

**MINUTES OF A REGULAR MEETING
OF THE BOARD OF COMMISSIONERS
VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY
February 17, 2011**

CALL TO ORDER: Chair Jeff Rigney called the meeting to order at 7:35 a.m. on February 17, 2011 in Room 146 at the VVWRA Administrative Offices, located at 15776 Main Street, Hesperia, California, with the following members present:

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

Jeff Rigney, Chair

Scott Nassif/Barb Stanton, Vice Chair

Rudy Cabriales, Secretary

Thurston Smith/Russ Blewett, Treasurer

VVWRA Staff and Legal Counsel:

Logan Olds, General Manager

Piero Dallarda, Legal Counsel (BB&K)

Chieko Keagy, Accounting Supervisor

Robert Coromina, Network Supervisor

Patricia Johnson, Secretary to the GM/Board

Gilbert Perez, Director of Operations

Tony Penna, Construction & E/E Manager

Ryan Orr, Public Information Officer

Others Present:

Amer Jakher, City of Victorville

Sean McGlade, City of Victorville

Tom Piper, Resident

Frank Robinson, Town of Apple Valley

Tracy Krueger, Larry Walker Associates

Alina Constantinescu, Larry Walker Associates

Dean Johnson, Athens Services

Dorothy and Norman Miller, Victorville Residents

Brian Johnson, City of Hesperia

David Mueller, High Desert Politics

Carlos Rodriguez/Larry, Residents

Ron Clark, Director – Helendale CSD

Kimberly Cox, Helendale CSD

Riel Johnson, Athens Services

CALL TO ORDER

PUBLIC COMMENTS – CLOSED SESSION AGENDA

Chair Rigney asked if there were any comments from the public regarding any item on the Closed Session agenda. Hearing none, he called for a motion to enter into Closed Session.

Commissioner Smith made a motion to enter into Closed Session, which was seconded by Commissioner Cabriales and approved by unanimous voice vote.

CALL TO ORDER & PLEDGE OF ALLEGIANCE

REGULAR SESSION

CALL TO ORDER & PLEDGE OF ALLEGIANCE

Chair Rigney called the meeting to order at 9:20 a.m. Commissioner Stanton led the Pledge of Allegiance.

REPORT FROM CLOSED SESSION

Piero Dallarda announced that the Board met in Closed Session pursuant to Government Code Section 54956.8 to discuss acquisition of real property. The discussion was regarding the properties defined on the agenda as to one particular property, Assessor Parcel Numbers 0405-711-71. The Board authorized acceptance of an offer by the property owner of \$24,000 to acquire the property. There is nothing else to report.

PUBLIC COMMENTS – REGULAR SESSION AGENDA

Chair Rigney announced that a Speaker Request card was received from Dorothy Miller.

Dorothy Miller stated her name and said she lives in the City of Victorville. She said we are having problems and I would like to know if you record your meetings or have cameras to take pictures and all these things and I want to know if you guys are doing it all. We are asking the city to do all of these things and we are asking you to do them. For one of the people, I kind of think it is a conflict of interest to work on the Council and at the wastewater treatment plant. I understand that they have offices and travel from here to over there when you have business to do there. Why don't we have meetings over there? Another problem I have that is really is bad one is that they hired a couple of people and the Board didn't know nothing about it. Now if that's true, you know what? I would have fired her right then and there because that should not happen. The Board should know what is going on. You guys really need to take a look at this. If it had been my business, out the door you would have went because you don't do things like that.

Chair Rigney announced that the next submittal is from Mr. David Mueller.

David Mueller said he is with High Desert Politics.org. He said time is of the essence is one of my favorite legal terms. He said time is always a critical issue. He would like to tell the Board a little bit about his background. He said he used to work as a civil servant and the Marine Corps Logistics Base in Barstow. While there, he finished his education and was trained to facilitate and resolve complex issues facing the organization. The issue in the government was primarily a problem of labor management relations. They were in the toilet back in the 90's and they are still in the toilet so obviously I failed. What he did learn as an important lesson was that to understand other parties issues, very often those you deal with are so consumed with their own vision that they fail to see reality. Time is a reality we must all deal with. Time is of the essence. Victorville is out of time and so are the other member agencies for fighting over who contributed what or when for cheap reclaimed water. He said he found an old note that says that in 2004 reclaimed water cost \$335 per acre foot to process. So it is

not cheap water no matter how we cut it. Especially if MWA is going to raise replacement water rates to \$415 per acre foot. We need that water and it is smart to reuse it.

David said he listened to Victorville's special meeting on February 15, 2011 and he came away with one conclusion. Your wounds are analogous to an arterial wound and without help you are going to bleed out. But the tone of the meeting sounded like you want to fight this Authority. He said previously that time is of the essence. In facilitating complex issues, parties typically fail to see reality because they are so consumed. Here is the reality. It states in the CIA you are going to review this morning, that unless you spread out the concentrations of TDS and nitrogen from the perc ponds this Authority risks being sued or fined into extinction by someone using the Clean Water Act. The decision to place a treatment facility and run sewer pipe directly in the center of the sole source of drinking water was at best ignorant. He is glad the MWA is finally stepping in to help this Authority. But they better do more than just provide lip service. At least they still have bond ratings that are above junk status. We can use them or we can die as a community.

David said he recently exchanged emails with Cindi Mitton at the LRWQCB and he knew he hit the nail on the head when she stopped responding to a series of questions he asked. Victorville's extremely high TDS problems from Dr, Pepper-Snapple Group are only the beginning. Wait until the HD power plant's turbines start running. The solution is reverse osmosis systems that help desalinate incoming salt water in the future and clean up wastewater on the other end today. That will require a lot of money and cooperation, but so will all these lawsuits. Reverse Osmosis will promote growth potential, while the lawsuits will leave you bankrupt. In reality, this nation already is nearly bankrupt. We need to do something to cooperate and we have to have a strategic plan. It has to be the Authority and all of the communities working together to come up with a long-term strategic plan. If we focus on our individual positions, we will end up bankrupt.

Chair Rigney announced that a Speaker Request card was received from Kimberly Cox, who will speak under Item 5.

ANNOUNCEMENTS AND CORRESPONDENCE:

4. Possible conflict of interest issues

Piero reported that he was not aware of any possible conflict of interest issues on the agenda.

5. Letter from Helendale Community Services District President (Read into record)

Kimberly Cox, General Manager of the Helendale Community Services District, read aloud a letter from the President of her agency into the record as follows:

"Dear Honorable Commissioners,

On behalf of the Helendale Community Services District Governing Board, I would urge you to seek a permanent solution to the recent unfortunate discharge of raw sewage into the Mojave River. This

incident has put all downstream water suppliers on alert. We are entirely dependent upon the river aquifer for our local water supply. The quality and quantity are critical factors for our residents. We have increased the monitoring of our wells and the river and will need to do so for the foreseeable future.

We have every indication that your staff acted quickly and decisively to mitigate the problem with a temporary solution as quickly as humanly possible. Your General Manager is to be commended.

However, this is not the first time this has happened, and we believe it won't be the last unless the permanent fix is put in place to ensure the well being of those that depend on the health of the Alto Transition Zone of Mojave River for water. We urge you to consider the permanent solution of tunneling under the river. A similar option was discussed with previous VVWRA Commissioners who failed to embrace the best long-term solution for the JPA members. It is our understanding that an "Option 4" was recently presented to you for consideration which represents the bore and jack option.

Despite the development of sub-regional plants that will allow each jurisdiction to beneficially reuse water, the Shay Road plant will always be a key component of the regional wastewater system. Improving the collection system going to the main plant is one of the most critical components of your infrastructure. Although the costs may seem great to repair the ill-placed sewer interceptor lines, we feel it would be the best solution for near term as well as future generations. The history of VVWRA reveals that the sewer lines laid in the river have been compromised several times in the past. The cost for completing a permanent solution will not be lessened by pushing the problem farther into the future.

We understand that a major factor in your decision is the ability to obtain mitigation funds from Federal and State emergency agencies. Please do not hesitate to let us know how we can help you lobby for these funds. The downstream users depend upon a clean river aquifer for current and future drinking water supplies. It is imperative that we all work together to protect this valuable resource".

Chair Rigney said those thoughts are shared by many on this Board.

6. Draft Memorandum of Understanding Between MWA and VVWRA

7. Article - Paying Waste: Sewage Contains More Usable Energy Than Scientists Thought

CONSENT CALENDAR:

8. Approve the January 2011 Cash Disbursements Register (No. 0111)

Commissioner Cabriaes said he would like to pull item 8 for discussion.

9. Approve the Minutes of the January 27, 2011 Regular Meeting

10. Recommendation to Approve Additional Resources for Cornerstone Right-of-Way LLC for Easement Acquisition for the Nanticoke Bypass Interceptor Project:

- 11. Recommendation to Approve Professional Services Contract with Larry Walker Associates for Upper Narrows Emergency Repair/Replacement Project:**
- 12. Recommendation to Approve Professional Services Contract with Tom Dodson Associates for Upper Narrows Emergency Repair/Replacement Project:**

Chair Rigney called for a motion to approve Items 9 through 12 of the consent calendar.

Commissioner Smith made a motion to approve Items 9 through 12 of the consent calendar, which was seconded by Commissioner Stanton and approved by unanimous voice vote.

Discussion of Item 8: Commissioner Cabriales asked what the entry to the State Water Resources Control Board contract number 02825 for \$250,000 was for. Manager Olds said it is either for repayment of the North Apple Valley Interceptor, the 11 MGD Expansion, or another project. This is an annual payment that we make at this time to repay the State Revolving Fund (SRF) loan.

Commissioner Cabriales said he sees there is some First Aid shown for Logan Olds and asked Manager Olds if he was hurt out in the field. Manager Olds said yes, a few of us experienced work-related injuries while we were out there. He said he knew where he was each day based on what happened. He has no long-term injuries, but sprained his ankle pretty badly and he wears a brace off and on.

Commissioner Cabriales said we have three SRF loans. That does not include the one that is currently underway. He asked Manager Olds what the total of the three loans is. Manager Olds said the total of the three existing loans is about \$10 million. The additional loan that will start coming due in 2012 or 2013 will encumber the Authority with an additional \$15.7 million.

Commissioner Stanton said she is curious about the electricity bill for \$46,000. She asked if that was a monthly bill. Manager Olds said yes. Our annual utility bills are somewhere between \$1 million and \$1.2 million. We typically spend approximately \$800,000 per year for electricity and another \$400,000 per year for natural gas. Some of the planned improvements associated with the Phase IIIA Regulatory Upgrades project are intended to eliminate the natural gas consumption at our facility.

Chair Rigney called for a motion for Item 8.

Commissioner Cabriales made a motion to approve Item 8 of the consent calendar, which was seconded by Commissioner Stanton and approved by unanimous voice vote.

REPORTS & PRESENTATIONS:

13. Cumulative Impact Analysis Presentation by Larry Walker Associates: Tracy Krueger of Larry Walker Associates provided a brief overview of the Cumulative Impact Analysis. Following the presentation, Commissioner Stanton asked if there were any changes in the particulates in the water in the last several years that have raised a red flag. Tracy said we did an analysis of all of them and there were no red flags. The Commissioners thanked Ms. Krueger for her presentation.

PUBLIC HEARINGS:

Piero Dallarda said there are two Public Hearings scheduled today under Items 14 and 15. Item 14 correlates to action item 16 and Item 15 correlates to action item 17. These are environmental approvals that are necessary for this Commission to undertake in order for the planning process and design process to continue for the subregional plants in Hesperia and Apple Valley as well as the Cumulative Impact Analysis that was recently presented to the Board. If the Board wishes, we need to open the Public Hearing and your Clerk will indicate that notice has been properly posted. We can open the Public Hearing and you can hear the presentation and receive public comments if the public is inclined to comment on this. The Board may take one item at a time or take both items 14 and 16 at once.

14. Certify Environmental Impact Report for Subregional Water Reclamation Plants in the City of Hesperia and Town of Apple Valley and Related Facilities and Consider Approval of Project:

Chair Rigney opened the Public Hearing at 9:55 a.m. and read the Public Hearing title. He asked if there was a presentation on this item. Piero said he would be more than glad to give an extensive presentation. There is a Resolution for the Board to approve that is over 30 pages. We believe that it satisfies the requirements of CEQA in terms of what is presented to the Board and approved and by the Board. He would be glad to go through the entire Resolution if the Board so wishes and if there are any questions he will answer them in the process, but the Board is not required to go through that entire process. The Resolution is before the Board and so is the Environmental Impact Report (EIR).

Chair Rigney announced that this is a Public Hearing and he has received no requests to speak on this particular item. He asked if there were any comments from the Commission or from the public.

David Mueller said he had one question on the CIA. He said he came across information on the percolation ponds that TDS is at 3,000 below those percolation ponds and that is really what the issue is. We need to spread out the plants to eliminate TDS. Through this analysis it provides a baseline. Hopefully right now that pollution has not migrated into the aquifer or into the water table. But over time it will change. We provided a baseline with his report. He would like to find out if Larry Walker Associates can give us an idea of how long it will take for that pollution to migrate to the aquifer, which is about 100 feet below. He said he knows there are wells that were tested and the measurements indicated that it had not migrated as of today. But is there a projection for the future of where that plume will eventually end up.

Chair Rigney asked Manager Olds if that is something he can answer. Manager Olds said the Anti-Degradation studies that were originally done for the EIR for the wastewater treatment plant identified some issues as well as some of the background studies that were done preceding the February 2008 adoption of the National Pollutant Discharge Elimination System (NPDES) Permit. As a result of those activities, the Regional Board required us to do a number of studies. One of them was a study of the nitrate levels below our percolation ponds, our drying beds, and underneath the wastewater treatment plant. The concern that the Regional Board had was that the Trichloroethylene (TCE) spill underneath George Air Force Base would migrate into the Mojave River and then downstream into the residential

wells and the well fields used to operate other municipalities. As they investigated our property, they were also concerned with the levels of TDS that were being measured related to activities at the time of California Bio Mass, who has since become American Organics. So there are two issues that are there under the facility. As a result of the 18-month study, it showed that there is essentially a fault that runs along our border which is containing all issues from our facility. Our activities at the percolation ponds are also preventing the TCE spill from migrating. Manager Olds said at this time it is his understanding that the Regional Board and also the third party consulting group that we hired is that the TDS, the nitrate and the TCE are being contained on that side. None of us live for thousands of years. At this point, the best technology and science says that it will stay on that side. One of the issues that we are facing with the adoption of the Waste Discharge Requirement for those percolation ponds is the belief that the Regional Board will propose additional restrictions on VVWRA for their operation and use, not unlike what was done for the NPDES Permit which will likely require some changes in our operation. We will have to wait and see. That is currently scheduled for May of this calendar year. His understanding is that those issues are addressed. In the future as reclaimed water use increases, our discharge to the percolation ponds will decrease and his hope is that at some point the only discharges from our facility will be that which occurs as surface water to the Mojave River to maintain our agreement with the Fish & Game MOU requirement.

Sean McGlade said on page 128 of the study there are costs for the subregionals associated with options that resemble the costs in the technical memo in the Master Plan and there is no cost for the percolation ponds. The Board acknowledged at that time that the numbers needed to be revisited.

Manager Olds said if the concern is the numbers, we are still a long way from moving forward with the numbers for the project and the Board will hear a report in March. In October or November, the Board provided direction to develop a spreadsheet that shows the two various options. The spreadsheet was distributed to the members of the Engineering Committee. We had scheduled a meeting to review the spreadsheet, but unfortunately the situation with the Upper Narrows occurred. Pat Johnson is currently trying to set up another meeting so that we can go through the spreadsheet. At this point, there is a differing of opinions as it relates to the costs and we are going to work through those as a team.

Commissioner Stanton asked Piero how long he has spent with the collective Committees in putting this plan together. Piero said he did not participate in the EIR itself. It was an environmental consultant by the name of Tom Dodson who has vast experience in the Victor Valley who put together the EIR for the subregionals. Best Best & Krieger reviewed it for legal accuracy and made sure that it complies with the requirements of CEQA. We also prepared the Resolution that is in your handout folder that is about 30 pages. That is the resolution that typically is required under CEQA to approve an EIR because the Board is required to make certain findings. He said he is comfortable in saying that the document is legal and it is a good document. In terms of the EIR, he cannot comment on the environmental analysis that has been done by an expert in the field because he is a lawyer and not a scientist. Mr. Dodson would be able to answer any questions you may have. For the benefit of the public that was not here at the last meeting, the EIR was presented at the last Board meeting and Mr. Dodson did make a presentation on the EIR and answered questions.

Chair Rigney asked if there were any other comments on Item 14. Hearing none, he closed the Public Hearing and called for a motion under Item 16.

15. Consider Approval of Cumulative Impact Analysis of Treatment Capacity, Discharge Locations and Water Resources:

Commissioner Rigney opened the Public Hearing for Item 15 at 10:07 a.m. to consider the approval of the Cumulative Impact Analysis of Treatment Capacity, Discharge Locations and Water Resources. He asked if there was anyone who wished to speak on this item. Hearing no comments, he brought the item back to the Board for comments. Hearing none, Chair Rigney closed the Public Hearing at 10:08 a.m. and called for a motion under Item 17.

ACTION & DISCUSSION ITEMS:

16. Resolution 2011-7: Certify Environmental Impact Report for Subregional Water Reclamation Plants in the City of Hesperia and Town of Apple Valley and Related Facilities and Approve Said Project:

Commissioner Smith made a motion to approve Resolution 2011-7 to certify the Environmental Impact Report for Subregional Water Reclamation Plants in the City of Hesperia and Town of Apple Valley and Related Facilities and Approve Said Project and authorize the filing of a Notice of Determination, which was seconded by Commissioner Stanton and approved by voice vote. Commissioner Cabriaes of the City of Victorville opposed the motion.

17. Resolution 2011-8: Approve Cumulative Impact Analysis of Treatment Capacity, Discharge Locations and Water Resources:

Commissioner Smith made a motion to approve Resolution 2011-8 to approve the Cumulative Impact Analysis of treatment capacity, discharge locations and water resources, which was seconded by Commissioner Stanton and approved by voice vote. Commissioner Cabriaes of the City of Victorville opposed the motion.

18. Recommendation Regarding Design Firm for Upper Narrows Emergency Repairs: Manager Olds reported that we are in a shortened process due to the nature of the emergency and the amount of money that we are expending on a daily basis to address this problem. A proposal was released on the 31st of January, so there was a very short timeframe to get this proposal before you. We received proposals that were distributed to the Engineering Committee for each of the member agencies to have the opportunity to review. Typically, we would meet as a group and go through them and arrive at a conclusion. Because there was not enough time to do this, we did a vote where each of the member agencies and VVWRA submitted a vote for which firm to our legal counsel. Piero is now handing out some information because we had a vote come in this morning. He will then be asked to tell us who the firm is. There were three proposals turned in. One was from Carollo, one from Tetra Tech, and one from CDM. Piero said as your General Manager indicated, the proposals were a response to a Request for Proposals (RFP) that VVWRA indicated. Then the proposals were forwarded to the member entities to consider them and rate them so to speak in terms of preference. Cost was not considered in terms of the grading, so cost was not a factor. He has provided what we received back from the

member entities. We could not include this in the original agenda package because the responses did not come in until much later on. Piero said he would like to commend the engineering staff of the member entities that have been burning the midnight oil so to speak to get back to us with this information. He said he has handed out the results to the member entities and the Commissioners. He had to tally them up this morning and hopefully his math is correct. We received three grading sheets. The results of the grading sheets indicate in terms of points that Tetra Tech has achieved 269 points, CDM achieved 248 points, and Carollo achieved 252 points. This grading by the member entities did not include cost. It included project understanding, project approach, qualifications and experiences, references, and level of effort. If you decide to award this proposal to any of the three submittals, you can consider cost if you so wish. You are not required to do so. This is a contract for Professional Services and is not a contract for Public Works. It is really up to the Board how you want to proceed.

Commissioner Smith asked who submitted the vote with no name. Piero said that is from John Leveillee of the City of Hesperia. We have not yet received a response from the Town of Apple Valley. Commissioner Smith asked if any of the companies that submitted a proposal were local. Piero said none of the submittals are from local firms. However if he recalls from reviewing the information correctly, the firm of Carollo Engineers actually proposed the use of some local subcontracting firms. Commissioner Stanton asked Piero to clarify the names of the member entity staff that submitted the votes. Piero said it was Sean McGlade of the City of Victorville, Mr. Oravets from the County, and John Leveillee of the City of Hesperia. We then have a memorandum from Tony Penna of VVWRA indicating his preference. Tetra Tech and Carollo were only one point apart.

Commissioner Cabriaes asked Piero to re-state the vote points. Piero said Tetra Tech with 269 points is first, Carollo with 252 points is second, and CDM with 248 points is third. We did not receive a vote from the Town of Apple Valley and that could change the numbers. Chair Rigney asked if we have enough information now or if we need to wait for Apple Valley. Piero said it is entirely up to the Board. From his standpoint, the Board has enough information to make a decision. You do not have to award based on these points. It is just guidance for the Board. If there are other things you want to consider, you may certainly do that.

Commissioner Cabriaes said he would like to hear from the City of Victorville. Piero said it is within the Board's discretion to hear from everyone. Commissioner Cabriaes said Sean, you graded these companies. Sean said there was not enough time to go through every piece. They are all good companies and any one can do this. Chair Rigney said the County has used Tetra Tech and has always had a good job from them. Manager Olds said he has to agree with the comment by Mr. McGlade. We received three excellent proposals. Chair Rigney said we haven't looked at the cost yet. Commissioner Smith said someone knows what the cost is. Manager Olds said we can go through that at this time.

Commissioner Stanton said she would like to hear from Mr. Robinson if he has any concern that we engage in this process. Frank said not at all. The collective information is good and we apologize that we could not get back to you as requested. Dennis told me that he is doing the best he can. Manager Olds said VVWRA appreciates the level of participation and activity of the member agencies. Again, this has been done a very short timeline. He said he is surprised that the quality of the proposals is so high. These companies had less than one week to put it together and get it through their review process and then over to us.

Commissioner Cabriales said it appeared based on the ratings that any one could do the job. They are all top notch companies. The cost would be a factor. Manager Olds said we can certainly do that at this time. The cost proposal from Tetra Tech was \$589,580. There are some caveats in their proposal as it relates to which option is finally chosen. \$589,580 is the base price. The proposal from CDM for Option 3 was \$1.1 million. If Option 4 is moved forward with, the cost is \$1.7 million. Carollo has a fee of \$850,000 for Option 3 and \$1.6 million for Option 4. So if you were to rank by the basic fees, it would be Tetra Tech, Carollo and then CDM. It has to do with how they presented their numbers. Tetra Tech lumped and the others split. To explain it simply, remember that the FEMA part is critical. The proposals for FEMA were good by all three. The difference comes in which option the Board chooses to move forward with on March 17. There is a little bit of confusion with the Tetra Tech bid as to whether it is for option 3 or option 4 at \$600,000 or if it is for Option 3 or Option 4. There is a little confusion as to how they presented their numbers. Commissioner Smith said if you add them together it would be \$1.1 million. Manager Olds said yes, depending on which option is chosen. Chair Rigney said Tetra Tech's bid of \$589,580 would at least be for Option 3. Based on rating and price, we could make it with the caveat that you could find that out. Manager Olds said absolutely.

Piero said perhaps because there is a concern, the Board could approve the award to Tetra Tech contingent upon the clarification of the amounts. If the amounts exceed the amounts of the next lowest proposal, which would be Carollo, it would be brought back to the Board and the Board can have a Special Meeting to decide what to do. That is one option. The other option is to do the same, but it does not come back to the Board. The Board would tell the General Manager just choose whoever is the cheaper of the two. Chair Rigney said because this is a professional service he does have a little bit of an issue choosing it by cost. Piero said he is giving the Board two options for the Board to decide. Chair Rigney asked if there are other things the Board should be considering such as timing of the job. Manager Olds said one of the considerations that the consultants were explicitly told was that review of the risk issues and a presentation of what FEMA would likely cover based on the various options would be presented to the Board at its March 17 meeting. Of the three proposals, the timelines for Carollo and Tetra Tech both indicate that. The timeline with Carollo shows a final completion date of December 30 of 2011. The timeline with Tetra Tech shows ending in May 2012. CDM shows completion in April 2012.

Commissioner Smith asked how we can figure out which way to go if we have not decided on Option 3 or 4 yet. Manager Olds said the presentation given to the Board at the last meeting included timelines associated with construction for the various projects because he wanted to know that upfront. He said he knew within the first week what the options would probably be and he based some of his decisions on that. So the consultants know and basically jack and bore adds one month to the construction. It is not a huge time difference. Commissioner Smith asked if there will be something in the contract stating that they will pay so much if the timeline is not met. Piero said the problem that you will have is that these are engineer's estimates as opposed to a contractor who signs a contract with liquidated damages, which provides that if they are late they will be paying liquidated damages. In his experience with construction contracts, he cannot think of a design firm who is only doing design who will agree to a liquidated damages provision that could be subject to the contractor who is doing the project over whom they have no control.

Manager Olds said time is money every month we spend on this. Interestingly, there is a statement at the bottom of the Carollo proposal which states, "Carollo is making a full commitment of the key staff listed to complete this work. We will not miss scheduled deadlines".

Piero said for the benefit of the Board he has been checking his email messages and he has received a response from Mr. Cron that rated Tetra Tech first, Carollo second, and CDM third.

Commissioner Smith said if we went with Tetra Tech, can we clarify the dollar amount and try to shorten time? I would go with Carollo because their time is shorter, but would you divulge these numbers to them? Manager Olds said absolutely not. This is the first discussion as a group that is related to the numbers.

At this time, Manager Olds asked Robert Coromina to get a section of pipe from his office.

Commissioner Stanton said wouldn't the price go up if we asked them to shorten the time. Manager Olds said absolutely. Manager Olds said let me throw a slightly different viewpoint onto this discussion. We have a 16-inch sewer line that is supported by three steel pilings driven 19 feet into the River and then run through a steel casing. that is all that is supporting that pipe. If there is another significant storm, there is a likelihood that we are going to lose it. Our plan is to anchor it with the heaviest piece of equipment that we can and hope that it doesn't go anywhere. We have a 28-inch pipeline that is running next to and within feet of the railroad tracks. If some idiot decides to make a fire on top of that pipe or below that pipe or do something to it, what do you think the ramifications are of that spilling and undercutting the railroad? But we have no choice because it is either there or in the River again. We are in an extremely difficult situation and time is critical here. His real fear is that something is going to happen and we are going to breach. Manager Olds asked Robert to hold up the section of pipe from Manager Olds' office. He said this is what all of the sewage flow from the Town of Apple Valley, the City of Hesperia, Spring Valley Lake, and Victorville from the I-15 to the Mojave River is going through right now. This is all that stands between VVWRA and another violation or another issue in addition to the sewer line that is going over the River at this time. If that line breaks it takes two days to fix, which means all of Apple Valley's entire flow volume is going to go back into the Mojave River during that timeframe because we cannot put two million gallons of sewage into trucks and put it into the next manhole.

Manager Olds said he is more than happy to do whatever the Board directs him to do. Chair Rigney asked what this is costing us per month right now. Manager Olds said now that we have it into a stabilization mode with the laboratory fees and all of that, we had to hire 24 new people to staff those two sites with security and the people who are operating those pumping stations. We basically built two new pumping stations that have to be manned 24 hours a day. He said he believes we are at \$20,000 to \$30,000 per week. Chair Rigney asked if we are renting form Rain for Rent. Manager Olds said yes, he should add that in. He is always thinking of the labor cost. We are renting from Godwin Pumps and we actually purchased two pumps to replace those rentals because they will pay for themselves. The rental fees for the pumps are about \$5,000 per week and then the fuel and all of those other issues. The laboratory sampling is now down, so we must be in the \$30,000 to \$40,000 range per week. Chair Rigney said so for the five months at \$40,000 per month you need to play that into the bid too. Isn't that about a quarter of a million dollars difference? Manager Olds said yes.

Manager Olds said he would like the audience to know the difficulty we face as well and that the Commissioners are facing in making this decision.

Chair Rigney said what we can do right now so that we don't have to have a Special Meeting, but we can if we need to, that would let the General Manager look at Tetra Tech's true costs to make sure we understand what the costs are from them and reduce the timeline and if that works out, but if not, go to the next one.

Piero said the Board has been very clear that there is concern about this project even going on. The cost of keeping this emergency remedy in place is something to be considered, in comparison also with the cost of engineering services. There is a lack of clarity in Tetra Tech when it comes to their fees that the Board would like to have some sort of clarification on. You could certainly have an approval that is contingent on two things. He said he will try to summarize the concerns of the Board. One is that Tetra Tech comes back to the General Manager and explains what those numbers mean in terms of services for each option. That is the number one concern that he has heard the Board express. The number two issue is a timing issue and how it affects the proposal with a deadline of May 2012 instead of December 2011, which has been provided by Carollo. The Board may tell the General Manager that he has the authority to go back and ask those questions and to award the contract if the project can be completed by December 2010 and if the cost is lower than Carollo. He said you may certainly put that into a motion. Commissioner Smith said Tetra Tech's proposal was \$589,580. Manager Olds said it is a little unclear what it is for and is if that is it in total whether it is Option 3 or 4. Commissioner Smith said Carollo was \$848 up to \$1.7.

Commissioner Stanton asked Manager Olds if he would prefer to see the Board to move forward with this as Mr. Dallarda has explained or would we be smarter possibly by going with Carollo whose price is higher. She said she tends to think Tetra Tech is going to bump up their price once you push that timeline forward. Because time is of the essence, she would like to know Manager Olds' opinion on what he thinks the smart choice would be.

Manager Olds said let me make my politically-correct statements first. He said he thinks both of them are excellent firms and knows both of the principles that would be working on this and can say nothing but good things for either of them. There are two other considerations. As one of the Commissioners mentioned, we are already working with Carollo. Carollo retained the services of RBF Consulting who we have worked with for a very long time and who knows our interceptor system and modeling issues such as how much flow can be put through the pipe. RBF also did all of the geotechnical work for the Apple Valley pipeline. Carollo has a local firm, Hall & Forman, associated with their proposal to do assistance for engineering services as a local presence. Commissioner Cabriaes has mentioned that we need to support local business. With Tetra Tech though, by all appearances cost is certainly a factor because we do not know how much FEMA will reimburse. Right now we are looking at 6.75 percent of something, but we do not know what that something is because we do not know how much they will cover. His preference is for the Board to make a decision today. The proposal that Piero put forward is certainly acceptable because it is just a matter of his calling Tetra Tech and asking those questions to make the determination. If the Board is considering Tetra Tech or Carollo, either one is fine. Commissioner Cabriaes said Victorville rated Carollo number one. He thinks the Tetra Tech cost will go up when you shorten the timeline.

Chair Rigney asked if this includes construction. Manager Olds said yes. Chair Rigney asked why Tetra Tech's cost would go up when the time we are shortening is on the construction side. Piero said maybe because more people would have to be thrown into the project to get it done faster. Manager Olds said if you look at Tetra Tech's proposal, they are putting less staff on the project. He would assume that when reducing the time they would put more staff on it and there would be associated costs with that. Piero said the one thing he would recommend to the Board is that they do provide some clear guideline which is if Tetra Tech comes up with a number that is higher than Carollo, the Board needs to be clear to the General Manager as to what happens if they are the same number or very close together what other factors should be considered in the decision. It is a very tough decision, but in terms of delegating your authority to award this proposal you do need to give him very clear guidelines so a member of the public or someone else cannot say that anyone fudged anything. The guidelines have to be clear. So if cost is a factor, you would tell the General Manager that if Tetra Tech comes back with higher numbers, then it is Carollo. If there are any other things you should also state those so that the approval is clear and the General Manager is given no discretion of his own to choose one of these people because that is your authority not his.

Chair Rigney said would it be easier if early next week we have a quick meeting to review our options. He said he has two main concerns here. One is potentially leaving money on the table. The other is if we can get this completed by next winter. As Ms. Cox read into the record today, we need to be as responsible as we can to ourselves and to our downstream neighbors to get this taken care of once and for all. Manager Olds said he would be more than happy to get that information and schedule a meeting as quickly as possible. Of the two proposals the Board is considering, only Carollo's seems to answer all the questions. Commissioner Smith said it is the cost factor versus getting it done quickly so that we do not have any more problems. We have a big storm coming this weekend and we do not know what is going to happen. He would just as soon go with Carollo because they have worked for us before and know all of our stuff. The proposals are all pretty close. Commissioner Stanton said except for the price they are close. She said her choice would be what Mr. Dallarda spelled out. We need to take the extra few moments to see if we can get the timeline down by Tetra Tech to where we want it if the price looks right and make that final decision if we can do it quickly. Manager Olds said he knows what the timeline is very intimately. If we delay and hold another meeting, we will not be able to meet the March Board meeting and we will have to come back to the Board at a later point. Chair Rigney said he thinks our General Manager knows the Board's concerns and we just need to put that in the form of a motion.

Piero said he thinks the motion that would pass legal muster so to speak would be a motion where you are very clear to your General Manager as to what he is supposed to do. What he hears today is that you would like him to go back to Tetra Tech and ask: 1) What the price would be for Option 3 and Option 4 to clarify that point, and 2) How much it would cost for them to deliver the project as set forth in Carollo's proposal date of December 30, 2011. Then if that number is significantly lower than Carollo, then the General Manager can award the contract to Tetra Tech. If the number is not significantly lower, meaning within \$100,000 lower, at that point the contract should be awarded to Carollo. Chair Rigney said he would like to make sure legally that we are not bid shopping. We have seen Carollo's date and now we are using their date to go back to Tetra Tech. Piero said you are in a situation where

you have given the proponents very little time to respond. You have given your engineering staff even less time to review and give you input on this because you are facing an emergency where health and human safety are at stake. You do have the ability to go ahead and you are not bid shopping because the bid is not clear. You also have a public duty to administer public funds. You are not bid shopping; you are getting clarification. Your first inclination was to award it to Tetra Tech, but the proposal is not clear as to which option they are talking about. It is perfectly fine for your General Manager to go back and ask, "What did you mean and how much is it to get to a deadline in December. If the number is significantly lower, more than \$100,000 lower, then you are choosing the person you were originally going to choose and choosing the person with the lowest cost. If the number is considerably higher, then you are choosing the one who is low and you are choosing the one that you may have chosen today because of the other factors that you considered. Either way, you are not engaging in bid shopping. Chair Rigney called for a motion.

Commissioner Stanton made a motion to award a contract to Tetra Tech upon the contingency that they can shorten their timeline and that the price is still below Carollo, and to authorize the General Manager to move forward at his discretion if these restrictions are met. She then asked Piero if her motion was close. Piero said he would take the word "discretion" out of it and you do want to say that the price is at least \$100,000 lower. Commissioner Stanton resumed her motion to state that the Board authorizes the General Manager to move forward with the contingency that the price is at least \$100,000 lower.

Piero said the concern for the price to be at least \$100,000 lower is that Carollo has other experience in this area that Tetra Tech has not demonstrated including the use of local sub-contractors. Piero asked Commissioner Stanton if she would like him to paraphrase the motion. Commissioner Stanton said please help us out. Piero paraphrased Commissioner Stanton's motion as follows:

"Commissioner Stanton's motion for the record is that the General Manager will have the ability as instructed by this Board to go to Tetra Tech and find two things. One is whether their price for the proposal refers to Option 3 or Option 4. The other is what their price would be if they were to meet a deadline of December 2011. Contingent upon the response to those two questions, the Board approves the award to Tetra Tech. But if Tetra Tech's response is that the price is over Carollo's price or it is within \$100,000 of Carollo's price and the timeline of December 2011 cannot be met, then the award should go to Carollo".

Manager Olds said, "Pat, I will need a copy of this portion of the minutes in writing by this afternoon.

Commissioner Stanton made a motion to authorize the General Manager to contact Tetra Tech to clarify whether their proposal price refers to Option 3 or Option 4 and to determine what their price would be to meet a deadline of December 2011. Contingent upon the response to those two questions, the Board approves the award of a contract to Tetra Tech if the price is at least \$100,000 lower than Carollo's price and if a December 30, 2011 timeline can be met. If the price is over Carollo's price or within \$100,000 of Carollo's price and if the timeline of December 2011 cannot be met, the award shall go to Carollo, which was seconded by Commissioner Cabriales and approved by unanimous voice vote.

Chair Rigney announced that the motion passed. Manager Olds said he appreciates the time that the Board spent on this because it really is a crucial issue for VVWRA.

19. Request from Pulte Homes for Refund of Connection Fees: Piero said before the Commissioners is a request from a developer, Pulte Homes, for a reimbursement of unused connection fees. It is for a project that Pulte Homes will not pursue. They have already had discussions with the City of Victorville in terms of other fees, which the City of Victorville has agreed to reimburse. The way it works for VVWRA is that the connection fees are charged to the City of Victorville, the City of Victorville then charges them to the developer. In this case, the developer has applied to the City of Victorville for reimbursement because the project will not go forward. In turn, the City of Victorville has contacted VVWRA and asked VVWRA to issue a reimbursement. That is the issue before the Commissioners today. If the Board were to take action to approve the reimbursement, the reimbursement would be to the City of Victorville and then the City of Victorville would issue a reimbursement to Pulte Homes. Commissioner Smith asked what the hookup fee for a residential home was in 2006. Manager Olds said in 2006 it was \$150 less than it is now. Commissioner Smith said he would like to receive a receipt from the City of Victorville.

Commissioner Cabriales made a motion to approve the request for a refund of unused connection fees paid by Pulte Homes for a project that will not be pursued, which was seconded by Commissioner Smith and approved by unanimous voice vote.

Piero said an issue came up about this with your staff that I am obliged to share with you, which is that there is no policy for reimbursement of connection fees at VVWRA to give staff clear guidelines. Perhaps this is a future action the Board may want to consider. The reason he brings with up as a legal item is that you do want to have some type of clear guidelines on how to deal with these issues because there may be other developers in the future who find themselves in this situation and it would be helpful to have a written policy. Chair Rigney asked if this is something we need to have an agenda item on or can we just ask the General Manager to come back with a proposed policy at a future Board meeting. Piero said perhaps the General Manager can consult with the member entities and come back to the Board with a proposed policy for the reimbursement of connection fees. This would not require an action. It would just be a direction to your staff.

Commissioner Smith said the City of Hesperia is getting a lot of requests for repayments. Piero said that is why he mentioned that the member entities should participate in the process. What is going to happen is that the requests for reimbursement will never be made to VVWRA. They will always be made to the member entities.

STAFF/PROFESSIONAL SERVICES REPORTS:

- 20. Financial and Investment Report – January 2011**
- 21. Operations and Maintenance Report/Performance Efficiencies – January 2011**
- 22. Construction and Energy Efficiency Report – January 2011**
- 23. Pretreatment and Interceptor Cleaning and Inspection Reports – January 2011**

24. Septage Receiving Facility Reports – January 2011

AGENDA ITEMS FOR FUTURE MEETINGS:

Mid-Year Budget Review (March)

Resolution to Approve MOU between VVWRA and MWA (March)

Recommendation Regarding Repair Options for Upper Narrows Emergency (March)

Interfund Loan (March/April)

Recommendation to Approve Santa Fe Interceptor Project (March/April)

Recommendation to Approve Administration/Laboratory Building Project (March/April)

Recommendation to Approve Revisions to VVWRA Financial Plan (May)

Recommendation to Amend VVWRA Reserve Policy (May)

Interceptor Connection Requirements and Enforcement and Industrial Pretreatment Program

Upper and Lower Narrows Sonar Investigation of Sewer Interceptor

NEXT BOARD MEETING:

Thursday, March 17, 2011 - Regular Meeting of the Board of Commissioners

COMMISSIONER COMMENTS

Manager Olds said we are burning through cash, but we are OK. If you take a look at the Financial Policy under Item 20, you can see that we are still slightly over \$14 million. You will be seeing some very significant Warrant Registers that are coming through and expect to see them many hundreds of thousands of dollars more than they have been because the bills are starting to hit. He feels confident that the cash flow will be able to accommodate those bills in addition to those of the Phase IIIA project that is going on now. A UNE designation on the Warrant Register signifies costs associated with the Upper Narrows Emergency.

Commissioner Cabriales of the City of Victorville said he is not even sure if this is correct or not, but in the newspaper we are getting beat up because we have an auditing firm that is auditing our books so we are getting a lot of flack for that. But it was posted in an email also that Best Best & Krieger is our


attorney. People don't understand that there is a separation and it hurts us. They are two different things.

ADJOURNMENT

The meeting adjourned at 11:55 a.m.

APPROVAL:

DATE: _____
Approved by VVWRA Board

BY:  _____
Rudy Cabrales, Secretary
VVWRA Board of Commissioners