

MINUTES OF THE SPECIAL MEETING OF THE FLORIN RESOURCE CONSERVATION DISTRICT BOARD OF DIRECTORS

Wednesday, March 7, 2018

The regular meeting of the Florin Resource Conservation District Board of Directors was called to order at 6:00 p.m. by Tom Nelson, Chairperson, at 9257 Elk Grove Blvd., Elk Grove, CA.

Call to Order, Roll Call, and Pledge of Allegiance.

Directors Present:	Bob Gray, Lisa Medina, Tom Nelson, Sophia Scherman, Jeanne Sabin
Directors Absent:	None
Staff Present:	Mark J. Madison, General Manager; Bruce Kamilos, Assistant General Manager; Patrick Lee, Finance Manager; Stefani Phillips, Board Secretary; Sarah Jones, Program Manager; Donella Murillo, Finance Supervisor; John Diaz, Water Distribution Operator II
Associate Directors Present:	Shahid Chaudhry, Kenneth Strom
General Counsel Present:	Ruthann Ziegler
Consultants Present:	None

Public Comment

No comments were made.

1. Closed Session

No reportable action.

2. Potential Options of the Florin Resource Conservation District

General Manager, Mark Madison presented background information on the financial stability of the Florin Resource Conservation District (FRCD). He mentioned that the FRCD is very insolvent financially and is on track to run out of money by January 2019.

Mr. Madison presented three (3) options to the FRCD Board of Directors (Board) and associated pros and cons to each of them:

1. Do nothing and try to find a source of funding for the FRCD.
2. The FRCD and the Elk Grove Water District (EGWD) merge declaring that FRCD will only perform water related activities that provide a direct benefit to the EGWD ratepayers.
3. The FRCD and EGWD split through the formation of a new water district.

Mr. Madison expanded on each option:

Option (1): Do nothing. With this option the FRCD would continue seeking a funding source; the EGWD would have to pay for all legal and audit costs or the FRCD could request the County to conduct the audits. The FRCD will most likely not be able to fund a fair share of the expenses for elections in 2020, leaving no option other than having the Sacramento County Board of Supervisors (Board of Supervisors) to appoint the Board. The FRCD is special in the fact that most RCDs do not select Board members by election, instead the Board of Supervisors appoint the positions. Many years ago the FRCD chose to select Board members by election, which will not be possible with this option.

Option (2): FRCD and EGWD merge. With this option the EGWD's expenses will increase \$10,000 to \$20,000 annually, which is not significant enough to affect rates or the rate

structure. The FRCD will preserve jurisdictional boundaries, but their activities will be limited.

Mr. Madison explained that eminent domain may be the only limiting aspect to this option. Ruthann Ziegler, General Counsel explained that although the FRCD cannot have eminent domain, they could possibly be granted authority through the Revenue Bond Law of 1941, but she would need to look into it.

There was a discussion regarding the FRCD imposing fines and penalties. Mr. Madison mentioned that this is an important topic because District's need to have a means of enforcement to get customers to do certain things (i.e. pay their bill, not steal water). Ms. Ziegler explained that the FRCD could impose fines and penalties two ways:

1. Through Government Code Section 53069.4; this code states any local agency can impose fines and penalties if there is a violation of its ordinances. Those actions for which the District wants to trigger fines and penalties would have to be adopted by ordinance. These fines are set by statute, which means that the District cannot make up the amount of the fines.
2. Through the Revenue Bond Law of 1941; this law has very broad definitions to allow maximum amount of authority pursuant to its provisions. It also allows certain penalties for non-payment of bills, etc.

Ms. Ziegler pointed out that it is important to keep in mind that a special district is different than a city. A city is created pursuant to the State Constitution giving it "police power", meaning it can take a broader range of actions for the public good. A special district is created by statute, meaning it does not have as broad a range of discretion for penalties and fines.

Chairperson Tom Nelson asked if the FRCD has ordinances that allow them to impose fines and penalties. Mr. Madison responded with yes.

Option (3): FRCD and EGWD split through the formation of a new water district. This option would be very costly initially, it would require legislation and a vote, legal issues, etc. The EGWD has talked about forming into a Community Services District (CSD) if this option is chosen, but there are other types of Districts that could be formed. With this option the FRCD could remain or dissolve, but it would need to come up with funding sources like in option (1) to remain.

Ms. Ziegler discussed a major issue affecting the current employees with this option - the Public Employees' Pension Reform Act (PEPRA). She provided background stating in 2013, PEPRA legislation was put into place and all new public sector employees hired after January 2013 would have a less beneficial formula to use towards retirement. PEPRA legislation also states that new entities and its employees are subject to using the new formula. The issue is, would existing EGWD employees who have the classic formula be subject to use the new formula?

Ms. Ziegler mentioned that a similar question was brought to the California Public Employee Retirement System (CalPERS) and from that question legislation was created stating that Joint Powers Agencies (JPA) formed after PEPRA could still use the classic formula for its employees that migrated over, but the legislation does not provide information on any other entities. She mentioned that the District can possibly get a written opinion from CalPERS stating that the employees with the classic formula can keep what they currently have, but in her experience it may not stop CalPERS from going back on their position at a later date.

Mr. Nelson shared his concern that he does not want employees looking for different employment because of the change in the retirement benefit formula.

Vice-Chairperson Bob Gray commented that two (2) JPAs got the legislation passed that protected all JPAs and the situation those JPAs were in are almost identical to the FRCD; because of that, he stated it does not make the idea of getting legislation passed covering the EGWD impossible. Mr. Madison mentioned that trying to get legislation passed to protect the current employees would be like flipping a coin and with 95% of the current employees under the classic formula, it is a huge risk.

Mr. Madison stated, after presenting all three (3) options, he recommends option (2). He stated that option (1) is not the way to do business and option (3) would have been good in 1999, but he is concerned about the retirement benefit issues for the employees.

Director Jeanne Sabin asked what the format of option (2) would look like and can the District change the election to only hold elections in EGWD boundaries. Ms. Zeigler responded that the District could go from its current "at-large voting" to "election by division based on population", but she would have to look further into it.

Mr. Madison responded to Ms. Sabin's first question, stating that if the Board goes forward with option (2), a very specific resolution will be brought back in April.

Ms. Sabin asked about the comment made when discussing option (1) regarding the FRCD deciding to elect their own Board instead of having the Board of Supervisors appointing them and how that works. Ms. Ziegler responded that the statute for RCDs provides that the Board of Supervisors appoint the Board of Directors when a new RCD is formed; there is an additional provision in the RCD statute that allows an RCD to select Board of Directors by election.

Director Sophia Scherman commented that she does not support the County of Sacramento Board of Supervisors appointing Board members for the FRCD. She believes they do not have the interest of the FRCD/EGWD in mind and will put one of their own in the position for leverage.

Mr. Madison presented a possibility down the road to the Board regarding option (2). He mentioned that if they choose option (2) and in the future go to the Local Agency Formation Commission (LAFCO) to shrink the boundaries consistent with the EGWD, they could possibly achieve option (3) in a much less expensive way.

Mr. Gray requested the whole board to answer two questions: Why do we want to keep the FRCD alive? And, if we go with option (2), what is one project that would directly benefit the rate payers and how would we pay for it?

Mr. Nelson responded that it is entirely possible to take water out of the Folsom South Canal and flooding an area in a section of the FRCD for groundwater recharge. This project will be done in conjunction with other entities to share the cost or they could get a Proposition 1 Grant to pay for the project. Mr. Nelson pointed out that with the current boundaries of the FRCD, the District has more influence on what happens to the water in that area, which in turn benefits the EGWD rate payers.

Director Lisa Medina seconded Mr. Nelson on keeping the FRCD alive for influence on the water in the current boundaries.

Ms. Sabin responded that her answer to Mr. Gray's question would be the continued battle with the Sacramento County Groundwater Authority (SCGA) and using the FRCD's influence based on control of the groundwater recharge basin. She also wanted to add that the Sacramento Regional County Sanitation District is within the FRCD boundaries and with California on track to start recycling water in the next 10-30 years it would be a benefit to the District for a reliable source of water. Ms. Sabin's last point was that the Board is not elected to run the EGWD, they are elected as FRCD Directors and have a responsibility to do projects that support the RCD. She gave examples such as water conservation and water recharge.

Mrs. Medina spoke again supporting Mr. Nelson and Ms. Sabin, stating that this was the first time she has heard about the groundwater recharge project and loves the idea. She does not want to give up the FRCD boundaries, because she believes it has great potential.

Mrs. Scherman responded that she did a lot of research before she ran for the Board. In her opinion, the FRCD has responsibility to its ratepayers and the responsibility of doing projects that benefit the rate payers. She wants to do more than just in the area where the ratepayers are, mentioning that the ratepayers may fight the projects at first, but with explanation she believes everything will be okay. She restated that she does not want to give up the boundaries and she does not want to "throw the employees to the wolves" with the retirement benefits change.

Mr. Gray commented that he still questions whether or not option (2) would be a violation of Prop 218. Mrs. Ziegler responded that if it benefit the rate payers, it does not violate Prop 218.

There was more discussion on Prop 1 grants. Sarah Jones, Program Manager commented that she has done a Prop 1 grant in the past and that it can be done.

Ms. Sabin does not want to progress with option (2) if the District cannot do it in a morally, financially, and legally defensible way; the resolution needs to be very specific.

More discussion ensued regarding grants and ratepayers in respect to concerns that the ratepayers would be stuck paying for projects if grants do not come through. Mr. Madison explained that option (2) provides the most flexibility to make refinements and additions in the future, such as making it a requirement that a project needs to be a certain percentage covered by grants in order to even go forward with the project. This option does not ditch the FRCD, it keeps it in tow and the FRCD would just need to make a declaration through a resolution to change things. He does not want to see a "paralysis through analysis" and to continue down the do nothing path.

Mrs. Medina mentioned that the FRCD/EGWD needs to be progressive and utilize the staff, public, etc. for their ideas and knowledge.

Mr. Madison asked if the Board wants staff to put a package together for consideration. There was a consensus from the Board to bring back a package regarding option (2) as soon as possible.

3. Closed Session

No reportable action.

Adjourn to regular meeting on March 21, 2018 at 6:30 p.m.

Respectfully submitted,

Stefani Phillips

Stefani Phillips, Board Secretary

SP/CR