

# CARSON TRUCKEE WATER CONSERVANCY DISTRICT

Board Meeting  
October 9, 2018

## **DIRECTORS:**

Todd Westergard  
John Capurro  
Mike Nevin  
Karen Baggett  
Tyler Henderson  
Ernie Schank  
Pete Olsen  
John Enloe  
Ty Minor

## **ABSENT:**

Ed James

## **GUESTS:**

Lori Williams, Engineer  
Michael Pagni, Attorney  
Ron Penrose, Superintendent  
Brian Casci, FWM Office  
Staff

### **1. CALL REGULAR MEETING TO ORDER -**

President Westergard called the Regular meeting to order at 10:00 a.m.

### **2. PUBLIC COMMENT – None**

### **3. APPROVE AGENDA –**

Director Schank made a motion to approve the posted agenda; seconded by Director Nevin; motion carried.

### **4. APPROVAL OF MINUTES AND CHECKS WRITTEN –**

Director Capurro made a motion to approve the September 2018 Minutes and financial statements as submitted and checks written on Bank of America #9509- #9514 and Nevada State Bank #2862 - #2866, motion seconded by Director Baggett; motion carried with Directors Schank and Olsen abstaining as they were not at the previous meeting.

### **5. FEDERAL WATERMASTER'S REPORT – Brian Casci**

*A complete copy of the Water Report is available at District Offices or on the internet at [troa.net](http://troa.net).*

Beginning October 1 rates went down to 400cfs. Boca and Stampede are both below flood level at this time. Prosser needs to be dropped to 9800 by November 1.

### **6. DISCUSSION AND POSSIBLE ACTION REGARDING “MONO COUNTY V. WALKER RIVER IRRIGATION DISTRICT: ORDER CERTIFYING A QUESTION TO THE SUPREME COURT OF NEVADA” AND POSSIBLE ACTION BY CTWCD– Todd Westergard/Mike Pagni**

There was discussion last meeting on whether the Board was interested in filing an Amicus Brief. There are several entities that have indicated that they will and are currently working on Briefs and would be interested in working with CTWCD on this. There was discussion last month about cost and Attorney Bergin was going to get an estimate. Attorney Bergin had mentioned that the Board may want to consider whether it would be worthwhile expense for the Board to file a Brief the voice or lack thereof that we would have. Director Westergard disagreed with that and felt that we had an obligation to voice our position on this.

Attorney Pagni (filing in for Attorney Bergin) that he and Debi Leonard from McDonald Carano are working on a Brief for TMWA and the deadline has been pushed to January 2019.

Mr. Pagni stated that when you file an Amicus Brief you are giving the Court additional perspective that they do not have from the parties that are already there. Mr. Pagni was trying to think what perspective CTWCD would have that isn't already represented. CTWCD does not have water rights which is really the meat of the case. That being said this clearly has huge impacts on Nevada Water Law. Generally, the more voices they hear from the better. What the District does day to day on the management of the channel verses what the District can

do and are empowered by statute are two completely different things. When you look at the Legislative purpose of chapter 541 on what you can do and what you are authorized to do Mr. Pagni thinks it really goes into the question because there is some language about the policy of the State is to put waters to beneficial use. The voice the District could add to the case is when you are talking about the Public Trust Doctrine the State of Nevada has declared that the Public Trust is putting waters to beneficial use which you do thru appropriating the waters. That would be a good new argument.

There are a couple ways the District can approach this. 1. A “Me Too” Brief which is where you are joining someone else’s brief. This would be a nominal cost. You are taking the same position as someone who is already there just adding a voice. 2. Would be to file a Brief. For this District’s purposes it would be a very narrow Brief talking about the District’s statutory authority, focusing on what the District does today in terms of maintaining the channel. This is not really relevant on the question before the Court as opposed to what the District could do under the statute and what the purpose of the District is under statute. McDonald Carano is currently doing work for TMWA on what is the Public Trust Doctrine and how is it adjudicated in other States. This District could do a not to exceed \$20,000 type of Brief. Mr. Pagni feels the cost would be lower.

Director Schank has spoken with Rusty Jardine with TCID who along with the City of Fallon and Churchill County and perhaps Pershing County have invited CTWCD to participate. Director Schank recommends that CTWCD direct our attorneys to work with that group. Mr. Jardine told Mr. Schank that one way this could be done is that TCID attorneys could do the bulk of the work and send the Brief to CTWCD attorney’s who could then edit and or add to the Brief and divide the costs accordingly. Or if we do not want to review and pay anything TCID would agree to that as well. Director Enloe agrees with proceeding this way, his only concern would be could there be issues that are not compatible with the other participants. Mr. Pagni said that is possible because there is a lot of different arguments already out there opposing the application of the Public Trust Doctrine but they are not necessarily consistent.

❖ Director Olsen made a motion directing the District’s Attorneys to proceed with working on the specific narrow issues for an Amicus Brief and to contact TCID to determine if the District files a separate Brief or joins with someone else and report back to the Board at the November meeting; seconded by Director Schank. Discussion followed - Director Schank stated that in Nevada vs. U.S. partially answers some the points. In that the Supreme Court decided that there was no Winters Doctrine in terms of Pyramid Lake Tribe and he feels this is an issue that needs to be mentioned in the Amicus Brief. Attorney Pagni advised there was a recent Supreme Court case where the Public Trust Doctrine was talked about in a different context. We have to figure out how to blend prior decisions on Public Trust and apply those to waters. Mr. Pagni advised that the case is actually pending in the 9<sup>th</sup> Circuit in Federal Court but because it is a State question and it is up to each individual State to figure out how the Public Trust Doctrine applies they have kicked it to the Nevada Supreme Court to say “You us what Nevada Law is and then we will apply it”. Director Schank advised that he had heard that the Department of Water Resources is not going to file anything, he has heard they are going to “advise” the Court. That they always take public interest in any water rights application, that is part of their review process. Mr. Pagni stated that that would be an example of the blended process. That the State of Nevada has always recognized the Public Trust Doctrine we have just implemented it differently. This is an arid State and putting waters to beneficial use is how we have implemented the public trust. If we don’t put them to use we have no State. It has changed over time but has always been there. Motion carried.

**7. DISCUSSION AND POSSIBLE BOARD DIRECTION REGARDING ENCROACHMENT PERMIT REQUESTS– Lori Williams**

*See Engineer’s Report*

Ms. Williams thought the NDOT permit would be ready today for the Boards approval but she has not received it yet

**8. DISCUSSION AND POSSIBLE BOARD DIRECTION REGARDING MAINTENANCE DEBRIS REMOVAL WORK, EMERGENCY DEBRIS/DEPOSIT REMOVAL WORK, FEMA PROCESS FOR COST RECOVERY AND NEXT STEPS FOR REMAINING WORK TO BE COMPLETED – Lori Williams**

*See Engineer’s Report*

DF will do the debris removal work this year as approved at last months meeting. Estimated start date is October 22, 2018.

**9. DISCUSSION AND POTENTIAL ACTION REGARDING ISSUES THAT MAY ARISE DURING THE**

**2109 REGULAR SESSION OF THE NEVADA LEGISLATURE WHICH COULD POTENTIALLY IMPACT CONSERVANCY DISTRICTS, GENERALLY -**

Director Baggett will begin to track this and provide reports to the Board.

Director Schank stated that there is a BDR currently being worked on regarding being eligible to run for Boards. Some of the younger people are having a hard time running as the family farms in in a Trust. The parents are the owners of the Trust but they are the beneficiaries of the Trust and running the farms and are precluded from running for Board positions because their names are not physically on the lands. TCID is working with the Legislature to try to remedy this situation.

**10. ENGINEER/CONSULTANT REPORT – Lori Williams**

*See Engineer's Report*

**11. SUPERINTENDENT REPORT – Ron Penrose**

Attended the Northern Nevada Water Planning Commission meeting of which this District holds a non-voting seat on. They approved funding of \$150,000 for an update to the Truckee Meadows water management protection plan. DRI made a presentation on their cloud seeding efforts and requested \$50,00 for this year. They commission approved \$100,000 for a public outreach program also for an affluent management plan.

**12. LEGAL COUNSEL REPORT – Mike Pagni**

Nothing to report

**13. SECRETARY/TREASURER REPORT – Mary Pat Eymann**

Nothing to report

**14. PUBLIC COMMENT - None**

**15. BOARD COMMENTS AND REQUESTS FOR FUTURE AGENDA ITEMS**

- Director Schank – Suggested if we have a December meeting we have a Luncheon after for past Board members.
- Director Westergard – Jason King State Water Engineer is retiring at the end of the year. There is no apparent internal successor.

**16. ADJOURNMENT -**

There being no further business, President Westergard asked for a motion to adjourn the meeting. Director Schank moved to adjourn, Director Nevin, seconded said motion, motion carried.

**\*\*The next meeting will be Tuesday, November 13, 2018 at 10:00 a.m.\*\***

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Todd Westergard,  
President

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Mary Pat Eymann,  
Secretary/Treasurer