

**SOUTHERN NEVADA WATER AUTHORITY
BOARD OF DIRECTORS MEETING**

2011-09-15

APPROVED MINUTES

Call to Order

09:03 AM

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Molasky Corporate Center, Southern Nevada Water Authority Board
Chambers,
100 City Parkway, Suite 700 (7th floor)
Las Vegas, Nevada

DIRECTORS PRESENT

Shari Buck Chair, Mary Beth Scow Vice Chair, Sam Bateman, Bob Coffin, Tom Collins, Duncan McCoy, Steve Sisolak

DIRECTORS ABSENT

STAFF PRESENT

Pat Mulroy, John Entsminger, Phil Speight, Rick Holmes, Jim Taylor

OTHERS PRESENT

ITEM NO.

Unless otherwise indicated, all members present voted in the affirmative.

COMMENTS BY THE GENERAL PUBLIC

There were no members of the public wishing to speak.

1. Approval of Agenda & Minutes

FINAL ACTION: A motion was made by Director Collins to approve the agenda for this meeting and the minutes of the regular meeting of August 18, 2011. The motion was approved.

CONSENT AGENDA

Items 2 - 8 are routine and can be taken in one motion unless a Director requests that an item be taken separately.

FINAL ACTION: A motion was made by Director Sisolak to consider agenda item numbers 5 and 6 separately. Director Collins made a motion to follow staff's recommendations on items 2 - 4 and 7 - 8. The motion was approved.

Items 5 and 6 were taken in one motion

5. Approve and authorize the General Manager to enter into an assistance agreement between the Bureau of Reclamation and the Authority, in substantially the same form, to accept a grant for an amount not to exceed \$611,590 to support the Authority's Water Smart Landscape Rebate Program, and authorize the General Manager to approve future modifications only if the future modifications do not fiscally impact the Authority.

6. Approve and authorize the General Manager to enter into an assistance agreement between the Bureau of Reclamation and the Authority, in substantially the same form, to accept a grant for an amount not to exceed \$100,000 to support the Authority's Water Smart Landscape Rebate Program, and authorize the General Manager to approve future modifications only if the future modifications do not fiscally impact the Authority.

Director Sisolak asked how the Authority's Water Smart Landscape Program was funded. Pat Mulroy stated that bond proceeds are used to fund the program. Director Sisolak asked if using bond proceeds for the program was in compliance with the bond covenant ordinances. Mrs. Mulroy said that it was.

FINAL ACTION: A motion was made by Director Collins to follow staff's recommendations. The motion was approved.

BUSINESS AGENDA

9. Award Contract No. 810G 01 C1, Duck Creek Confluence, Upper Narrows, and DU Wetlands No 1 Weir Structures, to Las Vegas Paving Corporation for the amount of \$16,987,000, authorize a change order contingency amount not to exceed \$1,690,000, and authorize the execution of the contract agreement or take other action as appropriate.

Pat Mulroy said that the Authority received a bid protest from the number three bidder. She said that there was enough substance to the protest that awarding the bid at this time could open the Authority up to potential litigation. Therefore, staff was recommending that the board reject all bids and then rebid a modified project package. Director Collins said that the project should be modified in such a way that would prevent bid shopping and to rebid the project in a timely manner. Mrs. Mulroy indicated that the new bid award recommendation will likely be on the Authority's October agenda.

FINAL ACTION: A motion was made by Director Collins to reject all bids. The motion was approved.

10. Approve a professional services agreement between the Board of Regents, Nevada System of Higher Education on behalf of the University of Nevada, Reno and the Authority to continue a dendrochronologic study to assess the potential impact of prolonged drought on various basins in eastern Nevada for an amount not to exceed \$138,500 over a two-year period.

FINAL ACTION: A motion was made by Director Collins to reject all bids. The motion was approved.

11. Approve an agreement between the Board of Regents, Nevada System of Higher Education, on behalf of the Desert Research Institute, and the Authority to continue the assessment of the potential impact of climate change on selected hydrographic basins in eastern Nevada for an amount not to exceed \$342,000 over a two-year period.

FINAL ACTION: A motion was made by Director Sisolak to follow staff's recommendation. The

motion was approved.

12. Approve and authorize the General Manager to execute the Stipulation for Withdrawal of Protests between the U.S. Forest Service and the Authority regarding U.S. Forest Service protests to the Authority's Spring Valley water right applications.

FINAL ACTION: A motion was made by Vice Chair Scow to follow staff's recommendation. The motion was approved.

13. Appoint and approve the Resolution Appointing Secretary, Acting Secretary, Treasurer, and Acting Treasurer.

FINAL ACTION: A motion was made by Director Collins to follow staff's recommendation. The motion was approved.

14. Adopt a resolution approving the issuance of Las Vegas Valley Water District refunding bonds in the maximum principal amount of \$450,000,000 to refinance certain outstanding bonds for the Southern Nevada Water Authority.

Pat Mulroy stated that this item would refinance an additional \$150 million of the Authority's bonds to take advantage of significantly lower interest rates at this time. Previously the board approved refinancing \$300 million; this item would increase the total refinancing to \$450 million. There would be no restructuring or moving the principal into the future.

Director Sisolak asked if the item included compensation for bond counsel. Mrs. Mulroy confirmed that it did. Director Sisolak asked for clarification on how bond counsel is contracted to perform work for the Authority. Mrs. Mulroy said that each bond matter is accompanied by a term of engagement letter to bond counsel that details the work. Jim Taylor, General Counsel, said that a term of engagement letter between bond counsel and the Director of Finance was used for this bond refinance. He also said that the item before the board today was to discuss the increase of the bond refinance amount.

Director Sisolak asked how bond counsel determined their rates. Mrs. Mulroy explained that prior to a bond issue, bond counsel provides the Director of Finance with a cost estimate of labor and submits a final invoice following the sale of bonds, which have historically been below the estimate. Director Sisolak said that these invoices did not include any rates or hours worked, but only a final amount.

Mrs. Mulroy said that the Director of Finance has the ability to audit the invoices if the amounts were higher than the original estimates. She said that the Director of Finance never felt it was necessary to audit the statements since the invoices were typically below the estimate. Director Sisolak expressed concern that many local agencies, including the Authority, are paying significant amounts to bond counsel without detailed, hourly invoices. Mrs. Mulroy indicated that with future bond matters, the Authority could request detailed invoices from bond counsel.

Director Sisolak asked how much the Authority pays for bond counsel services, and Jim Taylor responded that the Authority is charged \$450 per hour for a partner. Director Sisolak asked how the rate was negotiated; Mrs. Mulroy indicated that the Authority's previous finance director negotiated these terms. John Swendseid, the Authority's bond counsel, outlined the process of how his firm's rates are determined and are contained within agreements with various local governments. Director Sisolak expressed concern that Mr. Swendseid's firm charges different rates for the various local entities.

Chair Buck asked General Counsel whether discussing bond counsel rates among other local governmental entities was germane to the current agenda item. Mr. Taylor replied that Director Sisolak was within his rights to make the points he made, however, the subject of the agenda item was limited to whether to increase the bond refinancing amount. Director Sisolak said that his questions were related to this bond issue.

Director Sisolak asked questions about the scope of the item that was before the board for consideration. Mrs. Mulroy clarified that the board was being asked to increase the amount of the Authority's bond refinancing from \$300 million to \$450 million to take advantage of lower interest rates, saving an additional estimated \$7 million. The resolution to conduct the refinancing was previously approved by the board of the Las Vegas Valley Water District, acting on behalf of the Authority.

Director Coffin asked if questions were raised regarding bond counsel rates when the Authority's board previously approved the \$300 million bond refinancing request. Mrs. Mulroy said that there were no questions regarding bond counsel rates. She indicated that she could bring an item on a future agenda to discuss the bond counsel issue.

Director Collins asked counsel a procedural question about a call for the question. Mr. Taylor responded that under the board's rules of procedure, a vote must immediately follow a call for the question; discussion on the issue continued as no call for the question was made.

Director Bateman asked whether the agenda item addressed the bond resolution issues brought up by Director Sisolak. Mr. Taylor opined that it was not related to the resolution since the resolution was already approved. Director Bateman also indicated that he would like to see a future agenda item that discusses bond counsel rates.

Director Sisolak said that he would not support a motion to approve the refinancing since he felt that doing so was in violation of two covenants in the resolution.

ACTION: A motion was made by Director Coffin to follow staff's recommendation. The motion failed with Directors Sisolak and Bateman voting no; the motion required approval from all five of the purveyor members, which included the City of Henderson.

ACTION: A motion was made by Director Collins to reconsider the item. The motion was approved with Director Sisolak voting no.

FINAL ACTION: A motion was made by Director Collins to follow staff's recommendation. The motion was approved with Director Sisolak voting no.

15. Receive an informational presentation from staff regarding the use of Restrictive Conservation Easements and Conservation Easements in the Water Smart Landscape Program, and if appropriate, approve a process by which a Restrictive Conservation Easement and Conservation Easement may be removed and authorize the General Manager to institute the process.

Rick Holmes described that bond proceeds fund the Authority's Water Smart Landscapes Program. As such, the Authority requires a covenant on the property that restricts the homeowner from reinstalling turf or water features on the property.

Under the terms of the covenant, the Authority may remove the restrictive covenant if needed;

however, there has been no process to do so since removing the covenant was never requested until now. The proposed process before the board was to require a property owner to return all rebates given plus interest and an administration fee to the Authority.

Director Sisolak asked counsel to discuss the section of the covenant that requires this action. John Swendseid indicated that the covenant the Authority maintains is within an agreement between the Authority and the Water District. Director Sisolak reiterated that he felt the refinancing of bonds approved earlier was in violation of the same section in the bond covenant that is used in this situation.

FINAL ACTION: A motion was made by Vice Chair Scow to follow staff's recommendation. The motion was approved with Director Sisolak voting no.

16. Receive an update from staff on water resources including, but not limited to, drought conditions in the Colorado River Basin, the results of the implementation of the Authority's Water Resource and Conservation Plans, activities on the Colorado River, and on the development of in-state water resources.

John Entsminger provided the board with an update regarding drought conditions along the Colorado River. A copy of his presentation is included with these minutes.

Director Coffin commented on a recent trip he took through Texas and remarked how Texas' drought challenges are similar to southern Nevada's.

NO ACTION REQUIRED

Public Comment

There were no members of the public wishing to speak.

Adjournment

There being no further business to come before the board, the meeting adjourned at 9:56 a.m.

APPROVED:

Shari Buck, Chair

Patricia Mulroy, General Manager

Copies of all original agenda items and minutes, including all attachments, are on file in the General Manager's office at the Las Vegas Valley Water District, 1001 South Valley View Boulevard.