SAWPA COMMISSION
REGULAR MEETING MINUTES
JUNE 21, 2016

COMMISSIONERS PRESENT
Thomas P. Evans, Chair, Western Municipal Water District
Ed Killgore, Vice Chair, San Bernardino Valley Municipal Water District
Ronald W. Sullivan, Secretary-Treasurer, Eastern Municipal Water District
Phil Anthony, Orange County Water District
Terry Catlin, Inland Empire Utilities Agency

COMMISSIONERS ABSENT
None.

ALTERNATE COMMISSIONERS PRESENT; NON-VOTING
Jasmin Hall, Alternate, Inland Empire Utilities Agency
Steve Copelan, Alternate, San Bernardino Valley Municipal Water District

STAFF PRESENT
Celeste Cantú, Rich Haller, Larry McKenney, Karen Williams, Dean Unger, David Ruhl, Carlos Quintero, Ian Achimore, Kelly Berry

The Regular Commission Meeting of the Santa Ana Watershed Project Authority was called to order at 9:30 a.m. by Chair Evans at the Santa Ana Watershed Project Authority, 11615 Sterling Avenue, Riverside, California.

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE

2. ROLL CALL
Roll call was duly noted and recorded by the Clerk of the Board.

3. PUBLIC COMMENTS
There were no public comments.

4. CONSENT CALENDAR
A. APPROVAL OF MEETING MINUTES: JUNE 7, 2016
Recommendation: Approve as posted.

B. TREASURER’S REPORT – MAY 2016
Recommendation: Approve as posted.

MOVED, approve the Consent Calendar.
Result: Adopted (Unanimously; 5-0)
Motion/Second: Anthony/Sullivan
Ayes: Anthony, Catlin, Evans, Killgore, Sullivan
Nays: None
Abstentions: None
Absent: None
5. NEW BUSINESS

A. STATEMENT OF INVESTMENT POLICY (CM#2016.40)
Karen Williams advised that California law requires the Commission annually adopt a Statement of Investment Policy (SOIP). Staff reviewed the current SOIP and determined that no significant changes were needed from the policy that was approved by the Commission last year. Accordingly, this policy submitted for approval is the same as that which was approved last year.

MOVED, adopt Resolution No. 2016-2 approving the Statement of Investment Policy and delegating authority to the Chief Financial Officer to invest or reinvest funds consistent with the Statement of Investment Policy.

Result: Adopted (Unanimously; 5-0)
Motion/Second: Anthony/Killgore
Ayes: Anthony, Catlin, Evans, Killgore, Sullivan
Nays: None
Abstentions: None
Absent: None

B. BRINE LINE SERVICE CONTRACTS FISCAL YEAR 2016-2017 (CM#2016.44)
Carlos Quintero provided a PowerPoint presentation on the Brine Line service contracts for Fiscal Year 2016-2017. In March of 2015 the Commission approved the issuance of an RFP for Brine Line Service Contracts. The RFP required contractors to maintain prices for a minimum of two years and provided an option to renew for an additional third year, at the discretion of SAWPA. The table below outlines the scope of work for each service provider:

<table>
<thead>
<tr>
<th>Provider</th>
<th>Scope of Work</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>WWMD</td>
<td>Water quality sampling; Brine Line maintenance; emergency response</td>
<td>$117,000.00</td>
</tr>
<tr>
<td>E. S. Babcock Laboratories</td>
<td>2,700 sample analysis</td>
<td>87,000.00</td>
</tr>
<tr>
<td>Houston Harris</td>
<td>20 days Reach 4B cleaning; 7 days Reach 4E cleaning; water truck; line cleaning equipment; traffic control; CCTV inspection post-cleaning</td>
<td>$225,000.00</td>
</tr>
</tbody>
</table>

Rich Haller advised that a presentation on the TSS issue will be provided at the July 19, 2016 Commission meeting.

MOVED, approve Work Orders with E.S. Babcock Laboratories in the amount of $87,000 for water quality sampling and analysis services and Western Municipal Water District in the amount of $117,000 for Brine Line maintenance and operations activities; and approve the budget for Year Two of the existing Task Order with Houston Harris PCS, Inc. in the amount of $225,000 for pipeline cleaning.

Result: Adopted (Unanimously; 5-0)
Motion/Second: Catlin/Sullivan
Ayes: Anthony, Catlin, Evans, Killgore, Sullivan
Nays: None
Abstentions: None
Absent: None
C. **SEWER SYSTEM MANAGEMENT PLAN INTERNAL AUDIT (CM#2016.45)**

Carlos Quintero provided a PowerPoint presentation on the internal audit of the Sewer System Management Plan (SSMP). The SSMP, originally adopted in April 2009 then updated and adopted in April 2014, requires a bi-annual audit. This current internal audit is based on the State Water Resources Control Board Sewer Collection System Pre-Inspection Questionnaire. The only finding resulting from this current audit was that relative to the Overflow Emergency Response Plan, there is no formal requirement to train contractors working on the Bine Line regarding OERP procedures. Moving forward, this formal training requirement will be incorporated into contract documents, work orders and task orders. Training will be in-house and provided by SAWPA staff. The next audit will occur in 2018, and a formal update to the SSMP is required by 2019.

**MOVED,** receive and file a report on the Sewer System Management Plan internal audit.

- **Result:** Adopted (Unanimously; 5-0)
- **Motion/Second:** Anthony/Sullivan
- **Ayes:** Anthony, Catlin, Evans, Killgore, Sullivan
- **Nays:** None
- **Abstentions:** None
- **Absent:** None

Chair Evans announced that Agenda Item No. 5.D. would be considered at a future meeting. The Commission next considered Agenda Item No. 5.E.

E. **U.S. BUREAU OF RECLAMATION BASIN STUDY UPDATE PROPOSAL (CM#2016.47)**

Ian Achimore provided a PowerPoint presentation on the U.S. Bureau of Reclamation (Reclamation) Basin Study Update Proposal. As discussed at the June 7, 2016 Commission meeting, the Commission will receive the final Proposal for review and approval prior to the June 22 Reclamation submittal date. A copy of the final Proposal was provided as a handout to the Commission, staff and members of the public.

**MOVED,** approve the submittal of the Santa Ana Basin Study Update Proposal to the U.S. Bureau of Reclamation.

- **Result:** Adopted (Unanimously; 5-0)
- **Motion/Second:** Anthony/Sullivan
- **Ayes:** Anthony, Catlin, Evans, Killgore, Sullivan
- **Nays:** None
- **Abstentions:** None
- **Absent:** None

F. **RFP FOR QUALITY ASSURANCE SERVICES (CM#2016.48)**

Rich Haller provided a PowerPoint presentation on the RFP for Quality Assurance Services to support the Proposition 84 Grant Program (Prop 84) by augmenting SAWPA staff performance of grant administration providing independent verification of agreement compliance and project invoices. The Proposition 84 Grant Program consists of four rounds (Rounds 1, 2, Drought Round and Final Round) with a total of thirty-six projects; two drought round projects have four components. Specific goals and activities will confirm SAWPA/Sub-Grantee compliance with agreements with DWR. With the Commission’s approval, the RFP will be issued June 22 with proposals due July 14. The top proposing firms would appear before an interview panel with an award recommendation brought to the Commission at the August 2 meeting.
A discussion ensued regarding the anticipated budget amount for a consultant to provide these services over a five-year period as compared to the cost of hiring a full-time employee. It was noted that the probable first year budget would be approximately $300,000, with an anticipated reduced budget in following years. Commissioner Anthony suggested SAWPA hire one full-time employee to do the work, which would be more cost effective. Commissioner Sullivan voiced his desire to see a future projection since the amount budgeted for subsequent years would taper down.

Commissioner Anthony made a motion to direct staff to bring back to the Commission for consideration at a future meeting a plan to hire one full-time employee. Vice Chair Killgore seconded the motion for purposes of discussion. Commissioner Sullivan voiced his support of the motion, if staff would also include a five-year average cost for consultant services compared to the fully burdened labor cost of an employee over that period of time. Commissioner Anthony amended his motion for staff to include these estimates with the proposal to hire someone, stating his belief there is more than enough work at SAWPA for an additional full-time employee.

**MOVED,** direct staff to bring back to the Commission a plan to hire one full-time employee to support the Proposition 84 Grant Program, and include for comparison purposes a five-year average cost for consultant services.

Result: **Adopted (Unanimously; 5-0)**

Motion/Second: Anthony/Killgore  
Ayes: Anthony, Catlin, Evans, Killgore, Sullivan  
Nays: None  
Abstentions: None  
Absent: None

G. **PROJECT AGREEMENT 23 (CM#2016.49)**

Larry McKenney provided an oral presentation on the proposed Project Agreement 23 (PA 23), including an historical account of the purpose and function of Project Agreement Committees formed in accordance with Section 18 of the SAWPA Joint Powers Agreement.

The broad goal of PA 23 is to implement the project of improving the regional resilience of the watershed by making better use of the groundwater basins through conjunctive operation with imported supply in order to produce dry year yield. This is not just about constructing facilities with grant money. The grant agreement requires that we produce benefits, and the benefits will be produced by the operation of the project, not the building of it. The operation of the facilities is also included within the scope of PA 23. There are likely to be follow-on actions, other future phases of Santa Ana River Conservation and Conjunctive Use Program (SARCCUP) or other actions that would improve the operation of the groundwater basin and the PA 23 is drafted broadly enough to allow a framework to conduct those activities in the future if we have other funding sources, for example. As drafted, this agreement states that the committee members assume the financial responsibility of the committee project. This agreement has been circulated to all member agencies, who have met and conferred with SAWPA staff throughout this process.

Each member agency governing board will need to appoint a representative to the committee, which must be either a board member or the general manager.

McKenney highlighted committee responsibilities:

- Set the committee meeting schedule; power to create advisory and technical committees
- Overall responsibility for the project
- Approval of the project budget (process mirrors approval process for the SAWPA budget)
- Makes binding executive decisions without those decisions coming back to the SAWPA
Commission, including approving all expenditures within the project budget and approving all operating agreements and all operating decisions within those agreements

- Determine essential parties for all agreements entered into with respect to the project
- Determine and specify ownership of facilities constructed for the project and cost sharing parameters
- Determine liabilities of any agency that withdraws from the project, in terms of expressed financial commitments

Commissioners Sullivan and Anthony expressed their position that for the first five years of the project the general managers’ technical knowledge would be essential. It was noted that the IEUA, OCWD and EMWD governing boards had already appointed their General Managers as the PA 23 Committee representative. Chair Evans noted he would recommend that WMWD appoint a board member to the committee given the numerous initial policy issues facing the committee, including discussions with MWD.

MOVED, approve the Project Agreement 23 to implement the Santa Ana River Conservation and Conjunctive Use Project and future phases of this project; further that the Commissioners confer with their respective governing Boards and General Managers in order to appoint their Committee representatives during July 2016.

Result: Adopted (Unanimously; 5-0)
Motion/Second: Anthony/Catlin
Ayes: Anthony, Catlin, Evans, Killgore, Sullivan
Nays: None
Abstentions: None
Absent: None

6. INFORMATIONAL REPORTS
Recommendation: Receive and file the following oral/written reports/updates.

A. CASH TRANSACTIONS REPORT – APRIL 2016
B. INTER-FUND BORROWING – APRIL 2016 (CM#2016.41)
C. PERFORMANCE INDICATORS/FINANCIAL REPORTING – APRIL 2016 (CM#2016.42)
D. THIRD QUARTER FYE 2016 EXPENSE REPORTS
   • Staff
   • General Manager
E. BUDGET VS. ACTUAL VARIANCE REPORT – FYE 2016 THIRD QUARTER – MARCH 31, 2015 (CM#2016.43)
F. AUDIT COMMUNICATION LETTER FOR FYE JUNE 30, 2016 – WHITE NELSON DIEHL EVANS LLP
G. GENERAL MANAGER’S REPORT
   The recent passing of Burnie Cavender, former SAWPA Planning Department Manager, was announced.
   SAWPA representatives have been invited by the U.S. Bureau of Reclamation to attend a regional management team meeting reception, and those interested in attending should tell Celeste Cantú.
H. STATE LEGISLATIVE REPORT
I. SAWPA GENERAL MANAGERS MEETING NOTES
   • June 14, 2016
J. CHAIR’S COMMENTS/REPORT

K. COMMISSIONERS’ COMMENTS
Commissioner Anthony noted he attended the morning planning meeting of the Water Advisory Committee of Orange County (WACO) and SARCCUP was on the agenda for a presentation and discussion in August, which has been moved to September pending input from MWD. Commissioner Anthony voiced concern communications with MWD regarding SARCCUP may not have yet occurred. It was noted there have been two meeting to date with MWD, and there are scheduled future meetings.

L. COMMISSIONERS’ REQUEST FOR FUTURE AGENDA ITEMS
Commissioner Sullivan commented past OWOW Conferences have been very well received, and he recommended that planning begin for a future conference. Celeste Cantú advised a budget would be brought to the Commission for consideration at a future meeting.

7. CLOSED SESSION
Larry McKenney noted two Closed Session items the Commission would discuss, and stated that in addition to General Manager Celeste Cantú, Rich Haller and David Ruhl are essential to the discussion of Agenda Item Nos. 7.A. and 7.B. Commissioner Anthony requested the presence of OCWD General Manager Mike Markus during Closed Session. A discussion ensued regarding this request, whether member agencies’ general managers are essential to the discussion of these matters under the law, and the legal aspects of maintaining attorney client privilege.

Larry McKenney advised there is a process in the Joint Powers Authority Act and in SAWPA’s Joint Powers Agreement providing that confidential information discussed in a litigation-related closed session can be shared in a closed session of a member agency governing board, and that is the proper procedure to follow to ensure that the information remains privileged. Commissioners Sullivan and Anthony indicated they were not in concurrence with McKenney’s interpretation of the law. Commissioner Sullivan encouraged more collaboration and utilization of litigation experience within the member agencies, but discouraged district-by-district closed sessions and noted the importance of having everyone in the room for consensus purposes. Commissioner Anthony concurred, and strongly encouraged McKenney to consider this more collaborative path.

McKenney reiterated his interpretation that the way to maintain attorney client privilege in these discussions is through closed session under the Brown Act. There is a legal doctrine covering who can be in the closed session, but if that is exceeded and people not essential to the discussion of the matter are allowed to be in the closed session, the agency could effectively waive attorney client privilege. Commissioner Anthony voiced his opinion that general managers are as essential to the discussion as SAWPA staff, and that McKenney was being much too cautious in his interpretation. This is not a matter of distrust; it is a matter of what can be compelled to be produced under the Public Records Act or under the discovery phase of litigation. Commissioner Sullivan noted that the general managers would be present in an advisory capacity. McKenney stated that if a general manager participates in closed session and is thereafter deposed during the discovery phase of litigation, in his opinion the information that general manager received during those closed session discussions would no longer be privileged and would be discoverable because the general manager does not work for SAWPA and, in his view, would not be determined by a judge to have been essential to SAWPA’s handling of this case.

Commission Sullivan inquired whether the general managers could act as litigation consultants, stating if there is a way to make this happen so the Commission obtains better information from member agencies that have an exposure, then we should find a way. McKenney noted the SAWPA Joint Powers Agreement sets forth that the liabilities of SAWPA are SAWPA’s and not the members’. Commissioner Anthony urged
McKenney to provide legal advice that meets the concerns and needs of the Commission, to consider this in a broader sense and find some legal pathway that perhaps is not the easiest way possible but provides them what they are requesting.

Chair Evans asked if entering into a joint defense agreement would be an option. McKenney advised against relying on a joint defense agreement in this instance. Chair Evans noted McKenney’s interpretation has been the position taken by Metropolitan Water District of Southern California in like matters discussed during closed session, and that the mechanism by which a member agency receives information would be a briefing during a closed session with the member agency’s attorney and governing body. Commissioner Sullivan suggested perhaps more than one member agency could participate in a joint closed session, and suggested that SAWPA obtain a second legal opinion.

McKenney noted that from a practical perspective he understands why some Commissioners desire to have general managers involved in this discussion, but he is providing advice on how to protect this agency’s privilege. Commissioner Anthony directed McKenney to find a way to involve them in closed session discussions. McKenney stated he would continue to work with member agency attorneys to do so, and that the Commission may also choose not to act per his advice.

At 10:39 a.m., Chair Evans recessed the meeting to Closed Session. Celeste Cantu, Rich Haller and David Ruhl participated in the discussion of Agenda Item Nos. 7.A. and 7.B.

A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1)
Name of Case: Spiniello Companies v. Charles King Company, Inc., Santa Ana Watershed Project Authority, The Ohio Casualty Insurance Company (Superior Court of Los Angeles BC616589)

B. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(2)
Name of Party: Charles King Company, Inc.

Chair Evans resumed Open Session at 11:21 a.m. There was no reportable action.

8. ADJOURNMENT

There being no further business for review, Chair Evans adjourned the meeting at 11:21 a.m.

Approved at a Regular Meeting of the Santa Ana Watershed Project Authority Commission on Tuesday, July 19, 2016.

Thomas P. Evans, Chair

Attest:

Kelly Berry, CMC
Clerk of the Board