

Minutes of the Casitas Municipal Water District
Board of Directors Meeting Held
April 19, 2007

A special meeting of the Board of Directors was held April 19, 2007 at Oak View Community Center, Oak View, California. Directors Baggerly, Word, Hicks, Handley and Kaiser were present. 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 approximately 50 members of the public in attendance. Director Baggerly led the group in the flag salute.

1. Public comments re matters not on Agenda.

Dave Pressey said I see there is a radical change in the board from what used to be the board. A change from supplying water in a reliable fashion at a reasonable rate to one that is on the emphasis on save the trout, emphasis on cooperation with the federal Bureau that does not understand the water needs of this valley. The never thought the dam would fill up with water. If we try to save water for the trout and the people it is late. 65,000 depend on you for reserve water. We will have a problem with back to back drought. Everyone on the board needs to understand. President Baggerly asked if he was addressing the issue on the agenda and if so you are not speaking at the appropriate time. Dave Pressey continued there is radical change on the board and we will have to live with the change.

Joseph Gilbert commented that two months ago there was a warning for us not to go into the river as it could be construed as a take of salmon if we disturbed their migration. It is ironic that those that take water out of the river are accusing people who swim in the river of killing salmon. It is mindless. I think there is a right for people to go into a river. The dam at Robles creates a hazard for people to use the river. People of California own water in Ventura River and CMWD owns water in Lake Casitas. Encourage to take as much as they can from the public river. It is a conflict of interest, operating under rules that don't violate public's trust. Leave water to function in the river.

2. Board of Director comments.

Director Kaiser extended his appreciation for all the public showing up tonight to voice their issues and concerns on this matter. Thank you.

3. Public comments, discussion and review of Casitas Municipal Water District v. United States, Court of Federal Claims.

General counsel Rob Sawyer read his overview of the case which will be attached to these minutes.

Director Baggerly then begin by calling three names from the speaker cards

Joseph Gilbert asked does Casitas have the right to take all the water. President Baggerly explained that the purpose of this is to address the board, it is not a back and

forth conversation. Mr. Gilbert continued there is an overriding necessity to keep the river alive. If increase usage what happens in drought, there has to be a cushion available.

Kale Starbird – a customer of CMWD stated she would like to see that this suit is ended and more energy and money go into issues of conservation of water. We are facing a devastating water shortage in the future with climate change.

Ray King – lives in Mira Monte and urged the board to terminate the lawsuit. He thought the district should do more with conservation programs.

William Gray – lives in Ventura and added there are a lot of good things the board has done. The board is trying to do a cost benefit analysis on the issue of the lawsuit. Bottom line is as a water user in Ventura the number one responsibility is a reliable source of water at a price that makes sense. If we have to buy water elsewhere it is crazy.

Tom Hayden – Lives in western Ventura and read a letter from Mohammed Hasan. Dear Board of Directors, I have been involved in the water industry in Ventura County since 1974. I have served both private and public sectors during this time. Many of you already know me. I was one of the founders of the Association of Water Agencies in this county. Currently, my company, Hasan Consultants provides engineering design services along with water quality monitoring. When the burden of the unfunded mandates of regulations falls upon those that cannot bear, I feel very disturbed. To be fair, a small water agency must be given monetary support by the Federal Government when it finds problems that must be resolved and require funds that are not available. Everyone now realized that water is becoming more and more scarce. Tightening screws on Casitas Municipal Water District is unfair, without at least part of the monetary requirements being reimbursed by the Feds. Since everything else has failed, I strongly believe, despite a past negative judgment, Casitas Municipal Water District must continue to seek monetary help through the court system. It's not easy to continue the fight, giving up is easy. Sincerely, Mohammed A. Hassan.

Alasdair Coyne – representing Keep Sespe Wild. There are two decisions before the board. He urged the board to terminate both courses of action. He talked about the numbers and the water related to fish ladder flows. Bill Hicks was quoted the use of 5,000 acre feet/year in multiple dry years. There is no water used in a drought year There were no flows this year. The Tuesday Ventura County Star claimed 3,200 acre feet for the fish ladder. This is not a true figure. This needs explaining. Not all of it is diverted away; most go down the river anyway. At highest flows the canal can only carry a small amount. Limitation is not flow required for steelhead passage but small canal to carry water to lake. 1500 acre feet/year used on average. That is 7% of safe yield, not a devastating amount. It is an amount that can be saved by conservation. Not necessary to seek new water supplies. Please vote to terminate all legal action against fed govt.

Lanny Kaufer – a 40 year resident. I appreciate the democratic process and commend the board for the time you are taking and appreciated summary. The public does need a clear definition of actual numbers involved. It does not sound like the amount of compensation would be worth continuing to put money in this lawsuit. . Effort to conserve water would outweigh the gains.

Dave Pressey said he spoke already and expressed his opinion.

Steve Harbison – a resident of Seacliff, a rate payer and customer, attorney who does not practice water or government law. Members of this board need to concentrate on providing safe water at a fair price. Nothing to do with litigation tactics that will result in diminishing the effect of the ESA. It is our business to protect trout. District will abide by BO. Has something of a property value been taken that should be compensated and I think yes. Counsel believes there is a good chance of success. If judge would allow an appeal on if regulatory of physical then that should be followed. Can't cost much to do that. Consider working out a contingent fee agreement with the law firm. What is cost, what do experts say the value of the taking is and what is the range of values if win. Talk about what you can get out of this case. Get the bang for the buck and finish the job and if you lose so be it.

Larry Yuva – This is the third time meeting and hoping to get a decision from this board. I wish this meeting was called \$500,000 ago. You seemed to be aware of what you were doing before but now need everybody's input. You have allocated too much water already. If you are that close to running out of water then you are not doing your job for the last ten years.

Jim Giannatti – Oak View resident looking for accountability and to put forth that it is a losing battle. Like to see you go forward with the suit and say that is what you believe in.

Jim Coultas – In closed session you will discuss the chances of winning and costs of lawsuit, legal advice, looking at a chance of settlement, if leave lawsuit out now all leverage is gone. He commended directors who initiated this suit. It was the right decision to make at the time. The initial estimate was \$200,000. Judge Weise had ruled in another favorable in another suit and the thought was the Federal Government is free to preserve the fish; it must pay to do so. That is where Casitas was when it initiated the suit. There is a problem, if can take a bit of water they can take more. Lawsuit was aimed at limiting the amount they could take. Bureau of Reclamation owns the diversion dam, fish ladder and fish screen. It was a \$9 million project and they called it maintenance. We want the fish to recover. They are not going to recover while Matilija dam is there. Chances of critical mass necessary to restore the fishery won't work. Matilija Dam should have come down before the fish ladder was built. Problem, regulatory agencies hovering about during construction of the facility have abandoned Casitas. There are predators of prey to steelhead, 50 years, probably 75 years of planted trout by CDFG that has ruined the genetic purity of fish that can become steelhead. Why isn't there a captive breeding program? Condors, eagles, why isn't there a similar program for steelhead to build up a critical mass so they can recover? No one, Federal or State is doing this. Problem is the ocean. Pollution in the ocean and this is where they have to go. Global warming – Jim Lucky who was the head of NOAA, said if everything goes perfect they will not recover for 50 years. Fish may not be able to live with the change in water temperatures. Economics and effect on Ag community, law of unintended consequences. Allocations of Casitas are no longer any good. They have promised out more water then collecting. I can't believe that any agency issues another will serve letter. President Baggerly asked him to bring comments to a close. Mr.

Coultas continued this is out of our hands. Federal Government decided that water is gone. There are economic and environmental consequences.

Steve Smith – Ojai resident for 20 years. It is strange to hear bang for buck and hear doomsday scenario if not enough water in river. The issue is if the lawsuit is worth pursuing or not. Seems to me that the judge's decision was a wise one. Circumstances do change. Each case is unique. There is a level of stewardship here. Responsibility of board to support the ESA and to facilitate the breeding grounds, it is a local responsibility not the federal government. Over the past few years the country has been involved in a costly war. This is a local issue, the lawsuit should be dropped.

Lorenz Shaller – Resident of Meiners Oaks added his voice to those that speak from the Ag community. We are irrigating with local water. We need to reconsider our position. The suit is a loser. There is an opportunity in the near future for the board to ask for this suit to be dismissed.

Jim Ruch - Ojai Valley resident since 1957. There used to be no lawns in Ojai, there was no water. Matilija and Casitas were built and there was water some of it used for Ag. Speaking on behalf of the Ag community, I am a member of the board Ojai Conservation District and Alternate OBGMA. There is a relationship on Casitas and the underground basin. I thank the board for their wisdom in undertaking this litigation originally. They did it in response to what I consider to be an egregious use of ESA and southern steelhead. In 1971-1973 I was working in Washington and a drafter of section 7. The Board took its responsibility to rate payers seriously. Now they are at a crossroads. What is the best thing to do? This is how much going to cost us and economic consequences, social and environmental. What would happen to Ag community that creates the ambiance and the beauty and the reason many say they are here and is that sufficient for us to continue, seek out partners, contingent attorney, partners to bear part of the burden for litigation, proceed directly to an appeal? It is a chance, a choice you all will have to make. Hope you will explain to us why you made that choice, economic costs, and water lost and what will you do about it? Obligation is to continue to supply water to maintain the Ag base. It is critical to this valley and is your responsibility and I hope you take it seriously.

K.O. Davis – Ventura County resident since 1987. My father called first of month, and suggested I read one book of proverbs a day for the rest of the month. I read a passage in chapter 19 which said a person who moves too quickly may go the wrong way. I feel we should continue with this lawsuit. We may pay for it down the road. I support this suit. It is to see this thing through.

Paul Jenkins – mentioned he was before the board last week in support of discontinuing this suit. We have a former board member to thank for this meeting tonight. The makeup of the board has changed partly over this issue. Whatever decision is made tonight I suggest that each board member goes on record so that at election time you are held accountable. There is spin in the local paper here. The Board has had several presentations regarding where the silt will go when Matilija Dam is removed. Also tell you that study was done with two things in mind. People living in the flood plain and a water diversion downstream and have a reliable supply of water. Careful studies were done and we know where the silt will go and augment diversions of water

into Lake Casitas. Finally Klamath basin, judge rejects, appeal court reject Columbia dams, judge orders state stop killing delta fish, Casitas loses ground in water fight. Finally I don't mind which way you go. If appeal, it will lose and that will set the issue straight, if you don't then not pouring good money after bad, wasted half million dollars. It is time and you have a community that is capable of working out the issues and looking at progressive solutions to problems we face. Ways to put water back in the river to solve these problems.

Roberta Baptist – resides on PCH and has lived here all my life. We hauled our own water for a long time. When Casitas decided to put water line here it was a miracle and we value what you have done. I am in favor of pursuing this. Ventura has been spoiled here. Water is going to be a bigger thing. To spend this amount of money is nothing.

Kathy Bennett – Ojai resident. Two and a half years ago walking by ocean and there were 200 salmon steelhead trying to get upstream. Next day I drug friends down to see them. They figured out they would not get up the river, so they turned around and went to another spot. It is time to say we are not going to spend any more money and invest in conservation.

Lawrence Manson – Mid town Ventura resident and member of Surfrider Foundation. Litigation is expensive and outcome is very uncertain. One case we were involved in we appealed ruling of court in SB and lost there we believed that what we were doing was correct but we lost. This may be the situation you are in. Go in terms of water conservation. Water is crucial to society. Use resources to a maximum. Engage in strong water conservation. Encourage to use plants that are low or no water. Use of grey water.

Roger Myers - Faria Beach resident. Thank you for what you do. Couple of years ago you were very responsible when we lost our water line for two weeks. There was a meeting at my house and problem was accelerated. I am an attorney. I am familiar with the Lucas case, my wife was an amicus writer for that case. I have an understanding of what judge was struggling with. It was a difficult decision for him. Despite seemly simplicity of question before us not easy to decide. Defense would have us start with premise and use Penn Central. Those criteria require to bring us immediately to point and the point court finds most troubling passive restriction on use that amounts to a transfer of value. By virtue of his offer to certify his decision was an invitation and signaled he would like some questions answered and some guidelines from appellate court. We are in a drought now seems to me in fairness of all taxpayers they should pay for preservation of steelhead, national issues. District should be compensated. I support an appeal. Suggest that the board consider this and ADR such as mediation. With appeal in the bag could very well bring the government to the table. Bottom line, have capable counsel and follow what they advise and this discussion is better held in closed session as allowed by the Brown Act.

David Magney long time resident of Ojai. Lost of speakers have good points. Basic issue is spending more money. A great deal of money already spent. Can do a lot with that. Best thing for us to spend money to improve conservation to use water more wisely.

George Galgas – Did not speak and did not appear to be in the audience when his name was called.

Bill Loehr – Ojai resident. 1. From economics, the amount already spent has nothing to do with decision to proceed. The decision to proceed you have to look at money to spend for what to achieve. He urged the board to drop the suit. 2. If you drop the suit or not it will not change the amount of water in the river. Urge you to get on with the conservation measures necessary to keep Ojai and Ventura great places to live.

Dennis Rice – Ojai resident. Most of the kids grow up think they live in a town by lake. Ojai was built by a river that ran 20 miles through Ojai to the ocean. Stewardship and primary responsibility to deliver water at a reasonable rate. I want you to deliver water to me and pay attention to and be responsible to issues in the valley. We have taken the water for our purposes. We can learn to conserve and have Ag and water for our yards and have water for the river.

John Becker – Live in Oregon and care about fish. I don't know if you will win or lose but the steelhead are losing. They don't have a chance here. It is not going to happen here. When I read that you guys were part of paying \$9 million dollars for a fish ladder it is a waste of money. Environmentalists, you are not going to save steelhead around here. It is screwed. Steelhead have already lost. There is not even a river right now. This is a waste of time and money and the Federal Government should come in here. This is a joke and I feel sorry for you.

David Bury – former Mayor City of Ojai. I hope you make the right decision. It is not just about fish. It is about stewardship of the environment. The mistake was made when money went into impediments instead of correcting them. Present this as positive proactive board that we can show that we have the vision to implement appropriate policies to fish, conservation, and farming practices. We have had a board that has gone kicking and screaming into 21st century.

Elaine Paul, former Clerk of the Board. I personally worked with members of this board, I found them to be conscientious and careful of decisions and good representatives of the community they served. I trust the judgment that has gone into the decisions made and would hope that you would be very careful about your reason for continuing or not. I trust your judgment and you will serve the people.

President Baggerly asked if there were any comments from the board.

Director Hicks stated he was blown away by the presentations and they are right on both sides. We are both on same team and we have to work together when this is over. Save fish and have reliable water supply. I appreciate you coming tonight and the comments you made.

Director Word added there was a question of cost estimates and the estimated cost of appeal is at \$45,000. The cost estimate for trial is \$100,000, with an offer to take on contingency. \$45,000 to go to appeal is about \$15 per customer. President Baggerly added once you get an approximation of what an attorney thinks it will cost you triple it.

Director Word continued with thanking everybody for showing up and their willingness to share comments. We don't all agree on some of the specifics but we do all agree we need to keep water flowing in this area. We can get that done some way.

President Baggerly asked if you wish to use any one of these recommendations in open session or retire to closed session. Director Kaiser responded that he had questions to ask counsel in closed session. President Baggerly adjourned the meeting to closed session at 8:05 p.m. government code section 54956.9 Casitas Municipal Water District v. United States.

RECOMMENDED ACTION: Direction to staff included but not limited to:

- a. Dismiss the case (with or without prejudice) by appropriate means.
- b. Continue pursuit of case (trial, appeal, or other proceedings).
- c. Other

4. 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.

President Baggerly returned the meeting to open session at 8:37 p.m. Rob Sawyer reported what happened in closed session. It is the opinion of counsel that no action was taken in closed session that is required to be reported. The Board has approved public disclosure to of the decision to pursue the appeal of Judge Weise's March 29th order. That it be certified for appeal to Federal Court of Appeal prior to a trail date.

The public asked about review of vote. President Baggerly stated it is not difficult to figure it out, two against and three for. President Baggerly adjourned the meeting at 8:38 p.m.

The minutes are amended to show that the Board approved in closed session, on a three to two vote, a motion directing 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. Ayes Kaiser, Hicks, Word and Nays Handley, Baggerly.

Secretary