

**MINUTES OF A REGULAR MEETING
OF THE BOARD OF COMMISSIONERS
VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY
August 26, 2009**

CALL TO ORDER: Chair Thurston Smith called the meeting to order at 9:05 a.m. on August 26, 2009 in Room 146 at the VVWRA Administrative Offices, located at 15776 Main Street, Hesperia, California, with the following members present:

**HESPERIA WATER DISTRICT
ORO GRANDE (CSA 42) AND
SPRING VALLEY LAKE (CSA 64)
TOWN OF APPLE VALLEY
CITY OF VICTORVILLE**

**Thurston Smith
Jeff Rigney**

**Bob Sagona
Rudy Cabriaes**

VVWRA Staff and Legal Counsel:

**Logan Olds, General Manager
Piero Dallarda, Legal Counsel (BB&K)
Linda Ellsworth, Management Tech to GM**

**Patricia Johnson, Secretary to the GM/Board
Glen Price, Best Best & Krieger LLP
Melanie Mendez, Accounting Supervisor**

Others Present:

**Amer Jakher, City of Victorville
Frank Robinson, Town of Apple Valley
Sean McGlade, City of Victorville**

**Dennis Cron, Town of Apple Valley
Brian Johnson, City of Hesperia
John Sullivan, City of Victorville**

REGULAR SESSION

CALL TO ORDER & PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS – REGULAR SESSION AGENDA

Chair Smith asked if there were any comments from the public on the regular session agenda. There were no comments from the public.

ANNOUNCEMENTS AND CORRESPONDENCE:

1. Possible conflict of interest issues

Manager Olds reported that he was not aware of any possible conflicts.

2. Correspondence from City of Victorville Regarding Sludge Management Contract

Manager Olds reported that a copy of the letter dated August 12, 2009 that was provided at the last Board meeting from Mayor Cabriales that relates to an item on today's agenda was placed in each Commissioner's handout folder.

ACTION & DISCUSSION ITEMS:

3. Revisions to the Joint Powers Agreement: Manager Olds reported that Piero Dallarda and Glen Price of Best Best & Krieger have been working on the revisions to the Joint Powers Agreement (JPA) and are present to provide an update. Piero reported that at the last meeting of the Strategic Advisory Committee (SAC) various concepts were discussed but nothing has changed since that meeting. He said we have heard back from the Town of Apple Valley, the City of Hesperia and San Bernardino County in terms of what minimum flow commitments they are comfortable giving to VVWRA. One of the big issues with the JPA for VVWRA was what amount of flow was going to be directed by the member entities because that has a direct impact upon the ability to collect fees and revenue.

Piero said at the last meeting, the City of Victorville explored a new flow commitment concept which was a maximum allowable flow commitment. A concern that the other entities had about that a minimum flow commitment would give the investors for potential bonds a greater certainty that the money is going to be there. As of today, the Town of Apple Valley, City of Hesperia and County of San Bernardino have given us their commitments on the minimum flows they are comfortable sending to VVWRA give or take two or three percent given the current economic situation. We are waiting for the City of Victorville to provide us with their number or to provide their comments. We also still need to deal with the subject of diversions and how that ties in with the next agenda item, which is the sludge management agreement between VVWRA and the City of Victorville. That agreement is pretty much resolved, although we have not received comments in writing from Victorville's attorney yet.

Piero said he did forward an email that he received from Victorville's attorney indicating the City's concern in dealing directly with VVWRA or VVWRA's attorney on the JPA. This is something that will require direction from the Board and the SAC. He said two members of the SAC emailed him and indicated that VVWRA should be involved and should stay involved. Chair Smith asked if a motion is necessary to allow VVWRA to remain involved. Piero said a motion is not necessary because technically VVWRA is already involved. He said if Victorville's counsel is uncomfortable with Best Best & Krieger being involved, then we can retain someone else. The reason why VVWRA should be involved is that the Service Agreement is being incorporated into the JPA. VVWRA is a party to the Service Agreement and has to be a party to the Service Agreement because they will be providing services to each entity individually and potentially to third parties at some point. Therefore, it is important that VVWRA have input as its own entity in terms of what happens.

Piero said there are two remaining issues regarding the JPA. The City of Victorville is an important participant in this process as the largest contributor towards the flow so their input is very important. Commissioner Sagona asked what the rationale was why VVWRA should be excluded from the JPA negotiation process. Piero said he forwarded the email from Victorville's attorney to the SAC, but did not explore the attorney's comment any further. VVWRA exists because of the member entities. If at

some point the member agencies do not want VVWRA to exist, then you can amend the JPA to do whatever you think you should do. Commissioner Sagona said the representation of this Board is for the member entities. Piero said you have four separate, independent entities that have agreed to form another entity which is VVWRA. There were 50 independent states that decided to join together to form a county which is the United States. Unlike the United States where a state cannot secede, you as a member entity can withdraw from this entity. The City of Adelanto was an entity that decided to do so. A JPA is a completely separate entity. As Commissioners, you are sometimes in a difficult situation because you have to represent the interest of your entity while at the same time supporting the separate interest of the JPA. Chair Smith said each member entity has signed a Service Agreement with VVWRA. Piero said you have each signed a continuation of the current Service Agreement with a 30-year termination notice. Basically, if any entity decides to withdraw from the Joint Powers Authority you have to give a 30-year notice. That is where the JPA currently stands but the four member entities can decide to do something else by amending these agreements.

Commissioner Cabriales said the comment in the last paragraph of the city attorney's email is pretty clear. Piero said we will need some direction from the Board as to what they would like us to do. At this point, the City of Victorville has expressed a concern, but we still have not received comments from Victorville on the JPA. We did get input from Victorville's attorney on the sludge agreement, but not on the JPA. The Board passed a resolution indicating that we cannot move forward with the sludge agreement until we agree to amend the Joint Powers Agreement regarding the issue of diversions. So, we are at an impasse. Chair Smith said, "Let's move on to the next item".

4. Sludge Management Agreement between VVWRA and City of Victorville: Piero announced that comments were received from the City of Victorville's attorney last week and those comments were circulated to the SAC last week. Most of the issues that remain are not as much legal as they are policy issues, although one of the issues takes us back to the JPA again. That is the resolution that said we need to deal with the issue of diversion in the JPA before moving forward with the sludge management agreement.

Piero said the City of Victorville has taken the position that because of the way the Resolution was written, if there is no decision on the JPA we will move forward with the sludge agreement. We certainly differ in that opinion with the attorney for the City of Victorville. Our opinion is that the Resolution reads that we needed to get both agreements done at the same time. The fact that we did not finish the JPA by July 2009 as indicated in Resolution 2009-7 may vitiate the Board's ability to move forward with the sludge agreement unless you decide to rescind or change the Resolution.

Sean McGlade said we are very close on the sludge agreement and should soon have an agreement that everyone can buy in on. Sean read the written comments from BB&K by section number. He said that 2.1 b, c, and are OK, but in section 2.3 there is a question about 3.5 dry tons. He said that is a maximum daily discharge and 2.2 is the average, which is the base of the agreement. Sean said he wanted to clarify that. Manager Olds said VVWRA has no issue with the 3.5 dry tons daily maximum or the 2.52 average monthly. The issue was simply coming to a resolution on the cost per ton. Sean said section 2.3 is OK as well then. He said in section 2.1, the City of VV has purchased capacity that was inherited from George Air Force Base (GAFB) and we want the flexibility to use all or some of those credits toward the \$551,000. We are asking for that flexibility and seek your concurrence.

Manager Olds said this issue first came to light for him 2 ½ years ago when John Sullivan contacted him regarding an apparent record of a credit on the books for capacity fees that had been transferred from GAFB to the City of Victorville. Manager Olds said he was not aware of this and he investigated our records. About four years ago, the former General Manager issued a letter to Victorville about the existence of these credits. Manager Olds said that he and Piero have discussed the issue and their understanding is that the information needs to be presented to the Commissioners to make a decision on its validity, its value and how it would be apportioned. Piero said in about 1977 or 1978, the U. S. Air Force purchased capacity at VVWRA. That capacity was transferred by the USAF to the Victorville Sanitation District, which was later incorporated into the City of Victorville somehow. Technically, some of that purchased capacity has been handed down all the way to the City of Victorville. That is what the document seems to indicate. As we went through the JPA exercise, some of the Member Entities expressed concern about being able to tie up capacity for such a long period of time for 23 years or so. They wanted to see perhaps a restriction on that. Legally, you can do what you all agree to. Our point is that there seems to be a transfer of a certain capacity and the City of Victorville wants to use that capacity now. Whether or not you decide that capacity is something you should honor or not is an issue for the Board to agree to. Piero said what he does disagree with the City of Victorville is that it does necessitate the JPA to deal with that because the member entities have expressed a concern that there are too many problems that could arise. Another problem that could arise is when you tie up capacity for that long because it causes planning problems and financial problems. This is not to detract from the fact that the City of Victorville has inherited some capacity, but that issue becomes tied into the JPA. You should be able to decide the issue in this case as related to the City of Victorville. Again, the JPA is looking forward and is not looking backwards.

Commissioner Cabriales said this situation is one of a kind. Piero said he was not aware of this one until recently. Commissioner Cabriales said apparently there is a legal trail and he does not disagree that we should get rid of the capacity credit. Piero said this capacity was transferred down to the City of Victorville but we cannot give you a legal opinion as to the value of it or whether it was legally transferred down. Obviously, this is something that the Board could choose to honor. Commissioner Rigney asked if the Air Force Base purchased the capacity. Piero said there is no real document that shows that they did, but there is a document that shows the base had it. We cannot tell you how they acquired it or if they paid for it or if it was given to them. These documents are more than 30 years old and the records are sketchy. There is a trail from the Air Force to the Victorville Sanitation District and down to the City of Victorville. Now we may have to dig a lot deeper to determine whether the Air Force paid for it or how much they paid for it.

Commissioner Sagona asked if George Air Force Base (GAFB) was ever a member of VVWRA. Piero said GAFB was never a member, but VVWRA did serve GAFB. Sean said there was a loan or a grant from the State to the Mojave Water Agency and the GAFB was exempted from the loan. Piero said there was some transaction, but we have not located the documents. Commissioner Cabriales said the capacity that was purchased by GAFB was passed down to Victorville. Piero said it is a reasonable explanation, but we do not have documents to show that. What we have indicates there was some transaction, but we cannot determine what it was. Brian said we are open to switching capacity, but we want to know the capacity value. He said given that VVWRA will not get the \$551,000, what is going to be done to cover the cost of the sludge handling. Piero said it is clear that the capacity was passed down, but the value of it and how VVWRA is going to pay for it is not clear. Sean said there is

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documentation that some of the 4,000 dwelling unit capacity credit was assigned to the Federal Bureau of Prisons. He said the balance is somewhere around 2,500 EDUs. Commissioner Cabriales said so we have used those credits before. Piero said we need to determine how many credits were given, how many were used

Manager Olds said VVWRA staff will interact with Victorville staff on this and it will take some time. The idea is to be expeditious and to deal with the \$551,000. Mr. Johnson asked how that \$551,000 would be paid for. Please recall that the infrastructure required to meet the need of both facilities is already in place. So this is simply Victorville purchasing their portion of that capacity. The decision has already been made to construct the pipeline and we have already determined the location where that pipeline will tie into the VVWRA facility. The construction and details relating to that pipeline are the responsibility of the City of Victorville and we are working with their staff on the guidelines regarding the tie-in. In this particular instance, we are not dealing with a cash outlay and that is an important distinction to what the Commissioners ultimately decide to do. Manager Olds asked Sean if anything he said was incorrect. Sean said it was right on point and we are only asking for the flexibility to use all or part of the remaining credits. Chair Smith said what the credits cost in 1979 will also be a factor. Piero said it could be written into the agreement that the City of Victorville has the ability to offset it if they so choose and something that says the value will be determined in the future. Commissioner Cabriales said if we could agree on that it would not hold this thing up. Piero said the problem that we have is that we cannot make a call on the numbers at this time.

Manager Olds said based on consensus it is his understanding that VVWRA staff in conjunction with the SAC will meet and determine a value associated with those credits. The second item, as it pertains to section 3.1, is that the Commissioners are agreeable to allowing language to be inserted into the agreement to allow an offset of connection fees either in whole or in part. Commissioner Cabriales said this is a one of a kind situation and there is a legal trail that gives some value to it. This could be addressed for the future in the JPA, but if we can figure the value and get rid of it then it will not be an issue. Commissioner Rigney asked if GAFB actually purchased the capacity. Piero said there is no document to show if they paid for it, only that they had it.

Sean said in moving on with the comments from Glen Price, we assume that those sections are OK. Piero said in section 3.2, the City of Victorville has asked for a cost escalation every three years instead of every one year. It was originally discussed that there should be a cost escalation every one year. The Board may want to get a recommendation from staff on the cost escalation term. Manager Olds said he does not necessarily see a problem with a three year term.

Brian said he is bothered by the direction this discussion is going. He said we have not read the updated agreements and the Board is being asked questions to agree to, but we want to know what the financial impact will be. Are we setting a precedent that Victorville does not have any hookup fees for the next three years? We are looking at a redlined agreement that needs to go to the City Managers for approval before it is submitted to the Board. Manager Olds said at this stage, we are simply working through the various comments from the member entities and then all policy matters will be brought directly to the Board of Commissioners. Chair Cabriales said that could take a long time. Piero said he does not think it will take long because based on the comments Sean provided it looks like we are very close.

Piero said the overriding issue that is before the Board today is the issue of the JPA and how that agreement ties to the sludge management agreement and the problem of diverting current flows. That is the major issue that will take more time to resolve. For the sludge agreement, the SAC could sit down and hash out all of the issues in one meeting. Sean said the last time this was discussed was on August 13. Chair Smith said Victorville was not able to meet since then. Sean said no, but we provided comments. On the issue of the rate, the revenue this would bring is \$180,000 or \$190,000 per year. The cost to do the rate study is \$30,000 and it seems burdensome that a \$30,000 cost should be necessary every year when a three year cost escalation term would save those costs. Chair Smith said a rate study could be done for a five-year term all at one time, so VVWRA would not have to bear a \$30,000 cost each year. Chair Smith said we will leave that up to the SAC to determine the appropriate term.

Sean said 5.2 deals with the service issue and it indicates that Victorville would be assuming the handling cost if there is any interruption in service. He said we are willing to pay our share as long as all others share their part of the cost. This agreement says Victorville pays for the extra cost, but nothing says the other entities have to pay and we want to be treated equally. We don't want to pay for extra handling cost. Piero said the concern from a legal standpoint is that most of their clients act as utilities and in general a service provider of this nature does not want to take responsibility for an interruption in service and it is not recommended. Southern California Edison does not take that responsibility. Also, in the agreement with the City of Adelanto there are certain provisions where we can cut them off immediately if there is an interruption in service and it would be their problem and not ours. This would be an issue that the Board needs to deal with. Commissioner Cabriaes asked, "If there was a problem, how would you know if it was caused by the sludge"? Piero said the issue is what would happen if VVWRA cannot treat the sludge. If VVWRA cannot treat the sludge that Victorville was going to send, who would bear the responsibility for dealing with that sludge. This would be a policy decision of the Board.

Manager Olds said when he came to VVWRA all of our digesters were dead. They were all overloaded and were not producing any gas. We were relying solely on natural gas at that time. As part of the effort to restart those digesters, there were some contentious discussions with the septage haulers when it was necessary to eliminate septage from coming into our facility for several months so that we could restart the digesters. Since that time, we have two million gallons more capacity and we also have a great location for where Victorville would transfer the solids. The concern here is to ensure that VVWRA still has the ability to operate its facility to meet all of our Regulatory Permit requirements. We can take another look at this language, but it is not intended be used for anything other than to cover an emergency condition such as failure of our digesters. The City of Victorville is going to be operating its own facility and if a toxic load was received by VVWRA, we would respond and address it. Sean said from his point of view the sludge is not Victorville's it is everyone's.

Commissioner Rigney said he is a little confused because when he reads this section we are talking about an agreement between VVWRA and the City of Victorville that deals with the sludge from Victorville. Sean said we have no problem with paying the extra cost for the 2.5 dry tons, but the other entities should also be required to pay. Chair Smith said if Victorville is sending sludge to VVWRA and the problem is with Victorville's sludge, why would any other entity pay? Commissioner Cabriaes said you cannot tell whose sludge it is.

Piero said another concern we have is that VVWRA has no say in the agreements that the City has with other people such as another bottling plant. If there are penalties involved in those other agreements because the City cannot serve them, we need to ensure that those penalties do not trickle down to VVWRA. Brian Johnson said what he is hearing is that Victorville wants compensation from the member agencies. Manager Olds said it is not compensation. It is when the sludge becomes comingled that the expenses are associated and spread across all entities. If we identified that a toxic load was received that required VVWRA to expend resources to address that problem, those expenses are associated across all of the member agencies. Now if we identified one specific cause of that, then of course then the charge would be on that specific source. We do this all the time with our Industrial Pretreatment Program. If a toxic load is sent to VVWRA from the Prison or from Nutro, we have a procedure where we consistently sample those sites and if there is a violation then the cost of processing that toxic load is transferred to the source of the load. A toxic load that is sent to the treatment plant and an operational failure within the treatment plant are two different types of situations. When there is an operational failure, those costs would then be spread among all of the member entities. Sean said Victorville simply wants that recognition in the language. Manager Olds said we will look at that language again and there is a clearer understanding now.

John Sullivan said what about consequential damages. Piero said right now we have a service agreement that does not deal with that issue at all. Part of the concern is that, if the City of Victorville entered into an agreement with a new facility and there was some penalty involved due to loss of service and there was a resulting loss of production, the penalty does not get passed down to VVWRA. John asked what the industry standard is. Piero said a utility provider never agrees to do anything like that especially with a third party contract like this because they do not want to be responsible for consequential damages. Typically what happens is that the intermediate provider secures some kind of business interruption insurance policy to cover that type of problem. Our concern with the agreement as it is written is that Victorville could have an agreement with a third party that VVWRA has no say on and there could be a huge penalty provision there that could be passed down to VVWRA when the agreement is out of their control and has done nothing negligent. It is our responsibility to advise VVWRA to be careful of this because it could happen.

Sean said at this point, Victorville does not object to any of the language but we just wanted to be sure we are being treated equally. He made an error on the rates, but he and Piero have talked about that and resolved the issue. He said \$205.36 is the correct ton charge. Sean said at this point he would seek the Board's approval.

Piero said there are very few issues to resolve, but the crowning issue that needs to be resolved is whether or not to move forward with the approval of this sludge agreement that basically allows for the diversion of flows from VVWRA when you still have not dealt with it in the Joint Powers Agreement. That is the key issue now before the Board. The SAC is close to finalizing the revisions to the JPA. Allowing a diversion of 1.5 MGD is not provided for in the current terms and conditions of the JPA, which requires that all flows have to be sent to VVWRA. The JPA is now being amended to contemplate that you can divert and everyone has agreed to deal with that issue. A suggestion was made by Mike Podegracz that each entity could provide a minimum flow number to VVWRA, so that VVWRA has some certainty in terms of revenue to go and get bonds for the Capital projects. Then if an entity provided less flow than their minimum commitment, there would be a penalty. If more flow than

the minimum commitment is provided, then we would have to adjust the numbers. The City of Hesperia, the County and the Town of Apple Valley have provided the flow numbers they are willing to commit. We have not received a flow number from Victorville. The concern is that if we allow a diversion of existing flows, not future flows but existing flows, we are going to have a problem with our ability to secure bonds. Our bond counsel has advised that VVWRA will have serious issues getting bonds if existing flows are diverted. That is the one key issue that needs to be resolved. The Board can decide to take a risk and roll the dice and see what happens with the bonds. We can only alert you of what the dangers are when you have not clearly addressed this in the JPA.

Chair Smith asked if a motion is needed to rescind the Resolution or to amend it for an additional 90 days. He said he personally wants the JPA to be finalized. Commissioner Cabriales said Victorville has a timeline and we cannot wait for the JPA to be finalized. He was hoping to get the sludge agreement approved today. We either get it done here or we get it done somewhere else. Chair Smith said it was the original agreement that the JPA would be approved first. Otherwise, we are putting the cart before the horse. Commissioner Cabriales said he would like to make a motion.

Commissioner Rigney said for the JPA, the Managers need to get together and then report to the Board. From everything he is hearing we are not that far away on the JPA and we can deal with that. We only need to receive flow numbers from one entity and it should not take any longer to finalize the JPA than the sludge agreement. He said this could all be wrapped up in one or two weeks and he will make himself available to meet with the Managers at any time. That is the direction we need to go, but do it very quickly. Chair Smith said if it was that important, the City of Victorville should have called a meeting and attended a meeting. We called this meeting two weeks ago and there was supposed to be a meeting prior to this meeting. Chair Smith said if a meeting was important he would call it on Friday at 10 a.m. Why the City cannot make a meeting date, he is not sure. Piero said Victorville staff has expressed concern about providing a minimum flow commitment to VVWRA. That seems to be the only issue that is hanging things up on the JPA. Commissioner Cabriales said that may take some time to resolve and we have been waiting for eight months.

Commissioner Cabriales made a motion to rescind Resolution 2009-7 and approve the sludge management agreement with the City of Victorville.

Hearing no second to the motion, Chair Smith announced, "The motion dies."

5. Request from Town of Apple Valley to Change the Date of the September 17, 2009

Board Meeting to September 24, 2009: Piero Dallarda reported that the reason for the request to change the date of the September 17 Board meeting was due to a conflict with the League of California Cities that both the primary and alternate Commissioners from the Town of Apple Valley plan to attend. Therefore, there would be no representation for the Town of Apple Valley on September 17. Following a discussion of other potential meeting dates, Manager Olds suggested holding the September Board meeting on Thursday, September 10, which would be one week earlier rather than one week later.

It was the consensus of the Commissioners to schedule the next meeting of the VVWRA Board of Commissioners on Thursday, September 10 at 3 PM.

Chair Smith said prior to September 10, all members of the SAC will get together to discuss the JPA revisions and sludge management agreement. Commissioner Rigney asked if it could be agreed upon by consensus to cancel the September 10 Board meeting if it is determined in advance that there is nothing to meet about. He would like all details of the agreement to be worked out in advance of the next Board meeting. Piero said a Board meeting can be canceled at any time if 72 hours advance notice to the public is provided as required by The Brown Act. There are a lot of other issues beside the JPA and sludge agreement that will need to be addressed at the September 10 Board meeting.

COMMISSIONER COMMENTS

None

NEXT REGULAR BOARD MEETING:

Thursday, September 10 at 3 PM - Regular Meeting of the Board of Commissioners

CLOSED SESSION

CALL TO ORDER

It was the consensus of the Commissioners not to enter into Closed Session.

ADJOURNMENT

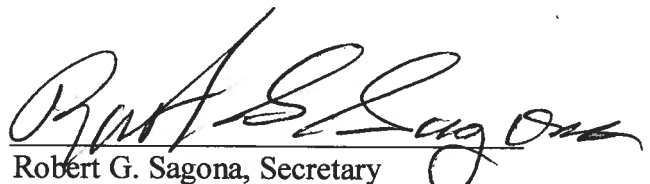
At 10:01 a.m., Commissioner Sagona made a motion to adjourn the meeting, which was seconded by Commissioner Cabriales and approved by unanimous voice vote.

APPROVAL:

DATE:

10/22/09
Approved by VVWRA Board

BY:


Robert G. Sagona, Secretary
VVWRA Board of Commissioners