

Staff Report

for the Board of Directors Meeting of June 26, 2019

TO: Board of Directors

FROM: Gary D. King, PE, Ph.D., Engineering Manager

DATE: June 19, 2019

SUBJECT: Establish District Policy 6685 - Canal Encasements

ENGINEERING

RECOMMENDATION:

Adopt Resolution No. 2019-19 (Establishing District Policy 6685 - Canal Encasements), as discussed by the Engineering Committee on March 19, 2019.

BACKGROUND:

The intent of this policy is to provide direction regarding the encasement of raw water conveyance systems (canals). The policy addresses numerous issues that have been encountered by the District relating to the need to encase canals. These issues have been encountered when interacting with developers, private landowners, and during District activities. The policy will create a consistent direction for the managing of external and internal encasement activities.

On February 19, 2019, the Engineering Committee discussed the Canal Encasement Policy and unanimously agreed to forward a recommendation to the Board of Directors. The Encasement Policy was brought to the Board of Directors on February 27, 2019, at which time the Board requested the policy go back to the Engineering Committee for further review and modification.

The Encasement Policy was again reviewed by the Engineering Committee on March 19, 2019, as directed. The Engineering Committee was unable to revise the draft policy and failed to reach agreement. Director Wilcox indicated the current draft was acceptable; however, Director Peters recommended the following edits:

- Strike “water loss” from 6685.1
- 6685.6 – strike entire section
- Strike “proactive” from the policy
- Director Peters questioned if perhaps there is a way to allow well owners to pay a surcharge and a way to continue to allow these wells to recharge through some other mechanism

The attached draft policy and resolution have not been revised since the discussion with the Board on February 27, 2019, or the Engineering Committee on March 19, 2019. The approved meeting minutes from the Engineering Committee on March 19, 2019, are attached.

This policy directly relates to Goal No. 1 of the District's Strategic Plan to strengthen the reliability and redundancy of facilities.

BUDGETARY IMPACT:

There is no budget impact at this time.

ATTACHMENTS:

- Resolution No. 2019-19 - Canal Encasements
- District Policy 6685 – Canal Encasements
- Assembly Bill No. 685
- Page 3-1 of the District current rules and regulations.
- Approved Engineering Committee Meeting Minutes from March 19, 2019
- Memorandum – County of Nevada Environmental Health Department dated March 18, 2019

GDK



RESOLUTION NO. 2019-19
OF THE BOARD OF DIRECTORS OF THE NEVADA IRRIGATION DISTRICT

**ESTABLISHING ADMINISTRATIVE POLICIES
Canal Encasements**

WHEREAS, the Nevada Irrigation District (the "District") intends to establish, and revise from time to time, administrative policies to guide the operations and management of the District; and

WHEREAS, the policy is intended to align the Board and the Administration regarding the encasement of canals; and

WHEREAS, the encasement policy addresses the needs of the District at the time of approval, and it is understood that the encasement policy will be subject to modifications by future Boards as appropriate; and

WHEREAS, such draft policies have been reviewed by the District's Legal Counsel and found to be in accordance with law; and

WHEREAS, the District owns and maintains over 475 miles of canals for raw water conveyance. Raw water conveyance and the related facilities are designed and constructed to accommodate District managed water supplies; and

WHEREAS, encasement of canals may be necessary to protect water quality, minimize the risk of injury, reduce operation and maintenance costs, minimize uncontrolled and unacceptable storm water intrusion, and reduce seepage; and

WHEREAS, the District possesses extensive water rights, and conveys waters subject to its rights through its system of raw water canals; and

WHEREAS, included within the District's water right portfolio, which it utilizes to serve its customers, are 'imported waters' which would not come to be located within the District's service territory, but for the District's development and continued operation of its system; and

WHEREAS, the water is necessary for human survival and the District serves customers located within its territory on a nondiscriminatory basis in accordance with its rules and regulations; and

WHEREAS, private groundwater wells are subject to the local, state, and federal regulations; and

WHEREAS, the Public has requested the District to investigate and consider canal encasement as a water efficiency strategy; and

WHEREAS, all District customers and ratepayers benefit from increased efficiency in conveying District water; the loss of District water requires current rate payers to pay for the management of loss water costs through water rates; and

WHEREAS, the purpose of the Canal Encasement policy is to provide guidance to Staff in evaluating canal encasement projects.

NOW, THEREFORE, BE IT RESOLVED, the Board of Directors of the Nevada Irrigation District hereby adopts the following policies as attached, and shall be incorporated herein:

#6685 – Canal Encasements

BE IT FURTHER RESOLVED, that the attached policies shall be incorporated into the District Policy Manual, and the Board Secretary is hereby authorized to assign and revise policy numbers, and format and reformat the attached, as needed for an organized, comprehensive, policy manual.

* * * * *

PASSED AND ADOPTED by the Board of Directors of the Nevada Irrigation District at a regular meeting held on the 26th day of June 2019, by the following vote:

AYES:	Directors:
NOES:	Directors:
ABSENT:	Directors:
ABSTAINS:	Directors:

President of the Board of Directors

Attest:

Secretary to the Board of Directors

Nevada Irrigation District

POLICY MANUAL

POLICY TITLE: Canal Encasements
POLICY NUMBER: 6685

The purpose of this policy is to provide guidance in determining when to pursue raw water conveyance (canal) encasements.

The District owns and maintains over 475 miles of canals for raw water conveyance and associated raw water conveyance facilities. Raw water conveyance and the related facilities are designed and constructed to accommodate District managed water supplies.

Encasement of canals may be necessary to protect water quality, minimize the risk of injury, reduce operation and maintenance costs, minimize uncontrolled and unacceptable storm water intrusion, evaporation, and reduce seepage.

- 6685.1** District will proactively pursue strategic encasement of canals to reduce impacts such as water quality health and safety impacts, uncontrolled stormwater intrusion, and water loss.
- 6685.2** The Canal Encasement policy is supported by the Storm Water Policy (Policy # 6655) to eliminate the discharge of stormwater into existing canal facilities. The focus will be to allow stormwater to remain in its natural channel and parent watershed, as outlined in the stormwater policy, and not to enter District facilities. The District is not a stormwater utility.
- 6685.3** Factors used to determine the need for encasement(s) in a development area such as location and size of buildings, parking lots, roads and other improvements within proximity of a canal; the canal size; the type of downstream water use; the nature of the development; and the use of hazardous materials within the development.
- 6685.4** District will design culverts, canals, and appurtenant structures to meet approved master plan design flows for District operations with an additional 25% capacity for unanticipated flows, or as modified by the Engineering Manager to meet District needs, but shall not permit the system to be used for the intentional conveyance of stormwater.
- 6685.5** District will actively engage local and state land use authorities and other regulatory bodies to manage and mitigate impacts to District facilities by stormwater runoff.

- 6685.6** Water which escapes District canals or conveyance facilities through seepage remains District property and is subject to elimination or recapture by the District at the District's discretion. Landowners possess no right or entitlement to the continuation of such escaped waters. If District conveyance facilities traverse land pursuant to prescriptive right, the District will make available a raw or treated water service per the current rules and regulations. The District will consider claims regarding seepage in accordance with applicable legal authorities.
- 6685.7** Private culverts can be considered an encasement but are covered under District Policy #6690, Privately Owned Culverts.
- 6685.8** District will review any encasement for compliance with state and federal regulations such as the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) including, to the extent applicable and necessary, review of environmental effects of seepage with appropriate regulatory organizations.
- 6685.9** Development occurring within a setback established by a local and/or state land use authority may be subject to encasement for protection of District facilities and the underlying property.

Adopted: [June 26, 2019 via Resolution 2019-19](#)

Assembly Bill No. 685

CHAPTER 524

An act to add Section 106.3 to the Water Code, relating to water.

[Approved by Governor September 25, 2012. Filed with
Secretary of State September 25, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 685, Eng. State water policy.

Existing law establishes various state water policies, including the policy that the use of water for domestic purposes is the highest use of water.

This bill would declare that it is the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. The bill would require all relevant state agencies, including the Department of Water Resources, the State Water Resources Control Board, and the State Department of Public Health, to consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and grant criteria are pertinent to the uses of water described above.

The people of the State of California do enact as follows:

SECTION 1. Section 106.3 is added to the Water Code, to read:

106.3. (a) It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

(b) All relevant state agencies, including the department, the state board, and the State Department of Public Health, shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water described in this section.

(c) This section does not expand any obligation of the state to provide water or to require the expenditure of additional resources to develop water infrastructure beyond the obligations that may exist pursuant to subdivision (b).

(d) This section shall not apply to water supplies for new development.

(e) The implementation of this section shall not infringe on the rights or responsibilities of any public water system.

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SECTION 3

GENERAL CONDITIONS OF WATER SERVICE

3.01 CUSTOMER COMPLIANCE

Each customer, by applying for or receiving water service from the District, agrees to be bound by and to comply with all Regulations of the District, as adopted from time to time by the Board.

3.02 CONTROL OF DISTRICT FACILITIES

All District facilities are under the exclusive control of the Board and its designated employees; and no other person shall interfere with, regulate or control any such facilities, or the water flowing therein, without authorization of the Board.

3.03 ALL WATER BELONGS TO DISTRICT

The District expressly reserves the right to recapture, reuse and resell all waters within the boundaries of the District. No water user acquires a proprietary right by reason of use.

3.04 PLACE AND USE OF WATER

Except with the prior written authorization of the District, no customer shall use, or permit the use of any water furnished by the District on any premises, or for any purpose other than that specified in the application for service, nor shall any customer resell any water furnished by the District.



COUNTY OF NEVADA
ENVIRONMENTAL HEALTH DEPARTMENT

950 MAIDU AVENUE, SUITE 170, NEVADA CITY, CA 95959-8617
(530) 265-1222 FAX (530) 478-5799 <http://mynevadacounty.com>

Amy Irani, Director

MEMORANDUM

DATE: March 18, 2019

TO: Gary King, Engineering Manager
Nevada Irrigation District

FROM: Amy Irani, REHS
Director of Environmental Health

SUBJECT: Surface water influence on wells – Encasement Policy 6685

The Nevada Irrigation District's proposed Encasement Policy 6685 provides guidance of when encasement of a raw water conveyance shall be pursued. A raw water conveyance is an infrastructure that conveys surface water. According to the aforementioned policy, the encasement of raw water conveyance/canal is to protect water quality, minimize the risk of injury, reduce operation and maintenance costs, minimize uncontrolled and unacceptable storm water intrusion and reduce seepage.

The Nevada County Department of Environmental Health (NCDEH) does not have opposition to the proposed Encasement Policy.

The NCDEH regulates well water systems for public use and oversees the installation of residential wells. The NCDEH works with local, licensed and certified well drilling companies to ensure that when a public or residential well is installed, the well is properly sealed to prevent surface water intrusion. Prevention of surface water intrusion into a public or residential well is crucial to ensure a safe, potable water supply for consumption by the public and homeowners.

Per California Code of Regulations, Title 22, Section 64651.83, surface water is defined as *water open to the atmosphere and subject to surface run off*. Should a public well system or a residential well be under the influence or impacted by the seepage of a raw water conveyance (surface water), the risk of the intrusion of bacteria, parasites and viruses into the well would then render the well "non-potable". Disinfection alone would not make the water safe to drink as chlorine is not an effective form of treatment against some parasites.

Public drinking water sources that are derived from surface water are required to undergo a rigorous multi-barrier treatment process (filtration and disinfection) to ensure the safety of the drinking water for consumption. Therefore, greater protection for waters collected and treated for consumption by the public and residents of Nevada County is a benefit to the community.

If you have any questions regarding this memorandum, please feel free to give me a call at (530) 265-1464 or email me at amy.irani@co.nevada.ca.us. Thank you.

NEVADA IRRIGATION DISTRICT

Engineering Committee

March 19, 2019

MINUTES

Committee Members Present: Nick Wilcox, Director, Division V
Laura L. Peters, Director, Division IV

Committee Staff Members Present: Remleh Scherzinger, General Manager
Gary King, Engineering Manager

Other Staff Members Present: Greg Jones, Assistant General Manager
Susan Lauer, Communications Specialist II
Chip Close, Water Operations Manager
Doug Roderick, Senior Engineer
Jana Kolakowski, Human Resources Manager
Adrian Schneider, Senior Engineer
Carie Deatherage, Management Assistant
Andrew McClure, District Legal Counsel

Public Comment

No Public Comment

Minutes of the February 19, 2019 Regular Meeting

Approved as submitted.

Establishing District Policy 6685 - Canal Encasements

Gary King, Engineering Manager, presented the item, explaining the Board returned the item to the Engineering Committee for further review.

The Committee reviewed the redlined changes to the draft resolution and policy as provided with the staff report.

Remleh Scherzinger, General Manager, added that the first two newly added "Whereas" paragraphs of the resolution need to end with "; and".

Mr. King noted that the following were included with staff report materials:

- Assembly Bill No. 685, Chapter 524
An effort has been made to incorporate some of the issues pertaining to human consumption in the policy. He noted Section (c) on Page 91 "This section does not expand any obligation of the state to provide water or to require the expenditure of additional resources to develop water infrastructure beyond the obligations that may exist pursuant to subdivision (b)." The District's Community Investment Program is directly related, and the District has been extending waterlines into areas that do not have water.

- NID's Rules and Regulations Section 3.03 – All Water Belongs to District
“The District expressly reserves the right to recapture, reuse and resell all waters within the boundaries of the District. No water user acquires a proprietary right by reason of use.”

Mr. King provided the Committee with a copy of a letter received on March 19, 2019, from the Nevada County Health Department regarding seepage. The letter describes the County's position on wells and the relationship to surface water stating, “Prevention of surface water intrusion into a public or residential well is crucial to ensure a safe, potable water supply for consumption by the public and homeowners.”

Director Peters commented that this is the fourth time the policy has been presented. One of the main reasons this policy has been a struggle is that it is very broad. It includes water leaving the conveyance system and water coming into it. As previously stated by Director Wilcox, and in which she completely concurs, the District is currently more concerned about discharges into the canal facilities.

Director Peters suggested separating seepage and intrusion. She understands that the District needs to have a policy that can be given to the local land use authority that gives direction when there is development when there are changes in land use on a property, or if there is an easement on private or public property.

Director Peters spoke about the following issues with the proposed policy:

- Seepage issue have many unknowns
- If there is damage to a property adjacent to the canal, the District does not need a policy to fix it
- If the District has a canal that is losing excess water, the District does not need a policy to tell a District department to fix it
- Policy should include a mandatory 100 ft. setback of private activities from District facilities, notifying property owners within 500 ft. if there is a project going forward where there will be an encasement

Director Peters proposed that the policy focus on water coming into the system as opposed to going out of the system, as cited under Policy 6685.2, which states “The Canal Encasement Policy is supported by the Storm Water Policy (Policy # 6655) to eliminate the discharge of stormwater into existing canal facilities.”

Director Wilcox stated that the District already has a Storm Water Policy and that it is adequately covered. He believes that this policy is really attempting to get at the other aspect, which is covered in Section 3.03 of the District's Rules & Regulations. That specifically states that the District expressly reserves the right to recapture, reuse and resell water. This issue has come up because of people's right to capture seepage, not because of storm water intrusion. He believes that there needs to be a policy to clearly explain this seepage issue. People do not obtain a right to seepage, and he believes the law is quite clear on that.

Andrew McClure, District Counsel, concurred that the law is quite clear on it. He shared how Stephens vs. Oakdale Irrigation District addresses just this and is somewhat of the seminal case that flows through decisions both effecting and affecting surface water recapture and entitlement to ground water benefits.

Mr. King read the following sections from District Policy No. 6655 - Storm Water:

6655.1 The District will proactively pursue modification, mitigation, and remediation within the development planning process, zoning changes, and other service related requests to require the management of storm water generated by projects to ensure that water is not directed, directly or indirectly, into District facilities.

6655.2 The District will work to reduce and/or eliminate the discharge of storm water into existing facilities. The focus will be to divert storm water away from District facilities and allow storm water to remain in its natural channel and parent watershed.

Director Peters added that the District states in its general conditions of water service that all water belongs to the District. If it is discovered that one particular canal is losing a lot of water, the District has the right to repair the canal. However, this gives the false impression that the District is going to try to line 475-miles of canals.

Director Wilcox replied that it does not, and that is why the word “strategic” was added to District Policy No. 6685.1. It is not the District’s intention to encase the entire system. It would be nice if it could be done if there was an extra \$3-billion on hand that ratepayers were willing to pay for to recapture 15,000 acre-feet of water from being lost.

Discussion ensued as to the primary purpose of the policy.

Remleh Scherzinger, General Manager, said that the Board is giving staff directive, essentially telling them what the Board’s wish is when running into a particular situation. For example, in Section 6685.6, the part that is of interest to staff is “If District conveyance facilities traverse land pursuant to prescriptive right, the District will make available a raw or treated water service per the current rules and regulations...” The Board is telling staff that if there is this situation, the Board would like staff to do this activity. It is saying that they do not have a right to the water, but if they want or need water, water will be made available to them. There are situations where a canal crosses a property with a constituent who is not a customer of the District. The District wants to make sure that these property owners have the ability to buy water from the District at that time.

Director Peters said that often it is raw water that is being cut off that is percolated and cleansed through the ground water recharge process into their well because it has been treated by the ground. The District often does not have treated water facilities to these locations. Not every property is set that it can hold a pond, tank or storage to treat water off-site. It is taking away a potable supply and offering a raw water supply. Groundwater is a hot topic. She is in support of repairing canals and working with property owners when there is a leak and water is being lost. It needs to be clearly stated.

Mr. Scherzinger said that this is in the preamble of the policy, which currently states that encasement of canals may be necessary to protect water quality, minimize the risk of injury, reduce operation and maintenance costs, minimize uncontrolled and unacceptable storm water intrusion, evaporation, and reduce seepage. He needs to know what more should be added to that or what mechanism the Board wants to drive staff to cause this to happen. One of these issues has to trigger for staff to be able to say there is an issue and encasement is needed.

Director Wilcox asked Mr. McClure to share rules and practices related to wells that are under the influence of surface water.

Mr. McClure said that the County's letter says it about as well as he could. When an isotope study shows a direct inner-connection between the surface water supply and the well, then that well would not be a valid source of potable water. If the District became aware of a pipeline from the canal to the source for a well, the District would need to notify the County Department of Public Health, to inform that it is not a domestic source of public water, because the District is not treating the water.

Discussion ensued regarding domestic potable wells, well recharging and well testing.

Director Peters recommended the following edits:

- Strike "water loss" from 6685.1
- Strike 6685.6, as she is not sure that the District can make treated water available to all of the customers whose wells might be impacted

Director Wilcox said that he disagrees.

Mr. Scherzinger asked if the recommended change to 6685.1 runs contrary to water conservation and if the District should be encasing if a canal is detected with significant loss.

Director Peters said a policy is not needed to do that. It is stated in the general rules that all facilities are in control of the Board and its designated employees. The District has control of these facilities. If a loss is found in a canal, the District has absolute control to fix it.

Chip Close, Water Operations Manager, requested clarification if Director Peters is saying that if the canal is providing some seepage, that it is replenishing the groundwater table for these wells.

Director Peters replied, "Perhaps."

Mr. Close said he is a bit confused as to how the District, by allowing them to purchase raw water and potentially land-apply it and provide that same percolation is any different. Additionally, if the District proposes to provide treated water, when they were getting raw water, it is not exactly apples to apples. He asked for clarification.

Director Peters replied that it takes a lot of time for a well to recharge. Typically, the connectivity has been going on for a hundred plus years, and if the connectivity is broken wells can fail. Not all properties are set up to pour water over the top of the ground and wait for it to go down into the well. Other issues may also arise with open raw water.

Mr. Close said that he thinks the proposal is to encase the open canal channel that has the same challenges, while at the same time provide a raw water supply for those property owners who are concerned their wells will be affected. They can then land-apply this water similarly or try to get the same seepage they were receiving from the canal.

Discussion ensued regarding the time it may take to recharge a well, who owns the seepage water, and the Newtown Canal Encasement Project challenges.

Director Wilcox said that he is fine with this policy as presented, and that Section 6685.6 is the heart of the policy to the extent that it is redundant with Regulation 3.03. There is no problem with redundancy between policy and regulation. The Committee does not have unity on the item. He recommended that it be moved to the full Board without the recommendation of the Engineering Committee.

Director Peters said that one of the fundamental concerns she has is that the policy says that the water is District property. The District is only stewards of the water. It seems heavy handed.

Director Wilcox interjected that this water would not be there were it not for the importation of water into this watershed. It is all foreign water.

Mr. King confirmed that Director Peters recommended the following edits:

- Strike "water loss" from 6685.1
- Strike 6685.6, as she is not sure that the District can make treated water available to all of the customers whose wells might be impacted

Director Peters said that she initially wanted to remove all of Section 6685.6. At a minimum, she recommends to include what the District's policy is with respect to mandating setbacks from facilities if there is development adjacent to our canals.

Mr. Scherzinger said the District could not do that, as the District does not have land use authority.

Mr. King explained that the current county setbacks are 100 feet.

Discussion ensued regarding the primary purpose of the policy.

Mr. Scherzinger said that the directive here is that encasement of canals might be necessary to protect water quality, minimize the risk of injury, reduce operation and maintenance costs, minimize uncontrolled and unacceptable storm water intrusion, evaporation, and reduce seepage.

Mr. King added that we are trying to align the Board and staff together. When aligned, the policy can be used to guide staff on different issues. Mr. King clarified that Director Peters' recommendation is to remove Section 6685.6 completely.

Director Wilcox requested that the record show he completely disagrees with that recommendation.

Director Peters requested that seepage and intrusion be uncoupled.

Mr. King replied that intrusion is addressed in Policy 6655, as earlier discussed.

Discussion ensued regarding the Storm Water Policy and the proposed Canal Encasements Policy.

Public Comment

Yara Pasner, resident of Penn Valley, thanked the Committee for their work on this policy. She provided the Committee with copies of some proposed edits, and reviewed them with the Committee:

1. Section 6685.3, changing "such as" to "include"
2. Section 6685.1, change "water quality health and safety impacts" to "impaired water quality health and safety"
3. Re-ordering by hierarchy and chronology
 - a. 6685.9 should be moved to 6685.4 (directly below 6685.3) for a more clear flow of the policy to discuss ways in which development would impact encasement and one of those ways if it is in a specified setback
 - b. 6685.6 move to 6685.9 (below 6685.8)
4. 6685.6 – strike all, except the last sentence "The District will consider claims regarding seepage in accordance with applicable legal authorities."

Ms. Pasner agreed with Director Peters that it would be a strong stance of the District to have a water conservation seepage policy. Her understanding of the Plan for Water, is that the Plan for Water process (RWMP) is where the public engages NID in developing pathways towards water conservation to meet projected long-term needs of the District.

Ms. Pasner sees a policy that gives priority to what areas should be encased to get the most benefit looking at areas that have the highest levels of seepage. Ms. Pasner referenced the Stantec Cascade report that discussed areas that have much lower rates of seepage than others within canals. For example, older canals generally have a line of silt that has been established that keeps seepage in the canals. Therefore, some canals might be losing a lot more water than other canals. Every raw water canal loses water. She believes the reason why Director Heck and Director Peters think that this Policy reads like it is trying to encase everything, is because it says the District will proactively pursue encasement for water loss. Every square inch of a raw water canal accounts for water loss, although different canals account for more and different canals account for less. If there is a policy that is going to outline how to use encasement to

conserve water, she would like to see that the policy discuss places where the money would be best spent, and this policy falls short of doing that. As Director Peters said, this policy is made to protect the health and safety of the canal and where the water is going. This was also a quote from Mr. Scherzinger made at the previous Board meeting. Ground water is very controversial. There have been lawsuits before over Environmental Impact Reports.

Ms. Pasner shared with the Committee that the purpose of the environmental review is to engage the public, to mitigate if possible, and if the public disagrees with the review, then there is room and process to get involved as a member of the public with that environmental review process. Some of her comments here are trying to depend on the checks and balances of that environmental review process, and not take precedent from past environmental review processes and say that is going to generalize all the way into the future. The Cascade EIR is the inspiration for 6685.6, but the Cascade report also did a huge amount of research as just discussed before that precedent was set. Trying to generalize what should be done to mitigate any potential impacts in this policy is inappropriate. She thinks it would be a much stronger position to have through the Plan for Water process, a policy that is dedicated to establishing water conservation through seepage that then lists off all the different resolutions that regard seepage. It would be a much stronger point to make. It would engage the public more freely, and that is why she believes that the two should be separated. The rest of her edits reflect that sentiment.

Mr. King asked Ms. Pasner to clarify that she recommends striking the following section of the "Whereas" statement from the Resolution:

- WHEREAS, the Public has requested the District to investigate and consider canal encasement as indicated by California

Mr. King added that there had been numerous requests from the public, including SYRCL and numerous other organizations asking the District to include encasements as part of the Plan for Water.

Ms. Pasner replied in the affirmative and added that she believes it should be in a separate policy.

Mr. King said that the District is working on this policy and trying to align with the public's requests for encasement discussions. It has been very controversial. The encasement policy is based on historical CEQA (California Environmental Quality Act) documents. Section 6685.6 did not come from Lower Cascade. It came from the Newtown Canal, which is the most current and improved document. The District is trying to create alignment. Striking the public's request is somewhat disingenuous to staff's effort in trying to create alignment.

Mr. Scherzinger interjected that he is not that concerned about the resolution language.

Director Peters said that in the Plan for Water process, the District is going to be looking at this. She believes there are reasons to encase canals when they are leaking and when there are problems with them. However, there are ways the District can clarify it and

make it a separate policy, as part of the District's Plan for Water investigation. She thinks it is premature.

Mr. Scherzinger said that the more water loss the canal experiences, the more ground water recharge is occurring. The higher probability of impact to a well system is there.

Ms. Pasner said that she believes that is why it would be important for them to be separate policies. When looking at intrusion into canals, all the reasons why you would want to encase a canal to protect its health and safety are completely different from the reasons you would want to encase a canal for water conservation. The reasoning is separate, and she thinks the policies should be separated. Additionally, she can see how the more the seepage there is, the more impact it can have on wells. She thinks that is a tricky balance that may not be found throughout the District. There may be places that have a very high level of seepage, and a well cannot be found anywhere nearby. There may be prime locations for water conservation, and she would like to see this policy seek those out. She believes it will take more prioritization and more hydrological precision in the policy to try to guide going about and balancing out that process.

Mr. Scherzinger said that she is describing a very active policy that would direct staff to march out to do work, as opposed to the proposed policy that is a passive policy. There could be Board direction that says thou shalt go out and find these areas, identify them and encase them. It is fully within the Board's authority to make a policy to do that. The proposed policy was not set up that way.

Director Peters noted Policy 6685.1 - District will proactively pursue strategic encasement of canals to reduce impacts such as water quality health and safety impacts, uncontrolled stormwater intrusion, and water loss.

Mr. Scherzinger spoke about the purpose of the policy, and drew attention to the last paragraph that states, "Encasement of canals may be necessary to protect..." He does not read it as the Board telling staff to go find these.

Director Peters said that this is what it implies, and that is why it went sideways when previously brought to the Board.

Mr. Scherzinger said that if the adjectives are bothering people, they could be taken out. It can read as "District will encase canals to reduce impacts" and "proactively pursue" can be removed. The Committee is here to figure this part out. Ms. Pasner is on two sides of this, showing a more proactive and aggressive side, which is fine. The District needs a policy that helps staff understand from the Board when to start encasing canals.

Director Peters pointed out that 6685.6 is perceived as being very heavy-handed.

Mr. Scherzinger replied that it is the District's water. It is the District's job to protect that water, to make sure that it is used efficiently, and to make sure that the water is going where it is supposed to go. If the water is not going where it is supposed to, then the District needs to get it back to where it needs to be.

Director Peters said that she does not understand why now after a hundred years, why this is now so important.

Mr. King replied that it is important because the District's current system is having difficulty serving its current customers. That is why the Raw Water Master Plan was developed, and that is why there is a \$300 million price tag to expand current District facilities. The District needs to serve its customers, and loss of water through the system does not allow the District to serve its customers. In some of the ditches, the water does not get to the end, and water has to be added to reach the end. This is about getting service to District customers.

Mr. Scherzinger added that the District has a lot of regulation that is coming. It did not exist 100, 50 or 20 years ago. The agriculture water conservation law requires that the District become more efficient in the use of ag water. That efficiency is directly in the regulation that you will become more efficient, and you will seek to reduce the loss. If the Board chooses to recognize that lost water is a benefit of local wells, it is within its power. Then we will leak water out of this system for the ground. If the Board believes that this is a property right and that it needs to be conserved and needs to stay in the canal, then the District will keep it in the canal the best it can. The problem that was faced as part of Newtown was the District did not have the Board's voice inside of the decisions that were happening in the EIR. Staff was making its recommendations, and the Board was reviewing the EIR and saying, "Yes, go forward." For consistency, there needs to be a voice from the Board that says, "These are the things we want you to address. These are the things we want you to do, and this is how we want you to do it." That is just the beginning. Every project gets an EIR. Every EIR has a legal test. Every EIR has those mechanisms within them.

Director Peters stated that it might be EIR, mitigated negative declaration or CEQA exemptions. Not all are EIR's and not all have that same consideration. She thinks that it is not a bad thing to let some water escape to the environment and let the environment have some of the District's water.

Mr. Scherzinger replied that we are not talking environment. In the environmental situation, it is taken care of as part of the EIR. If there is an environmental situation that requires water out of the ditch or from the District, then the District puts that water out there. If there are members of the public that would like to maintain a seep, then this policy allows them to buy raw water and continue the health of that seep. The struggle occurs over the concern that the District is put in a position where it learns, realizes or detects through study that wells are benefiting from the canal, which immediately puts the property owner in danger.

Mr. King requested that the Committee please understand that the Newtown Canal had three separate CEQA documents. It is relevant because those three documents would have been reduced to one if District staff and the Board were aligned prior. Three CEQA documents cost a lot of money and caused a lot of frustration. This is why staff and Board need to be aligned.

Mr. McClure said that he heard some suggestions that Policy 6685.6, which is really focused on water right entitlements, is somehow derived from recent experience on either Newtown Canal or Upper Cascade. It is important to be careful to separate the water rights side of this from the environmental review side of this. Newtown Canal said nothing about water right entitlements. It was strictly whether from a physical perspective there was a groundwater/surface water interaction. That is an environmental impact. The question was not before the judge if there is that relationship, do the landowners have an entitlement to the water. We are looking at two completely separate spheres of applicable law. One is the water right side, and one is the environmental review side. Policy 6685.6 would say what it says regardless of whether the District had ever litigated the Newtown or Upper Cascade cases. He wants the Committee to be careful that it is not confusing those two issues.

Mr. King added that this is the sole reason that Policy 6685.8 indicates NEPA (National Environmental Policy Act) and CEQA considerations. This portion of the policy also includes "to the extent applicable and necessary, review of environmental effects of seepage with appropriate regulatory organizations."

Discussion ensued regarding who has the right to the seepage water.

Director Wilcox said that well owners are basically overlying riparians, and they have a right to the water that naturally occurs under their ground that comes from the local watershed. To a large extent the water that is being percolated into the ground from the canals, such as it is, is foreign water to which they can never attain a right. It always is foreign water. He was always taught that the cardinal rule of water in California is Article 10, Section 2 of the California Constitution. The District has a duty to put water to reasonable and beneficial use and to avoid waste. By seeping water into the ground, the District is not putting the water to maximum beneficial use and is actually allowing a certain amount of waste.

Mr. McClure shared a case decision that found unreasonable use where an irrigation district was using water to flood out gophers.

Director Wilcox added that there are other cases before that. He would argue that in the past, losing some water was a tolerable situation. The District historically had surplus water, and the situation was not as tight as it is now. It has become tighter as the system has expanded and as snowpack has shrunk and supply has shrunk. The whole system has become more and more critical.

Ms. Pasner completed her public comment, stating that the USGS has been conducting a groundwater study in this area over the past four years. It is the first comprehensive study of its kind, and it is about to be published. The raw data is available, and she would be happy to share the link to anyone who is interested. Preliminary results are also coming out, but the journal itself has not been published so none of that data can be used in a policy. Dr. Kimberly Taylor, who is one of the three leads on this project, believes that this canal encasement project can potentially be changed based on the

scientific findings of this report. There are three reasons why their scientific findings will likely have a direct bearing on this canal encasement policy, and only the parts of this policy that regard seepage. Ms. Pasner shared that she thinks surface/groundwater interaction is becoming more scientifically known, and policy is catching up with those scientific advancements. The DWR (Department of Water Resources) is currently fighting to make groundwater recharge a beneficial use, so that Article 10, Section 2 of the current constitution will be interpreted differently to embody the beneficial uses that occur when groundwater is recharged. Currently, one specific bit of beneficial use is covered as a beneficial recharge. Anything put in the ground that can be pulled back out is a beneficial use of water. There is also a small section of the District that is in an alluvial groundwater basin, and there is a larger section that can be used to recharge that alluvial basin. She thinks having a comprehensive seepage policy is the best way to mesh well with the public, and recommends informing the public of what the seepage policy is, how mitigations will be handled, and what the public can expect to see encased first. This policy does not give members of the public, the Board or staff any kind of idea of where the District would start encasement due to water loss. She thinks it would be a good idea for a more encompassing policy to be developed with the public through the Plan for Water process. She thinks it would decrease a lot of the controversy that currently exists with this policy and would help the District establish ways in which it can conserve water more effectively and efficiently.

Ms. Pasner recommended that if there is going to be a bifurcation in today's Committee, that two policies be recommended – one that is more encompassing and one that just regulates what goes into the canals. She recommended that another policy be made that particularly addresses seepage. If the Board is going to make decisions to try to align future CEQA processes with staff, and making decisions that are going into the future about how to mitigate issues, then those decisions should be based on the very best science available. Because within a matter of months, the USGS is going to be producing a very impactful and comprehensive report that will address many of the issues discussed today, including the quality and amount of groundwater in domestic wells, she recommends waiting for those results. It will give the Board a much more grounded perspective on how to guide future decisions.

Chip Close, Water Operations Manager, shared that the USGS reached out to the District requesting data. The District provided them with the data it had. As Ms. Pasner pointed out, it talks about the nexus between the canals and the groundwater table. He does not know if anyone here is challenging that the canals do not at least provide some recharge to the groundwater table. The argument being discussed today is more about who has right to the water, and how the District helps to mitigate that by providing water to the people who feel that their groundwater is compromised.

Director Peters restated her concern about landowners, who are likely taxpayers, whose wells will be negatively affected by encasement of canals.

Discussion ensued regarding the benefit from paying taxes.

Director Peters questioned if perhaps there is a way to allow well owners to pay a surcharge and to find a way to continue to allow these wells to recharge through some other mechanism.

Mr. Scherzinger clarified that Director Peters' recommendation was to develop a payment mechanism that relates to leakage loss out of a canal to support well owners. Director Peters added that well owners could request to keep the canal connected to the ground for a certain section just to keep their well charged.

Discussion ensued regarding the varying depths of wells, surface seals, direct connections, and whether to pursue a well owner because they are benefiting from the historical loss of water from the ditch.

Mr. King asked if the following section is addressing what is being discussed:

Policy 6685.8 – District will review any encasement for compliance with state and federal regulations such as the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) including, to the extent applicable and necessary, review of environmental effects of seepage with appropriate regulatory organizations.

Director Peters said she has seen over two thousand wells go dry in the San Joaquin Valley because surface water and groundwater was disconnected. The rivers dried up, and now many wells are dry. The State of California has spent hundreds of millions of dollars trying to make these people whole. She does not want to see the same thing happen in the boundaries of Nevada Irrigation District. That is her concern.

The meeting recessed at 1:40 p.m. and reconvened at 1:45 p.m.

Mikos Fabersunne, member of the public, commented on the following:

- In relation to intrusion into the canal and area of influence, County regulations and reference to 100 ft. set back or distance – This references lateral considerations. If there is a development on a hill, the vertical elevation difference has a huge impact on that water table and what is going to go towards the canal. He thinks that needs to be considered.
- From observing today, there seems to be an apparent reason to have this policy discussion divided into two parts. The issue of seepage and whether or not it is a beneficial use and some of the possible beneficial uses as discussed before and as pointed out by Ms. Pasner in particular. Groundwater recharge is an issue in this District in terms of some of the opportunities for water storage that could be part of the overall plan. He thinks that is a very different issue than contamination that could be realized from flow into the canal from adjacent surface areas. Including all of that in Policy 6685.1, where it talks about “water quality health and safety impacts, uncontrolled stormwater intrusion” is fine. However, the inclusion of water loss there, because it has so many other factors, whether it is environmental or fire suppression potential or habitat service, should be separated.

- Update Policy 6685.8 to include the following underlined components:
District, as lead agency under CEQA, will review any encasement projects.

Mr. Fabersunne complimented Ms. Pasner for her contribution to this discussion.

Mr. King replied to Mr. Fabersunne's comment regarding the lead agency. The District is not always the lead agency but is often the responsible agency.

Peter VanZant, resident of Nevada City, said that the District's canal system is not just a conveyance system. It has been around for a hundred years and is historic. There are greenbelts around the canals, and there is worry about fire safety. He is concerned that the word "seepage" in the proposed policy seems to indicate that if there is seepage, the District will go in and encase. Wherever it is not encased there is seepage. If a canal is not lined, there is seepage. Mr. VanZant stated that Director Wilcox said it would cost a lot to encase the whole system. What are the drivers to repair a leak? Theoretically, it can all be done under the term "seepage." Looking at this from a management standpoint and from an economic standpoint, there needs to be some qualifiers included. If the driver is seepage and it is not qualified, then it is an open policy without direction.

Mike Pasner, owner of Indian Springs Organic Farm in Penn Valley, thanked Mr. Scherzinger for bearing with him if he outburst once or twice. It is a very emotional issue, and he is trying to control himself. Taking away people's well water is an emotional issue. Mr. Pasner stated the following:

- He agrees with Director Peters regarding separating out the water entering the system (intrusion) and the water leaving the system (seepage).
- He asked District Counsel to look at the other side of this issue and to present 5-10 cases where NID, PCWA or other water districts have lost lawsuits to well owners over this exact issue. Those cases have not been heard of today, and he is sure that they exist. He would like a presentation on them.
- Thousands of private wells are fractured granite systems in our current system. The collar prevents surface water, and the rest of the system is down below, and it often takes a long time to get down to the well. These will affect private property rights on that fractured granite system.
- Many wells have been fed for a hundred years by ditch leaks
- He thinks the District should take the time to wait for Dr. Kimberly Taylor's USGS report, as it will provide more information pertaining to today's item

Andrew McClure, District Counsel, replied that he is not aware of any decision, anywhere in the State of California, that says that the underlying landowner that has a well is entitled to the benefit of either imported water or water that has been developed by the surface water right holder. That is contrary to the principles that almost every SGMA (Sustainable Groundwater Management Act) discussion that he has had, and he represents districts from Bakersfield to Tehama County on that issue. He is not aware of any decision that has reached that outcome.

Mr. Pasner asked District Counsel about a case he had earlier mentioned.

Mr. McClure replied that he was earlier referring to a study that was reviewed in connection with the Upper Cascade Project, but not a court decision.

Mr. Pasner asked about the PCWA case where the well owner won because the well ran dry due to lack of and cutting off recharge.

Mr. McClure responded that there is no such case that he is aware of.

Mr. Pasner recommended that some research be done, as it may totally affect the outcome of this item.

Mr. King clarified that the Committee's direction at this time is split, and this item will be advanced to the Board of Directors without the recommendation from the Committee.

Mr. King clarified recommendations made by Director Peters:

- 6685.1 – strike “and water loss”
- 6685.6 – strike entire section

Mr. King clarified that Director Wilcox did not recommend any changes.

Director Wilcox recommended that approved minutes from this meeting be included with the materials presented to the Board.

Director Peters said that she would also recommend the word “proactive” be struck from the policy.

Mr. Pasner asked for clarification of the redlined “Whereas” clauses.

Director Wilcox replied that they are still in there. This is Ms. Pasner's recommendation, and the Board can take that into consideration.

District Procurement Process

Andrew McClure, District Counsel, presented a brief outline on public contract competitive bidding, and how those requirements apply to irrigation districts and NID specifically. He also brought with him the Public Contract Codes, and explained that in the heart of the two volumes, there are really two objectives:

1. To ensure that all qualified bidders have the opportunity to participate in public contracts and to stimulate competition
2. To avoid fraud, corruption, and favoritism in awarding public contracts

One of the means to accomplish this is called public contract competitive bidding. There are four requirements:

1. Uniform invitations to bid – This means that all bidders are to be looking at the same project with the same plans and specifications
2. To publically advertise bids – This is generally done in a newspaper or general circulation in the county where the principal offices are located

3. Open sealed bids at a public meeting - The public is there to view that no bids are getting shuffled under the deck
4. The requirement that a contract is let to the lowest responsive, responsible bidder – A bid is responsive if it will perform the contract that it was invited to bid on, and a bidder is responsible if they are capable of performing the contract as required.

Each of these requirements are in the code and are all good values. Mr. McClure explained that the better part of Volume 1 deals with state agencies competitive bidding and other requirements. Volume 2 deals with local agencies. Within the Local Agency Public Contract Act, there are 129 separate articles. Article 35 applies to irrigation districts. Mr. McClure reviewed Article 35 with the Committee and a three-step process for when competitive process applies to irrigation districts.

Step 1: Class of project - All actual statutory requirements apply to construction of works

Step 2: What is a work – Work is defined as any work to be paid for with the proceeds of the sale of bonds or limited assessments

Step 3: Does this project receive funds from either of these sources?

- Bonds: Proceeds from bonds is straightforward. When issuing bonds, an installment purchase agreement is also signed, which is the District's commitment to repay the debt service. That installment purchase agreement will designate particular projects that the District can spend bond money on.
- Limited Assessments: Water Code 20540 defines as a completion assessment, a particular purpose assessment or an emergency assessment

If none of these applies and there is not a work (project paid for with the proceeds of bonds or limited assessment), the District is not subject to the public contract code competitive bidding requirement.

Gary King, Engineering Manager, listed a number of current projects that were competitively bid, including:

- Lower Cascade Project
- Combie Phase I
- Bear River Project
- Cement Hill Community Facilities
- Rodeo Flat Assessment District

Remleh Scherzinger, General Manager, asked Mr. King to take the Committee through how the District does a normal project bid, if not doing the public contract process.

Director Peters shared that Mr. King took the Committee through that on January 22, 2019. She said that the District is accountable to the public, using public funds to do District work. Ms. Peters said that everyone should have an opportunity to put in a bid and that the District will put out responsible plans and specifications and solicit them. By not doing that, she thinks it is costing the District money. She said she has been in

meetings where a low bid was passed over by a higher bidder because the lower bidder had not been worked with before.

Mr. King replied that the District has never rejected a low bid using District Policy 3080 process. The reason why is because these bidders have already been pre-qualified. He explained that in public qualified bidding includes a qualitative component and a quantitative process. The District prequalifies and competitively bids with typically ten contractors. Depending on the work, the District may receive 3-5 bids. It is competitive bidding. The low bidder gets the bid.

Mr. King shared that before he came to the District; the District was doing some open bidding and had horrendous problems with it. The Board then developed a policy. That was about the time he entered the District. Mr. King shared that the current dynamics are roughly as follows:

- Change Orders 3 years ago were 4.5% based on almost \$100 million worth of work through the Engineering Department
- Current overhead above construction costs ranges from 15%-20%, where PCWA in comparison is at about 40%

Director Peters asked how often the pool of qualified contractors is looked at.

Mr. King explained that it is looked at on every project. If there are contractors that are not performing for the District, they are taken off the list.

Discussion ensued regarding adding contractors to the pool.

Director Peters said that this policy is silent on the standardized contracts, which includes the long construction contract, the short construction contract, the abbreviated contract, the consultant services contract and the services contract.

Mr. King said that the standardized contracts have been approved by the Board, and were reviewed by the Board. Legal Counsel and the General Manager have the authority to make minor modifications as needed. Those contracts have gone to the Board and accepted by the Board. They were not handled in a non-transparent manner. This Committee, in particular, has seen all of these contracts.

Discussion ensued regarding what triggers going to the competitive bidding, the District's contractor pool and change orders.

Mr. Scherzinger requested that Director Peters provide him with her notes. He will take them to staff, identify those areas of weakness, work on it, and then will bring back to the Committee to review.

Director Wilcox shared that his experience has been that virtually all District projects are put out for competitive bidding and the District gets competitive prices. The District uses a whole suite of contractors who compete with each other. They give us a good price and the District gets value for its customers.

Discussion ensued regarding bidding trends, where sometimes only one bid is received, or where sole-sourced work is necessary for situations where custom and specialized work is required.

Public Comment

Barbara Bashall, member of the public, shared that she has been involved in public contracting for many years, has worked with NID for many years on this policy and supports the policy. It works really well and ensures qualified bidders. She could share some horror stories of public bidding from when she first started in her job and having to take the lowest bidder before they prequalified contractors. There were many stories about unqualified contractors. It is very important to prequalify contractors, and NID is not the only agency that prequalifies. Almost 100% of schools now use a prequalification process, because the law now allows that, due to all of the problems with the lower bidder. She disagrees that NID is not getting the best bang for their buck, and she guarantees that the process NID has is very good. Many local contractors get to bid on NID projects. NID projects come into their online plan room, and that they work with 22 other builders exchanges around the state of California and those projects go into that plan room. There is a list of prequalified contractors, but all sub-contractors get to bid on those projects and material suppliers. A lot of the local sub-contractors and suppliers are successful in getting that work. They are satisfied with the policy and how it works.

Mr. Scherzinger asked Ms. Bashall concerning the schools, and how often the prequalification occurs.

Ms. Bashall replied that they have it for different amounts of money. If it is under \$250,000, they have an ongoing process to prequalification at any time. If there is a project coming out, then they will send out for mostly sub-contractors for the prequalification, since they have their list of contractors, similar to what NID does. Often, because the scope of the project is so large, it really limits what contractors can bid on those projects because of the bonding capacity. There are only certain amounts of contractors who qualify for those bonding limits. Currently, there is a project at one of the schools where prequalifications have been sent out asking for subcontractors on a certain project. So now, they are not just prequalifying the general contractors, but they are also prequalifying the sub-contractors as well.

Jeff Hansen, with Hansen Brothers, shared that they do a fair amount of schoolwork. Typically, what they are now seeing is that every year, they are being made to prequalify on any project over approximately \$500,000. It is a fairly in-depth process. It used to be a one-page process, but now they are actually looking at financials and safety. It varies a little bit, but they are actually looking at financials to make sure that whom they are dealing with is solid.

Mr. Scherzinger asked how they handle that information. It is not necessarily public information.

Mr. Hansen replied that with the one District he could think of offhand, they actually send a confidentiality statement ahead of time, which he appreciates because that information in the wrong hands can be detrimental to any contracting company or any business. He assured the Committee that the process that NID has from his perspective is one of the best processes that there is out there. Cal Trans, last time he looked, has a 20%-25% change order rate. That is because they have a 100% open bid policy, and anyone with a contractor's license who meets the class for that contract, can go and bid their project. This means people from Southern California can bid on a local project here, who have never even seen the job. Demographics make a big difference up and down the state. There is no way that his company is a qualified contractor to work on a Los Angeles highway. They have worked on a number of projects that took the lowest, supposedly, qualified bidder, that ended up bonding out of those projects, and they went in behind them and finished them, and they are a disaster. He knows that Director Peters wants to open this net broad and wide, but advises to be careful what fish you catch because when doing that, you catch the good fish and the bad fish.

Director Peters stated that she does think it should be opened up broad and wide, but she is not opposed to prequalifying but wants to understand the process and to make sure that it is done on a regular basis.

Mr. Hansen said that the change order rates speak for themselves. At the end of the day, they want a long-term relationship with NID and whatever agency they are working with. They want to stay on that preferred list. There is buy-in on the contractors' side and buy-in on the District's side.

Mr. Scherzinger said that the District could operate within the prequalification space.

Mr. Hansen said that it has been a good relationship. He recalled a project when he called Mr. King up asking why they were not on the bidder's list. Mr. King told him that he did not think they were qualified. Mr. Hansen stepped back, and he was right, they did not belong there. It is a two-way street. It is a relationship that the District has built. They have done the investigating to make sure that these contractors are right for these types of projects.

Mr. King shared how the District operates using the Lake of the Pines to Alta Sierra Pipeline as an example, which is close to 33,000 feet of pipe. It was chopped into four pieces. By doing that, it allowed the smaller contractors that did not have the high bond numbers to bid on it, and the District got more bidders that way. The District has a system that is more complicated than just doing one big project. The District can chop projects into pieces and can manage it easily inside the District, and allow the locals to bid on these jobs. Had the District bonded LOP to Alta Sierra all together, it would have been close to a \$10 million job and would have blown out most of the locals' bond capacity.

Mr. Hansen said it allows a lot of tighter quality control and still gets competitive numbers for the District and ratepayers. Ninety percent of the employees that work for Hansen Bros. live in Nevada, Placer and Yuba County, and mostly within the District boundaries.

Ms. Bashall added that she thinks it is the best use of the District's money. It is money well spent. The District is not paying more than it should be for projects and is getting very good quality.

Director Peters asked what the process is for shortlisting, and if it is by dollar amount or specialty.

Mr. King replied that it is by specialty. Sometimes the District will call them up and ask if they have a certain bond capacity or is interested in a particular job. It is a very organic process. Usually, depending on the size of the project, the District will have someone work on a number of small jobs, and if they are performing well, they will be moved up to bigger projects. The District knows a good number of the local contractors and some outside that do good work. There are also some that contact the District wanting to work with the District. Sometimes they prove they can do the work and sometimes they do not.

Discussion ensued regarding contractor relationships, the bid list, the process in place, and the variety of work done at the District.

Mr. King summarized the following:

- Director Peters is to provide her recommendations to the General Manager
- Staff will work modifications to the policy
- Proposed changes will be brought back to the Engineering Committee, and then advanced by the Committee to the Board

Centennial Water Supply Project Update (FATR #7013)

Doug Roderick, Senior Engineer, presented the item.

California Environmental Quality Act (CEQA) Draft Environmental Impact Report (DEIR): Continuing to work on the AB52 consultation. There are three who have requested consultation. The District has actively been participating with two of the tribes. The draft alternatives analysis is progressing relatively slow.

Design Efforts:

The District is currently looking at a couple of the alternatives, which are some conceptual layouts and designs for alternatives to the project that would be part of the DEIR. Currently, there is no new geotechnical investigation or design at the dam site location. No new work has been done regarding the proposed bridge and road crossing.

Director Peters asked if the alternatives are to the project itself.

Mr. Roderick responded in the affirmative.

Director Peters asked when that started.

Mr. Roderick replied that it began when the draft EIR process began.

Director Peters asked to hear about a couple of the alternatives.

Mr. Roderick shared that there is a list of approximately 27 alternatives, including alternative storage locations, canal encasements, conservation, and not supplying additional water once the District has met the maximum amount and groundwater usage. Some of the alternatives are looked at in combination because by themselves they are not enough of an impact.

Director Peters stated that it is good to know that the water that can be realized is being looked at from all of these alternative methods.

Water Rights:

The quarterly update was filed with the State Water Resources Control Board (SWRCB) on December 28, 2018. The next update is due at the end of March. Currently, no action involving protestants, waiting on the DEIR to be released before engaging in discussions with protestants.

Director Wilcox confirmed that the Water Board is given an update of the activities that have taken place in the preceding quarter. Updates may include items such as how much money is being spent, the AB52 consultation, alternatives, property acquisitions and various aspects of the project, demonstrating to the State Board that the District is progressing diligently, and therefore keeping the District's water right filing intact and current.

Mr. Roderick responded in the affirmative and said that it is very similar to this report in a different format. It is a broad description, and specific details have not been requested or provided.

Director Peters said it would be interesting to see one of the reports, and she asked if they could be seen online.

Mr. Roderick replied that they could be put online.

Director Wilcox recommended putting them all online.

Director Peters agreed that it is a good idea, and lets the public know what the District is doing. She expressed her concern that once the District has purchased all of the properties, the District will have preselected its project. It will come across as though the District does not care about the alternatives and this is what the District intends to do.

Website:

No new documents have been added to the website, but will be soon.

AB52 Consultation:

The District is continuing tribal consultation with United Auburn Indian Community, Colfax-Todds Valley Consolidated Tribe, and Nevada City Rancheria Nisenan Tribe. A meeting was held in late December with United Auburn Indian Community, and in mid-January with Colfax-Todds Valley Consolidated Tribe, to discuss results of cultural resources report. The United Auburn Indian Community will be providing the District with

some additional information so that the District can incorporate as much known information as possible of the potential impacts at the site.

Director Wilcox asked if the Nevada City Rancheria has been included in all of the communications, and has been given the opportunity to engage, but has simply elected not to do so.

Mr. Roderick replied that this is correct. The District continues to send them periodic requests to engage but has not received a response. The District will continue to send and track these requests.

Property Acquisition:

The District is continuing to consider property acquisitions with property owners that come to the District within a willing seller-willing buyer transaction framework. One property has been acquired since the December 6, 2018, Engineering Committee Meeting.

Meetings:

No additional public meetings are currently scheduled.

Future Updates:

As discussed at the October 16, 2018, Engineering Committee, the updates for the Centennial Project will be done on a quarterly basis starting in 2019. The next update will occur at the June 2019 Engineering Committee meeting.

Gary King, Engineering Manager, asked the Committee if it wished to continue these updates on a quarterly basis.

Director Peters responded that she prefers bi-monthly.

Director Wilcox responded that quarterly updates are adequate. Having seen the previous updates, things are moving slowly. At the rate things are moving, quarterly updates are sufficient.

Director Peters asked if the Committee would be alerted, should something occur.

Mr. King said that more information would be added to the Project Status Report, which is seen monthly. The Project Status Report is an agenda item, and it can be opened up for discussion at that time.

Mr. King confirmed that the Engineering Committee agenda would continue to have a monthly Project Status Report and a quarterly formal review of the Centennial Water Supply Project Update.

The Committee unanimously agreed.

Budgetary Impact:

Mr. Roderick noted two corrections to the budget on the Staff Report.

- Property – Expenses/Revenue Totals should read \$14,587
- Staff Total should read \$2,141

Director Peters inquired about the property acquired since the last update. The update shows that the District made money, but does not show an expense for property acquired.

Mr. Roderick responded that expense would show in 2018, since the transaction closed in 2018, following the December 6, 2018, Engineering Committee meeting. The Staff Report for the December 6, 2018 meeting did not include the expense, as it only included accounting information through the end of November 2018.

Director Peters asked if the expense for the property acquired in December 2018 was included in the \$2,087,989 figure shown for 2018 Expenses.

Mr. Roderick replied that it was included in that figure.

Mr. Roderick reported that the following modifications were made to the structure of the 2019 breakdown of expenditures, at the request of Marvin Davis, Finance Manager:

- Property – Expenses/Revenue: This pertains to rental properties owned and rented out by the District. For example, \$14,587 shown in the expenditures below is in parenthesis and indicates net revenue to the District
- Consulting Property

Director Peters inquired about the item for Consulting Property of \$6,370.

Mr. Roderick responded that it is either for the appraiser or the brokerage services. The majority of it is actually from 2018. As noted in the staff report, some expenses shown in 2019 were incurred in 2018. Month 13, for accounting purposes, actually closes at the end of March. The 2018 numbers for month 13 will be reconciled in April. The majority of the Consulting and Consulting Property occurred in 2018, but the invoices were not received until the end of 2018, which means that they were paid in 2019, but were 2018 expenditures.

Remleh Scherzinger, General Manager, added that it depends on when the invoice hits the system and when the warrant is issued.

Mr. Roderick added that of the roughly \$25,000 of Consulting, only approximately \$1,500 has been spent in 2019 as of March 4, 2019. The rest of that will be adjusted back to 2018.

- Staff and Legal are separated out but are not part of the overall total. That is because they are budgeted elsewhere.

Mr. King added that those costs are within the Engineering Department's budget line items, but need to be tracked.

The breakdown of the expenditures is as follows:

2019	January-Feb	Totals
Consulting	\$19,142	\$19,142
Consulting Property	\$6,370	\$6,370
Property – Expenses/Revenue	\$(14,587)	\$(14,587)
Property - Purchase	\$0	\$0
Staff	\$2,141	\$2,141
Legal	\$192	\$192
<u>Total</u>	<u>\$10,925</u>	<u>\$10,925</u>

Mr. Roderick reviewed the annual breakdown of expenditures as follows:

	2014*	2015*	2016*	2017*	2018	2019**
<u>Budget</u>	<u>\$1,540,331</u>	<u>\$1,475,000</u>	<u>\$4,500,000</u>	<u>\$3,500,000</u>	<u>\$3,840,000</u>	<u>\$1,775,000</u>
<u>Expenses</u>	<u>\$1,342,436</u>	<u>\$2,124,526</u>	<u>\$4,610,595</u>	<u>\$4,085,599</u>	<u>\$2,087,989</u>	<u>\$10,925</u>
<u>Under/(Over) Budget</u>	<u>\$197,894</u>	<u>\$(649,526)</u>	<u>\$(110,595)</u>	<u>\$(585,599)</u>	<u>\$1,752,011</u>	<u>\$1,764,075</u>

*Final adjustments after the audit.

**Some expenses shown in 2019 were incurred in 2018. The 2018 numbers for 13 will be reconciled in April.

Mr. Roderick pointed out the following pertaining to the annual breakdown of expenditures:

- The amount listed above of \$4,085,599, is for the entire year of 2017. The audit only reflected expenses through October of 2017 of \$3,599,000.
- The 2018 expense amount reported at last update in December of 2018 was \$1,714,448. The amount shown now is \$2,087,989. The majority of that is from the property purchased in December of 2018, and some additional consulting costs.

Director Peters inquired if some of the 2019 Expenses shown at \$10,925, will be reverted to 2018.

Mr. Roderick responded in the affirmative. The approximate \$3,000 will remain.

The Committee reviewed the following:

Overall 2014-2019:

Budget	\$16,630,331
Expenses	\$14,262,071
Under/(Over) Budget	\$2,368,260

Public Comment

Mikos Fabersunne, resident of Nevada City, shared the following questions/concerns:

- Background Design Efforts and Conceptual Designs being considered for potential alternatives to be part of the DEIR – He only heard “Raw Water Master Plan” mentioned once. It was not made reference to as a potential source of the potential alternatives. Mr. Fabersunne said that this concerns him. It has been discussed many times that the Raw Water Master Plan and/or Strategic Plan should be setting up the kinds of things the District is going to be looking at as alternatives. Without that plan, that is not yet underway. He does not understand why the District would not consider potential alternatives. It has the appearance of being illusory and of not taking public comments into consideration. He said to look at the RWMP, and go about this rationally. Look at sustainable groundwater and how that might interact or influence the District if there are inner-agency or inner-district transfers. All those issues that have come up repeatedly, but he does not hear a response to that in any of the reporting, and he does not understand why.
- Property acquisition – Members of the public have repeatedly asked why the District is continuing to acquire property when it is not yet determined that this project is going forward. He would like to hear a rationale given by the Board or Engineering Staff. He recommended to put the brakes on property acquisition, and wait until the District knows it has a project that is going forward.

Dianna Suarez, resident of Colfax, addressed the Committee and asked them to not invest in acquiring more property. She spoke about the properties being destroyed by the District, including beautiful riverfront property. She said, “Here comes NID, this foreign entity from across the river, throwing their millions of dollars around, buying up property in our communities in order to destroy them without any awareness or acknowledgment of the value of the communities across the river. The things that are important to us, our schools, NID wants to put a big road right through one school where they already have parking and traffic issues. There are people’s houses right up next to the road, and all of this is going to have to be changed. You seem to heartlessly look at all of these suffering people over here and care not.” She said she thinks that is against the District’s Strategic Plan that says it will continue to be good stewards of the Bear River Watershed. The District has not been good stewards of the Bear River Watershed. That watershed is 90% industrialized. There is 10% left. It is not an appropriate place for a dam. She said, “Now you’ve come and said that you want these water rights. That is why we have to build a dam. We have to show beneficial use.” If the District could show beneficial use in another way, that would be more appropriate. If the District wanted to do a groundwater conjunctive use project that would be more appropriate. It would be cheaper. It would happen a lot faster, and it would secure the District’s water rights a lot sooner. It would be a far more certain way to secure water rights than chasing this dam for decades because that is what it is going to take. There is huge opposition on her side of the river, and it is continuing to grow. The Bear River day use is growing; the campground is growing and is online now. They are having a big festival there at the end of the month, and there is a whole month to celebrate it. They are pursuing recreational uses. There are so many other things going on here. The District does not need to do this to the Bear River. The District needs to enhance and stand with them and follow its Strategic Plan. She said she also thinks it violates a core value; if the District had any;

there are no core values in here. She would think that people, water and the environment would be core values. She said that the District is hurting people, is over storing water in one little watershed that already has a huge amount of storage in it. The District is hurting the people and the environment. The District is not stewards of the Bear River watershed. There is a restoration plan that Sierra Streams did independent of NID because NID does not do restoration plans for the Bear River Watershed. She said she guesses NID just cares about English Meadows and Scotts Flat Reservoir because Bear River Watershed needs restoration. She said, "Then people were kicking around that it used to go dry before NID put water in it. What was the Bear River flow regime in 1825, before the hydraulic mining, before the overgrazing, before the forestry and cutting down all the trees to build the flumes for NID?" She said that all of that needs to be taken into account. Now it appears to the public that NID is using the Raw Water Master Plan to say it wants to build the dam and does not have a planning document, so they slam out this raw water thing, and later say that they adhered to a planning document. It has been rotten from the beginning. If the District really wants the water rights, they have had the Western Placer Sustainable Groundwater Agency here asking them to be a contributor. That gives the District an opening and a beneficial use. The District can secure its water rights and not worry about it. Then look at the RWMP, Strategic Plan and overall planning to determine if water storage is needed and where. The District has the whole district to look at water storage. The Bear River Watershed is overtaxed and over impacted already. It is one of the most impacted watersheds in the state. There is no reason to say that Bear River owes the District 110,000 acre-feet of water. Bear River has been trying to survive now in spite of NID for hundreds of years. She thinks that NID needs to change its attitude on the Bear River Watershed and see it independent of building a dam there. The District should realize that they already have two dams on the Bear River and there is a third one and one on Magnolia Creek. There are four dams on the Bear River Watershed. If Centennial Water Supply Project were completed, the District would be asking the Bear River Watershed to store more water than the entire rest of the District combined. The size of the Bear River Watershed compared to the extended Yuba River Watershed; it is a little tiny watershed. Yet, the District is asking from that watershed, more storage than the whole rest of the District combined. This is inequitable. It is not fair. It is not right, and it has social implications. Colfax is a disadvantaged community that depends on the Bear River for its recreation. She said she wants to discourage the District from continuing to do this oppression and occupation of our communities. To her, it is like Russia moving in and taking over Ukraine. That is how it feels, and that is how it feels to the people in the Bear River, the people who want to hang on to their homes, the people that love their park. They have a beautiful park. It is getting a lot of attention and many visits. She met some people there this week from Orange County. It is an important regional asset, and it is important to the future of Placer County. Hidden Falls, the big park that everyone goes to, has so many problems now, they have to make reservations for parking. She said, "We have a need in Placer County for Recreation. Bear River is a prime recreation spot." She read the Recreation Plan that the District put in for Proposition 1. The District wants to build a reservoir and charge people money. She continued, "The state asked if it is a public benefit to cut off free access to the river and then charge people money and show the money made as a public benefit. It was not. They decided that it was not a public benefit." Ms. Suarez continued to state that the public benefit would be NID working to enhance, preserve and restore the Bear River

Watershed for future generations. It is some of the last of the riparian vegetation and riparian ecosystem at that elevation. That elevation is a heavily developed place in the foothills. There are not a lot of river ecosystems left. This is an opportunity to have a largely intact six miles, which is the last 10% of this river that the public can access. It is the last 10% that has a chance to become a functioning and healthy ecosystem. It has excellent riparian habitat right now. It is very valuable. If the District has water concerns, she encourages the District to look at groundwater storage. It will be a beneficial use. Take the dam off the table. Start with the RWMP, Strategic Plan and look at the whole district to determine if extra storage is needed. Determine how the Drum Spaulding infrastructure will influence the need for storage. The District needs to get to the landscape level questions but is anchored to the ground with the dam. The District is buying property and does not even have a project. The District's purchasing of property is having huge effects across the river. NID is not popular across the river. It is creating a huge public relations nightmare for itself, which might take years and maybe even decades to go away. This opposition is solidifying and growing. The deafness of NID towards its neighbors is a violation of common courtesy. She said, "If you had core values, I think it would violate your core values." Ms. Suarez said that it is understood that the District wants the water rights, and it can be done in a quicker, cheaper and easier way. The District needs to start at the beginning to determine its needs, determine the supply and demand, and where it can look to meet its needs, rather than looking to the Bear River to come up with so many thousand acre-feet or have a dam put on it. That is not a correct way to approach it. The correct way to approach it is to look at everything and do a good solid plan that will work for the future. Then the District will not have its meetings full of conflict and upset people. She said that the only reason there are not a lot of upset people here is that it is the middle of the week. She has people come up to her all of the time thanking her for coming to NID meetings. They would attend if they could make. It is hard for her to get here from Colfax. She said, "I am begging you guys to quit buying property. You are destroying our communities. The stress that people are undergoing is significant, and they are having health issues. You are hurting people, and there is this growing anger and animosity towards NID. It is not a good road." The mercury removal process she thinks is positive. She is not sure how many people know about it, but she feels positive about it. She said that they want to make a Bear River Park Preserve. They want to enhance this area with the state land. They want to make it a place where people can come and learn what river ecology is all about. That can happen in the Bear River Watershed right now. Bear River Park is the most accessible park in the State. It is very level because it is an old river. She worked in recreation for the Forest Service for many years. Most of the riverside campgrounds are steep or loud and by a freeway. The Bear River is special. It is special, unique and irreplaceable.

Mr. King requested that people remain focused on the agenda items.

Ashley Overhouse, Policy Manager at South Yuba River Citizens League (SYRCL), thanked the Committee and staff for the quarterly update and for the thorough report including the budget clarifications. Ms. Overhouse asked the following questions:

- If NID chose to move forward with some of the property acquisitions that were considered in Closed Session in January and February, would those be noted on

the next quarterly update, the monthly Project Report update, whenever they closed or whatever is sooner?

Mr. King replied that it would be reported whenever the money goes out.

Mr. Roderick added that it depends on when a transaction closes. It may be several months before a transaction closes. Depending on when it closes, and that money gets transferred, it would show up in the following update.

Ms. Overhouse thanked staff for that information and said that she supports Director Peters' request to put the water rights reports online.

- SYRCL asks NID to stop where legally possible spending on Centennial while pursuing the Plan for Water or Raw Water Master Plan Update endeavor

Mike Pasner, resident of Penn Valley, said that Director Peters made a great statement "Buying properties will result in a preselected project." This biases the Plan for Water. The General Manager and Director Wilcox have supported it for a long time, and he asked them to address it.

Mr. Scherzinger replied that it is a Closed Session issue and they are unable to respond.

Mr. Pasner said that he would like him to address how the buying of property biases the plan for water, not information from Closed Session.

Mr. Scherzinger replied that this is one interpretation. There are a number of capital projects where entities purchase property prior to project execution. That is normal.

Andrew McClure, District Counsel, said that generally, predetermination precludes the agency from pursuing one of the alternatives. If there is something that the agency does, that prohibits it from legitimately considering or selecting one of the alternatives as the project that is when there is a predetermination. What Mr. Pasner is saying is certainly an argument, but the predetermination question comes at the time that comments to the EIR are accepted. Therefore, when the EIR is issued, then one of the comments may be that the project was predetermined. In terms of what is a predetermination, it is taking an act that precludes realistically or legitimately considering project alternatives.

Mr. Pasner suggested looking at it as biasing the Plan for Water. He asked if it is correct that the District wants it to be an open and transparent policy, and is biasing the future of the Plan for Water by investing in this project.

Mr. Scherzinger replied that it is not correct.

Director Wilcox said that he does not think that The Plan for Water addresses Centennial at all. There could be a storage component in the Plan for Water, but he does not think that it will identify exactly where that storage will occur.

Mr. Pasner said that he does not agree.

Peter VanZant, member of the public, said that Centennial is out there. The Board has supported it; staff is supporting it and money has been spent on it. Now the District is doing the Raw Water Master Plan to go back and look at the need and supply. Centennial and the Raw Water Master Plan are mixed up. One is designed to precede the other. Currently, the District is going out to get a facilitator to design the next step for public participation of the TAC, and he would like to know when and where an update would be given on that.

Mr. Scherzinger said that it would come before the Water and Hydroelectric Operations Committee.

Mr. VanZant asked when it would go to the Board.

Mr. Scherzinger replied that it would go to the Board once they have their plan.

Mr. VanZant said that he understands. The District is assigning a huge hundred million dollar project, which it has embraced two sub-committees that do not get all of the participation, and certainly, do not get all of the publicity. He does not think it is the way to deal with a billion dollar project that is going to come eventually out of taxpayers and ratepayers and hide it in committees. That is his opinion. He thinks that someone should be reporting the outcome of this meeting on Centennial to the full Board. That is when the camera is running and when the reporters are there. That is how the information of what the District is doing gets out to the public.

Mr. VanZant said that the alternatives are interesting. Alternatives to a CEQA project are generally some variation on the project itself. They generally do not get the depth of inquiry and study that the main project gets. So what is an alternative to Centennial, to a dam? No project is a clear alternative, but it is not like a land use alternative. The alternative cannot be to only build it fifty feet high. That is not the way it works with dams. His issue and concern are that the big project of looking at the whole district, water supply, etc., the alternatives in the Centennial DEIR will not look at the larger picture. How do you get the water you need? How do you survive climate change with alternative programs, not just alternatives to a single project?

Dianna Suarez, resident of Colfax, said that purchasing property before the Raw Water Master Plan presents a bias to the selection of the project. The District is buying property for a project that has not been selected through the planning process, and that is where the bias lies.

Project Review – Information

Reviewed the Project Status Report with Committee members as an informational item.

KSt