MINUTES OF THE REGULAR MEETING
& OF THE
ENGINEERING COMMITTEE MEETING

June 22, 2020

At approximately 7:30 a.m. President Monin called the Regular meeting to order.

Director Freshley led the Pledge of Allegiance to the flag.

Committee Members JOSE F. VERGARA, MARK MONIN, KATHRYN FRESHLEY, MIKE GASKINS, and KAY HAVENS participated via Zoom.

Also participating via Zoom were DENNIS P. CAFFERTY, General Manager, JUDY CIMORELL, Human Resources Manager, NEELY SHAHBAKHTI, Finance Manager/Controller, GILBERT J. GRANITO, General Counsel, RICK OLSON, Operations Superintendent, BOBBY YOUNG, Principal Engineer, RORY HARNISCH, Project Engineer, JENNIFER PANCAKE, Special Counsel, CAROL MOORE, Laguna Woods City Council Member, and POLLY WELSCH, Recording Secretary.

Oral Communications/Public Comments

There were no comments.

Items Received too Late to be Agendized

President Monin asked if there were any items received too late to be agendized. Mr. Cafferty replied no.

Attorney Report

Mr. Granito reported that a Closed Session is needed to discuss item #1 as agendized in today's Closed Session agenda.

Closed Session

At approximately 7:45 a.m. the Board went into Closed Session. Also at this time, Ms. Shahbakhti, Ms. Cimorell, Ms. Welsch, Ms. Moore, Mr. Olson, Mr. Young, and Mr. Harnisch left the meeting.

Open Session Report

At approximately 8:20 a.m. the Board returned to Regular Session. Also at this time Ms. Shahbakhti, Ms. Cimorell, Ms. Welsch, Ms. Moore, Mr. Olson, Mr. Young, and Mr. Harnisch returned to the meeting.

Mr. Granito reported that the Board did go into Closed Session at approximately 7:45 a.m. to discuss and deliberate on item #1 of today's Closed Session agenda.

Mr. Granito reported that during the first phase of the Closed Session discussion pertained to the Quiet Title Action that the District has been pending for some time with regard to solidifying and clarifying the District's ownership in the Oso Lift Station site, and during this phase of the Closed Session the Board authorized Special Counsel to move forward with the Quiet Title Action.

Mr. Granito reported that during the second phase of the Closed Session General Counsel, Special Counsel, and the General Manager commented on the risk associated with moving forward with awarding the construction contract for the improvement project while the Quiet Title Action is pending and that risk analysis was shared with the Board. No further reportable action was taken.

At approximately 8:25 a.m. Ms. Pancake left the meeting.

Engineering Committee Meeting

Director Freshley called the Engineering Committee Meeting to order at 8:20 a.m.

Consent Calendar

1. Consider approving the minutes of the May 26, 2020 Engineering Committee meeting.

Director Freshley asked for a Motion.

Motion: Vice President Gaskins made a Motion, seconded by Director Havens, and unanimously carried across the Board to approve the Consent Calendar.

Roll Call Vote:

Director Freshley	aye
Director Havens	aye
President Monin	aye
Vice President Gaskins	aye
Director Vergara	aye

Engineering Action Items

Cal Trans I-5 Widening Project

Mr. Young stated that we had a formal bid process as reflected in the Board package.

Mr. Young stated that 4 bidders submitted bids last Wednesday which were opened publicly and read aloud and having done our bid analysis, the conclusion was that Paulus Engineering, Inc. has submitted the lowest bid.

Mr. Cafferty stated that the District has previous experience with Paulus Engineering, Inc. He further stated that we are prepared from a construction standpoint to proceed, but staff is still working out agreements with Caltrans necessary to accommodate the expansion of the I-5 freeway.

Mr. Cafferty stated that staff has been negotiating with Caltrans for some time on who is responsible to pay for the relocation costs. He further stated that they have agreed to pay a portion, which is shown in the staff paper as $328,000 of the total cost of $769,000.

Mr. Cafferty stated that staff has prepared utility agreements that the Board approved at a previous meeting, which staff has signed and returned to Caltrans. He further stated that we have not received the executed agreements back from Caltrans.

Mr. Cafferty stated that we will not proceed until we have received the executed signed agreement from Caltrans documenting that they will pay for their portion of the project. He further stated that the remaining amount of work amounts to approximately $440,000 and is work that we have not yet agreed who is responsible to pay, as the District believes the State should pay for this portion but Caltrans feels the District should pay for it.

Mr. Cafferty stated that a large portion of these utilities are in the right-of-way of Avenida de la Carlota (Carlota) which is owned by the City of Laguna Hills, and the work we are having to do is not necessitated by an improvement to Carlota. He further stated that Caltrans is arguing that we have no superior occupancy rights.

Mr. Cafferty stated that staff feels this project is only necessary to accommodate the expansion of the I-5 freeway and Caltrans should be covering the costs. He further stated that there are provisions within the Caltrans right-of-way manual stemming from the Streets and Highways Code that deal with conflicts such as this and our interpretation would suggest that there is a means to proceed in which Caltrans pays for the work and the dispute gets settled later.

Mr. Cafferty stated that the next step will be to submit a letter indicating that while we still maintain that this should be Caltrans cost, if they want to proceed with the work so that we can accommodate their schedule, this would be the path to do so. He further stated that we are aware that Santa Margarita Water District (SMWD) is experiencing a similar issue in the exact same area and their work is close to $4 million, and they have proposed a similar alternative to get the project going, but Caltrans has not responded to them.

Director Havens stated that when she looks at a bid and sees such a wide span of cost differences, she questions why. Mr. Cafferty replied it's difficult to understand the minds of contractors, but factors may include where they are located and their current workload.

Vice President Gaskins stated that in the staff paper under the Recommended Action it states that according to "previously signed agreements with Caltrans these costs will be reimbursed by Caltrans", and asked is this a done deal. Mr. Cafferty replied that the $328,000 worth of work was agreed to by Caltrans that they would pay, so it's the $440,000 worth of work that is being negotiated. He further stated that staff is asking the Board for approval to award construction contingent on having the executed Utility Agreements in place with Caltrans.

Mr. Cafferty stated that the one Agreement will say that Caltrans will pay for a certain amount of work and the other Agreement will likely say that the work is still in dispute, that they will advance the funding, and will be resolved at a later date. He further stated that there will remain the potential that we are responsible for the $440,000 cost either via a compromise or litigation.

Mr. Cafferty stated that Caltrans has asked that this work be done by the middle of October, so staff is asking the Board to authorize staff to move forward with the Contractor contingent upon receiving the signed Agreements indicating that Caltrans will either pay, or pay and work under dispute.

Mr. Granito reported that when there is a dispute as to who is liable, the law and Street and Highway Code Section 706 as procedurally reflected in Chapter 13 of Caltrans Right of Way Manual would compel Caltrans to fund the project based on an Agreement, which could reflect a compromise.

Mr. Granito reported that after Caltrans funds the project, they have 4 years to file a lawsuit to refund their costs.

Director Vergara stated that he feels it would be in the best interest of Caltrans to get this project moving and questioned whether the District has any leverage. Mr. Cafferty replied that Cal Trans has two big concerns; one is the precedent of paying the $440,000 cost that they feel they are not liable for, and they feel that paying for these costs is a gift of public funds.

President Monin asked do we know how Santa Margarita Water District (SMWD) is handling their issue. Mr. Cafferty replied that they are also asking Caltrans to front the costs with reference to their right-of-way manual, and when Mr. Cafferty contacted SMWD last week they had not received a response from Caltrans.

President Monin stated that he feels we will lose a lot of leverage and he feels we have been good stewards and therefore should not go ahead with a construction contract until Caltrans agrees to assume the liability. President Monin further stated that he is not comfortable with being on the hook for the liability for as much as four years until resolved.

Mr. Granito suggested continuing the discussion to Thursday and allow staff to make further contact to Caltrans and determine any reaction to the suggestion of Caltrans funding the project until the dispute is resolved.

Director Freshley stated that she is concerned about the District being an impediment to a project that is important to the County. President Monin stated that he agrees staff should contact Caltrans to get further information.

Director Vergara stated that "gift of public funds" mentioned by Caltrans, and asked if this is true when the State spends money on a public agency project, or only when spending money on a private entity. Mr. Cafferty replied that their letter stated that they interpret, per their right-of-way manual, that they are not responsible to pay for this work and would therefor consider it a gift of public funds.

Mr. Cafferty stated that Caltrans has indicated that they have some sort of cooperative agreement with the Orange County Transportation Authority which represents all the Cities and they feel they have some type of superior right-of-way. He further stated that we asked for a copy of the agreement, but they are checking to see if it is a public document that they can disclose.

President Monin asked how long this work would take. Mr. Cafferty replied that it would have to be done in phases with some of the work being done in a couple months and the remainder coordinated with the freeway construction.

Director Vergara suggested moving on with the construction contract so that we don't delay this project, but he also supports further discussion on Thursday to see if staff can provide additional information from Caltrans. He further stated that we could negotiate with Caltrans on the project costs.

Vice President Gaskins agrees with the action item as presented, with the understanding that an Agreement will be in place to be reimburse for the $440,000 costs from the State prior to authorizing the work, but he is also ok with holding off discussion until Thursday.

Director Havens stated that she feels we should get the signed Agreement from Caltrans and have assurance moving forward, and would not like to hold up the project.

Director Freshley stated that we are not funding this project from our Reserves because Caltrans would fund the project. Director Freshley further noted that Caltrans can come back later over the next four years to come back to request the funds from the District if they feel they were not responsible. Mr. Cafferty clarified that the proposed approach would have Caltrans pay for the project up front with the understanding that they may come back later arguing that it was always the District's liability and ask us to pay the $440,000 cost.

Director Freshley stated she did not want to commit to any compromise until research regarding the District's occupancy rights is complete.

Director Freshley asked for a Motion.

Motion: President Monin made a Motion, seconded by Director Vergara, to continue further discussion on this project at Thursday's Board meeting on June 25, 2020 after staff has had more discussion with Caltrans.

Roll Call Vote:

Director Freshley	no
Director Havens	aye
Director Vergara	aye
President Monin	aye
Vice President Gaskins	aye

Motion passes 4-1.

Oso Lift Station Improvement Project

Mr. Cafferty stated that we are proposing to award the construction contract with an encroachment permit from the City. He further stated that we have been in contact with the City of Laguna Woods through email and a phone conversation with Chris Macon, the City Manager, whose interpretation is that everything is done except for Recording the documents for the lot line adjustment.

President Monin asked if there is any way we could build the project so we wouldn't need the extra 10 feet. Mr. Cafferty replied that the entire design of the project which was started approximately 5 years ago with a preliminary engineering alternatives analysis where they looked at a variety of different designs and this was the best one.

President Monin asked what are we going to be putting on the extra 10 feet. Mr. Cafferty replied that the second page of the staff paper shows a design of the new lift station.

Mr. Cafferty stated that the difference between the low bid and high bid were $50,000 apart so we are comfortable in suggesting Filanc for the project, and the engineering services contract to Tetra Tech, with some smaller contracts for geotechnical and CEQA services that are within the General Manager's authority.

Director Havens asked if the Contractor is sharing any risk with the District. Mr. Cafferty replied no, they are not sharing any of the property acquisition risk, which is minimal.

Director Freshley asked for a Motion.

Motion: Director Vergara made a Motion, seconded by Vice President Gaskins, and unanimously carried across the Board to authorize the General Manager to 1) enter into a contract (after agreement on the permit) with J.R. Filanc Construction Company, Inc. in the amount of $1,954,236.00 for construction of the Oso Lift Station Improvement Project, and 2) to enter into a contract with Tetra Tech in the amount of $84,000.00 for professional engineering services during construction after procurement of the encroachment permit from the City of Laguna Woods.

Roll Call Vote:

President Monin	aye
Vice President Gaskins	aye
Director Vergara	aye
Director Freshley	aye
Director Havens	aye

Engineering Information Items

Capital Projects Report

Phase II Recycled Water Distribution System Expansion Project

Mr. Young stated that the State has approved several of our upcoming retrofit sites being the taller manor 3-story buildings, and the County has weighed in on their cross control procedures. He further stated that staff continues to work on notifying the residents and is in the process of reaching out to building captains, preparing notification flyers to be posted in laundry rooms, building access points, and throughout the sites, so the residents are aware of the project, when their water will be turned off, for how long, and when it will be turned back on.

Mr. Young stated that we submitted another package to the State to address their questions on the remaining sites, which the State and County are reviewing, and we hope to have a response this week.

Mr. Young stated that we have hired a Consultant to move forward with Phase II West dual-plumbed areas, which requires a supplemental engineering report that is a thorough document that the State will review for procedures and on-going maintenance that the District will partake.

Mr. Young stated that staff has been in contact with the Southern California Water Smart staff and they have been a little more lenient on the deadlines associated with the retrofit rebates for converting to recycled water which is typically a 6-month process.

Mr. Cafferty stated that staff has been looking for ways to minimize the interaction with residents and the contractor is ready to move.

President Monin stated that he is in favor of moving this project forward. Director Freshley stated that we shall see how converting the first building goes.

Director Havens asked about the manors that have courtyards, can they opt in or out. She further asked if any residents have practiced the social distancing and wearing masks. Mr. Cafferty replied yes, our staff is wearing masks and following CDC regulations for safety of the residents and our staff.

He further stated that the courtyard may have a control valve from a potable supply that irrigates part of the courtyard, and another with recycled water, but there is no unique valve into their courtyard, its part of the overall system.

Engineering Items Discussed at Various Conferences and Meetings

Comments Regarding Non-Agenda Engineering Committee Items

There were no comments.

Adjournment

At approximately 10:00 a.m. the Engineering Committee meeting was adjourned to Thursday June 25, 2020 at 7:30 a.m.

Respectfully submitted,

Polly Welsch

POLLY WELSCH
Recording Secretary

APPROVED:

Mark L Monin

MARK L. MONIN, President
of the El Toro Water District and the
Board of Directors thereof

DENNIS P. CAFFERTY, Secretary
of the El Toro Water District and the
Board of Directors thereof