

**PINOLE / HERCULES  
Wastewater Subcommittee**

**Draft Minutes prepared by: Anita Tucci-Smith  
October 17, 2013  
8:30 A.M.**

The meeting was hosted by the City of Hercules in the City Council Chambers of City Hall.

**Sherry McCoy, Councilmember, City of Hercules, called the meeting to order at 8:30 A.M.**

**1. CALL TO ORDER**

**Subcommittee Members Present:**

Sherry McCoy, Councilmember, City of Hercules  
Dan Romero, Councilmember, City of Hercules  
Debbie Long, Mayor, City of Pinole  
Tim Banuelos, Councilmember, City of Pinole

**Subcommittee Members Absent:**

None

**Staff Present:**

Steve Duran, City Manager, Hercules  
John McGuire, Municipal Services Director, Hercules  
Patrick Tang, City Attorney, Hercules  
Nickie Mastay, Finance Director, Hercules  
Belinda Espinosa, City Manager, Pinole  
Hector de la Rosa, Assistant City Manager, Pinole  
Benjamin Reyes, City Attorney, Pinole  
Dean Allison, Public Works Director/City Engineer, Pinole  
Ron Tobey, Plant Manager, Pinole

**Member(s) of the Public:**

Jim Tillman, Pinole Resident

**2. FLAG SALUTE**

**Pinole Councilmember Banuelos** led the Pledge of Allegiance.

**3. INTRODUCTION OF PARTICIPANTS**

**4. PUBLIC COMMENTS**

**Jim Tillman, Pinole**, referenced the July 18, 2013 meeting when a representative from the Rodeo Sanitary District had spoken to the contract with Pinole, Hercules, and Rodeo for the outfall pipeline to the Bay, and had expressed concern that the Wastewater Subcommittee was not a Joint Powers Agreement (JPA). He asked if that would affect the renegotiations of the contract with Rodeo. He also expressed concern with Pinole's application to the State of California for its \$21 million share of the project cost given the issue of Pinole Valley Park and state and federal grants which could mean that Pinole was out of compliance and could lose the loan. If that occurred, he questioned how Pinole would be able to fund the project. He also referred to the continued confusion with the JPA related to the operation and ownership of the Pinole-Hercules Wastewater Treatment Plant which allowed assumptions that Hercules had some ownership of the plant. He asked for a copy of the 1977 contract with the Rodeo Sanitary District and asked for clarification of the ownership issue.

## **5. APPROVAL OF THE JULY 18, 2013 MINUTES**

**Pinole Mayor Long** noted that the meeting was being held in Hercules given the rotation of meetings between Hercules and Pinole, and asked if Hercules had updated its media equipment to be able to produce CDs or DVDs of the Wastewater Subcommittee meetings.

**John McGuire, Municipal Services Director, Hercules**, referenced some complications that had slowed the process but noted that Hercules was moving forward to update its equipment.

**Action: Motion by Pinole Mayor Long, seconded by Pinole Councilmember Banuelos to approve the minutes of the July 18, 2013 meeting, as submitted, with Hercules Councilmember Romero's abstention due to absence from part of that meeting.**

## **6. ADMINISTRATIVE PROCEDURES / GOVERNANCE**

**Benjamin Reyes, City Attorney, Pinole**, stated that he and Patrick Tang, City Attorney for Hercules had been tasked by the Wastewater Subcommittee to discuss the current operating processes for the Subcommittee, had completed that task, and had met with the Hercules and Pinole City Managers to present an overview of the administrative process. He referenced the 2001 Joint Powers Agreement and cited the statute that enabled cities and public agencies to enter into an agreement without necessarily forming an authority, which was currently in force and effect. While there was nothing in the 2001 agreement to stipulate the typical meeting process, he stated that as a standing subcommittee the Wastewater Subcommittee was subject to the Brown Act; meetings had been noticed 72 hours in advance, the agenda had been published, meetings were open to the public, meeting minutes taken, and the meeting process now and in the past fully complied with the Brown Act.

**Mr. Reyes** stated it was clear in the agreement that Hercules owned 50 percent of the water treatment plant but not the land and that Hercules had a right to review the annual budget, Pinole operated and managed the plant exclusively and shared studies and reports with Hercules, and both parties agreed to cooperate with each other. He reiterated there was no formal process to govern subcommittee meetings although the meetings had been operated in conjunction with the Brown Act.

**Patrick Tang, City Attorney, Hercules**, explained that the agreement did not speak to the timing of budget review or receipt of the studies, which would have to be addressed.

**Mr. Reyes** noted that Hercules and Pinole had met regularly to discuss the operations of the plant, the subcommittee had been cooperative, the meetings had been regular, and the JPA required quarterly meetings although with the plant upgrade project meetings had taken place more regularly.

**Mr. Tang** highlighted some of the issues raised by the Hercules members of the Wastewater Subcommittee, and while not an exclusive list he stated those issues related to additional input into the budgeting process, input into hiring consultants, the long-term Capital Improvement Plan and the city's input, and resolution of decision-making authority although there may be other issues.

**Mr. Reyes** advised that the Pinole issues related to additional assurances of Hercules' financial ability to upgrade the project given that Pinole is the owner of the plant on title, the permit is issued in Pinole's name, and any enforcement mechanism from the state would require Pinole's compliance and potential fines related to the continued operation and maintenance of the plant. Pinole also wanted to continue its discretion in operating and maintaining the plant consistent with the JPA and to ensure its ability to comply with its National Pollutants Discharge Elimination System (NPDES) permit, which had imposed deadlines and conditions with respect to the continued operation of the plant.

With that in mind, **Mr. Reyes** stated that he and Mr. Tang recommended that the Wastewater Subcommittee consider the preparation of a project-specific agreement outlining the responsibilities of the cities, which had precedent with the 1977 agreement, a copy of which had been provided to the City of Hercules and the Hercules City Manager. He suggested a project-specific agreement would be an opportunity for Hercules and Pinole to capture and address all the issues that had been raised as opposed to a continuation of the JPA. He explained that both he and Mr. Tang had experience in preparing project specific agreements. If the Wastewater Subcommittee was inclined to consider a project-specific agreement, he suggested a committee of the councils be appointed to craft that agreement.

**Mr. Reyes** also recommended no modifications to the current operating agreement unless a committee from the councils offered a mutual agreement of proposals to clarify the good faith cooperation expressed in the contract, and also form a committee to change the 2001 JPA if that was desired.

**Mr. Tang** reiterated that the immediate need was for some kind of project-specific agreement to provide a process not currently in place to be able to move forward as expeditiously as possible on the project which was time sensitive. He added that some of the more long-term governance issues beyond the scope of the upgrade project could be dealt with over time.

In response to Pinole Councilmember Banuelos who expressed concern for an agreement for a project already underway, **Mr. Reyes** explained the default that Pinole was responsible for building out the project, the permit had been issued in Pinole's name, and the contracts had been issued in Pinole's name, although Hercules had a financial obligation to fund 50 percent of the project and the 2001 JPA could be relied upon to ensure the financing for the project.

**Mr. Tang** clarified that the underlying agreements were vague and with a project with a tight timeframe some of the issues raised were not cleanly addressed and a project-specific agreement would be an opportunity to provide that structure.

In response to questions, **Messrs. Reyes** and **Tang** expressed a preference to have elected officials guide the process and suggested that both cities follow the same process for the creation of an ad hoc committee for a limited duration, specifically to prepare a project-specific agreement. They added that they would work as quickly as the process allowed to establish a project-specific agreement subject to the direction of the city councils.

**Hercules Councilmember Romero** asked that both cities report on the status of their Wastewater Enterprise funds. He suggested that Hercules could encounter some problems with the revolving loan with the state if there was no agreement. As to the committee for the councils, he suggested the current members would be preferable but would like to bring the issue to his council to see if there were any other ideas. He thanked the city attorneys for the presentation and the clarification which had resolved some of the questions related to ownership of the plant. He did not want to do anything that would delay the process.

**Pinole Mayor Long** verified with Mr. Reyes that Pinole owned the underlying land and the plant was jointly owned as an undivided interest by both parties. She referred to the Addendum to the Environmental Impact Report (EIR) which spoke to the need to relocate the Public Works building because the site would need to be reconfigured to accommodate the new engineering and design, which she noted would not mean that Hercules would own 50 percent of that building. She also verified that the operation and maintenance of the plant was exclusive to Pinole and employees were entirely under the purview of Pinole.

With respect to liability issues, **Pinole Mayor Long** wanted to make clear that as related to the plant itself there was a joint liability for the structure, operation, and maintenance of the plant. She clarified that a project-specific agreement would only be specific to the particular procedures of building the project and once the plant had been upgraded the agreement would expire. She wanted to ensure that those elements that may conflict with the current operation of the plant would be thoroughly addressed and she wanted those specifications and differences in the agreements in writing. She suggested a project-specific agreement would be time specific to occur after the finalization of the engineering design to avoid stalling the project. She supported the recommendations with those provisions.

**Mr. Reyes** clarified that those properties separate from the plant remained the property of the City of Pinole, which could be clarified in the project-specific agreement.

**Hercules Councilmember McCoy** also supported the proposal and saw the timing as a dual track to continue working on one agreement while creating another, although she questioned whether there were issues between the City of Pinole and the state that could affect the funding, and asked whether there was an alternative plan to address the timing issue.

**Mr. Reyes** clarified some misinformation related to the proposed cellular tower in Pinole Valley Park that had raised some legal issues, noted he was in the process of clarifying that information and would report back, but emphasized that there was no impediment with respect to obtaining the State Water Resources funding given that it was a different process, a loan process for which the City of Pinole qualified. He added that the State Water Resources Board would consider Pinole's application along with Hercules' application, and there were no issues with respect to grant funding involving the Bay Front Park in that the land for that park had not been purchased with any grant monies nor were there any issues with respect to funding that would affect the water treatment plant.

**Hercules Councilmember Romero** suggested it would be prudent to consider an alternative plan in the event that would be needed.

**Pinole Councilmember Long** emphasized that any alternative plan with respect to bonding would not involve joint financing in that the loan applications for Pinole and Hercules were separate requests although the State Water Resources Board would consider both applications as a whole. She emphasized that any bonding would be done separately by each jurisdiction and there would be no comingling of funds.

**Jim Tillman, Pinole**, referred to prior discussions and a promise made by the Pinole City Council as to the ownership and control of the plant where the intent of the 2001 contract had been based on a Pinole ownership only.

**Mr. Tillman** asked to be provided the history of the contract, who wrote it, who reviewed it legally as to form and legal adequacy, and any of the minutes of that time in 1999 and 2000 to identify the intent. He agreed that the contract was poorly written, difficult to interpret at this point, and stated that Pinole only used two thirds of the plant in that the rest went to West County and it wasn't fair to the Pinole public, and he asked how to offset that cost. He wanted Pinole and its citizens to review the contract and wanted his representatives to ask if the citizens of Pinole should help write the next contract and then ask the Pinole City Attorney to approve it as to form, legal adequacy, and fairness to both parties to identify whether or not the water treatment plant was Pinole's plant.

**Mr. Reyes** stated that the agreements would be provided to Mr. Tillman and to the rest of the Wastewater Subcommittee.

**Action: Motion by Hercules Councilmember Romero, seconded by Pinole Councilmember Banuelos and carried unanimously to direct Messrs. Reyes and Tang, and staff, to authorize the preparation of a project-specific agreement and use the Wastewater Subcommittee as a working committee, to be submitted to the Hercules and Pinole City Councils for approval, with a return to the Wastewater Subcommittee at its next meeting.**

On the discussion, **Pinole Mayor Long** suggested that the two items be separate; a project-specific agreement as one matter and evaluating the current contract with Hercules and Pinole as another matter.

**Mr. Tang** concurred that there would be two separate documents.

When asked about the cost and how long the process of crafting a project-specific agreement would take, **Mr. Reyes** suggested it would take no more than 25 to 30 hours depending upon the input from the subcommittee.

## **7. ENGINEERING SERVICES FOR PLANT UPGRADES**

**Dean Allison, Public Works Director/City Engineer, Pinole**, reported that a final design contract had been awarded to HDR Engineering, Inc. and the process would take a full 12 months to complete, after which there would be plans to advertise which would take three months, to be under construction by the first of the year in 2015, with construction to take two years to complete. He added that the Wastewater Subcommittee had looked at, and the Pinole City Council had awarded, a contract to The Covello Group for project management and value engineering, and would review HDR's preliminary plans in what he characterized as a unique process. The next deadline would be completion of the plant design by March 2014, which would actually be October 2014, although the long-term deadline was expected to be met, requiring an explanation to the State Water Resources Board which had already allowed a one-year extension to the completion date, as shown.

**Mr. Allison** reported that another contract was being negotiated with Carrollo Engineers having to do with the joint facility with the Rodeo Sanitary District and the deep water outfall. He noted that Rodeo had expressed concern the design would create a disruption to its operation and had asked for a peer review, which Carrollo had estimated at \$6,000, and which would be presented to the Wastewater Subcommittee. The cost would be split three ways based on flow of usage of the deep water outfall where 75 to 85 percent of the cost would be Pinole's. An additional contract had to do with the evaluation of land outfall, the 3.5 mile pipeline from the plant through Hercules to the deep water outfall given the need to understand the condition of the line. Staff had worked unsuccessfully with one firm to do that work and another firm would have to be found.

## **8. FINANCIAL ASPECTS OF PLANT IMPROVEMENTS**

**Mr. Allison** provided an update to the financial aspects of the construction of plant upgrades, advised of a meeting with the State Water Resources Board, and noted there would be a delay in reimbursement for the project and it was important that the project agreement discuss how cash flow would be handled. He emphasized the importance of Hercules moving forward with its financial audits to be able to submit a complete application to the state, and noted questions as to how much cash each city estimated to have on hand once construction began, a likely schedule of cash required for the project, the best model for a short-term cash flow to meet the demand, and whether the two cities could work together with the state to simplify the invoicing process.

**Belinda Espinosa, City Manager, Pinole**, pointed out that the meeting with the state had been fruitful in terms of the type of financial problems that might be encountered. She stated that Pinole and Hercules were interdependent on their applications and the issue of the audit from Hercules had been a huge concern. Pinole's application was complete and with the state and waiting for Hercules' application which could not be completed without the audits and which could impact the cost of the project.

**Nickie Mastay, Finance Director, Hercules**, reported that the Fiscal Year 2011 Audit had been completed and the goal was to get the FY 2012 and FY 2013 Audits completed by the end of March 2014. She explained that not only did Hercules have to satisfy the Wastewater Subcommittee, it was also selling its utility and there was a lot going on in the city.

**Hector de la Rosa, Assistant City Manager, Pinole**, clarified that the application required three years of financial statements and if Hercules only had a 2011 statement, it should submit that with its 2010 and 2009 statements now with a notice that once the 2012 and 2013 audits had been completed they would be submitted. He urged the City of Hercules' submission now with a notation of when the other audits would be available given that the state's process would take six months to complete.

With regards to the financials, **Mr. de la Rosa** reported that Pinole had \$4 million in reserves and by the time of actual construction there would be \$6 million in reserves for cash flow purposes, although he questioned whether it would be sufficient for cash flow for Pinole's \$21 million share of the upgrade project.

**Ms. Mastay** reported that as of June 2014, the City of Hercules should have \$3.5 million in reserves without any application or revolving loan monies coming back for reimbursement.

**Pinole Mayor Long** sought assurances from Hercules that the audits were a number one priority and that it was committed to allow the process to move on and the project to be constructed.

**Hercules Councilmember Romero** stated that the audits were a priority, that the enterprise budget was separate from the city budget, and if there was no set agreement between the two cities on the project Hercules could be left from getting any money and he wanted to make sure that it was clear that the City of Hercules had a 50 percent ownership of the plant and would receive reimbursement on any loan with the state.

In response to Pinole Councilmember Banuelos as to a cash flow analysis and the timing of milestone payments for the project, **Mr. Allison** advised that a project of the magnitude and complexity of the plant upgrade would be very important for when the contract shall submit and the city review, and the other complexity had to do with the fact that the contract was not only constructing but ordering a lot of equipment, and it was important that those complexities were addressed and written into the contract.

Speaking to retention and in response to Pinole Councilmember Banuelos, **Mr. Reyes** clarified that two years ago SB 395 dropped the retention from 10 percent to 5 percent on public works department projects but allowed public agencies to declare the project to be sufficiently complicated and complex to hold a higher rate of 10 percent and potentially more. The law provided withholding at the least the minimum amount of retention or 125 percent of the disputed amounts.

**Pinole Councilmember Banuelos** supported a vigorous system for evaluating change orders.

**Hercules Councilmember McCoy** asked if there were other cities that had utilized the type of loans being considered which could provide information on invoicing, sequencing and the like to help Pinole and Hercules better understand the cash flow needs.

**Mr. de la Rosa** described what he had encountered in a similar situation elsewhere where reimbursement took from 30 to 45 days after submittal to the state and the state retained 10 percent.



When asked, **Mr. de la Rosa** explained that he had informed the state prior to the submittal of Pinole's application that it would be a joint application process with the City of Hercules, two separate applications, and although the state preferred one application staff thought it was easier and had worked with joint applications in the past and would be willing to work with them.

When asked about potential issues regarding the invoicing and reimbursement process, **Ms. Espinosa** advised that there would be more discussion on that issue and probably a meeting dedicated just to the financial impacts and the critical path decisions that would need to be made.

**Pinole Mayor Long** requested that Hercules keep everyone informed as to the status of its application to the state.

**Hercules Councilmember McCoy** recommended as a standing agenda item moving forward to ensure that not only both cities but that the Wastewater Subcommittee and the public were aware of the status of the application.

When asked about a way to expedite payments, **Ms. Espinosa** stated that was part of the project agreement. She suggested that Pinole be designated as the fiscal agent given the critical nature of payments and the delays that could be involved impacting the cost of construction bids, emphasized the importance of the cash flow analysis and figuring out what to do for cash flow whether issuing bonds or some type of letter of credit, would return with more information in that regard, and recommended that as a standing item on the agenda as well.

## 9. **FY 2013/14 OPERATING AND CAPITAL BUDGETS**

**Mr. Allison** explained that the capital and operating budgets had been presented to the Wastewater Subcommittee at its July meeting and there had been questions having to do with depreciation, administrative charges, and the funding for the Intern position. He explained that the dollar amount for depreciation that had been included in the budget and attached to the report was a robust financial calculation of the depreciation and how those amounts had been determined. The total depreciation was identified as \$544,450 which would be split 50/50 between Pinole and Hercules. With respect to where the monies would be deposited, he stated that was up to discussion and he suggested that each city keep its depreciation in its own financial area, keeping it separate, with the understanding that when capital items needed to be replaced that would be where the funds would come from.

**Mr. Allison** explained that the administrative charges were charges for those who worked partially at the plant, such as the Assistant City Manager, Finance Director, two Accounting Specialists, HR Specialist, IT System Coordinator, Public Works Director, and Administrative Secretary for approximately 6.2 percent of the cost, or \$200,000, as previously identified.

It was clarified that the Public Works Director would continue to be charged at 50 percent. At this point the City Manager was not being charged although she was also doing duties as part of the Administrative Secretary at an Administrative Secretary rate.

**Hercules Councilmember Romero** commented that he understood that the Public Works Director had been a big part of the contract but in the future with project management by The Covello Group, he suggested that work would be diminished and his duties likely reduced. With respect to the structures at the Water Treatment Plant, he requested a map to show which buildings would be subject to the 50 percent charge to Hercules.

**Pinole Councilmember Banuelos** suggested there would be some reduction although the Public Works Director also had to manage the managers and there would still be time to monitor staff. For depreciation of sewer lines, he asked if the sewer lines were inside the facility itself, and Mr. Allison clarified the sewer lines involved and stated the depreciation for the sewer lines had been taken out.

#### 10. **WORK PLAN FOR INTERN PROGRAM**

**Ron Tobey, Plant Manager, Pinole**, stated that at the July meeting the Wastewater Subcommittee had discussed the Intern position that had been budgeted and members of the Subcommittee had requested additional information from staff as to how the position would be advertised, which he reported would be listed on the websites as the best way to have members of the Pinole and Hercules communities become aware of the position with the intention to help young people in the community at the local high schools and the local colleges. He explained that the recruitment of the position had been complicated somewhat by the fact that the Intern program was no longer a County program, and the intern would have to comply with the governing laws of the State Water Resources Control Board which required interns to have a high school diploma.

**Mr. Allison** commended Mr. Tobey's creation of a stair step process where an Intern position would be the initial step allowing someone to learn, develop, and qualify for other positions at the plant keeping young talent in the community. Given the loss of the County program, the Intern position was no longer funded by the County. Mr. Tobey had reduced one position, which had reduced costs to allow the funding of the Intern position.

**Action: Motion by Pinole Mayor Long, seconded by Pinole Councilmember Banuelos and carried unanimously to approve the Work Plan and posting for an Intern Program.**

#### 11. **VERBAL REPORT FROM STAFF ON VARIOUS ITEMS**

- **1977 Agreement with Rodeo Sanitary District**

**Mr. Allison** stated that the issue with respect to the Rodeo Sanitary District and the discussion of the 1977 agreement related to the deep water outfall and how much flow each agency contributed. He noted that not much progress had been made and more meetings would be scheduled.

- Implementation of SCADA Upgrades

**Mr. Tobey** referred to the installation of a Wastewater Management System in the last budget as part of the SCADA system to help collect and decipher data in the plant, and stated the process was in the coordination stage and the IT Department was coordinating different computer languages to bring them together. The first kick-off for the project would be the week preceding Thanksgiving. More updates would be provided at the next meeting.

## 12. FOLLOW-UP ITEMS

There were no follow-up items.

## 13. COMMENTS FROM BOARDMEMBERS

In response to Pinole Mayor Long with respect to an update of the contract with the Rodeo Sanitary District, **Mr. Allison** stated that the issue had been identified and in the meetings there had been an admission that the Manager of the Rodeo Sanitary District had been using more of the deep water outfall than the agreement allowed and would need to pay a higher proportionate share of its operation and cost. He expressed the need for a mechanism in the new agreement to allow changes to the amount of outfall flow that would be needed. Rodeo's issue was that it would get a handle on its inflow and filtration and when done that would need to be modified once the wet weather flow decreased. He stated there would be some back charges involved.

**Pinole Mayor Long** requested a written report to be submitted to the Subcommittee at its next meeting. She also asked if there would be better participation if Wastewater Subcommittee meetings were scheduled in the evening.

The Wastewater Subcommittee agreed to schedule a discussion of meeting time for the next meeting agenda.

## 14. ADJOURNMENT

The meeting was adjourned at 11:10 A.M. to the next regular meeting on **November 21, 2013 at 8:30 A.M. in the City of Pinole.**