



Inverness Public Utility District

Fire Department ~ Water System

50 Inverness Way No., P.O. Box 469, Inverness CA 94937 ~ (415) 669-1414

Board of Directors

Minutes, Regular Meeting

Wednesday, May 26, 2021, 10:00 a.m.

Inverness Firehouse / Zoom Teleconference

1. Call to Order

President Emanuels called the meeting to order at 10:05 a.m.

Attendance Report

Directors Present: Kenneth J. Emanuels, Dakota Whitney, Brent Johnson, David Press

Directors Absent: Kathryn Donohue

Staff Present: Shelley Redding, Clerk and Administrator; Jim Fox, Chief of Operations; Wade Holland, Customer Services Manager

Legal Counsel: Peter Spoerl, Ragghianti Freitas LLP

Public Present: Nicole Bartolini, Josh Garcia, Carlos Porrata, Jerry Meral, Kathy Hartzell, Ann Elliott, Woody Elliott, Tom Baty, Bridger Mitchell

2. **Public Expression:** Tom Baty expressed his appreciation to the staff and Board for the smooth execution of the Tenney Tank Project. He reported that the contractor's personnel were easy to work with. After waiting almost 32 years for this project to begin, he is relieved that it is underway.

3. **Approval of Minutes:** Regular Meeting of April 28, 2021

M/S Press/Johnson to approve the minutes of the Regular Meeting of April 28, 2021, as submitted. AYES 4, NOES 0.

4. **Bartolini/Garcia Appeal (Public Hearing on request for exception to Water Shortage Emergency moratorium on installation of new service connections):**

Director Whitney announced her recusal at 10:10 a.m. due to her close acquaintance with the appellants.

President Emanuels opened the Public Hearing at 10:10 a.m. and asked for a staff report.

Customer Services Manager Holland introduced Peter Spoerl (legal counsel), then provided an overview of the appeal, as stated in the Staff Report. He noted that the Staff Report that had been prepared for the Special Meeting scheduled for May 14 (which meeting was cancelled for lack of a quorum) was no longer applicable, because at that time the current appellants were asking only that the District amend Water System Regulation 117. Subsequently, they filed an appeal under paragraph (i) of Regulation 117 asking for an exception to the moratorium on installing new service connections with respect to their plans to develop their property at 88 Vision Road. The purpose of today's hearing is to grant or deny their request for the exception.

BOARD OF DIRECTORS: **KENNETH J. EMANUELS**, PRESIDENT • **DAKOTA WHITNEY**, VICE PRESIDENT
KATHRYN DONOHUE, TREASURER • **BRENT JOHNSON** • **DAVID PRESS**



SHELLEY REDDING, ADMINISTRATOR • **JAMES K. FOX**, CHIEF OF OPERATIONS

Holland noted that the appellants' appeal must be acted on by the Board within 30 days of its receipt by the District on May 13, that the Board should provide some findings on which it bases its decision to grant or deny the appeal, and that Section 16072 of the Public Utilities Code states that no action of the Board "shall be passed or become effective without the affirmative votes of at least a majority of the board," which means, he concluded, that with Director Whitney's recusal and Director Donohue's absence, all three remaining Directors must vote in the affirmative to take any action today.

Acknowledging that the current Regulation 117 provides little guidance on handling appeals, he outlined four generally accepted standard grounds that are typically considered in evaluating appeals: Was the appeal ripe and timely filed?; Was there any assertion of invalidity of the rules and regulations the District applied?; Were the rules applied in a discriminatory manner?; Did the District act in an arbitrary and capricious manner? He also urged the Board to be aware of the "arbitrary and capricious" standard in how it makes its decision.

President Emanuels asked for questions from the Board. Director Press asked Counsel if he had any comments. Counsel Spoerl said he concurred with and had nothing to add to Holland's summary of the grounds for evaluating appeals. He urged the Board to consider the appellants' letter through the lens of the current regulations.

Director Press asked if there had been any additional requests for water meters that have been denied. Holland explained that no applications have been denied. All applications received after the Water Shortage Emergency was declared were handled in the same manner as the Bartolini/Garcia application, which was to approve the request and allocate a meter subject to delaying installation of connection facilities until the Water Shortage Emergency has been ended. He said there are three such other meters also on hold for this reason, in addition to one application received before the Water Shortage Emergency was declared, which is being processed according to the normal pre-Water Shortage Emergency procedures.

Director Press then asked about the effect on today's appellants if their current appeal is denied and how revising Regulation 117 would affect their application. Counsel Spoerl responded that they could not appeal again on the same grounds as today, but they could base a new appeal on an issue incorporated into the revised Regulation 117 that was not part of the current Regulation 117. Holland added that if the deferred landscaping exception is included in a revised Regulation 117 and is activated by means of a Board resolution, the exception would be granted by staff ministerially without the necessity for Board action.

President Emanuels asked if all three applications that are on hold are in the same position? It was confirmed by Holland that this is the case.

Director Johnson asked for clarification about the revision proposed for Regulation 117 allowing new service connections with the restriction on using water for landscaping. Counsel Spoerl responded that if the revisions to Regulation 117 are approved by the Board as currently proposed at the meeting scheduled for the end of June, the adoption ordinance would be subject to a public review process for 30 days before the revised regulation takes effect. After that, there would be no restriction on the appellants submitting a request for a service connection under the proposed exception (if it is adopted).

President Emanuels invited the appellants to make their presentation:

Nicole Bartolini read her response to the Staff Report and reiterated the request for an exception to be made for their new service connection. Josh Garcia also discussed their unique position and their

request for the exception to be granted. He noted their strong ties to the community, their willingness to defer installation of landscaping, and that they would bring water in from outside sources for use during construction. Both stated that the moratorium on new service connections was not well known by the community and they stated that the District did not properly notify the community about the moratorium. They also asked what the actual harm would be to the community if new service connections are allowed?

President Emanuels asked the appellants how they distinguish themselves from the other applicants. They responded that none of the other applicants are in the County planning process. They have applied to amend an existing Coastal Permit, so they are further along in the process than the other property owners.

President Emanuels then invited members of the public to comment:

Members of the public spoke in support of the appellants, citing the appellants' community ties and a lack of public notice about the moratorium on new service connections.

Counsel Spoerl advised that the Directors need to identify the basis for their action. The decision will not influence additional requests and is not precedential.

M/S Johnson/Emanuels to deny the Bartolini/Garcia appeal for an exception to the moratorium on new water service connections because the Board finds that the appellants' situation is not unique among the other existing applications that are also on hold. AYES 2 (Emanuels, Johnson), NOES 1 (Press). Motion failed.

Director Press acknowledged that Staff did their due diligence but feels that gaps exist and the public process may need to be enhanced, some of which is being addressed in the proposed revisions to Regulation 117. He said he favored approval of the appeal or that the appellants withdraw their appeal and wait for the amended Regulation 117 to come into effect.

M/S Press/Emanuels to continue the public hearing and the Bartolini/Garcia appeal to a special meeting on a date uncertain on or before May 12, 2021. AYES 3, NOES 0.

Director Whitney returned to the meeting at 11:45 a.m.

5. Management Report

Financial Reports: Administrator Redding presented the financial reports for April 2021. She noted that revisions to the current year's budget will be presented at the next regular meeting and a budget for the next fiscal year will also be presented at that time.

Capital Projects Accounting, April 2021: Administrator Redding presented updated capital projects reports and noted that construction billing for the Tenney Tanks Replacement Project will begin next month.

New Service Connection Fee: The certificate setting the New Service Connection Fee for 2021 at \$7,800 was presented. The staff answered questions about installation of new meters during the drought and noted that the Water Shortage Emergency resolution passed last July activated a moratorium on installation of new connections during the declared water shortage emergency.

Tenney Tanks Project Update: Administrator Redding noted that a project schedule provided by Piazza Construction has been provided to the Board.

MWPA Update: Nothing to report.

MERA Update: Nothing to report.

6. Water System Report: April 2021

Senior Water Operator Ken Fox submitted a written report for April showing previous year comparisons. Streamflows continue to be significantly lower than last year.

7. Fire Department Report: April 2021

Chief Fox reported that there were only seven dispatches in April, none of significance except for one necessitating activation of the landing zone for a medical evacuation.

8. Provide Direction on Proposed Revised Water System Regulation 117, “Water Shortage Emergency (Water Conservation Program)”: Proposed for adoption at meeting on June 23

There being no further discussion, President Emanuels directed staff to submit the proposed Regulation 117 as drafted for legal review and schedule it for adoption if possible at the special meeting to be held before June 13, 2021.

9. Provide Direction on Proposed Ordinance 100-2021, “Mandatory Water Rationing”: Proposed for adoption at meeting on June 23

There being no further discussion, President Emanuels directed staff to submit the proposed Ordinance 100-2021 as drafted for legal review and schedule it for adoption if possible at the special meeting to be held before June 13, 2021.

10. Accept and Approve the Audit for Fiscal Year 2019/20

M/S Johnson/Press to accept and approve the Fiscal Year 2019/20 Audit as presented. AYES 4, NOES 0

11. Accept and Approve Responses to 2019/20 Management Report Recommendations

Director Emanuels noted that the auditor had made no new recommendations in this year’s Management Report.

M/S Press/Johnson to approve the responses to the Management Report’s recommendations as drafted.

AYES 4, NOES 0.

12. Approve Auditor Engagement for 6/30/2021:

Administrator Redding presented the proposed audit engagement letter from R.J. Ricciardi, CPAs, for the current 2020/21 fiscal year (year ending June 30, 2021) at an estimated fee of \$10,200 plus \$1,000 for preparation of the State Controller’s Report.

M/S Johnson/Press to accept the auditor engagement for the year ending June 30, 2021, as proposed. AYES 4, NOES 0.

13. Approval of Expenditures and Credit Card Charges

Administrator Redding presented the April 2021 expenditures and the April 2021 Cal Card statements for S. Redding and J. Fox.

M/S Press/Johnson to approve the expenditures for April 2021 and credit card charges invoiced in April 2021.

AYES 4, NOES 0

14. Proposal for Creation of Committee to Study Possible Parcel Tax Measure

Jerry Meral introduced a proposal to form an advisory committee to address needs within the district related to water supply and storage and wildfire prevention. Staff member Redding and Director Johnson volunteered to participate on behalf of the District.

15. Update on Recruitment for Fire Chief Position

The closed session on appointment of a new Fire Chief was moved to the next regular Board Meeting.

16. Announcements, Next Meeting, Adjournment

The next regular meeting is scheduled for June 23, 2021, at 9 a.m., either at the Firehouse if conditions and County guidance allow or by Zoom Video/Teleconference.

President Emanuels adjourned the meeting at 12:00 noon.

These minutes were approved by the Board of Directors at the regular meeting on June 23, 2021.

Attest: /s/

Date: 6/23/2021

Shelley Redding, Clerk of the Board