

CARSON WATER SUBCONSERVANCY DISTRICT
REGIONAL WATER SYSTEM & FLOOD COMMITTEE
August 13, 2018, 9:00 A.M.

Meeting Minutes

Directors Present:

Brad Bonkowski, Carson City
Ken Gray, Lyon County
Austin Osborne, Storey County
Ernie Schank, Churchill County (by teleconference)

Directors Not Present:

Barry Penzel, Douglas County
Fred Stodieck, Douglas County Ag

Staff Present:

Ed James, General Manager
Patrick King, Legal Counsel
Toni Leffler, Administrative Assistant

Others Present:

Jason Wierzbicki, Storey County

Committee Member Bonkowski called the meeting of the Carson Water Subconservancy District's Regional Water System and Flood Committee to order at 9:00 a.m. in the Conference Room of Carson Water Subconservancy, 777 East William Street, Suite 110, Carson City, Nevada. A quorum of the Regional Water System and Flood Committee was present in person or by telephone.

Item #3 – Discussion Only: Public Comment - None

Item #4 - For Possible Action: Approval of the Regional Water System and Flood Committee Minutes from August 29, 2017. *Committee Member Osborne made the motion to approve the Regional Water System and Flood Committee Minutes from August 29, 2017. The motion was seconded by Committee Member Schank and unanimously approved by the Regional Water System and Flood Committee.*

Committee Member Gray arrived at 9:10 a.m.

Item #5 - 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 explained that he received a letter from Gordon DePaoli representing the Walker River Irrigation District. Mineral County and environmental groups have asked for a court order that a minimum amount of 127,000 acre/feet of water per year be reserved to go to Walker Lake. In dry years there isn't even that much water coming into Walker Lake.

An example of the use of the public trust doctrine is the Mono Lake ruling that there was a public trust benefit to Mono Lake and Los Angeles had to reduce its water use. In the Mono Lake case, Los Angeles had another source of water supply, so the ruling was in favor of Mono Lake.

The amicus brief is a legal document which is beyond staff's knowledge to create, so Mr. James recommended that Mr. King be authorized to draft an amicus brief on CWSD's behalf.

Mr. King explained that in ancient times, the government owned the natural resources being held in trust for the public. The doctrine has been expanded to apply to all natural resources, whether government or privately owned. Does the public trust doctrine trump private ownership rights?

Mr. Gray asked if this would be considered a "taking." Mr. James responded that in the Mono Lake ruling it was not considered a taking. The court indicated that it is not a taking of property but only providing limitations on when the water can be used.

Mr. Gray asked whether the government would compensate the water right owners for the use of their water. It was noted that there were bigger issues involved. In this case, the water users on the Walker River have no alternative water source other than the Walker River. The farmer would not be able to farm and would lose his livelihood, not just water. Also, the communities of Smith Valley and Mason Valley would have no municipal water.

Mr. James pointed out that the biggest concern is that if the public trust doctrine was used on the Walker River, it opens up the possibility that the same argument could be used on the Carson River.

Mr. Schank suggested that because of the ramifications to all water systems Mr. King should look at the Supreme Court decision on Nevada v. United States in 1983. Mr. Schank also mentioned that the courts ruled that the "winter" doctrine does not apply to the Pyramid Lake Paiute Tribe. The U.S. claimed they own the water, but the Supreme Court ruled that the U.S. might have a lien on the water, but the ownership is with the person who purchased the water right. Mr. Schank plans to go with the Truckee Carson Irrigation District's (TCID) General Manager, Rusty Jardine, to a meeting with the Nevada Attorney General if it can be arranged.

Mr. King noted that a ruling in favor of the public trust doctrine opens the opportunity to fight all previous decrees. The Ninth Circuit Court asked the question of whether the Supreme Court wishes to hear the case, which it does.

Mr. Bonkowski asked how much the annual average flow is into the Walker Lake. Mr. James responded that he is analyzing that and will have the number at the Board meeting. Regarding the argument that those who would lose the use of the Walker River water could use groundwater, the State Engineer has determined that the groundwater is over-allocated. There are no other alternatives sources for water to Walker Lake.

Mr. Schank noted that on the Truckee River there are other ramifications, including the potential that the doctrine to Lake Tahoe could be affected and water might not be released into the Truckee River.

Mr. King explained that the rule on filing an amicus brief is that it must be by a governmental agency. CWSD wants to look at the bigger picture to determine what argument is most important for the court to think about. Mr. Schank commented that the overarching issue is the financial stability of northern Nevada. He suggested looking into the water right settlement in the Truckee River Operation Agreement (TROA) to see if there is anything in that document to preclude Mineral County's effort.

Mr. King will give an estimate of his time and the cost of creating the amicus brief which is beyond the scope of normal legal services which are included in his monthly retainer.

Mr. Gray asked whether the full court or a three-person panel of the Ninth Circuit Court remanded this case to the Supreme Court. After some conversation about this, Mr. Bonkowski noted that since this was the second hearing of this case, it was probably the full court.

Committee Member Schank made the motion that the Regional Water System and Flood Committee recommend to the Board that CWSD direct Patrick King to draft an amicus brief in 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 and that CWSD seek each county's support. The motion was seconded by Committee Member Gray and unanimously approved by the JPA Board members of the Regional Water System and Flood Committee.

Item #6 –Discussion Only: Public Comment.

Item #7 – Adjournment. There being no further business to come before the Regional Water System and Flood Committee, Director Schank made the motion to adjourn, and the meeting adjourned at 9:45 a.m.

Respectfully submitted,

Toni Leffler
Secretary