

**SPECIAL MEETING**  
Seaside Groundwater Basin Watermaster  
*October 23, 2008*

**MINUTES**

**I. CALL TO ORDER**

Chairman Rubio called the meeting to order at 8:00 a.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 – (Alternate) Les Turnbeaugh  
City of Sand City – Mayor David Pendergrass  
Coastal Subarea Landowner – (Alternate) Pat Orosco  
Monterey County/Monterey County Water Resources Agency (“MCWRA”) – (Alternate) Curtis Weeks

**III. REVIEW OF AGENDA**

There were no changes to the agenda.

**IV. PUBLIC PARTICIPATION/ORAL COMMUNICATIONS**

There were no questions or comments from the public.

**V. CONSENT CALENDAR**

- A. Consider authorizing Board chair to submit a letter to MPWMD regarding Security National Guaranty compliance with the Basin Adjudication in its application for a water distribution permit for the Monterey Bay Ecoresort development.

**Moved by Mayor Russell, seconded by Director Costa, and unanimously carried, to approve the letter to MPWMD on behalf of Security National Guaranty as presented.**

**VI. ORAL PRESENTATION – None.**

**VII. OLD BUSINESS**

**A. COMMITTEE REPORTS**

**1. BUDGET AND FINANCE COMMITTEE**

- a) The Board received and reviewed the submitted proposed Memorandum of Understanding (“MOU”) between Watermaster and CAW conditioning credits to California American Water to offset the Replenishment Assessment Fees imposed by Watermaster for over pumping of the Seaside Basin to insure

replenishment of the Basin by CAW at no cost to Watermaster in a quantity equivalent to CAW's overproduction for which credit had been granted, unless the Court determines water tables had risen sufficiently or other seawater intrusion prevention measures had been undertaken to eliminate the threat of seawater intrusion into the Basin.

Mr. Russ McGlothlin, counsel for the City of Seaside, and Ms. Jan Driscoll, counsel for CAW, stated that the proposed MOU was designed to encompass credits requested for replenishment assessment fees levied by Watermaster per the Judgment for any given water year. CAW would continue to submit a credit request to Watermaster for expenses it claimed had or would supply non-native water to the basin, Watermaster to grant the credit based on the assurance of replenishment of the Basin consistent with the proposed MOU.

CAW would receive credit only to the extent of replenishment assessment fees levied thereby keeping the credit amount in line with benefit to the Basin. The MOU would establish that the obligation would be held in abeyance as a "water" liability instead of monetary liability for CAW until project completion when the aggregate amount of water over pumped by CAW would be replaced acre-foot for acre-foot. Director Bunosky pointed out that once the Basin had reached a healthy level it would be pointless for CAW to continue replenishing as, based on hydrologic data, the excess water would eventually begin to replenish the Salinas Basin outside the boundaries of the Adjudication. The City of Seaside was supportive of the MOU as entirely consistent with the terms of the Judgment; no objection by the judge was anticipated.

Director Lehman felt there were currently viable sources of non-native water available for purchase. Ms. Driscoll noted that each year Watermaster had declared no replenishment water available. Mr. McGlothlin noted that CAW's Coastal Water Project ("CWP") would be capable of future replenishment of the Basin to at least its current condition and it would seem imprudent to charge now for replenishment via a demand for CAW payment of assessments passed on to ratepayers since there had been no replenishment water available for Watermaster to purchase in years 2006-07. Subsequently, the MOU would provide for a credit to CAW based on the anticipated CWP however if a non-native water source other than the CWP becomes available, especially if it is less expensive than CWP water, CAW would be conditioned under the MOU to purchase the alternative supply for ultimately some form of Basin replenishment. Director Bunosky stated that CAW is extremely interested in any and all water that could possibly replenish the Basin and help increase the overall Peninsula water supply, such as the MRWPCA Groundwater Replenishment Project.

Chair Rubio noted that assessments and water availability for 2008 and beyond was a different matter than the issue at hand and any future credit requests would be considered on a year-by-year basis. He called for the any approval of the credit request by CAW for expenses incurred for the CWP in

years 2006-07 to be contingent upon the proposed MOU being codified by the Board.

Mr. George Riley, Citizens for Public Water, expressed concern that the MOU did not appear to provide for Watermaster to press CAW for timely projects and prioritization of replenishment over any other use such as selling water directly to customers.

Mr. David Laredo, Counsel to MPWMD, believed that the MOU obligated Watermaster to extend credits to CAW beyond 2006 and 2007 and suggested striking words in the second paragraph, “and therefore... future requests for Replenishment Credits” and “future” in the same sentence to avoid the MOU binding the board with regard to future credits. Furthermore, Mr. Laredo felt that Mr. Bunosky had a possible conflict of interest in the matter and perhaps should not vote on the issue.

Mr. McGlothlin pointed out that to avoid having to revisit the issue in the future the MOU included the condition that credit requests would require consensus by Watermaster that the associated project had or would result in replenishment of the Basin; he discouraged striking wording relating to future applications of the MOU.

Mr. Tim Miller, CAW counsel, cited Government Code Section 1090 that prohibited members of government entities from voting on contracts in which they may have an interest however inasmuch as the Decision required representation of CAW on the Watermaster board, the governing Rule of Necessity defined in the section eliminates the existence of any conflict of interest.

Director Costa stated that although counsel for Laguna Seca Resort suggested support of the MOU, several members of the landowner group had not responded to internal inquiries regarding the matter, prompting him to abstain from voting.

Ms. Driscoll felt it prudent to let Watermaster and the Watermaster Technical Advisory Committee (“TAC”) determine specific timing and agreements to guide most beneficial, expeditious replenishment of the basin. Mr. McGlothlin projected that a year from now more project information and technical data would be available to better determine the feasibility and timeline for replenishment.

Budget / Finance Committee members include: Mr. Ray Corpus – Chair; Director Paul Bruno; Director Tom Bunosky; Mr. Steve Matarazzo. The Committee is charged with due diligence for each credit requested by CAW and could review in detail each request if so desired.

Ms. Driscoll requested the opportunity to conform the MOU to the language of the Decision.

**Moved by Director Pendergrass, seconded by Director Costa, and carried, to direct counsel to conform the language of the Memorandum of Understanding between Watermaster and California American Water for conditions of credit against replenishment assessment fees to the language of the Decision. Mayor Russell voted no due to the expenses involved with the credit not being clearly identified as incurred solely to the benefit of the Basin. Director Costa, while supporting the motion, abstained from the final vote for reasons stated earlier in the discussion.**

**2. CONVERSION OF APA TO SPA AD HOC COMMITTEE (FORMERLY 10% RAMP-DOWN COMMITTEE)**

The Board received and reviewed a draft motion proposed to be filed with the Court requesting an extension in perpetuity of the deadline of March 27, 2009 per the Adjudication for Alternative Production Allocation (“APA”) producers to change to Standard Production Allocation (“SPA”) to achieve most beneficial use of groundwater. APA parties are Laguna Seca landowners, Coastal Subarea landowners, Bishop McIntosh and McIntosh, Pasadera, Laguna Seca Resort, Seaside golf courses, Calabrese, Mission Memorial, Security National Guaranty, City of Sand City, and York School.

Mr. McGlothlin gave an overview of APA and SPA water rights per the Decision that allowed owner transferability of overlying rights not allowable under common law, and the imminent deadline for the opportunity to convert from APA to SPA, a 3-year time limit from the filing of the Adjudication, i.e. March 27, 2009. He felt the deadline was not consistent with the fundamental best interest of the basin and sound water management principals. The proposed in-perpetuity APA/SPA one-time conversion opportunity allows the market and consuming public to decide where the highest and most valued use of water at any particular time should be. Transferability creates a financial incentive for water rights holders to conserve or invest in water efficiency measures to reduce demand on a particular property and transfer the surplus water elsewhere in exchange for a financial reward. The 10% ramp down measures along with replenishment assessment fees are adjudication mechanisms that bring the basin into balance regardless of the timeline for conversion from APA to SPA. The committee recommended seeking the concurrence of the Board to approach the court to request that the 3-year time limit for the one-time conversion from APA to SPA be extended in perpetuity. The alternative would be to lock water to properties with no incentive for owners to strive for the most beneficial, efficient use.

Director Bunosky requested a process be established to insure that at least the CEO and subsequently the board review the documents prior to submission to the court.

Mr. Ed Ghandour, Security National Guaranty, addressed the board stating that SNG’s Ecoresort planned for development in the City of Sand City is a prime example of APA water being put to most beneficial use. SNG is an

APA producer under the adjudication and planned the resort with extensive water-saving features to free up a significant portion of SNG's production allocation for conversion to SPA with arrangements made for lease and use off-site by CAW.

**Moved by Director Weeks, seconded by Mayor Russell, and unanimously carried to direct legal counsel to finalize the wording of the Motion and file with the court subject to review by the Watermaster CEO and the Board Chair.**

- a) Laguna Seca Landowners' request for Watermaster to submit to the Court a determination by the Watermaster TAC that groundwater elevations are at a sufficient level in the Southern Coastal and Laguna Seca Subareas to avoid saltwater intrusion to allow an exemption of that area from the Court specified 10% reduction in pumping.

**Moved by Mayor Russell, seconded by Director Weeks, and unanimously carried to direct the TAC to continue the issue to its next meeting scheduled for October 29, 2008.**

### 3. RULES AND REGULATIONS COMMITTEE

- a) The Board received proposed revisions to the Watermaster Rules and Regulations governing the calling of and timeframe for noticing Standing Committee meetings.

**Moved by Director Weeks, seconded by Director Costa, and unanimously carried to approve the revisions to the Watermaster Rules and Regulations Section 3.3.2. Meetings of Standing Committees as presented. Director Lehman had left the meeting.**

- B. The Board received and reviewed the joint closing brief of the Monterey Peninsula Water Management District and the Seaside Basin Watermaster dated October 8, 2008, filed with the State Water Resources Control Board (SWRCB) regarding the Cease and Desist Order hearing on California American Water diversions from the Carmel River.

Director Bunosky informed the board that the attorneys involved in developing the joint brief had finalized the document and no form of the brief had ever been submitted to the Watermaster CEO or any of the directors prior to it being filed with the court. Chair Rubio called for the establishment of an ad hoc Administrative Review Committee comprised of him, CEO Evans, Director Bunosky and Mayor Russell to review documents developed under the authority of Watermaster. Mr. Laredo stated that the next brief is due on November 10<sup>th</sup> and a draft would be ready for review around November 5<sup>th</sup>. CEO Evans and Mayor Russell requested their names be added to Mr. Laredo's distribution list to receive the draft document.

## VIII. NEW BUSINESS

### A. COMMITTEE REPORTS

**1. BUDGET/FINANCE COMMITTEE**

- a) Adoption of Fiscal Year 2009 and 2010 Annual Budgets
  - Administrative Fund
  - Monitoring and Management—Operations Fund
  - Monitoring and Management—Capital Fund
  - Replenishment Fund

**Moved by Director Turnbeaugh, seconded by Director Bunosky, and carried to approve the Administrative Fund, Monitoring and Management – Operations and Capital Funds, and the Replenishment Fund budgets as presented. Directors Costa and Orosco abstained per the Judgment requiring that landowners not vote on the budgets. Director Lehman had left the meeting.**

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

- A. Report of Groundwater Production through Quarter Ended 9/30/08
  - B. Technical Advisory Committee (TAC) draft minutes of October 8, 2008
- There were no questions or comments.

**XI. DIRECTOR'S REPORTS**

There were no reports from directors.

**XII. EXECUTIVE OFFICER COMMENTS**

The next Technical Advisory Committee meeting was scheduled for October 29, 2008 at 1:30 p.m. in the City of Seaside portable building. The draft Seawater Intrusion Analysis Report was distributed to board members for review and consideration for approval at the November 5, 2008 regular board meeting; the TAC members would receive copies at the October 29<sup>th</sup> TAC meeting. The draft Annual Report and a request from MPWMD to conduct a dual test of injections into wells would be on the November 5<sup>th</sup> agenda. CEO Evans would be sending out the draft Annual Report, if available, prior to the November 5<sup>th</sup> meeting.

**XIII. NEXT MEETING DATE – Regular Meeting to be held on November 5, 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 10:23 a.m.**