

**SPECIAL MEETING**  
Seaside Groundwater Basin Watermaster  
*March 18, 2009*

**MINUTES**

**I. CALL TO ORDER**

Chairman Rubio called the meeting to order at 2:01 p.m. in the Monterey Regional Water Pollution Control Agency Boardroom at 5 Harris Court, Building D, Monterey.

**II. ROLL CALL**

City of Seaside – Mayor Ralph Rubio, Chairman  
Coastal Subarea Landowner – Director Paul Bruno, Vice Chair  
Monterey Peninsula Water Management District (“MPWMD”) – Director Judi Lehman, Secretary  
City of Del Rey Oaks – Mayor Joseph Russell, Treasurer  
Laguna Seca Subarea Landowner – Leonard McIntosh (Alternate)  
California American Water (“CAW”) – Director Craig Anthony  
City of Monterey – Mayor Charles “Chuck” Della Sala  
City of Sand City – Mayor David Pendergrass  
Monterey County/Monterey County Water Resources Agency (“MCWRA”) – Curtis Weeks (Alternate)

Absent: None

**III. APPROVAL OF MINUTES**

**It was moved by Director Bruno, seconded by Mayor Pendergrass, and carried to approve the minutes of the Watermaster Special Meeting of January 21, 2009. Mayor Della Sala and Director McIntosh abstained due to not having attended the meeting.**

**It was moved by Director Bruno, seconded by Mayor Pendergrass, and unanimously carried to approve the minutes of the Watermaster Regular Meeting of February 4, 2009.**

**IV. REVIEW OF AGENDA**

There were no changes to the agenda.

**V. PUBLIC PARTICIPATION/ORAL COMMUNICATIONS**

There were no questions or comments from the public.

**VI. CONSENT CALENDAR**

- A. Consider Approval of Summary for Payments Made in February 2009 totaling \$153,715.70**
- B. Consider current year Financial Reports – Through February 28, 2009**

**Moved by Mayor Pendergrass, seconded by Director McIntosh, and unanimously carried, to approve the consent calendar as presented.**

## VII. ORAL PRESENTATION

- A. Mr. Russ McGlothlin for the City of Seaside (“City”) presented a conceptual plan for the in-lieu replenishment of the Seaside Groundwater Basin (“Basin”) in conjunction with the 540 acre feet per year (“AFY”) of Alternative Production Allocation held by the City and currently used for irrigation of the Bayonet and Blackhorse golf courses, involving the City purchasing water allocated to it by the Fort Ord Redevelopment Agency (“FORA”) purveyed by Marina Coast Water District (“MCWD”). This arrangement would allow the City to not pump its adjudicated Alternative Production Allocation to the degree that water is substituted by MCWD with the FORA allocation, and the un-pumped City in-lieu replenishment water could then be purchased by Watermaster by way of a credit to replenishment assessments owed by the City at a cost of \$3,040 per acre foot through the term of the arrangement. The \$3,040 cost was established in 2009 by Watermaster to be the average projected cost of replenishment water. If the Regional Urban Water Augmentation Project comes to pass, then the recycled water produced from that project could be purchased by the City instead of the FORA allocation. The City would expect Watermaster to annually review and consider any alternative replenishment supplies and rates available. Mr. McGlothlin stated that the connection of the City’s and MCWD’s systems for water delivery could be arranged relatively quickly. Mr. McGlothlin pointed out that the in-lieu replenishment would be enough to offset the 2009 Water Year first triennial 10% pumping reduction now being dealt with by Watermaster under the Decision.

Director Weeks felt that the proposed arrangement used Salinas Basin water supply to address the City’s revenue shortfalls, and that the \$3,040 AF cost to Watermaster for the replenishment water was substantially higher than current water supply costs. He urged the Board to proceed with caution in this matter to get a better understanding of the issues to develop a comprehensive approach that would optimize financial incentives for using recycled water when available to offset water being pumped from the Basin. Chair Rubio pointed out that the \$3,040 amount is the cost basis for replenishment assessments paid to Watermaster by the City and therefore is equitable as a cost to Watermaster for replenishment supply.

Mayor Pendergrass, Director Bruno, and Attorney Lloyd Lowery for the Hidden Hills Subunit Ratepayers Association expressed support of the City’s proposed plan. Mr. Lowery submitted a letter to the Board at the beginning of the meeting that addressed some points made by Mr. McGlothlin. Director Weeks suggested that a rate structure for different types of water use by the City of Seaside – i.e., 300 AFY overlying demand offset by 300 AFY of the FORA allocation at one rate, and other incremental use at another – be considered when reviewing. Director Lehman requested wording that the \$3,040 cost is a placeholder based on current findings and is open for adjustment be included in the review.

**Moved by Director Weeks, seconded by Director Anthony, and unanimously carried, to refer the City of Seaside’s conceptual plan for In-Lieu Replenishment of the Seaside Basin to the Technical Advisory Committee (TAC) and the Budget and Finance Committee.**

## VIII. OLD BUSINESS

### A. COMMITTEE REPORT

#### 1. TECHNICAL ADVISORY COMMITTEE

- a) The Board received and reviewed the submitted memorandum and paper describing the TAC findings and conclusions regarding each of the four points of the Amended Decision determining the requirement that the operating yield be reduced by 10% as of January 1, 2009. The conceptual plan by the City of Seaside for in-lieu replenishment was not considered by the TAC when developing its findings as it had not yet been presented.
- b) Declaration of Artificial Replenishment Water Available for Water Year 2009.

**Moved by Director McIntosh, seconded by Director Bruno, and unanimously carried, to direct the TAC to consider the City of Seaside's conceptual plan for In-Lieu Replenishment of the Seaside Basin and present its findings, conclusions and recommendation on replenishment water available for Water Year 2009 to the Board at its May 2009 Board meeting.**

- c) The Board received the matrix of comments developed by the TAC upon its review of the California Public Utilities Commission ("CPUC") Draft Environmental Impact Report ("DEIR") for the Monterey Coastal Water Project. Mr. Robert Jaques, Technical Program Manager, stated that the first table, *TAC Comments on DEIR for the CAW Coastal Water Project*, contained comments of a technical nature, and the second table, *Possible Board Policy and Preference Comments That Could Be Added to the TAC Comments in Table 1*, contained comments more for policy and preference consideration. Mayor Della Sala requested that in the future a slide presentation be furnished for items of this type. With regard to Watermaster filing as an intervenor in the proceedings, Attorney Don Freeman recommended that the Board preserve the right to intervene as soon as possible as allowed by the administrative law judge due to the filing deadline having passed. Mayor Russell noted in Table 1- Section ES13 Project 4, degradation of the quality of advanced treated water being conveyed in the same pipeline as tertiary treated water, it was his understanding that the issue had been addressed by MRWPCA. TAC comments urged that the matter be discussed and the resolution duly noted in the DEIR. Mr. Keith Israel, MRWPCA, stated the issue had been brought up with CPUC however the DEIR document had already been submitted. CPUC had indicated verbally to MRWPCA that the appropriate flushing of the lines as is planned would be adequate to resolve the issue. MRWPCA had requested from CPUC a written response in the matter and had not yet received anything.

Director Bruno noted in Table 1 - DEIR Page No. 2-4 referencing footnote 6 the statement had not been verified yet by action of the Board and should be removed.

Mayor Pendergrass stated the importance of the Ground Water Replenishment Project ("GWRP") and requested the inclusion of Table 2 in its entirety with the Table 1 comments when submitted to the CPUC.

Director Anthony felt that the role of the Watermaster was to protect the Basin under the physical solution; he was uncomfortable with Watermaster endorsing the GWRP or any other project or project component. He supported the comments in Table 1, and agreed with Table 2 – 1-4 and 7-3, and did not feel it appropriate to include the other comments in Table 2. Mayor Russell stated he felt supporting the GWRP with the comments in Table 2 supported replenishment and preservation of the Basin in a reliable, ecological, and un-contentious manner. Mayor Della Sala stated the City of Monterey's strong opposition to the GWRP being placed back into Phase I of the Regional Projects stating that the portfolio of recycled water projects comprised the first component projects that should be considered before replenishment projects. Mr. Israel stated MRWPCA was not necessarily requesting support from Watermaster to endorse the GWRP, but to request that the CPUC more fully analyze the project for reconsideration at the project level by way of the comments in Table 2 – ES14 3, 4.

Attorney Lloyd Lowery for the Hidden Hills Subunit rate payers stated he agreed that the Table 1 – DEIR page 2-4 was inappropriate in the comments at this time. Regarding Table 2 – DEIR page no. 7-3, Mr. George Riley urged support of carefully proceeding in the DEIR rather than rushing to judgment and potentially incurring errors in decision making.

Director Lehman, referencing Table 1 – 2-1 with regard to requiring an additional 2,000 AFY be supplied to the Basin from projects implemented, felt the level of additional water needed could not be satisfactorily quantified at this point to justify including the requirement in the response comments. Mr. Jaques stated that in the future when the groundwater modeling component of the technical work was functional, that quantity could be accurately stated, but not in time for the DEIR response period. Chair Rubio requested that the statements in 2-1 regarding the 2,000 AF additional supplies and the statement regarding the groundwater modeling providing a more accurate figure be tied together.

**It was moved by Director Bruno, seconded by Director McIntosh, and carried, to approve Table 1 with the exception of item 2-4. Director Lehman voted no.**

**It was moved by Mayor Russell to endorse Table 2 in its entirety and include it with the approved Table 1 comments. There was no second to the motion.**

**It was moved by Director Bruno, seconded by Director Weeks, and carried, to include in Table 1 only comments 1-4 and 7-3 from Table 2 and direct the CEO to submit the comments to the CPUC prior to the April 1, 2009 deadline. Mayor Russell voted no.**

**It was moved by Mayor Russell, seconded by Director Lehman, and unanimously carried, to add the item regarding Watermaster filing as an intervenor to today's agenda.**

**It was moved by Director McIntosh, seconded by Mayor Russell, and unanimously carried, to direct staff to prepare and file the appropriate documents for Watermaster to preserve intervenor status in the DEIR proceedings before the CPUC.**

## **IX. NEW BUSINESS**

### **A. COMMITTEE REPORT**

#### **1. TECHNICAL ADVISORY COMMITTEE (TAC)**

- a) **Moved by Director Weeks, seconded by Director Lehman, and unanimously carried, to approve the Request for Services with Mr. Martin Feeney to prepare a Basis of Design Report for the new Watermaster monitoring well to be installed later this fiscal year.**
  
- b) Mr. John Fischer, TAC public member, addressed the Board stating that he had consulted with counsel associated with Watermaster issues prior to the groundwater modeling goals and objectives workshop meeting held by Hydrometrics LLC on February 19, 2009 and chose not to participate as the meeting was not noticed as per the Brown Act. Mr. Fischer requested clarification as to the requirements for noticing this type of meeting. CEO Evans stated that the Watermaster TAC and the Watermaster Budget and Finance Committee meetings were required to be noticed as per the Brown Act. Mr. Jaques stated that the workshop had been arranged and hosted by HydroMetrics LLC and was not a TAC meeting. No action was taken during the workshop, and the results of the workshop were considered by the TAC at a noticed meeting on March 11, 2009. Attorney Don Freeman suggested that in the future if a meeting or workshop was held with committee members in attendance and had the appearance of a noticed meeting, the clearest way to proceed for public and others not familiar with the noticing requirements is to give notice of the meeting per the Brown Act.

**Moved by Director Bruno, seconded by Director Weeks, and unanimously carried, to approve the Watermaster Groundwater Modeling Goals and Objectives developed by HydroMetrics LLC.**

### **B. OTHER NEW BUSINESS**

1. a) Director Anthony recused stating that California American Water (“CAW”) was a party to the application referenced in the issue before the board and left the room.

Director Bruno stated he attended the most recent Monterey Peninsula Water Management District board meeting and apologized to Director Lehman for his impassioned comments to her after that meeting. He felt the MPWMD board had overstepped its bounds and felt Watermaster needed to make a forceful appeal to the MPWMD board to reverse its action denying an application by CAW and Security National Guaranty (“SNG”) to produce water from the Seaside Groundwater Basin under SNG’s adjudicated water entitlement as an Alternative Producer for use on its land which overlays the Basin. Director Bruno felt that a right delayed is a right denied, and that Watermaster should proceed directly with a letter to MPWMD and,

that failing to reverse the MPWMD board action, direct staff to engage legal counsel to keep agencies from hijacking water rights. Director Lehman, also a MPWMD board member, stated that her understanding was that pumpers' rights were not being questioned by MPWMD in the matter, but that the environmental impacts of the project needed to be addressed.

Mr. Freeman suggested the Board direct a consortium of legal counsel to draft a project neutral letter to the MPWMD board for its upcoming meeting requesting it reconsider recent action in light of the considerations in the letter presented by Watermaster and that the District issue findings concerning legal and policy principles contained in the letter concurrently with its decision on the instant application. Mr. McGlothlin submitted to the board an outline of water rights principals and standards to be included in the draft letter stating that missing from the submitted outline was the issue that pumping from the Basin is governed by and part of the physical solution that is embodied in the judgment and therefore under the auspices of the court and exempt from CEQA. Chair Rubio stated that the outline submitted did not preclude comments by others made at today's meeting from being included in the letter. Mr. Ghandour clarified that the MPWMD staff report included in the last MPWMD board meeting packet analyzed issues as stated by Mr. McGlothlin.

Mr. Fischer urged all legal counsels in the matter along with a representative from the SWRCB to gather to come to a timely, less costly resolution rather than continuing the issue on for months or years.

Attorney Heidi Quinn, associate district counsel for MPWMD, addressed the board stating that MPWMD exercised its appropriate authority in denying the application based on potential adverse environmental impacts to the Basin and the Carmel River pursuant to CEQA. MPWMD was not challenging the water rights of the applicant, but was using its powers affirmed by Judge Randall.

Attorney Jim Heisinger, City of Sand City, respectfully disagreed with MPWMD counsel stating that the last several pages of the Adjudication Decision include MPWMD's request to act as Watermaster claiming plenary authority. Based on the fact that MPWMD had been in existence since 1977 and had not in that time period produced a Basin Management Plan for the Basin, the judge adjudicated the basin under Article 10 Section 2 of the California Constitution and denied MPWMD its request to act as Watermaster, tasking the Watermaster board with producing the plan. Page 53 of the Seawater Intrusion Analysis Report, a component of the Basin Management Plan that was approved by the Watermaster board in January 2009 indicates the advantage of pumping water allocations relatively far inland: SNG has complied with the physical solution by its arrangement with CAW to supply water for the project from wells located inland and away from the coastline. Mr. Heisinger viewed MPWMD's action as requiring CEQA on Judge Randall's Adjudication Decision which is exempt under California Law, Section 15379 of CEQA guidelines, and as MPWMD exerting unauthorized jurisdiction in interference with the Judgment's physical solution.

Attorney Sheri Damon for Security National Guaranty requested that the Watermaster include in the letter to MPWMD a reference to both the physical solution governing extractions and location of production facilities and the priority of use within the Basin as a fundamental law concept that goes hand in hand with the Decision. She also encouraged Watermaster to retain legal counsel to appear before Judge Randall to keep MPWMD from usurping authority and to uphold Watermaster governance for issues of production and extraction from the Basin.

Mr. George Riley addressed the board stating that the original EIR produced by SNG was dated 1998 and noted that many circumstances had changed relating to the EIR and the permitting process since that time and felt the Watermaster Board should review the 1998 EIR. He questioned why pumpers and not the Watermaster would be bringing suit against MPWMD and felt Watermaster was manufacturing a legal issue.

Mr. Steve Shimek with Monterey Coast Keepers Otter Project stated that the core of the issue as witnessed at the MPWMD board meeting as he understood it was the inadequacy of the 1998 project EIR analysis on environmental impacts and that new impacts were not considered. He believed that MPWMD had the authority to request a subsequent EIR and that Judge Randall had reserved that right for MPWMD. Mr. Shimek had issue with Watermaster considering a joinder with SNG counsel to address the issue when in his opinion it was not one relating to the adjudication.

Mr. Ed Ghandour, SNG Project Owner, stated that neither Mr. Riley nor Mr. Shimek presented the fact that a more recent project EIR dated October 2008 was available and that furthermore he had himself given a copy of the updated EIR to Mr. Shimek. The 400-page updated EIR studies the project's baseline EIR and all the new circumstances such as hydrology and the judge's Decision and can be viewed at the SNG web site [www.montereybayshores.com](http://www.montereybayshores.com). Mr. Ghandour stated that for the two gentlemen to claim that the SNG project EIR is based on 1998 data is a falsehood. Mr. Ghandour thanked MPWMD staff for their work and conclusion that the project had no CEQA issues remaining. Mr. Ghandour stated MPWMD had made repeated requests for enhancements in project water savings and water catchments in the project plans, which SNG complied with, obtaining approval from the Department of Health for the first grey water recycling system in the County, and obtaining necessary approval for the most advanced storm water management and catchment system in the world. Although MPWMD staff recommended acceptance, the MPWMD board had voted no in the past on these project water savings improvements as well as others such as green roofs that would equate to a 25% water savings. Mr. Ghandour stated SNG had held countless open forums regarding the project and published the EIR. He submitted that the MPWMD board is requiring CEQA and others such as Mr. Shimek are supporting the requirement, not because of environmental impact concerns but because they want to stop the project. The issue had been continued twice by MPWMD, over 6 months, when it required SNG to present a letter from SWRCB stating that no water offsets were required for the project, which SNG obtained and presented and MPWMD rejected. Mr. Ghandour contended that no CEQA was required to examine the judge's decision and that no Carmel River issue existed. Mr. Ghandour appealed to Director Lehman to reconsider the MPWMD board decision at its next board meeting. He

requested Watermaster send a letter to the MPWMD board, and to engage legal counsel to obtain definitive clarity from the judge as to jurisdiction in the matter.

Chair Rubio noted that Watermaster was formed to serve at the pleasure of the judge and that he would be the best one to describe the duties and authorities of Watermaster in this matter, and felt it was well within the interest of Watermaster to request the board of MPWMD to reconsider the CEQA requirement. Mayor Pendergrass stated that the Decision gave brackish water rights to the City of Sand City for use in desalination treatment which MPWMD approved by only a slim margin. He felt that in the interest of parties with adjudicated water rights under the Decision the issue of jurisdiction needed to be settled once and for all. Mayor Russell stated that the language in the Decision was not clear as far as agency authority and noted that the Watermaster was formed due to fear of what MPWMD would do in such a situation as this; he favored drafting a letter to the MPWMD board.

Mr. Heisinger stated that the SNG project had on file a certified EIR with the responsible party being City of Sand City. MPWMD had requested a subsequent EIR the scope of which was not defined, but hearings would reveal that the scope covers at least the same subject matter as the adjudication itself, if not the entire water distribution system for the Monterey Peninsula. Director Weeks stated that CEQA roadblocks would usurp Watermaster's ability to be an effective manager of the Basin. Director Lehman stated she would not vote in favor of sending a letter although she felt it within the rights of the Board to send a letter. She stated that there would be findings that may give clarity to the Watermaster Board on what the real issues are to be reconsidered.

Mayor Pendergrass stated that the next MPWMD meeting was scheduled for March 26, 2009 and he requested the letter from Watermaster include a request to the MPWMD board to consider the contents at its March 26<sup>th</sup> meeting.

**It was moved by Director Bruno, seconded by Director Pendergrass, and carried, to direct attorneys to draft a letter to MPWMD inclusive of the points of the outline submitted and comments of Ms. Damon and Mr. Heisinger, and to request the letter be placed on the MPWMD board meeting agenda for its March 26, 2009 meeting, and that an action item be placed on the next Watermaster board meeting agenda to consider retaining legal counsel in the matter. Director Lehman voted no.**

- b) The letters from the California Environmental Law Center were taken into consideration during the above item discussion.
2. Mr. McGlothlin highlighted the revised approach for calculation of the Replenishment Assessment and accounting of carryover credits per the joint request of California American Water and City of Seaside. Mr. Evans stated that Mr. McGlothlin had convinced him of the legal nature of the issue and felt that since counsel to the parties had not objected, then he was in agreement with the revised approach presented.

**It was moved by Director Bruno, seconded by Mayor Russell, and unanimously carried, to accept the request of the City of Seaside to use its proposed method for Carryover Credit when calculating Replenishment Assessments, and to accept the non-duplicative method of Replenishment Assessment of Alternative Production Allocation producers for Operating Yield Over-Production as set forth by the City of Seaside.**

**IX. NEW BUSINESS**

There were no new business items.

**X. INFORMATIONAL REPORTS (No Action Required)**

- A. Timeline Schedule of Milestone Dates (Critical date monitoring)
- B. Technical Advisory Committee minutes of February 11, 2009
- C. Water Production Report for First Quarter of Water Year 2009 (10/1/08 – 12/31/08)

**XI. DIRECTORS' REPORTS**

Chair Rubio requested that page numbers be included for all pages in the board agenda packets.

**XII. EXECUTIVE OFFICER COMMENTS**

The next Watermaster TAC meeting is scheduled for Wednesday, April 8, 2009 at 1:30pm at the Seaside City Hall portable building conference room.

**XIII. NEXT MEETING DATE – Regular Meeting to be held on April 1, 2009, at the Monterey Regional Water Pollution Control Agency (MRWPCA) Board meeting room at 5 Harris Court, Building "D" on Ryan Ranch in Monterey at 2:00 p.m.**

**XIV. There being no further business, Chairman Rubio adjourned the meeting at 4:55 p.m.**