



**District Attendees**

Dave Underwood	Board President
Misha Sarkovich	Board Vice President
Michael McRae	Board Member
Tom R. Gray	General Manager

**Other Attendees**

Jeffrey Mitchell                      Kronick, Moskovitz, Tiedemann & Girard

**Absent**

**AGENDA ITEMS**

**I. Call to Order**

The meeting was called to order at 5:40 p.m.

**II. Public Comment**

None.

**III. Discussion**

1. Review and discussion of an Agreement for payment of costs for Phase II of the FO 40 Transmission Pipeline Rehabilitation Project.
  - Vice President Sarkovich stated he would like Mr. Mitchell to answer two questions:
    - i. Does SJWD have legal rights to charge FOWD in advance for the Fair Oaks 40 construction cost?
    - ii. Does SJWD have legal rights to impose unilaterally facilities fees?
    - iii. Mr. Mitchell stated that pertaining to the second question “Does SJWD have legal rights to impose unilaterally facilities fees?”, based on the wholesale agreement and the addendum to the agreement, he believes SJWD can. He stated the wholesale agreement and the addendum to the agreement from 2011 is very general. He stated with the addendum, SJWD is obligated to notify FOWD 150 days for the rate change, FOWD has a right to comment and SJWD has an obligation to account for FOWD’s comment. However, SJWD

does not have to do anything besides account for FOWD's comment. Based on the agreement, SJWD is able to bill quarterly for the service charge and debt service and in arrears for the actual usage. SJWD has a broad authority to name the category. He stated SJWD cannot charge FOWD for something twice. He stated the District can ask to verify that the personnel are not being charged twice like through the wholesale water rate and through the FO 40.

- Vice President Sarkovich stated FOWD can demand a new wholesale water agreement with SJWD as part of the settlement on FO-40.
- General Manager Gray responded that the agreement stated looking to update the wholesale water agreement and it doesn't promise any changes.
- Mr. Mitchell stated that SJWD has to act in good faith in looking at the wholesale water agreement.
- President Underwood stated that some of the SJWD Directors are uneasy about the last FO-40 payment/litigation; therefore, it was decided that SJWD would bill one quarter in advance for the FO-40 Phase II.
- Director McRae believed that the pricing structure on the original SJWD proposal looks more favorable. He suggested having SJWD provide reconciliation to ensure FOWD is not overbilled.
- GM Gray stated SJWD is supposed to work with FOWD on actual cost. SJWD is supposed to provide a copy of the contract.
- Mr. Mitchell stated that FOWD can pay based on the approved contract and not on the engineer's estimate. He stated that SJWD should provide us with the construction schedule and the billing should be aligned with that schedule.
- General Manager Gray stated FOWD will pay on estimate regardless. He stated that staff will create a job number and will report back to the Board along with the reconciliation.
- General Manager Gray stated that Rob Dolan had previously mentioned that SJWD can bill FOWD in advance.
- President Underwood stated he is on the fence between paying one quarter in advance and paying the Facility Charge for five years.
- Director McRae is favorable to the five year plan but there has to be a final accounting that FOWD is only paying on actual costs.
- Vice President Sarkovich stated he will discuss with SJWD Director Ted Costa on paying on actual cost for FO-40. If the answer is no, he will go with the \$397,000 per year for five years.
- The Budget Committee recommended going with Capital Facility Fees paying \$397,000 for five years if SJWD doesn't allow paying based on actual cost.
- Vice President Sarkovich suggested staff send an electronic copy of all the policies to all the Board members of the series 5000. He would like to edit the policy and track changes.
- General Manager Gray stated the policies will be added to the FOWD website.
- Mr. Mitchell stated FOWD should agendaize all committee meetings with the exception of Ad-Hoc Committees. He stated no Board action is required but that FOWD should send out a notice going forward.

**IV. Adjournment**

With no further business to come before the Board, President Underwood adjourned the meeting at 7:07 p.m.

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The Board approved the preceding minutes on April 11, 2016

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Tom R. Gray  
General Manager/Board Secretary

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Date