Sarno indicated that this item is to address a claim filed by Mr. and Mrs. Dennis Barnes in the amount of \$13,143.81. The claim is requesting reimbursement for damages caused by a leak onto his property. Chief of Administration Sarno stated that staff had responded to Mr. Barnes' call on July 15, 2011 regarding a leak running onto his property. Staff conducted an extensive leak survey and had identified a small leak across the street from a "blow-off." This leak was repaired and subsequently removed and abandoned because it was no longer required. Staff had determined that the amount of the leak from the "blow-off" was very minimal and was not the cause of the Barnes' problems. Following the removal of the "blow-off," Mr. Barnes' property continued to have a leak. Staff contacted Mr. Barnes on Monday, November 28, 2011, to follow-up and he indicated that he no longer had a leak. He stated that he had done some considerable construction on his property and, as of Monday, he no longer had any leaks. As Mr. Barnes' no longer had a leak, staff did not attribute the leak to District infrastructure. Staff is recommending that the Board reject Mr. and Mrs. Barnes' claim. By rejecting the claim, it would start the statute of limitations to file a lawsuit. The claim will then be referred to the District's insurance carrier, Special District Risk Management Authority, should Mr. & Mrs. Barnes choose to follow-up on the rejection of their claim.

It was discussed that if the District were found to be liable, the District's insurance would cover the cost of the claim. However, the amount of this claim would likely be part of the District's deduction, dependent on its claims experience. Chief of Administration Sarno indicated that based on staffs' evaluation, staff is confident that the water was not from the District's side of the system.

General Counsel Shinoff stated that under the California Torte Claims Act, the filing of a claim is the precursor to filing a lawsuit. Claimants need to follow a procedure and must first file a claim. Also, by the District acting on the claim, it shortens the timeframe in which the claimant may pursue remedies to six (6) months. If the District does not respond to the claim within 45 days, the claimant would have up to two (2) years to pursue action on their claim.

A motion was made by Director Croucher, seconded by Director Robak and carried with the following vote:

Ayes:	Directors Bonilla, Croucher, Gonzalez, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to reject Mr. and Mrs. Barnes' claim.

7. APPROVE AN AGREEMENT WITH THE LAW FIRM OF STUTZ, ARTIANO, SHINOFF AND HOLTZ, A PROFESSIONAL CORPORATION, FOR A TERM OF TWO (2) YEARS THROUGH DECEMBER 31, 2013, TO PROVIDE GENERAL COUNSEL SERVICES TO THE DISTRICT

President Bonilla stated, at the District's November 2, 2011 board meeting, he had proposed a special board meeting to address legal counsel services as he did not wish to start the new year without a contract for legal services. He stated that Stutz, Artiano, Shinoff and Holtz (SASH) have agreed to reduce their rates and have locked the rate for the next two years. He noted that the agreement can be terminated by either party at any time.

Director Croucher indicated that he has been very impressed and happy with Dan Shinoff, Jeff Morris and Richard Romero's work. He stated that he is also extremely pleased that they were willing to work with the District and had reduced their firm's rate. He indicated that he fully supported the approval of their agreement and that it has been a very good partnership for the District.

Director Lopez indicated that he had nothing but positive comments to share with regard to SASH. He stated that Attorney Romero is very responsive to issues of concern to the District and he has been very pleased with the services they have provided.

Director Robak stated that he was pleased with the reduction in SASH's fees and that he echoed his fellow board members sentiments. He stated that their firm has done a good job and he very much appreciated the work they have done for the District.

A motion was made by Director Croucher, seconded by Director Lopez and carried with the following vote:

Ayes:	Directors Bonilla, Croucher, Gonzalez, Lopez and Robak
Noes:	None
Abstain:	None
Absent:	None

to approve staffs' recommendation.

INFORMATIONAL ITEMS

8. UPDATE ON DESALINATION PROJECT (WATTON)

General Manager Watton indicated that he had handed out copies of Consolidated Water's Security and Exchange Commission's (SEC) filings from November 9 and 10 of this year. He stated that the handout provides a good outline of the status of the project. He stated that NS Agua and Consolidated Water both have 50% interest in the desalination project and the two organizations have formed NSC Agua together.

NSC Agua has made significant progress on the project. The land for the desalination plant is under option with NSC Agua and is ready for purchase. It is adjacent to a power plant and is one of the only parcels available for this type of use. NSC Agua is also nearing completion of agreements with the Comisión Federal de Electricidad (CFE - electrical utility) for easements on their power plant site and for the use of the cooling water.

Otay Water District has done some studies for possible pipeline alignments and the required permits have been identified. The District's board had approved the engagement of an engineering firm to design the pipeline alignment and produce an Environmental Impact Report and statement to the Federal Government which is the precursor for the permitting process. The District has also prepared preliminary water quality requirement analyses and has forwarded the information to NSC Agua. The analysis indicates the quality of water the District will require to blend into its current supply. To date, the District has spent approximately \$900,000 on the various consultants, engineering studies, etc.

NSC Agua is at the point where it requires the partners to provide funding for the development of the plant itself. There is an issue of who will make this investment which will also determine who will have controlling share of NSC Agua. This will be a major investment and is the issue the partners are working through at the moment (as noted in the 10-Q SEC filing). General Manager Watton indicated that he felt the next 30 to 60 days will determine how the project will progress.

General Manager Watton indicated that desalinated water, as a water resource, is too important to Mexico and the United States. Who the investors ultimately are may change, but the project is too important as a water resource not to move forward.

He noted, at the moment, he has asked staff to hold further studies and engineering expenditures until NSC Agua works out its internal issues. The District does have a couple consultants continuing to monitor the United States and Mexico water discussions. The District must still keep abreast of the activities related to the Colorado River and United States and Mexico Federal Governments.

He noted that the Poseidon Desalination Plant Project and other plants that are being considered in the Orange County and Los Angeles areas are very complicated and difficult projects to bring to fruition. Poseidon has been working to complete their plant in Carlsbad for eleven (11) years now. He stated that once the Rosarito Project is back on track, he wanted to remind the board that it is still a very complex and difficult project, but his belief is it will move forward.

In response to an inquiry from Director Robak, General Manager Watton indicated that the District is not certain of the actual investment amounts that the partners of NSC Agua have invested, but the relationship is an equal partnership among the investors at this time. The NSC Agua partners are working out investment issues. Their issue is not related to Otay Water District or the project itself. A desalination pilot plant is

ready to be installed, but until the partners resolve their investment issues, the project will remain at a standstill.

It was noted that the Poseiden Project had experienced similar issues and in some ways, worse issues than NSC Agua. Poseiden was financed by Venture Capital firms and two of the firms have sold their interest/left the project. It was noted that the Rosarito project is unique in that the project will serve two nations. Water will be crossing an international border.

RECESS TO CLOSED SESSION

9. CLOSED SESSION

The board recessed to closed session at 4:00 p.m. to discuss the following matter:

- a) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
[GOVERNMENT CODE §54956.9]
 - (I) SALT CREEK GOLF, LLC, UNITED STATES BANKRUPTCY COURT,
CASE NO. 11-13898-LA11

RETURN TO OPEN SESSION

10. REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION. THE BOARD MAY ALSO TAKE ACTION ON ANY ITEMS POSTED IN CLOSED SESSION

The board reconvened from closed session at 4:23 p.m. General Counsel Daniel Shinoff indicated that the board had met in closed session and no reportable actions were taken.

11. ADJOURNMENT

With no further business to come before the Board, President Bonilla adjourned the meeting at 4:23 p.m.

President

ATTEST:

District Secretary