

CARSON WATER SUBCONSERVANCY DISTRICT  
BOARD OF DIRECTORS AND  
CARSON RIVER WATERSHED COMMITTEE MEETING  
August 15, 2018, 6:30 P.M.  
Minutes

Chairman Abowd called the meeting of the Carson Water Subconservancy District (CWSD) to order at 6:30 p.m. in the Churchill County Commission Chambers, 155 N. Taylor St., Fallon, NV. Roll call of the CWSD Board was taken and a quorum was determined to be present.

**CWSD Directors present:**

Karen Abowd, Chairman  
Brad Bonkowski  
Carl Erquiaga, Vice Chairman  
Chuck Roberts  
Ernie Schank  
Steve Thaler

**Directors not present:**

Ken Gray  
Don Frensdorff  
Doug Johnson  
Barry Penzel  
Fred Stodieck

**Staff present:**

Shane Fryer, Watershed Program Specialist  
Edwin James, General Manager  
Patrick King, Legal Counsel  
Toni Leffler, Administrative Assistant/Secretary to the Board  
Debbie Neddenriep, Water Resource Specialist II

**Also present:**

Geoff Brownell, Michael Baker Int'l.  
David Griffith, Alpine County  
Don Jardine, Alpine County  
Karin Peternel, Michael Baker Int'l.  
Andrew Roberts, private citizen  
Bettina Scherer, Nevada Dept. of Conservation & Natural Resources

The Pledge of Allegiance was led by Director Abowd.

**Item #4 – Discussion Only: Public Comment** – Debbie Neddenriep shared with the Board that yesterday was Toni Leffler's last birthday with CWSD since she will be retiring next February. Since the staff has not been available to take her for her birthday lunch and won't be for a while, staff decided to bring a birthday cake to share with the Board. Everyone sang happy birthday to Ms. Leffler.

**Item #5 – For Possible Action: Approval of Agenda.** Director Schank made the motion to approve the agenda. The motion was seconded by Director Thaler and unanimously approved by the CWSD Board.

**Item #6 – For Discussion and Possible Action: Approval of the Minutes from the Board Meeting of July 18, 2018.** Director Schank made the motion to approve the Minutes of the Board meeting on July 18, 2018. The motion was seconded by Director Bonkowski. Mr. Griffith offered a correction. On page three of the minutes (page seven of the Board package), item #17, at the beginning of the third paragraph, the “2917” should be “2017.” The maker and second of the motion approved the correction, and the CWSD Board unanimously approved the Minutes of the Board meeting on July 18, 2018.

#### CONSENT AGENDA

**Item #7 – For Possible Action: Approval of Treasurer’s Report for July 2018.**

**Item #8 – For Possible Action: Payment of Bills for July 2018.**

**Item #10 – For Possible Action: Approve the “I Am 65% Carson River” Watershed Awareness Campaign.**

Item #9 was pulled from the Consent Agenda for discussion. Director Bonkowski made the motion to approve Items #7, #8, and #10 of the Consent Agenda. The motion was seconded by Director Schank and unanimously approved by the CWSD Board.

\*\*END OF CONSENT AGENDA\*\*

**Item #9 – For Possible Action: Approve Contract with Horizon Construction, Inc. to install Watershed Signs in an amount not to exceed \$25,000.** Mr. James explained that the contract is for the amount of \$24,800.04. After the Board package was printed and posted staff was notified that the costs would be more. On page 42 of the Board package, the Contract specifies that it does not include welding of the posts or base. Originally it was believed that these were signs prepared by Nevada Department of Transportation (NDOT) that would just be bolted onto posts. However, Shane Fryer learned that there will have to be some welding done, so the contractor gave an estimate of about \$1,700 for the additional work. Staff would like a motion to approve the existing contact now and will bring the change order to the Board at the next meeting.

Mr. Griffith noted that paragraphs 8 and 9 of the agreement duplicate paragraphs 6 and 7 on page 3 of 5 of the Contract (page 38 of the Board package). Mr. James noted that staff had to create this different type of contract and verified with legal counsel, Patrick King, that the duplication will not have an impact on the contract. Mr. Griffith also noted that there are several more entrances/exits to the Carson River watershed in Nevada and in Alpine County which are not listed in the contract on page 41 of the Board package. He asked if these will be addressed in the future. Mr. James responded that at this point CWSD only received \$25,000 from the grant to cover the most major roads. Mr. Fryer pointed out that the funding for these signs came from Nevada Division of Environmental Protection (NDEP) so we were limited to Nevada locations. Staff assured Mr. Griffith that they would be seeking California funding to extend the signage into California.

Director Bonkowski verified that Mr. James would identify where the additional money above that budgeted will come from when the change order is brought before the Board.

*Director Bonkowski made the motion to approve the Contract with Horizon Construction to install Watershed Signs in an amount not to exceed \$25,000. Director Roberts asked about the language at the end of the contract on pages 39-40 of the Board package which reads: “This form of Contract, including any amendments to the Contract, is not authorized for use if the ‘not to exceed’ value Section 4, Consideration exceeds \$49,999.” Mr. James explained that this language is from the State contract form which was used as the template for this contract. Director Bonkowski amended the motion to not to exceed \$24,800.40 which is the amount on the contract, instead of the amount in the Board letter. Director Roberts seconded the motion which was unanimously approved by the Board.*

RECESS TO CONVENE AS  
THE CARSON RIVER WATERSHED COMMITTEE

**Item #11 – Roll Call** – Director Abowd convened the Carson River Watershed Committee and a roll call was taken.

**Committee Members present:**

CWSD Directors as present in roll call above  
David Griffith, Alpine County  
Don Jardine, Alpine County

**Committee Members not present:**

Ken Gray  
Don Frensdorff  
Doug Johnson  
Austin Osborne  
Barry Penzel  
Fred Stodieck

**Item #12 – Discussion Only: Public Comment** – None

**Item #13 – For Discussion Only: Presentation by Michael Baker International regarding a revision to the Carson River Watershed Regional Floodplain Management Plan.** Mr. James gave a brief background on the creation of the Carson River Watershed Regional Floodplain Management Plan (RFMP). He noted that the original document was created in 2008 which was adopted by CWSD and all the counties that touch the Carson River. It was to look at how to deal with flooding in the Carson River Watershed. In 2013, staff did a brief update, and now we are doing a revision to the Plan.

Mr. James then introduced Geoff Brownell and Karin Peternel of Michael Baker International and noted that they put a lot of time in on this revision, including some of their personal time.

Overview of presentation:

- Why are we here?

- How are we here?
- Why is this important?
- Project timeline.
- Stakeholders.
- Stakeholder Meetings.
- Components of the RFMP.
- Next steps.

Why are we here? FEMA requires updates to the Floodplain Management Plan (FMP) and Discover Report every five years (2008, 2013, 2018) to identify new hazards, identify hazard mitigation as it has taken place in the watershed since the last revision, identify suggested actions or implementation strategies (eight categories), and that the FMP includes components necessary to continue to be eligible for various FEMA grant funding. FEMA defines a floodplain management plan as “a written description of the flood risks and actions a community will take to address how to mitigate those flood hazards.”

The Discovery Report is a FEMA process which is used to collect data from all the stakeholders in the watershed. This data is then used to develop a list of flood projects throughout the entire watershed. The first thing Michael Baker Int’l. did as part of the process is update the Discovery Report, which is an appendix in the RFMP. It houses all the projects that the counties identified. The RFMP is more of an implementation strategy for the counties and the watershed.

How are we here? CWSD is part of FEMA’s Cooperating Technical Partners (CTP) Program. Because regional collaboration is provided by one over-arching group hazards within the region are recognized, prioritized, and addressed and consistent messaging to jurisdictions and residents is effective through outreach and education. FEMA carries our flood hazard mitigation activities through the CTP program by providing funding to local communities for flood hazard map revisions, flood hazard mitigation planning, and outreach and education.

Why is this important? Maintaining these activities is critical to continue to receive the necessary funding to prevent and minimize economic losses of property and homes for individuals and damage to infrastructure for jurisdictions. Flood insurance is available to local communities by participation in the National Flood Insurance Program (NFIP). The Community Rating System (CRS) is actions required by jurisdictions to maintain flood insurance premium reductions.

Project timeline –

- Meeting #1 on July 13, 2017 was an internal kick-off for revising the RFMP.
- Meeting #2 on August 15, 2017 was a stakeholder meeting for the Discovery kick-off.
- Meeting #3 on October 24, 2017 was a stakeholder meeting to present the draft Discovery Report for comment.
- Meeting #4 on January 23, 2018 was a stakeholder meeting to present the final Discovery Report and kick off the RFMP.
- Meeting #5 on April 11, 2018 was the Carson River Watershed Forum at which the draft RFMP was presented.
- Meeting #6 on August 15, 2018 is a presentation to the Carson River Watershed Committee.

Stakeholders include the project team of CWSD and Michael Baker Int'l. Local community partners and officials included Alpine, Churchill, Douglas, Lyon, and Storey Counties and Carson City. State stakeholders included Nevada Division of Emergency Management (NDEM), Nevada Department of Water Resources (NDWR), and Nevada Division of Environmental Protection (NDEP). Federal agency partners include FEMA, U.S. Geological Survey (USGS), U.S. Navy, National Weather Service, and U.S. Army Corps of Engineers (USACE). Other stakeholders include the Washoe Tribe, Fallon Tribe, University of Nevada Reno Cooperative Extension (UNCE), and Carson River Coalition (CRC) members.

Components of RFMP include introduction and background, FEMA, flood history and risk assessment, flood risk reduction and floodplain strategies, implementation, planning process, and emergency response and flood warning. The goals are identification of new flood hazards, recommendation of suggested actions, and to follow CRS requirements to receive credits for flood insurance premium discounts. There are 11 Appendices to the RFMP update.

What's new since 2008? 1) Identification of new flood hazards in alluvial fan flooding and long-term extending riverine flooding. 2) Identification of new types of solutions/actions such as Low Impact Development (LID) and stormwater management actions. 3) Identification of impediments to flood protection such as no upstream storage, private property rights, and funding. Positive outcomes include floodplain protection becoming more of a priority and active partnerships continue to result in implementation and regional floodplain management.

Mr. Brownell noted that, due to schedule and budget limitations, there are several new sections in the Table of Contents which are placeholders to be addressed in the next revision and have not been fleshed out yet. These include risk assessment for which FEMA has a software platform called HAZUS that does economic loss assessments based on natural disasters. Also included are public and private infrastructure, future condition consideration and impacts to floodplain, rain gage network, map/study alluvial fan flood hazards, stormwater mitigation, hazard mitigation plans, Carson River Watershed Adaptive Stewardship Plan, Carson River Flood Mitigation Plan, and flood forecast and warning systems.

Next steps include adoption of the revised Carson River Watershed Regional Floodplain Management Plan by the CWSD Board in September and by the counties in the fall of 2018.

Mr. Griffith asked whether there is a PDF version of this and if it be made available. Mr. James responded that there will be. This copy isn't complete, but staff wanted to be able to give the Board something to review. The revised Plan will also be put on the CWSD website. Mr. Griffith mentioned that Alpine County just adopted its updated Hazard Mitigation Plan. Ms. Peternel confirmed that they did get that plan in part of the discovery process.

Mr. Jardine explained that PG&E is draining down Upper Blue Lake to do seismic retrofitting of the dams. He asked if that was part of what was documented as part of this plan update. Mr. Brownell responded that it was not documented as part of this process, but this document is more of a plan to implement strategies moving forward for flood hazard mitigation in the watershed. The Blue Lake draining is a temporary condition.

*No action was taken; receive and file.*

**Item #14 – For Possible Recommendation: Discuss CWSD’s position on the use of the Public Trust Doctrine to be applied to water rights already adjudicated and settled under the Doctrine of Prior Appropriation and to submit an Amicus Brief to the Court.**

Mr. James gave some background on this item. The Regional Water System and Flood Committee met on Monday, August 13, to discuss this and give recommendations to the Board. Mr. James gave an overview of the Walker River Watershed. There are East and West Forks like on the Carson River, but the big difference is that there are several significant reservoirs on the Walker River. On the West Fork there is the Bridgeport Reservoir and on the East Fork there is Topaz Lake. The West Fork flows into Mason Valley, and the East Fork flows into Smith Valley and Mason Valley, with the two forks coming together in Mason Valley. The river then flows to Weber Reservoir which is owned by the Walker Tribe and into Walker Lake.

The hydrographs on the West Walker River below Topaz from 1970-2017 fluctuates with the low flow of less than 49,000 af occurring in 1977. On the East Fork the total flow was about 40,000 af of water in 1977. The streamflow data above Weber Reservoir is only available from 1995 to current. In one of the briefs by the Walker Lake Tribe, the Tribe contends that if there is a public trust doctrine, it would not pertain to them as a sovereign nation. So when you talk about the total amount of water for flow into Walker Lake you have to add on to what the Tribe would take over and above that. There were periods of time when no water got into Walker Lake. During 1988-1994, there was an average of 27,000 af going by the Wabuska gage, but no water reached Walker Lake. An overview of flows from 1995-2016 shows that during low flow years the 127,000 af minimum flow demanded in the lawsuit can’t be met by water coming into Nevada.

Mr. James explained that the Public Trust Doctrine came from England where the King owned the water but had to manage it for the benefit of the public. This followed into the United States where the government has a trust to the public to maintain and protect the natural resource. The famous court case testing the Public Trust Doctrine was on Mono Lake where the water that Los Angeles was diverting from Mono Lake was drawing it down and damaging it. The Court ruled that even though LA Water and Power owned water rights, there was a public trust to maintain water levels at Mono Lake. It wasn’t a matter of the public trust trumping water rights but the public trust and water rights are on an equal basis. One of the main differences between Mono Lake and Walker Lake is that LA had other sources of water to use besides Mono Lake, whereas the Walker Lake Watershed does not. It is not considered a “taking”, at least in California, because they are not taking your water right, you just can’t use your water right because there is no water to go with it. The Nevada Courts would have to consider whether it would be a “taking” with the farmers compensated, but that’s not being asked at this point. Mr. James will be going to the Humboldt Water Authority meeting in Winnemucca on Friday, August 17, where Gordon DePaoli will be explaining the case. Mr. DePaoli represents the Walker River Irrigation District and is the attorney who sent the request for an Amicus Brief to us. There are several Amicus Briefs in favor of the opposing side, many from law professors who don’t identify what happens to the farmers who lose their water.

Our concern is that if the Public Trust Doctrine can be used on the Walker River, it could set a precedent that could be used on the Carson or Truckee Rivers. Mr. King explained that a letter response to the court would not meet the requirements of an Amicus Brief. Other parties that have an interest in submitting an Amicus Brief would have to file a motion with the Court requesting permission to file an Amicus Brief, but as a government entity, CWSD is exempt from that. Mr. King reported that he spoke with Mr. DePaoli who shared background information with him but is

prohibited by the Court from preparing an Amicus Brief for somebody else. Mr. King explained that in England the Public Trust Doctrine pertained to government-owned water rights, but when it was brought to the United States it was expanded to apply to privately-owned water rights as well. His suggestion is that an approach to our Amicus brief could be to point out an issue that they are missing in the lawsuit to undercut the established jurisprudence on this subject.

Mr. James noted that the work on this is outside Mr. King's duties on retainer, so Mr. King's estimate of cost to create an Amicus Brief for CWSD will be brought back to the Board next month. The Regional Water System and Flood Committee asked that if the CWSD Board approved going forward with an Amicus Brief, Mr. James would go to each of the counties to get their support. Mr. James believes that Lyon County is already working on a response to this, as well as other entities up and down the watershed.

Mr. Griffith noted that driving by Walker Lake over the years shows it decreasing. The Mono Lake court case is coming up again before the State Water Quality Control Board, and he believes that LA Water and Power will lose again. He noted that a similar issue is being fought over in the Klamath Valley along the Oregon-Washington border and it could be devastating to the farmers and ranchers there. In the event that the water right owners do have to cut back, there should be fair compensation.

Mr. King related hearing that in California there was an issue of whether it is going to cost money or would be difficult to achieve. It can be achieved but is going to be very expensive because there are other sources of water available. However, in Nevada all the water is allocated and there is no other source.

Mr. Thaler asked if the ultimate goal is for the water to get used coming down the river, not to be stored at the terminus. Mr. James noted that, according to Nevada Water Law, you have to put water to beneficial use, so those are some of the arguments Gordon DePaoli brought up in his brief. Mr. James pointed out that you can try to make arrangements to benefit everyone. For instance, on the Carson River CWSD deal with environmental issues by creating instream flows by water released from reservoirs that we own or maintain. No one would argue that Walker Lake is deteriorating. The questions are: How do you fix it? And is the cure worse than the disease? When you try to fix those terminal lakes this way, what are you giving up? Are you saying no more agriculture? There are a lot of things that can be done and there is already a program established on the Walker River to purchase water rights to bring to Walker Lake for restoration.

Mr. Thaler noted that they will have to dry up the upstream storage just to get the desired amount of water in Walker Lake and keep water stored at the end of the line, which may not make sense. Mr. James noted that the question is: What are you trying to save...the butterfly or the flower? Nevada Water Law has been established over many years to deal with a limited supply of water. We have to protect our resources; otherwise what you have today could be gone tomorrow.

We need to say that the environment is important and the public trust is already addressed in Nevada Water Law, but water appropriation is important, and we need to make sure that those two are kept on an equal basis to protect the other water users. Otherwise no one would know what would be available in the future.

Mr. Roberts noted that it's not a question of the mechanics of where the water flows; it's a question of whether you flow the water or not. He asked what the question is before the court and which court it is before. Mr. King responded that this brief was filed in the Nevada Supreme Court. The Ninth Circuit Court asked the Nevada Supreme Court to answer the question: "Does the public trust doctrine apply to rights already adjudicated and settled under the doctrine of prior appropriation and, if so, to what extent?" The Nevada Supreme Court has said that they are the appropriate court to decide Nevada law, so they will answer the question to the federal court. The federal court can take that answer and accept it as the law in Nevada and then rule accordingly.

Mr. Roberts noted that the federal courts by decree have allocated the water, so can Nevada re-allocate that water? Mr. James responded that we have federal decrees up and down the watershed and the question is where the Public Trust Doctrine fits in to those federal decrees. That's what the Ninth Circuit Court is asking the Nevada Supreme Court to answer.

Mr. Roberts pointed out that if the people who want water in Walker Lake don't prevail, they will likely appeal. Once it's fully engaged in the federal courts, the current changes to the U.S. Supreme Court may be in favor of the environmental sensitivities. With that in mind, whomever runs out of money first is going to be the loser, depending on who appeals what and what the next decision is. Are we prepared to play in that game, either with legal assistance or financial assistance, as it moves forward? What will the commitment of the CWSD be? Mr. King responded that you have to have specific standing with the court to engage in the lawsuit, and we may not have standing. Mr. Roberts noted that even if we do not have standing, we will most certainly be affected by it.

Mr. James pointed out that what we are looking at today is submitting an Amicus Brief on this question to the Nevada Supreme Court. If it goes on into the future, that's going to have to come back before the CWSD Board for discussion of the ramifications.

*Committee Member Roberts made a motion to recommend that the CWSD Board approve the creation of an Amicus Brief opposing the use of the Public Trust Doctrine to be applied to water rights already adjudicated and settled under the Doctrine of Prior Appropriation, that Mr. King's fees be brought back to the CWSD Board, and that staff be authorized to go to the counties to discuss this matter and bring any comment back to the CWSD Board and not a committee. The motion was seconded by Committee Member Schank. Mr. Bonkowski asked whether this should be a motion consistent with the recommendation of the Regional Water System and Flood Committee. Mr. James explained that the only difference is that at the time of the committee meeting it hadn't been determined that this legal service would be outside the retainer paid to Mr. King. This motion only adds bringing that expense back to the Board, so it was determined to be within the intent of the committee's recommendation. After discussion, the motion was unanimously approved by the Carson River Watershed Committee.*

**Item #15 – For Discussion Only: Review of the current water runoff picture for water year 2018.** Mr. James explained that on the East Fork gage we saw a large runoff early on, with the peak occurring on April 3, 2018. The runoff was above the historic average until about May, and then the river was running at about 50% of average flows coming down the Carson River. Even though we had some good rain in March, it didn't hold up our watershed. At the Carson gage the flow is staying close to the median, but at this time of year there is not much water flowing in the lower river. At Ft. Churchill gage, the river often goes dry. The peak in April brought the river up, but it went down very fast instead of just tapering off.



Last year at this time at Lahontan Reservoir there was about 260,000 af in storage. This year it got down to about 175,000 af. TCID expects to finish the year with about 100,000 af of storage

*No action was taken; receive and file.*

**Item #16 – Discussion Only: Public Comment.** None.

**ADJOURN TO RECONVENE AS THE  
CARSON WATER SUBCONSERVANCY DISTRICT BOARD OF DIRECTORS**

**Item #17 – For Possible Action: Authorize legal counsel to prepare an Amicus Brief to the Court stating CWSD’s opposition to the use of the Public Trust Doctrine to be applied to water rights already adjudicated and settled under the Doctrine of Prior Appropriation.** This item was discussed earlier in the Agenda as Item #14.

*Director Roberts made the motion to authorize legal counsel to prepare an Amicus Brief to the Court stating CWSD’s opposition to the use of the Public Trust Doctrine to be applied to water rights already adjudicated and settled under the Doctrine of Prior Appropriation, that attorney fees for the work beyond Mr. King’s retainer be brought back to the Board, and that staff be authorized to go to the counties to discuss this matter and bring any comments back to the Board. The motion was seconded by Director Schank and unanimously approved by the Board.*

**Item #18– Discussion Only: Staff Reports**

General Manager – Mr. James reported:

- On Monday, staff heard that CWSD got almost \$650,000 in funding for FEMA MAS #9 to do several studies: 1) Remapping the Pine Nut Creek area in Douglas County. 2) A study in the north part of Carson City to try to eliminate some flooding in the Goni industrial area. 3) Creating an Area Drainage Master Plan (ADMP) on the south side of the river in the Dayton Valley area. 4) Funding for flood awareness. Mr. James mentioned that Region IX likes our process where a large amount of money is going to one entity to accomplish many projects throughout the watershed. The process is streamlined by having only one administrator instead of many. FEMA is trying to adapt our process to Region IX and across the country. Mr. Griffith noted that all federal agencies are doing the same thing of pulling together a lot of groups towards one grant.
- The watershed signs were in the Watershed Literacy 2 program, and the “I Am 65% Carson River” campaign is in the Watershed Literacy 3 program. NDEP discovered that the Watershed Literacy 2 Program ended on June 30, 2018 instead of December 31, 2018, as previously believed. NDEP is proposing to move the \$25,000 from Watershed Literacy 2 to Watershed Literacy 3, effectively combining the two grants.

Water Resource Specialist II – Ms. Neddenriep reported:

- The CWSD “Get on the Bus” Watershed Tour will be on October 11-12, 2018.
- Staff has been doing all this work while moving the offices.

**Item #19- Discussion Only: Directors’ Reports** – There were no Directors’ reports.

**Item #20 – Discussion Only: Update on activities in Alpine County.**

Supervisor Griffith reported:

- Humboldt-Toiyabe National Forest is moving ahead on their West Carson River project of about 1,500 acres in Hope Valley and Willow Creek. It will involve meadow restoration and cutting out conifers from among the aspens. They are also closing Scott's Lake Road to Crater Lake which is an old road that doesn't meet current standards.
- Dr. Wesley Kitlassen of the USGS is going to be giving a presentation to the Alpine Watershed on Sept. 4 in the evening at Turtle Rock Park which will go into depth about meadow restoration.
- About 30,000 acres have burned in the Donnell Fire, one-third of it in Alpine County. Alpine County lost one structure and one resort got burned down. About 500 permanent structures in the wilderness were burned which were there before the area was declared a wilderness. Now the Forest Service will probably not permit them to be rebuilt.

**Item #21 – Discussion Only: Update on activities in Storey County.** Committee Member Osborne was not present.

**Item #22 – Discussion Only: Public Comment.** None.

*There being no further business to come before the Board, Director Schank made the motion to adjourn, and the meeting was adjourned at 7:51 p.m.*

Respectfully submitted,

Toni Leffler  
Secretary