



SPECIAL MEETING

Tuesday, October 23, 2018

**Location: Torrance Public Works Yard Conf. Rm.
20500 Madrona Ave., Torrance, CA 90503**

MINUTES

Vice-Chairperson Shawn Igoe called the meeting to order at 1:07 P.M. Nina Tarnay recorded the minutes.

Mr. Igoe determined there was a quorum of the West Basin Water Rights Panel and asked for self-introductions.

The following West Basin Water Rights Panel members were in attendance:

Shawn Igoe, City of Manhattan Beach
Rob Beste, City of Torrance
Ron Sorenson, California Water Service Co.
Denis Kurt, Marathon Petroleum Corp.
Toby Moore, Golden State Water (on behalf of **Katherine Nutting**)

The following persons were also in attendance:

Stephanie Hastings, Brownstein Hyatt Farber Schreck, LLP (counsel to WBWRP)
Ted Johnson, Water Replenishment District
Clynton Namuo, Alston & Bird, LLP (counsel to WRD)
Rafael Villegas, Los Angeles Department of Water and Power

APPROVAL OF MINUTES:

Minutes from the September 4th meeting submitted for approval. Rob Beste moved to approve the Minutes, Ron Sorenson seconded and the Minutes were approved as submitted. Toby Moore and Denis Kurt abstained from voting because they were not present at the prior meeting.

ISSUES:

1. Re-consider Proposed Amendment (Attachment A)

Background:

Mr. Igoe asked the West Basin Water Rights Panel (the Panel) counsel, Stephanie Hastings, to provide an overview and set forth the purpose of today's special meeting. Ms. Hastings shared that in the prior WRP meeting on September 4th, Panel members understood that the Motion to Amend ("Motion") presented to the Panel and later filed by WRD on September 21st, dealt solely with the Goldsworthy Desalter project ("GWD project"). Upon further consideration, the Panel determined that the previously submitted Motion, adding Paragraph V.15 to the Judgment, was not limited to just the Goldsworthy Desalter project but would apply to any project that meets the 4 criteria set forth in WRD's proposed Judgment Amendment. Accordingly, the Panel decided to reexamine the Motion to more clearly define its scope and set forth the criteria for consideration of projects that fall under the Motion.

Ms. Hastings and WRD have proposed modification to the proposed Judgment Amendment providing for the Panel's and the Administrative Body's review and approval, as set forth in the Proposed Order (Attachment A).

Counsel for the Panel and WRD have agreed to a continuance of the hearing on WRD's Motion until November 15, 2018 to provide the Panel and WRD time to reconsider the Proposed Judgment Amendment and to propose any modifications of the Proposed Amendment.

Discussion:

Mr. Igoe asked Panel members for their comments or questions related to the Proposed Order (Attachment A).

Toby Moore asked for clarification regarding the language originally proposed in the Judgment Amendment. His understanding was that prior discussions regarding the Motion involved only the GWD project. He questioned why the body of the original Motion didn't specifically state it was limited to the GWD project?

Clynton Namuo stated that the intent is for the Proposed Order to apply to any project that meets the criteria set forth and not be limited to just the GWD project.

Mr. Moore asked if under the Proposed Judgment Amendment, any agency could apply to do remediation work in the Basin if it meets the criteria set forth in the Proposed Judgment Amendment or if WRD is the only agency authorized to perform the remediation work under the Amendment. Ted Johnson replied that other agencies that are legally authorized to do water clean up projects, such as the Environment Protection Agency or Waterboard, could qualify if they meet all the criteria set forth in the Proposed Order, including obtaining approval from the Panel.

Denis Kurt questioned whether the Proposed Order would limit the ability of parties with adjudicated rights to pump non-potable water. Ms. Hastings and Mr. Namuo confirmed that as long as the water pumped is within the adjudicated rights of the particular party, the Proposed Order would not affect that party's right. The proposed exemption is not applicable where a party with adjudicated rights is pumping water that is within their rights, regardless of the quality of the water pumped. As long as the water pumped, brackish or otherwise, is counted against the party's adjudicated rights, no exemption is required.

Mr. Kurt expressed concern that the title proposed for Paragraph V.15 creates uncertainty on the question of whether extraction of non-potable water would trigger an exemption requirement.

- Following further discussions, Ron Sorensen suggested and other Panel members agreed to amend the title of proposed paragraph V.15 to “**Extraction Exemption**” (from **Extraction of Nonpotable Groundwater to Benefit the Basin**) to clarify that the provision applies only to exempt extractions and does not affect adjudicated rights.

Ms. Hastings led the Panel through a review and discussion of each of the criteria set forth in the Proposed Order:

1. Only groundwater containing at least 500 milligrams/liter of chloride, as measured at the influent to any facility used to treat such, may be extracted.

Mr. Kurt asked why 500 mg/ML was chosen as the extraction limit. Mr. Johnson explained that this was the standard for drinking water limits. The Panel discussed whether to keep the limit more open, but determined that the 500 mg/ML limit was acceptable and that the limit could be changed at a later time if necessary.

Mr. Sorensen questioned the monitoring and reporting mechanism—who would determine if the criteria were being met? After discussion, the Panel determined that WRD would report on compliance on at least an annual basis, but would monitor at least semi-annually. Ms. Hastings added that under Criteria 5 of the Proposed Order, the Panel has the authority to set reporting requirements. Ted Johnson stated that a compliance acknowledgement could be added to the annual Watermaster Report to fulfill the reporting requirement.

- The Panel determined that this criterion is acceptable as proposed.
2. Extractions must be done by a public agency with statutory authority to clean contaminated groundwater.
 - The Panel discussed and determined that this criterion is acceptable as proposed.
 3. Extractions of such groundwater must provide a Regional Benefit to the Basin as a whole and not just to the extracting party.

Ms. Hastings read the definition of “Regional Benefit” (page 5, paragraph 27 of the Judgment) to the Panel.

- The Panel discussed and determined that this criterion is acceptable as proposed.
4. All extractions pursuant to this Paragraph V.15 are subject to the payment of the Replenishment Assessment.

Ted Johnson provided an overview of how the Replenishment Assessment is determined and confirmed that the entity purchasing the extracted water pays for the RA.

- The Panel discussed and determined that this criterion is acceptable as proposed.
5. All new projects that seek to extract groundwater pursuant to this Paragraph V.15 shall be reviewed and approved by the following entities: (1) the Water Rights Panel and (2) WRD in its capacity as the Watermaster Administrative Body. Those entities shall review such projects using the procedures generally described in the following subsections of Paragraph

V.13.B: subsections (2), (6), (8), and (9); the second and third sentences of subsection (1); the first sentence of subsection (4); and the last sentence of subsection (7). The findings of the Water Rights Panel and WRD in its capacity as the Watermaster Administrative Body shall include a determination that the project is Technically Feasible and will not cause Material Physical Harm. Any new project that would be carried out by WRD pursuant to this Paragraph V.15 would not constitute a conflict of interest within the meaning of Paragraph V.13.B (8) as to WRD's role as Watermaster Administrative Body.

Ms. Hastings clarified that only those provisions in Paragraph V.13.B that are applicable to the projects at hand are included in the Proposed Order. The excluded provisions of Paragraph V.13.B pertain to storage projects and thus not helpful to the analysis of extraction exemptions and not included in Paragraph V.13.B.5.

➤ The Panel reviewed and discussed the provisions in the Judgment referenced in criterion 5 and determined that this criterion is acceptable as proposed.

Action:

- Ron Sorensen moved to withdraw the Panel's September 4th approval to support WRD's Motion to Amend filed on September 21, 2018. Toby Moore seconded the motion and the Panel voted unanimously to withdraw its September 4th approval to support WRD's Motion to Amend.
- Rob Beste moved to support WRD's Proposed Order, as redlined, (Attachment A) with the following revisions:
 - The title of proposed paragraph 15 is changed to: ***Extraction Exemption***
 - The addition of a reporting requirement by WRD on at least an annual basis, included in the annual Watermaster Report.

Toby Moore seconded the motion and the Panel voted unanimously to approve.

2. Re-consider and make findings regarding Goldsworthy Desalter (Attachments B and C)

Discussion and findings:

Applying the 5 criteria set forth in the Proposed Order, the Panel considered consent of WRD's Goldsworthy Desalter project, subject to approval of the Court.

The Panel determined WRD is an entity that does not have an adjudicated right, but is allowed to produce groundwater within the Basin so long as it satisfies the conditions under paragraph V.15 of the Proposed Order:

1. Only groundwater containing at least 500 milligrams/liter of chloride, as measured at the influent to any facility used to treat such, may be extracted. Following review of Ted Johnson's Declaration (Attachment B) and data on the Goldsworthy Desalter Wells chloride content (Attachment C) the Panel determined that criterion 1 is satisfied.
2. Extractions must be done by a public agency with statutory authority to clean contaminated groundwater. Following review of Ted Johnson's Declaration (Attachment B) the Panel determined that criterion 2 is satisfied.

3. Extractions of such groundwater must provide a Regional Benefit to the Basin as a whole and not just to the extracting party. Following Panel review of Page 5 of the Judgment setting forth the definition of “Regional Benefit” and review of Ted Johnson’s Declaration (Attachment B), the Panel determined that criterion 3 is satisfied.
4. All extractions pursuant to this Paragraph V.15 are subject to the payment of the Replenishment Assessment. Following review of Ted Johnson’s Declaration (Attachment B) and discussions during the meeting confirming same, the Panel determined that criterion 4 is satisfied.
5. All new projects that seek to extract groundwater pursuant this Paragraph V.15 shall be reviewed and approved by the following entities:
 - (1) The Water Rights Panel and (2) WRD in its capacity as the Watermaster Administrative Body.
 - The Panel and WRD are each reviewing or have reviewed the GWD project.
 - Those entities shall review such projects using the procedures general described in the following subsections of Paragraph V.13.B:
 - Subsection 2: Ms. Hastings read aloud Paragraph V.13.B.2 of the Judgment which requires a joint hearing of the WRD Board of Directors and the Panel, whenever feasible. Ms. Hastings shared that due to the timing of the upcoming court hearing, it was not feasible to conduct a joint hearing. The WRP is proceeding with an independent review, with input from WRD representatives. WRD representatives advised that the WRD Board of Directors has independently reviewed this project and previously approved moving forward with obtaining Panel approval.
 - Subsection 6: Ms. Hastings read aloud Paragraph V.13.B.6 of the Judgment which requires joint approval of the project with the condition that if there was a conflict of interest on the part of one party under Section V.13(A)(8), approval by the remaining party would deem the project approved. Ms. Hastings summarized that if the Panel approves the GWD project, the project is deemed approved.
 - Subsection 8: Ms. Hastings read aloud Paragraph V.13.B.8 regarding conflicts of interest. As the end user of the processed water from the GWD project, the City of Torrance (via Rob Beste), agreed to abstain from voting on approval of the GWD project to avoid any appearance of a conflict of interest.
 - Subsection 9: Ms. Hastings read aloud Paragraph V.13.B.9 regarding the requirement that factual determinations must be based on the “substantial evidence” test. The Panel determined that Attachments B and C to the Proposed Order meet the “substantial evidence” test.
 - Subsection 1: Ms. Hastings read aloud the second and third sentence of Paragraph V.13.B.1. regarding the submission of a staff report. The Panel has elected not to direct staff to submit a report, but notes that the minutes from today’s meeting will constitute a report, analysis and a determination of whether all 5 criteria of Paragraph V.15 have been met. WRD will submit a staff report. No other party has submitted a staff report.
 - Subsection 4: Ms. Hastings read aloud the first sentence of subsection 4 regarding the adoption of written findings explaining their decision on the GWD project. The Panel submits that the analysis and findings, with input from WRD’s staff, reflected in the minutes from today’s meeting constitute such findings.

- Subsection 7: Ms. Hastings read aloud the last sentence of Paragraph V.13.B.7 regarding the adoption of a uniform set of conditions of approval. The Panel, with input from WRD staff, Ted Johnson, and Counsel, Clynton Namuo, agreed: (1) WRD would provide at least semi-annual chloride results, to be included in the annual Watermaster report; and (2) If any condition of Paragraph 15 is not longer satisfied (e.g. lower than 500 mg/ML chloride results) WRD must report such findings to the Panel within a reasonable time, but at least within 30 days of such findings.
- The Panel considered the final conditions set forth in Paragraph V.15.1: The findings of the Water Rights Panel and WRD in its capacity as the Watermaster Administrative Body shall include a determination that the project is Technically Feasible and will not cause Material Physical Harm.
 - Following review of Attachments B and C, discussions with Ted Johnson and consideration of the definition of “Material Physical Harm” under the Judgment, the Panel found that the GWD project is technically feasible and will not cause material physical harm to the Basin.

Action:

- Following discussions and determination by the Panel that the Goldsworthy Desalter project complies with the conditions set forth in Paragraph V.15, Shawn Igoe moved to support WRD’s Goldsworthy Desalter project, conditioned upon Court approval. Ron Sorensen seconded the motion and the motion passed without any objections. Rob Beste abstained from the vote.

3. Authorize filing of a conditional non-opposition to WRD’s Motion to Amend, including changes to Proposed Order (Attachment A).

Discussion:

The Panel discussed the need to amend the proposed order submitted by WRD on September 21, 2018, adding a 5th criterion to Paragraph V.15, to ensure proper consideration and vetting of all new projects that fall under the purview of an exemption extraction.

Action:

- Panel voted unanimously to authorize Stephanie Hastings to file a conditional non-opposition to WRD’s Motion to Amend, filed on September 21, 2018, that includes the changes redlined in the Proposed Order (Attachment A) and incorporates the conditions discussed today. Ms. Hastings is further directed to work with Shawn Igoe to complete and file the non-opposition with the Court.

NEXT MEETING:

- The next WBWRP Quarterly Meeting will be on November 6, 2018 at 12:30 P.M.

ADJOURNMENT

- Vice-Chairperson Igoe adjourned the meeting at 2:33 P.M.

Shawn Igoe, Chairperson

Dated

Nina Tarnay, Executive Administrator

Dated