

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Board of Supervisors

BOARD AGENDA # *A-3

Urgent Routine

AGENDA DATE December 16, 2008

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Amend the Bylaws for the Rock Creek Water District

STAFF RECOMMENDATIONS:

Approve amending the Bylaws for the Rock Creek Water District.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

BOARD ACTION AS FOLLOWS:

No. 2008-836

On motion of Supervisor Monteith, Seconded by Supervisor Grover
and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, and Vice Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: District Two vacant

Abstaining: Supervisor: None


1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No. DW-14-11

SUBJECT: Approval to Amend the Bylaws for the Rock Creek Water District

DISCUSSION:

The Board of Directors of the Rock Creek Water District are required by Sections 35301, et seq., of the Water Code to prepare bylaws for the written approval of the Board of Supervisors.

The bylaws in their original form, together with the approval of the Board of Supervisors and the resolution of the directors adopting them, shall be certified by a majority of the directors and the secretary and recorded with the County Recorder. Until so recorded, no bylaw, addition thereto, or amendment or repeal thereof can be enforced against any person not having actual notice thereof.

POLICY ISSUE:

The Board of Supervisors is the Bylaws Reviewing Body for all Water Districts whose boundaries are solely or principally within Stanislaus County.

STAFFING IMPACTS:

There are no staffing impacts associated with this item.

Rock Creek Water District
% C. Bruce Orvis
9601 E. Highway 4
Farmington, CA 95230
(209) 899-2460

December 08, 2008

Stanislaus County
Board of Supervisors
1010 Tenth Street, Suite 6500
Modesto, CA 95254
Attention: Christine Tallman, Clerk

BOARD OF SUPERVISORS
2008 DEC 10 PM 2:56

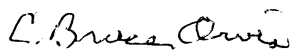
Re: Resolution 2008-2

Dear Ms. Tallman:

Rock Creek Water District has made some changes in their bylaws. We are enclosing our Resolution 2008-2 and a copy of the amended bylaws for your approval. We are also enclosing a copy of the previous bylaws, which were approved by the Stanislaus Board of Supervisors in 1986, showing where changes were made, and a copy of a letter from our attorney summarizing the changes.

We would appreciate your response as soon as possible.

Sincerely,


C. Bruce Orvis
Secretary-Treasurer

Enclosures

ROCK CREEK WATER DISTRICT

RESOLUTION 2008-2

**A RESOLUTION REQUESTING APPROVAL OF THE BOARD
OF SUPERVISORS OF THE COUNTY OF STANISLAUS
TO AMEND THE BYLAWS OF THE
ROCK CREEK WATER DISTRICT**

RESOLVED by the Board of Directors of Rock Creek Water District, Stanislaus County, California, to amend the bylaws approved by the Board of Supervisors, April 08, 1986, No. 86-485, to reflect the current state law regarding voting procedures, and

RESOLVED that individuals do not have the power to sell water outside the District, and that any "surplus" water may be sold only by the District as a whole.

PASSED AND ADOPTED by the Board of Directors of the Rock Creek Water District at a regular meeting held this day of November 15, 2008, by the following vote, to wit:

Ayes, and in favor thereof, Directors: Fahey, Orvis, Orlando, Slicton:

Noes, Directors: None

Absent, Directors: None

Abstentions, Directors: None

Signed C. Bruce Orvis
Secretary, C. Bruce Orvis
Rock Creek Water District

Dated: November 15, 2008

BYLAWS OF ROCK CREEK WATER DISTRICT

ARTICLE I

District Office

1. The District office shall be such location as the Board of Directors may, from time to time, establish by resolution. A certified copy of any resolution changing the location of the office shall be posted in three (3) public places within the District within three (3) weeks after its adoption.

ARTICLE II

General District Elections

1. General District elections shall be held within the District boundaries and shall be called and conducted and nominations shall be received in the manner provided in the California Water District law (Division 13, commencing with Section 34000, of the Water Code of California) and the applicable provisions of the Uniform District Election Law (Division 10, Part 4, commencing with Section 10500, of the Elections Code of California).

ARTICLE III

Elections Other Than General District Elections

1. Elections of the District other than general District elections shall be called and noticed pursuant to Division 13 of the Water Code and shall be held and conducted in the manner provided for general District elections.

2. The Secretary of the District shall perform the duties and functions of the County Clerk in elections other than general District elections unless otherwise provided by the resolutions and orders of the Board of Directors or prohibited by law.

3. Where no other notice is required by law, notice of election showing the time, place and purpose thereof shall be given as provided by the resolutions and orders of the Board of Directors.

ARTICLE IV

Manner of Voting

1. Each voter, as defined in Division 13 of the Water Code, shall be entitled to cast one vote for each acre owned by the voter within the district, provided that if the voter owns less than one acre then the voter shall be entitled to one vote and any fraction shall be rounded to the nearest full acre. The last assessment roll of each affected county shall be used in lieu of the assessment book of the district as evidence of ownership of land. This manner of voting is in accordance with Division 13 of the Water Code which provides voting procedures for districts, such as Rock Creek Water District, that do not have an equalized assessment book.

2. Every voter, or his legal representative, may vote in any District election either in person or by a person duly appointed as his proxy. Where record title to a parcel is held in the names of more than one person, i.e. partnership, joint tenancy or tenancy in common, only one ballot shall be issued and one of said persons shall be entitled to cast all of the votes to which the property entitles them.

3. No appointment of a proxy shall be valid, accepted, or a vote allowed thereon at any District election unless it meets all of the following requirements:

- a) It is in writing;
- b) It is executed by the person or legal representative of the person who, in accordance with the provisions of Sections 35003 or 35003.1 of the Water Code, is entitled to the votes for which the proxy is given;
- c) It is acknowledged or certified in accordance with Section 2015.5 of the Code of Civil Procedure;
- d) It specifies the election at which it is to be used. An appointment of a proxy shall be used only at the election specified and is revocable at the pleasure of the person executing it at any time before the person appointed shall have cast a ballot representing the votes for which the appointment was given;
- e) It shall be on a form as specified by the County Clerk meeting the above requirements.

4. Before a legal representative may vote, he shall present to the precinct board a certified copy of his authority which shall be kept and filed with the returns of the election. "Legal representative" means an official of a corporation owning land or a guardian, executor, or administrator of the estate of the holder of title to land who:

- a) is appointed under the laws of this State, *and*
- b) is entitled to the possession of the estate's land; *or*
- c) is authorized by the appointing court to exercise the particular right, privilege, or immunity which he seeks to exercise.

ARTICLE V

Officers

1. Each Director shall be a holder of title to land within the District.
2. Each officer shall take office as soon as he qualifies except that officers elected or appointed pursuant to the Uniform District Election Law shall take office at noon on the last Friday in November next- following the general District election.
3. The Board of Directors elected at the formation election shall, in accordance with the California Water District Law, hold office until noon on the last Friday in November of 1943 and an election shall be held on the first Tuesday after the first Monday in November of 1943 to

choose a successor for each elective officer the term of whose office will expire in November of 1943. The Directors elected at the general District election held in November of 1943 shall meet as soon as practicable after taking office and classify themselves by lot in accordance with the California Water District Law.

4. If any office of Board Members becomes vacant it, shall be filled pursuant to Section 1780 of the Government Code.

5. The Board shall elect a President from its members who shall serve until the reorganization of the Board at its first meeting following the next succeeding general District election.

6. The Board shall appoint the Secretary and such agents, officers, and employees as may be required, who shall serve at the pleasure of the Board. It shall further prescribe their duties, fix their salaries and prescribe terms and conditions of employment

7. The Board, except as otherwise specifically provided by Division 13 of the Water Code, shall manage and conduct the business and affairs of the District.

ARTICLE VI

Compensation of Officers

1. The compensation to be received by the Secretary, Assessor, Tax Collector and Treasurer of the Rock Creek Water District shall be such sums as shall be fixed by resolution of the Board of Directors from time to time

2. The compensation to be received by each Director shall be such sums as shall be fixed by resolution of the Board of Directors from time to time, up to a maximum of One Hundred Dollars (\$100.00) for each directors' meeting attended or for each day's service rendered as a Director by order of the Board, not exceeding a total of six (6) days in any calendar month, together with expenses incurred in the performance of his duties required or authorized by the Board.

ARTICLE VII

Sale and Distribution of Water

1. The Rock Creek Water District is the sole owner of the District's water right. Receipt of water from the District, either by contract or apportionment, does not create any ownership interest in the District's water right in any person served with District Water.

2. Water sold to holders of title of land within the District shall be apportioned ratably to each holder of title to land making an application to the District, and such water shall only be used upon such land located within the District.

3. If the Board of Directors deems it to be in the best interest of the District, upon a four-fifths (4/5) vote, the Board may enter into a contract for the lease, sale, or use of any surplus water not then necessary for use within the District or necessary for retention in the reservoir to

accommodate District users in anticipation of a dry or drought year. In the event that there is such a surplus and the Board deems it in the best interest of the District to sell such surplus water, priority shall first be given to uses within the District, and second to uses within the Rock Creek watershed. Water service contracts in existence prior to November 15, 2008 shall be unaffected by this provision. Nothing in this provision authorizes an individual landowner or other recipient of District water to sell or otherwise export water outside the District.

4. The District may, by majority vote of the Board of Directors, withhold the delivery of water to persons who violate the District Bylaws or against whom there are delinquent water, standby, facility, or other charges or penalties or interest on such penalties.

ARTICLE VIII

Method of Repeal or Amendment of Bylaws

1. These bylaws may be repealed or amended, or new bylaws adopted, by the assent of two-thirds of the total vote of the District given either in writing or by ballot cast at a District election.

2. Amendments may also be had by a four-fifths vote of the Directors and; the approval of the Board of Supervisors of the County of Stanislaus.

3. Any repeal or amendment of, or addition to, these bylaws, together with the written assent thereto or a memorandum of the election returns, shall be certified by a majority of the Directors and the Secretary and recorded with the County Recorder of said Stanislaus County.

ARTICLE IX

Violation of Bylaws

1. The penalty for a violation of these bylaws shall be an amount not to exceed in any one case Two Hundred Dollars (\$200.00) for any one offense.

* * * * *

It is hereby certified that the foregoing constitutes a full, true and correct copy of the Bylaws of the Rock Creek Water District, of the County of Stanislaus, State of California, adopted by Resolution of its Board of Directors on November 15, 2008.

C. Bruce Orvis
C. BRUCE ORVIS

Anita Moran Slicton
ANITA MORAN SLICTON

Allison S. Fahey
ALLISON S. FAHEY

Roy J. Orlando
~~CHARLES S. RHODES~~
ROY J. ORLANDO

Directors
of Rock Creek Water District

C. Bruce Orvis
C. BRUCE ORVIS
Secretary, Rock Creek Water District

Approved by the Board of Supervisors of Stanislaus County, California, being the County within which the District is located on December 16, 2008.

Christina Ferraro
County Clerk
County of Stanislaus

Enclosed RYI

Hello Director Slicton,

Attached are the revised District bylaws—one document shows the changes made in italics & underlined, with deletions struck through; the other is a clean copy ready for execution should the Board accept the changes.

I sent these to Mr. Orvis earlier this afternoon, and he thought it would be a good idea for you to have them as well to ensure they are distributed for tomorrow's meeting.

The changes are summarized as follows:

In Article 2, the citations to the pertinent sections of law were inserted, and a correction was made to the reference to the correct provision of the elections code.

Article 4 sets forth the proper voting procedures—one vote per acre—for the District. This is in accordance with current state law, as I discussed in a previous research memo to the District.

Article 5, I clarified that officers must be holders of land located within the District.

Article 7 sets forth the provisions of the Water Code relating to the sale of water, water rights, etc., so there is no ambiguity that it is the DISTRICT, not individual landowners, who have the right to sell water.

in #2, I reinforced the above, by saying that landowners within the District must use the water received on District land.

in #3, I set forth the export limitations set forth in the Water Code, and gave the Board the power to approve exports by a 4/5 vote. The 4/5 vote is not required by law, but I felt it offered the District landowners the most protection. The Board may wish to reduce this requirement to a simple majority vote.

#4 is a power offered the Board by the Water Code.

Please do not hesitate to give me a call if you have any questions. I will be available by cell tonight and tomorrow at 209.481.1548.

I understand your meeting is tomorrow, November 15. I am available to attend if the District would like to have legal counsel present.

Sincerely,

Mia S. Brown
Attorney at Law
Neumiller & Beardslee
A Professional Corporation
209.948.8200 (phone)
209.948. 4910 (fax)
mbrown@neumiller.com

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Thank you

11/14/2008

BYLAWS OF ROCK CREEK WATER DISTRICT

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~~book of the District is conclusive evidence of ownership and of the value of the land so owned, except that in the event an assessment for the District shall not have been made and levied for the year in which the election is held, the last equalized assessment roll of said County shall be used in lieu of the assessment book of the District.~~

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* * * * *

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C. BRUCE ORVIS

ALLISON S. FAHEY

ANITA MORAN SLICTON

ROY ORLANDO

Directors
of Rock Creek Water District

C. BRUCE ORVIS
Secretary, Rock Creek Water District

Approved by the Board of Supervisors of Stanislaus County, California, being the County within which the District is located on _____, 2008.

County Clerk
County of Stanislaus