



STANISLAUS REGIONAL WATER AUTHORITY

SRWA Governing Board Special Meeting Minutes

September 3, 2015

The Stanislaus Regional Water Authority (SRWA) Governing Board held a special meeting on September 3, 2015, at City of Modesto, 1010 10th Street, 2nd Floor Conference Room 2001, Modesto, California.

Directors Present: Chris Vierra (Ceres), Bill Zoslocki (Modesto), Gary Soiseth (Turlock)

Staff Present: SRWA: Steve Stroud, Judy Rosa

Ceres: Michael Brinton

Modesto: Larry Parlin, Adam Lindgren, DeAnna Espinoza, Leslie Vaughn

Turlock: Michael Cooke, Garner Reynolds, Roy Wasden, Phaedra Norton

- I. Call to Order - The special Board meeting was called to order at 10:04 a.m.
- II. Public Comments – None
- III. Unfinished Business
 - a. Exercise the right to discharge Davidovitz and Bennett pursuant to paragraph 6 of the Services Agreement between the Stanislaus Regional Water Authority and Davidovitz and Bennett. Authorize the Chair to take any and all action necessary to discharge Davidovitz and Bennett including, but not limited to, providing Davidovitz and Bennett with thirty days written notice of discharge pursuant to paragraph 6 of the Services Agreement. – Director Zoslocki stated that an email was received from Davidovitz and Bennett resigning as the SRWA’s legal counsel effective August 26, 2015. The email was sent directly to the Chair, with copy to Larry Parlin.

Adam Lindgren, City of Modesto City Attorney, advised the Board that he had been asked by Director Zoslocki to provide information to the Board regarding the release of General Counsel at the August 27, 2015 Board Meeting. He stated that it is very rare, even after a terrible performance evaluation, that the Board almost immediately posted the notice about the termination of the public employee. The more common practice is that the Board Chair will offer, on behalf of the Board, the public employee a chance to resign. He stated that the Board should discuss items for the next agenda at the prior meeting to be more effective.

Mr. Lindgren stated that his understanding was that Director Zoslocki was surprised that the item was added by a single member of the Board or to the Chair to consider the possible termination of the employee. Director Zoslocki felt there should have been prior discussion before this item was agendaized.

Mr. Lindgren, speaking for the City of Modesto and the Mayor, stated Modesto has no issue with the substance of the Board’s decision. However, Mr. Stevens was a 25-year City employee, and believe that employee and previous employees of the City should be treated with the highest norms of professional treatment among cities. He recommends the Board hire fully independent and highly competent outside counsel that is independent of the three cities represented on the Board.

Director Zoslocki stated he downloaded his agenda and it did not have the updated agenda, it just had a review of both parties. He stated he fully supports hiring independent counsel.

Chair Vierra stated he appreciated these comments and clarified that the wording was not to terminate, but to have the ability to terminate. And the vote was unanimously to terminate Mr. Stevens' services with the SRWA. He stated that the Board needs to be working on providing surface water to its residents, and not focused on the idea that the Board doesn't have representation. He also stated that the agendas will go out to make sure that all the members have the most up to date information and be posted.

Vice Chair Soiseth stated he was the person that added it to the agenda to prevent any more delays. He also stated that he was frustrated that the email only went to the Chair and the City of Modesto staff, not the City of Turlock or the City of Ceres staff. He conferred with his City Attorney to make certain that the wording was correct and that the posting met the 72 hours deadline. He requested of the Chair, which is 2/3 of the Board, and there was consent to place the item on the agenda. He also stated that it was up to staff to make sure all the Board members received the updated agenda. He also stated that he believes this is a distraction that it is preventing the Board from moving forward and progressing.

Chair Vierra stated he still has not seen the resignation from Davidovitz and Bennett and he asked the other Board members whether they wanted to make any changes to the previous decision of the Board. Vice Chair Soiseth stated that since he hadn't seen the resignation email, he wanted to move forward because the Board has a lot of big issues going forward and legal representation is needed, and since the resignation letter was not in front of the Board, Vice Chair Soiseth stated he agreed that the Board should execute Agenda Item III.a. He also wanted to know if the SRWA has 30 days of legal representation or not. This item was to be continued after III.b. while a copy of the resignation email was provided to the Board for its review.

- b. Interim General Manager to provide a detailed timeline for the Surface Water Project with associated benchmarks that identifies action items that are necessary/critical for the project's completion. – Board Chair stated the Board had before them a project schedule prepared by Interim General Manager (IGM) Steve Stroud for the Board's review. Chair Vierra commended Mr. Stroud for the work done on the schedule. Mr. Stroud explained that the City and TID will have to do separate CEQA, per the Water Sales Agreement. He also stated that the SRWA TAC meeting is scheduled for 9/10 and a subsequent meeting will follow with TID to discuss CEQA needs. He stated this project report shows what needs to be done, and it hasn't been vetted out with TAC or TID.

Chair Vierra asked about Item 17- Needs Assessment for Modesto only. Larry Parlin explained that Modesto is in the process of its Water Master Plan, and within 60 days Modesto should know if this project is still attractive for the City of Modesto rate payers.

Chair Vierra asked and Larry Parlin confirmed that there is a possibility that Modesto may not need the water. Chair Vierra also asked the IGM if there was a contingency plan in place should Modesto back out. Mr. Stroud stated there would need to be an amendment to the Bylaws to reflect a majority vote.

Chair Vierra stated that he was frustrated because he thought we had already covered who was going to be part of the project in the previous years. With Modesto now deciding it might not be in, this could delay moving forward, and the Board will need to look at other options. He stated the Board needs to know as soon as possible whether Modesto is in or out, as this will have a huge impact on his ratepayers and others. Vice Chair Soiseth stated he was in agreement.

Larry Parlin responded stating that the water situation has dramatically changed in the last few years, and decisions made for this project have change going forward. He believes that Modesto is being proactive by doing a master plan now to really see what the water needs are, and parts of Ceres are part of this master planning effort. He stated the growth projections are completely different and former master plans and general plans are no longer valid. He stated Modesto needs to make sure it can afford the project, as rates will already be increasing significantly. Also, are the rate payers going to be able to afford more, and does Modesto need the project?

Chair Vierra asked whether in the CEQA work we have to know the size of the facility, and Mr. Stroud confirmed that we do. Chair Vierra also stated that if the size decreases, this should not be a problem.

Director Zoslocki stated that Modesto's information is fairly new, and with Phase 2 MID plant coming online, along with the mandates from the state we suspect are coming down, it's is really a gray area. He stated for planning purposes that we move forward with Modesto as a partner in the project until the water needs are known.

Larry Parlin added that we are making assumptions to go forward with this project right now, and we are verifying that these assumptions are still valid. We have a stranded asset now with MID, a 60 mgd treatment plant and we are only getting 11 mgd delivered right now. We have an obligation to our ratepayers not to go down that path again. We have to verify that.

Chair Vierra stated he fully understood Modesto's concerns; however, Ceres and Turlock are now waiting on Modesto to see whether they are in or out to be able to move forward. We need to determine who's in and who's out because if one jurisdiction is out, the others will need to shuffle and do things differently.

Larry Parlin stated that he doesn't believe Modesto's analysis will delay what is shown on the schedule for the next three months. He stated he will commit to expedite Modesto's demand analysis conclusion to help out. He also stated that

once the analysis is done, it will need to go to Modesto's Council for them to decide if they want to stay in this project.

Vice Chair Soiseth asked if there was a reason the master plan hadn't started previously so that Modesto would have known prior to negotiating the Water Sales Agreement with TID, whether it was in or out,? Mr. Parlin stated the master plan started about six months ago and didn't specifically address SRWA, its focus is on the entire Modesto system and the following:

- changing conditions
- agreements with MID
- water conservation
- growth and the fact that the voters may put a wall around Modesto to stop urban sprawl

Mr. Parlin also stated that SRWA plays a very small part related to Modesto's overall water picture. All previous assumptions are incorrect, and everything has changed dramatically.

The Chair and Vice Chair shared their equal frustration with not knowing this information earlier, as their jurisdictions will be affected should Modesto pull out. Director Zoslocki reiterated that this was new information for Modesto and they didn't know enough about the data being collected to comment prior to the execution of the Water Sales Agreement with TID.

Vice Chair Soiseth suggested meeting every two weeks to keep the momentum going; however, no decision was made to do that at this point.

There was continued discussion about this subject and it was determined that other jurisdictions should be asked one more time to see if any others would like to be part of this JPA. Chair Vierra gave direction to the IGM to have the TAC contact the previous jurisdictions to see if there is any interest, as well as Stanislaus County. This would also include the need to change the Bylaws to a majority vote.

Continued Discussion on item III.a.

Vice Chair Soiseth asked that now Turlock's City Attorney has arrived, that Mr. Lindgren please repeat his concerns about the posting of the 8/27/15 updated agenda and the verbiage related to the dismissal of the General Counsel. Mr. Lindgren repeated that he was at the meeting at the request of Director Zoslocki to talk about the process of terminating a senior public employee. He stated that usually Boards and Councils went into Closed Session to conduct a performance evaluation, and if the conclusion of that performance evaluation was very negative, they would direct the Chair or the General Manager or the General Counsel to go to the employee that the evaluation was done on, and advise them that they received a very negative evaluation and give them an opportunity to resign. If they didn't, the Board would likely take future discussions about ending the relationship. Mr. Lindgren stated that Mr. Zoslocki commented that that opportunity didn't appear to be afforded to Davidovitz, and he also stated under the Brown Act where the Board is addressing serious matters, whether they be the

matters of scheduling or the substance of key work that is being done, or whether it be sensitive personnel matters, that it may be a better practice for this body and other JPAs to advise each other at the end of the meeting if there are major items that you expect to add to the next agenda, whether in open session or at the end at the closed session, rather than to add them between meetings because the placing of this item came as a surprise to Mr. Zoslocki.

Vice Chair Soiseth said that at the prior meeting when the review was scheduled, he had reserved the right to clarify the language because he needed to consult with Turlock's City Attorney for the correct language to use. The language said discipline/dismissal/ release allowing the Board to move forward instead of just evaluating the performance. He stated that General Counsel Stevens didn't show up for the last meeting, he had to be called to come down for his review, and Mr. Stevens asserted that he was told not to show up by Mr. Lindgren. Mr. Lindgren stated that was incorrect. Vice Chair Soiseth listed the concerns regarding Mr. Stevens representation for the SRWA and lack thereof, and not attending today's meeting or having representation from Davidovitz. Then an email from Davidovitz that was just sent to the Modesto City Attorney, Mr. Parlin, and the Board Chair (who acknowledged it just came through in his email but was sent at 9:30) affords the SRWA with no legal representation at this point, even though the Agreement reads 30 days after notice of termination.

Mr. Lindgren stated that he did speak with Mr. Stevens the previous night and advised him about standard practices should he decide not to attend the meeting today, and one recommendation was to send an email to the Board Chair resigning from the position. He agreed with the Board that they have more important thing to address, and believe that Director Zoslocki is not here to hinder progress.

Director Zoslocki stated that looking at his electronic copy of the Closed Session agenda item didn't show the updated verbiage that was added and posted within 72 hours of the meeting of 8/27/15. He stated he should be getting the same information as everyone else. Vice Chair Soiseth pulled up the SRWA website to show that the correct agenda was on the website.

SRWA Secretary Rosa explained that she was on vacation when the request came to update the agenda for posting was made, and prior to her leaving she had the original agenda posted. She stated she did check her City email, and had a staff member post the agenda; however, she was the only one that posts to the website and that did not happen prior to the 8/27/15 meeting.

Director Zoslocki stated there was no Brown Act violation. The problem was he just didn't get the information and was surprised. Vice Chair Soiseth agreed that there was no Brown Act violation and that the SRWA has been given misinformation these last few months, a lot of it central to Mr. Stevens, and the way the item was proposed to the Chair and the way the Chair responded was correct. Mr. Lindgren stated that the email in front of the Board is the willingness of your General Counsel to resign.

Turlock City Attorney Phaedra Norton asked if the email resignation was being taken under Matters Too Late for the Agenda. One of her concerns was after the posting of the agenda there is no need to take immediate action on the resignation. Both attorneys were in agreement that the agenda item before them they could take action on the resignation email. She reiterated that they posted the agenda in accordance with the Brown Act, and confirmed the frustration with the lack of information provided to all the Board members.

Mr. Lindgren stated that he wasn't stating the Board did anything illegal, that's not what he was saying. He said that his firm represented approximately 40 cities and the norm that he sees that most agencies don't jump to termination. He advised that it was up to the Board how they want to treat its employees, and how you treat employees of the City of Modesto.

Chair Vierra asked Mr. Lindgren if he was the City of Modesto's City Attorney or a contract employee. Mr. Lindgren confirmed he was the City of Modesto's City Attorney by contract with his law firm that is not Davidovitz and Bennett. He stated that he was here to talk about how the City of Modesto does business at Director Zoslocki's request, and to talk about values and norms that Director Zoslocki believes he would have conducted this termination, and how he believes the City of Modesto would also have conducted it.

Vice Chair Soiseth stated that he believes the legal representation for the SRWA has not been the norms and best practices. He stated there was a concerted discussion about the lack of legal representation and the decision to proceed with termination. He also stated the fact that Davidovitz sent the email only to the Chair, Larry Parlin, and Adam Lindgren is a perfect example. He questioned why it wasn't sent to the other cities' representatives as well.

Mr. Lindgren stated that the SRWA is an independent public body that has been slated to do a very difficult and important job. He also stated that he felt if the Board contacted Mr. Davidovitz directly they would provide representation for the next 30 days.

It was moved to approve by Vice Chair Gary Soiseth, seconded by Chair Vierra, and carried unanimously to discharge Davidovitz and Bennett pursuant to paragraph 6 of the Services Agreement between the Stanislaus Regional Water Authority and Davidovitz and Bennett. Authorize the Chair to take any and all action necessary to discharge Davidovitz and Bennett including, but not limited to, providing Davidovitz and Bennett with thirty days written notice of discharge pursuant to paragraph 6 of the Services Agreement.



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- IV. Matters Too Late for the Agenda – Resignation letter from IGM Steve Stroud. Mr. Stroud stated his willingness to stay on through the end of December to give the Board the time to bring on a new General Manager. Chair Vierra and Vice Chair Soiseth thanked Mr. Stroud for his service as IGM for the SRWA.
- V. Adjournment – The meeting adjourned at 11:15 a.m. to Closed Session

Report out of Closed Session:

Phaedra Norton, City Attorney for Turlock, will be the Interim General Counsel for six months.

Jennifer Land, City of Turlock will be the Board Secretary.