

Minutes of the Casitas Municipal Water District  
Board Meeting Held  
April 13, 2016

A meeting of the Board of Directors was held April 13, 2016 at the Oak View Park & Resource Center located at 555 Mahoney Ave. in Oak View, California. The meeting was called to order at 3:00 p.m. Directors Kaiser, Baggerly, Word, Hicks and Bergen were present. Also present were Steve Wickstrum, General Manager, Rebekah Vieira, Clerk of the Board, and Attorney, John Mathews and Special Counsel Doug Dennington. There were four staff members and approximately 40 members of the public in attendance. President Kaiser led the group in the flag salute.

1. Public Comments (items not on the agenda – three minute limit).

Alasdair Coyne explained that he was asked by Russ Baggerly to address the board regarding the tree killing beetle. It has been found in Santa Paula and in Ojai and is infesting LA County. It is originally from Southeast Asia and kills 39 different tree species. There are no sprays that kill this bug. It bores a hole and carries a fungus that kills the trees in as little as a year. He suggested the board consider a protocol to not let people bring in firewood to the lake as that is the way it moves around. He provided an informational flyer to the General Manager. Ron Merckling then told the board that there will be a professor from UC Davis at the upcoming Orchards and Oaks drought workshop who will be discussing these issues.

2. General Manager comments.

Mr. Wickstrum reported that Fisheries Biologist Scott Lewis had a request from Mary Larson with the Department of Fish & Wildlife to jointly submit an application for a national award for the Robles Diversion Dam for Fisheries Eco Hydrology award. This is representative of the coordination and cooperative efforts of National Marine Fisheries and California Department of Fish & Wildlife and Casitas working together on the Ventura River for steelhead migration when and if we get stream flow.

3. Board of Director comments.

None

4. Board of Director Verbal Reports on Meetings Attended.

Director Bergen reported that she and the General Manager attended a meeting of the formation committee of the Groundwater Sustainability Agency for the upper Ventura River. The voting structure was discussed as well as funding and different agency approaches.

Director Baggerly reported on his attendance at a Rotary club meeting where Mr. Stan Greene was awarded the Paul Harris Award for efforts to help protect the Ojai valley. He invited Mr. Greene to stand and be applauded.

5. Consent Agenda

ADOPTED

- a. Minutes of March 23, 2016 Board Meeting.
- b. Recommend approval of a purchase order to Draper Construction in the amount of \$20,860 to place concrete paving on the peninsula at the Water Adventure.
- c. Recommend approval of a purchase order to AAA Awnings Inc. in the amount of \$29,390 to construct removable awning covers at several pump plant facilities.

The consent agenda was offered by Director Word, seconded by Director Baggerly and adopted by the following roll call vote:

AYES:	Directors:	Bergen, Hicks, Word, Baggerly, Kaiser
NOES:	Directors:	None
ABSENT:	Directors:	None

6. Bills

APPROVED

Director Hicks questioned the invoice for concrete lessons. Mr. Wickstrum answered it is for a special process for refinishing the bottom of the shower room at the Waterpark.

On the motion of Director Hicks, seconded by Director Baggerly, the bills were approved by the following roll call vote:

AYES:	Directors:	Bergen, Hicks, Word, Baggerly, Kaiser
NOES:	Directors:	None
ABSENT:	Directors:	None

7. Public Hearing to hear input regarding the proposed Resolution Determining the Public Interest and Necessity for Acquisition of the Real Property and Business Enterprise Owned by Golden State Water Company within Golden State's Ojai Service Area.

- a. Conduct Public Hearing
  - i. Letter from George Soneff of Manatt, Phelps & Phillips, LLP, Counsel for Golden State Water Company.

President Kaiser announced this is the time and date set for a public hearing to consider input from the public regarding the proposed resolution determining the public interest and necessity for acquisition of the real property and business enterprise owned by Golden State Water Company within Golden State's Ojai service area. President Kaiser asked the Clerk of the Board to read the names of the public who called or submitted communications regarding the proposed resolution. Ms. Vieira replied she had received one letter which is in your agenda packet and was submitted from George Soneff, attorney for Golden State.

President Kaiser asked for the General Managers Report and Mr. Wickstrum explained that this all started in March of April of 2011 when Ojai FLOW approached Casitas to ask us to consider the acquisition of the Golden State water utilities. Ojai FLOW's feasibility analysis indicated their issues were water rates and increases in water rates that were more than twice as much as the surrounding agencies. The question was raised can service at an equal or better quality than Golden State be provided to the community at a lower cost. One of the factors was the annual difference in cost of water between Golden State and Casitas would be enough over time to acquire the Golden State Ojai system. It is hard to believe that was five years ago.

June 11, 2011, Casitas received approximately 1,900 signatures requesting us to consider the acquisition. It took a while for us to think about it and seriously consider the request and work through it. January 29, 2013 the Casitas board moved to use the Mello-Roos Community Facilities District Act of 1982 to fund this objective. Adoption of a resolution of intention to establish Community Facilities District 2013-01 Ojai and authorize the levy of special taxes that would follow. Also, adoption of a resolution declaring the Casitas board's intention to reimburse expenditures from the CFD bond obligations and to set up a public hearing for March 13<sup>th</sup> to consider the rate and method of apportionment for the proposed CFD and to schedule a special election at which the voters would decide on the question of the CFD and collection of taxes.

On March 13<sup>th</sup> the board affirmed those actions and moved forward with the election on August 27, 2013. Overwhelmingly, 87.2 % of the votes counted in favor of the CFD. On March 26<sup>th</sup> Golden State filed suit against Casitas to challenge the formation of the CFD. We spent the next two years in court with decisions leading up to a denial by the California Supreme Court allowing us to move forward with the Community Facilities District as adopted by the Casitas Municipal Water District. In September 2015, Casitas engaged Bruce W. Hull & Associates to perform an appraisal of Golden State's Ojai water utility system. The Casitas Board of Directors authorized special counsel to extend to Golden State an offer of just compensation and, of course, with requirement of California law that was based off of that appraisal.

Subsequent efforts to negotiate a voluntary purchase and sale have been unsuccessful as made apparent by the E-mail exchanges between special counsel of Casitas and Golden State Water Company attorneys. Casitas special counsel provided Golden State counsel with a formal notice of this hearing to consider the adoption of the resolution of necessity, which is the prerequisite to filing an eminent domain action under California law.

We had some discussion between Golden State's letters and our memorandum regarding CEQA. It is the district's position that the action of this notice of resolution and the acquisition of Golden State's utility is not subject to CEQA.

There are a few key issues that are part of the resolution of necessity and I'll go over those briefly, and whether the public interest in necessity require the proposed public use, and we see it as the lowering of costs in providing water to

the Ojai customers and rate payers, and providing local control over like communities in water use and water utility, providing transparency, accessibility, accountability and responsiveness.

The second key issue is whether the proposed public uses plans were located in the manner that will be most compatible with the greatest public good and the least private injury. Start with the injury first. I think our offer of just compensation for the acquisition so that Golden State would not suffer a private injury. The most compatible in terms of local control and efficiency of operation and economy of scale really bring back the transparency, and responsiveness of local government and local operation of the utility.

The third one is whether the property sought to be acquired is necessary for the proposed use. It is already in place, it does serve and would be necessary to provide uninterrupted water service to the customers that are currently being served by that system.

The fourth one is whether the offer required by Section 7267.2 of the California Code has been made to owner of record. An offer was made to Golden State on February 26<sup>th</sup>, 2016. Golden State has replied that the Ojai system is not for sale and sees no reason for negotiation. We are still open for negotiations and discussions. At this time we ask the board to consider the staff and counsel's memorandums, the comments to be received during the public hearing to make a determination on the proposed resolution of necessity.

President Kaiser opened the public hearing at 3:24 p.m. and requested that the audience refrain from applause. He added that we have a court reporter here who will take transcription and requesting that the speakers speak clearly and state you name when you come up to the podium.

David Moran, attorney for Golden State Water Company appeared on behalf of the Golden State Water district. We submitted a letter on April 8, 2016 setting forth our objections to the resolution of necessity by which Casitas Municipal Water District intends to acquire Golden States's water system by eminent domain. I understand that letter has been made part of the record and we object to the adoption of the resolution of necessity for all of the reasons set forth in that letter. The notice of this hearing was inadequate and fails to comply with the statutory requirements set forth in Code of Civil Procedure Section 1240.030. There is no proper description of the project. The notice purports to confine the project by stating that, quote, for the purpose of CMWD's acquisition of the subject property is to convert the privately owned, operated and held Golden State Water Company Ojai service area to public ownership and control by CMWD, end quote. That is not an intelligible description of a project. CMWD has not certified an environmental impact report in compliance with the California Environmental Quality Act. When a project may have an environmental impact, CEQA requires a public agency to prepare an EIR. Moreover, the public agency must conduct an initial study to determine whether the project may have a significant effect on the environment. Analysis must be performed before the adoption of the resolution of necessity. CMWD has predetermined the outcome

of this hearing and it has not engaged in a good faith judicious consideration of the pros and cons of whether a resolution of necessity is justified.

The public interest and necessity do not require the takeover of Golden State's water system. CMWD has not identified any issues with the quality of water service provided by Golden State. CMWD has not established that it can operate the system more efficiently or effectively than Golden State and supplanting the CPUC in the setting of water rates is not a legally advisable justification for condemnation. The project does not satisfy the greater public good. Under California law, the project must be planned to be most compatible for the greatest public good and least private injury. The acquisition of Golden State's water system will cause private injury to Golden State, its employees and its customers. CMWD has not explained what public good will result from the takeover, other than claims of future rate reductions that will not even offset the taxes being imposed to finance the takeover. The project is not necessary for public use because CMWD has no plans to improve this system or invest in the system. CMWD has also not made an offer to acquire the property that complies with Government Code Section 7267.2. CMWD failed to appraise the property, easements, franchise rights and water rights and it failed to provide sufficient detail to indicate the basis for its offer.

Finally, the description of the property CMWD proposes to condemn is too vague to satisfy due process standards. The description of the property leaves open to the possibility that CMWD will add or subtract from the property to be condemned at a later date. That is improper and violates due process. For all of these reasons that are reasons set forth in our February letter, CMWD may not properly adopt resolutions of necessity to acquire Golden State's property. Golden State reserves the right to assert all applicable objections to CMWD's right to take an eminent domain proceeding. President Kaiser thanked him for his comments.

Hank Bangser, Superintendent of Schools for Ojai Unified School District spoke and was reminded of how long you have been working on this. On behalf of the School District, when I sat down with Richard and Pat a number of years ago to talk about the impact of the change in management of the water system within the geography that's applicable, we agreed that on an annual basis we were probably looking for, in terms of the School District, a water bill of somewhere in the neighborhood of \$50,000 - \$100,000 a year. Now, everything is relative these days when you talk about money. We have a \$25 million dollar budget. We are required to set aside 3% in reserves. We struggled the last five years to do that. In projections we are looking at about \$50,000 - \$300,000 above that reserve we are unable to touch. So, a savings on our water bill of \$50,000 - \$100,000 could constitute as much as a doubling of the fund balance above our required reserve. It is very important for us to not spend additional money on this utility. I urge you to strongly support the resolution that is in front of you. In my 38 years as a superintendent in four districts in three states, I have been involved in other voter initiatives or citizen's groups stepping forward on behalf of what they felt was an important position and Ojai FLOW is a group that is in the top three in terms of commitment and quality of work, credibility and I

have come to know every person in the group. Ojai Flow is a group without question an ally I would want.

Dr. Rob Feiss thanked the board for ongoing efforts in support of Ojai community and stewardship of our precious water resource. Based on prior actions of Golden State Water Company with regards to community based force, our request that aside from identifying themselves, that other speakers state where they live, whether or not they are Golden State Water Company rate payers, who they represent and if they have any fiduciary ties to Golden State. My understanding is the intent of this meeting is for those that have suffered at the hands of Golden State Water Company to reaffirm their commitment to get rid of this company by way of the eminent domain process. Golden State Water Company's sole interest has always been and it the bottom line not responsible representation, and certainly not responsible service. They will retract this process until they can extract the last penny of profit. As the golden hen ceases to lay the egg, they'll sell the hen house. As a community we must remain united and we must aggressively resolve this with respect to our community and remain united and resolute in our commitment. The CPUC provides dispute process. Ojai as a community should establish an account into which the rate payers deposit their deposits rather than paying them to Golden State Water Company. Perhaps some of the money that constitutes the open payments could be utilized to complete the work needed to re-establish our historic theater and the restaurant next door and pay back the over payments that we've been making since the vote. There is no good faith effort on the part of Golden State Water Company or desire to do that which is best for the community. Their actions come as no surprise to anyone who has dealt with them in the past. They are not responsible, ethical stewards of the water they control. They look forward to continued exploitation of this community. Golden State Water Company is a blight upon this community that needs to be gotten rid of.

Mr. Mathews commented that those who wish to testify do not have a responsibility to state if they live in Golden State's area or not, nor provide their address.

Kathleen Richards addressed the board adding that she lives in the CFD and will be affected by decisions made here. She thanked the Board for the work so far and asked that you stay the course. Ms. Richards suggested that the franchise agreement with Golden State says if citizens want to take the water system back they shall do so by eminent domain. There is already permission in the franchise agreement. We do want it back. Their legal smoke screen is ground work for more litigation to slow the process. Their franchise agreement says we have the right to do this.

William Weirick spoke first on a personal basis and secondly as the mayor pro tem of the city of Ojai and at the request of the Mayor. He reminded the board that 139 years ago the supreme court established the basis for regulated utilities and when the owner of a property devotes to a use in which the public has an interest, he grants the public in any such use and must submit to be controlled by the public for the common good as long as he maintains that use. To be given this right you agree to submit to the public good. Over the years we

have regulatory capture which I contend we have the perfect case study with Golden State Water utility where they are regulated by a group that is appointed and gains revenues every time they grant a rate increase. We are in the situation here where the citizens voted their wishes and their will. When the City Council provided the indeterminate term for the franchise it should be noted that both the city auditor and the city attorney said, this is really a bad idea. And that was the advice to the city council at the time. Furthermore, the city auditor already had completed a study showing systematic rates higher for the same service coming from Golden State's predecessor relative to alternative supplies of water. That was in place in the 60's and has been going on ever since. If you read the minutes and resolutions of that council meeting that approved this, it was specifically in their minds as legislative intent that the right of eminent domain was the remedy for abuse of the franchise. It was clearly in the minds in what justified the majority vote of the council at that time. Second, as the franchise holder and in my official position of the City of Ojai, I've discussed this with the mayor, city attorney and city manager, we support this resolution and the resolution already taken by the City in support of the vote for the Mello-Roos district. It is part and parcel of the same effort. We urge you to pass this resolution and proceed with what the city of Ojai indicated its support for at the time of the elections and what the votes endorsed. The symbol of the situation is we have a blighted building and a piece of our cultural icon ripped out of our community's heart. It is approaching two years now in terms of the playhouse situation.

Louise Stubblefield commented that back in 2008 she was concerned over a \$152 charge for a one inch meter and she started talking to people and others joined in and they walked the streets and got signatures. 2,800 rate payers voted and it is wonderful. She showed a dollar and hopes that she can give this as part of the process for eminent domain.

Richard Hajas spoke as a member of the Ojai FLOW Board of Directors. We knew this day was going to arrive. Reasonable people could have come to an agreement but it doesn't appear that Golden State has any interest in doing that. It has been five years but longer than five years for all of us participating in CPUC rate setting processes. It was frustrating and a waste of time. A lot of people went but people gave up and five years ago we presented a petition to you. We collected 1,900 signatures requesting support in an effort to take over the service area. The election in August 2013 was to approve the take over and authorize funds to do the needed repairs. The election was a landslide – 87% approved it. The community did speak decisively that they wanted Golden State out and replaced with Casitas. Rather than respond to the community's needs, Golden State confirmed their committed to continue business as usual, no reasonable argument to continue to accept water from Golden State that has no concern for its customers. There is no confidence in the CPUC. They are unwilling to protect community interest. We have no other alternative. Eminent domain is the prescribed remedy to replace a utility that does not serve its customers. On behalf of Ojai residents and FLOW Board of Directors I thank you and encourage you to move to next phase.

Peter Crane a Golden State customer agrees we should get rid of this company, but is concerned about cost. How much is spent so far, Are we on budget? They will fight us all the way. It will cost a lot of money. They have deep pockets. We are your pockets and we are not so deep. Main concern is cost. How high will this go? What happens if they prevail and we don't get a resolution to this problem? They put us into this mess. I love Ojai. I don't know why we could not have revoked the charter and invoke a competitive bid. Casitas could have bid. I don't want to go against the flow but those are my concerns.

Len Klaif, residing at 412 N Fulton, a customer of Golden State thanked the board and Ojai FLOW for the work they have done. He explained that the bond issues include funds for litigation which will follow. That was figured in. He said he has far more faith in an elected body to spend our money. He added that Golden State was for sale the day they took the franchise agreement, an agreement that provide they agree to be taken over by eminent domain. How they can maintain the fiction and good faith that they are not for sale is beyond me. The contempt which they hold for the community is evidenced by the fact that their representative left this meeting immediately after he spoke, showing a total lack of concern with community and by what is going on with theater. Their negligence is why the theater got damaged. They could take the money out of petty cash and they would not feel it. We asked you to go forward and I ask for your yes vote today.

Ryan Blatz spoke as a board member and attorney for Ojai FLOW and litigated alongside this board in the litigation Golden State brought. I did not know I would be arguing the legality of this. I thought we had settled that already. This is a big endeavor. Thank you for the effort, reviving the trust in public municipal utilities and doing everything that brought us to this moment. This is the beginning of something close to the end. Act 3. Thank you and I hope this final phase goes smoothly as possible. I am happy to discuss with Mr. Crane his concerns. The proposals put for by this board are as well as they could have been done. Thank you.

Stan Greene spoke as a member of Ojai FLOW and a resident and customer of Golden State. What is frustrating is that we have a company that all the time said 55 years ago they would distribute the water and the city said yes and the city also said if we have a problem we want an agreement to use eminent domain as a way of dealing with it. We go through 50 years of arguments and service issues, lack of faith on part of company and inability of the population to have any control over rates. It is frustrating that someone comes up here and after they violated the franchise by not accepting a negotiation and eminent domain acceptance of the process to accuse the community of violating laws. The CEQA issue is a ridiculous issue. You people we have been abusing us, saying we didn't do CEQA or something to delay the process while you continue to collect revenues. The company is in violation of a franchise agreement and will delay for years and years in court. We want you out. We are never going away. We have fought other companies. We are not going away. Take a bit of the money offered by Casitas to buy you and get the theater fixed and other obligations taken care of and get this over with – it is not going to end your way I promise you.

Bob Daddi spoke as a resident of Ojai and a Golden State rate payer. I spoke with the superior court judge that lives behind me regarding eminent domain cases and he urged me to ask you to file for eminent domain, post the bond and move for immediate possession. We have been in court three times and three times George Soneff, chief lawyer for Golden State was asked if Casitas has the right to eminent domain for the Golden State Water District and three times their attorney in court answered to the affirmative that, yes, you have the right. Please file the papers, invoke the right, post the bonds and move for possession and let them play the games in court where it counts and move forward.

Dale Hanson spoke as a Golden State customer and member of FLOW. He said that as a real estate agent Golden State has hurt them in many ways. When we sell a property we disclose and tell them about the water bill. It hurts people and effect property values. He appreciated the work and hopes this moves forward.

President Kaiser thanked the public for their comments and closed the public hearing at 4:10 p.m.

- b. Resolution Determining the Public Interest and Necessity for Acquisition of the Real Property and Business Enterprise Owned by Golden State Water Company within Golden State's Ojai Service Area.

ADOPTED

Director Baggerly explained that a clear change of a name does not rise to the level of a project under the law and we do not have to do an initial study or environmental document as this is not a project under CEQA. Eminent domain will go to court. 87% of the voters asked us and told us they want Golden State gone.

Mr. Dennington added it is my understanding is the board has not had before it any decision regarding the actual acquisition. What it has had before is the approved funding for an acquisition. But that does not predetermine the outcome today. This is a fresh decision.

Director Baggerly replied the issue was laid out in the resolution of necessity, and as the elected representative of the Ojai area that is affected by this decision; I move we adopt the resolution of necessity. The motion was seconded by Director Hicks and passed by the following roll call vote:

AYES:	Directors:	Bergen, Hicks, Word, Baggerly, Kaiser
NOES:	Directors:	None
ABSENT:	Directors:	None

Resolution is numbered 16-06

President Kaiser asked for a brief recess at 4:15 p.m. and then moved the meeting back into session at 4:24 p.m.

8. Presentation of the 2016 Casitas Water Supply and Demand Status.

Direction provided to staff

Mr. Wickstrum reported that El Nino did not happen and rainfall was less than 15 inches and we had no substantial surface flows and no diversions at all and are still in a drought. Our customers are doing a good job at conserving water. The question now is as we are getting close to the 40% number where we would implement a stage three conditions. The sooner we do that the better and we will begin the conversation today regarding moving to a stage three. As outlined in the Water Efficiency and Allocation Program (WEAP) you can make a determination to go to an additional stage and determine any surcharges and allocation adjustments.

Statewide recognition of a drought helped with awareness and work our staff has done on water conservation, focused on newsletters hitting drought issues. Cinnamon McIntosh, Ron Merckling and Larry Harris have been reaching out to our public doing surveys, and there is more work to be done. There has been a learning curve on the allocation program that was implemented in July – September. Some people are slightly over, some are well over. Stage three would call for a ten percent reduction from where we are now. Allocation program is new and people are adjusting to it and adjusting with the situation. Mr. Wickstrum added that on the one chart it shows approximately 4 – 6 years of water with no inflows. Our annual water sales are down to 15,000 acre feet of sales because of actions people have taken to conserve. We will go through our stages and apply more water demand reductions to keep Lake Casitas from going to a minimum pool. President Kaiser thought we should hold a public workshop to go over things we may need to consider. Director Baggerly suggested that some customers may have to be convinced to comply. Director Hicks added that monthly billing was the smartest thing we did. It helps with early leak detection.

Mr. Wickstrum added that he has a draft resolution to move to stage three that could come to the April 27<sup>th</sup> Board meeting for consideration. President Kaiser directed staff to bring this back to the Board at the April 27<sup>th</sup> meeting.

9. Information Items:

- a. Water Resources Committee Minutes.
- b. Recreation Committee Minutes.
- c. Executive Committee Minutes.
- d. Lake Casitas Recreation Area Report for February, 2016.
- e. Water Consumption Report.
- f. CFD No. 2013-1 (Ojai) Monthly Cost Analysis.
- g. Investment Report.

Director Baggerly added that the Executive Committee minutes should include the committee discussed holding a workshop to discuss water issues.

On the motion of Director Word, seconded by Director Bergen, the Information Items were approved by the following roll call vote:

AYES:	Directors:	Bergen, Hicks, Word, Baggerly, Kaiser
NOES:	Directors:	None
ABSENT:	Directors:	None

10. Adjournment

President Kaiser adjourned the meeting at 4:55 p.m.

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James W. Word, Secretary