

AGENDA FOR A REGULAR MEETING OF THE BOARD OF DIRECTORS
OF THE VALLECITOS WATER DISTRICT
WEDNESDAY, SEPTEMBER 1, 2010, AT 4:00 P.M.
AT THE DISTRICT OFFICE
201 VALLECITOS DE ORO, SAN MARCOS, CALIFORNIA

CALL TO ORDER – PRESIDENT FERGUSON

PLEDGE OF ALLEGIANCE – GENERAL MANAGER LAMB

ROLL CALL

In the case of an emergency, items may be added to the Agenda by a majority vote of the Board of Directors. An emergency is defined as a work stoppage; a crippling disaster; or other activity which severely imperils public health, safety, or both. Also, items which arise after the posting of the Agenda may be added by a two-thirds vote of the Board of Directors.

ADOPT AGENDA FOR THE REGULAR MEETING OF SEPTEMBER 1, 2010

ORAL COMMUNICATIONS

Persons wishing to address a matter not on the Agenda may be heard at this time; however, no action will be taken until the matter is placed on a future agenda in accordance with Board policy.

NOTICE TO THE PUBLIC

All matters listed under the Consent Calendar will be voted upon by one motion. There will be no separate discussion of these items, unless a Board member or member of the public requests that a particular item(s) be removed from the Consent Calendar, in which case it will be considered separately under Action Items.

CONSENT CALENDAR

1.1 APPROVAL OF MINUTES

A. REGULAR BOARD MEETING – AUGUST 18, 2010

Approved minutes become a permanent public record of the District.

Recommendation: Approve Minutes

1.2 WARRANT LIST THROUGH SEPTEMBER 1, 2010 - \$3,659,276.49

Recommendation: Approve Warrant List

*****END OF CONSENT CALENDAR*****

ACTION ITEMS

- 2.1 RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLECITOS WATER DISTRICT ESTABLISHING A WATER AND SEWER SERVICE POLICY REGARDING AFFORDABLE HOUSING PURSUANT TO SECTION 65589.7 OF THE GOVERNMENT CODE

Currently, the District has no formal policy providing a priority for water and sewer service to affordable housing pursuant to Government Code Section 65589.7

Recommendation: The Board approve the proposed Resolution which incorporates a formal written policy in accordance with Government Code Section 65589.7

- 2.2 REQUEST FOR REIMBURSEMENT OF COSTS FOR SEWER CONSTRUCTION – AUTUMN TERRACE PROJECT

At the July 12, 2010, Board Committee meeting, Mr. Effinger requested that the Board consider reimbursement of approximately \$440,000 in costs for the sewer main reconstruction which was required to mitigate the impacts of the Autumn Terrace Project.

Recommendation: Find that the Autumn Terrace project is not eligible for a Reimbursement Agreement and deny Mr. Effinger's request

- 2.3 CONFLICT OF INTEREST CODE FOR VALLECITOS WATER DISTRICT, BIENNIAL REVIEW AND ADOPTION

Government Code Section 87306.5 requires every local government agency to review its Code biennially to determine if it is accurate or if the Code must be amended.

Recommendation: Approve Amended Conflict of Interest Code

- 2.4 RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLECITOS WATER DISTRICT RESCINDING RESOLUTION NO. 1273 AND CONFIRMING THE CITY OF ESCONDIDO'S REPRESENTATIVE TO VOTE IN THE ABSENCE OF VALLECITOS WATER DISTRICT'S REPRESENTATIVE TO THE SAN DIEGO COUNTY WATER AUTHORITY

Due to the appointment of a new VWD Representative to the San Diego County Water Authority, Resolution No. 1273, which designates a representative to vote on VWD's behalf in the absence of VWD's representative, has been revised.

Recommendation: Approve Resolution

2.5 RESCHEDULE BOARD MEETING OF DECEMBER 1, 2010, DUE TO AN ANTICIPATED LACK OF QUORUM

Due to Board attendance at the ACWA fall conference, the December 1, 2010, Board meeting needs to be rescheduled.

Recommendation: Approve rescheduling the December 1, 2010, Board meeting to December 8, 2010

*****END OF ACTION ITEMS*****

REPORTS

3.1 GENERAL MANAGER

3.2 DISTRICT LEGAL COUNSEL

3.3 SAN DIEGO COUNTY WATER AUTHORITY

3.4 ENCINA WASTEWATER AUTHORITY

3.5 ACWA/REGION 10

3.6 LAFCO

3.7 DIRECTORS REPORTS ON TRAVEL/CONFERENCES/SEMINARS ATTENDED

*****END OF REPORTS*****

OTHER BUSINESS

4.1 CITY OF SAN DIEGO WATER PURIFICATION DEMONSTRATION PROJECT

4.2 EL MONTE VALLEY PROJECT

4.3 CERTIFICATE OF ACHIEVEMENT - CALIFORNIA HIGHWAY PATROL

*****END OF OTHER BUSINESS*****

5.1 ADJOURNMENT

*****END OF AGENDA*****

If you have any disability which would require accommodation in order to enable you to participate in this meeting, please call the Executive Secretary at 760.744.0460 ext. 264 at least 48 hours prior to the meeting.

AFFIDAVIT OF POSTING

I, Diane Posvar, Executive Secretary of the Vallecitos Water District, hereby certify that I caused the posting of this Agenda in the outside display case at the District office, 201 Vallecitos de Oro, San Marcos, California by 3:00 p.m., Friday, August 27, 2010.



Diane Posvar

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS
OF THE VALLECITOS WATER DISTRICT
WEDNESDAY, SEPTEMBER 1, 2010, AT 4:00 PM AT THE DISTRICT OFFICE,
201 VALLECITOS DE ORO, SAN MARCOS, CALIFORNIA

President Ferguson called the Regular meeting to order at the hour of 4:00 p.m.

President Ferguson led the pledge of allegiance.

Present: Director Ferguson
Director Gentry (arrived at 4:02)
Director Hannan
Director Poltl
Director Shell

Staff Present: General Manager Lamb
Legal Counsel Scott
Finance Manager Scaglione
Administrative Services Manager Caudle
District Engineer Gerdes
Principal Engineer Gumpel
Capital Facilities Engineer Scholl
Development Services Supervisor Brandstrom
Engineering Technician Koonce
Public Information/Conservation Supervisor Urabe
Public Information Specialist Webb
Executive Secretary Posvar

ADOPT AGENDA FOR THE REGULAR MEETING OF SEPTEMBER 1, 2010

10-09-01 MOTION WAS MADE by Director Poltl, seconded by Director Shell, and carried unanimously, with Director Gentry absent, to adopt the agenda for the Regular Board Meeting of September 1, 2010.

ORAL COMMUNICATIONS

None.

CONSENT CALENDAR

10-09-02 MOTION WAS MADE by Director Hannan, seconded by Director Poltl, and carried unanimously, with Director Gentry absent, to approve the Consent Calendar as presented.

1.1 Approval of Minutes

A. Regular Board Meeting – August 18, 2010

1.2 Warrant List through September 1, 2010 - \$3,659,276.49

ACTION ITEMS

RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLECITOS WATER DISTRICT ESTABLISHING A WATER AND SEWER SERVICE POLICY REGARDING AFFORDABLE HOUSING PURSUANT TO SECTION 65589.7 OF THE GOVERNMENT CODE

General Manager Lamb stated that this item is to formally adopt written policy required by SB1087 for affordable and low income housing projects. The Resolution incorporates the statutory provisions required for a water and sewer agency. Adoption of this Resolution will formalize the existing policies and procedures used in processing affordable and low income projects. Adoption of the policy will provide a priority for affordable or low income housing projects in that service will not be denied unless the District makes specific findings that it does not have sufficient water supply, is in a drought emergency, does not have sufficient capacity to serve the development, or if the applicant fails to agree to reasonable terms and conditions including the payment of applicable fees.

Staff recommended the Board adopt the Resolution.

Director Poltl asked for clarification on the statement the project will be given priority.

Legal Counsel Scott responded by stating that what is really meant by giving priority is that a project could not be denied unless a situation existed where the District did not have, as defined in the statute, a sufficient water supply or was in an emergency drought condition or did not have sufficient capacity to serve the development. The legislature was simply making sure that the land use agencies, such as cities and counties, were coordinating properly with the utility providers when processing affordable housing and low income projects.

Mr. Bill Effinger, member of the public, addressed the Board stating that he represents Hitzke Development and the affordable housing projects of Park View and Autumn Terrace.

Mr. Effinger stated that because of the complexities of the issues involved in their request for what they believe to be their legal right to obtain a refund of costs relative to their constructing the sewer line in San Marcos Boulevard as the VWD 2002 Master Plan required, and wherein the CIP within that plan stipulated the need, and further established the time to do so as being the year 2006, and VWD staff insisting they are not entitled to a refund for having to construct the sewer line in 2009, they have been forced to seek legal counsel.

Mr. Effinger stated that as a result, he is now asking the Board Secretary to give each Board member a copy of a letter from their law firm, Anderson Mann, Hilbert & Parker, LLP addressing the issues before them today and citing case law on each of the issues for their review and consideration (copy of letter distributed). Mr. Effinger stated that he

was told that District staff has previously received a communication from Sheppard Mullin Richter & Hampton, LLC, also citing case law, which he must assume they already have before them. If not, he has a copy of pages 7, 8, & 9 referencing this issue.

Mr. Effinger stated that there no doubt exist misunderstandings between his client, himself, and VWD staff, as General Manager Lamb has stated. However, while some misunderstandings might be overlooked, some cannot.

Mr. Effinger stated that as an example, he quote from an e-mail sent to him by General Manager Dennis Lamb last Friday afternoon at 2:07 p.m. "the District does not have a written policy adopted for the compliance of the statue, although as a practice, we do follow and comply with the statutory requirements." Mr. Effinger provided a copy of that e-mail.

Mr. Effinger stated that they submit that Mr. Lamb's statement is a bit like standing before the judge after having been arrested for driving without a license for almost five years and telling him you always drove carefully. They are sure the maximum sentence for breaking the law in that case would still be handed down. There can be no misunderstanding on the issue of the SB1087 mandate. The law was broken

President Ferguson asked Mr. Effinger if he was speaking for or against the Resolution. Mr. Effinger responded that he is speaking against it.

Mr. Effinger further stated that however, even the staff's proposed Resolution misstates the intent of the Department of Housing & Community Development, May 22nd, 2006 memorandum on SB1087, relative to Section 65589.7 Chapter 727 which clearly mandates that water and sewer districts create written policies and procedures. He emphasized "procedures" because it is not stated in the proposed Resolution title before them today. He further suggested that the proposed Resolution should be made an Ordinance and retroactive to January 1, 2006, requiring a revisit of all affordable housing projects constructed within the District to assure that any omission of the State mandate has not unfairly burdened any affordable housing project with costs it should not have born, had the policies and procedures been in place at the time.

Mr. Effinger stated that they suggest this Board require staff to reword the proposed Resolution into becoming an Ordinance, establishing it to become VWD Policy incorporating the proper language in full compliance with SB1087 before any further action is taken today.

Legal Counsel Scott stated that there is no requirement in the statute for this to be an Ordinance. This is simply adopting a policy that recites and incorporates the provisions in Government Code Section 65589.7.

Mr. Kirk Effinger, member of the public, next addressed the Board stating that the issues surrounding SB1087 calls into question whether other State mandates such as AB1600 may have been missed or misinterpreted. Given the circumstances, staff

apparently overlooked the explicit mandate imposed in SB1087 which the Board is now considering steps to correct. He respectfully requested a thorough review of State code, legislative action and so forth be undertaken by the District to ensure no other omissions have occurred that might be relevant to the District's policies and procedures.

Mr. Stephen Kildoo, member of the public, addressed the Board stating that he wanted to speak on the topic more in general terms as a past Board member of this District as well as being involved in two of the larger mixed use projects that are due to come forward in San Marcos over the next few years. Affordable housing becomes a critical component of those projects as well as the City as a whole. It is of some concern to him that this has gone this long without the correct written procedures, but more important that it be addressed in a way that allows the District to do what it needs to do well; husband resources, make sure it's fiscally sound, and the policies reflect a way for the District to be successful in providing of water and sewer treatment. He further stated that at the same time, it is important from his other perspective that those policies allow the best practices for the development of what is now State mandated county and federally supported infill mixed use projects that San Marcos has in the planning stages now. He encouraged the Board to look at this policy and make sure as they define not only affordable housing rates, but affordable housing and infill project rates and CIP contributions, that it be done in a way that both protects and does the best interest for the District, but also allows those projects to move forward so that at the end the District doesn't end up becoming a defacto land use agency simply by making it very difficult if not impossible for a project to move forward.

Mr. John Seymour, member of the public and from the nonprofit National Community Renaissance, addressed the Board stating that they have about 800 housing units inside the City of San Marcos that they own, operate, and manage. They've been involved in the past with several inclusionary housing projects with master developers, working with them right now and they're processing a project right now in the Richmar neighbourhood; they are in design guidelines. They are concerned, to say the least, about moving forward with their conditions of approval, although they haven't received them yet, they have a draft sewer and water study. They are very concerned with what Mr. Effinger's client just went through. From what he understands, it almost collapsed the project. That's not good, this is affordable housing, they need it. He further stated that what he is concerned about specifically is overcharging any and all developers. He used to work for the Building Industry Association – it has occurred numerous times. They fully support paying their fair share and if there is a deficiency, they will be the first one to step up and pay their fair share. But no more; they don't want to be taken to the barnyard. They want to be able to pay their fair share, get their service availability letters, move on and get these unit constructed in a timely manner. He appreciates their consideration. While he feels he should be supporting that policy, it just seems why did it come all of a sudden now? Why wasn't it done years ago? He doesn't understand that connection.

Legal Counsel stated that he felt it was done, it just wasn't in written formal policy.

President Ferguson asked the Board members if they had any comments on the letter

from the attorneys.

Legal Counsel Scott stated that the letter cites provisions of the law that do not apply to the District. He further stated that, with all due respect to Mr. Effinger's opposition, he felt it would serve the best interests of the District to proceed and adopt this Resolution.

10-09-03 MOTION WAS MADE by Director Hannan, seconded by Director Poltl, and carried unanimously, to approve the Resolution.

Resolution No. 1361 - The roll call vote was as follows:

AYES: GENTRY, HANNAN, POLTL, SHELL, FERGUSON

NOES:

ABSENT:

ABSTAIN:

Director Poltl stated that he is a little offended when somebody comes up and says no more will they be taken advantage of. He doesn't think anybody was taken advantage of; he doesn't think that the proper approvals were had before the project started. Whether or not that's to blame on anybody, he doesn't think it may have come as a surprise during the particular process of building the project; that wasn't the District's fault. The fault was that the proper approvals were not obtained before the construction started. He further stated that they are not here to surprise anybody; they're here representing the people and trying to give them the appropriate prices for people who want to be a part of the system, have to add on so that the costs are distributed fairly.

REQUEST FOR REIMBURSEMENT OF COSTS FOR SEWER CONSTRUCTION – AUTUMN TERRACE PROJECT

General Manager Lamb stated that this item was first discussed when it was presented by Mr. Effinger at the Board Committee meeting on July 12, 2010. At that point Mr. Effinger requested reimbursement for costs associated with sewer improvements that were required as part of the Autumn Terrace project.

General Manager Lamb stated that the item was placed on the August 4, 2010, agenda and with that was a staff recommendation to deny the request. At the August 4 meeting, Mr. Effinger provided a written response to the staff memo that had been provided to the Board and staff. At the Board's direction, the item was continued to this meeting to allow staff an opportunity to review the additional comments submitted by Mr. Effinger. Staff and Counsel did review the additional items and again recommended denial of the request based upon the following:

The District received written confirmation from Mr. Effinger, which was previously provided, that there would be no request for reimbursement. The offsite sewer requirement the developer is requesting reimbursement for would actually fall under Ordinance No. 161. At the last meeting, Mr. Effinger indicated that the project was approved prior to adoption of the Ordinance. That approval was for the onsite

improvements; the offsite improvements that are subject to the reimbursement request were actually approved after adoption of Ordinance No. 161. General Manager Lamb further stated that with respect to the fees that were requested, it was about \$440,000. Ordinance No. 161 specifically excludes reimbursement for what are considered soft costs and also excludes reimbursement for projects of this type and further requires that the request must be made at the time the improvement plans were submitted and approved by the Board, which was not done in this case. The impacts to the project are identified in the developer's study and it was clear that the existing sewer facilities did not have sufficient capacity and reconstruction of the sewer main was required. The constructed main was the minimum size because the slope is in the street and there was no oversize required of that project. Staff is again recommending denial of the request.

Legal Counsel Scott clarified one point. Malinda Dickinson's letter and Mr. Effinger keep referring to a hearing. For the record, there is no hearing today on this item; there never has been a hearing on this item. This matter is on the agenda because of a request for reimbursement from Mr. Effinger that was brought to the District's attention this past July.

Steve Bram, member of the public, next addressed the Board and stated that he echoes the same comments that Bill, John Seymour, and Stephen made. He is also an affordable housing developer in town and has some concerns; mainly just being treated fairly and equitably. On this reimbursement, for instance, if they're putting in more than what's their fair share, he believes they should be reimbursed for it. He further stated that it's been his experience through all the years that when they work with water districts, they will support reimbursement agreements and was kind of surprised that this District doesn't; at least that is what he has heard and not sure if that's the official stance. He thinks that Bill shared some facts with them the other day that out of 35 water districts, this district is only one of two that do not allow reimbursements. One of their other big concerns going forward is that they've had a chance to participate in some of the Master Plan and environmental hearings. He stated that it looks to him that the way the District is assessing fees for mixed use projects, the District is taking a mixed use project and saying that you can have a fully developed commercial site and a fully developed residential site at the same time when in fact if they're mixing those two kinds of densities, you're really not going to get – you're trying to place the full amount of density for commercial and residential together. He thinks this is something else that should be looked at and once again, their overall objective is to be treated fair and equitably.

Director Gentry asked Mr. Bram that, assuming he is preparing his 610 and 221 water supply assessment report for any future projects, and if he is not doing them, then the District is doing them on his behalf at the City's request per State law, if those assessment studies show that there is intensification of a mixed use project and that if it does exceed the capacity of the system, sewer or water, doesn't then the project have not only an environmental impact but also have a capital facility impact?

Mr. Bram responded that he was not going to be able to answer that question directly but indirectly, the circumstances he sees is he is doing one map and having both residential and commercial on it. If he were to plan his project and do a separate map for commercial and a separate map for residential the fee structure would be entirely different for yet the same product.

Director Gentry stated that they are not talking about that, they're talking in the context of a mixed use project. He is referring to the District's workshop on the EIR process for the Master Plan. Director Gentry further stated that they've encouraged all of them to provide information in that process that they can get a better understanding of where they see a differential for mixed use projects from the way the District provides other rate structures. The Master Plan will not set the rates; that is also a point of some confusion and continues to be some confusion both in the verbal testimony and the written testimony. The District's Master Plan is about public facilities and the infrastructure system needed. Director Gentry encouraged Mr. Bram that if the development community has some very specific examples of how mixed use development and capital facility fees or system improvements and infrastructure needs are being done differently by other districts to bring those forward. The District does do development agreements, not necessarily reimbursement agreements. That is a Board policy, and in the future, the Board may or may not revisit that policy, but the District does do development agreements with development projects all the time. He again urged all of the developers to bring forward those facility fees that they feel are most appropriate and applicable for mixed use projects and put it into the EIR process so the Master Plan can evaluate it accordingly.

Mr. Bram stated that he felt this was a good option and thanked Director Gentry for offering it and will take advantage of it.

General Manager Lamb reiterated that the fees that are not established by the Master Plan nor by the workshops that are being conducted. Five meetings have been established for the NOP/EIR process, and two additional information meetings have taken place already, and he encouraged the group to continue to attend the meetings and that he feels good information has been going both ways. Staff has spoken about how the water unit is developed (gallons per day per acre of water and sewer) and also gone through the basic process with them to explain in general how capacity fees are developed; not project specific and not District specific. Staff will continue to work through this with them. He reiterated that the meetings to date do not establish fees, they establish criteria for developing the Master Plan. General Manager Lamb further stated that if the developers have resources that they can bring forward, staff would be happy to look at it.

Director Gentry asked Legal Counsel if there is a prohibition in State law that would restrict the District or any other water or sewer district from overcharging and is there a citation that could he could provide.

Legal Counsel Scott responded that the District follows under Government Code Section 6613. This is where the authority to charge water and sewer capacity fees for

Special Districts are found. This is a little different than development fees. Section 6613 has been a State law for many years and is part of the basic AB1600 process.

Director Gentry stated that the Government Code Sections cited don't seem to structure the same conclusion that has been reached in either the letters or the presentation on this reimbursement by Mr. Effinger. He is a little perplexed about the claim that is being made. If the District has never had reimbursement agreements in the past for projects, do we need to step back and take a look at some other provisions?

Legal Counsel Scott responded that there is some confusion regarding payback and reimbursement and what is really being talked about. Development agreements have included reimbursement for over sizing facilities and they have been done for many years.

General Manager Lamb cited a few projects where these development agreements have been done. General Manager Lamb referred to a statement made by Mr. Effinger where, with respect to the fact that the Master Plan said it was supposed to be built within a timeframe. General Manager Lamb reiterated that the Master Plan is a tool; it's a planning tool of what is anticipated to be needed and when it will be needed. The capacity fee structure is developed under a different purview. On an annual basis, the District identifies the capital budget. The capital budget identifies facilities that might be built within a reasonable time period. To make the statement that "we wished to have built it by 2005 therefore we should have done it" - that project was not within the District's development facilities that were projected to be built. It was not included in the fee structure; there was no component of the current capacity fee structure that identified that facility to be built right now by the District. Any fees that were being paid toward capacity were not being contributed to that pipe, therefore, there was no "double charging" of fees. If there was an over sizing or reimbursement, that would have been addressed in a development agreement. The reimbursement agreement Ordinance 161 is a separate issue. The way the Board identified and adopted that Ordinance - the intent was to provide ability for an essential service for somebody who didn't receive water service, sewer service, failing septic, or failing well. If facilities had been put in that benefitted others, they would be entitled to receive a reimbursement. This type of payback agreement has been in place for over 30 years.

Mr. Bill Effinger addressed the Board and stated that there are some issues that have been misstated. The main issue as it relates to 2.2, from their perspective, is that the VWD requirement to construct the sewer main was not presented to Hitzke project engineers until the project was ready to break ground, long after the project costs was submitted to lenders, tax credit agencies and bond holders, placing the project in great jeopardy. He referred to a water and sewer availability letter for Autumn Terrace dated April 3, 2008 (copy provided), in which he highlighted two sentences in the second to last paragraph of the last page: "The nearest sewer main is an existing 8-inch VCP sewer main to the south within a District Easement" and "There are existing sewer credits for the above referenced parcels". There is no mention of Hitzke having to construct a new sewer main.

Mr. Effinger further stated that Hitzke Development and its constituents were never informed of a VWD requirement to request a reimbursement in writing, because VWD Policy 161 excluded such information from being given by staff to a multi-use, multi-density project in its own wording.

Mr. Effinger stated that as recently as last Wednesday evening in a public technical workshop meeting in the VWD training room, District engineers denied that the exclusions were contained in Policy 161, as he is sure the minutes will show, and admitted that the District had no policies and procedures for affordable housing as required by SB1087. If the engineers were not aware, how could they have made his client or consultants or other developers aware?

Mr. Effinger reestablished for the record that the binder containing all of their research documentation given to the Board on August 4th of this year, and referenced in the minutes of that meeting, remains part of the documentation of their continuing efforts to seek reimbursement, and that this copy of the 2002 Master Plan and the CIP for the San Marcos Blvd. sewer line (copy provided), are also made part of their presentation of facts.

Mr. Effinger stated that they are not asking this Board to require staff to write his client a check for \$440,000 dollars today. What they are asking is that staff be directed to sit down with them and work out a fair and equitable solution on Autumn Terrace and give them and their fellow developers assurances that all fees and charges on future projects including Park View will never again be sprung on them at the last moment as a surprise, as has been the process in well documented cases in the past, and that all requirements of the District for facility payments and construction by developers be in compliance with AB1600 and SB1087.

Mr. Effinger respectfully requested that the Board take no further action on this item, pending their meeting with VWD staff and respective counsels to review the legal opinions presented by their attorneys and the San Diego Building Association Attorneys in the accompanying letters presented today, in their attempt to resolve the issues amicably and to mutual satisfaction.

General Manager Lamb stated that nobody disagrees that their project was to a point of funding before they were probably aware of some improvements that needed to be built. When this did come up, Mr. Effinger met with the District to act in good faith towards the mitigation of that impact. Staff met with the proponents of the project – Mr. Effinger was present representing the developer. Mr. Effinger had met with Mr. Rucker and he (Lamb) attended on behalf of the Engineering staff. During that meeting several items were discussed which included the additional cost to build the project. Staff understood there was additional funding needed to reconstruct the off-site sewer main. There was a credit given that was identified in the memo that was given as a good faith way to mitigate the impacts to the project. The District acted in good faith to allow the payment of fees to be deferred for six months to allow them not to have to pay the interest on that draw. There was also a change in materials allowed for the project to help reduce the construction costs of the project. The District acted in good faith to mitigate the impacts

and to acknowledge the fact that maybe things were done out of sequence. When all parties walked away, whether Mr. Effinger agrees with what was intended in his e-mail or whether he doesn't agree with it, it is what's of record.

Staff recommended denial of the reimbursement.

President Ferguson asked staff if they could sit down and work out a solution.

General Manager Lamb responded that staff has looked at this and provided a hypothetical situation. General Manager Lamb stated that the slope dictated that the pipe be a 15 inch pipe; the piece before that was a 12 inch pipe and the last piece was flat. Because of that being flat, the pipe needed to be larger. He stated let's assume that that wasn't even the case; that the District agreed it would pay that cost. The District would pay nominal costs between the 12 inch and a 15 inch pipe. General Manager Lamb cited a similar incident with San Elijo when their project was built and a similar incident with the Twin Oaks Ranch project. When they (Effinger) came in, they did the study and the District identified that the pipe in the street could not handle the additional impact from the development. Staff did a study and provided it to the developer. If staff were to look at any kind of an over sizing, the only piece that it might even could be, would be from the 12 to 15.

General Manager Lamb stated that the issue of a reimbursement agreement was discussed when Mr. Effinger was there with Mr. Rucker and him (Lamb). A payback agreement is usually based upon front footage and benefit. He further stated that the issues with this are very complicated and that's why the intent when staff went through the negotiation with Mr. Effinger in good faith, was to put that issue to bed and allow almost a \$200,000 credit in sewer capacity fees. Mr. Effinger has spoken several times about a \$1.2 million surprise. Out of that \$1.2 million, \$800,000 was for capacity fees. That was not a surprise. He didn't think there were any surprises; there might have been a little difference between what the developer's engineer calculated and what staff calculated, but that was not a \$1.2 million surprise.

Mr. Kirk Effinger addressed the Board and stated that speaking globally about the reimbursement agreements, he spent the last several days seeking clarification from various water agencies throughout the southern California region – talking to San Diego, Orange County and Riverside County entities. He was able to get answers from 14 of them. All of them said that they have reimbursement policies in effect and none mentioned exclusion for any type of development. To further clarify, he asked six of the agencies serving these regions that are sufficiently urbanized or urbanizing and thus likely to have mixed use projects either built or proposed whether they had exclusions for mixed use projects or made any other exceptions. All six made it clear they have no policy that singles out mixed use projects in any way for anything. Mr. Effinger further stated that while it is true that you are an independent agency that can, to some extent, write your own policies, as both SB1087 and AB1600 demonstrate, that right is not without certain constraints. Furthermore, when a random sample of the policies of other agencies illustrate you are alone in its attitude toward reimbursement policies, it begs to question whether you are following the right path.

Mr. Jim Hernandez, member of the public, next addressed the Board stating that his concern relative to the existing reimbursement Ordinance, is that he is personally involved in two projects in the Creek District and is in those two projects going to be placing over 1,000 feet of sewer and water passing many other parcels of property that, unless they are going to be putting in larger pipe for water and sewer, that they would not be possible for a reimbursement. Those are the issues that he would like the Board to reconsider relative to the reimbursement agreement. Mr. Hernandez further stated that back in the day, he remembers that he did have a reimbursement agreement and if they had to put in 300 feet, but passed other properties and they laterally connected into the line, there was an opportunity for reimbursement. He stated that he would like to see the Board revisit this ordinance and reassess and add that back into the facility because there are going to be developers not only in the Creek District, but also in the University District, where in fact they are going to be placed well ahead of the in tandem development scheme.

President Ferguson asked General Manager Lamb if he had any knowledge of these developments that Mr. Hernandez was talking about.

General Manager Lamb responded that water and sewer studies had been completed on the project Mr. Hernandez was referring to. The water and sewer study is completed as a whole for the project; the entire footprint for the development is looked at. When staff evaluates the water main for the development project, it is be evaluated for the whole. Every developer that comes in is conditioned in the same manner to install the pipe. Whether Mr. Hernandez installs the pipe or a developer across the street, this scenario has had previous conflict when presented to the Board. In the past, it was determined that the costs that would be recovered through the development is not for reimbursement. In the past, there were provisions for that type of payback; that was excluded and removed from the agreement.

Mr. Hernandez stated that that is his point. He agreed that if he had to put in 1,000 feet to get to their project, that would be appropriate. The benefit to the other 900 feet when they attach, they didn't have to put that in. So they are getting free pipe and the only thing they have to pay for is the stub outs and the lateral connection and they don't believe that is fair just because they were the first ones in. Mr. Hernandez further stated that back in the day, they would have put in their 1,000 feet and if somebody attached to it, they would have to pay a portion of that 1,000 feet. He felt that was a fair reimbursement agreement that they lived with for a number of decades and asked the Board to revisit that and reinstitute that into either a modification or a new ordinance.

President Ferguson asked General Manager Lamb if the District still has reimbursement agreements.

General Manager Lamb responded that when the Board revisited this issue, which is clear in the ordinance itself, the intent of the reimbursement agreement was to provide an avenue for individuals who experienced something like a failing septic system and the sewer line needed to be extended, the financial burden would be great to that customer and others would be able to connect to the pipe.

Mr. Hernandez stated that the current policy excludes commercial, industrial, multiple use, multiple tenant, subdivision, parcel maps, and the only thing it does include is the mom and pop that has a failure.

President Ferguson asked Mr. Lamb if the previous reimbursement agreements applied to commercial and mixed use projects.

General Manager Lamb responded yes.

Legal Counsel Scott stated that if the Board wants to go back and revisit the policy, that is a separate issue from the reimbursement request that is before the Board today. It is the prerogative of the Board should it decide to take another look at that issue.

Mr. John Seymour, member of the public, addressed the Board stating that he sensed the Board agrees with Mr. Hernandez and thought it was a fantastic idea. He further stated that he also believed that it's very confusing to say the least. Maybe in the spirit of working together the Board can maybe delay this a week or two so that the Board can allow Mr. Effinger and his client to come back one last time with the General Manager. If they can't work it out, come back and deny his request. But at least give him a shot, work together on it. It is confusing, there is some muddiness that maybe needs to be cleared up and fully agrees with what Mr. Hernandez was talking about to look at that and put that in place as a policy and reimbursement agreement.

President Ferguson asked the General Manager if what Mr. Effinger is talking about is the same as what Mr. Hernandez is talking about.

General Manager Lamb responded no. There are two things. As Mr. Hernandez pointed out, if you build something that is offsite that provides benefit and crosses other properties that it provides a benefit to, that would be what historically has been a reimbursement agreement if there is extra capacity. Mr. Hernandez is speaking about direct frontage and footage. There are two issues with Mr. Effinger's request. First, he believes they feel there was some over sizing – from 12" to 15" – secondly, that they feel that the basic costs should be subject to a reimbursement agreement. That is the difference – there is no direct frontage or benefit to that improvement to anybody else in the immediate area of the off-site improvements, because the adjacent properties are all receiving service.

Mr. Bill Effinger addressed the Board stating that there is a misunderstanding on what they are talking about. They are talking about when other projects tie into that main that they built, he has never been involved in a development in his entire career where they have not been reimbursed for the downstream people that hook in or tie into whatever facility they build. What they are saying is that the main was built and there are to be other people tying into that line, as Mr. Hernandez has described, at a later date and they are willing to wait, the law says up to ten years on a reimbursement, when another building gets built and they tie into that main they built, they get proportionately reimbursed for that portion that they built. It might take ten years, but at least they will get back money that they paid for the benefit of those people that are tying in later.

That is the issue and he didn't think that has been made clear in everything that they've been doing. They are not asking the Board to write a check, they are asking to be reimbursed as new developments tie into the line that they built. And that is so standard in building; it just is. He thanked the Board.

General Manager Lamb stated that whether or not there is confusion, the previous e-mail statement from Mr. Effinger when staff did meet with them, to mitigate the impact of this project. If Mr. Effinger is now saying that they want to get a reimbursement – secondly there will be no connections to this main, everything along the pipeline is served, there would be no direct connections that he is aware of that can provide benefit – we credited that project with \$200,000 in capacity fees towards that issue. So if we are going to open this up toward going back to a reimbursement situation then it needs to be opened up to everything.

Legal Counsel Scott stated that there is no current District policy in effect that would allow for reimbursement in this situation.

Director Gentry stated that he knows there is no urgency in rendering a decision in this matter; he certainly has captured some of the thoughts of Chair as well as others that perhaps we do want to look again at the reimbursement side of things. He further stated that he doesn't know that revisiting that is going to change much about the reimbursement cost for the project in Item 2.2 and the General Manager makes a very good argument that if we are opening it up to those kinds of consideration that we open it up to the District side of it as well. And that has to be clearly understood by everybody if we're talking about fairness and equity. He has not yet heard anything today that tells them that there are other benefitting properties for that additional sewer capacity or sewer size that went in place. However, he is not inclined to act in haste; he hears a lot of confusion on both sides about what is really the intent. Is it a payback or is it a reimbursement or is it this or is it that? He would welcome the opportunity to get that a lot clearer, both for this Board and for the public.

Director Hannan stated she agreed that if the District is going to have to go back and look this over again, that they do have to consider what has already been mitigated to Mr. Effinger, the \$200,000, and what the District did to help him out, the District should get that back. She doesn't know that two weeks from now or three months from now is going to change the way Mr. Effinger feels about this. If the District does have to go back, then we should go all the way back, like the General Manager says.

Director Shell stated that he kind of agrees with that too. That if the District is going to reopen negotiations on an issue that, at this point doesn't have a current policy to cover, it's basically like starting with a new development agreement. And if this is going to be done, he would support that.

Director Poltl stated that he has to agree with some of the things Director Gentry said, which is if there isn't an emergency, certainly it can be delayed. It's been delayed before and it's coming back with the same arguments; he isn't seeing anything clear and not seeing anybody understanding the other side. From the facts seen that was

presented to the Board having to do with the District saying that the reason we should deny this claim, it seems pretty clear why the claim should be denied. It seems as though that everybody agreed to that when the project was built. Now, coming back and stating they didn't realize what they were agreeing to, there were things they didn't know and they would like to renegotiate. He didn't have a reason to want to act today if the Board wants to postpone it another couple of weeks. He didn't really see that anything new was going to come up on this particular project. If the District wants to come up with a new process down the line and look at things a little differently, then that is fine. The Board is now dealing with this particular project and doesn't really see anything that would sway him from denying this claim. However, if the majority of the Board wishes to delay it a couple of weeks, he would be o.k. with it.

President Ferguson stated that she didn't think that anything will be accomplished by delaying this staff recommendation for two weeks. She thinks the arguments are going to relay the same between payback and reimbursement and really agrees with staff that it is not applicable to that section of pipe and stated that she would move staff's recommendation.

10-09-04 MOTION WAS MADE by Director Ferguson, seconded by Director Hannan, and Opposed by Director Gentry, Director Poltl, and Director Shell to deny the request for reimbursement. The Motion did not carry. The item will be continued for two weeks.

Director Gentry stated that it might be useful to offer and invite one more meeting sessions with all the players. Director Gentry addressed Mr. Effinger and urged him that if he can prove their case that they have oversized this and they are benefitting other properties, they had best be prepared to prove it now because, thus far, they have not shown that to this Board. He further stated that on the issue of the reimbursement agreement, this is going to be handled separately and thinks that there is some sense from the Board to revisit the policy. Whether they shape something new or not, will depend obviously on that time and that date. But if they are going to rely on what they have presented thus far, it is not adequate for changing the staff recommendation. He agrees not only in principle but in fact, with Director Poltl and Director Ferguson, they have before them the fact and this Board is prepared to make a decision; they are going to give Mr. Effinger one more shot at this point and urged him to take advantage of the invitation.

CONFLICT OF INTEREST CODE FOR VALLECITOS WATER DISTRICT, BIENNIAL REVIEW AND ADOPTION

General Manager Lamb stated that Government Code Section 87306.5 requires every local government agency to review its Conflict of Interest Code biennially to determine if it is accurate or if the Code must be amended. The changes to the document were minor and identified.

Legal Counsel has reviewed the District's current Conflict of Interest Code and amendments have been made based on Fair Political Practices Commission revisions.

Staff recommended the Board approve the revised Conflict of Interest Code.

10-09-05 MOTION WAS MADE by Director Shell, seconded by Director Gentry, and carried unanimously, to approve the amended Conflict of Interest Code.

RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLECITOS WATER DISTRICT RESCINDING RESOLUTION NO. 1273 AND CONFIRMING THE CITY OF ESCONDIDO'S REPRESENTATIVE TO VOTE IN THE ABSENCE OF VALLECITOS WATER DISTRICT'S REPRESENTATIVE TO THE SAN DIEGO COUNTY WATER AUTHORITY

General Manager Lamb stated that Resolution No. 1273 authorized W.D. "Bill" Knutson with Yuima Municipal Water District to vote in the absence of Vallecitos Water District's representative, Margaret E. Ferguson, to the San Diego County Water Authority.

At the June 2, 2010, Board of Directors meeting, Director Trish Hannan was appointed to replace Director Margaret E. Ferguson as Representative to the San Diego County Water Authority.

Director Hannan has selected Ms. Marilyn Dailey, from the City of Escondido to vote in her absence. Ms. Dailey was reappointed to the San Diego County Water Board of Directors on August 26, 2010, and her term will expire in 2016, concurrent with Director Hannan's term.

10-09-06 MOTION WAS MADE by Director Poltl, seconded by Director Shell, and carried unanimously, to approve the Resolution.

Resolution No. 1362 - The roll call vote was as follows:

AYES: GENTRY, HANNAN, POLTL, SHELL, FERGUSON

NOES:

ABSENT:

ABSTAIN:

RESCHEDULE BOARD MEETING OF DECEMBER 1, 2010, DUE TO AN ANTICIPATED LACK OF QUORUM

General Manager Lamb stated that due to the attendance of Directors Gentry, Hannan, Poltl and Shell at the ACWA Fall Conference (November 29 – December 3, 2010) a lack of a quorum for the Wednesday, December 1, 2010, Board meeting is anticipated. He recommended the Board consider moving the Board meeting of Wednesday, December 1, 2010, to Wednesday, December 8, 2010, at 4:00 p.m.

10-09-07 MOTION WAS MADE by Director Poltl, seconded by Director Shell, and carried unanimously, to reschedule the December 1, 2010 Board meeting to December 8, 2010.

REPORTS

GENERAL MANAGER

General Manager Lamb stated that he sent an e-mail to the Board members regarding the Little Hoover Commission Report on the State Water Project. If any Board member would like a hard copy, let him know and a copy will be provided.

DISTRICT COUNSEL

None.

SAN DIEGO COUNTY WATER AUTHORITY

Director Hannan stated that the Board meeting was held last week. A copy of the Board Meeting Summary was provided to each Board member. Director Hannan stated that nothing is happening with Poseidon – there have been no meetings.

General Manager Lamb stated that a meeting with the Desal partners will take place at the next SDCWA MAM meeting in two weeks.

ENCINA WASTEWATER AUTHORITY

Director Poltl stated at the last Board meeting, a contract for the replacement and rehabilitation was approved.

ACWA REGION 10

Director Gentry stated that the combined Region 6, 7, & 10 Fall Workshop which had been scheduled for October has been cancelled. The next meeting will take place at the fall Conference.

LAFCO

Director Poltl stated that the meeting has been postponed.

DIRECTORS REPORTS ON TRAVEL/CONFERENCES/SEMINARS ATTENDED

President Ferguson noted that written reports were provided electronically. The reports are on file.

OTHER BUSINESS

CITY OF SAN DIEGO WATER PURIFICATION DEMONSTRATION PROJECT

This item was for information only.

EL MONTE VALLEY PROJECT

This item was for information only.

CERTIFICATE OF ACHIEVEMENT – CALIFORNIA HIGHWAY PATROL

General Manager Lamb stated that every year the District undergoes a Biennial Inspection of Terminals. The Program requires all motor carriers operating trucks from terminals located in California to undergo an inspection of each operational terminal to rate their compliance with applicable laws and regulations relating to motor carrier safety. He further stated that Operations and Maintenance Manager Arrant and staff have gone through six years plus one full Administrative Review without a single glitch. Staff has done an excellent job.

ADJOURNMENT

There being no further business to discuss, President Ferguson adjourned the Regular Meeting of the Board of Directors at the hour of 5:07 p.m.

A Regular Meeting of the Vallecitos Water District Board of Directors has been scheduled for Wednesday, September 15, 2010, at 4:00 p.m. at the District office, 201 Vallecitos de Oro, San Marcos, California.



Margaret E. Ferguson, President
Board of Directors
Vallecitos Water District

ATTEST:



Dennis O. Lamb, Secretary
Board of Directors
Vallecitos Water District