

**MINUTES OF THE
SPECIAL MEETING OF THE BOARD OF DIRECTORS
OTAY WATER DISTRICT
April 17, 2017**

1. The meeting was called to order by President Robak at 3:05 p.m.

2. ROLL CALL

Directors Present: Croucher, Gastelum, Robak, Smith and Thompson

Staff Present: General Manager Mark Watton, General Counsel Daniel Shinoff, Attorney Jeanne Blumenfeld, Asst. General Manager German Alvarez, Chief of Engineering Rod Posada, Chief Financial Officer Joe Beachem, Chief of Administration Adolfo Segura, Chief of Operations Pedro Porras, Asst. Chief of Operations Jose Martinez, District Secretary Susan Cruz and others per attached list.

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

A motion was made by Director Thompson, and seconded by Director Smith and carried with the following vote:

Ayes: Directors Croucher, Gastelum, Robak, Smith and Thompson
Noes: None
Abstain: None
Absent: None

to approve the agenda.

5. ADOPT RESOLUTION NO. 4333 A RESOLUTION OF THE BOARD OF DIRECTORS OF THE OTAY WATER DISTRICT TO CENSURE DIRECTOR HECTOR GASTELUM FOR OFFICIAL MISCONDUCT

Director Thompson indicated that the presented resolution is sponsored by Director Smith and himself. He stated that the resolution is in response to public testimony received at the March 1, 2107 that had really moved him. He stated the resolution censures Director Gastelum, a fellow board member, and that censuring a board member is a serious action which is not taken lightly. Director Thompson read the resolution into the record (see attached copy of Resolution No. 4333).

Director Thompson clarified that the resolution does not take any rights away from Director Gastelum as he is elected to his seat on the board by the

constituents of his division. It, however, provides an opportunity for the District's board to make a general statement about Director Gastelum's comments.

Director Smith added that he worked with Director Thompson and the District's General Counsel to determine what the board could do in this situation and the presented resolution is the result of that discussion. He stated that, as Director Thompson noted, Director Gastelum is elected by the public and the board does not have jurisdiction over that election. He stated that this resolution became necessary because of Director Gastelum's comments during the March 1, 2017 board meeting. He stated that he wished to clarify that the word "censure," in this situation means a reprimand of a "behavior," typically in a public setting, and it is not a censorship of the language used by Director Gastelum. He encouraged Director Gastelum to recognize that he represents water customers of his division and not just himself.

Director Thompson indicated that he wished to clarify that Director Smith and he have not spoken with any other member of the District's board about the presented resolution.

General Counsel Daniel Shinoff indicated that the presented resolution does require a majority vote of the board to enact the "censure." A censure is a strong expression of disapproval and criticism of the conduct of a member of the Board.

A motion was made by Director Thompson, and seconded by Director Smith to approve Resolution No. 4333 censuring Director Gastelum for official misconduct.

Director Gastelum requested a clarification of what Board of Directors Policy 40 entails and asked specifically what comments he had made at the March 1, 2017 meeting that necessitated this resolution.

General Counsel Shinoff indicated that Policy 40 is the Board of Directors "Ethics Policy" which establishes defined guidelines and specific prohibitions to which elected officials of the District's Board of Directors must conform to in pursuit of their assigned duties and responsibilities to foster public respect, confidence and trust.

Director Thompson added that Director Gastelum had not provided, in his judgement, an apology with true contrition for his comments which cast a large cloud over an entire religious group. This is the reason the resolution is being presented for the board's consideration.

Director Gastelum indicated that he was very specific to whom his comments were geared towards and what behaviors he was condemning. He stated that he has said repeatedly that he did not intend to paint all Muslims with the same brush. He indicated if they do not accept the apology, that it is on them.

Members of the public requested to address the board on this item. The first speaker was Mr. David Patterson of Ramona, representing the San Diego Veterans for Peace, stated that his organization is made up of United States military veterans, many of whom saw combat in Afghanistan, Vietnam and the Korean wars. He stated that his organization's members are appalled by the current state of bigotry, racism and hatred expressed towards Muslims. Bigotry and racism violates all the values that they believed they were defending during their military service. He asked the Otay WD board to pass the presented resolution to censure Director Gastelum and, as a next step, to demand his resignation.

Mr. Mitsuo Tomita of San Diego indicated that he is appalled by Director Gastelum's comments and felt that such comments are not consistent with a public office. He stated he feels that Director Gastelum should resign and that the board should take action on the resolution.

Mr. Chris Pearson of Spring Valley stated that though Director Gastelum indicates that it was not his intention (to call all Muslims subhuman), it is still the epitome of hate and it is wrong. He stated he is opposing the presented resolution because it does not go far enough and urged the board to amend the resolution to replace "censure" with "remove." He asked Director Gastelum to resign.

Mr. Edgar Hopida of Chula Vista indicated that he had provided Director Gastelum a book titled, "The Fear of Islam: An Introduction to Islamophobia in the West" after the board meeting on March 1, 2017 as he thought that Director Gastelum was just misinformed. He stated that he had contacted him a few days later and Director Gastelum indicated that he had not yet read the book because he had ten (10) other books to read ahead of that book and needed to read those books first. Mr. Hopida stated, additionally, that Director Gastelum's social media posts following the March 1 meeting have been anti-Islamic. He indicated that he does not feel that Director Gastelum's apology is sincere, nor is he willing to learn. He stated for these reasons he is requesting that he resign. He stated he supports the presented resolution and asked President Robak to strip Director Gastelum of all his committee assignments.

Mr. Kilian Colin of El Cajon indicated that he is a proud American who is a Jewish immigrant from Syria. He stated that his father worked as an interpreter for the United States military and was kidnapped and tortured. He and his family sold everything they owned to get his father released. In 2005 they traveled to and lived in Syria for seven (7) years as refugees waiting for the United States vetting process to be completed. His family moved to the United States in 2011 which represented for him and his family as a place where there is "Justice for All." He stated that "for all" means Muslims, Jewish, Arabs, etc. He indicated that they do not want a public official who is using taxpayer's money for his (Director Gastelum's) bigotry and racism. He stated that he invites Director Gastelum, as his brother and fellow human being, to resign today.

Ms. Wendy Patterson of San Diego indicated that she is an organizer for the “Women’s March” where they believe that a diverse community is the strength of our Country. She stated she also is Jewish and her family had to flee different Countries due to prejudice and racism. She indicated that Director Gastelum’s social postings are unbelievably abrasive, hurtful and divisive. They are anti-American and he should not be a representative for the people of this community. She asked the board to take Director Gastelum out of office in whatever way they need to do it.

Ms. Alexandra Curtis of San Diego indicated that she is attending as a community member to speak out against hateful and bigoted statements made by Director Gastelum and to take a stand for the integrity of public service. She stated that Director Gastelum’s primary duty as a public servant, and as a recipient of taxpayer funded benefits, is to work for the public good and to preserve the trust the public has placed in him. She stated that he has made it clear repeatedly that he does not serve everyone in the public equally or at all and he has failed as a public official in his responsibility to set a positive example. She stated she supports the presented resolution to censure Director Gastelum and for his removal from all committee assignments. She indicated that this response, however, does not go far enough and requested that he resign immediately.

Mr. Jorge Del Castillo of Chula Vista stated he is attending today’s meeting, along with his colleagues, to request that the board not censure, but remove Director Gastelum from his seat on the board. He indicated that just last week Director Gastelum posted that he reserves the right to call people subhuman monsters. He stated, thus, the resolution passed by the Otay WD board on March 1, 2017 did not make any impact on Director Gastelum. He asked Director Gastelum to resign from his seat on the board.

Ms. Mona Dibas of Bonita thanked the board for the presented resolution. She stated, however, that it is just sweeping the problem under the rug as it does nothing to stop Director Gastelum. She noted that he had just indicated at today’s meeting that if you do not like his apology, then it is on you. The board just pledged to the American flag, “liberty, freedom and justice for all.” She stated that the board has the opportunity to do what is right today and do something American. Give liberty, freedom and justice for all.

Ms. Margaret Baker of Chula Vista stated that she would also like to see more than just a censure today and would like to push the board to go as far as it can. She stated that Director Gastelum’s comments are a threat to our way of life and on behalf of her community, who all value an open transparent society, she requested that the board take the strongest action possible today.

Mr. James Elia indicated that he finds it very sad that they have to come together as a group to hold their public officials accountable. He indicated that he has contacted the City of Chula Vista and the City indicates that they would have full authority to conduct an investigation and oversee the activity of the Otay WD if

there is any type of operational issues. He stated that he has called for the City to investigate as he believes that this is an operational issue. When the staff of the District is answering 3000 phone calls a month because of social media posts by a board member condemning minority groups, this is an operational issue. He indicated that the United States will always be a welcoming nation and will always have immigrants. He encouraged Director Gastelum to seek counsel from his pastor or priest.

Mr. Haider Aljaber of Chula Vista indicated that he was offended by Director Gastelum's posts that called him and fellow Muslims subhuman. He indicated that he is a refugee from Iraq. His family fled to Saudi Arabia and lived in a refugee camp before immigrating to the United States in 1997. He stated he is a United States citizen now and a ratepayer of the Otay WD. He indicated that if it were up to him, they would vote at today's meeting to remove Director Gastelum from his seat.

Mr. Fayaz Nawabi of San Diego, representing the Council on American-Islamic Relations and the Trustee Advisory Council for the San Diego Community College District, indicated that Director Gastelum needs to think about what he posts and what he has done. He stated that he has not been responsible or accountable for what he has been posting and he must realize that when he posts as a public official, it has repercussions in the community. He stated that he supports the presented resolution, however, the resolution does not go far enough. They are requesting that he resign and be accountable for his actions.

Mr. Jason Prater of Chula Vista indicated that he is calling for the resignation of Director Gastelum for his disgraceful, inappropriate and hurtful comments made towards Muslims, African Americans, Hispanics, members of the LGBT community, women and veterans. He stated that Director Gastelum has lost credibility and the ability to lead in the City of Chula Vista and the South Bay. He stated that he is a student of leadership and recently was studying what political leadership means. Specifically, what citizens want from their elected leaders and wished to read a short excerpt from an article that spoke to this issue. The article states:

We need leaders who understand that governing means uniting and building coalitions, not dividing and conquering. We do not need more partisanship or divisiveness, we need leaders with a broad set of work experiences and strong management skills. Leaders who will use discretion and good judgement. We need real leaders that can correctly anticipate and handle an increasing number of major world events and crisis, sometimes simultaneously, as well as those who challenge, empower and hold accountable those serving under them. We need leaders who understand that ideology in and of itself is not a reason for decisions. We need leaders who understand that we are living in a global world where diversity is an asset and not a threat.

He indicated to Director Gastelum that he has shown that he prefers divisiveness over unity and partisanship over building coalitions and lacks discretion and good judgement. He asked him to apologize for his hurtful comments and resign from his seat on the board.

Mr. Mark Bennett of Chula Vista indicated that he supports the presented resolution. He stated that his father is a World War II veteran, his father's father was a marine in World War I, and his son is in the Army reserves. He stated he wished to address Director Gastelum's comment that he feels like he surrendered his first amendment right when he was elected to office. Mr. Bennett clarified that the first amendment protects citizens from the government from making laws that prevent their free speech and freedom of religion. The United States founders, in their wisdom, put in the first amendment right so citizens can hold elected officials accountable to the ethical standards of our society. He stated that all those in attendance at today's meeting are doing this today.

Ms. Andrea Beth Damsky of La Mesa stated that she has attended to speak on behalf of her Muslim and Latino friends and all in the community who are other than "white." She indicated, as a Jewish person and a woman, that she is concerned and offended by Director Gastelum's comments. She shared that La Jolla has a shameful history that most people are not aware of. La Jolla residents had refused to let Jewish people live within their community. She stated that this is no longer the case, but she brings it up because she doesn't want anyone in this County to feel unwelcome to use the services provided by the agencies or to be part of the community. She stated that she is very much in favor of censoring and removing Director Gastelum from his position as he is not a good role model for our community and children.

Director Gastelum indicated that, again, his comments were not about the people attending today's meeting. He stated he never painted everyone with the same brush and that his comments were specific to the people who are doing horrible things. He stated that he has apologized to the people whose feelings were hurt and he stands by his apology and that he had not painted everyone with the same brush. He stated he believes that the attendees at today's meeting know this and that they are trying to make a political statement. He reiterated that he never painted 1.6 billion people with the same brush and his comments were very specific to the people who are doing horrible things and his comments did not include the people attending today's meeting.

Director Croucher indicated that it is unfortunate that we are here today. He stated that he agrees with the speaker who indicated that the District should be focused on water issues: quality, reliability and rates. He stated that the statements made by Director Gastelum are his statements and they are not the board's statements. He noted that the speaker, Mr. Jason Prater, was very well spoken and that he agreed with his comments. He indicated that he would like to invite him back sometime in the future to discuss leadership and serving the community.

President Robak indicated that the Board of Directors does not have the power to remove Director Gastelum from his seat as he is elected by the voters in his division. He stated that comes down to either Director Gastelum resigning, as the public attendees are requesting, or the public can organize a recall.

General Counsel Daniel Shinoff shared that the role of the board is to create policy for the Otay WD and assure that its operations are financed. The District has a general manager and staff who manage the day-to-day operational issues of the District and these individuals are held ultimately accountable to the board. He stated if there is interest in having an individual removed from office, there is a recall process, which is brought forward by the people of the division. He noted that, unfortunately, there is a significant expense associated with a recall election and the District would be responsible to fund the special election with ratepayer funds.

Director Thompson indicated to Director Gastelum that he needs to be aware of the ramifications of his comments and how they impact people's lives. He stated the District will spend many hours of its time on things that have nothing to do with water because of Director Gastelum's comments. He stated that because Director Gastelum lacks the ability to understand the profound impact of his actions and how to move forward by telling the community that he will change his behavior and will not do it again, he has brought the presented resolution forward. He additionally indicated to Director Gastelum that he does not believe that anyone is ever lost forever. He believes that Director Gastelum can find himself and a better way.

The motion and second was carried with the following vote:

Ayes: Directors Croucher, Robak, Smith and Thompson
Noes: Director Gastelum
Abstain: None
Absent: None

to approve Resolution No. 4333 censuring Director Gastelum.

The board recessed at 4:21 p.m. and reconvened at 4:36 p.m.

6. 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

Ms. Mona Dibas of Bonita indicated that she wished to address the people Director Gastelum has disrespected repeatedly and the members of the District who must listen to their comments at each meeting. She indicated that this would not be the last time that they would need to work hard to do what is right. She stated that they may defeat Director Gastelum, but others may take his place and they cannot give up. Ms. Dibas indicated that people united can never

be divided. She thanked the board for approving the resolution and stated that it was a step in the right direction and she hoped it would help them take many more steps.

ACTION ITEMS

7. ENGINEERING AND WATER OPERATIONS

- a) APPROVE A CONSTRUCTION CONTRACT WITH ACE ELECTRIC, INC. FOR THE OWD ADMINISTRATION AND OPERATIONS PARKING LOT IMPROVEMENTS AND PH. I-LIGHTING & ELECTRIC VEHICLE CHARGING STATION PROJECT IN AN AMOUNT NOT-TO-EXCEED \$369,495

Engineering Manager Dan Martin indicated that staff is requesting that the board approve a construction contract with Ace Electric, Inc. in an amount not-to-exceed \$369,495 for the Otay WD Administration and Operations parking lot improvements and Phase I lighting and electric vehicle charging station project. He reviewed information within the staff report (please see attached copy of the staff report).

In response to an inquiry from Director Gastelum, staff indicated that the yearly savings will be \$8,500 per year based on all lighting that is replaced. The lighting has reached the end of their serviceable life. Additionally, Title 24 requirements requests that all lighting radiating upward be eliminated. All lighting must radiate towards the ground. The District will also add lighting along the driveway going uphill to the District's building to enhance safety.

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

Ayes: Directors Croucher, Gastelum, Robak, Smith and Thompson
Noes: None
Abstain: None
Absent: None

to approve staffs' recommendation.

WORKSHOP

8. WORKSHOP ON THE RESULTS OF THE 2017 WATER COST OF SERVICE STUDY

Finance Manager Kevin Koeppen indicated that staff will be presenting the results of the current Water Cost of Service Study (COSS) to obtain direction from the board to prepare the FY 2018 budget using the recommended rate structure from the study. He stated that the District performs a COSS every five (5) years depending on changes in economic factors, water usage patterns,

regulations, CIP costs and other related cost drivers. He indicated that the study was prepared by HDR Engineering, Inc. and that it is important to perform these rate studies on a periodic basis to ensure there is equity in the water rates for the various customer classes. He noted that it has been four (4) years since the last rate study and changes in usage patterns and the legal environment warrant that the study be updated. The primary objective of the study is to present a rate structure that is compliant with Proposition 218 requirements and is least disruptive to the District's customers, to reduce the complexity of the District's rate structure, and to maintain revenue neutrality. This means that the District will collect the same amount of revenue, though customer bills may change. He reviewed information within the staff report (see attached copy of staff report).

Mr. Koeppen introduced Mr. Tom Gould, HDR Engineering, Inc., to review the process and the results of the study. Mr. Gould presented a powerpoint (attached) which provided an overview of the District's current potable and recycled rates, Proposition 218 requirements for rate setting, an analytical framework on how to establish cost-based rates, an analysis on revenue requirements, a review of how costs are allocated between potable and recycled water, an analysis on the District's cost of service, the proposed rate structures for potable and recycled, and a comparison of customer bills based on the proposed rate structures.

In response to an inquiry from Director Smith, Mr. Gould confirmed that for irrigation customers, usage patterns are considered when allocating costs. He noted that cost of service is not a precise analysis as there are certain assumptions that need to go into the analysis and, additionally, cost and assumption patterns are constantly changing. He stated that if you are within $\pm 5\%$ of the overall adjustments, you would be within the range of a good scientifically based cost of service study (the District is at $\pm 0\%$). He also noted that because fixed charges are higher than the District has charged in the past, low water users will have a higher impact by the proposed tier rate adjustments.

Mr. Gould explained in response to an inquiry from Director Gastelum that part of the District's costs is related to the oversizing of facilities to meet fire protection requirements. The District allocates the cost of the oversizing related to fire protection demands to customers. Therefore, there is no cost charged to the fire department as the costs are allocated equitably in the distribution costs to the customers of the District.

Director Croucher indicated in response to an inquiry from Director Thompson that residential structures are pretty small compared to commercial structures which require a much larger fire flow. Mr. Gould stated that the cost distribution is based on the potential for fire protection, but not on the number of actual fires that were put out in any single year. The infrastructure needs is based on the number of all structures and the gallons per minute required for fire protection for each structure. The required oversizing cost is then proportionally shared among

all customers. It was noted that fire protection cost is a small portion of overall costs.

Director Gastelum inquired if a large irrigation meter customer lowers their consumption because they have redone their landscapes with drought tolerant plants, would these customers be able to request a smaller meter for their irrigation needs. Staff indicated that if their new lowered water use can be accommodated by a smaller meter, the District would consider switching their meter out to a smaller meter.

Mr. Gould indicated, in response to an inquiry from Director Thompson, that the drought has really pushed peak demands down for customers. The first tier cost of \$3.03/CCF (for 1 to 10 units water use) is made up of the cost for the flow of water and the allocation of the capacity cost (cost of the system). He stated that residential customers have reduced their peak demand considerably, particularly those customers in the lowest tier. This is the reason residential costs have gone down.

Director Croucher left the dias at 5:40 p.m. and returned at 5:45 p.m.

President Robak inquired why staff has proposed a uniform rate for all customers with the exception of residential. Mr. Gould indicated that multi-residential will also continue with tiered rates. He stated with residential customers, the rates should encourage efficient use. The philosophy of tiered rates is to provide efficient users with a cost based rate, but also price tiers for inefficient users to encourage conservation. He noted that if the District moved to a uniform rate for residential users, the cost would be approximately \$3.85/CCF. This would provide a significant benefit to the larger users and could encourage more water use. The District also wishes to minimize the impact to customers, as the low water users would be more impacted by a uniform rate. He stated that if the District would like to move to a uniform rate for residential users, it could slowly collapse the tiers. For FY 2018 it is proposed that the District move from a four (4) tier to a three (3) tier rate structure. The District can eventually move to two tiers than a single uniform rate.

Director Gastelum left the dias at 5:50 p.m. and returned at 5:54 p.m.

Following Mr. Gould's presentation, Finance Manager Koeppen indicated that staff wished to receive the Board's feedback on the findings of the COSS and stated that the proposed FY 2018 budget will be based on this study. He stated the budget will be prepared and presented on May 24, 2017 for the board's consideration. There will be a five-year Proposition 218 notification to customers advising of the proposed water and sewer rate increases. The notification will also include a pass-thru component of supplier (San Diego County Water Authority, Metropolitan Water District, SDG&E and the Metro Commission) rate increases. The notice will establish a maximum rate increase for the portion of the rate increase that is related to internal (Otay WD) cost increases. He also indicated that staff plans to begin mailing the Proposition 218 notices to

customers in the early part of the third quarter of the calendar year and it is hoped that the Proposition 218 hearing would be held in the later part of the third quarter or early in the fourth quarter of this calendar year. It is at that hearing that the board would vote on the proposed rates and structures and those new rates and structures would become effective in January 2018.

9. ADJOURNMENT

With no further business to come before the Board, President Robak adjourned the meeting at 5:59 p.m.

President

ATTEST:

District Secretary