

SPECIAL MEETING
Seaside Groundwater Basin Watermaster
September 9, 2008

MINUTES

I. CALL TO ORDER

Chairman Rubio called the meeting to order at 2:00 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
Laguna Seca Subarea Landowner – Director Bob Costa
Monterey Peninsula Water Management District (“MPWMD”) – Director Judi Lehman, Secretary
California American Water (“CAW”) – Director Tom Bunosky
City of Del Rey Oaks – Mayor Joseph Russell, Treasurer
City of Monterey – Councilmember Frank Sollecito
City of Sand City – Mayor David Pendergrass
Coastal Subarea Landowner – Paul Bruno, Vice Chair
Monterey County/Monterey County Water Resources Agency (“MCWRA”) – (Alternate) Curtis Weeks

III. APPROVAL OF MINUTES

Moved by Director Weeks, seconded by Mayor Russell and unanimously carried, to approve the Watermaster Regular Meeting minutes of June 4, 2008.

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. Approval of Summary for Payments made from June through August 2008 – \$114,887.46
- B. Approve two contract amendments authorized by the CEO each under \$10,000 authorized limit:
 - 1. Hydrometrics \$7,516.25
 - 2. MCWRA \$2,875.00
- C. Consider current year financial reports – Through August 31, 2008.

Moved by Council Member Sollecito, seconded by Director Weeks, and unanimously carried, to approve the payment of bills, ratify Watermaster CEO’s approval of two contract amendments each under \$10,000, and authorize the current fiscal year financial reports.

VII. ORAL PRESENTATION

Russ McGlothlin, Watermaster representation before the State Water Resources Control Board (“SWRCB”), reported on the hearing subsequent to the January 2008 draft Cease and Desist Order. He stated that testimony covered the highlights of the adjudication limiting CAW production from the Seaside Basin and the potential threat of seawater intrusion and associated contingency plans that, if in effect, would significantly impact CAW’s Basin supply. Testimony occurred in two phases: 1) the liability of obligations under Order 95-10 requiring due diligence by CAW in pursuit of new water supplies; and 2) any remedy if liability was found. SWRCB ordered a 45-day briefing period and scheduled a status conference for September 15th to determine if alternative remedy negotiations had progressed.

Attorney David Laredo addressed the Board stating that a reply brief period would follow the briefing period and that January or February 2009 would most likely be the earliest the draft decision would be brought back to the State Board. The hearing process imposed a page limit on briefs; a joint Watermaster/MPWMD brief was being explored for a consolidated presentation of the comprehensive argument against SWRCB issuing the CDO. Attorney Don Freeman commended the four mayors on an outstanding job done under tough questioning during the hearing.

VIII. OLD BUSINESS

A. COMMITTEE REPORTS

1. BUDGET AND FINANCE COMMITTEE

- a) Request from California American Water for a credit against replenishment assessment for expenses incurred for water supply augmentation that it contends will result in replenishment of the Seaside Groundwater Basin.

Budget/Finance Committee Chairman, Ray Corpus reported that the committee had met today to consider a recommendation regarding the CAW credit request submitted to Watermaster in May 2008. The City of Seaside was asking for a guaranty from CAW that its Coastal Water Project (“CWP”) desalination plant in Moss Landing would provide replenishment water in the future to avoid the impact of drought or seawater intrusion to the extent that CAW over-pumped through time under the judgment. An attempt at a settlement in the form of a guaranty contract was made however no agreement was reached. The Committee voted 3-1 to recommend to the Board that the CAW request for \$12.3 million against the Replenishment Assessment fees imposed by Watermaster be approved.

Attorney Don Freeman, counsel for the City of Seaside, addressed the Board stating that the full amount of \$12.3 million being requested is for remedy to the Carmel River basin and is not specific to Basin replenishment. He encouraged the Board to seek declaratory relief from the Court as to the intended use of replenishment assessment funds.

Mr. Freeman pointed out that Judge Randall had stated in the past that he would preside for approximately 2 years over the adjudication; that time period was about to

expire. If Watermaster did not seek court clarification now, it would lose the opportunity to work with the judge, attorneys and staff from different agencies familiar with the judgment.

Mr. Freeman requested that the Watermaster Board not accept the recommendation of the Budget/Finance Committee for the following reasons: 1) the committee had not performed due diligence in terms of fiduciary responsibility in requesting that the full amount of \$12.3 million be credited for a Peninsula-wide project that may or may not provide water and 2) direction is needed from the Court regarding the intent of the judgment on this issue, to be sought in a non-adversarial way at a hearing where all could weigh in.

Mayor Pendergrass felt the CAW CWP desalination project, now at the Public Utilities Commission ("PUC") environmental impact review stage, was a viable project. He was very concerned with ratepayers paying twice, once for the CWP, then again for the Watermaster replenishment assessment fee if the credit was denied.

Mr. Freeman believed that Judge Randall's intent had been that the Basin's draft of 50' below sea level be replenished in the future using the Replenishment Fund assessments to purchase water from newly developed sources; Mr. Freeman did not feel there was any danger of ratepayers being charged double in a scenario where CAW guarantees that Basin replenishment water would be made available at no charge in the amount equal to what it had over pumped, and had been credited for, a credit that depletes Watermaster of any funds to purchase supplemental water should the CWP project become viable.

Director Bruno, member of the Budget/Finance Committee, stated that the committee intended to perform a thorough analysis of the \$12.3 million expenditures by CAW to determine to what extent the amount applied to the physical solution of the Seaside Basin. Mr. Freeman noted that the analysis was not included in the recommendation to the board for Watermaster to extend the credit.

Director Bunosky stated that CAW is obligated by Order 95-10 and the Watermaster Adjudication to pursue supplemental water sources for its Monterey County service area that may result in replenishment of the Basin. It was recognized in the judgment that such a continuing pursuit incurs expenses that CAW could receive a credit for against the Replenishment Assessment. All the projects currently being considered through the PUC process have as EIR elements the use of Seaside Basin as a storage vessel. CAW has an extremely vested interest in the health of the Seaside Basin because it is integral to every project that brings water into the service territory. CAW pays 87% of the administrative costs to Watermaster and would be supportive of Watermaster hiring staff to review the expenditures in the credit request.

Mr. Freeman felt that the fastest, most inexpensive way to resolve the issue at hand would be to clarify the language of the judgment by asking the judge what he intended.

Chair Rubio stated that the Board was appointed to implement the judge's order: If any division of the board is due to differing interpretations of the language of the order, the judge could best provide clarification. The mission of the Watermaster in all its efforts is to be united, proactive, and expeditious. Director Sollecito and Mayor Russell agreed with Chair Rubio's comments and did not support the recommendation to the Board from the Budget/Finance Committee. Chair Rubio thanked the B/F Committee for its hard work in addressing the issue.

Director Costa inquired why taking the issue to the judge was not the recommendation from the Committee. Director Bruno stated that within the confines of the judgment CAW made a presentation requesting credit, and Watermaster was obligated as a Board to make a decision subsequent to a review of the credit request documentation.

Director Weeks encouraged continued deliberation by Watermaster and to not petition the judge, and felt that granting CAW the full credit requested seemed disproportionate for the amount of benefit to the Basin.

Steve Matarazzo, City of Sand City, stated that unless a credit was extended, ratepayers currently paying for the CWP by virtue of a PUC approved rate hike could again be subject to a PUC approved increase to cover the cost of CAW's replenishment assessment due to Watermaster. CAW has been diligent in pursuing water supply projects however it has no control over the project approval process.

Budget/Finance Committee Chair, Ray Corpus informed the Board that he had voted no to the motion for the recommendation due to 1) the committee not having gone through the credit request documents in detail; and 2) Watermaster having sought clarification from the judge in the past.

Jan Driscoll, outside counsel for CAW stated that the replenishment credit process was clearly identified in the judgment and did not agree with Mr. Freeman's suggestion of a different process. What was asked by CAW in the settlement negotiations with the City of Seaside was to have the option in any given year to do either a contract as suggested or forebear producing or submit a replenishment credit request. She felt that the City of Seaside was negotiating for CAW to give up the option of a replenishment credit all together. She pointed out that the judgment called for non-native replenishment water sources and that Watermaster had declared no replenishment water available for 2007 and 2008. The CWP, if speculative, is less speculative than any other project not even envisioned yet.

George Riley, citizen and CAW ratepayer, noted that B/F committee members supported the motion for the recommendation to the Board without all of the credit request information having been considered. He felt that the Board should not rely on the PUC's review of the credit request documents in determining whether to grant a credit. He felt that, if the credit were granted, there would be no money left to purchase water and no contract for supplemental water to be provided in the future. Flexibility and leverage are inherent within the replenishment assessment credit

process that could be used by Watermaster in the best interest of replenishment of the Basin.

Director Bunosky stated that CAW respectfully requests a credit against the replenishment assessment through this point in time, not in perpetuity, according to the process noted in the judgment hopefully without the need to go to court. He felt that a potential change in judgeship should not be considered an urgent need to change established processes since water issues on the Peninsula are of a long range nature inevitably subject to continuing changes in circumstances.

Director Lehman expressed concern that the Board's decision in the matter could establish precedence and lead to a possible serial credit request by CAW and that clarification now from the judge would be prudent. She supported a close review of the credit request documents in the most expedient manner.

Director Bunosky noted that although he agreed with the urgency of the matter as spoken by Chair Rubio, the agenda did not indicate action was to be taken on the item today, but to consider receiving a recommendation from the B/F Committee.

Director Sollecito noted that declaratory relief could be used any time and the Board should not be hesitant to do so. Director Weeks felt that he needed more information to be able to make a decision.

Chair Rubio announced that the recommendation was received from the B/F Committee and requested that the item be scheduled for the next board meeting for action or direction to the B/F committee.

Moved by Director Lehman, seconded by Mayor Russell, and withdrawn, to deny the recommendation of the Budget/Finance Committee to grant CAW the Replenishment Assessment Credit requested and continue the issue to seek clarification from the judge while investigating the credit request expenditures documents.

2. TECHNICAL ADVISORY COMMITTEE (TAC)

A. No report.

IX. NEW BUSINESS

The Board received the submitted memorandum from Russell McGlothlin on behalf of the City of Seaside regarding the potential in lieu replenishment from Seaside golf courses as a means to avoid the court ordered 10% ramp-down scheduled for January 1, 2009. Mr. McGlothlin reviewed the memorandum and the associated requirements of the Judgment. The water obtained by the City of Seaside from Marina Coast Water District ("MCWD") would be available to Watermaster at a cost of approximately \$1,600 per acre-foot. Another element of the proposal for in lieu replenishment would be that the Judgment deadline for the election of alternative production right to be converted to standard production right be deferred and continued beyond March 27, 2009 to the extent that the

proposed interim in lieu replenishment is in effect. Mr. McGlothlin felt that restricting water allocation to specific property is not the most beneficial use of water supply and would request the Court extend the deadline for conversion indefinitely for all alternative producers.

Mr. McGlothlin stated that the proposal is an interim measure until other projects provide supplemental water; recycled water from MRWPCA would not be available by January 1st. He stated that converting a portion of alternative production right to standard production right is within the bounds of the judgment; the 41 acre-feet per year (“afy”) amount proposed to be converted to standard production right by the City of Seaside would be reduced at the time of conversion by the amount of reduction already in effect on the Basin so that most, but not all, of the 41afy would be available to the City of Seaside under its standard production right.

The proposal could be viewed as the City of Seaside asking Watermaster to lease golf course irrigation water rights to use as a replenishment source. The City of Seaside would not make any profit on the exchange but would pass the MCWD cost straight through to Watermaster and would not request a carry over credit or ask for the water back. Contract terms for the proposed contribution would clearly indicate what would transpire when the City of Seaside was in need of the 500afy for a project.

Mr. McGlothlin requested the Board support the City of Seaside’s proposal to use its contribution of 500afy to offset the 560afy 10% ramp-down effective January 1, 2009, and to apply for an extension of the timeline to convert from alternative production right to standard production right; the proposal would then be submitted to the Court for approval. Mr. McGlothlin suggested options for offsetting the remaining 60afy ramp-down.

Director Bunosky inquired of MCWRA whether the proposed provision of water from the Salinas Basin was allowed. Director Weeks stated it was consistent with the annexation of former Fort Ord property and clarified additional assessments that had not been included in the proposed costs. Mr. McGlothlin responded that costs were being researched and finalized, and that replenishment assessment fees due from CAW would be needed for Watermaster to pay approximately \$900,000 annually for the proposed interim replenishment solution.

Mr. Ed Ghandour, Security National Guaranty, alternative producer party to the judgment, addressed the Board, commending and supporting the City of Seaside proposed contribution. He felt the alternative producers should provide a pro rata share of the balance of the 60afy needed to meet the 560afy ramp-down.

Mr. McGlothlin stated the City of Seaside would greatly appreciate multilateral agreement of landowners in support of providing the balance of the offset to show the Court a cooperative effort in addressing the problem.

Mayor Pendergrass stated that the Sand City desalination plant would provide 300afy to CAW to use to offset either production from the Carmel River or for use toward other solutions. Plant construction is projected to be completed by the end of the year and operational before February 2009.

Director Sollecito proposed direction be made to continue the planning process to find the most cost effective way to replenish the Basin to avoid the 10% ramp down. Chair Rubio appointed an ad hoc committee consisting of Director Bruno, Mr. McGlothlin, and Director Costa, with the Chair to be determined at the first meeting and requested that a recommendation for action be made to the Board at its October meeting.

Director Weeks requested a determination of the value of the well and the energy offset involved with MCWD in the proposal.

Director Bunosky stated that based on the availability of Sand City desalination and CAW ASR project water supplies, winter weather and water storage conditions, and barring any further cease and desist cutbacks CAW would be able to meet the 75% partial year amount of the first 10% reduction imposed for 2009 as well as its limitations on pumping from the Carmel River.

X. INFORMATIONAL REPORTS (No Action Required)

- A. Special Technical Advisory Committee Report (TAC)
- B. Timeline schedule of Milestone dates (Critical date monitoring)
- C. Report of Groundwater Production for Quarter Ended 6/30/08
- D. Report of Groundwater Levels and Water Quality for the period ending 3/31/08
- E. Technical Advisory Committee (TAC) draft minutes of June 11 – Sept. 3, 2008
- F. Report of notice of lengthy reports on Watermaster web site

There were no questions or comments.

XI. DIRECTOR'S REPORTS

There were no reports from directors.

XII. EXECUTIVE OFFICER COMMENTS

CEO Evans encouraged the directors to please read the special TAC report provided in item X.A which necessitates two meetings next month, October 1st and October 23rd, in preparation for the Annual Report due November 15, 2008.

XIII. NEXT REGULAR MEETING DATE – October 1, 2008 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 4:15 p.m.