

**North Bay Water Reuse Authority
Board of Directors Meeting
Conference Call Meeting
Minutes
April 27, 2020**

1. Call to Order

Chair Rabbitt called the meeting to order at 9:35 a.m. on Monday, April 27, 2020. Due to Shelter in Place Orders, this meeting was a conference call only meeting. Meeting participants and the public participated by calling 866-906-7447, pass code 2428170#.

2. Roll Call

PRESENT:	David Rabbitt, Chair	Sonoma Water
	Jill Techel, Vice Chair	Napa Sanitation District
	Mariam Aboudamous	City of American Canyon
	Jack Baker	North Marin Water District
	Carole Dillon-Knutson	Novato Sanitary District
	Jack Gibson	Marin Municipal Water District
	Susan Gorin	Sonoma Valley County Sanitation District
	Kevin McDonnell	City of Petaluma
	Belia Ramos	Napa County
	Dennis Rodoni	Marin County

ABSENT: Las Gallinas Valley Sanitary District

OTHERS

PRESENT:	Chuck Weir, Program Manager	Weir Technical Services
	Kevin Booker	Sonoma Water
	Anne Crealock	Sonoma Water
	Grant Davis	Sonoma Water
	Jim Grossi	North Marin Water District
	Rene Guillen	Brown & Caldwell
	Tim Healy	Napa Sanitation District
	Felix Hernandez	City of American Canyon
	Pam Jeane	Sonoma Water
	Sandeep Karkal	Novato Sanitary District
	Drew McIntyre	North Marin Water District
	Mark Millan	Data Instincts
	Jim O’Toole	ESA
	Larry Russell	Marin Municipal Water District
	Mike Savage	Data Instincts
	Paul Sellier	Marin Municipal Water District
	Brad Sherwood	Sonoma Water
	Jake Spaulding	Sonoma Water
	Dawn Taffler	Kennedy Jenks Consultants
	Chelsea Thompson	City of Petaluma

Leah Walker

City of Petaluma

MEMBERS OF THE PUBLIC

Dan Baxter

Wilke Fleury

Ginger Bryant

Bryant & Associates

3. Public Comments

Chair Rabbitt asked if any members of the public wished to speak on any topic. Dan Baxter introduced himself and Ginger Bryant. He indicated that he was an attorney representing Ms. Bryant, that they desired to comment on Agenda Item No. 13, and that Ms. Bryant would speak first. Ms. Bryant and Mr. Baxter read their statements into the record which are attached to these minutes.

4. Introductions

Introductions were not made.

5. Board Meeting Minutes of December 9, 2019.

On a motion by Director Dillon-Knutson, seconded by Director Baker, the minutes of the December 9, 2019 meeting were unanimously approved by the Board by a roll call vote.

6. Election of Officers

Vice Chair Techel inquired if Chair Rabbitt was willing to continue as Chair and he indicated that he was if that was the pleasure of the Board. Vice Chair nominated David Rabbitt as Chair for 2020. The nomination was seconded by Director Gorin. Vice Chair Techel stated that she was not running for reelection and that she would be leaving NBWRA as of December 31, 2020. She then nominated Belia Ramos as Vice Chair for 2020. The nomination was seconded by director Gorin. Chair Rabbitt indicated that both items would be considered together. David Rabbitt was elected as Chair and Belia Ramos was elected as Vice Chair unanimously by the Board by a roll call vote. Lastly, Chair Rabbitt thanked Mayor Jill Techel for her many years of service to NBWRA.

7. Report from the Chair

Chair Rabbitt noted that it was likely there would be a federal stimulus package in the future that would probably include funding for water related projects and that NBWRA needed to be in position to respond accordingly

7.a Summary of TAC Conference Call of February 3, 2020

The Board reviewed the summary of the call.

8. Consultant Progress Reports

The Board reviewed the consultant progress reports for the period October 2019 – March 2020.

9. Financial Reports for Fiscal Years Ending June 30, 2019 and June 30, 2020.

The Board reviewed the financial reports for the period ending June 30, 2020. Jake Spaulding noted that there were surplus funds due to low levels of activity and that would be further discussed in Item No. 14 for the FY2020/21 Budget.

10. Phase 1: Status of Reconciliation and Closeout Activities and Approval of a Request for a Six-Month Extension with USBR on Closeout

Jake Spaulding gave an update on the reconciliation and close out activities for Phase 1. There is still one ongoing project with Las Gallinas. He said progress was still being made on the Las Gallinas project, with commissioning scheduled roughly one month prior to the grant deadline. However, the complicated closeout process and potential delays due to COVID-19 could result in construction or administrative tasks going beyond the current September 30, 2020 deadline. He recommended that the Board approve a request to USBR for a six-month extension through March 31, 2021. He noted that all costs associated with an extension would be borne by the grant and not NBWRA. A motion by Director Baker, seconded by Director McDonnell to request a six-month extension with USBR was unanimously approved by the Board by a roll call vote.

11. Status of Phase 2 EIR/EIS

Jim O'Toole provided an update on the status of the Phase 2 EIR/EIS. He also noted that there could be another federal stimulus package that would provide funding for water related projects and that if that occurs it would be time to reach out to USBR regarding completing the necessary tasks to get the Record of Decision issued. This could also lead to additional federal funding for projects. Lastly, he noted that there was \$30,000 remaining in their agreement that could go toward this effort. This was an information item only.

12. Acceptance of Funding from IRWMP for City of Petaluma and City of American Canyon and Authorization for Sonoma Water to Act as the Fiscal Agent and Program Administrator.

Jake Spaulding gave a summary report. He noted that the draft funding list was released in early April for a comment period. The list included funding of more than \$4 million for the American Canyon and Petaluma projects. Now that the comment period has passed NBWRA can expect the award to become official in May, at which time contracts would need to be approved. Administrative costs will be borne by the two cities through agreements with Sonoma Water at no cost to the other NBWRA members. A motion by Director McDonnell, seconded by Director Aboudamous was unanimously approved by the Board by a roll call vote.

13. Consideration of Continuation of a Formal Consulting Agreement for Program Development, State Advocacy, and Federal Advocacy

Chair Rabbitt provided a summary of the process undertaken by the review committee and that the Board approved not funding this program at the December 9, 2019 Board meeting. The recommended action would formalize that prior action by the Board. Director Rodoni asked if a Request for Proposal process would be used in the future if the need arose for these services. Chair Rabbitt stated that was correct. A motion by Vice Chair Techel, seconded by Director Gorin was unanimously approved by the Board by a roll call vote.

14. Approval of Fiscal Year 2020/21 Budget

Jake Spaulding provided a summary of the proposed FY2020/21 Budget and noted that there are remaining funds to cover all proposed activities. The only invoice that will be issued is for \$5,000 for Marin County's Associate Membership. Kevin Booker stated that Sonoma Water was in the process of amending the agreements with Brown and Caldwell and Weir Technical

Services for time extensions only. A motion by Director Dillon-Knudson, seconded by Director McDonnell was unanimously approved by the Board by a roll call vote.

15. Items for the Next Agenda

Chair Rabbitt listed the items for the next agenda that will hopefully be back at Novato City Hall. The items will include the regular reports, Phase 1 and Phase 2 Status Reports, IRWMP Grant Funding, and Water Bond status and provisions.

16. Comments from the Chair, Board, and Member Agencies.

Director Rodoni asked about SB 45 a water related Bond Act that may be on the November ballot. Chair Rabbitt stated that NBWRA would review it at the October Board meeting. Grant Davis asked if the TAC would be meeting between now and the next Board meeting. Chuck Weir stated that the TAC would be holding conference calls on July 20 and September 28.

17. Adjournment

Chair Rabbitt adjourned the meeting at 10:16 a.m. The next meeting will be Monday, October 26, 2020 at 9:30 a.m. at Novato City Hall.

Minutes approved by the Board October 26, 2020.



Charles V. Weir
Program Manager

Attachment

Statements of Ginger Bryant and Dan Baxter

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**North Bay Water Reuse Authority
Board of Directors Meeting**

Monday April 27, 2020 – 9:30 AM Via Teleconference

Comments of:

Ginger Bryant, Bryant & Associates and Dan Baxter, Wilke Fleury

Agenda Item 13 — *Consideration of Continuation of a Formal Consulting Agreement for Program Development, State Advocacy and Federal Advocacy*

The comments provided at the meeting are supported by these written statements and are submitted to the Program Manager for inclusion in the NBWRA Meeting Minutes. These comments are based on supporting documents which are included in the meeting packet:

1. March 26, 2020 Cease and Desist Letter, including Appendix 1, to NBWRA Board Members and Sonoma County Supervisors acting as Directors of Sonoma Water, from Dan Baxter, Wilke Fleury, as legal counsel to Bryant & Associates.
2. April 1, 2020 Response Letter from Sonoma County Deputy County Council Verne Ball to Dan Baxter, Wilke Fleury.

Comments made by Ginger Bryant:

On March 26, 2020, my counsel transmitted a *Cease and Desist Letter providing Notice of Brown Act Violation and Demand for Reinstatement of Contract*. This was the legal pathway available to me—to bring before the NBWRA Board—a series of decisions and Brown Act violations that occurred prior to, and during, the failed contracting process with my firm.

It was never my expectation that a Reinstatement of Contract would result from this Letter. The intended purpose was to bring transparency to a series of decisions and actions made by Sonoma Water which are fully described in Appendix 1.

During the 18-years I worked with NBWRA agencies, I ensured every member was equally represented, and my actions were consistent with direction provided by the Board. I practice one of the most basic principles of management; if you are responsible for something, then you are accountable. This principal is the basis of my legal action.

We all deserve, and must insist upon, mutual respect, transparent actions, and open communication as fundamental to maintaining confidence and trust in our public institutions.

Thank you.

Comments made by Dan Baxter:

Hello, everyone.

My name is Dan Baxter and I am the lawyer representing Bryant & Associates. Obviously, three minutes does not allow for an extended exposition of the legal issues raised by Sonoma Water and the NBWRA's handling of the legislative development services contract. Indeed, as Ms. Bryant just described, those issues, and the underlying facts out of which they arise, are more fully developed in our March 26 submission.

What I do want to say here today is by way of a brief response to Sonoma Water's April 1 response letter—penned by Deputy County Counsel Verne Ball—which takes the rather startling position that the Brown Act doesn't apply to the conduct at issue here because, in Sonoma Water's words, “[n]o improper meeting of a ‘legislative body’ occurred,” and “[t]he advisory subcommittee you discuss was not a Brown Act body at all.”

The position adopted in Sonoma Water's letter is meritless, and ignores the relationship between the parties at issue. The NBWRA is formalized by an MOU for administrative purposes, and Sonoma Water acts as fiscal agent for the organization. The Board is comprised of locally-elected officials from member agencies, and conducts its meetings in accordance with the requirements of the Brown Act. The way in which the RFQ process was initiated and completed, right up until the April 22, 2019 Board meeting, was in accordance with Brown Act requirements. If it is really the present position of the NBWRA and Sonoma Water that those requirements never applied in the first place, then it certainly calls the question of whether they would take ostensible pains to meet those requirements in the initial stages of the process.

In any case, I and my client are confident in our position that Sonoma Water and the NBWRA were subject to Brown Act requirements, and violated those requirements by conducting what we believe was a back room, politically-motivated about-face relative to the award of the legislative services contract. And we are prepared to take legal measures to see that Bryant & Associates' rights are preserved.

Thank you.