

CARSON WATER SUBCONSERVANCY DISTRICT
BOARD OF DIRECTORS AND
CARSON RIVER/ALPINE COUNTY WATER SUBCONSERVANCY
JOINT POWERS AUTHORITY BOARD MEETING
October 18, 2017, 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 Room 202 of the NAI Alliance offices, 1000 N. Division St., 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
Ken Gray
Doug Johnson
Barry Penzel
Chuck Roberts
Ernie Schank
Fred Stodieck
Steve Thaler

Directors not present:

Don Frensdorff

Staff present:

George Benesch, Legal Counsel
Edwin James, General Manager
Brenda Hunt, Watershed Program Manager
Toni Leffler, Administrative Assistant/Secretary to the Board
Debbie Neddenriep, Water Resource Specialist II
Louise Thompson, AmeriCorps Member - Watershed Tech

Also present:

David Griffith, Alpine County
Don Jardine, Alpine County
Mike Salogga, Carson City Senior Center

The Pledge of Allegiance was led by Director Schank.

Item #4 – Discussion Only: Public Comment – Director Penzel mentioned that recently the Washoe Tribe tried to post signs at the edge of their property that the water on the East Fork is not fit for drinking, saying that a spill at Leviathan Mine had polluted the river during the flooding events. Don Jardine noted that the LRWQCB stated that it did not spill. [Note: Mr. Jardine found out that there were two spills last winter. One spill was contained on-site, and the other spill did flow into Leviathan Creek.]

Brenda Hunt introduced Louise Thompson, the new AmeriCorps member working with CWSD staff on a full-time basis until next June. Ms. Thompson said that she has an educational background in psychology and has worked in wildlife and fisheries. She chose this AmeriCorps assignment because she has found water management to be interesting and is here to learn.

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

Item #6 – For Discussion and Possible Action: Approval of the Board Meeting Minutes from September 20, 2017. *Director Schank made the motion to approve the minutes of the September 20, 2017, Board meeting. The motion was seconded by Director Johnson and unanimously approved by the CWSD Board, with Director Bonkowski abstaining for not having been at that meeting.*

CONSENT AGENDA

Item #7 – For Possible Action: Approval of Treasurer’s Report for September 2017.

Item #8 – For Possible Action: Payment of Bills for September 2017.

Item #9 – For Possible Action: Approval of CWSD’s Revised Criteria for Selecting Board Officers.

Item #10 – For Possible Action: Approval of CWSD’s Policy for Selecting Committee Members.

Item #11 – For Possible Action: Renewal of the General Manager’s Employment Contract.

Item #12 – For Possible Action: Approval of Revised CWSD Regional Water System Policy.

There was no public comment. *Director Schank made the motion to approve Items #7-12 of the Consent Agenda. The motion was seconded by Director Stodieck and unanimously approved by the CWSD Board.*

END OF CONSENT AGENDA

RECESS TO CONVENE AS THE CARSON RIVER/ALPINE COUNTY WATER SUBCONSERVANCY JOINT POWERS AUTHORITY BOARD

Item #13 – Roll Call – Director Abowd convened the Carson River/Alpine County Water Subconservancy Joint Powers Authority (JPA) Board and a roll call was taken.

JPA Directors present:

Karen Abowd, Chairman
Brad Bonkowski
Carl Erquiaga, Vice Chairman
Ken Gray

David Griffith
 Don Jardine, Treasurer
 Doug Johnson
 Barry Penzel
 Chuck Roberts
 Ernie Schank
 Fred Stodieck
 Steve Thaler

Directors not present:

Don Frensdorff

Item #14 – Discussion Only: Public Comment – None.

Item #15 – For Possible Action: A workshop to discuss possible organizational structures for Alpine County and CWSD to work together on watershed issues. Mr. James explained that the Board has been talking about how to structure our agreement with Alpine County and introduced Mike Salogga as highly recommended by Carson City to facilitate this process.

Mr. Salogga stressed that this is intended to be a conversation, not an action item. He explained his experience and credentials for facilitating a process like this. The conversation can be strategic and tactical by asking a series of questions. Why do we do what we do? Why do we exist? What is our value? Where are we going? Are we on the right track? What's working right and what needs some changes?

Director Abowd noted that it is important to address these questions in the spirit of transparency and compliance with Open Meeting Laws and it needs to be better defined because institutional memory that will fade.

Director Roberts noted that the conflict comes when defining whether we are talking about CWSD or Joint Powers Authority business.

Mr. Salogga commented that he likes the idea that everyone, from headwaters to terminus, be involved. Director Jardine commented that he views the Carson River as one large watershed. A reason work on clean up at Leviathan Mine is because what happens in California flows downstream. Director Griffith agreed that the consensus of the group is that we all want to look at as watershed. The problem is with how to get there legally.

Director Schank commented that the CWSD Board is very successful in what has been accomplished over the past 15-20 years. Before this Board came together with Mr. James as General Manager, everyone was provincial. This has been a fun board that has accomplished a lot with relationships between counties which had been damaged. We don't want to be so tied down that we are all about mechanics and not about substance.

Director Penzel addressed Board composition and wondered why the tribal chair is not involved. He also noted that Storey County has not been as regular a participant since the controversy began. We need to enlarge the conversation.

Director Stodieck noted that prior to this controversy, we were moving forward. This controversy is a step back. Do we need to just change the name of the CWSD to encompass the entire watershed? George Benesch responded that we can't change name without the legislative process. Mr. Salogga commented that a name change is a place to start but more homework needs to be done after deciding who you want to be known as in the community. Mr. Benesch recalled that before Mr. James, there was a General Manager under contract and all the work went to his firm. The CWSD has progressed to be a poster child for what a watershed should be; everyone gets along.

Director Thaler suggested that CWSD may not be the only organization who serves more than one county and state and that we might want to look at other agencies. Mr. James noted that the only other agencies which cross state boundaries do so by court order or federal action. We are unique because we work from the ground up instead of from the government down. Director Schank emphasized that we don't want to make anyone (Alpine County) feel like second-class citizens and not equal.

Director Johnson noted that he doesn't feel it is necessary to take anything back to the Legislature to make changes. He asked what other forms of a full board can we do besides the JPA to keep the organization legal and get back to functioning well the way it has been for 19 years.

Director Penzel asked for the group to identify what problem we are trying to cure. Director Abowd responded that we want equal representation for everyone, including Alpine County and Storey County. Director Gray asked the intent. If the intent is to work as a blended family and we are operating as what it was intended to be, where's the problem? Mr. Benesch responded that, from legal standpoint, when the idea of Alpine County working with CWSD came up, he met with the Alpine County counsel to come up with an instrument that would work and the Joint Powers Agreement (JPA) was the result. It was submitted to Nevada Attorney General's (AG) office who determined that it was compliant with Nevada law, and Alpine County did the same to verify that it met California requirements. At the time the instrument wasn't challenged, and since that time there have been many inquiries from other groups about how to make their organization work similarly. Recently the AG's office declined to give an advisory opinion on CWSD's open meeting law compliance. He doesn't foresee a big problem. Previously we just convened the Joint Powers Authority Board in the beginning of the meeting and functioned as one big happy family.

Mr. James noted that the JPA needs clean up language, but the structure would stay the same. Mr. Salogga comment that he was hearing that most people are happy with the way it was.

Director Gray brought up the idea of risk vs. reward for changing the organization. He felt that there is a risk of creating waves. Director Roberts talked about qualified immunity as applying when you "color within the lines" but when not operating within the law, you are subject to a lawsuit, particularly if you have been put on notice. This Board doesn't understand the mechanics of how we operate. We have two separate entities, one by interlocal agreement. He pointed out that the JPA Exhibit A isn't accomplishable. Director Thaler noted that we are assuming that we are doing something wrong. He agrees with Director Gray; if someone wants to file an Open Meeting Law violation complaint, they should do it and let the AG's office rule. Director Roberts noted that we aren't even following the contract that we have. If the goal is to usurp the Legislature, we are setting ourselves up to problems. He said that he read through the Open Meeting Law and quite a few court opinions about it, and he believes that we are closer to having the proper name now.

Mr. Salogga stressed that this group has the intent of doing the right thing and, secondly, we are willing to fix any problem as an organization. If mistakes have been made in the past, they are learning opportunities, or we are going to fix it.

Director Penzel addressed another issue: the intent to usurp the Legislature. We have no desire to do that. The problem we have is that the Board is responsible to direct Mr. James and to oversee the river activities. The methodologies should be within the law that make sense. We must rely on our attorney to provide direction. Mr. Benesch commented that he doesn't think that we are as far off as Director Roberts suggests.

Director Roberts addressed his concern that twice or three times the Board has directed that Director Roberts and Mr. James sit down with another attorney to discuss the JPA. If we want to use the JPA, we just need to be following it. Mr. Salogga noted that the Administrative Committee has been addressing the JPA through a process. How much more is needed? Director Abowd responded that it is a tactical approach that needs tweaking to make it crystal clear that we are staying within our boundaries.

Mr. Benesch stressed that CWSD wants to be in government compliance which includes the Open Meeting Law. We've gone through the process of verifying that we are compliant by revising the agenda to create two meetings. Mr. James agreed that the JPA language needed to be tweaked, including Exhibit A. Mr. James proposed using the 11 Guiding Principles which every county has adopted as the revised language for Exhibit A.

Director Bonkowski asked if we are doing something wrong, how do we fix it? This issue has impacted CWSD's ability to get work done. Mr. Bonkowski suggested assigning this to committee and let the board continue with business.

Director Erquiaga asked who is to make the determination that we are doing something wrong? The response was a neutral third party. Director Stodieck asked what better specialty attorney is there on the Open Meeting Law than the Attorney General? Mr. Salogga suggested continuing the process by having the Administrative Committee finish work based on feedback from this meeting and work with Mr. Benesch for legal advice. Director Gray noted that before Administrative Committee does any further work, Mr. Benesch should have given his opinion first. Mr. Benesch explained that he tried to get a laundry list of Director Roberts's concerns but never got it. He feels it is an artificial problem that he doesn't feel is as serious as Director Roberts thinks it is. This is a government entity doing what it is supposed to do, getting along and doing what's best for the watershed.

Director Penzel suggested a solution of withdrawing Douglas County from this Board until we get an opinion from the Douglas County District Attorney. We operate under several Nevada Revised Statutes (NRS). Until you ask the right questions, you are not going to get anywhere. He suggested taking a county's agenda as a template. There are a host of other things that need to be addressed with an attorney who specializes in that.

Director Thaler commented that we hear Director Roberts's concerns and we have a qualified legal counsel who we are paying him to give us good advice. Director Roberts noted that we are asking the same person who wrote the JPA to look at it for what's wrong with it. Mr. Salogga noted that Mr. Benesch and the Administrative Committee do not have a bullet point list of the concerns.

Director Griffith suggested retaining an outside attorney to look at this problem. Director Roberts offered to sit down with Mr. Benesch to go through the NRS. He needs to be able to present his questions directly. If we stay within the parameters of Exhibit A of the JPA, meet the Open Meeting Law requirements, and address workers comp, he has no problem.

The next steps are for Mr. James, Mr. Benesch, and Director Roberts meet, make a bullet list of concerns, take it to Administrative Committee, and bring recommendations to the Board. Director Johnson stressed that we need to follow the advice of our legal counsel. Director Roberts commented that it is now a matter of how Mr. James structures business until the JPA is modified.

Director Schank asked how we can involve Storey County to get their input and not break any laws. Mr. Salogga suggested that be added as a bullet point. Director Roberts suggested an alternative structure for involving whomever we want; create a subcommittee and convene the subcommittee instead of the Joint Powers Authority Board in the CWSD meetings.

Item #16 – For Possible Action: Possible recommendation after review of the proposed five-year budget for future planning purposes. Mr. James explained that this item was reviewed by the Finance Committee. The proposed budget plan is a strategic planning directive of where we want to go in the future. Mr. James gave a PowerPoint presentation. Income is from ad valorem taxes, grants, and interest. Until FY 2009-10, ad valorem taxes were increasing but then decreased for several years. Today's income from ad valorem taxes is still less than in FY 2009-10. CWSD's 2011 commitment to pay \$125,000/yr. for 20 years to both Douglas County and Carson City for the pipeline has taken up funds that would be used to replenish the Acquisition/Construction and Floodplain Management Funds.

The priorities determined from the Strategic Planning session include:

- #1 – floodplain management and, with equal votes, Carson River rehabilitation and stabilization
- #2 – regional water supply and, with equal votes, data collection
- #3 - regional. water quality

The five- year budgeting process on page 70 of the Board package reflects the net of what staff gets. The FEMA grants are keeping up the flood priorities.

The Floodplain Management Fund is to deal with flood projects. Projects already committed from that fund include \$40,000 for Hwy 88 in Minden, \$167,000 for 2017-18 conservation districts flood repair projects, and \$50,000 for the proposed Churchill County 100-yr flood flow calculation. The five-year budget proposes to put \$160,000 back into Floodplain Management Fund.

Mr. James reviewed the future integrated project priorities:

1. Pursue legislation regarding the Carson River Channel. We are working with various stakeholders regarding this issue.
2. Become more active in federal and state legislative action. Staff is monitoring legislative action.
3. Update perennial yield for the various groundwater basins. The State Engineer recommends holding off to see what comes out of litigation on the Humboldt River.
4. Analysis of potential surface and groundwater storage sites. Mr. James will talk to the Finance Committee about next year's budget to bring in someone to categorize what is available and what opportunities to pursue.

5. Evaluate how to modify river grade control structures for fish, sediment, and recreational bypass.
6. Conduct surface and groundwater quality studies. CWSD is working with USGS to collect water quality data.
7. Continue funding the Watershed Literacy Campaign. This is ongoing.
8. Others: Upper watershed forest health and study the feasibility of creating erosion compensation fund.

Mr. James mentioned that this year's flooding pointed out the need to better understand who is responsible for maintaining the repairs to the river. It is important to all of us to have a plan in place for dealing with the next flood. Director Abowd asked if we are talking with the right State people. Mr. James responded that he has been talking with the State Lands Director. Director Schank suggested talking with a variety of State agencies to simplify some of the permitting process to where there is some agreement among agencies. Director Jardine asked to keep California Fish and Game in the conversation about storage in Red Lake. Mr. James noted that California Fish and Game owns some of the largest water rights storage facilities in Alpine County but has limited funds to manage Red Lake.

The Board had no further comments or directions to give staff.

Item #17 – Discussion Only: Public Comment. None.

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

Item #18 – For Possible Action: Approval of CWSD's Revised Policy for Director Meeting Compensation. Mr. James explained that this topic was brought up to the Administrative Committee at the July meeting, but the item was tabled for more discussion. At the September Administrative Committee meeting, the committee reviewed the policy. Included in the Board package was the proposed changes to the policy.

There was no public comment. *Director Schank made the motion to approve CWSD's Revised Policy for Director Meeting Compensation. The motion was seconded by Director Stodieck and unanimously approved by the CWSD Board.*

Item #19 – For Possible Action: Authorize CWSD to pursue Nevada Department of Agriculture grant for Invasive Species control. Ms. Hunt explained that the Nevada Department of Agriculture (NDA) is planning to put out a Request for Proposals (RFP) for a grant of perhaps \$25,000 for the whole state. Even though it is a small amount, staff needs authority of the Board to go after the grant and work in tandem with Carson Valley Conservation District (CVCD) for work in Eldorado Canyon.

Director Bonkowski made the motion to authorize CWSD to pursue a Nevada Department of Agriculture grant for Invasive Species control. The motion was seconded by Director Penzel and unanimously approved by the Board.

Item #20 – For Possible Action: Review of the proposed five-year budget for future planning purposes. This topic was discussed under Item #16. There was no further Board or public comment.

Item #21 –Discussion Only: Staff Reports

General Manager - Mr. James reported:

- He has been meeting with water purveyors. He will bring a presentation to the CWSD Board in November, and then give it to all the water purveyor boards.
- Staff has been putting together the Carson River Water Summit in January of 2018 to talk about future water issues. The water summit will be held in the Nevada Room at the Governor’s Mansion.

Brenda Hunt reported:

- Snap Shot Day will be on Fri., 10/20/17. Water testing will occur at 11 sites throughout the watershed and CWSD staff will participate.
- Flood Awareness Week is the week of 11/12/17. There will be events at Lloyd’s Bridge involving children from the Carson Montessori School on 11/13/17, and at the Douglas County Community Center in Gardnerville on 11/14/17, among others.

Legal –Mr. Benesch had nothing additional to report.

Item #22- Discussion Only: Directors’ Reports

Director Penzel suggested that future meetings about Douglas County water with Ron Roman and Nick Charles, also include Eric Nilssen.

Item #23 – Discussion Only: Update on activities in Alpine County. Director Griffith reported that the Alpine Biomass Committee working group in the Carson Ranger District have been working with the people looking for signs of plague and insects in the forest, and the report came back clean.

Item #24 – Discussion Only: Update on activities in Storey County. There was no public comment on this item.

Item #25 – Discussion Only: Public Comment. Debbie Neddenriep reported that the Alpine Aspen Festival was wonderful and CWSD staff was happy to participate.

There being no further business to come before the Board, Director Johnson made the motion and the meeting was adjourned at 8:21 p.m.

Respectfully submitted,

Toni Leffler
Secretary