

CARSON WATER SUBCONSERVANCY DISTRICT
BOARD OF DIRECTORS AND
CARSON RIVER WATERSHED COMMITTEE MEETING
November 30, 2017, 2018, 10:00 A.M.
Minutes

Chairman Abowd called the meeting of the Carson Water Subconservancy District (CWSD) to order at 10:00 a.m. in the Conference Room of the Carson Water Subconservancy District offices, 777 E. William St. #110, Carson City, 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 (by teleconference)
Don Frensdorff
Ken Gray
Doug Johnson
Barry Penzel (by teleconference)
Chuck Roberts (by teleconference)
Ernie Schank
Fred Stodieck
Steve Thaler

Directors not present: None

Staff present:

Edwin James, General Manager
Patrick King, Legal Counsel
Toni Leffler, Administrative Assistant/Secretary to the Board

Also present:

Andrew Bain, US EPA
Rebecca Bodnar, NDEP
Beth Farley, Kohn & Company
Dave Friedman, NDEP
Austin Osborne, Storey County
Yolanda Sanchez, US EPA

The Pledge of Allegiance was led by Director Abowd.

Item #4 – Discussion Only: Public Comment – None.

Item #5 – For Possible Action: Approval of Agenda. Item #10 was pulled from the Consent Agenda for discussion. *Director Schank made the motion to approve the agenda, less Item #10. The motion was seconded by Director Stodieck and unanimously approved by the CWSD Board .*

Item #6 – For Possible Action: Approval of the Board Meeting Minutes of October 17, 2018.

Director Schank made the motion to approve the Board Meeting Minutes of October 17, 2018. The motion was seconded by Director Frensdorff *and unanimously approved by the Board.*

CONSENT AGENDA

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

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

Item #9 – For Possible Action: Approval of the Agreement to hire HDR to upgrade the HEC-RAS model version 5.0.3 to 5.0.5 as part of FEMA MAS #9 in an amount not to exceed \$10,738.00.

Item #11 – For Possible Action: Approval of updates to the Personnel Policy Manual.

Item #12 – For Possible Action: Approval of a letter of recommendation to the Governor for appointment of the CWSD General manager to the Carson Truckee Water Conservancy District Board of Directors.

Item #13 – For Possible Action: Approval for the General Manager to attend the 2019 Nevada Water Resources Association conference in Reno, Nevada.

Item #14 – For Possible Action: Approval of changes to the Administrative Assistant job description.

Director Schank made the motion to approve Items #7-9 and 11-14 of the Consent Agenda. The motion was seconded by Director Bonkowski and unanimously approved by the CWSD Board.

Item #10 – For Possible Action: Approval of the Agreement to hire Michael Baker Inc. to conduct the North Carson City Study as part of FEMA MAS #9 in an amount of #130,000 with the possibility of increasing the contract by \$28,080 if funding is provided by Carson

City. Mr. James explained that on p. 57 of the Board package, the wrong section of the Agreement with Michael Baker Inc. was crossed out. He will go over this with Michael Baker Inc. regarding modification.

Director Bonkowski made motion to approve the contract with Michael Baker subject to clarification on paragraph 13. The motion was seconded by Director Schank and unanimously approved by the Board.

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

RECESS TO CONVENE AS
THE CARSON RIVER WATERSHED COMMITTEE

Item #15 – 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
Austin Osborne, Storey County

Committee Members not present:

David Griffith, Alpine County
Don Jardine, Alpine County

Item #16 – Discussion Only: Public Comment – None

Item #17 – For Possible Recommendation: Ratify the hiring of MacLeod Watts, Inc., Actuary firm to calculate OPEB liability. Mr. James explained that this topic came up during the recent CWSD FY 2017-18 audit. There are new GASB rules in place to consider post-employment benefits. CWSD had to hire MacLeod Watts, Inc. to calculate CWSD's OPEB liability before the audit could be concluded, so staff is requesting that the CWSD Board ratify staff's action.

Committee Member Bonkowski made the motion to recommend that the CWSD Board ratify the hiring of MacLeod Watts, Inc., Actuary firm to calculate OPEB liability. The motion was seconded by Committee Member Thaler and unanimously approved by the Carson River Watershed Committee.

Item #18 – For Possible Recommendation: Presentation on the FY 2017-18 Audit by Kohn & Company. Beth Farley of Kohn & Company, who recently merged with Eide Bailly LLP, explained that the two-page letter on p. 110 at the beginning of the audit is a required communication. During FY 2017-18 there have been two Government Accounting Standards Board (GASB) changes: GASB Statement No. 82 relating to pension liabilities resulting in prior-period adjustments to the accounting records, and GASB Statement No. 75 which required evaluation of Other Postretirement Obligations (OPED) liabilities.

There are no audit findings of deficiencies in internal control that might be material weaknesses or significant deficiencies to be discussed. Auditors report of clean audit.

The Management's Discussion and Analysis beginning on p. 117 of the Board package reports a fund balance increase during FY 2017-18 in the General Fund by \$27,358 which primarily represents an increase in county project revenue over what was budgeted. The Capital Projects Fund (Acquisition/Construction Fund) balance increased by \$9,304 due to greater investment income than anticipated. The fund balance in the Floodplain Fund decreased by \$29,627 due to costs associated with the flood damage that occurred in January and February 2017.

The Management's Discussion beginning on p. 118 of the Board package is a condensed statement of CWSD's net position and activities. General Fund review reveals a total revenue of \$1,965,747 and total expenses of \$1,938,389. This is a strong financial position.

The audit performed in accordance with Governmental Auditing Standards on p. 146 and with the Nevada Revised Statutes produced an unmodified opinion on p. 147. Ms. Farley mentioned that the government auditing standards keeps putting more requirements on auditors for compliance.

Committee Member Schank made the motion to recommend CWSD Board adoption of the FY 2017-18 Audit by Kohn & Company. The motion was seconded by Committee Member Stodieck and unanimously approved by the Carson River Watershed Committee.

Director Gray joined the meeting at 10:20 a.m.

Item #19 - For Discussion Only: Presentation by the EPA on the Mercury Superfund Project in the Middle and Lower Carson River Watershed. Dave Freedman from NDEP and Andy Bain and Yolanda Sanchez from EPA were introduced. Mr. Freedman explained that the mercury problem has been defined well enough to have solutions. The Lahontan Dam is trapping a lot of mercury so people shouldn't eat fish, but swimming in the reservoir is fine. The feasibility study was to explain options. EPA is required to actively consult stakeholders about the study results.

Mr. Bain reviewed the Superfund process which includes:

1. Preliminary Assessment/Site Inspection;
2. Placement on National Priorities List (NPL);
3. Remedial Investigation (RI) and ecological and human health risk assessment;
4. Feasibility Study (FS);
5. Proposed Plan (PP)
6. Record of Decision (ROD)
7. Remedial Design (RD)
8. Remedial Action (RA)
9. Long-term Operations & Maintenance (O&M)

Community involvement is an integral part of the entire process, as well as government to government tribal consultation.

Operable units: Superfund sites are large and complex. Often the EPA divides the sites into smaller, more manageable projects called operable units (OUs). The CRMS Site has two OUs: upland/source areas, and river channel including floodplain, sediments, and biota (divided into four subareas). Operable unit 1 is Virginia City; Operable Unit 2 is below Mexican Dam along the Carson River where the processing mills were located. The Washoe Valley mills are outside the Carson River watershed and being treated separately.

Superfund Milestones for the Carson River Site include:

- 1860's - mercury contamination from Comstock-era mines because of the amalgamation in the silver process. In the 1970's, the USGS began to look at broader water quality issues and found higher levels of mercury which brought highlight to it.
- 1990 – area added to the National Priorities List with initial mercury removals.
- 1992 – EPA studies begin on OU1 (source – mill areas) and OU2 (river/lakes).
- 1995 – OU1 Record of Decision was signed.
- 1999 – cleanup of five yards in Dayton and one in Silver City.
- 2000-2013 – started remedial investigation of OU2 surface water, banks, and sediment studies.
- 2014 – bilingual health advisory signs were placed at Lahontan Reservoir, Washoe Lake, and access points along the river.
- 2015 – additional OU2 fieldwork

- 2017 – remedial investigation and risk assessment released.
- 2018 – EPA just completed the Long-Term Sampling and Response Plan (LTSRP).

Andy Bain explained the Carson River OU2 process. This is one of the largest Superfund sites in the US because of the distance of river involved and five counties. There are no responsible parties to pay for remediation. From more than 100 sample locations 800 samples were taken. The final remediation investigation report was issued in April 2017 which included:

- A wealth of existing data which informed the risk assessment.
- Completed map coverage.
- Identified obvious data gaps.
- Coordinated with State, Tribe, local and Federal government experts throughout the process. The EPA has come to the technical stakeholders on multiple occasions.
- Informed the community.

Contamination at the Carson River OU2 – Remedial investigation (RI) findings include:

- Estimated 7,500 tons of mercury was lost to the environment during the Comstock area.
- Mercury is deep in old channels but released during river bank erosion or construction from meander scars.
- The 1997 flood transferred contaminated sediments along the Carson River with little impact to the river reaches beyond the Lahontan Reservoir.
- It is estimated that 80-90% of the mercury is trapped in Lahontan Reservoir.
- Elemental mercury trapped in the river and reservoir sediments converts to methylmercury (bacteria) through the food chain, reaching extreme levels in sport fish such as walleye and wiper. The methylation process amplifies mercury to methylmercury which is very toxic; some of the highest levels of mercury world-wide.

Results of risk assessment in fish, waterfowl, and wild plants: the EPA is trying to synchronize the message about health risks on various websites. The mercury exposure is not an issue to wildlife in the terminal wetlands.

Other risk considerations include: 1) Existing residences in the floodplain may be at risk in areas that have not been sampled; and 2) Future development in the floodplain is a potential future risk in areas that have not been sampled.

Feasibility study – The EPA evaluated cleanup technologies that can be used to treat contaminated soils/sediments and surface water to find more finite list of technologies including land use controls, monitoring, containment (capping/barriers and bank stabilization), in-situ treatment, and ex-situ treatment.

Technology review included removal (dredging and excavation), disposal in a landfill, beneficial reuse (below roadbeds), and sediment management.

Committee Member Schank asked what the effects are on a person. Mr. Bain responded that the greatest concern is about babies which would show up as tremors and neurological diseases. Studies have been done in Morimoto, Japan that concluded that poisoning is through consumption rather than absorption but it can be breathed in other forms of mercury. Yolanda Sanchez noted the

historical nuance about mercury poisoning in hat makers which caused them to be referred to as “mad hatters.”

Committee Member Stodieck asked if there is a cure for mercury poisoning. Can the mercury be put in landfill and covered up? Mr. Bain responded that an adequate characterization of the mercury is important. The current standard is 80 ppm. Contaminated soil can be put in a landfill and covered with clean soil, then use environmental covenants to avoid digging into the contaminated soil.

Committee Member Frensdorff asked about infiltration of mercury into the water resources to water hay that is fed to cattle. Mr. Bain explained that the local form of mercury is not bioavailable.

Development of alternatives: Remedial alternatives were developed from the technologies most suitable to address the site-specific conditions for CRMS OU2. Four remedial alternatives were developed to address the risks, each utilizing technologies which are progressively more complex and costlier:

- Alternative 1 – No remedial action taken to address risks. EPA is required by law to consider this option.
- Alternative 2 – Land use controls (LUCs)/institutional controls (ICs) and monitoring.
 - No active remediation of the site.
 - Reduces exposure to risks by managing site activities.
 - Land use controls such as fish and wild plant advisories, stop commercial fishing, stop stocking sport fish, and wild plant/waterfowl consumption advisories.
 - Soil sampling and management for construction activities.
 - Monitoring of surface water and sediments.
 - Implementation will require the active involvement of principal stakeholders.
- Alternative 3 – Limited areas of riverbank stabilization with sediment excavation and disposal, LUCs and monitoring.
 - Everything in Alternative 2, plus:
 - Annual inspections will be performed as part of the long-term monitoring program. The inspections will include identification of areas of new erosion from major flood events or high flow conditions.
 - Limited areas of riverbank stabilization with sediment excavation and disposal (or beneficial reuse such as road bed construction).
 - Stabilization of the riverbank using rock, a vegetative cover, or a combination of rock and vegetative cover as appropriate for the location.
- Alternative 4: Limited areas of riverbank and river bed removal and disposal, riverbank stabilization, LUCs, and monitoring.
 - Everything in Alternatives 2 and 3, plus:
 - Removing limited areas of riverbed to capture contaminated riverbed sediments for permanent removal from the Carson River drainage.
- NOTE: Alternatives 3 and 4 do not apply to the terminal wetlands.

What comes next?

- Complete the Feasibility Study report (Dec 2018)
- Additional outreach in the spring

- Using the nine Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) aka SuperFund criteria, determine a preferred remedy plan (“alternative”)
- Present the Proposed Plan to the public and hold a formal comment period (fall 2019)
- EPA Record of Decision (remedy plan) and response to comments (2020)
- Design the remedy (2021)
- Implement remedy (2022)
- Outreach, reuse, and redevelopment (ongoing).

Committee Member Schank noted that to make this work in Lyon County and Churchill County, you need to get the county governments to sign on. There needs to be a county permitting process for building in those areas. Mr. Bain mentioned that the EPA met with the new Churchill County Manager about working on permitting in specific areas of concern.

Committee Member Johnson asked about mapping the mercury hot spots. Mr. Johnson noted that liability is a concern of county commissions. Mr. Freeman offered to provide more information if someone wants to talk with him.

No action required on this item; receive and file.

Item #20 – For Possible Recommendation: Update on the Amicus Brief regarding the Public Trust Doctrine. Pat King explained that Gordon Depaoli is writing the opposition documents for Lyon County. Mineral County just filed their brief in opposition. Our amicus brief is scheduled to be filed in early February 2019.

Mr. King explained the origins of the public trust doctrine. From ancient Roman law there is a restriction on the right of government to interfere with public access to oceans, etc. One of first public trust doctrine cases in the United States was where the government dedicated a portion of land in Illinois to the railroad but that would interfere with the public’s access to lake. Waterways are held in public trust. The Court is now asking Nevada how they review the public trust doctrine. The State Engineer considers the public interest in his decisions. There is a question of whether water which has been decreed is subject to the public trust doctrine. When brought into question, the Court will decide. If the Court decides that the public trust doctrine prevails, they aren’t taking into consideration where the water is going to come from.

Director Stodieck asked if other states have gone through this. Mr. King responded that several other western states have tried to put limitations on the public trust doctrine through legislative action.

On the “taking” issue, since Nevada water law fundamentally says water belongs to the people, your water right allows you to use the water. They aren’t taking away the right to use water, they are just taking the water. The threat is that this case could take down not only the Alpine Decrees but all decrees. Mr. James explained that they are trying to consider the public trust doctrine as a super senior water right.

Several counties want to join the CWSD in the amicus brief. Judge Jones dismissed the complaint stating that Mineral County doesn’t have standing. But when it was appealed and went to the Ninth

Circuit Court, the three judges said Judge Jones was biased against the federal government and when they send the case back it cannot be heard by Judge Jones.

Mr. James will send the draft amicus brief to the CWSD Board. Lawsuits are very expensive, so there is a concern that people who don't have money to defend their position will automatically lose to those who have the money to press their case.

No action required on this item; receive and file.

Item #21 – Discussion Only: Public Comment. None.

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

Item #22 – For Possible Action: Ratify the hiring of MacLeod Watts, Inc., Actuary firm to calculate OPEB liability. This item was discussed earlier in the Agenda as Item #17.

Item #23 – For Possible Action: Approval of the FY 2017-18 Audit as presented by Kohn & Company. This item was discussed earlier in the Agenda as Item #18.

Director Schank made the motion to approve Items #22 and #23 The motion was seconded by Director Johnson and unanimously approved by the Board.

Item #24– Discussion Only: Staff Reports

General Manager – Mr. James reported:

- At the next Board meeting Committee Member Osborne will give an overview presentation regarding the Truckee Reno Industrial (TRI) Complex.
- Mr. James has been talking with Churchill County about their old flood maps and whether they might be interested in remapping the flood plain. We may want to include it as a project for FEMA MAS #10 funding.
- There are already a lot of Bill Draft Requests (BDRs) for the 2019 Legislative Session. Mr. James will schedule a CWSD Legislative Committee meeting in February to go over what might be of interest to follow for CWSD.
- The December 19 Board meeting will be preceded by a catered Christmas dinner like last year. It will cost around \$20/per person.
- Steve Thaler asked about Jason King retiring as State Engineer and who might replace him.

Correspondence – As included in the Board package and handed out at the meeting.

Item #25- Discussion Only: Directors' Reports – None.

Item #26 – Discussion Only: Update on activities in Alpine County. none

Item #27 – Discussion Only: Update on activities in Storey County. Committee Member Osborne reported:

- Virginia City's new water pipeline from Five Mile Reservoir to the water treatment plant is now online.

Item #28 – Discussion Only: Public Comment. Director Roberts requested that the EPA presentation be sent to the Board so those who attended by teleconference could read it. Staff will send it by email.

There being no further business to come before the Board, Director Thaler adjourned the meeting at 11:40 a.m.

Respectfully submitted,

Toni Leffler
Secretary