

MINUTES OF THE SPECIAL MEETING
OF THE
BOARD OF DIRECTORS
OF THE
EL TORO WATER DISTRICT
September 10, 2020

President Monin called the meeting of the Board of Directors of the ELTORO WATER DISTRICT to order via Zoom at 7:30 o'clock a.m. on September 10, 2020 at the El Toro Water District Administrative Offices, 24251 Los Alisos Boulevard, Lake Forest, California.

Director Vergara led in the Pledge of Allegiance to the flag.

Present at today's meeting were Committee Members MARK MONIN, MIKE GASKINS, JOSE F. VERGARA, KATHRYN FRESHLEY, and KAY HAVENS.

Also present were DENNIS P. CAFFERTY, General Manager/Secretary, JUDY CIMORELL, Human Resources Manager, GOLNAR FOZI, Attorney at Law - Meyers Fozi & Dwork LLP-Labor Counsel, RICK OLSON, Operations Superintendent, BOBBY YOUNG, Principal Engineer, RORY HARNISCH, Project Engineer, GILBERT J. GRANITO, General Counsel, and POLLY WELSCH, Recording Secretary.

Oral Communications - Public Comments

President Monin stated that at this time members of the public may address the Board or they may reserve this opportunity with regards to an item on the agenda, until the Board discusses said item later in today's meeting.

Mr. Cafferty stated that this meeting is being recorded.

Items Received Too Late To Be Agendized

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

"At Will" Policy

Mr. Cafferty stated that for a number of years, language in the Employee Handbook maintains an "At Will" Policy, and staff and the Board have had previous discussions on the "At Will" Policy. He further stated that Ms. Fozi is working with staff to discuss the pros and cons of having or not having this policy.

Ms. Fozi stated that most of her law practice is labor employment issues for public agencies, and she has been in this business for 25 years. She further stated that she is on the Preferred Panel for ACWA/JPIA, and on the Preferred Panel for a number of Cities, insurance pools for Cities and School Districts.

Ms. Fozi stated that she recalls that the District has had an "At Will" employment policy for many years which is permissible for a local agency. She further stated that the law provides that a local government agency should provide the due process that it actually allows by its own rules.

Ms. Fozi stated that one of her concerns in this draft was that the District needs to determine if it is going to continue to be "At Will" or give job protection

or due process to employees. Ms. Fozi further stated that we don't want to do both "At Will" and due process of complaints and resolutions that go to the Supervisor or Manager because the complaint procedure has been known to nullify an "At Will" policy.

Ms. Fozi stated that as a water district the District can make termination for cause only and we draft up the appropriate due process steps that go with that.

Ms. Fozi stated that we could have an "At Will" situation where employees can be terminated at any time with or without reason. She further stated that she has not seen our District use the "At Will" Policy very often, so this is a Policy decision for the Board to make; does the Board want due process rights before termination or the "At Will" Policy which would not allow the complaint procedure at the same time.

Mr. Cafferty stated that the District has a history of respect for our employees and tries to resolve issues before they get to a point where termination becomes the only option. He further stated that the "At Will" Policy is like a tool in our toolbox that provides flexibility as opposed to the rigor of a process that would allow employees to play out the system to their benefit at the expense of the District. Mr. Cafferty stated that we have the tool but still make the effort for the employees before having to go to this extent.

President Monin asked if the "At Will" Policy bears any weight in a court of law on how many terminations there have been. Ms. Fozi replied that it's not how many terminations a District has had, the employee can complain for a

number of reasons which doesn't mean they are relevant in a court of law, but when the employee sues, the employer must provide a valid business reason for the termination that is not protected to their classification.

Ms. Fozi stated that included in our Policy is a formal progressive discipline policy which includes verbal steps, written steps, and a chance for an improvement plan. Ms. Fozi further stated that, at the discretion of management, any of these steps can be skipped depending on how serious the infraction is.

Director Freshley asked if we were considering a grievance procedure. Mr. Cafferty replied that it was being considered and drafted, but at Ms. Fozi's recommendation staff did not include it in the redline of the Employee Handbook, but it still needs discussion.

Director Vergara questioned the legality of the "At Will" Policy and stated that if it is legal, he suggests keeping it.

Vice President Gaskins commented that he did labor relations on the employee side for a number of years in over 100 Cities and water Districts in Southern California and represented hundreds of employees in grievances and a number of terminations. He further stated that it is his determination that a good grievance procedure heads off a lot of further problems if they are well crafted. He also stated that the "At Will" question comes up because most public employees are exempt from the California Labor Laws which only apply to public employees.

Vice President Gaskins stated that we have to pay overtime after 40 hours in a work week, and in the private sector it is after 8 hours in a day. He further

stated that the actual words about whether we can have an "At Will" employee is legal and goes on to say that if you have acted or behaved in such a manor as the employee is no longer "At Will" then you can weaken your "At Will" position, and he suggests that the District has acted in this way by protecting their employees by establishing a past practice.

Vice President Gaskins stated that he would like to see the "At Will" statement removed from the Employee Handbook because he feels it is threatening and could be viewed as bullying. He further stated that he would like to see a well-crafted grievance procedure and a progressive discipline procedure so both employers and employees know the rules.

Director Freshley stated that she understands Vice President Gaskins' position but she feels an "At Will" clause is important which allows and gives the flexibility to management for discipline issues.

Director Havens stated that she is concerned about the assumption of "At Will", if it was not in our policy would it still be assumed, and regarding our grievance procedure what is our current policy.

Ms. Fozi stated that California law under the Labor Code provides that every employment is presumed to be "At Will" unless there are rules to the contrary or unless you have a contract that sets a term of employment. She further stated that the "At Will" policy can be annihilated by either a contract that provides reasons for termination or with policies that say termination is for cause only.

Ms. Fozi stated that termination for cause would be a complete overhaul of the District's current policy showing that we provide an employee before and after they are fired that would include a notice of intent to terminate or impose discipline. She further stated that the employee would have a hearing with management, and then the right to appeal the decision to the Board of Directors, and possible litigation.

Director Vergara stated that he does not feel we need to change the "At Will" policy.

President Monin asked Mr. Granito how long he has been the General Counsel for El Toro Water District. Mr. Granito replied since the 1970's which used a different labor counsel who highly recommended "At Will" policies.

President Monin asked general counsel if he finds it cumbersome the way it is set up now. Mr. Granito replied no, that he did not. Mr. Granito went on to express that the belief that such a policy must be administered under a standard of good faith and fair dealing. In that context, Mr. Granito then asked Ms. Fozi if having an "At Will" provision shifts the burden of proof to the employee rather than the District. Ms. Fozi replied and clarified that if we have an "At Will" provision, there is no explanation needed to be given whatsoever at the time of termination; only if there is litigation will it become an issue and the employee has the burden of proof that they had a protective classification that they were terminated after given the classifications or blew the whistle and after they were damaged which then causes the burden to shift to the employer to explain the valid business reason for the termination.

Director Freshley commented that “At Will” puts a greater burden on supervision to be adequately trained in following procedures and the expectations and communicating these to the employees.

Mr. Cafferty stated that when management is challenged with personnel issues they are taken seriously. He further stated that we are fair to the employees and are treated with respect and redirection to correct a positive productive attitude for the employee.

Mr. Cafferty stated that there is also a responsibility to the District, and we recognize the potential for litigation if we terminate an employee. He further stated that current policy has served management and the District well.

Mr. Cafferty stated that staff’s recommendation is to maintain the current policy.

President Monin asked Legal Counsel for their recommendation. Ms. Fozi stated that she feels our current policy works.

Vice President Gaskins stated that he is not in favor of keeping the current policy, but he is okay with it as it stands.

Director Vergara stated that he agrees that the best asset the District has are its employees.

Director Havens does not see that the District is broken but wonders if we should add any language regarding fair dealing and good faith. Ms. Fozi replied and further clarified that the law provides that the covenant of good faith and fair dealing exist in every contract of any kind but does not apply in an “At Will” situation.

Director Vergara asked how difficult it would be to include the right to go to management or the Board with a grievance. Ms. Fozi replied that it could be a slight addition to the open door policy section of the handbook, but it already exists in the harassment discrimination policy. Mr. Cafferty added that it is already included in the policy.

Director Freshley stated that she appreciated the discussion and different opinions.

Employee Handbook

Mr. Cafferty stated that staff is recommending approval of the Employee Handbook as revised.

President Monin asked for a Motion.

Motion: Vice President Gaskins made a Motion, seconded by Director Freshley to approve the ETWD Employee Handbook dated September 2020 which Handbook replaces the existing ETWD Employee Handbook in its entirety.

Roll Call Vote:

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

Oso List Station Improvement Project – Change Order No. 1

Mr. Cafferty stated that the critical path schedule for this project will be about the equipment acquisition including the motor control center which is the longest lead time item. He further stated that the Board has inquired about the

pump startup energy costs and potential energy rate increases in the coming years.

Mr. Cafferty stated that staff reviewed pump motors and talked with pump station staff, electrical staff, and the design engineer and concluded that the specified pump motors are appropriate and the most efficient we can find. He further stated that we also reviewed the motor control center and the system has constant speed pumps with ramp-up soft starters.

Mr. Cafferty stated that staff performed a detailed cost analysis of going to variable frequency drives which would mean the pumps run for longer periods of time and maintain the wet well at a constant level which significantly reduces the amount of time that the pumps start and stop. He further stated that this could reduce wear and tear and the electrical demand costs associated with starts and stops.

Mr. Cafferty stated that installing variable frequency drives comes at a cost. He further stated that staff discussed these changes with the contractor who submitted a Change Order request just under \$72,000, which also includes new code requirements relative to arc flash safety that will require some expansion of the motor control center, which is about 1/3 of the cost.

Mr. Cafferty stated that the payback analysis with some assumptions of future Edison rate increases would suggest approximately 11 years.

Mr. Young stated that some of the non-quantitative cost benefits could lead to savings in the long run.

President Monin stated that at the Laguna Woods City Council meeting Edison spoke on anticipated rate increases, and he asked if we could get any subsidy by any entity. Mr. Cafferty replied that staff will look into it.

Director Havens stated that on residential use Edison is trying to switch everyone to Time of Use rates instead of Tiered rates, and asked if this would impact the District. Mr. Cafferty replied that Edison has a number of different rate programs they use.

Vice President Gaskins asked what is the expectant life of these motors that start and stop, and will the variable frequency drive extend the life span or just be a savings during the time difference. Mr. Young replied that is our understanding, that while they are running continually and smoothly throughout the day, could elongate the life of the motor and reduce some of the maintenance associated with heavy starts and stops at the lift stations.

Vice President Gaskins asked what is the total life span of the motor. Mr. Cafferty replied that we have pump motors that are 20-30 years old.

President Monin asked for a Motion.

Motion: Director Freshley made a Motion, seconded by Director Havens to authorize the District's General Manager to execute Change Order No. 1 with J.R. Filanc Construction Company, Inc. in the amount of \$71,857.69 for electrical improvements of the Oso Lift Station Improvement Project.

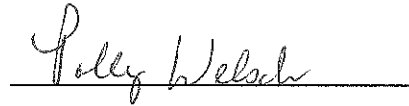
Roll Call Vote:

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

Adjournment

There being no further business to come before the Board, the meeting was adjourned at 9:00 a.m.

Respectfully submitted,



POLLY WELSCH
Recording Secretary

APPROVED:



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

