PURISSIMA HILLS WATER DISTRICT

REGULAR MEETING OF THE BOARD OF DIRECTORS

6:30 P.M. WEDNESDAY, APRIL 13, 2016

26375 FREMONT ROAD, LOS ALTOS HILLS CA 94022

Teleconference: Robert N. Anderson
Desert Springs II, Cook Street, Palm Desert, CA
650-464-1620

Agenda

6:30 1. CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

6:35 2. COMMENTS FROM THE PUBLIC

6:45 3. CONSENT CALENDAR

Items appearing on the Consent Calendar are considered routine and will be adopted in one motion, except for any item removed for separate consideration elsewhere on the agenda. The President will ask the Board and the audience for requests to remove these items.

A. APPROVAL OF MINUTES: REGULAR MEETING OF MARCH 9, 2016

B. APPROVAL AND RATIFICATION OF MARCH 2016 DISBURSEMENTS PAID IN APRIL 2016, IN ACCORDANCE WITH RESOLUTION 2013-9 (DISBURSEMENTS SIGNED BY DIRECTOR JORDAN, PATRICK WALTER, AND RAYLENE COLLINS)

C. FINANCIAL REPORTS FOR: INCOME AND CAPITAL IMPROVEMENT PLAN MARCH 2016

6:50 4. PROPOSED INCREASE IN SANTA CLARA VALLEY WATER DISTRICT (SCVWD) TAX FOR CALIFORNIA WATER FIX DISCUSSION

7:00 5. ENGINEER'S REPORT

A. PAGE MILL TANK RETROFIT UPDATE

7:10 6. MANAGER’S REPORT

A. FIELD REPORT UPDATE

B. CUSTOMER COMMUNICATIONS UPDATE

7:25 7. DIRECTORS’ REPORT DISCUSSION

A. BAY AREA WATER SUPPLY AND CONSERVATION AGENCY (BAWSCA), ACWA/JPIA, AND OTHER AGENCY ISSUES

B. DIRECTORS’ COMMENTS

7:50 8. AGENDA ITEMS FOR MAY 11, 2016 BOARD MEETING DISCUSSION
8:00  9.  **ADJOURNMENT**

**ASSISTANCE FOR PERSONS WITH DISABILITIES**
In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the District Secretary at 650-948-1217. Notification 48 hours prior to the meeting will enable the District to make reasonable arrangements to ensure accessibility to this meeting.

Copies of all agenda reports and supporting data are available for inspection at the District office, 26375 Fremont Road, Los Altos Hills, Ca. A complete agenda and minutes can also be found on the District’s website: http://www.purissimawater.org.
1. **CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE** President Anderson called the regular meeting to order at 6:30 p.m. in the District office.

Directors Present: President Robert N. Anderson, Directors Brian Holtz, Steve Jordan, Ernest Solomon and Peter Evans, and Brian Holtz.

Staff Present: Patrick Walter, General Manager; Brandon Laurie, Engineer; Pakpour Engineering, David Gehrig, Attorney, Hanson Bridgett; and Ray Collins, Office Manager/District Secretary

The Pledge of Allegiance was recited.

2. **COMMENTS FROM THE PUBLIC** None

3. **CONSENT CALENDAR**

   It was moved by Director Solomon, seconded by Director Holtz, to approve the Consent Calendar. Motion approved unanimously—voice vote.

4. **RESOLUTION 2016-03 APPROVING PURISSIMA HILLS WATER DISTRICT’S GRANT APPLICATION TO SANTA CLARA VALLEY WATER DISTRICT SAFE, CLEAN WATER AND NATURAL FLOOD PROTECTION PROGRAM FOR THE RESIDENTIAL ADVANCED METERING PROJECT AND AUTHORIZING THE GENERAL MANAGER TO ACCEPT GRANT FUNDS**

   It was moved by Director Anderson, seconded by Director Holtz, to approve Resolution 2016-03.

   **AYES:** Directors Jordan, Evans, Anderson, Solomon, and Holtz
   **NOES:** None
   **ABSENT:** None

5. **APPROVAL OF PERSONNEL MANUAL REVISED MARCH 2016**

   It was moved by Director Solomon, seconded by Director Evans, to approve the updates to the personnel manual. Motion approved—voice vote.

   **AYES:** Directors Evans, Anderson, Solomon, Jordan, Holtz
   **NOES:** None
   **ABSENT:** None

6. **APPROVAL OF DIRECTOR ATTENDANCE:**

   **BLUETECH FORUM, SAN FRANCISCO, CA JUNE 1, 2016**

   It was moved by Director Holtz, seconded by Director Solomon, to approve Director Jordan’s attendance. Motion approved unanimously—voice vote.

   **ACWA/JPIA SPRING CONFERENCE, MONTEREY, CA MAY 3-6, 2016**

   It is not necessary to obtain Board approval for a Director’s attendance at ACWA/JPIA conferences.

7. **GENERAL MANAGER GOALS AND OBJECTIVES** The General Manager discussed the update to his 2016 Goals and Objectives. Director Evans requested that the General Manager consider further outreach to high use customers with AMI meter data.

8. **ENGINEER’S REPORT**
A. PAGE MILL TANK RETROFIT The Engineer reported the project is nearing completion. The tank floor is being coated, the interior will be cured for 14 days, and it is scheduled be back in service by end of March 2016 after water quality tests are completed.

9. MANAGER’S REPORT

FIELD REPORT

- Installed Service: Trenched across Page Mill Road to install a 2” service for 13686 Page Mill Rd
- Elena Tank: Installed 4 new vents and a PAX power vent. Disconnected and cut out floor drain. Cut out concrete vault to install flush cleanout. Scheduled to install a flush cleanout, install three water testing valves
- Altamont Tank: Installed a three valve set to provide operational flexibility. Cut out concrete necessary to install flush cleanout.

B. CUSTOMER COMMUNICATIONS The District Secretary discussed an e-mail from a customer who suggested notifying all District customers about the benefits of irrigating trees during the drought.

10. DIRECTORS’ REPORT

A. BAY AREA WATER SUPPLY AND CONSERVATION AGENCY (BAWSCA), ACWA/JPIA, AND OTHER AGENCY ISSUES

B. DIRECTORS’ COMMENTS Director Jordan reported that he and the GM met with Stanford representatives about the possibility of monitoring local ground water that is not being monitored by the Santa Clara Valley Water District

11. AGENDA ITEMS FOR APRIL 13, 2016 BOARD MEETING

12. ADJOURNMENT It was moved by Director Holtz, seconded by Director Solomon to adjourn the meeting at 7:30 pm. Motion approved unanimously- voice-vote
MEMO

Agency: Purissima Hills Water District  
Attn: Board of Directors  
Project Name: Page Mill Tank Retrofit Project  
Reference: Project Update and Progress Payment No. 5  
From: Joubin Pakpour, P.E. – District Engineer JP

Construction Status

On March 10, 2016 Simpson Sandblasting (SS), Paso Robles Tank’s (PRT) coating subcontractor, completed the coating system of Page Mill Tank. The District’s coating consultant CSI approved the coating after all the repairs were performed and began the cure time. The paint manufacturer recommended 14 days when the average temperature is 40 °F or above. If the temperature is above 77 °F, the cure time can be reduced to 7 days. Since the site saw a variation of temperature above 40 °F but below 77 °F, CSI recommended a minimum cure time of 14-16 days. The District however added an additional 7 days to ensure the coating had enough cure time. SS returned to the site on April 4, 2016 to wash down and disinfect the tank. CSI was on site and performed a "solvent rub test" and confirmed the tank's coating is ready to be immerse in water. The District began to fill the tank following disinfection. On April 5, 2016 Page Mill Tank was filled to the 20-ft water level with no major issues.

After the water sits inside the tank for six days, the District will take two water samples which will be tested for Volatile Organic Compounds (VOC) and bacteriological presence. The District is scheduled to draw samples on Monday, April 11, 2016. After we review the test results and confirm no taste or odor issues, the District will be able to return the tank in to service.

As of April 5, 2016 all construction equipment has been demobilized from the site. On March 31, 2016 a correction list was issued to PRT of which approximately ¾ is complete.

Project Schedule and Request for Progress Payment No. 5

As of March 31, 2016, the contractor completed 100% of the contractual work ($677,839.92) and has 11 working days remaining out of 102 working days (Original 80 working days, CO#1 4 working days, CO#2 14 days, CO#3 4 days). If additional days are needed, rain delays can be added to the project at a later time.

Enclosed please find Progress Payment No. 5 due PRT for this period for $24,985.00 (value of work minus 5 percent retention). Total retention held on this project is $33,892.00. The work performed to date has been satisfactory and payment is recommended.
## PHWD Board – Page Mill Tank Retrofit Project Update and Progress Payment No. 5

**April 7, 2016 – Page 2**

### Current Month Summary

<table>
<thead>
<tr>
<th>Description</th>
<th>Current Month</th>
<th>Total</th>
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<tbody>
<tr>
<td>Original Contract Amount</td>
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<td>$647,800.00</td>
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<tr>
<td>Approved Change Orders</td>
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<td>$33,239.92</td>
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<tr>
<td><strong>Final Contract Amount</strong></td>
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<td>$681,039.92</td>
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<tr>
<td>Previously Paid</td>
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<td>$618,962.92</td>
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<tr>
<td><strong>Current Request (Less Retention)</strong></td>
<td>$24,985.00</td>
<td>$24,985.00</td>
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<tr>
<td>Retention **</td>
<td>$1,315.00</td>
<td>$33,892.00</td>
</tr>
<tr>
<td>Total Value of Work Completed</td>
<td>$24,985.00</td>
<td>$677,839.92</td>
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<tr>
<td>Total Remaining on Contract</td>
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<td>$3,200.00</td>
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### Original Contract

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<th>LAHCFD Share</th>
<th>PHWD Share</th>
<th>Subtotal, Original Contract (A):</th>
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### Change Orders

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<th>LAHCFD Share</th>
<th>PHWD Share</th>
<th>CO No.</th>
<th>Subtotal, Change Orders (B):</th>
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<td>$0.00</td>
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<td>$0.00</td>
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<td>$33,239.92</td>
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### Total Contract (A+B)

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<tr>
<th>Share</th>
<th>LAHCFD Share</th>
<th>PHWD Share</th>
<th>Subtotal, Total Contract (A+B):</th>
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<td>$431,826.16</td>
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**Retention paid to an escrow account at Bank of Sacramento every month.**
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<th>Bid No.</th>
<th>Description</th>
<th>Original Contract Amount</th>
<th>Change Order</th>
<th>Revised Contract Amount</th>
<th>Earned This Period</th>
<th>Prior Billing</th>
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<td></td>
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<td>Mill Air Handling Unit Assembly Custom ASME Mounting Curb</td>
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</tbody>
</table>

**SUMMARY**

- **Amount Earned**: $647,896.00
- **%**: $33,239.82
- **%**: $681,539.82
- **%**: $26,300.00
- **%**: 4%
- **%**: $651,539.92
- **%**: 96%
- **%**: $677,839.92
- **%**: 100%
- **Retention (5%)**: ($33,239.82)
- **Progress Payment Ret 1**: ($133,820.00)
- **Progress Payment Ret 2**: ($120,000.00)
- **Progress Payment Ret 3**: ($93,454.50)
- **Progress Payment Ret 4**: ($69,885.72)
- **Amount Due - Contractor - PFT**: $24,985.00
- **Amount Due - Contractor - Bank of Sacramento**: ($1,315.00)
- **$3,892.00**
- **%**: 0%
- **Amount Remaining on Contract**: $10,000.00
- **Total Retention**: $33,239.82
- **Total Pending Change Orders**: 0%

Prepared By

**District Engineer, Saumal Pakpour, P.E.**
Page Mill Tank Retrofit Project
Purissima Hills Water District, Los Altos Hills, CA
March 1, 2016 thru March 31, 2016

March 10, 2016 - Holiday Test—Searching for paint deficiency

March 20, 2016 - Temporary Fan Set-Up
Page Mill Tank Retrofit Project
Purissima Hills Water District, Los Altos Hills, CA
March 1, 2016 thru March 31, 2016

April 4, 2016 - Tank wash down

April 4, 2016 - Fill tank
March 15, 2016

Barbara Keegan
Chair, Board of Directors
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Re: Property Tax Override for California Water Fix

The purpose of this letter is to put the Santa Clara Valley Water District on notice that the Howard Jarvis Taxpayers Association disputes the claim that SCVWD and other state water contractors may levy a property tax in excess of Proposition 13’s 1% cap in order to fund construction of the twin tunnels proposed in the current California Water Fix plan.

Proposition 13, enacted by voters in 1978, caps property taxes at 1% of assessed value, and limits upward reappraisals of value to 2% per year. (Cal. Const., art. XIII A, § 1(a).) However, Proposition 13 allows its 1% cap to be exceeded “to pay the interest and redemption charges on ... [i]ndebtedness approved by the voters prior to July 1, 1978.” (Id., § 1(b).) Taxes levied in excess of Prop 13’s 1% cap to pay a pre-approved indebtedness are commonly know as “property tax overrides.”

State water contractors have utilized this exception for years to make part of their payments to the State under the Burns-Porter Act. The Burns-Porter Act was enacted by the Legislature in 1959 and ratified by voters in 1960. It authorized the construction and operation of specified state water facilities, and a $1.75 billion bond for initial construction. The Act directed the Department of Water Resources to enter into contracts to sell water and power, so that revenue from those sales would pay to operate the facilities and repay the bond.

Most contractors take the water they buy from the State and resell it to customers or other purveyors. Some use it to recharge groundwater. If resale revenues or recharge fees are inadequate to cover a contractor’s payments to the State, the Act permits contractors to levy a property tax for the difference.

In Goodman v. County of Riverside (1983) 140 Cal.App.3d 900, the Court of Appeal held that the voters’ enactment of Proposition 13 in 1978 did not bar state water contractors from continuing to collect a property tax in excess of the new 1% cap when necessary to make contract payments to the State, because such a tax fell within subdivision 1(b)’s exception for “[i]ndebtedness approved by the voters prior to July 1, 1978.”
To resolve whether the subdivision 1(b) exception applies today to a property tax increase to fund the delta tunnels, the question that must be answered is whether the delta tunnels are included as part of the indebtedness voters approved in 1960 when they ratified the Burns-Porter Act.

It should be noted at the outset that, even if the subdivision 1(b) exception applies, the Attorney General has opined that property taxes may be increased only if it is not feasible to instead increase the rates and fees collected from water and power customers or groundwater pumpers. Following the enactment of Proposition 13, the Attorney General provided “general guidance as to the extent to which water districts may rely on property taxes to pay the state.”

The Burns-Porter Act expresses a preference for water charges over taxation in that it provides that the state system would be supported primarily by the sale of water and power. It directs the Department of Water Resources to enter into contracts to sell the water and power and it pledges the revenues from those contracts to the operation of the system and the service of the bonded debt. (Wat. Code § 12937.) The Legislature and the voters clearly contemplated an essentially closed, self-supporting system. The Act even provides that revenues from water and power sales would be sufficient to reimburse the California Water Fund for amounts that had been expended for the construction of the State Water Resources Development System. (Wat. Code § 12937(b)(3).) The ballot argument in favor of the Burns-Porter Act echoed this preference: ‘The program will not be a burden on the taxpayer; no new state taxes are involved; the bonds are repaid from project revenues, through the sale of water and power. In other words, it will pay for itself.’ (Voters Pamphlet, Nov. 8, 1960, p. 3; emphasis in original.)

The Burns-Porter Act and water contracts under that act do contemplate that local taxes may be required to pay the obligation to the state, and authorize such taxation. However, that authority is expressly limited to situations where it is necessary. The Burns-Porter Act incorporates by reference the Central Valley Project Act. ... The Central Valley Project Act authorizes local taxation, but only where necessary: ‘The governing body [of any public agency that has contracted with the State] shall, whenever necessary, levy upon all property in the State agency not exempt from taxation, a tax or assessment sufficient to provide for all payments under the contract then due or to become due within the current fiscal year or within the following fiscal year before the time when money will be available from then next general tax levy.’ (Wat. Code § 11652; emphasis added.)

Similarly, the contract with the Metropolitan Water District authorizes taxation only where revenue from the sale of water proves insufficient: ‘If in any year the District fails or is unable to raise sufficient funds by other means, the governing
body of the District shall levy upon all property in the District not exempt from taxation, a tax or assessment sufficient to provide for all payments under this contract then due or to become due within that year.' (Metropolitan Water District of Southern California contract, article 34(a); emphasis added.) (61 Ops.Cal.Atty.Gen. 373 (No. CV 78-90, Aug. 18, 1978).)

This A.G. Opinion raises the question whether SCVWD’s current funding practice is legally authorized, even apart from the delta tunnels question, for SCVWD levies a property tax override to pay 100% of its State Water Project contractual obligations.

Laying that question aside, however, and turning to the question of the delta tunnels, the Goodman case described the project that voters approved in 1960: “The State Water Project (Project) consists of a series of twenty-one dams and reservoirs, five power plants, and sixteen pumping plants which stretch from Lake Oroville in Butte County to Lake Perris in Riverside County. Project water flows from the Feather River to the Sacramento River and then into the Sacramento-San Joaquin Delta. It is lifted by the Delta Pumping Plant into the California Aqueduct, and the aqueduct conveys it south.” (Goodman, 140 Cal.App.3d at 903.) The Court held that the “indebtedness” approved by the voters “includes not only the $1.75 billion bonded indebtedness, but the cost of maintaining, operating and replacing the system.” (Id. at 908.)

Those advocating a property tax override to fund the delta tunnels argue that the tunnels are a “replacement” for the current pumps. As we understand it, however, the current pumps would remain in place. The tunnels would be an addition, greatly enhancing the volume of water that could be siphoned from the delta and transported elsewhere.

In Howard Jarvis Taxpayers Assn. v. County of Orange (2003) 110 Cal.App.4th 1375, a city’s property tax override was challenged to the extent it was levied to pay for retirement benefits added after the enactment of Proposition 13. The city’s voters approved a city charter prior to July 1, 1978, in which they approved the city’s participation in the PERS pension program for the benefit of city employees.

After July 1, 1978, the city added new benefits. It began paying part, then all, of its employees’ share of the retirement contributions. It also added a medical benefit permitting employees to remain insured after retirement, with a portion of the premiums subsidized by city. The question before the Court was whether these post-Prop 13 additions to the city’s overall retirement system could be funded with a property tax override as an “indebtedness” that existed before July 1, 1978. The Court said no.

Quoting extensively from the Supreme Court’s decision in Carman v. Alvord (1982) 31 Cal.3d 318, the Jarvis Court reasoned as follows:
City seeks to avoid Proposition 13 by entering into contracts with added benefits funded through or in connection with a "retirement system," classify them as previously approved obligations, and then levy an excess tax to pay for them. *Carman* cautioned against this, prohibiting "open-ended voter approval, given before Proposition 13, to incur any government expense deemed desirable from year to year and to tax accordingly." (*Carman*, supra, 31 Cal.3d at p. 326, fn. 6, 182 Cal.Rptr. 506, 644 P.2d 192.) It explained that subdivision (b)'s phrase "interest and redemption charges' denotes no more or less than the sums from time to time necessary to avoid default on obligations to pay money, including those for pensions." (*Carman*, supra, 31 Cal.3d at p. 328, 182 Cal.Rptr. 506, 644 P.2d 192, fn. omitted.) The purpose of subdivision (b) is "to prevent the impairment of contracts approved by the voters in reliance upon the power of the district to levy the tax necessary to fulfill that contract. [Citation.]" (*County of Shasta v. County of Trinity* (1980) 106 Cal.App.3d 30, 40, 165 Cal.Rptr. 18, italics added.) Thus, *Carman* upheld only "a levy for a narrowly defined purpose that necessarily would give rise to payment obligations in the future." (*Carman*, supra, 31 Cal.3d at p. 326, fn. 6, 182 Cal.Rptr. 506, 644 P.2d 192.)

Here, City's position is a far cry from "narrowly defined." In the trial court, City asserted that the new charter language gives it the right to levy an excess tax for virtually anything, including "giv[ing] a house ... to every employee as they retire ... [¶] ... as long as it's a retirement related purpose." City's construction of the exception created by subdivision (b) eviscerates Proposition 13. As one court explained in another context, "If we were to accept the City's interpretation ..., we would be turning [Proposition 13] on its head, by narrowly construing the ... requirements and broadly construing the statutory exceptions to it. [Citation.]" (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 924, 117 Cal.Rptr.2d 631.)

(*Jarvis v. County of Orange*, 110 Cal.App.4th at 1383.)

Applying *Jarvis v. County of Orange* to the delta tunnels, we do not believe the courts would consider them part of the Project approved by voters in 1960 that was to be constructed with the $1.75 billion bond on that ballot, as that project was described by the *Goodman* court. Rather, the tunnels are more like the retirement benefits added to the city retirement system in *Jarvis v. County of Orange*. They are therefore ineligible for a property tax override.

Sincerely,

[Signature]

Timothy A. Bittle
Director of Legal Affairs