

**JOINT MEETING  
CITY OF MORRO BAY AND CAYUCOS SANITARY DISTRICT  
WASTEWATER TREATMENT PLANT  
(UNDER JOINT POWERS AGREEMENT)**

**MINUTES**

**CAYUCOS SANITARY DISTRICT  
BOARD OF DIRECTORS:**

Robert Enns, President  
Harold Fones, Vice-President  
Shirley Lyon, Director  
Michael Foster, Director  
Dan Chivens, Director

**CITY OF MORRO BAY CITY COUNCIL  
MEMBERS:**

William Yates, Mayor  
Noah Smukler, Vice-Mayor  
Carla Borchard, Councilmember  
George Leage, Councilmember  
Nancy Johnson, Councilmember

**MEETING DATE:**

6:00 p.m., Thursday, April 14, 2011

**HOSTED BY:**

Cayucos Sanitary District

**MEETING PLACE:**

Cayucos Veterans Hall  
10 Cayucos Drive  
Cayucos, CA 93430

**CALL TO ORDER AND ROLL CALL**

President Enns called the meeting to order at 6:03 p.m.

Morro Bay City Council present were Mayor Yates, Vice-Mayor Noah Smukler, Councilmember Carla Borchard and George Leage. Councilmember Nancy Johnson was absent.

Cayucos Sanitary District Board members present were President Robert Enns, Vice-President Hal Fones, Directors Shirley Lyon, Michael Foster and Dan Chivens.

Morro Bay Staff members present were Bruce Keogh, Rob Livick, Susan Slayton, Dylan Wade, Rob Schultz, and Andrea Lueker. Also present was JPA WWTP Project Manager Dennis Delzeit

Cayucos staff present were District Manager Bill Callahan and District Council Tim Carmel

**PUBLIC COMMENT PERIOD**

Members of the audience wishing to address the governing bodies on Morro Bay-Cayucos Wastewater Treatment Plant (WWTP) business matters may do so at this time. By the conditions of the Brown Act, the governing bodies may not discuss issues not on the agenda, but may set items for future agendas. When recognized by the Chair, please come forward to the podium and state your name and address for the record. Comments should be limited to three minutes.

President Enns opened Public Comment.

- Kathy Ryan - Commented that we should follow the advice of the CCC and also not waste our money on a lobbyist.

- Barbara Dorre – Commends the Board on their Public Comment structure and appreciates the agenda items being available online.
- Betty Winholtz – Wants the smallest footprint and the least expensive project along with keeping the aesthetics pleasing.
- David Nelson – We need to work together and get out the 100 year flood plain. Do the right thing and don't build a trench plant like in Pismo Beach, look at alternatives. Commented that they've been called "gnats" for public speaking, but someone has to speak up
- Judy Newman – Representing Sustainable Cayucos, aesthetics is key. Staff needs to have transparent reports.
- Ann Reeves – Listen to the people.
- Al Barrow - Coalition for Low Income Housing, saw the Los Osos project spend and spend on consultants, look where it got them. MWH is driving us the wrong way and sending cost soaring
- Alex Beatty – Wants the proper verbiage used, it's a WWTP, not a sewer plant.
- Steve Hennigh – Compliments the board on listening to the public
- Karen Elliott – Has worked in the corporate world where they would go into the war room and come up with the worst case scenario. Here, we are following the best case scenario, thinking there are unicorns at the wastewater project turning the project into mermaid shaped jellybeans and not following the CCC worst case scenarios.
- Dorothy Fones – Six years ago we were looking at the same scenario, the Board tried to please everyone, they didn't have to go to full tertiary but that's what the public wanted. There was no mention of moving the plant, where were all these people then? PERC was going to put the plant in the same location, when that didn't happen, the public turned on the Board.

Hearing no further comments President Enns closed Public Comment.

#### **A. CONSENT CALENDAR**

1. Minutes of March 10, 2011 JPA Meeting – Recommend approve.

**MORRO BAY MOTION:** Borchard made a motion to approve Consent Calendar Item A1. Smukler 2<sup>nd</sup>. Motion passed (4-0).

**CAYUCOS MOTION:** Fones made a motion to approve Consent Calendar Item A1. Lyon 2<sup>nd</sup>. Motion passed (5-0).

#### **B. OLD BUSINESS**

1. Status Report on Upgrade Project as of April 1, 2011 – Recommend receive and provide direction to staff.

Delzeit presented the activities on the project, the update on the CCC appeals and the process going forward. He reported that additional studies are necessary before the CCC will schedule the *de novo* hearing. These additional studies and RFQ results are contained in a separate staff report later on the agenda.

Delzeit pointed out that since his contract did not include the appeals process. All his time spent since the suspension of the design phase of the project is outside the scope of his contract and he is analyzing the financial impact and the subsequent extension of his services.

Smukler questioned the \$820,000 figure for project consultants (not including the lobbyist) spent up to when the design phase was stopped.

Keogh clarified the reporting of these consultant's figures as being the only one's involved in this part of the process and does not include the FMP in the amount of approximately \$240,000.

Foster questioned Delzeit's role and costs during the appeals process as being outside the scope of his contract.

Delzeit responded it was clear the appeals process was not in the scope of work when the RFP was put out for a Project Manager

Foster and Delzeit continued discussion as to whether or not Delzeit was discontinuing his work until the appeals process was over. Foster stated Delzeit's contract is a perfect illustration as to why the Board needs to make decision on the scope of work for any RFP's. He questioned how the McCabe contract went from 1 month commitment to an ongoing ordeal. Foster asked where Ms. McCabe is, why isn't she present?

Enns clarified the McCabe contract and stated there was more information on the next agenda item.

President Enns opened Public Comment.

- Alex Beatty – Running trucks back and forth in front of the high school hauling water is ridiculous. Tertiary water is only good for dust control and concrete. The Board isn't trained in WWTP design; we need professionals here to answer these questions.
- Betty Winholtz – Doesn't remember the omission of the appeals process in the Delzeit contract.
- Marla Jo Bruton – Remarked that Wade had stated several times he came here from Los Osos to build a WWTP, he's our professional, why are we outsourcing? Infrastructure is a big part of the equation. Starting over is costly, how much are we willing to spend?
- Bob Dorre – Asked the Board, if you could make decision on the location, would you vote for this location?
- David Nelson – Has anyone looked at the Chevron land? Cayucos is already pumping through there; Morro Bay should be able to add a pumping station to get there.
- Barbara Dorre – Unable to get reports online. Agrees that we were proud to say we were going to full tertiary. Current staff should work with the CCC not a lobbyist.
- Jack McCurdy – Many questions have been raised on Delzeit contract by Foster and Smukler and whether it does or does not cover the appeals process, the Board needs to settle this once and for all.

Hearing no further comments President Enns closed Public Comment.

Mayor Yates asked to say a few things – Yes the Board voted for tertiary and reclaimed water, decision made 16 years ago. They don't want secondary treatment, but we need to move on. Speaking to David Nelson Mayor Yates commented that he has never called nor heard the public referred to as gnats. The JPA is trying to do the right thing, the people here are not the majority, he hears from the majority all day long, and they too just want the project to move forward.

Smukler commented on Dorothy Fones statements that yes we were comfortable until the flood plain analysis was completed; the shift took place from renovation of the old plant to a whole new plant shifted to the south. With this drastic change the public then asked us to look at alternative sites.

2. Discussion of Advocacy Consultant Status Report – Recommend receive and provide direction to staff  
Delzeit recapped the motions and votes on hiring McCabe. He noted that there will be peaks and valleys in time required by McCabe during the appeals process. He pointed out the highlights of the McCabe report and stated he had spoken with a former CCC commissioner who also voiced his opinion that an advocate is necessary for this process. Delzeit reported that a new CCC commissioner from Ventura County, Brian Brennan, had been appointed by the Governor and McCabe said this is good news as she is familiar with this commissioner.

Smukler asked does the \$155,000 for the McCabe contract include the \$12,500 already approved.

Delzeit confirmed it does.

Smukler stated he would like to see an incentive for success written into the McCabe contract.

Delzeit – Contract is already complete and signed by all parties. Payment based on performance is not done in this field of work

Borchard asked for clarification on the cost stated in the McCabe report – Would have been \$32,093 if we were being charged by the hour, but our cost was only \$12,500?

Delzeit confirmed that \$12,500 was our cost.

Borchard asked if we had a cancellation clause in the contract and it was confirmed by Delzeit that she would continue as agreed until we cancel.

Yates asked if McCabe was going to attend a meeting.

Delzeit responded she will certainly be invited.

Smukler asked aren't we deciding on going forward on the contract?

Delzeit – We haven't terminated her contract, the contract reads that she provide her services until it is deemed they are no longer needed.

Foster said he is an advocate of alternative plans including PERC, can't sole source as we accused on PERC, now we are sole sourcing on the advocate. We have our answers from the CCC, we don't need McCabe. What is this \$32,093 in costs? How did this come about? Foster moved to suspend the McCabe contract until we have the alternative site analysis, then we can decide if going forward with McCabe is deemed necessary. Hearing no second, motion failed.

Foster then addressed the idea of having the public advocate and lobby to the CCC.

Enns commented on the CCC suggestions for alternative sites.

President Enns opened Public Comment.

- Barry Branin – If Delzeit is off the clock, why is he negotiating with McCabe, arranging for RFP's etc., who's in charge here?
- Steve Hennigh – McCabe actual costs are a moot point; we pay the \$12,500 stop with her and proceed with alternative site analysis.
- Bob Dorre – Thorough studies needed, don't just place anywhere without research.
- Marla Jo Bruton – We were given a special waiver 19 years ago, it's been 35 years since the State mandated full secondary and we're not even there yet. Tertiary treatment is the way to clean up the pollutants that are entering the ocean. Spend the \$12,500 on inspecting the sewer lines that run down Main St. to the WWTP and their effects on the drinking aquifers.
- Alex Beatty – Why pay McCabe to do what Livick, Delzeit & Dylan could do? Agrees with Foster to suspend McCabe contract
- Al Barrow – Concurr with Beatty. De novo hearing is a higher bar than sustainable issues hearing. Don't bring a tank in to do what a fly swatter can take care of. Don't use the mafia style approach to shove project down the public's throat.

- Barbara Dorre – Do we have a \$155,000 contract with McCabe?  
(Delzeit clarified that the contract has not been cancelled, the \$12,500 per month is ongoing, Enns confirmed)  
She read the motion on the McCabe contract from the staff report and asked how did the decision get made to go forward with McCabe? Who is in charge and where is she? Who does she report to?
- David Nelson – The public is your best lobbyist, outside lobbyist isn't needed.
- Nancy Bast – Confused, if McCabe reported to Enns and Yates, why can't we hear from them on what she had to report instead of hearing it from Delzeit?
- Betty Winholtz – Her recollection was that the CCC meeting was over midday today, why isn't she (McCabe) here? If the plan were to change utilizing the suggestions of the CCC, no lobbyist is needed. Stop wasting ratepayer money. Lobbyist will manipulate the CCC and they'll do the same to the public.
- Richard Margetson – Agrees with Foster, we don't need McCabe. Suspend or at least amend the monthly stipend or this will go on and on.

Hearing no further comments President Enns closed Public Comment and called for a short break at 8:05 p.m.

President Enns re-adjourned the meeting at 8:29 p.m.

Mayor Yates commented on the meeting he, President Enns and staff had with Ms. McCabe. This staff report is accurate and much of the information in the report wasn't available for this meeting with Ms. McCabe due to timing. The town spoke when they elected Nancy Johnson, George Leage and himself, and he is behind Ms. McCabe and this complicated project.

Leage said people ask him when is this going to get done; the majority just wants it done. They do hear both sides.

Borchard clarified that regarding sole sourcing, referred to by Foster on the McCabe contract, the consultant wasn't sole sourced, the JPA was presented with options. She also is concerned that the McCabe contract is not open ended and agrees this needs to be watched.

Smukler asked, what's the harm in suspending the McCabe contract until the Delzeit contract is finalized?

Yates said suspending the contract then coming back and saying okay let's go, it just doesn't work that way. He stated he feels Marla's frustration on the time it's taken and can see the Los Osos cycle coming if alternate sites have problems.

Smukler said opposition has occurred due to concerns expressed and these concerns have been brushed off with "we have a good plan, don't worry about it" and has caused delays as these issues come up. Smukler moved to suspend the McCabe contract.

Carmel pointed out this is a discussion item and no action can be taken at this meeting.

Smukler requested that the McCabe contract along with the Delzeit contract be put on the next agenda for further discussion and review.

Foster apologized for pulling a number out of his hat earlier but stated the \$155,000 is also out of the air. He suggested hiring someone so we could keep these items "in-house" instead of hiring a consultant.

## C. NEW BUSINESS

### 1. Discussion of Requests for Qualifications for Substantial Issues Study to address California Coastal Commission Appeal with Consideration to Authorize Staff to Negotiate a Contract for JPA Consideration in May

Delzeit reported on the Request for Qualifications for a Substantial Issues Study to address the issues brought up by the CCC. He reviewed in brief the background and discussion section of his staff report. Delzeit reported that four firms were interviewed today and narrowed to 2 based on qualifications, now the full scope of the work must be identified to meet the CCC requirements. There is no budget for this and there are only estimates at this time. The Board needs to decide on going forward with consultants so a contract can be presented to the Board in May.

Yates asked if a contract amount will get nailed down that is within the estimated range in the staff report.

Delzeit responded that it was probably too early in the process to be exact but \$300,000-\$350,000 is more likely.

Further discussion ensued among the Board and staff regarding process, scope and fee for this work.

It was stated the two finalists from among the five consultants interviewed were Sage Institute, Atascadero and Dudek, Santa Barbara.

Chivens asked if a performance clause was appropriate for this so as not string this process out.

Delzeit explained that a schedule is part of the scope of work and will be in the contract.

Foster stated that the current site seems to be the preference for Delzeit and commented that this might bring bias into the hiring process of the consultant. Can't we step back and look at other alternatives like the possibility of each community having their own WWTP, or if a percentage of monies spent on contracts should remain in the community.

Smukler gave a brief presentation on the Atascadero and Shell Beach/Pismo Beach WWTP's showing that they accomplished site relocations.

President Enns opened Public Comment and presented an email received from Michael Lucas who stated his concerns on costs and implications.

- Steve Hennigh – Alternative site appeal he put forward is because if we are only looking at alternative sites to appease the CCC then that's wrong. We may have to widen our scope of thinking too.
- Al Barrow – Previous Board refused to look at alternative sites, are we going to get a fair analysis or just a spin from the consultants.
- David Nelson – Don't build old technology like Pismo, look at alternate sites and alternate designs, like PERC.
- Barry Branin – Concur with Nelson, we need to look at new designs.
- Brent Bosserman – Toro Creek oilfield is an alternate site, he has toured it and it fits the criteria outlined and can go inland, similar to SLO.
- Marla Jo Bruton – Pointed out that in 2008 and 2010 the CCC staff wrote letters suggesting alternative site analysis, this was ignored, now we have to look at alternative sites. She has trust issues with staff especially with a current staff member that may be biased towards MWH having been a former employee of theirs. (Delzeit clarified that this staff member Marla Jo is referring to abstained himself from the issues and

selection involving MWH contract)

- Richard Margotson – MWH needs to be looked at along with alternative sites.
- Barbara Dorre – Thought two years ago it was looked at to move the plant and it was decided at that time to not move it, now we have to look at alternate sites. Need openness to change.
- Don Ritter – Stated he was team member with one of the firms interviewed today and unfortunately not one of the final two. He said it was made very clear to him that staff wanted a thorough, open and honest analysis.
- Betty Winholtz – Agrees with Barbara Dorre. Staff should not be whittling down selections, it should be the Board. CCC requires two workshops, is that where the consultant comes in?

Hearing no further comments President Enns closed Public Comment.

Foster stated the \$200,000 to \$650,000 is a big range. It's important to realize the results of this study will direct the future of a \$35-\$60 million dollar project. As an elected representative of the community, he wants to be a part of this decision making process, not just get a narrowed down recommendation from staff. He stated he doesn't recall giving staff the direction to interview consultants.

Delzeit responded that as the Project Manager he took the initiative to move forward on what was obvious and to keep the process moving.

Discussion continued between Foster and Delzeit.

Yates responded that he didn't think Foster could invite himself into the process of interviewing the consultants without the approval of his Board. Yates continued that he appreciates the Project Manager and his abilities.

Fones concurred with Yates and stated we can't always second guess staff. The Project Manager has not brought them a contract; it's just a preferred list of qualified consultants.

Lyon stated that neither she, nor other Board members have the expertise to do this type of work. That is why we have a Project Manager; she has no problem letting the staff do this work.

There was further discussion among the Board regarding a subcommittee including Foster to be involved in the consultant interviews. It was asked of Carmel if this decision could be done at this time and Carmel responded it could be ratified on an agenda if need be.

Enns said they need to move on with this consultant process and they need to look at how they conduct business in the future then put it on an agenda. He is satisfied with the work that staff has brought before them but if the Board wants to see all 5 candidate qualifications then by all means do so, he personally doesn't want to be a staff member and a Board member. He trusts staff to make the right decision.

There was additional discussion amongst the Board on the subject.

**CAYUCOS MOTION:** Foster moved that the Board members be notified of all communication and meetings between the staff and these consultants. That the Board is copied on any correspondence and that they are notified and invited to participate in any interviews. Chivens 2<sup>nd</sup>.

Carmel advised that the motion was too broad and recommended pairing down the motion to include just Foster in the interview and selection process to stay within the bounds of the Brown Act.

Enns brought the motion back for vote. Motion failed. (1-3-1) Foster-Yes, Enns, Fones and Lyon-No, Chivens abstained.

**CAYUCOS MOTION:** Foster moved to appoint 1 member each from the MB City Council and Cayucos Sanitary District to participate in the selection of the consultants. Chivens 2<sup>nd</sup>. Motion passed (3-1-1) Enns, Foster and Chivens-Yes, Fones-No, Lyon abstained.

**MORRO BAY MOTION:** Smukler moved to appoint 1 member each from the MB City Council and Cayucos Sanitary District to participate in the selection of the consultants. Borchard 2<sup>nd</sup> with discussion on who the MB member would be. Discussion ensued. Borchard called the question. Motion failed (2-2) Yates, Smukler-Yes, Borchard, Leage-No.

**MORRO BAY MOTION:** Smukler moved to allow Cayucos to send a member of their board to participate in the process of selection of alternative site analysis consultants. That member along with the staff, bring a recommendation back to the Board and include information about a minimum of 2 firms. Also, other Board members are given the ability to submit scoping questions and content to staff to be included in those discussions as they see fit. Hearing no second motion failed.

**MORRO BAY MOTION:** Smukler moved that MB allow a representative for Cayucos to attend the interview process for alternative site analysis consultants. Borchard 2<sup>nd</sup> with the emphasis of “allows a Board member to attend” Smukler responded with “participate”, Borchard again clarified he said “attend”. Borchard then withdrew her 2<sup>nd</sup>.

Smukler amended his previous motion to remove the word “attend” and include the word “participate”. Hearing no second motion failed.

**MORRO BAY MOTION:** Smukler moved to allow Cayucos to send a member to the interview process for alternative site analysis consultants and that member can then bring their personal recommendation to the Board to be reviewed alongside the staff recommendation. Hearing no second motion failed.

**MORRO BAY MOTION:** Smukler moved to allow Foster to attend the interview meetings. Borchard 2<sup>nd</sup>. Motion failed (2-2) Smukler, Borchard-Yes, Yates, Leage-No.

**MORRO BAY MOTION:** Smukler moved to bring back a minimum of 2 evaluated firms and that the Board makes the final decision. Borchard 2<sup>nd</sup>. Discussion of whether the 2 firms would attend or just their qualifications and recommendations would be evaluated at the next JPA. Smukler clarified at next JPA they will evaluate the qualifications and recommendations. Motion passed (4-0).

**CAYUCOS MOTION:** Fones moved to bring back a minimum of 2 evaluated firms and that the Board makes the final decision. Foster 2<sup>nd</sup>. Discussion to get Foster the information on the criteria for the firms and the evaluation process. All information is available to Foster and will be given to him. Motion passed (5-0).

Yates asked to pull Item C2 and continue it to next agenda.

## **ADJOURNMENT**

President Enns adjourned the meeting at 10:19 p.m.