

CARSON TRUCKEE WATER CONSERVANCY DISTRICT

Regular Meeting
November 10, 2020
Video Conference via ZOOM

DIRECTORS:

Todd Westergard
Karen Baggett
Pete Olsen
Ty Minor
John Enloe
Ed James
Mike Nevin
Ernie Schank
John Capurro

ABSENT:

Tyler Henderson

GUESTS:

Leo Bergin, Attorney
Lori Williams, Tri Sage Consulting
Ron Penrose, Superintendent
Kayla Dowty, Tri Sage
David, Schaper, Barnard Vogler

Staff

Mary Pat Eymann

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 James; motion carried.

4. DISCUSS AND APPROVE DRAFT FINANCIAL AUDIT FY 2019-2020 – David Schaper, Barnard Vogler

A copy of the Financial Audit was presented to the Board and is available at District Offices

- ❖ Director Schank made a motion to approve the audit as presented; seconded by Director Nevin; motion carried.

5. APPROVAL OF MINUTES AND CHECKS WRITTEN –

Director Enloe made a motion to approve the September 8 Minutes and financial statements as submitted and checks written on Bank of America #9641- #9645 and Nevada State Bank #3021 - #3029, motion seconded by Director Baggett; motion carried.

6. FEDERAL WATERMASTER'S REPORT –

A complete copy of the Water Report is available at District Offices or on the internet at troa.net.

7. DISCUSSION AND POSSIBLE BOARD DIRECTION REGARDING ENCROACHMENTS, PERMITS AND REQUESTS– Lori Williams/Kayla Dowty

See Engineer's Report

See Martis Creek Agreement, which is referenced in this agenda item

8. DISCUSSION AND POSSIBLE BOARD DIRECTION REGARDING MAINTENANCE DEBRIS REMOVAL WORK, EMERGENCY DEBRIS/DEPOSIT REMOVAL WORK AND AUTHORIZATION FOR EXPENDITURES FOR SUCH WORK – Lori Williams/Kayla Dowty

See Engineer's Report

Splitting up the debris removal work into 2 projects with 2 separate contractors. Noah Tree Removal has started last week. NV Environmental is scheduled to start tomorrow. The 2020 debris removal should be completed by end of next week.

Tri Sage has had several discussions with various employees at the City of Reno regarding the 14,000cfs flood channel extents and projects to prevent camping in the river area. During the river inspection it was noted that the north bank under the Keystone bridge had been rocked without authorization or permitting from the District. The work was directed to be done by the Chief of Police as it was deemed an emergency to eliminate the opportunity for future encroachments. This area was an area that had previous severe bank erosion so the repair was needed and was made in a way to not encroach into the flood channel by removing bank material before placing the rock armoring. Thus, the repair of the erosion is permissible under the Martis Agreement without a permit; however, the Tri Sage and District Superintendent held a meeting with City representatives on October 21st to further discuss projects within the flood channel and the permitting requirements. Additionally, there was a good discussion with the City regarding camping encroachments in the flood channel. The City assured the District that Page 5 of 5 they are doing everything possible to address these encroachments, especially with flood season approaching. They requested that another letter be sent to the City to further confirm the City's legal responsibility to keep the flood channel clear of encroachments. There was also discussion regarding possibly contacting Washoe County and reminding them of similar assurances that they committed to in the Martis Agreement.

The City would like a refreshed follow-up letter sent to them as well as to Washoe County. The Board agreed that said letter should be sent.

9. UPDATE ON WALKER RIVER LITIGATION CASE (MINERAL COUNTY V. LYON COUNTY) – Leo Bergin

The Supreme Court issued its 4-2 decision on the scope of the public trust doctrine in the Mineral v. Lyon County case. As you recall, the District filed an amicus brief in the case arguing for protection of the finality of water rights adjudications.

In short, the Court agreed with the position in our Amicus brief and concluded that the public trust doctrine as implemented through Nevada's comprehensive water statutes does not permit the reallocation of water rights already adjudicated and settled under the prior appropriation doctrine. This is a good overall result for the District and protection of the finality of rights under the Orr Ditch Decree. Notably, the court affirmed for the first time that the public trust doctrine applies to all waters - - navigable, nonnavigable, those previously adjudicated or appropriated and (while not expressly mentioned) groundwater. This is an expansion of prior case law, recognizing the public trust applies to non-navigable waters that flow into navigable bodies, and it is not clear what implications this may have going forward.

However, on the question of whether the public trust doctrine was superior to the prior appropriation doctrine, the Court appeared to follow the arguments we presented in the amicus brief and concluded that Nevada's statutory scheme is consistent with the public trust doctrine because it constrains water allocations based on public interest (by requiring the State Engineer to consider the public interest when allocating and administering water rights) and it satisfies all elements of the dispensation of public trust property (construing beneficial use as a public use and finding appropriations are thus only for a public purpose).

Finally, the Court recognized that the Legislature expressly prohibited reallocation of adjudicated

water rights that have not otherwise been abandoned or forfeited, recognizing that the finality of judicial decrees is vital in arid states like Nevada. The Court stated “Municipal, social, and economic institutions rely on the finality of water rights for long-term planning and capital investments. Likewise, agricultural and mining industries rely on the finality of water for capital and output, which derivatively impacts other businesses and influences the prosperity of the state. To permit reallocation would create uncertainties for future development in Nevada and undermine the public interest in finality and thus also the management of these resources consistent with the public trust doctrine.”

It will be interesting to see how the 9th Circuit applies this ruling to the underlying dispute involving Walker Lake, as many elements of the decision seem to go beyond the narrow question certified to the Supreme Court by the 9th Circuit. That being said, this generally seems to be a positive outcome and protection for the finality of adjudicated water rights.

10. ENGINEER/CONSULTANT REPORT – Lori Williams/Kayla Dowty

See Engineer’s Report

11. SUPERINTENDENT REPORT – Ron Penrose

Nothing to report

12. LEGAL COUNSEL REPORT – Leo Bergin

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

Future Agenda Item Requests: none

Board Comments:

- Director Capurro – The forcing of the homeless camps from the River are forcing them to the Ditches. It is becoming hard to maintain the ditches as the people are becoming more aggressive.
- Director James – Workshop on water supply focus was held in October which was very well attended (virtually) the workshop is available for review.

16. ADJOURNMENT -

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

****The next meeting will be Tuesday, December 8, 2020 at 10:00 a.m.****

Todd Westergard,
President

Mary Pat Eymann,
Secretary/Treasurer