

**BAY AREA WATER SUPPLY AND CONSERVATION AGENCY
BOARD OF DIRECTORS MEETING
June 17, 2004 – 7 p.m.
Foster City Community Building, Foster City CA**

MINUTES

1. **Call to Order/Pledge of Allegiance/Roll Call – 7:00 p.m.**

Ira Ruskin, Chair, called the meeting to order and led the flag salute. Acting Secretary Art Jensen called the roll. Nineteen (19) members were initially present with Director Kasperzak participating in the meeting telephonically, constituting a quorum. Director Lee Panza arrived at 7:05 p.m.; Director Irene O’Connell arrived at 7:10 p.m.; Director Chris Reynolds arrived at 7:15 p.m. A list of directors present (22) and absent (6) is attached.

2. **Comments by the Chair:** Mr. Ruskin talked about achievements during the first year of the organization: BAWSCA is up and running, therefore AB 2058 has been implemented; three goals were agreed upon; arbitration of San Francisco’s accounting irregularities has been completed and resulted in significant savings for our customers; the Board agreed that BAWSCA will be a water conservation leader; Art Jensen was hired as general manager; also hired were a small staff and experienced consultants; there is a strategic plan to build a positive public identity. Mr. Ruskin also noted that important progress has been made toward future achievements for the three goals: a meeting has been scheduled with Mayor Newsom of San Francisco on June 28th; steps have been taken to reduce the administrative load on general manager Jensen so he can concentrate on substantive activities; the Board agreed that BAWSCA should be a member of the Regional Water Management Plan so that member agencies would be eligible for state grants for building water projects; the general manager organized a Technical Advisory Committee.

Mr. Ruskin announced that he is forming two committees, the Board Policy Advisory Committee and the Contract Initiation Advisory Committee. He said that only one person will serve on both committees and that is Vice Chair Beecham and that Director O’Mahony has agreed to be Chair of the Board Policy Advisory Committee.

Lastly, Mr. Ruskin shared his view that the meeting with Mayor Newsom of San Francisco on June 28th was an important opportunity to pursue the group’s concerns about whether San Francisco can rebuild the regional water system, concerns about that city’s financial irregularities and operation of the system, and concerns about delays in responding to requests for information. Mr. Ruskin also noted that attendance at the meeting had to be limited to comply with the Brown Act and avoid a noticed meeting which would in turn delay the date of the meeting.

3. **SFPUC Report:** Ms. Cheryl Davis spoke as the Acting SFPUC General Manager and noted that her time in this role will be brief, but she has worked for the San Francisco Water Department for over 20 years, with over a decade spent working for the regional water system. She noted that when she was first Water Supply Treatment and Division Manager, the only significant interaction with customers was a quarterly meeting with operations people and a monthly management meeting. She stated that the level of interaction is expanding, with more one-on-one meetings with the staff of different customer agencies. They recently had a meeting with the managers that attend the Technical Advisory Committee, and have had some special task forces. Ms. Davis said that with the challenges ahead, the relationship is going to have to be more like a partnership that involves continuing interaction and exchange with the agency.
4. **Public Comments:** None
5. **Consent Calendar:** Item E, Approval of Contract for Auditor of BAWSCA, BAWUA and RFA, was pulled.

M/S/C (Cooper/Parle; unanimous) that the Minutes of the May 20, 2004 BAWSCA meeting be approved, the Monthly Budget Status Report be received and filed, the Rules of the Board be amended to reflect a change in the regular meeting schedule, and that Art Jensen be appointed Secretary.

Item E was approval of a contract with C.J. Uhlenber for auditing services. Director Panza raised the issue of a possible conflict of interest, or the possible appearance of a conflict of interest in awarding this contract. He noted that Jeff Ira is employed at C.J. Uhlenberg and would be the principal in charge of the audit, and is also a Redwood City Councilmember, as is Chair Ruskin. Mr. Panza shared his opinion that, in these times of well-publicized accounting irregularities in the corporate world, BAWSCA would want to maintain lack of contact with the entity that is going to do the audit. He also said he knew Mr. Ira, has a lot of respect for him and isn't even suggesting that there might be anything out of line with this, but he was concerned about what he would say too a person who alleged that the award was unfair.

Chair Ruskin said he intended not to vote on the item. Mr. Jensen stated that the solicitation of proposals and the selection was made at the staff level and at the General Manager's level and that there was no discussion with the Chair or any other members of the Board about the selection.

Mr. McDevitt, legal counsel, said that he didn't believe there was a conflict in the sense of either a violation of the political reform act or government code 1090 and, therefore, no legal impediment to BAWSCA engaging the Uhlenberg firm to perform audit work.

Director Panza noted that it would cost more money if we went out for rebid. He also noted that the second bid was \$3,500 higher and would be money well spent to avoid any perception in the public that there might be a back room deal. Director Reed said that

Mr. Ira would be voting on who should represent the Redwood City in this Board, so the relationship is not completely independent and that may be the issue for the auditors. Director Beecham noted that in Palo Alto if there is a conflict of interest on any issue, that member does not participate in the matter and there has been no indication that Chairman Ruskin had any participation in this matter and has already indicated the he is not voting. He, therefore, didn't see a conflict for Chairman Ruskin or the principal of the firm. Director Beecham stated there will be many cases of contracts in the future where someone knows someone, but that should not prevent a relationship if they otherwise are vetted properly, go through the appropriate public process and come out on top and he moved for adoption of Item E.

Chair Ruskin requested the Vice Chair withdraw his motion and lead the meeting. Mr. Ruskin stated that he had nothing to do with this process and will not vote on the matter so there is no perception of conflict.

Director Panza reiterated his concern that in politics appearances are in some cases more important than realities. He said the degree of detachment that we should be trying to maintain is not present.

Director Kasperzak asked legal counsel if there would be any type of extended 1090 problem with a contract between BAWSCA and Uhlenberg. Mr. McDevitt replied that even under the most extended or liberal reading of 1090 he did not see a problem.

Director Gage asked if there was no conflict, was BAWSCA obligated to accept the lowest bidder. Mr. McDevitt replied that the agency's statute doesn't require bidding or accepting low bids.

Director Cooper inquired as to whether there was a contract termination date. Legal Counsel, Ray McDevitt, stated that the proposal is for three years which is the standard audit term. Director Cooper replied that, although she is not taking a stand on the issue, it is a perception problem rather than a legal one.

Director Beecham asked if Redwood City Council Member Jeff Ira, since he would have a financial interest in what this agency does, would be precluded by conflict of interest rules from any participation at his council level on issues relative to BAWSCA. Counsel McDevitt answered that it would be very difficult to see any votes on the Redwood City Council that would have an impact on the audit contract, but if there were, he could remove himself from that vote.

Director O'Mahony asked if the Board wanted to consider the additional requirement that Mr. Ira not be the partner who supervises the project. Mr. Jensen said it is not a large organization and he would have to review that before answering.

Director Kasperzak asked if the \$500 income rule would apply and preclude Mr. Ira from participating in anything involving BAWSCA. Mr. McDevitt said \$200 within the past twelve months is the threshold and triggers the necessity to decide whether the vote

would have a material effect on the entity. It is not an automatic disqualification. It would apply when evaluating the impact of a vote on his contract with BAWSCA, not just any BAWSCA matter. Director Kasperzak noted that the amount of discussion on the matter causes him to agree with Director Panza.

Director Panza asked if there was no issue, why did the Chair feel it necessary to leave the room. Dr. Beecham replied that Director Ruskin had indicated that he intended not to participate in the vote or discussion.

M/S/C (Beecham/O'Connell; Panza, Livengood, Reed, Cooper, Fanon, Kasperzak opposed; 15-6) that a contract for audit services be completed with CG Uhlenberg.

6. Action Calendar:

A. Public Hearing and Possible Adoption of an Ordinance on Board Compensation:

Mr. Jensen reported that currently the Directors receive \$100 for attendance at Board meetings and no remuneration for participation in committee meetings. At the last meeting, the board was informed that directors could authorize compensation for attendance at committee meetings and other events in service to the board, but no more than \$100 per day. To do so requires a public hearing and the Board set this hearing date. The hearing was noticed and published in three newspapers. No written comments were received. Mr. McDevitt confirmed that the agency had met all of the legal requirements in calling this hearing. The public hearing was closed as no members of the public wished to speak.

Director Livengood stated that although it will not impact him because he is not available for daytime committee meetings, he felt it was appropriate action to allow for compensation for these meetings, knowing how much work goes into participation on a committee. Director Gage asked for a list of who would be serving on the proposed committees. Chair Ruskin noted that he hadn't completed the selections, but that there will be nine members on each committee with only one person serving on both committees.

Director Cooper noted that most public agencies pay for Board meetings and Committee meetings. It acknowledges the worth of their work. Director Wykoff stated that as a matter of personal choice he would be opposed, but that he did not want it to be interpreted that he felt it is not right.

Director Reed voiced support of the motion, but asked for opinion from counsel to confirm that the Board was not in conflict of interest on this item. Mr. McDevitt confirmed that there was no conflict. Mr. McDevitt also noted that the ordinance contained some choices, such as when the ordinance would become effective. As written, the first month that payments could begin would be September.

M/S/C (Cooper/Livengood; for: Beecham, Cooper, Craig, Hershman, Kasperzak, Livengood, Mickelsen, O'Mahony, Parle, Reed, Reynolds, Risch, Seidel, Vella, Weed; opposed: Fannon, Gage, Goff, O'Connell, Panza, Ruskin, Wykoff; passed 15-7) that the Board shall receive compensation in the amount of \$100 per day for attendance at meetings of the Board, meetings of committees of the Board, and for each day's service otherwise rendered "by request of the Board" and that this compensation shall not exceed \$400 per month.

B. Approval of Revised Position Descriptions and Benefits Adjustments: Mr. Jensen stated that a review was conducted of the positions of Office Manager, Senior Water Resources Planner and Senior Administrative Analyst and changes have been recommended to make sure that the descriptions and titles are consistent with the actual job duties. It has also been recommended that the top step salary range be changed on two of the positions, and that the title be changed on one of them. He noted that the Start-Up Advisory Committee had recommended the changes by a unanimous vote.

M/S/C (Parle/Vella; unanimous) that the recommended changes be made to the job descriptions, changes be made in two of the titles, and the top step salary ranged be changed on two of the positions.

C. Approval of New Position: Mr. Jensen requested approval for the new position of Assistant to the General Manager. This individual would provide general administrative and analytical support, prepare analyses and recommendations for programs, coordinate budget preparation, and provide staff support to the Board and the committees as required, as well as other duties. He noted the Start-Up Advisory Committee's unanimous recommendation for board approval.

M/S/C (Parle/O'Connell; unanimous) that the Board authorizes the creation of the position of Assistant to the General Manager and that the initial top step salary be set at the median of the market, \$71,736 per year.

D. Approval of Proposed Budget of Expenditures and Revenues for FY 2004-2005: Mr. Jensen reviewed the major components of the proposed budget which the Start-Up Advisory Committee had unanimously recommended be approved. Director Goff asked if the COLA adjustment in the budget superseded what had just been approved in Items B and C and if the proposed budget already included the amounts approved in Item C. Mr. Jensen stated that the COLA adjustment in the budget would be in addition to the salaries in the earlier items, because those survey results are based on market data that are now one year old. The proposed budget does contain funds for the proposed salaries.

Director Panza asked what effect the \$124,000 being drawn from the reserves would have upon the reserves. Mr. Jensen noted that the current reserves were around \$300,000, so this would draw down less than half of the reserves. Director Kasperzak asked if the carryover from this year would go to the BAWSCA reserve. Mr. Jensen explained that the funds being used this year are from the BAWUA assessments and so any remainder

this year goes into the BAWUA reserve. Next year any unused money from BAWSCA assessments will go into a BAWSCA reserve

Director Panza questioned what a prudent reserve for BAWSCA to maintain would be and if the remaining reserve is sufficient. Mr. Jensen replied that he would be bringing a formal BAWSCA Reserve Policy before the Board for consideration in September. Director Reynolds asked for examples of what constituted miscellaneous income. Mr. Jensen stated that some of it was interest income and some of it was payment for tours.

M/S/C (Wykoff/Seidel; unanimous) that the Board adopt the proposed budget comprising total expenditures of \$1,806,490 and revenues consisting of \$1,641,995 in assessments, \$124,095 from the BAWUA general reserve and approximately \$40,400 from other sources.

Director Kasperzak asked if the Board had any interest in directing staff to investigate the possibility of doing a two-year budget. Director O'Connell stated that because BAWSCA was a new agency, she felt that we should wait until the end of this budget year to consider a two-year budget. Director Wykoff stated that he does not agree with two-year budgets because of the possibility of shortfalls in revenue and the problems that followed. Director Vella commented that many two-year budgets have to be revised at the end of the first year and in the economy we currently have, you can lose control. Director Cooper agreed that now is not the time for a two-year budget. There are uncertainties regarding how the contract with San Francisco will change or if the State will have an impact on the budget. She did feel that there was an advantage to a two-year budget in stable times. Director Ruskin suggested that the Board might want a two-year planning and budget cycle in the future, but recommended staying with one-year now.

E, F, G, H, and I Approval of Contracts for Consultants: Chair Ruskin stated that each of these contracts had been unanimously approved and recommended by the Start-Up Committee after significant discussion.

M/S/C (O'Connell/Parle; unanimous) that the Board approve the General Manager to execute contracts with Hanson Bridgett for legal services, Harlan L.P. Wendell for strategic counsel, Stetson Engineering for master contract water use analyses, Brown and Caldwell for engineering services, and Kelling, Northcross and Nobriga for financial services.

7. Reports

A. Policy Calendar Update: Mr. Jensen noted that most of the items are being completed in June or July. A new policy calendar will be presented in July that will extend through the next fiscal year.

B. Progress Report on Items due by June 30th: Referring to a list in the agenda packet, Mr. Jensen said that he would discuss items 7 through 13 which are due by June 30, 2004. Under item 7, four cost-effective water conservation programs have been

implemented. The fifth was not due to resource limitations. Item 8, to determine water availability to BAWSCA agencies following a major event, and item 9, to determine the preparedness of communities to cope with outages, have not been completed, pending information that both BAWSCA and San Francisco are currently developing. These items have been re-scheduled for FY 2004-05. Item 10, the assessment of water supply needs and how to meet them, is being prepared, will be completed by the end of June, and updated next year when water conservation potential has been assessed.

Mr. Jensen continued with items 11 and 12, updating San Francisco's progress implementing AB 1823 and providing an updated assessment on their ability to implement the CIP. An oral report will be provided to the board in July after the completion of the report by Brown and Caldwell. Mr. Jensen then moved to item 13, drafting principles for fair allocation of future costs, and Item 14, which was inadvertently left off the list, developing elements of a new water service contract. He said work has been performed and that these items will be reviewed with the ad hoc Contract Initiation Advisory Committee.

C. Update on Health Officials' Evaluation of Chloramination: Mr. Jensen said that some customers have raised questions about the health impact of chloramines. Since the April 15th Board meeting the staff has focused on obtaining statements from qualified county health officers and providing regular status reports to the Board. The SFPUC has agreed to lead the effort to obtain the opinions of the health officers in Alameda, Santa Clara and San Mateo Counties. Mr. Jensen stated that Dr. Katz from the San Francisco Department of Public Health considers chloramine to be a good choice and opinions are expected from the other three county health officers by the end of June. These opinions will be forwarded to the Board immediately. Mr. Jensen also spoke about a legal action filed against San Francisco on behalf of a Peninsula customer asking that the use of chloramines be stopped. There is debate continuing on the issue of health impacts. Once the opinions are in from the county health officers, the Board can evaluate the statements and discuss possible further action.

Director Cooper asked if East Bay MUD had been contacted since they have been using chloramine in the water for four or five years. Mr. Jensen responded that they as well as other agencies and water districts had been contacted including several BAWSCA members that converted to chloramines years ago. As to customer reactions in those areas, he noted that with any chemical changes there are often concerns or complaints at the time of the change. He was not aware of any persistent issues or legal cases.

Denise Johnson-Kula, the individual on whose behalf the recent legal action was taken, and a resident of Menlo Park, spoke about her experience after chloramine was added to the water. She has started experiencing severe asthma attacks when showering. She discussed her medical treatment and her investigation into EPA documentation of problems associated with chloramination. She stated that the EPA documents show there are at least fourteen choices for disinfectants, with chloramine being the cheapest. Ms. Johnson-Kula also discussed her attempts to get information on removing the ammonia through water filtration at her residence. She stated that the lawsuit is going forward.

Mr. Jensen requested copies of some of the materials that Ms. Johnson-Kula had obtained, including the actual written statements from her doctors. Ms. Johnson-Kula was unsure if the doctors' statements were public.

D. Assessment of SFPUC Capital Improvement Program Implementation: A report on the Brown and Caldwell work will be given in July. Mr. Jensen said that he is in the process of developing some measures and milestones that can be used to track progress and provide an early warning. The first issue is determining San Francisco's plan of progress and whether they are on schedule and, if not, what is the significance to public health and safety. He is looking at critical path milestones, actual spending versus budget, and physical progress versus plan. Mr. Jensen said that critical path milestones, activities that delay future work if they do not occur on time, are very important and that with 37 or 38 complex, inter-related projects it can be very complicated. The question is how do we tell today if a project will get done on schedule and whether a variance will have a major impact on the schedule. He also discussed the requirements of AB 1823 which required that by February 1, 2003, San Francisco submit to the State a Capital Improvement Program, which was done. It also stipulated that the schedule of projects had to show completion of projects equivalent to 50% of the cost of the total program by 2010 and the balance by 2015. San Francisco is free to modify the program, schedules, and projects however necessary and when they do, those schedules in the future do not have to meet the 2010 requirement. However, two state agencies must review any delayed projects and provide a public report on whether the delays cause an increased risk to public health and safety.

A graph was shown with timelines comparing the SFPUC schedule adopted in May 2002, the SFPUC's revised plan adopted in August 2003 and a proposed revision to be considered by the commission this summer. The proposed SFPUC plan allows for more realistic timeframes to complete environmental work and completes all of the work two years before the 2015 schedule. It is a more aggressive plan because it has longer periods for environmental work and more construction being done simultaneously. The question remains whether it can be met. Intermediate milestones and the critical path milestones will be monitored. Mr. Jensen noted that the availability of reliable and consistent information is important for them to evaluate the progress.

It was asked if there was a designated person for information from SFPUC or if the staff has to go to different people and departments. Mr. Jensen stated that SFPUC was forthcoming with information, but the accuracy and consistency was the problem. Director O'Mahony asked why only two of the 9 seismic projects would be completed by 2010. Mr. Jensen said that a more detailed answer would be available at the next Board meeting.

Mr. Reed asked if there were any assumptions when bonded debt will be required and how much of the project can be funded with commercial paper. Mr. Jensen said he assumed those decisions will be made close to the time of the issuance of debt and the schedule for selling bonds has been changing and is not reliable at this point.

8. **Directors' Discussion: Comments, Questions and Agenda Requests:** Director Fanon asked who would be participating in the meeting with the Mayor. Chairman Ruskin said the list of twelve people attending included: Bern Beecham, Mike Goff, Marc Hershman, Chuck Kinney, Bob Livengood, Pete Nelson, Irene O'Connell, Rosalie O'Mahony, Aldyth Parle, Chuck Reed, John Weed and Ira Ruskin. Mr. Jensen explained the process for calling the members regarding attending the meeting.
9. **Date, Time and Location of Next Meeting:** Next meeting will be held July 15th at 7:00 p.m. in the Wind Room, Foster City Community Center.
10. **Adjournment:** Director Parle moved adjournment; seconded by Director Parle. Following a show of hands, the meeting was adjourned at 9:30 p.m.

Respectfully submitted,

Arthur R. Jensen, General Manager and Secretary

ARJ:js

Attachments: 1) Attendance Roster

BAY AREA WATER SUPPLY AND CONSERVATION AGENCY

Board of Directors Meeting

June 17, 2004

Attendance Roster

Present:

Bern Beecham	City of Palo Alto
Roberta Cooper	City of Hayward
Robert Craig	Westborough Water District
John Fannon	Town of Hillsborough
Stan Gage	Los Trancos County Water District
Mike Goff	Stanford University
Marc Hershman	City of Millbrae
Mike Kasperzak	City of Mountain View
Robert Livengood	City of Milpitas
Chris Mickelsen	Coastside County Water District
Irene O'Connell	City of San Bruno
Rosalie O'Mahony	City of Burlingame
Lee Panza	City of Brisbane
Aldyth Parle	City of Santa Clara
Chuck Reed	City of San Jose
Chris Reynolds	Skyline County Water District
Tim Risch	City of Sunnyvale
Ira Ruskin	City of Redwood City
Dan Seidel	Purissima Hills Water District
Louis Vella	Mid-Peninsula Water District
John Weed	Alameda County Water District
Rick Wykoff	City of Foster City

Absent:

Randy Breault	Guadalupe Valley Water District
Chuck Kinney	City of Menlo Park
Peter Nelson	California Water Service Company
Tom Piccolotti	North Coast County Water District
Adrienne Tissier	City of Daly City
David Woods	City of East Palo Alto