

COUNTY OF INYO PLANNING COMMISSION

MINUTES OF JUNE 1, 2011 MEETING

COMMISSIONERS:

WILLIAM STOLL
CYNTHIA LITTLE
SAM WASSON
RICHARD WHITE
PAUL PAYNE

FIRST DISTRICT
SECOND DISTRICT (VICE-CHAIR)
THIRD DISTRICT (CHAIR)
FOURTH DISTRICT
FIFTH DISTRICT

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PLANNING DIRECTOR
INTERIM PUBLIC WORKS DIRECTOR
COUNTY ADMINISTRATOR
SENIOR PLANNER
ASSOCIATE PLANNER
ASSOCIATE PLANNER
PLANNING COORDINATOR
COUNTY COUNSEL

The Inyo County Planning Commission met in special session on Wednesday, June 1, 2011, in the Administration Building, in Independence, California. Commissioner Wasson opened the meeting at 10:00 a.m.

ITEM 1: PLEDGE OF ALLEGIANCE – The Pledge of Allegiance was led by Commissioner Wasson at 10:00.

ITEM 2: ROLL CALL - Commissioners: Bill Stoll, Paul Payne, Sam Wasson, Cindy Little and Richard White.

Also present were: Josh Hart, Planning Director; Dana Crom, County Counsel; Tanda Gretz, Senior Planner; and Dan Stewart, Planning Coordinator.

Absent: Kevin Carunchio, County Administrator
Doug Wilson, Interim Public Works Director
Adena Fansler, Associate Planner
Cathreen Richards, Associate Planner

ITEM 3: PUBLIC COMMENT PERIOD – This is the opportunity to address the Planning Commission on any planning subject that is not scheduled on the Agenda.

There was no one from the public wishing to comment.

ITEM 4: APPROVAL OF MINUTES (Action Item) – Approval of Minutes from April 27, 2011.

Mr. Josh Hart, Planning Director, commented that there were typographical corrections to the minutes, and those errors would be corrected.

MOTION: Moved by Commissioner White and seconded by Commissioner Little to approve the Minutes from April 27, 2011 with the corrections stated by Mr. Hart.

The Motion passed unanimously.

ITEM 5: APPEAL CONDITIONAL USE PERMIT (CUP) 2007-03 (Public Hearing & Action Item) – In May 2009, the Inyo County Board of Supervisors approved Conditional Use Permit (CUP) 2007-003 and certified an associated Environmental Impact Report (EIR), which permitted the Coso Operating Company (Coso) to extract groundwater from two existing wells on its Hay Ranch in the Rose Valley and transport it via pipeline to Coso's geothermal plant at China Lake Naval Air Weapons Station nine miles east. Conditions of approval included a Hydrologic Mitigation Monitoring Plan (HMMP), which provides a mechanism to monitor groundwater levels in the Rose Valley and to regulate Coso's groundwater pumping to ensure less than significant impacts. As required by the CUP, EIR, and HMMP, the Water Department issued an Addendum to the HMMP on April 1, 2011, which describes the baseline groundwater levels and the changes to the groundwater level triggers, pumping rate, and duration of pumping approved by the Water Department. Mr. Thomas Schneider appealed the Water Department's issuance of the HMMP Addendum to the Planning Commission, pursuant Inyo County Code Section 18.81.030.

Planning Director, Joshua Hart, presented the Staff Report to the Commission. Mr. Hart started by presenting a brief history of the project leading up to Mr. Schneider's appeal. On April 12, Mr. Thomas Schneider appealed the Addendum to the Planning Commission. Mr. Hart explained Mr. Schneider makes two broad allegations in his appeal: (1) the Water Department did not have adequate evidence to support its approval of the Addendum; and (2) a new environmental document should be prepared. This hearing was held for the Planning Commission to determine if the appeal should be upheld or denied. Chair Wasson established ground rules which were provided to the appellant and Coso prior to the hearing. Mr. Hart explained that the ground rules provided a fifteen minute time limitation to make presentations for both the appellant and Coso. Then the appellant would be provided ten minutes for rebuttal. Mr. Hart indicated that he would address the appellant's second allegation and Dr. Bob Harrington, Inyo County Water Department Director, would address Mr. Schneider's first allegation.

Dr. Bob Harrington greeted the Commission and stated that the County's Groundwater Ordinance applies to the inter-basin groundwater transfer in the Rose Valley. Dr. Harrington explained that many conditions of approval were developed in the approval of CUP 2007-03/Coso, including the Hydrological Mitigation and Monitoring Plan (HMMP). The HMMP was implemented to ensure that significant impacts were avoided. A key mitigation measure in the HMMP is to set groundwater level thresholds, which require groundwater pumping to be curtailed once groundwater levels fall below the specified thresholds. A ground water model was used in the EIR to predict how the proposed pumping would affect the basin, and to determine what threshold should be used to specify groundwater level triggers in the monitoring wells to avoid significant impacts. Dr. Harrington commented that once pumping had commenced data could then be gathered to better calibrate the theoretical model, and better predict the associated impacts to the groundwater in the Rose Valley basin. The revised model would determine triggers, pumping rate, and the duration for which pumping would be allowed. The HMMP

required that these revisions be presented in an addendum to the HMMP after ground water pumping had initiated for one year. This task was completed by hiring a consultant, Daniel B Stephens and Associates (DBS&A) to determine triggers, pumping rate, and the duration pumping. The Water Department developed the Addendum based on DBS&A's recommendations. Dr. Harrington then informed the Commission of some technical detail contained in the DBS&A report.

Dr. Harrington commented that Mr. Schneider's appeal alleges the Water Department lacked adequate evidence for the decisions made in the Addendum, specifically: the lack of evidence for allowing Coso to continue to pump at the rate and duration specified, elimination of triggers and monitoring wells, changes in the manner in which impacts are measured, and changes to the establishment of baseline water levels.

Dr. Harrington stated that the primary evidence supporting the Water Department decision to allow Coso to pump is contained in the DBS&A's report. The consultant's report was aimed at using data collected in the first year of pumping to recalibrate, and improve, the ground water model to establish triggers, pumping rates, and the duration for which pumping would be allowable.

Dr. Harrington then addressed Mr. Schneider's allegation that the definition of what constitutes a significant impact had been changed. Dr. Harrington stated that the HMMP and the Addendum both define a significant impact as a greater than ten percent reduction in ground water discharging to surface water features at Little Lake.

Dr. Harrington stated that the Addendum doesn't eliminate triggers or monitoring wells. The Addendum does establish two water level triggers for each monitoring well, maximum acceptable draw-down and draw-down at the time pumping concludes. Dr. Harrington explained, with the use of charts, why the two triggers are necessary.

Dr. Harrington then addressed Mr. Schneider's allegation of the lack evidence for establishing baseline water levels by stating that the HMMP requires at least six months worth of historical data for each monitoring well and all pre-project data should be used to establish baselines. Dr. Harrington stated that Schlumberger Water Services used these pre-project data to develop baseline water levels as outline in the HMMP.

Dr. Harrington finished by affirming that the Water Department performed all of the requirements outline in the HMMP, and had substantial evidence to support its decision. Mr. Harrington also added that the supporting documentation has been available to the public on the Inyo County Water Department's website.

Mr. Hart then addressed the appellant's allegations that a subsequent environmental document should be prepared pursuant to the California Environmental Quality Act (CEQA). CEQA Guidelines Section 15162 specifies when a subsequent environmental document is necessary. Mr. Hart stated that the HMMP Addendum merely implements the direction provided by the EIR, which required setting baseline groundwater levels, the recalibration of the groundwater model, and changes to the groundwater level triggers, pumping rate, and duration. The HMMP Addendum does not result in the a change to the EIR and continues to assure that no significant impacts to Little Lake will occur. None of

the circumstances requiring a subsequent environmental document exist, and no further action pursuant to CEQA is required.

Mr. Hart concluded by summarizing 1) the Water Department had adequate evidence to support the Addendum, and 2) no additional CEQA action is required. Therefore, staff recommended that the Commission deny the appeal and make the findings on page two of the Staff Report.

Chair Wasson reiterated the ground rules for the Commission meeting and then opened the hearing, calling first for the appellant and Coso to make their presentations.

Tom Schneider, appellant, addressed the Commission. Mr. Schneider began by commenting that this was the first opportunity that he has had to appeal since the approval of the EIR. He then stated that he not only objected to the baselines established but also the consultant (Schlumberger Water Services) because they were neither independent nor impartial. The consultant was previously used by Coso to help develop the project. Mr. Schneider also objected to the fact that baseline water levels were established using data from as long ago as seven years. Which on the surface would seem logical, however Mr. Schneider argued the Rose Valley ground water basin was still in recovery from the agricultural pumping during that period, which resulted in artificially low baseline levels.

Mr. Schneider then argued that the maximum draw-down would be reached many years after the termination of Coso's pumping. He went on to state that no one really knows what effect the proposed pumping would have on Little Lake due to the lengthy lag in pumping and the observed draw-down at Little Lake.

Mr. Schneider stated that the Addendum is eliminating close to half of the monitoring wells in the original monitoring program, one in particular at Little Lake.

Mr. Schneider challenged that the HMMP and the Addendum have different maximum allowable draw down levels. There are two wells on the Little Lake Ranch, the North Dock Well and North Ranch Well. He maintained that the FEIR defines the maximum allowable draw-down as .3 ft. at the North Dock Well and a .4 ft. at the North Ranch Well. The DBS&A model and the Addendum defined the maximum allowable draw-down at 1.52 ft. at the North Dock Well and a 1.3 ft. at the North Ranch Well. Mr. Schneider commented that the direct change in elevation at Little Lake is not directly addressed, only the amount of inflows and maximum draw-down at the two monitoring wells. Mr. Schneider acknowledged that Little Lake is a dam controlled body of water and could be manipulated, but that since the ending of the hunting season (end of January) the lake levels have not been manipulated. Mr. Schneider very clearly stated that the FEIR defined a significant change as a 10% change in the spring water discharge to Little Lake and the Addendum defined a significant change as something different.

In conclusion Mr. Schneider commented that a six to seven inch drop in a three foot deep lake is a significant change, and would have a significant impact. Mr. Schneider then entertained questions from the Commission.

Commissioner Payne inquired about the annual evaporation at Little Lake. Mr. Schneider replied that one study found that the water budget for Little Lake is 1,700 acre feet of water. He went on to state that they had not manipulated the lake level from Spring to Fall during the past three years.

Commissioner Payne asked about the North Ranch Well and the use. Mr. Schneider replied that the use of the well is for domestic purposes. Commissioner Payne further asked about the amount of water taken from that well. Mr. Schneider replied that he was unsure. Dr. Harrington interjected by stating that he believed the amount of water drawn by the North Ranch Well was about three acre feet per year.

Coso, applicant, was then given an opportunity to present to the Commission. Charity Schiller, attorney for Coso, stated this hearing differs from most hearings the Commission hears. This hearing is not for a new project, to the contrary the County has already granted Coso a property right subject to certain conditions pursuant to a CUP. She also clarified that Mr. Schneider bears the burden of proof, not Coso. Ms. Schiller stated that Mr. Schneider did not meet his burden of proof.

Ms. Schiller stated that the recalibrated HMMP was available for public review on the publicly available website and the Addendum was not approved until the public review period was concluded.

Ms. Schiller addressed Mr. Schneider's allegation that the County lacked evidence to allow Coso to continue to pump at the rate and duration specified in the HMMP. Mrs. Schiller stated that the DBS&A report uses the "Drain Cell Approach," which was the most conservative approach and would let Coso pump the least amount of water. She went on to add that DBS&A and the County Water Department used and adopted the most conservative approaches.

Ms. Schiller clarified that all the existing wells will continue to be monitored by the Water Department. Data will continue to be gathered and analyzed as pumping continues.

Ms. Schiller then addressed Mr. Schneider's claim that the baseline water levels that the Addendum establishes were inappropriate. CEQA provides that a baseline level is established based upon the data available when the Notice of Preparation is sent out, or range of data that is available. This is the exactly the approach the Water Department took in establishing the baseline groundwater levels.

Ms. Schiller stated that CEQA does not call for the preparation of an EIR every time a public agency takes an action. CEQA review is required only when a discretionary approval is issued. Coso's view of the approval of the Addendum is that the approval does not constitute a discretionary action. There was no discretion involved in any of the decisions made by the County Water Department, all requirements were set by the HMMP.

Ms. Schiller stressed that Mr. Schneider's assertion that the maximum allowable draw-down has changed is inaccurate. She claimed that .3 ft. draw-down, referenced by Mr. Schneider, is a predicted amount of draw-down not a maximum allowable draw-down.

Ms. Schiller concluded by summarizing there is no basis for additional CEQA review, there is no change to the threshold of significance, and no new significant impacts. The recalibration is exactly what was called for in the HMMP. Ms. Schiller concluded by stating that Mr. Schneider has not, and cannot, meet his burden of proof in this instance.

Commissioner Little questioned whether or not any of the monitoring wells have been eliminated. Mrs. Schiller replied that the well directly adjacent to Coso's Pump at the Hay Rach shows a sharp draw-

down due to the nearness to the pumping site. Therefore would not be good predictor of the draw-down at Little Lake. Commissioner Little further questioned whether or not there had been an elimination of any monitoring wells at Little Lake. Mr. Schneider clarified that the monitoring well directly adjacent to the lake had been eliminated. Mrs. Schiller commented that the monitoring well directly adjacent to the Little Lake had been eliminated due to the fact that the well level is directly correlated to the lake level, which could be manipulated by the dam at Little Lake.

Mr. Gary Arnold, attorney for Little Lake and a member of Little Lake Ranch, provided the rebuttal argument on behalf of Mr. Schneider's appeal. Mr. Arnold stated that there is a fourteen inch difference in the lake level from spring to fall due to naturally occurrences. He further clarified that Little Lake does not manipulate the lake level outside the hunting season. Mr. Arnold stated that a ten percent decline of the inflows to Little Lake will decrease their ability to establish upland game habitat south of Little Lake, and will have a significant effect. Mr. Arnold maintained that the Addendum eliminates all of the triggers that were measured quarterly, and therefore eliminates the early warning system. Mr. Arnold went on to assert that there is no data on the inflows to Little Lake, only theoretical simulation. Mr. Arnold also stated that baseline water levels were established using data from six or seven years ago. Like Mr. Schneider, Mr. Arnold argued that the Rose Valley ground water basin was still in recovery from historic agricultural pumping, which causes an artificial deflation of the baseline, thus allowing Coso to pump additional water. Mr. Arnold argued that, from a lay person's perspective, if you decrease the amount of water in a basin the associated decrease in pressure will decrease the volume of spring flow down-flow from the basin. The decrease in spring flow will cause a decrease in volume of water supplied to Little Lake, which will cause a significant impact to Little Lake.

Mr. Arnold pleaded to the Commission to look at what this proposed pumping will do to Little Lake and the Rose Valley. He then questioned the wisdom of taking those kinds of risks based on the data presented.

Commissioner White inquired about the output of the spring six or seven years ago versus today. Mr. Arnold replied that there is no data available from when the agricultural pumping was taking place. Mr. Arnold continued to state that the basin has been in recovery ever since the agricultural pumping stopped. He also stated that it has been his observation that in his time as a member of the Little Lake Ranch that spring flows had been increasing, however there was no data collected to substantiate his claim. Commissioner White commented that it has been his experience that the Little Lake water level was high during the time when the agricultural pumping was taking place.

Commissioner Payne questioned the subsurface water flow to the Indian Wells Valley, and the associated impacts to the agricultural operations in the Indian Wells Valley. Mr. Arnold commented that to his recollection the over flow from the Rose Valley was about two or three hundred acre feet. Mr. Arnold stated that he believed that the "spillover" from the Rose Valley into Indian Wells Valley was relatively little.

Commissioner Little asked Mr. Arnold if Little Lake had acquired a hydrologist. Mr. Arnold replied no, the cost was too great.

Chair Wasson opened the hearing to comments from the public.

Mr. Mike Prather, resident of Lone Pine, addressed the Commission. Mr. Prather asked the Commission to remember the organizations that made the last Owens Dry Lake habitat enhancement project possible. He went on to urge the Commission to be mindful that decisions made today have lasting effects.

Mr. David Tanksley, a Bishop resident and businessman, expressed his admiration for the science associated with the project. Mr. Tanksley went on to express his concern that this may be another effort to get more money out of Coso. Mr. Tanksley also reminded the Commission of the historical agricultural groundwater pumping was twice what Coso is proposing.

Ms. Charity Schiller, attorney for Coso, readdressed the Commission. Ms. Schiller pointed out that there are nine wells up the valley from Little Lake that will provide an early warning system for Little Lake, contrary to Mr. Arnold's assertion.

Mr. Schneider, appellant, readdressed the Commission. Mr. Schneider clarified that the possible problems with early warning system that Little Lake has put forth was more a warning of deficiencies in the model, than actually desire for an early warning. He went on to express his concerns about the effects of the pumping will take many years to reach Little Lake, and ultimately if the model is inaccurate Little Lake will suffer the effects many years after pumping has stopped.

Commissioner White asked Dr. Harrington if the groundwater from Rose Valley flows to Little Lake. Dr. Harrington replied the best evidence that spring water in Little Lake comes from Rose Valley is that the water has to come from somewhere. He also added that the DBS&A report verified some previous reports on groundwater flow in Rose Valley. Dr. Harrington commented there is no other reasonable explanation for the origination of the spring flow into Little Lake than overflow from Rose Valley.

Commissioner White asked Dr. Harrington about Mr. Arnold's comment regarding the lack of a mechanisms to stop Coso's pumping if the draw-down is greater that the maximum allowable. Dr. Harrington replied that Mr. Arnold's comment is not correct. Dr. Harrington continued to state that the reason that both the groundwater model and the monitoring network are used is because neither is perfect. Commissioner Stoll inquired about the length of monitoring. Dr. Harrington replied that monitoring will continue after the pumping has ceased.

Commissioner White inquired about the process if the draw-down is less than the model predicts. Dr. Harrington replied that Coso is to stop pumping in 2.7 years, then Coso could then request that it be allowed to continue to pump.

Commissioner Wasson inquired about the continued recovery of the wells in the area of the Rose Valley after the agricultural pumping stopped at the Hay Ranch. Dr. Harrington replied that there continues to be recovery from the agricultural pumping in the 80's.

Commissioner Stoll inquired about the previous relationship of Schlumberg Water Services and Coso. Dr. Harrington replied that Schlumberg Water Services was contracted to provide services under Coso during the preparation of the EIR. He further explained that the HMMP provided that Coso would select the consultant to perform the services, which consultant had to be approved by the Water Department. The Water Department approved Schlumberg Water Services because its work was professional and reliable

Commissioner Little questioned what would happen if the triggers were hit in six months instead of 2.7 years, and if the triggers were hit would Coso be required to stop pumping. Dr. Harrington replied that, again, this is why both the model and the monitoring wells were implemented. Yes, Coso will be required to stop pumping once the trigger levels are hit.

Mr. Arnold stated that Little Lake has an issue with the elimination of the quarterly triggers. Dr. Harrington replied that Mr. Arnold is correct the quarterly triggers were eliminated due to the increase in confidence of the model.

Jim Scott, a Bishop resident, reminded the Commission that the ground water used by Coso will aid in providing 50,000 homes with electricity, and the Commission should be mindful of the fact that the electricity will benefit approximately 200,000 people.

Chair Wasson closed the public hearing at 11:30 am.

Chair Wasson commented that he was comfortable with the triggers, the work of the consultants, and the Water Department's conclusions. Commissioner Stoll agreed.

Commissioner White commented that he had a few questions that Dr. Harrington answered to his satisfaction previously during the meeting.

Commissioner Little commented that the Inyo County Water Department is very sensitive to water issues due to the history with LA DWP and she was comfortable with their work.

MOTION: Moved by Commissioner Payne and seconded by White to: Make certain Findings as provided on page two and three of the Staff Report dated June 1, 2011 and deny Appeal No. 2011-01 (Schneider), as recommended in the staff report.

The Motion passed unanimously.

Chair Wasson moved to take recesses at 11:35. Chair Wasson reconvened the meeting at 11:45.

COMMISSIONS' REPORTS/COMMENTS– Commissioner Little expressed concern about the well behind the hospital in Bishop that provides irrigation water to the cemetery, and commented that the grass has died. The Commission replied that the cemetery is in the city limits and to contact Terri Dean at the Pioneer Cemetery District.

DIRECTOR'S REPORT– Dana Crom, County Counsel, informed the Commission that the County of Inyo and the Board of Supervisors are being sued for the approval of the Renewable Energy General Plan Amendment.

ADJOURNMENT - With no further business, Chair Wasson adjourned the meeting at 12:10 P.M. to reconvene in Special Session on Wednesday, July 6th at 10:00 a.m. in the Board of Supervisors Room, Administrative Center, Independence, California.

Prepared by:
Dan Stewart, Planning Coordinator
Inyo County Planning Department