

REGULAR MEETING
Seaside Groundwater Basin Watermaster
April 2, 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 – (Alternate) Kristi Markey
California American Water – 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 – Director Paul Bruno, Vice Chairman
Monterey County/Monterey County Water Resources Agency – (Alternate) Curtis Weeks

III. APPROVAL OF MINUTES

Moved by Director Sollecito, seconded by Mayor Russell, and unanimously carried, to approve the Watermaster Regular Meeting minutes of March 5, 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 in March 2008 \$11,200.00
- B. Current Year Financial Reports – Through March 31, 2008

Moved by Director Sollecito, seconded by Director Bruno, and unanimously carried, to approve the payment of bills and the current fiscal year financial reports.

VII. ORAL PRESENTATION

- A. Update on State Water Resources Control Board (SWRCB) Cease and Desist Order Concerning California American Water's Diversion from the Carmel River – Don Freeman

Mr. Freeman reported that he attended the pre-hearing one week ago in Sacramento. CAW had requested the SWRCB narrow the issue to whether or not CAW was in compliance with Order 95-10; if found not in compliance, then advise of any remedy requirements. The requested limited-scope process was derailed by environmentalists seeking to have SWRCB reopen all environmental issues relating to the Carmel River, which the Board allowed by offering parties the opportunity to file briefs regarding all Carmel River issues by next Wednesday, April 9th. Responsive briefs are due by April 23rd. A draft brief has been prepared, and is circulating at the meeting today, to be submitted to all members of the Watermaster Board and all attorneys that have attended any of the hearings, concurring that the narrow issue of compliance with Order 95-10 needs to be set forth in the draft CDO and would involve only CAW and the SWRCB. If, and only if, non-compliance is determined, Watermaster and the cities would then become involved submitting evidence on how any required remedies would affect the Seaside Basin. SWRCB would then determine its course in the matter and its interpretation of the issues at a hearing on May 7, 2008. The currently scheduled June 19th & 20th evidentiary hearing most likely will not occur because of the briefing schedule conflicting with preparation. Mr. Freeman met with Judge Randall Monday, March 24 to discuss the role of the Watermaster Board in the issue and the judge indicated the Board should continue on as a full party. There was no objection to the City of Seaside representing the Watermaster Board at any hearings or filing any paperwork with SWRCB in the matter. Chair Rubio, Director Bunosky, and Mr. Freeman all commended Director Weeks, MCWRA, for coordinating multiple excellent presentations of water projects currently underway throughout the County at yesterday's SWRCB policy statement hearing. Mayor Joe Russell and Director Bruno as an individual also spoke at the hearing. Watermaster Board representation has been provided at not cost through counsel of the City of Seaside, CAW, and MPWMD. Director Bunosky suggested the Board consider codifying a position in support of the narrow scope and liability, and remedy bifurcation of the issue, such consideration to be placed on the agenda of a subsequent Board meeting.

VIII. OLD BUSINESS

A. COMMITTEE REPORTS

1. BUDGET AND FINANCE COMMITTEE

- a) Consider a request to encourage CAW to submit a thorough report and an "accounting of all expenditures it has made for water supply augmentation that it contends has or will result in replenishment of the Basin," and establish a deadline for submittal.

CEO Evans reviewed the submitted staff memorandum on the matter. He stated that he had discussed the credit request from CAW for \$13,469,120 submitted in a letter to the Board at the March 5, 2008 Board meeting with Budget/Finance Committee Chairman, Ray Corpus who respectfully requested CAW pay the entire past due amount immediately with any credit determined at a later date to be reimbursed to

CAW at that time. Mr. Freeman will meet with CAW counsel Tim Miller soon to determine what information is needed from CAW for the Budget/Finance Committee to determine the validity of the credit. If CAW and Watermaster at some point do not agree on the validity of the credit, then the Court would need to arbitrate. The letter received on March 5 was very broad and CAW has been asked for more detail as to how the project directly benefits the basin. Chair Rubio pointed out that the order is not specific as to the process for issuing credits, but is specific for assessment payment requirements; in order for the Board to be in compliance with the adjudication CAW should pay the replenishment assessment amount it owes; if a white paper is submitted then, at a minimum, it should be accompanied by a payment of the 2005/06 replenishment assessment as a good faith gesture.

Director Bruno appreciated Chair Rubio's comments, noting that they were a departure from direction given to CAW during Budget/Finance Committee meetings to pay assessments when funding was needed for replenishment expenditures; Director Bruno took issue with the 5% penalty for non-payment added to CAW's assessments for 2005/06 and 2006/07. Director Russell noted that the Watermaster Board did not directly communicate to CAW not to pay its assessment.

Director Weeks acknowledged CAW's efforts to develop sources of water to the Peninsula, and to some degree the Basin, and suggested future discussion by the Board on the role of Watermaster and its committees in considering these efforts and how they affect the levying of replenishment assessments while maintaining compliance with the Court.

Director Markey requested CAW provide within the white paper an assessment of the viability of the project in the long-term.

Mr. Freeman suggested that the Board allow 90 days for he and CAW Counsel Miller to meet and determine the information needed to process the credit requested as it pertains to health of the Seaside Basin and then present findings to the Board to aid in its direction to the Budget/Finance Committee as to whether to accept or reject the credit, in whole or in part, and to present to the Court as addressing the issue in compliance with the Court Order.

Director Bunosky stated that CAW's intent was to fully cooperate with the Board to furnish whatever is requested and to furnish a "white paper" summary of credit request expenditures as well as an explanation of the actual Basin replenishment process as it relates to the assessment in approximately three weeks, to be followed up by a detailed accounting after applicability of the credit to the Basin is determined by Watermaster.

Mr. Freeman stated initial meetings between counsels can set parameters as to what should be considered for credit and brought to the Board, and subsequently the Court, for approval.

Chair Rubio expressed concern regarding the disconnect between the Board and committees on what the Board desires and what committees are communicating. If the committee had expressed to CAW that payment of assessments could be delayed, then penalties are not applicable, but a good-faith partial payment of what is owed seems in order.

Moved by Director Sollecito, seconded by Director Bruno, and unanimously carried, to request California American Water submit to Watermaster Budget/Finance Committee within 30 days a white paper summary giving an account of all expenditures it has made for water supply augmentation that it contends has or will result in replenishment of the Basin.

2. TECHNICAL ADVISORY COMMITTEE (TAC)

No current report.

B. OTHER OLD BUSINESS

- 1. Consider approving agreement to provide funding assistance for MRWPCA's Ground Water Replenishment Project (GWRP)**

Mayor Russell indicated, speaking as Chair of the MRWPCA Board, that staff, counsel and the executive director had accepted the contract as written. Chair Rubio commended staff for presenting the issue in contract form for Board approval. Mayor Pendergrass, speaking as a board member of MRWPCA, requested the Watermaster staff allow more time than receipt of the contract on Thursday afternoon for Friday approval when submitting documents for approval.

Director Bruno pointed out that the motion regarding approval of the funding at the last meeting stated *up to* \$100,000; the contract is worded *total fixed amount* of \$100,000. Mr. Jaques stated that "up to" is an indeterminate amount and MRWPCA would most likely not be able to proceed under those terms; projected cost is \$130,000 so total fixed of \$100,000 is not an issue.

Moved by Director Bruno, seconded by Director Costa, and unanimously carried, to approve the contract as written, acknowledging a policy change from funding up to \$100,000 to a fixed amount of \$100,000.

IX. NEW BUSINESS

- A. Consider Referring to the Rules and Regulations Committee the drafting of modifications to Seaside Groundwater Basin Watermaster Rules and Regulations to ensure that all Parties owning and/or operating wells provide Water Quality, Water Level and Water Extraction**

information to Watermaster on a timely basis, which is necessary for Watermaster's monitoring program

Mr. Freeman stated that the Court has ordered changes to the bylaws in this regard; CAW Counsel, Tim Miller is preparing a draft of changes to address the matter. Chair Rubio appointed Directors Lehman and Bunosky to the Rules and Regulations Committee in addition to Mr. Jim Heisinger, Mayor Pendergrass, and Director Costa.

Moved by Director Bruno, seconded by Director Sollecito, and unanimously carried, to refer to the Rules and Regulations Committee the drafting of the modifications to the Seaside Groundwater Basin Watermaster Rules and Regulations to ensure that all parties owning and/or operating wells provide Water Quality, Water Level and Water Extraction information to Watermaster on a timely basis, which is necessary for Watermaster's monitoring program.

X. INFORMATIONAL REPORTS

- A. Timeline schedule of Milestone dates (Critical date monitoring)
 - B. Watermaster Achievements in 24 months since March 27, 2006 (2nd anniversary of original court decision)
 - C. Report of Groundwater Production for Quarter Ended 12/31/07
 - D. Technical Advisory Committee (TAC) draft minutes of March 12, 2008
- There were no questions or comments.

XI. DIRECTOR'S REPORTS

There were no reports from directors.

XII. EXECUTIVE OFFICER COMMENTS

Next TAC meeting is scheduled for Wednesday, April 9, 2008 at Seaside City Hall.

XIII. NEXT MEETING DATE – MAY 7, 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 3:05 p.m.