

NEVADA IRRIGATION DISTRICT

BOARD OF DIRECTORS

MINUTES

August 11, 2010

The Board of Directors of the Nevada Irrigation District convened in regular session at the District's main office located at 1036 W. Main Street, Grass Valley, on the 11th day of August, 2010 at 8:00 a.m.

Present were W. Scott Miller, President; Nancy Weber, Vice-President; John H. Drew, Jim Bachman and Nick Wilcox, Directors.

Staff members present included Ron Nelson, General Manager; Tim Crough, Assistant General Manager; Marie G. Owens, Finance Manager/Treasurer; John Kirk, Operations and Maintenance Manager; Gary King, Chief Engineer; Jeff Meith, District Counsel; Anthony Soares, District Counsel; and Lisa Francis Tassone, Board Secretary.

MINUTES – July 28, 2010 Meeting

Approved the Minutes of the Board of Directors' meeting of July 28, 2010, as submitted. M/S/C Weber/Drew

WATER EFFICIENCY TECHNICIAN I/II – Budget Amendment

Approved budget amendment and advertising for new position of Water Efficiency Technician I/II. M/S/C Weber/Drew

AGREEMENTS: District's Fuel and Petroleum Contract

Approved extension of the District's existing Fuel and Petroleum Contract, not to exceed two years, and authorized the General Manager to execute the necessary documents. M/S/C Weber/Drew

WARRANTS

Approved the following warrants: Yuba-Bear Revolving Fund Nos. 22938 through 22977, inclusive; General Fund Revolving Account Nos. 51144 through 51276, Nos. 46524, 46855, 47020, 47607, 48639, 48654, 48890, 49222 and 49664 being

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void; Recreation Fund Nos. 2458 through 2482, inclusive; and Payroll Direct Deposit and Warrant Nos. 55189 through 55364, inclusive. M/S/C Weber/Drew

LEGISLATIVE UPDATE

Ron Nelson, General Manager, reported that the Water Bond measure will not be on the 2010 voter's ballot, due to the State's budget woes. The plan is to have the measure placed on the 2012 ballot. This means that any funding anticipated for the District's watershed/region will not be forthcoming until the bond passes.

Mr. Nelson stated that a number of bills are being submitted regarding water legislation that was passed last year. He is not aware of any bills that are advancing, but he will keep the Board informed as information becomes available.

NEVADA COUNTY FARM BUREAU – Invitation to Tour

Ron Nelson, General Manger, reported that the Board and Staff have been invited to participate in the Nevada County Farm Bureau Tour. If the Board is interested in attending, they need to let Staff know by August 13, 2010. The Tour is scheduled for August 22, 2010.

SIERRA NEVADA CONSERVANCY GRANT – Mercury Remediation Project

Tim Crough, Assistant General Manager, announced that the District will be submitting an application for a grant from the Sierra Nevada Conservancy for the Mercury Remediation Project. Funding for this grant is coming from 2009 funds, and the maximum amount to apply for is \$1 million. If the District receives the grant, work on site improvements and well monitoring could commence.

ENVIRONMENTAL PROTECTION AGENCY (EPA) APPROPRIATIONS – Mercury Remediation Project

Ron Nelson, General Manager, reported that appropriations for the District's Mercury Remediation Project remains in the EPA's budget for the next fiscal year for the amount of \$3.5 million.

FEDERAL ENERGY REGULATORY COMMISSION (FERC) – Relicensing Update

Ron Nelson, General Manager, reported that the District will be submitting its Draft License Application on December 1, 2010. The Draft will be reviewed by the agencies and a Final Application will be submitted the middle of 2011. There continues to be a number of meetings with all of the licensing participants and some progress is being made on a broad range of issues. All of the issues will not be resolved before the Draft Application is submitted, but discussions will continue on the remaining issues.

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CEMENT HILL WATER SUPPLY PROJECT – Community Development Block Grant (CDBG) Update

Director Weber reported that Nevada County had applied for CDBG funding for tax lien assistance for the Cement Hill Water Supply Project and the grant was awarded. The grant was taken back due to technicalities. She stated that there has been a great deal of effort made by the Cement Hill Neighborhood Association and Nevada County Supervisor Nate Beason to obtain intervention at the Federal level (they have already worked through the State level). There has been active involvement from Congressman McClintock's office. A public meeting is scheduled for August 24, 2010 at 7:00 p.m. at the Nevada City Elk's Lodge to update and discuss this issue.

OBSERVATION OF RUN-OFF

Director Drew stated that every week he has an opportunity to drive over the summit. In the last two weeks, he observed that run-off has diminished significantly. Snow remains on the upper peaks and the north facing slopes, but run-off is diminished.

TABLE MEADOW WATERLINE EXTENSION PROJECT (PROPOSED) – Community Meeting

President Miller reported that a community meeting was held August 3, 2010 to discuss the proposed Project. This neighborhood is high on the list for waterline extension projects. The meeting seemed to be well taken by the attendees, and he received feedback that the meeting was positive. The proposed Project consists of 115 parcels. The neighbors became divided, and as a solution, the District may consider breaking up the Project into smaller projects. This would mean that funding would be substantially limited.

Tim Crough, Assistant General Manager, informed the Board that a survey will be mailed to the property owners this week. A meeting will be held with the property owners in the "clusters" of parcels that have a dire need for water in order to craft a project.

LOWER CASCADE CANAL / BANNER CASCADE PIPELINE PROJECT – Review of the Mitigation Monitoring and Reporting Program (MMRP)

Gary King, Chief Engineer, stated that throughout the Project, Staff has made every effort to be open, transparent and honest about the process. Construction has started, and a mile of pipe has been installed. The Engineering Department decided to provide the Board an update on the Project's MMRP. Staff will continue to be open and transparent, continue to work with property owners and continue to do the best job possible.

Brian Powell, Project Manager, stated that he will be presenting information on the MMRP that is associated with construction for the Lower Cascade Canal / Banner Cascade Pipeline Project. The MMRP is a set of guidelines that were developed during the Environmental Impact Report (EIR) stage and were revised and incorporated into

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the construction specifications for this Project. He would like to discuss how the District has been working with the property owners, how the MMRP was developed and how the District and the contractor, Teichert Construction, are implementing the MMRP.

At the beginning of the design phase, the District and the design team made a conscious effort to work with the public and property owners on the design of the Project. There were numerous public meetings, neighborhood meetings and one-on-one meetings in order to gather concerns of the property owners, answer questions and have them inform the District of their property to develop the most comprehensive and complete design that can be taken to construction.

Through the District's efforts of communication with residents along the alignment, Staff tried to develop trust and cooperation and establish open communication. Staff would hope that if there was a problem with some aspect of the Project that someone would contact the ombuds people, Mr. Powell or a team member about it.

Staff has heard rumors that the District and Teichert are not adhering to the MMRP that was developed for this Project and wanted to bring this to the Board today to address and discuss the history of the MMRP, review an evaluation of the MMRP, address any misunderstandings or correct anything that might have been missed. Staff wants to make sure as construction moves forward that the public and the construction team fully understand that the Project will proceed as shown in the specifications.

For this project, Staff has taken on the concept of a team effort approach. As he stated earlier, the design of the pipeline was developed through public input, as was the MMRP. The MMRP was created through a collaborative effort with the public, consultants, and District Staff in the EIR process. The Project design team then took the EIR MMRP and turned that document into something a contractor could realistically assign a dollar value to in order to implement the Program during construction. After the MMRP for the specifications was ready, Staff posted it on the District's website in August 2009, sent an invitation letter out to everyone on the alignment, allowed a 30 day public review period and held a public meeting in September 2009 to discuss the revised MMRP.

At this meeting there were approximately 25 people and Staff reviewed the MMRP section by section, listened to comments and made modifications to the contract MMRP. Following the completion of the specifications, the Project went out to bid.

This team effort approach has moved into the construction team. A series of checks and balances have been established within the construction team resulting in a number of individuals observing the construction and making sure the MMRP is adhered to.

The District has the firm Eco:Logic working on the environmental compliance for this Project. They are responsible for monitoring the contractor through many aspects of the work. They are also responsible for providing pre-construction surveys for the biological and archeological portions of the Project. These include the nesting bird, bat and frog

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surveys and the special status plant surveys. They will also be present full time as the work is completed through the creek crossings. They will verify that Teichert has installed the erosion control measures and will monitor the water conditions above and below the work site.

Staff has two ombuds people working on this project (Hugh Gordon and Sarah Rohde). Their duties involve responding to calls from property owners, calling affected property owners two weeks in advance of construction and calling affected property owners three days in advance of their driveway being blocked by the construction. They are also asking the property owners if there are any medical conditions that the team needs to be aware of prior to construction so that special arrangements for those property owners can be made. They are also observing the construction on a periodic basis and will report to Mr. Powell if they see something that is being done in violation of the MMRP.

There is a full time construction inspector on site observing the contractor conduct the pipeline installation to make sure that it is completed to the specifications including the MMRP.

Mr. Powell visits the Project on a regular basis to make sure that construction is progressing as planned and as described to the property owners during the design phase.

With regard to Teichert, Staff has discussed with them from the beginning of this Project about how this Project is very visible within this community, and that they need to conduct themselves and their work in a professional manner. The Project Manager and Supervisors are aware and understand the MMRP. In fact, they have distributed the document and had discussions with every member of the construction crew regarding the MMRP and the implementation of the Program. To date, Teichert has done a good job on this Project. They have been respectful to the neighborhood and residents and are installing the pipeline in an expeditious manner while adhering to the plans and specifications for the Project.

Mr. Powell distributed an evaluation that Jones and Stokes prepared at the District's request. Because of rumors that the District was not adhering to the MMRP, Staff decided to take a pro-active approach and have a third party evaluate where the District was at this point in the construction, due to rumors being heard that the MMRP was not being adhered to. Jones and Stokes prepared the original MMRP for the EIR process. Staff asked them to compare the EIR MMRP with the contract MMRP and review how the document is being implemented. Their review states that the contract MMRP matches the EIR MMRP for content. As for the implementation, the evaluation indicates that Teichert is adhering to the MMRP.

Mr. Powell asked rhetorically if there is room for improvement. Always, but Staff is doing their best to minimize issues with the construction. As he has always stated through the design phase, the construction zone will be dirty, dusty and noisy at times,

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but the team will work to get through an area as soon as possible and return the neighborhood to a quiet area as quickly as possible. Teichert is doing their best and staying within the MMRP to minimize the impacts of construction and complete the installation in a timely, efficient manner while continuing to work with the public.

In response to President Miller's question regarding the percentage of the Project that has been completed, Mr. Powell stated that approximately 10 percent of the Project has been completed. Approximately 4,500 feet of 36-inch pipe has been installed. Pipe has been installed across the Airport property, and continued to the creek areas, but Staff is still waiting for a permit from the Army Corps of Engineers in order to accomplish the creek crossing. Staff started the permitting process five or six months ago. He hopes that the District will have the permit very soon. About 800 feet of pipe has been installed on Madrone Forest, and beginning on August 9, 2010, pipe was being installed on Banner Lava Cap Road.

Director Drew asked Mr. Powell to expand on the permitting issue from the Army Corps of Engineers for the creek crossing.

Mr. Powell explained that there are three agencies to obtain permits from in order to cross the creek – the Army Corps of Engineers, the Department of Fish and Game, and the State Water Resources Control Board. Staff has received two of the three permits, but is still waiting for the permit from the Army Corps of Engineers. Their jurisdiction is within the wetlands area, and they have gone out for consultation with the State Historic Preservation office regarding historic roads that are listed on a map. They have no problems with the creek crossing, but they are obligated to go out for consultation regarding the historic roads. They have had the District's application for four or five months before they went out for consultation. The District has a short time frame to install the pipe across the creek (between June and September).

Director Weber asked why the application for the permit was not submitted earlier.

Mr. Powell stated that the permitting process is usually a three to four month process. The District submitted the application in February and the permit should have been received in June.

Director Weber stated that Jones and Stokes prepared the MMRP, audited the MMRP and submitted the applications for the permits. They have caused "quite a bit" of inconvenience that Mr. Powell is not mentioning regarding Madrone Forest due to the inability to cross the stream bed. This has delayed the Project and required that work start at the beginning of the road rather than working from the end of the road.

Mr. Powell stated that some of these issues are beyond the District's control.

Director Weber stated that she understands that permits can take up to one year to obtain. The District is paying good money to Jones and Stokes, and they need to obtain the necessary permits on time so that construction is not delayed.

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Mr. Powell explained that work began in September 2009 to obtain the required permits. He honestly felt that there was plenty of time to receive the permits. He did not anticipate the delay.

Director Weber stated that this is Jones and Stokes' responsibility because this is what the District pays them for.

Director Wilcox referred to the evaluation that was distributed earlier. He stated that it appears that the District is currently in compliance with the MMRP.

Mr. Powell concurred.

Director Wilcox asked if Mr. Powell knows what the specifics are of the rumors he has heard regarding non-compliance.

Mr. Powell stated that he does not know the specifics. He stated that Staff wanted to provide the Board with an update on the Project's MMRP to determine whether or not there is something being missed. If there is something missing, he wants to make the necessary and appropriate corrections sooner rather than later.

Director Weber stated that she is aware of violations of the MMRP and she has been working actively with Ron Nelson, General Manager, and Mr. Powell. One of the problems is dust. The District made arrangements to provide the Airport some fill dirt. When the California Department of Forestry (CDF) tanker planes take off, they raise a great deal of dust. That dust was not watered by the District's contractor because it was the responsibility of the Airport to do the watering for dust control. The Airport did not follow through and a number of residents had "a lot" of dust come into their homes. Dust control has been minimal and absent at times. On the bulletin board, it states that there will be no watering on the weekends. She stated that the wind does continue to blow, even though there is no construction occurring on the weekends.

Mr. Powell addressed Director Weber's comments. The alignment and disturbed area crosses the east end of the runway with a 40 foot wide and 200 foot long path. The Airport Manager requested that Teichert place additional fill along the east end of the runway to raise the elevation and make a safer approach for planes that extended approximately 150 feet across and 200 feet deep. The Airport signed the standard property owner release form for the District and Teichert installed and compacted the additional soil material as the Airport requested. The soil was watered several times a day during the work week to control dust as specified in the specifications, but one hot weekend the CDF tankers were responding to fires and there was an issue with dust generated off that eastern end of the runway. During the next week Teichert and District personnel met with the Airport Manager to figure out a way to stop the dust problem and decided to place rock material on that section. The area will continue to be watered.

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Director Weber asked if watering is being done now on the weekends.

Mr. Powell stated that watering is not occurring on the weekends, but Staff will look into this matter.

Director Weber stated that dust control on the weekends is included in the MMRP.

With regard to Mardrone Forest, Mr. Powell explained that during construction, there was dirt and dust, and crews did the best they could to minimize the dirt and dust. Road rock was placed on the road to minimize the dust. Construction has been completed, and a road base is down and watering is continuing. Until the creek crossing is done, the road base needs to be down. If the permit from the Army Corps of Engineers is not received by the end of August 2010, Madone Forest will be repaved, and work will continue next year.

Director Weber inquired about restoration efforts. She has been asking through e-mails and consultations with the General Manager for a reclamation program that is available now before areas are disturbed. She asked for a status on her request.

Mr. Powell explained that restoration is a part of the contract. The banks will be cut out for construction, and the banks will be restored by a contractor using a fertilized flower seed mix (from the Natural Resource Council) and top soil. This is not a grass seed mix, but a flower seed mix that will last for a couple of years. The mix will establish a root base in the soil for a couple of years, and will eventually allow native plants to return. The mix and the top soil will be covered with a coconut mesh that will be stapled down to protect the slopes.

Director Weber stated that this was not what was promised to the property owners that negotiated the MMRP. What was promised was that there would be a professional group of people who deal with this and have biologists on their staff who do restoration work. They need to be part of the Project now. She stated that she is frustrated and has put about 12 hours into three items and she does not see anything happening. This is a violation of the MMRP.

Mr. Powell stated that the restoration process was included in the MMRP.

Director Weber stated that what is being done is not what is described in the MMRP. She furnished Mr. Nelson with an example of the background necessary for the restoration to be done properly. "It is not happening."

President Miller asked Mr. Powell to cite the section in the MMRP regarding restoration.

Mr. Powell referenced the Environmental Mitigation Requirements of the contract (Section 1800 1.8 B(2): "The Contractor shall leave the ground within his work zones graded to pre-construction conditions, suitable for further landscaping restoration by District's restoration contractor. Contractor shall apply jute netting on roadway

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embankment slopes; reconstruct embankments to near original grade; construct water bars and silt fences on steep slopes (greater than 3 to1).”

Mr. Powell stated that the seeding portion of the contract was split out because a restoration contractor will be hired to work on tree replanting and mitigation and monitoring for the trees. There were property owners that were concerned about putting seed on the slopes within their area.

President Miller stated that it appears to be an issue of timing. Director Weber may need to be patient until the restoration contractor is brought in.

Mr. Powell stated that according to the contract specifications, the tree planting and the seeding would occur at one time. He has decided that the seed needs to be placed earlier in order for roots to establish, so this will be removed from the restoration contract and Teichert’s crew will place the seed below the jute netting as it is being put down.

President Miller asked who the restoration contractor is.

Mr. Powell stated that the contract has not been put out for bid at this time.

Director Weber stated that there is testimony during the EIR process that the property owners did not want non-native plants introduced by seed mixes. Jones and Stokes did not change this and this matter ended up in the MMRP. If tall grasses are introduced, they dry out and create a fire hazard. The District needs experienced individuals handling the restoration for the Project. There is no biologist on Staff, and there is no one who knew what Scotch Broom is when that was being masticated. The District needs to have an expert to advise the Project team before the area is disturbed.

Director Weber stated that there are “a lot” of exceptions taken with regard to the way Teichert’s trucks are traveling (using jake breaks). One incident that was reported to her was a piece of heavy equipment being moved on a flat bed truck. A truck was behind the flat bed pushing it. Further, the drivers of the two trucks were holding signs out the window that said ‘Slow.’

A representative from Teichert confirmed that he was following the equipment and there were three pilot cars.

Director Weber stated that apparently the person who reported the incident did not see the pilot cars.

Director Weber stated that what Teichert is doing in the community reflects on the District. When Teichert wanted the contract, they told the District that they would be very considerate of the community. She does not see this happening. Teichert needs to deal with the parking. Parking is happening on side streets instead of designated parking areas as stated in the MMRP.

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Mr. Powell stated that Staff is addressing these concerns and is taking care of them.

Director Weber stated that one of the suggestions she had was to take the MMRP and divide responsibilities for the more technical biological items and assign those to professionals, and to have the dust, dirt, etc. be part of the ombudsman's responsibilities. As a result of this, a work plan would be developed. With the work plan, the District would be able to function in advance of problems rather than reacting to reports and then dealing with the problems. The District is responsible for the MMRP, not the neighbors.

Mr. Powell stated that the team is working with the neighbors, providing notifications, conducting dust control, etc.

Director Weber stated that dust control is not occurring on the weekends. She stated that if Mr. Powell really wants to know what is happening, he needs to visit the property owners. He will get feedback from them and can then determine what portions of the MMRP are not working. Then he can have someone assigned to that part of the work plan to work on these issues. She reiterated that the District needs to have a restoration contractor available now. This is what was promised to the neighborhood.

Director Weber stated that she knows Mr. Powell has tried hard and has done a good job talking with the property owners about the Project. Now, this has to be implemented so it is not so damaging.

Mr. Powell stated that the District is working with Randall Frizell, Arborist. He has been on site taking care of situations regarding trees and root cutting. He has put together planting specifications for trees, and has been working with the Master Gardeners. He has contacted companies in the area to do the restoration work and planting. He has also contacted nurseries in the area to determine if they can provide native species plants and trees. He hopes that the District will be going out to contract for the restoration work in the next few weeks.

Director Weber stressed that the District has to be proactive.

Mr. Powell reminded the Board that he will look into dust control on the weekends.

Frank Lawrence, resident on Wings of Morning, stated that he has been a participant in the Banner Mountain Homeowners' Association Pipeline Committee for the past 10 years. The MMRP is one document, and the Construction Specifications derived from the MMRP are a separate document. Mr. Powell cited the Construction Specifications. This is what the contractor bid on, and this is what they are obligated to do. The District is obligated to fulfill the MMRP. Reading from the Construction Specifications is not the same as reading from the MMRP.

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Mr. Lawrence stated that the MMRP was designed and states literally that the District will avoid and minimize a long list of impacts. This cannot be done after the fact. Having professionals (other than the contractor, the building inspector and the ombuds people), who understand the biology and the botany in the field before the work is done, and as the work is done, is the only way the District can meet its obligations under the MMRP.

Mr. Lawrence referenced page 19 of Jones and Stokes evaluation, Section 3.8-3B. The District cannot avoid or minimize impacts on special status plant populations after the fact. The next section: The District cannot reduce the introduction and spread of invasive and noxious weeds after the fact. The District cannot avoid disturbance of special status birds after the fact (Section 3.8-5). The District cannot minimize or avoid the effects on heritage trees after the fact. The entire MMRP is designed to avoid or minimize the environmental impacts. Bringing someone in after construction is done to review and remedy the issues is too late. He wants the Board to hear this loud and clear.

Mr. Lawrence stated that he has asked Mr. King and Mr. Powell what training the contractor, crews, the building inspector and the ombuds people have to ensure that the mitigation measures are implemented on the work being done today. He did not receive an answer.

Mr. Lawrence stated that the District's settlement of the litigation with the Homeowners' Association incorporates the MMRP. The District's rights-of-way negotiations also incorporate the MMRP.

Mr. King explained that the Project does not start with construction, but design. An EIR serves as the guide for the design. During the design phase, 6,000 trees were mapped for this Project, and special plants and wildlife were surveyed. Prior to construction, this work was done by Eco:Logic. They have professional biologists on their team and their credentials are available. He noted that the alignment has been moved to avoid trees. There were four meetings to discuss the alignment and the proposed tree removal.

Jeff Meith, District Counsel, stated that he agreed with Mr. Lawrence regarding the MMRP being incorporated in the settlement between the District and the Homeowners' Association. With regard to the easements, he believes there is reference to the MMRP. If the District is in violation of the right-of-way agreement, the District could lose its right-of-way.

Dan Prout, resident on Banner Lava Cap (not directly affected by the Project), brought to the Board's attention that next week school starts. He stated that he assumes there will be construction activity occurring next week. Anyone who has raised children knows how stressful the first day of school is. Families come from as far as three or four miles away to the bus collection point (intersection of Banner Lava Cap Road and Idaho Maryland Road). He hopes that the construction crews will keep this in mind so

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that there will be a smooth transition for everyone concerned. This would reflect well on the District.

Director Weber pointed out that this is included in the MMRP.

Mr. Powell stated that he has been involved in discussions with Durham Transportation (local school bus company) regarding bus routes and bus stops. He understands the importance of this issue. Five notification boards are available that Ms. Rohde has been involved with in order to provide communication to the residents. Delays will be minimized as best as possible.

Director Weber stated that there may be as many as 100 cars delivering children to the bus stop. If there are delays there will be chaos.

Mr. Powell stated that he and Teichert Construction will have a game plan in place to deal with the school traffic.

Mr. Powell addressed Mr. Lawrence's comments about noxious weeds, etc. Eco:Logic identified scotch broom throughout the project alignment and a large amount located at the Airport. After discussions with Director Weber and a couple of property owners, the team decided to address the Scotch Broom issue in two ways. Containment at the Airport – in which any vehicles coming in contact with the plant were to be cleaned in a specified wash down area and inspected by Eco:Logic before leaving the Airport area. The other method was to remove the Scotch Broom. Staff contacted the local Fire Safe Council and they provided a ground crew to locate the patches of Scotch Broom along the alignment, hand pulled and removed the plant from the area. The Fire Safe Council provided this service to the District at no cost.

Director Weber stated that she feels some of the information is being "laundered." The Scotch Broom containment occurred after a resident on Lee Lane complained to her. It took seven hours of telephone calls and e-mails to Mr. Powell regarding the removal of Scotch Broom. Finally, she asked Mr. Nelson to stop the work because there was a violation of the MMRP due to masticating the Scotch Broom and bringing it out through the neighborhood. There was no washing station prior to this. Again, this is not a proactive approach. It sounds great when Mr. Powell talks about the public relations value of being involved with the Fire Safe Council. In actuality, the neighborhood is enforcing the MMRP. The District needs to be responsible for enforcing the MMRP.

Kathy Thomas, resident off of Sesame Street, expressed concern that there is no water truck in the area. Also, her daughter was late for work, even though she left earlier than usual. She understood that the wait times would be made shorter during the morning and afternoon hours so that people can get to their destination on time. Her biggest complaint is the dust. While she was waiting, she had to roll up her windows. Also, her car is very low to the ground, and there are berms of dirt that she has difficulty driving over.

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Director Weber stated that traffic control was promised on Sesame Street and Banner Lava Cap Road. There are times when the traffic control is not available.

Mr. Powell explained that Sesame Street is outside of the construction area at this time. Currently construction is occurring at Wings of Morning and Idaho Maryland Road. This is a tough area because the alternate routes are difficult.

Director Weber stated that traffic control must be available if Sesame Street is the only way out of the area, even though it is not in the direct Project area.

Mr. Powell stated that signs have been installed two weeks ago indicating the construction schedule.

Director Weber reiterated that there needs to be traffic control at Banner Lava Cap Road and Sesame Street because of the blind turn on Banner Lava Cap Road.

Mr. Powell stated that he understands the concern and will look into this matter further.

Mr. Nelson stated that since the Project team is available, he invited the audience members to meet with the team to discuss their thoughts, recommendations and concerns.

MT. VERNON ROAD SIPHON PROJECT – Public Hearing (Res. No. 2010-50)

Anthony Rondoni, Right-of-Way Agent, stated that the District is seeking an easement for the Mt. Vernon Road Siphon Project on Assessor's Parcel Number 038-032-078 owned by Robert G. Hane and Sharon M. Hane. Mr. Rondoni provided the Board with an update:

Public Meetings:

- March 2007 – Initial Public Meeting (Alternative Alignments with Preferred Route Presented)
- June 2007 – Start Environmental Process
- July 2007 – Geotech Borings B-5 and B-6 (Hawkins' and Hane's property)
- February 2008 – Alignment Presented (Design Tech Report)
- October 2008 – Second Public Meeting during 30-day Public Comment Period (Alignment Presented)
- November 2008 – Board of Directors Accept Project

Acquisition History:

- Five (5) Right-of-Way Meetings with Property Owners:
 - 1) August 27, 2009 – Appraisal Inspection
 - 2) October 13, 2009 – Deliver and Discuss District's First Written Offer
 - 3) November 6, 2009 – Site Meeting
 - 4) January 14, 2010 – Site Meeting
 - 5) January 29, 2010 – Site Meeting
- Six (6) Separate Letters/Mailings:

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- 1) October 13, 2009 – First Written Offer with Copy of Appraisal (hand delivered)
 - 2) November 20, 2009 – Letter
 - 3) January 15, 2010 – Letter
 - 4) January 29, 2010 – Notice of Intent
 - 5) February 1, 2010 – Letter(s) from Owner Requesting to be Heard at Resolution of Necessity Public Hearing
 - 6) February 10, 2010 – Notice of Resolution of Necessity Public Hearing Date
- Nine (9) Telephone Calls

Mr. Rondoni stated that of the 13 easement deeds needed, the District to date has been able to reach an accommodation and collect signed easements with all but two of the property owners.

History with the Board of Directors:

- February 24, 2010 – Item continued to March 10, 2010
- March 9, 2010 – Hanes agreed to obtain their own appraisal and sign the Agreement for Possession and Use with the District
- March 10, 2010:
 - Item removed from the Agenda at request of Chief Engineer
 - Right-of-Entry signed by property owner on March 9, 2010
 - Owner agreed to obtain their own appraisal (at District expense)
 - New appraisal and Right-of-Entry agreement would allow Staff additional time in which to seek resolution with property owner

Hane's Appraisal Chronology:

- March 9, 2010 – Mr. and Mrs. Hane signed the Agreement for Possession and Use and agreed to obtain their own appraisal
- March 10, 2010 – Board of Directors removed the Hane item from the agenda at the request of the Chief Engineer
- April 18, 2010 – The District received the appraisal ordered by the Hanes (\$9,434 in lieu of \$5,500)
- April 28, 2010 – The District offered to pay the Hanes their appraised value (\$9,434)
- May 5, 2010 – Mr. Hane advised the District that \$9,434 is not adequate
- Hanes met with the General Manager
- Fence installation completed by the District at Hane's request

Mr. Rondoni explained that the General Manager had numerous meetings and conversations with the Hanes in an attempt to reach a negotiated settlement, but to date, the District remains at an impasse regarding appropriate compensation.

Adrian Schneider, Project Engineer, stated that the intent of the Mt. Vernon Road Siphon Project is to construct a new water pipeline that will be used to convey irrigation water that currently flows through the Combie Ophir IV Canal. This Canal has very

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limited access for ditch maintenance. Construction of the proposed raw water pipeline is expected to reduced overall maintenance costs, reduce erosion and the potential for spill, and enhance safe carrying capacity during peak summer months. In past years, there have been numerous canal breaches resulting in loss of operation, canal spillage and damage to property.

Project Drivers:

- Capacity and Operations
 - Canal at Capacity
 - Future Flows Exceed Current Capacity
 - Water Loss Due to Seepage of Canal
- Maintenance
 - Limited Access for Maintenance
 - Unstable Canal Berm
- Public Safety
 - Failures and Flooding of Properties

Project Objectives:

- Increases Capacity to Meet Demand
- Eliminates Bank Erosion and Flooding
- Reduces Maintenance
- Enhances Existing Services
- Conserves Water
- Public Safety

Mr. Rondoni continued with his portion of the presentation:

Parcel Overview:

- Overall Parcel Size: +/- 5.2 Acres (unimproved parcel)
- Easement Area: +/- 0.24 Acres
- Easement Area: Approximately 30 Feet by 352 Feet
- Easement sits inside Placer County Building Setback Area (30 Feet)

Mr. Rondoni pointed out that Mr. and Mrs. Hane own the adjoining 4.2 acre parcel, which is not part of the District's proposed easement area, but does include the Hane's residence and retail Christmas tree operations.

The District's proposed easement area is about $\frac{1}{4}$ of an acre and is not currently planted in Christmas trees. The District's proposed easement is located at the side of the parcel and is a strip approximately 30 feet by 352 feet in size.

Current Status:

- Staff has reached an impasse in negotiations with owners
- Project review and acquisition impasse leads Staff to recommend that the Board consider adopting Resolution No. 2010-50 for proposed easement affecting Assessor's Parcel No. 038-032-078

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In order to adopt the Resolution of Necessity, the Board must concur with the following findings:

Resolution of Necessity (RON) Findings:

- 1) Public interest and necessity require construction of the project
- 2) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury
- 3) The property interests sought to be acquired are necessary for the project
- 4) Any offer required by Section 7267.2 of the Government Code has been made to the owner(s) or record

Mr. Rondoni stated that District Counsel has advised Staff that this is not the venue to enter into negotiations regarding compensation.

Jeff Meith, District Counsel, added that the four Findings are also stipulated in the Possession and Use Agreement which was executed by Mr. and Mrs. Hane.

President Miller opened the public hearing.

Robert Hane, property owner, stated that it appears that there are some factual disputes. He distributed a copy of a section of the February 24, 2010 Board of Directors' meeting minutes:

Mr. Hane stated that his matter will come up next on the agenda. He would like to discuss the appraisal process that he went through. He had lengthy conversations with Mr. Crowe and Mr. Rondoni at Mr. and Mrs. Hane's home. He was happy with the \$1.90/foot appraisal price and is not opposed to the Project. Mr. Crowe suggested that the only way that Mr. Hane could interact with the Board is to obtain a second appraisal. At that time, Mr. Hane did not want to obtain another appraisal because of the time limit. If Mr. Hane wanted anything more than \$5,000, he would need to obtain a second appraisal.

Mr. Hane stated that he was fine with the original appraisal even though there were items that "did not necessarily fit on the ground." One of the items not mentioned in that appraisal was the fact that he was going to lose production of Christmas trees. In that appraisal, it points out that the very next section of Christmas tree planting was to take place in the area where the proposed pipe alignment is. He has a business and has been in business for 31 years. His property is zoned 2.3 (Agriculture and Residential). There are no agriculture setbacks in Placer County, so he can plant his trees right up to the fence line. Mr. Hane did not want to obtain a second appraisal, but Mr. Crowe stated that this would be the only way Mr. Hane could interact with the Board. He thanked Mr. Nelson for coordinating the fence to be installed on his property. Mr. Hane reiterated that the \$1.90/square foot appraisal was acceptable to him.

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Mr. Hane distributed copies of information to clarify some points. He stated that he realizes the Board is on a time schedule.

President Miller informed Mr. Hane that the time schedule will not be a factor for this matter.

He referenced a section of a report titled '2005 Christmas Trees Costs and Returns Study – Sierra Nevada Foothills' by the UC Cooperative Extension. He noted that Christmas trees are planted in portions (not planted at once, but over a period of time). He has a 'choose and cut' Christmas tree farm. He also has other property where he brings in trees that he cuts off of. Primarily, his business is 'choose and cut,' so he has to continue to plant trees.

Mr. Hane referenced sections on page 28 of Jim Oakam's appraisal of September 2009:

- A value for the whole property (unimpaired) before the take has been determined (\$431,201) now an after value is needed.
- Compensation will still be based upon market value and the same sets of market data used in the before condition will be used. However, in the after condition, the major emphasis will be upon the lower limits of the value ranges, because the easement burdens (impairs) a portion of the property.

He referenced sections on page 6:

- The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell, but under no particular or urgent necessity for doing so, not obliged to sell, and a buyer, being ready, willing and able to buy, but under no particular necessity for doing so, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adapted and available. Source: California Code of Civil Procedure, Subsection 1263.320

He referenced sections on page 36:

- Value for whole property before take = \$431,201 (226,948 square feet @ \$1.90 per square foot). *Mr. Hane stated that \$1.90 is the highest market value.*
- The after value of \$1.40 per square foot is 73.7 percent fee value; therefore, the value for the take is 26.3 percent of fee or \$.50.
- Currently, the subject is a home site(s) (*Mr. Hane stated that this is not true*) and not a developed tree farm. It could be both. In the after condition it can still be both, but no trees in the easement area. A loss of tree production is difficult to quantify, one reason being maybe the road in the take area can accommodate fertilizer delivery trucks, i.e. an off-set. The appraiser gave some consideration to the loss by use of a lower price per square foot for the after condition.

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Mr. Hane stated that the appraiser devalued the \$1.90 per square foot to \$1.40 per square foot, and from there devalued to \$.50 because of the bundle of rights. The appraiser stated that the bundle of rights was not being violated. Mr. Hane still had the property, could still pay taxes and still use the property. The appraiser did not take into consideration that Mr. Hane has a Christmas tree farm and property relates to money. Through various meetings with District Staff, he indicated that he was happy with the price of \$1.90 per square foot, but basically he was told that "this was not going to happen" because the appraisal valued the easement at \$.50 per square foot.

He referenced sections of page 35:

- Easement Impact Analysis - Overall Impact on Easement: Very minimal; no major intrusions or encroachments, and take is also in a side yard setback area.
- Appraiser's Impact Observations/Interpretations:
 - No loss of land area; an easement take, not fee.
 - No change due to easement of neighborhood trends, still functional for Christmas trees.
 - No trees; in the after condition, Christmas trees would not be permitted within the take.

Mr. Hane stated that his bundle of rights have been violated to the maximum. If he cannot use his property for its intended use, then he has a problem.

He referenced sections of page 31:

- Future Planned Use – Area for expansion of another phase of the Christmas tree farm known as Pine Valley Ranch
- Other – Owner Questions/Concerns:
 - Will take reduce his future tree production on the subject parcel, which is not yet planted, so any loss is difficult to quantify. Perhaps use of the roadway in the take area by fertilizer trucks will off-set production loss.

Mr. Hane stated that he brings in approximately four loads of fertilizer each year through his own gate. Using the District's easement for access will not off-set his production loss.

Mr. Hane referenced an area on a map (NID EASEMENT – Exhibit B) and stated that repeatedly throughout the appraisal, it says the ground is fallow, empty and unimproved. He has about 2,500 Christmas trees growing in the subject property. The easement area is 352 feet which he agreed to by signing the Possession and Use Agreement. He is not opposed to the Project, and he is not trying to stop the District from delivering water or making money. He would like for the District to take into consideration the impact to his Christmas tree ranch.

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Mr. Hane referenced the second appraisal conducted by Owen/Associates (section on page 2). He did not plant in the proposed easement area at the time because when Mr. Schneider came out to the ranch and was looking for a 50 foot easement, it was basically from Mr. Curtis' property to Vista Robles. His business is based on a seven to nine year extended period of time. He will plant trees in January and harvest them eight to nine years from now. He has not planted trees in the proposed easement area because of the possibility of eminent domain by the District.

Mr. Meith interjected and stated that this is one of reasons why negotiations for price are not well suited for this discussion. He reminded the Board that in the Possession and Use Agreement, it refers to the fact that if there is no agreement on price in 120 days, the issue of eminent domain must be sought.

Mr. Hane informed Mr. Nelson in their last meeting that they were at a point of impasse. He would like to distribute additional information to the Board.

Mr. Meith pointed out that negotiations for price do not have to end because the Board takes the action to formally proceed with eminent domain.

Mr. Hane stated that he understands. The District has to do what it needs to do to conduct their business, and he has to do what he needs to maintain his cash flow and the health of his operation.

Mr. Hane referenced sections of page 60 of the second appraisal:

- 226,948 square feet (5.21 acres) x \$1.30 per square feet = \$295,032
- The presence of this easement will, in effect, take away a portion of the "bundle of rights" associated with property ownership (i.e. fee simple ownership generally includes 100 percent of the "bundle of rights"). In many cases, only a small portion of the "bundle of rights" is impacted by the presence of a permanent easement.
- As explained earlier, the unit value (or value-per-square-foot) for the fee simple interest in the easement area will remain the same as the unit derived for "whole" property (i.e. \$1.30 per square foot). Therefore the market value of the fee simple interest in the easement area has been calculated to be \$13,477.

Mr. Hane stated that the second appraisal was conducted in March 2010, even though it was asked to be dated September 1, 2009. He noted that since September 2009, there has been a great reduction in property values, which is not beneficial to Mr. Hane. The only reason he agreed to obtain a second appraisal is because he feels, to some degree, that he was "badgered into it." He was happy with the first appraisal except for the fact that the loss of production costs was not considered.

He referenced sections on page 62:

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- The presence of the easement could possibly impact the design development of any potential future division of the subject.
- Value for the “Whole” property before the take: 226,948 square feet (5.21 acres) at \$1.30 per square foot = \$295,032
- Value for the “Whole” property after the take:
 - 10,367 square feet at \$.39 per square foot = \$ 4,043
 - 216,581 square feet at \$1.30 per square foot = \$281,555
 - 226,948 \$285,598
- Indicated compensation due owner for easement (“Take”): \$ 9,434

Mr. Hane referenced sections on page 5 and stated that his property is zoned Residential Agricultural (zone 2.3) which in turn makes his property more valuable than a zone 4.6. The appraisal indicates that 5.21 acres is rural residential zoned land.

The valuation date was September 1, 2009 - agreed upon date with the District and the date of the original appraisal prepared by Mr. Oakham (The appraiser noted that the physical inspection of the subject property was completed on March 19, 2010).

He referenced sections on page 26:

- The subject property is currently zoned for rural-residential utilization (“RA-B-100”) with zoning and general plan guidelines calling for 2.3 acre minimum parcel sizes. The subject’s current utilization as an existing Christmas tree farm reportedly represents an allowable usage under the existing zoning designation and land use guidelines.

He referenced sections on page 29:

- The landowner (grantor) retains all the normal responsibilities of ownership, i.e. property taxes, insurance, maintenance and management.
- It appears that the current owners of the subject property will not be allowed to complete their planned planting of Christmas trees within the easement area (as all areas within the easement will have the trees removed, and the easement areas will periodically be cleared of future trees).

He referenced sections on page 44:

- Comparable Land Sale No. 1: 5.30 acres was sold for \$325,000 in August 20, 2008. *Mr. Hane stated that this property is zoned farm 4.6 and is no comparison for his property which is zoned 2.3 and he has two active wells on his property.*

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Mr. Hane noticed that the sale price per acre of this property was \$49,056 per acre. The appraisal priced this at \$1.13 per square foot. It should be \$1.41 per square foot. He contacted the appraiser and pointed out the mistake. The appraiser stated that the District had already contacted him to point out the error.

President Miller asked who chose the second appraiser.

Mr. Hane stated that he chose the second appraiser because as indicated in the February 24, 2010 Board of Directors' meeting minutes, the only way he could approach the Board was to obtain a second appraisal (paid for by the District).

President Miller stated that the Board is somewhat held to what the appraisal tells them. The Board is not in authority to make these determinations.

Mr. Hane stated that the point he is trying to make is that he was happy with the first appraisal. He told Staff repeatedly that he was happy with the \$1.90 per square foot. He would not be here today if the first appraisal would have been accepted. He wants the Board to know this.

President Miller closed the public hearing.

Director Weber asked about the two sums of money that were mentioned earlier (\$5,500 and \$9,434) and if the two figures are to be added together.

Mr. Rondoni stated that there were two appraisals – the first appraisal by Mr. Oakham was valued at \$5,500 and the second appraisal by Mr. Owens was valued at \$9,434. The District has already paid Mr. and Mrs. Hane \$5,500. The District would then pay the balance.

Director Weber asked about the setback requirements in Placer County and the difference between a building setback and an agriculture setback.

Mr. Rondoni stated that Mr. Hane is correct that there are no restrictions for planting trees near the property line.

Director Weber asked if the District is then taking property from Mr. Hane that he could legally plant trees on.

Mr. Rondoni stated that the District would not want Christmas trees planted in the easement area. Both appraisers took this into account as part of their valuation by stating that he has been compensated for his loss for his inability to utilize the easement area for planting trees.

Mr. Hane protested and stated that Mr. Rondoni's comment is a false statement. Mr. Hane was not compensated for his loss and his "bundle of rights" has been affected.

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He will not be able to use that land again, but he will be required to pay taxes on the land.

Director Bachman asked if the \$1.41 per square foot has been offered to Mr. Hane.

Mr. Rondoni stated that this amount is the fee value. If the District were to purchase Mr. Hane's property outright, this would be the price per square foot.

Mr. Meith explained that the appraisal is the value of the take. Mr. Oakham appraised the take at \$5,500 and Mr. Owens appraised the take at \$9,434. The dollar per square foot is the starting point to get to the appraised value.

Director Bachman stated that the second appraiser made a mistake. This would throw the appraisal off.

Mr. Rondoni explained the mistake occurred in one of eight comparables to the subject property. After further review, Mr. Rondoni discovered that the property actually sold at \$1.13 per square foot. The sales price was overstated by the appraisal for the one comparable property.

Director Wilcox made a motion to adopt Resolution No. 2010-50 (Declaring Necessity and Authorizing Eminent Domain Proceedings for the Acquisition of Real Property for a Public Project known as Mt. Vernon Road Siphon Project on Placer County Assessor's Parcel No. 038-032-078, owned by Robert G. Hane and Sharon M. Hane). Director Drew seconded the motion.

Motion passed on the following roll call vote:

Division I	No
Division II	Aye
Division III	Aye
Division IV	Aye
Division V	Aye

Director Wilcox stated that he appreciates Mr. Hane's points but they involve compensation, and compensation matters need to be dealt with outside of this proceeding. The District needs to move the process along. Director Wilcox is comfortable with the four findings. It is quite clear that the property is necessary for the Project. Though he does not have a problem making the necessary findings, he does have sympathy for Mr. Hane and the loss of income from the Christmas tree plantings. As he understands it, these discussions can continue.

Meeting adjourned at 9:55 a.m. to allow Directors and Staff to attend opening ceremonies at the Nevada County Fair; meeting reconvened at 12:15 p.m.

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CLOSED SESSION was declared at 12:15 p.m. pursuant to Government Code Section to discuss pending litigation with District counsel; the name of the case is Nevada Irrigation District vs. Nevada City Sugar Loaf Properties LLC, et al., Nevada County Superior Court Case No. 76097.

CLOSED SESSION was declared at 12:15 p.m. pursuant to Government Code Section 54956.9 to discuss existing litigation with District counsel; the name of the case is Robbins vs. Nevada Irrigation District, County Superior Court Case No. 75530.

CLOSED SESSION was declared at 12:15 p.m. pursuant to Government Code 54957.6 to provide direction to the District's designated bargaining representatives – Nelson, Crough, Morrow, DuBose and Meith – regarding 2010 salary/benefit/working conditions.

MEETING RECONVENED in regular session at 1:40 p.m.

MEETING ADJOURNED at 1:40 p.m. to reconvene in regular session on August 25, 2010, at 9:00 a.m. at the District's main office located at 1036 W. Main Street, Grass Valley, California.

Board Secretary

Attest a true record of actions
had and taken at the above and
foregoing meeting our presence
thereat and our consent thereto.

Director
Division I

Division II

Division III

Division IV

Division V
