

Minutes of the Casitas Municipal Water District
Board of Directors Meeting Held
April 25, 2007

A meeting of the Board of Directors was held April 25, 2007 at Casitas' Office, Oak View, California. Directors Baggerly, Word, Handley and Kaiser were present. Director Hicks was absent. Also present were Steve Wickstrum, Interim Co-General Manager, Rebekah Vieira, Clerk of the Board, Interim Co-General Manager; and Attorney, Rob Sawyer. There were four staff members and 5 members of the public in attendance. Director Baggerly led the group in the flag salute.

1. Public comments.

Paul Jenkin reminded the Board that at the meeting last Thursday I requested that the vote be known so we know who voted for what in closed session. That has now been made clear in newspaper articles. I remind all of you as elected officials of a public agency your duty is to act in the public trust, balancing all the issues and insuring that we are not losing some of the most important public trust assets in the Ventura River. It appears that a lot of the decision has been made on misinformation, exaggeration, talk of the lake drying up. We know that the BO has safeguards that whatever additional water is released for steelhead will not dry up the lake. Money is not going to buy any more water. This is not about water. Releases required by BO are water that is required to mitigate for past and current impacts due to diversions of the river and operations of Casitas facilities. I was looking back at the original studies. 3,100 acre feet of water is the trial amount to be released. Looking at 3,100 feet additional in wettest years. Water is not just for fish but to keep water in the river. We have a dry river there. People do not like to see a dry river. I believe the lawsuit was based on a false premise, that water is yours as if you are a private party entitled to take water from the river for your profit. It does not add up. I did see an op ed that was published by Director Kaiser and there are some things that rang true to me. The conclusion of the piece is we need to cooperate in order to create our long term sustainability. I ask Director Kaiser how this lawsuit will affect the relationships with other agencies and the public. How can we begin the dialog to devise the strategies to ensure the balance of the issues? To date this district has taken an adversary role, including the removal of Matilija Dam. Director Word, how do you feel this suit protects the public trust? I was going to ask Bill Hicks what he wants from this lawsuit and how it will end up securing our water supply in the future. I welcome any comment on these things. Issue of public trust is first and foremost in our minds as we move forward. The way this district has been operating in the past is not conducive to moving in the future.

Alasdair Coyne representing Keep Sespe Wild commented that Pete Kaiser called me up three years ago and he sought to use my name in his advertising and in his campaign for a more environmental approach. He used my name. He voted against the suit and then twice this spring I called Pete Kaiser and asked his position on the suit and when he would terminate it and he has been a swing vote on that issue. The response was terminate either before or after a ruling was made. I am curious why he had voted to continue this appeal. In the papers it stated economic grounds. Whose interest does he represent?

President Baggerly asked if anyone wished to respond. There was no response.

Park Services Manager Brian Roney presented large copies of checks from the Department of Boating and Waterways for \$108,000 and \$146,000. Four years ago this was written off as bad debt reimbursement for the Santa Ana grant project. Brent Doan's dedication and hard work paid off. President Baggerly thanked him. Director Word expressed thanks for the extra effort and work with State of California to obtain those.

2. Board of Director comments.

Director Handley commented on the Brown Act and actions in closed session. When elected to the position I was given guidelines for following the Brown Act – Open and Public. Read into the minutes for reference. Chapter 6 closed sessions under pending litigation states that protection of the attorney client privilege cannot itself be the reason for closed session. The rules that apply to holding a pending litigation closed session involve complex technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in pending litigation. While the issue is not absolutely clear, the Attorney General believes that if the agency's attorney is not a participant, a pending litigation closed session cannot be held. Maintain confidentiality of closed session discussions and permits that final votes be reported publicly. There were several closed sessions in recent weeks and the act states no body shall take action by secret ballot. I am concerned that we have had potential violations in the past. I don't feel comfortable serving on a board where violation of state statute is taking place. A couple of times in the last few meetings and in closed session and the question of what unrestricted reserve are of the district. When the auditor was here he reported it was \$8 million, Mr. Johnson said it was \$4 million. It is important for the board and the public to know what the actual amount is. This can be either in the budget or the audit. It is something that we can base our decisions on.

President Baggerly reported on the diligence of board member Rich Handley looking into the Brown Act and discovering with the Attorney General that there was a Brown Act violation in the Apr 19th meeting. The vote of the Board members present was not reported out and there were other issues that were not reported out as well. The other issues would not have prejudiced this board in the litigations. In an effort to cure that alleged violation we are now reporting out the following. This is from the Public Information Officer and a press release that went out yesterday afternoon. Casitas Board Appeals Water Rights Decision. Ojai Valley, California – Casitas Municipal Water District's Board of Directors on Thursday, April 20, 2007 in closed session approved a motion to appeal a water rights ruling. On a three to two vote (Ayes Pete Kaiser, Bill Hicks and Jim Word and Nays Russ Baggerly and Richard Handley), the Board directed its attorneys to (a) seek certification of the March 29 order, and, provided such certification was granted, (b) appeal that order to the Court of Appeals. Then it goes on to explain a little bit about the case. I hope this cures the potential for Brown Act violation and my review of the Brown Act did not reveal a specific cure in section 54957.1 (a) 2 . There was not a specific cure for the violation.

Director Word asked if you left before I did on the 19th. It was reported. President Baggerly stated it did not report the votes. The specific section calls for the reporting out of each members vote.

Attorney Rob Sawyer stated I have been asked by people in the media and the information provided when we reconvened public session was composed by me and not by the board or any employee. It was determined after the meeting was concluded that section 54957.1 (a) 2 requires that if an action is taken to direct counsel to pursue an appeal the action and the vote and identities must be revealed. This was not provided. Any failure of the board was solely the responsibility of agency counsel. This was brought to counsel's attention, researched and steps were taken to get the word out as soon as possible. In the event of a prosecution for a Brown Act violation it may be cured in 30 days. There must be intent on the part of Directors to violate the law. The omission of the announcement was solely on the part of agency counsel and not on the board or agency managers. This district has never taken closed session vote on secret ballot. This has not happened to my knowledge. Votes are taken and unless the law provides that they do not need to be announced in public session they are announced. Procedural votes would not have had to have been made public. Not only the step of certification but also self executing it was required by law to be reported and now has been reported. Agency counsel apologizes to the Chair and to Board of Directors. Director Handley thanked Rob for taking action so quickly.

3. Consent Agenda

ADOPTED

- a. Minutes of April 11, 2007 meeting.
- b. Recommend approval of a purchase order to Airwave Adventures Inc in the amount of \$8,620.25 for the installation and operation of a wireless internet access service.
- c. Resolution authorizing membership in State Water Contractors, Inc and payment of the Bay Delta Dues in the amount of \$13,935 for 2007-2008.
- d. Recommend approval of leak relief to Lawrence and Lorraine Mohr.
- e. Recommend authorization for attendance at the California Urban Water Conservation Council workshop on BMP 11 – Conservation Rate Structures being held April 27 in Santa Ana or May 1st in San Rafael.
- f. Recommend approval of a purchase order to Alliance Contracting in a not to exceed amount of \$18,980 for the construction of the Vaki Riverwatcher shroud.
- g. Recommend approval of sending out a request for proposal for a Water Conservation Rebate Program.
- h. Resolution approving an agreement with Earthplay Learning Adventures, LLC for the operation of the Earthplay Tour Boats concession at Lake Casitas Recreation Area.
- i. Recommend rejection of bids for Garden Tank Replacement Specification 07-301 and seek lower cost options.

Director Word asked that item h be considered separately.

Brian Roney represented item h seeking the approval of an agreement with Earthplay for the operation of the tour boat. Earthplay has entered into an agreement

with John Taft to take over ownership with option to purchase not less than 6 months. Capable of carrying forward, with the intent of the board, to offer educational and wildlife tours on the lake. Issue that came up was to alter the terms of the initial rent to none for the first three months and then 50% for the following three months rent. Then they would pay the full rent. The agreement is identical to what was offered to Santa Barbara Botanic Gardens with exception of first six months rent. The only issue outstanding is the rent still due from Santa Bar. Botanic Garden. We want to separate the issues and we will pursue payment through SBBG or Center for Earth Concerns. SBBG considered the previous agreement terminated and walked away. Technically they were on the hook. Director Word asked what leverage you have. Mr. Roney said if the agreement is approved we would like to go after them and small claims as they still owe us the money. Director Kaiser added the committee supported this strongly and he encouraged the board to accept this item. Director Word added he is happy to see something transpire. It is listed as electric boat. What is the status and how will it be maintained? Mr. Sandoval, Executive Director for Earthplay answered it is important to do our best to keep boat to full capacity to operate as electric boat. There are safety concerns such as high winds where the engine would be used but main power and main way of operating the boat will be electric engines. Only reason to use gas power would be to push through the winds or if there was trouble maneuvering the boat. Main objective is not to promote something but to follow through with the way it is promoted. Two electric engines are both operable. President Baggerly suggested that Mr. Sandoval keel Mr. Roney informed of the operational nature of the electric engines and asked Mr. Roney to report back to the board in 6 months to a year. He added that all certificates of insurance and registration of the boat should be reviewed to ensure we are listed as co-insured. Mr. Roney added it is still subject to DMV and proper insurance and other requirements such as licensing of captains and pfd's.

There was a suggestion by a board member that perhaps SBBG would trade some native plants for their debt. Director Handley asked if the boat is still legally owned by SBBG? Mr. Roney said yes, DMV records don't show a transfer of title. Director Handley stated the agreement with Botanic Gardens also included a building that would provide naturalist headquarters etc. Mr. Roney replied we had that in the original agreement that if in the event in the future, a kiosk or small portable building could be installed, to pursue educational nature of it and potential grant money. This is laying ground work for the future.

The resolution for item h was offered by Director Kaiser, seconded by Director Word and passed by the following roll call vote:

AYES:	Directors:	Kaiser, Handley, Word and Baggerly
NOES:	Directors:	None
ABSENT:	Directors:	Hicks

Resolution is numbered 07-22.

The consent agenda items a-g plus I was offered by Director Word, seconded by Director Kaiser and passed by the following roll call vote:

AYES: Directors: Kaiser, Handley, Word and Baggerly
NOES: Directors: None
ABSENT: Directors: Hicks

Resolution is numbered 07-23.

4. Bills APPROVED

On the motion of Director Word, seconded by Director Kaiser and passed, the bills were approved.

5. Committee/Manager Reports APPROVED FOR FILING
a. Recreation Committee Minutes
b. Executive Committee Minutes
c. Water Resources Committee Minutes

Mr. Wickstrum mentioned that the Water Resources Committee discussed the letter from Senior Canyon regarding changes to their water rates from ag to resale. They have asked to consider holding back that change. It is reasonable to incorporate the change in rates along with Prop 50 grant agreement. They were originally 90% Ag 10% resident. Now they are 90% residential, 10% Ag. Mr. Wickstrum suggested putting this in an agreement that addressed the Proposition 50 projects and bring it to the board.

On the motion of Director Kaiser, seconded by Director Word and passed, the Committee/Manager reports were approved for filing.

6. Resolution approving membership in California Special Districts Association in the amount of \$3,162.
NOT APPROVED

Mr. Wickstrum reported that the board took action not to pay this bill and the next morning we received e-mails from CSDA wanting us to be a part of their organization. There was discussion regarding benefits of membership and that no one had been going to any of the meetings.

Director Word moved to adopt the resolution but it died for lack of a second.

7. Information items:

Level of lake -4/16/2007 - -557.20 feet above mean sea level 9.80 feet below spill elevation); present storage is 228,202 acre feet (25,798 acre feet below full capacity of 254,000 acre feet, 101,202 acre feet above half capacity, or 89.84% full capacity.

- a. Recreation Area Report for March, 2007.
- b. CSADA Special District Legislative Days May 14-15 in Sacramento.
- c. Letter from Department of Water Resources acknowledging the district's 2005 Urban Water Management Plan is complete.
- d. ACWA advisory regarding court ruling halting state pumping operations.
- e. Report on the Snow Bird Program at Lake Casitas Recreation Area.

- f. Report from MWH regarding recommendations for the Fish Screen Cleaning System.
- g. News Articles of Interest
- h. Investment Report

Neil Cole and the board discussed the report from MWH on the fish screens. Mr. Wickstrum reported that some of these suggestions have been listed in the budget for Robles Diversion dam, with the time frame of June through October for completion.

Mr. Wickstrum reported that things are improving regarding the turnover in lake. We received 33 phone calls and the City of Ventura had numerous calls. The water tastes better in this building. It has to work its way through the system. Susan put in a lot of time, effort and concern regarding this.

8. Closed Session

- a. Conference with Legal Counsel -- Existing Litigation (Subdivision (a) of Section 54956.9, Government Code). Name of Case: Casitas Municipal Water District v. United States.
- b. Conference with Legal Counsel - Anticipated Litigation Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9 (one potential case).
- c. Conference with Real Property Negotiators (Section 54956.8):
District Designated Negotiators: Steve Wickstrum, Rebekah Vieira, Pete Kaiser, Bill Hicks
Property: Rights to operate Lake Casitas Recreation Area under Federal Water Project Recreation Act.
Negotiating Parties: Bureau of Reclamation
Under Negotiation: Lease, price, identification and nature of consideration, and terms of payment
- d. Conference with Legal Counsel – Existing Litigation (Subdivision (a) of Section 54956.9 Government Code. Name of Case: Aaron Stittler vs. Casitas Municipal Water District, Case number: CIV246325.

President Baggerly convened to closed session at 5:24 p.m. regarding government code section 54956.9 closed session item a. President Baggerly adjourned the closed session at immediately adjourned the meeting at 5:26 p.m. stating no action was taken during closed session.

Secretary