



**FENNER VALLEY  
WATER AUTHORITY**

**AGENDA  
FENNER VALLEY WATER AUTHORITY  
BOARD OF DIRECTORS'  
REGULAR BOARD MEETING**

**SANTA MARGARITA WATER DISTRICT BOARD ROOM  
26111 ANTONIO PARKWAY, RANCHO SANTA MARGARITA, CA 92688**

**May 30, 2019**

**8:30 a.m.**

*Upon Request, this agenda will be made available in appropriate alternative formats to persons with disabilities, as required by Section 202 of the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to Kelly Radvansky, at (949) 459-6642 at least 48 hours before the meeting if possible.*

**ITEMS DISTRIBUTED TO THE BOARD LESS THAN 72 HOURS PRIOR TO MEETING**

Pursuant to Government Code section 54957.5, non-exempt public records that relate to open session agenda items and are distributed to a majority of the Board less than seventy-two (72) hours prior to the meeting will be available for public inspection in the lobby of the Authority's business office located at 26111 Antonio Parkway, Rancho Santa Margarita, California 92688, during regular business hours. All documents available for public review are on file with the Authority's Secretary located at 26111 Antonio Parkway, Rancho Santa Margarita, California 92688.

1. **CALL MEETING TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ORAL COMMUNICATIONS**

Persons wishing address the Board of Directors on matters not listed on the Agenda may do so at this time. "Request to be Heard" forms are available at the entrance to the Board Room. Comments are limited to three minutes, unless further time is granted by the Presiding Officer. Please submit the form to the Secretary prior to the beginning of the meeting.

Those wishing to address the Board of Directors on any items listed on the Agenda should submit a "request to be Heard" form to the Secretary before the Presiding Officer announces that agenda item. Your name will be called to speak at that time.

**4. CONSENT CALENDAR**

- 4.1 Consideration and Action on the Minutes of the April 25, 2019 Board Meeting.  
**Page 3**

**Recommendation:** Approve the Minutes.

**5. INFORMATION ITEMS**

- 5.1 Workplan Roles and Responsibilities Update. **Page 8**
- 5.2 Status of Legislation – SB 307 Water conveyance: use of facility with unused capacity. **Page 12**
- 5.3 Cadiz Valley Water Conservation, Recovery and Storage Project Update.
- 5.4 Executive Director Report (verbal or written reports may be provided and shall be included in the record/minutes).
- 5.5 Directors' Reports of Outside or Other Meeting/Events (verbal or written reports may be provided and shall be included in the record/minutes).

**6. ATTORNEY'S REPORT**

**7. CLOSED SESSION**

- 7.1 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation

Pursuant to Government Code Section 54956.9(d)(2) Potential Cases: 1

**8. ADJOURNMENT**

The next Regular Board of Directors' meeting is scheduled for 8:30 a.m. on June 27, 2019 at the Santa Margarita Water District, 26111 Antonio Parkway, Rancho Santa Margarita, California.



**FENNER VALLEY  
WATER AUTHORITY**

**MINUTES  
FENNER VALLEY WATER AUTHORITY  
BOARD OF DIRECTORS'  
REGULAR BOARD MEETING**

**SANTA MARGARITA WATER DISTRICT BOARD ROOM  
26111 ANTONIO PARKWAY, RANCHO SANTA MARGARITA, CA 92688**

**April 25, 2019**

**8:30 a.m.**

**ATTENDEES**

Betty H. Olson	Director-Chair
Charles T. Gibson	Director-Vice Chair
Natasha Raykhman	Director
Daniel R. Ferons	Executive Director
Robert Grantham	Treasurer/FVWA
Ruben Duran	General Counsel/Best Best & Krieger
Kelly Radvansky	Secretary to the Board of Directors/FVWA
Don Bunts	Deputy General Manager/SMWD
Michelle Pickett	Brownstein Hyatt Farber Schreck
Russell McGlothlin	Brownstein Hyatt Farber Schreck
Roy Wolfe Ph.D.	Consultant

**1. CALL MEETING TO ORDER**

**2. PLEDGE OF ALLEGIANCE**

*Vice Chair Gibson led the Pledge of Allegiance.*

**3. ORAL COMMUNICATIONS**

*There were no requests to speak.*

4. **CONSENT CALENDAR**

- 4.1 Consideration and Action on the Minutes of the February 28, 2019 Board Meeting.

**Recommendation:** Approve the Minutes.

**Motion:** Approve the Consent Calendar as recommended.

**Moved by:** Charles T. Gibson

**Seconded by:** Betty H. Olson

**Ayes:** Gibson, Raykhman, Olson

**Unanimously approved**

5. **ACTION ITEMS**

- 5.1 Consideration and Action on Adoption of Resolution 19-03-01; a Resolution of the Fenner Valley Water Authority Establishing a Policy that the Legislative Body of the Member Agencies may Discuss, Receive or Take Action Concerning Information Obtained in a Closed Session of the Fenner Valley Water Authority Pursuant to Government Code Section 54956.96.

**Recommendation:** Adopt the Resolution.

*Dan Ferons, Executive Director noted the correct resolution number is 19-04-01.*

**Motion:** Approve as recommended.

**Moved by:** Charles T. Gibson

**Seconded by:** Natasha Raykhman

**Ayes:** Gibson, Raykhman, Olson

**Unanimously approved**

- 5.2 Consideration and Action on Implementation of Groundwater Management, Monitoring, and Mitigation Plan for the Cadiz Groundwater Conservation, Recovery and Storage Project.

**Recommendation:**

1. Request County of San Bernardino and Fenner Valley Mutual Water Company to appoint the Technical Review Panel.
2. Request Fenner Valley Mutual Water Company to initiate monitoring under the GMMMP, in anticipation pumping may commence under the project within one year.
3. Request Fenner Valley Mutual Water Company to review the Report of the Independent Peer Review Panel for the Groundwater Monitoring, Management and Mitigation Plan for the Cadiz Project prepared for Three Valleys Municipal Water District and Jurupa Community Services District and provide a proposal on refinements as appropriate.

*Mr. Ferons explained the revisions to the recommendation as noted in the motion below and the staff report.*

*Vice Chair Gibson recommended looking at the financial implications of where the Authority stands. Mr. Ferons clarified Vice Chair Gibson is referring to overall project costs.*

*Mr. Ferons said a flow chart can be provided with the work that needs to be done.*

**Motion:**

1. Request County of San Bernardino and Santa Margarita Water District to appoint the Technical Review Panel.
2. Request Cadiz and Fenner Valley Mutual Water Company to commence preparation and deliver all needed permits for monitoring facilities prior in anticipation that construction may commence under the project within one year.
3. Request Fenner Valley Mutual Water Company to review the Report of the Independent Peer Review Panel for the Groundwater Monitoring, Management and Mitigation Plan for the Cadiz Project prepared for Three Valleys Municipal Water District and Jurupa Community Services District and provide a proposal on refinements as appropriate.

**Moved by:** Charles T. Gibson

**Seconded by:** Betty H. Olson

**Ayes:** Gibson, Raykhman, Olson

**Unanimously approved**

- 5.3 Consideration and Action on Participation in the Southern California Water Coalition Evaluation of Economic Feasibility of California's Drinking Water Standard.

**Recommendation:** Authorize execution of a Memorandum of Understanding with Southern California Water Coalition for participation in an amount not to exceed \$7,500.

*Vice Chair Gibson requested staff to identify a specific budget for all future fiscal impacts.*

**Motion:** Approve as recommended.

**Moved by:** Charles T. Gibson

**Seconded by:** Natasha Raykhman

**Ayes:** Gibson, Raykhman, Olson

**Unanimously approved**

**6. TREASURER ITEMS**

- 6.1 Fiscal Year 2019 External Audit Selection.

6.2 Interim Financial Statements as of March 31, 2019.

6.3 Consideration and Action on Annual Budget.

**Recommendation:** Approve annual budget in the amount of \$524,000.

**Motion:** Approve as recommended.

**Moved by:** Charles T. Gibson

**Seconded by:** Betty H. Olson

**Ayes:** Gibson, Raykhman, Olson

**Unanimously approved**

## 7. INFORMATION ITEMS

7.1 Cadiz Valley Water Conservation, Recovery and Storage Project Update.

*Russell McGlothlin, Brownstein Hyatt Farber Schreck, updated the Board on a CEQA draft addendum that has been prepared to address the issues with stream connectivity stemming from the letter last December from California Department of Fish and Wildlife; the water treatment facilities and where they would be placed and how they'd operate; and the small pipeline realignment.*

*Mr. McGlothlin updated the Board on the pipeline realignment, noting discussions with Bureau of Land Management (BLM), and BLM will have to do their own environmental assessment for finding of no significant impact.*

*Mr. McGlothlin noted litigation against BLM is scheduled for June 20<sup>th</sup> and the briefing is understood to be completed by May 10<sup>th</sup>.*

*Mr. McGlothlin said this is his last meeting on behalf of Cadiz, since he is moving to a different law firm, and Michelle Pickett will provide future Cadiz updates.*

7.2 Executive Director Report (verbal or written reports may be provided and shall be included in the record/minutes).

*Mr. Ferons said the draft addendum Mr. McGlothlin mentioned was received, we've asked Best Best and Krieger to review, and meetings will be scheduled to make sure we understand what's included and the level of documentation is appropriate.*

*Mr. Ferons noted a hearing held two weeks ago at the senate looking to add traditional CEQA review, there are discussions going on regarding potential amendments.*

*Mr. Ferons said FVWA will write a letter to Fish and Wildlife in response to the letter they sent to Cadiz regarding the study that was done that said there could be impacts to the springs by pumping down. The letter will address that study as well*

*as other subsequent studies that have been done that confirm what we've always said that there isn't any linkage.*

*Director Gibson asked that the SMWD Board be fully aware of the addendum before coming to the FVWA Board.*

- 7.3 Directors' Reports of Outside or Other Meeting/Events (verbal or written reports may be provided and shall be included in the record/minutes).

*Chair Olson said she visited San Onofre on Tuesday.*

**8. ATTORNEY'S REPORT**

*There was no report.*

**9. ADJOURNMENT**

The next Regular Board of Directors' meeting is scheduled for 8:30 a.m. on May 30, 2019 at the Santa Margarita Water District, 26111 Antonio Parkway, Rancho Santa Margarita, California.

**Motion:** Adjourn the meeting.

**Moved by:** Charles T. Gibson

**Seconded by:** Natasha Raykhman

**Ayes:** Gibson, Raykhman, Olson

**Unanimously approved**



## FENNER VALLEY WATER AUTHORITY

### MEMORANDUM

**TO:** Board of Directors

**DATE:** May 30, 2019

**FROM:** Daniel Ferons

**SUBJECT:** Workplan Roles and Responsibilities Update

#### **SUMMARY**

**Issue:** Operation of the Cadiz Project is governed by the Groundwater Management Monitoring and Mitigation Plan for the Cadiz Valley Groundwater Conservation, Recovery and Storage Project (Management Plan) in compliance with the County of San Bernardino Desert Groundwater Management Ordinance. The Management Plan is designed to assist in avoiding any significant adverse impacts and undesirable results to critical resources within the region. There are specific actions and responsibilities in the Management Plan for the signatory parties.

**Fiscal Impact:** The monitoring and reporting under the Management Plan is considered a part of the operational costs of the Project and will be included in the water purchase agreements. The initial costs are the responsibility of Cadiz, Inc.

**Previous Action:** The Authority authorized requesting the County of San Bernardino and Santa Margarita Water District to proceed with the establishment of the Technical Review Panel and with requesting Cadiz to schedule permitting and construction of monitoring facilities in anticipation of the pre-operational phase of the Project as required by the Management Plan.

#### **DISCUSSION:**

##### *General*

The Management Plan governs the water extraction under the Project, both for agriculture uses and urban deliveries. Cadiz is currently authorized to extract up to 30,000 acre-feet of water for Agriculture Purposes under an existing monitoring plan through the County of San Bernardino (County). The Management Plan authorizes an average annual production of 50,000 acre-feet in total. As the urban deliveries increase, the agricultural uses will decrease. Under the Management Plan, data is collected to determine if observed changes are consistent with the changes projected in the groundwater modeling that was used to develop the allowable extraction amount. Action criteria are identified with specific requirement prior to creating any adverse impact due to pumping.



Three distinct operational periods are identified along with specific monitoring requirements associated with each the time period as shown below:



*Parties:*

**Santa Margarita Water District (SMWD)** As part of a public-private partnership with Cadiz, SMWD will carry-out and supervise the Project as the managing member of the Authority. Under California Environmental Quality Act (CEQA), as lead agency, SMWD prepared and certified an Environmental Impact Report (EIR) for the Project in July 2012. SMWD will carry out and supervise the Project through its participation in the Authority and as a shareholder in the Fenner Valley Mutual Water Company. SMWD will enforce the implementation of all adopted mitigation measures including those under the Management Plan. The Authority is now the lead agency under CEQA for future actions related to the implementation of the Project, as the decision to submit any future permits must be made by the Authority. (Joint Powers Agreement sections 2.2 and 3.1.)

**Cadiz, Inc. (Cadiz)** as the project proponent is responsible for permitting and construction of the monitoring facilities and for financing and construction of the Project.

**County of San Bernardino (County)** regulates groundwater production within its unincorporated eastern area under its Desert Groundwater Management Ordinance (Ordinance). The Management Plan was developed in compliance with the Ordinance. The County will ensure the project is operated to avoid significant adverse impacts to critical resources and any undesirable results.

**Fenner Valley Mutual Water Company (FVMWC)** was formed for the purpose of delivering water from the Project. SMWD and other project participants will make up the membership of FVMWC, Cadiz formed the mutual company however it will not own shares in the FVMWC. The Project will be operated by FVMWC under the management and supervision of SMWD through the Authority. FVMWC, under the Management Plan, will collect and assess data, propose refinements, prepare and submit various annual and periodic reports in consultation with the County and SMWD.

FVMWC shall have the responsibility to collect, collating and verify the data under the monitoring plan and posting it in a database.

### *Technical Review Panel*

An integral part of the Management Plan involves regular and ongoing review of the data collected during the term of the Project. This review requires contracting with outside technical expertise. A Technical Review Panel (TRP) is required for the purpose of data review and analysis, report preparation and advising parties on technical aspects of the Project. The County and SMWD will each appoint a TRP member with appropriate qualifications and a minimum of 10 years' experience in the groundwater field. The two representatives will appoint a third member, subject to review and approval by the County and SMWD.

The TRP is responsible for critical review and analysis of project monitoring data. The TRP may make recommendations to the County and/or SMWD and the County and/or SMWD may request recommendations from the TRP on additional monitoring, mitigation, and modification to Project operations.

The TRP shall coordinate with FVMWC to review and monitor the project, which includes having access to all monitoring data within 90 days of collection. The TRP shall also provide an independent review and provide comment to the County on annual reports developed by FVMWC. Cost of the TRP shall be borne by FVMWC and shall not exceed \$60,000 per year with a 2% annual escalation using 2012 as the base year, unless otherwise authorized in response to orders from the County or SMWD.

The TRP shall convene at least once every year to discuss and take action, if necessary, with respect to its responsibilities. The members will elect a Chair and rotate the position annually. The Chair will take minutes and submit those to the other representatives and SMWD within 10 days of the meeting. Any determinations or recommendations shall require the affirmative agreement of at least two members, if there is not consensus, the dissenting view will be included in the submittals.

### *Pre-Operational Monitoring*

The pre-operational phase commences upon start of construction and will last at least 12 months. Cadiz will complete and deliver all needed permits for monitoring facilities and construct the facilities prior to the pre-operational phase. A report is due at the end of the first year. Discussions are under way for implementation of monitoring facilities.

### *Operational Phase*

The operational phase will commence with the completion of construction and end of the pre-operational phase. Each year during the operational and post-operational phases, FVMWC will prepare an annual report on the monitoring and it will include any recommendations for changes. Every five-years, commencing on the fifth anniversary from commencement of construction, a "Five-Year Report" will be prepared that will include updated refinements to the modeling, summaries of trends, documentation of complaints and actions.

The report preparation is prescribed in the Management Plan, it is prepared by FVMWC and submitted to the TRP, SMWD and the County on or before April 1<sup>st</sup> for annual reports and December 31<sup>st</sup> for Five-Year Reports. The TRP will then review and determine if

recommendations, edits or additions are appropriate within 45 days of receipt from FVMWC. Within 60 days of receipt of the TRP recommendations, the County will determine if the report can be finalized, if revisions are required, FVMWC will have 45 days to resubmit the report to the County and SMWD.

#### *Oversight and Enforcement*

The County, in its sole discretion, will take into consideration the reports and recommendations of the TRP, and will issue final determinations on assessments of triggering action criteria and responses. The County may order FVMWC to take corrective actions and will provide notice in writing to FVMWC, SMWD and the TRP members. FVMWC will have a set period to implement the order. Except in cases of threat of immediate or irreparable damage, the order will be subject to the dispute resolution provisions.

Additionally, because compliance with the Management Plan is a condition of SMWD's approval of the Project, SMWD in its discretion, will consider the findings and actions taken and recommended by FVMWC and the TRP. SMWD may require corrective action and changes, even if the County does not. SMWD must adhere to the same rules as the County for dispute resolution.



## FENNER VALLEY WATER AUTHORITY

### MEMORANDUM

**TO:** Board of Directors **DATE:** May 30, 2019

**FROM:** Jim Leach

**SUBJECT:** Status of Legislation – SB 307 Water Conveyance: Use of Facility with Unused Capacity

#### SUMMARY

**Issue:** SB 307 (Roth), *Water conveyance; use of facility with unused capacity* is a bill introduced in this session of the legislature that, if passed and signed into law, will have the effect of further delaying the Cadiz Water Project with additional review requirements.

**Fiscal Impact:** None

#### DISCUSSION

In the past two sessions of the legislature, bills substantially similar to SB 307 have been introduced. AB 1000 (Friedman) was the result of a “gut and amend” process in 2017 and it failed to report out of committee. In 2018, Sen. Roth introduced SB 120 which was essentially identical to Assemblymember Friedman’s bill from the previous session. SB 120 was also a “gut and amend” bill and it failed to report out. These bills would have had the effect of putting additional environmental review requirements by state agencies in place regarding the Cadiz Project. In both past sessions these bills failed for largely procedural and political reasons. This year, Sen. Roth has introduced SB 307 in regular order.

While SB 307 does not specifically name the Cadiz Project as its target, that fact is acknowledged in the various analyses by the State. And, while it does not prohibit Cadiz from accessing the groundwater, it does prohibit moving the groundwater through what is widely acknowledged as the Metropolitan Water District’s (“Met”) Colorado River Aqueduct.

Essentially, this bill will place additional review and procedural burdens on Cadiz and further delay the project. It injects the State Lands Commission (“SLC”), the California Department of Fish and Wildlife (“DFW”), and the Department of Water Resources (“DWR”) into a review process that goes beyond the requirements of CEQA.

The project would prohibit the project from moving forward unless the SLC, in consultation with DFW and DWR make a finding that the project will not harm the environment. It also requires Cadiz, should the SLC make such a finding, to report annually to the SLC on the condition of the groundwater basin.

Cadiz has made attempts at working with the author and has offered amendments that would include additional, voluntary scientific studies as well as inclusion of the Department of Water Resources in a review process in conjunction with a specific timeline for completion of any further reviews in order to provide the company some sense of a final process. Those amendments were rejected.

It is widely acknowledged that the Cadiz Project's EIR was conducted in compliance with the requirements of the California Environmental Quality Act ("CEQA"). This fact was noted by the members of the California Senate Natural Resources and Water Committee when the bill came before it in April of this year. It was further noted that the EIR was approved by the board of the lead agency, the Santa Margarita Water District ("SMWD") and was vetted further by the San Bernardino Board of Supervisors in connection with their passage of the County's Groundwater Monitoring, Mitigation, and Management Plan (GMMMP). Finally, it was litigated (and ultimately upheld) with respect to procedural elements of the EIR as well as a number of other questions posed by opponents. The Committee further acknowledged that subjecting the Project to further review could call the CEQA process and requirements into question because of the additional requirements after the fact. Nevertheless, the Committee reported the bill out with minor, non-substantive amendments on April 22 and sent it to the Senate Appropriations Committee.

It was heard in Senate Appropriations on May 6 and placed in the Suspense File. It was sent to the Senate Floor where it was passed after third reading on May 21. It now goes to the Assembly. Cadiz will continue to try to work with the author and with the Assembly leadership on appropriate amendments.