

**BROOKTRAILS TOWNSHIP COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTORS
Tuesday, May 26, 2009**

The Board of Directors of Brooktrails Township Community Services District met in regular session on May 26, 2009 at 7:00 p.m. at the Brooktrails Community Center.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

Roll call showed the following directors present: Williams, Ziady, Horrick and Skezas. Also present was General Manager Chapman, Director Orth and District Counsel Neary were absent with notice.

REPORT ON CLOSED SESSION

None.

C. ADDITIONS/ADJUSTMENTS TO THE AGENDA

None.

D. MINUTES OF PREVIOUS MEETINGS

1. May 12, 2009. Director Horrick moved to approve the minutes; Director Ziady seconded. The minutes were unanimously approved.

E. SPECIAL PRESENTATION

None.

F. PUBLIC HEARINGS

None.

G. PUBLIC COMMENTS

None.

H. CONSENT CALENDAR

2. Review of Accounts Payable report and authorization to issue checks. Director Horrick moved to approve payment of the outstanding bills. Director Williams seconded; the motion was unanimously approved.

I. ACTION AGENDA

3. Consideration of (a) Lake Ada Rose Stage 1 contract with AES and (2) AES contract on Lake Emily habitat restoration. Pete Bontadelli from AES, former director of CF&G, was present to describe the timeline for the Lake Ada Rose expansion project. He said this project was different from the recent rubber spillway project because there was a water right involved. While the District would still be the lead agency, AES usually prepares documents to the Water Board standards. An average CEQA document takes 4-5 years to get through the Water Board process, without additional studies. Recently they have become more focused on secondary impacts of water right applications and the cumulative effects. We would also need Fish & Game 1600 streambed alteration agreements, also subject to CEQA, and so the District's environmental document has to meet their standards as well. He commented that AES had actually planned to do the Notice of Preparation, Scoping & Initial Study.

The project initiation meeting would focus not only on the presumed design, but also at other alternatives that could be done, which have to be included. They would work with District Counsel to be sure they are tiering correctly off of general plans, etc. Alternatives would include everything from "no project" to the actual project as currently conceived. The first meeting is to be sure we have looked at all the engineering alternatives, including indirect impacts like the roads and the sewer system over time, dredging or modifying the size of Lake Emily, etc. Can we minimize the impact on salmon in Willits Creek, or do we have to have water stored for some time behind Lake Emily? Is there a possibility of being able to take some of the deposited material in Lake Emily and use as a borrow pit for Ada Rose? We need to look at the current second access road feasibility study and identify the likelihood of that and its timing; how many expansions to infrastructure will be needed as a result of that. These alternatives have different permitting and environmental requirements.

Step two is ensuring that the Specific Plan, County General Plan, DHS orders, CEQA guidelines, Air Quality Management District activities are all reviewed and integrated, database diversity, maps, specific species review such as spotted owls, listed in our Specific Plan; seismic issues. After all this is done they would meet with the Water Board and get them on as responsible agency and identify their needs. They would need to prepare a public trust resource analysis, which is a separate decision they have

to make in addition to granting the water right; they will ask us for the impacts on listed species of fish, wildlife and plants and specific surveys needed. By the time we get to year two we will have an accurate list of cost estimates for all the portions of the project. [Note: "project" here means AES's environmental work only. It does not include construction cost, permitting, special reports, etc.] The last item in the first year would be preparing the initial study. We may be able to do a focused EIR on just those issues relevant to the project, based on the Specific Plan; other parts we'll have to do in more detail, like cultural impacts. When we apply for a 404 Corps permit, they will have to certify that impacts on endangered species have been addressed; we will add that information to our CEQA process. If the District desires to add anything, like solar power, electricity generation and impacts will have to be included. After the first year, then the Board will be in a position to decide whether to proceed to the next step or delay for awhile. We could send a Notice of Preparation to actually start the CEQA process at that time.

Director Williams asked who ultimately decides what we can do. Mr. Bontadelli said that would be a state decision based on the Water Board granting the water right. This is the State Board, not the Regional. In order to store water for any use or divert water from a stream in California, you have to have a water right issued by the State Water Board, including expanding or changing a dam or place of use. The Regional Boards address water quality, enforcement, fines, which is essentially a delegated authority from EPA under the Clean Water Act. We share document drafts with them as we go. The primary burden is whether or not a water right can be obtained; this is the most critical question for any development to the Specific Plan level.

Director Williams said there is an equally powerful constraint, that being Second Access Road. Mr. Bontadelli said that is not incorporated as it has a separate agency with control decision and a separate set of decision-making points. We need to be able to state the likelihood of it happening and where, when, the timeline, what options are there and how does this interface with the development of the water. Once you get the water right you have five years to bring it into play in order to convert from a permit to a license. Director Williams said then, if we don't get second access, we don't turn the key.

Director Ziady said if we don't get the second access we don't go to a 218 election and we stop right there. Mr. Bontadelli said our application for water rights went in a few years ago; if we fail to keep up with their timeline and show progress, they can suspend the application and we go to the back of the line. If you keep going, you can still turn it off any time based on other issues, but if you step off the treadmill you have to restart the whole process.

Director Horrick asked about the later timeline in years two and three. Mr. Bontadelli said in year two we prepare a fisheries report addressing how the project would affect fisheries in Willits Creek, which is classified as essential fish habitat by National Marine Fisheries Service. We have to prepare the equivalent of a biological assessment to address federal and state listed species such as the spotted owl. Tree removal and how it relates to our forest management plan would be part of it, along with cultural resources. The area that would be inundated has to be walked for this study. We will have to determine the timing of taking stored water from Lake Emily to Lake Ada Rose; Fish & Game would have to readdress the issue of what happens behind Lake Emily. We have to look at issues of noise, aesthetics, impacts on agriculture and timberland, cumulative impacts, air quality, hazardous materials transport, water supply. Additional engineering studies might be needed to address specific questions. Year two is essentially the actual preparing of the administrative EIR draft for review. He anticipated year two would go only to the administrative draft, although it is a goal that the formal draft EIR be ready at the end of year two to go out for public notice.

In year three we would be dealing with public and agency comment and preparing the final EIR, final mitigation and reporting plan, and actual certification of the final EIR and the Notice of Determination. This assumes we don't have a lot of additional issues from the Water Board or that we discover. This gets us to the point where we are ready to prepare the permit applications.

Director Horrick asked if they looked at growth-inducing impacts and will relate that to the Specific Plan to see if it adequately addresses impacts, or do you just accept the work we've done? Mr. Bontadelli said we start with the Specific Plan and rely on it unless there are significant new factors not included. Significant new factors discovered would have to be covered in the growth-inducing assessment. The Board would have to decide whether these had been adequately covered by the Specific Plan.

Director Williams said this contract gets us up to the final EIR and the \$185,000.00 is a bargain. Mr. Chapman said there will be probably more studies that would be outside this and that he wouldn't want the Board to think they are just looking at this figure. He said we haven't discussed how we throw the financing into this; this initial two or three years will impact rates and fees and certainly at the end of the first year we have to make a decision as to how we're going to finance the bulk of this, because it will get significantly more expensive. Plus we've got the Second Access Road. We're going to have to figure out how to do it or the rates will be a lot higher than \$36 base.

Director Williams asked if any biologist had walked around Ada Rose; Mr. Chapman said Mr. Bontadelli had and Mr. Bontadelli then described the two small streams that come into Lake Ada Rose. We will have to address the impact on Willits Creek and any water that you divert over to Ada Rose, he said. The Water Board has to decide whether they will allow the impact. These are potential separate

studies. To determine if a species is not present, there are protocol surveys over one to two years. If we are in a sustained drought we may not get blooms during blooming season which will delay the process.

Mr. Chapman said he and Mr. Bontadelli had previously discussed two other large issues. One was about capturing peak-flow storms. If it goes over the spillway, it's gone. Under the design now we only have two 24" pipes. He believed we would have to have something a lot larger to transfer that kind of peak water. The other issue was our appropriation; we currently have 5,800 paying the water availability fees. The Specific Plan says the buildout is 4,000. We'll have to make a decision as to where we'll cut this 4,000 figure and address this with the State Division of Water Rights. Right now we've filed for 5,800, based on legal advice, when the guideline buildout is 4,000.

Director Williams asked if we would have to make big transfers after Lake Ada Rose was filled. Robert Melluish responded from the audience that he thought it would be essentially maintenance but with 4,000 homes he didn't know. That's a small problem compared to the other issues, he said. Mr. Bontadelli said if the engineers say you can't move the water that fast, you might have to modify Lake Emily as well. There may be only specific times for water transfers that won't impact fisheries.

Director Williams asked what degree of confidence Mr. Bontadelli had that at the one-year mark he could give us overall cost. Director Williams responded at the end of the first year it looks like we'll have a number of half to three-quarters of a million to complete this process and we'll have to go to a lender. And we could end up eating the whole thing.

President Skezas said the current ratepayers would have to pay it and asked, is there any way your outline could be slowed down and still stay on the track? Mr. Bontadelli said his cost estimates were based on a lot of assumptions and was the best-case scenario. Director Horrnick said the Second Access Road and also the Willits Bypass could be slowed down, so we'd probably need to slow this down too. Director Ziady asked if we could slow it down for financial reasons and Mr. Bontadelli said yes. Director Williams asked if the fact that Brooktrails is operating within a preexisting development could impact the water rights. Mr. Bontadelli said it will. It is consistent with all the plans for Mendocino County. The County will have to deal with the impact of the road; that issue still has to play out. All the Board has to deal with is making progress to keep this moving.

Wallace Stahle asked if the second year could be delayed while we get quotes; Mr. Bontadelli said yes. Don Morris asked if litigation problems were anticipated on this project. Mr. Bontadelli said no: there are not very significant wetlands; there will be some impacts to the stream course which has separate mitigation; minimal wetlands are anticipated; any required mitigation has to be performed simultaneously with or in advance of the project itself. Richard Estabrook said he thought both Lakes Emily and Ada Rose were required to make the 4,000. Mr. Chapman said the raise that we just did plus the planned expansion to 725 acre feet would take us to 3,816. It's the 15' raise that would take us to another 1,000 population (i.e., 5,000).

Mr. Estabrook asked if the decision to issue water rights can be based only on an initial study. Mr. Bontadelli said no, they will need a full EIR. Mr. Estabrook asked why NEPA wasn't being brought in right up front. Mr. Bontadelli said the Corps' NEPA process is done as part of the permitting; Section 7 was the endangered species requirement and Section 6 is for the Historic Preservation Act. They have to look at an alternatives analysis. He didn't think the application would be such that a separate NEPA process would need to be triggered. Mr. Estabrook commented that \$125,000.00 for an EIR wouldn't be enough. Mr. Bontadelli said there are many studies not included in this quote.

Mr. Melluish asked what the worst-case cost would be — as he thought the \$280,000.00 figure unrealistic. Director Williams answered it's not unrealistic, it's just not complete. Mr. Chapman suggested we'd have to make a Prop. 218 determination a year from now. Director Williams said until we can get a fairly educated idea, we are not going to send an engineering firm out; we might get a cost estimate for a 218 process, but we would not initiate it until we have a high degree of confidence we can actually build it. President Skezas said that can be replaced with loan money if the project is a "go," but if we say no, that money cannot be repaid. Director Williams said the Board has an obligation to do everything it can in order to get this done, but we are not a real estate firm, and we didn't make a promise to anybody that we would build out. And if it becomes financially unrealistic to do it, we won't, unless a huge number of vacant lot owners figure out a way to finance it. There are two main issues up front: the up-front costs on those who live here now, and the Second Access Road.

Mr. Melluish said he should step off the treadmill until the Second Access Road is a go, because it will take them five or six years to determine that. Director Williams said we have a fiduciary duty to do this; as long as we can slow our progress on the treadmill and keep our finances under control, we have to stay on the treadmill. If we step off the treadmill, we will get a lawsuit. Mr. Melluish said we're not the only district in a moratorium and he didn't see anybody else on the treadmill. And if they did sue us, so what? We can't afford to break the District; we've been down this path before. Director Williams said as we approach the one-year mark we need to make sure everybody up here knows what's going on and involve the non-resident owners in that process so they also know what's at stake. Mr. Melluish said he didn't think we could be held responsible for actions taken back in the '60s; Directors Williams and Ziady said you could.

Mr. Chapman said the dam we just built was built 90% with the locals' money because the locals got the benefit; we needed to switch gears for Ada Rose with 90% being paid by the vacant lot owners

because they will get the benefit, and maybe 10% by the locals for increased fire protection. Director Ziady asked if you have one or two large property owners that had a big say in the development, at some point is there a way we approach them and say, are you willing to put up money?

Director Horrick asked if we have to initiate this now; we haven't had feedback from DHS yet on the moratorium. Mr. Chapman said we're in the process of doing the 12-month study on Lake Emily, but it's nothing compared to buildout. We started the process two years ago and we have about \$60,000.00 into the project already, plus whatever is approved tonight.

Mr. Bontadelli said you're into the water rights process at this point and they're going to ask whether you're taking ongoing action. This year you're in the process of going into a CEQA process, identifying what components need to be done, that's progress.

Discussion turned to the other related agenda item, the contract for rubber spillway mitigation monitoring for five years of the wetlands mitigation (Lake Emily). This is being paid out of the Enterprise Fund per Mr. Chapman.

Director Williams moved to approve the contract with AES for AES Job #209528 for \$60,000.00 for ongoing development of the Lake Ada Rose project. Director Ziady seconded. President Skezas asked if one year meant next June for the report. Mr. Bontadelli said June or earlier. Director Horrick voiced he was in no hurry for the report. Mr. Bontadelli said after the meeting with the Water Board, there may be a whole lot of issues that would change our schedule. Roll call vote was as follows:

AYES: Directors: Williams, Ziady, Horrick, Skezas
NOES: Directors: None
ABSENT: Directors: Orth

Director Williams moved to approve the contract with AES for AES Job #206524 for \$28,170.00 to continue the process of monitoring mitigations for the Lake Emily rubber spillway project. Director Ziady seconded. Roll call vote was as follows:

AYES: Directors: Williams, Ziady, Horrick, Skezas
NOES: Directors: None
ABSENT: Directors: Orth

The Directors thanked Mr. Bontadelli for his appearance.

4. Consideration of resolution authorizing bulk water sales. Mr. Chapman noted this issue was discussed at the last meeting and this would allow selling bulk water to local licensed contractors, although we would not necessarily be setting up a permanent water bulk sale program. He informed the Board that District Counsel had said that this could be accomplished by a resolution.

Director Williams said he would like the resolution to specify building contractors; Director Ziady said it should say "within Mendocino County." Mr. Stahle said at the last meeting there was discussion about what projects would get built with this and he understood roads were a common use and asked whether these would be included. Mr. Chapman said yes. Some comments were made that these building projects would not necessarily be in Brooktrails. Mr. Melluish said we have the right to refuse anybody. Don Morris said he was concerned that the District would give treated water instead of raw water as on the Golf Course. Director Williams said it's because we don't have the equipment and we want it drawn from a place we can monitor the hauling trucks. Mr. Chapman said he could see the fire hydrant from his desk and that the trucks would be measured for capacity.

Director Williams moved that with the addition of "within Mendocino County" to the first "Whereas" and to Paragraph 1 that we adopt the resolution authorizing bulk water sales, Resolution 2009-4. Director Ziady said this wasn't near and dear to her heart but since the governor would be coming after our taxes, she would second the motion. Roll call vote was as follows:

AYES: Directors: Williams, Ziady, Horrick, Skezas
NOES: Directors: None
ABSENT: Directors: Orth

5. Adoption of resolution setting tax appropriations limit for FY 2009-10. Mr. Chapman explained this was a calculated formula set out in the attachment. This year's total was \$2,721,292.00. He confirmed Director Horrick's comment that this was about ten times our actual tax proceeds. Director Williams moved to adopt the resolution establishing the annual tax appropriations limit for FY 2009-10 at \$2,721,292.00, Resolution 2009-5. Director Horrick seconded. Roll call vote was as follows:

AYES: Directors: Williams, Ziady, Horrick, Skezas
NOES: Directors: None
ABSENT: Directors: Orth

J. ADDITIONS TO FUTURE AGENDAS

None.

K. SPECIAL REPORTS

From Directors: None.

From District Counsel: None.

From General Manager: Mr. Chapman said he attended the ACWA conference in Sacramento and said 95% of California is dependent upon somebody else for water delivery and we're lucky to control our own watershed. He said unfortunately we are expecting a raid from the state government, although when they say 8%, we don't know what this means because the state has its own formulas. The most alarming news was that, if it parallels the LAFCO process, the County pays one-third, municipalities pay one-third, and special districts pay one-third, The small local districts will take by far the worst hit due to their size. In other news he reported that we had a very successful cleanup days event with four dumpsters in all. Director Williams expressed appreciation for the contribution from the Sherwood Band of Pomo Indians to the Fire Department. Director Ziady said they aren't taxed for our fire services so they contribute this way.

L. PUBLIC COMMENTS

William Boosinger said he trespassed on what used to be called Thimbleberry Trail, which had been closed off by Clay Romero, and that he noticed that he had cut several roads into the property and left all of the downed trees, and slash piled up in very thick woods. He felt there was a fire danger, more than anything he's seen in Brooktrails. Mr. Chapman responded by saying he would notify the Fire Department the next morning.

Mr. Stahle said across the street from his home there were branches left after abatement and he sees a lot of branches trimmed some length away from the trunk, but you're supposed to cut back to the trunk so the cambium can seal it off in future. He thought that people who are permitted to do abatement don't know proper techniques or species identification; he asked if there were some mechanism to monitor this and to incorporate education into the program, perhaps via a handout with the abatement process.

M. ADJOURNMENT

Director Horrick moved to adjourn. President Skezas adjourned the meeting at 9:03 p.m.

George Skezas, President

ATTEST:

MICHAEL V. CHAPMAN