

MINUTES
CITY COUNCIL – SPECIAL MEETING
DRAFT KIMBALL DAM BYPASS PROJECT
PUBLIC HEARING
WEDNESDAY, JUNE 29, 2011 – 6:00 PM
CALISTOGA COMMUNITY CENTER

CALL TO ORDER

Mayor Gingles called the Regular Session to order at 7:02 p.m.

In attendance were the following: Councilmember Chris Canning, Councilmember Gary Kraus, Councilmember Karen Slusser, Vice Mayor Michael Dunsford, and Mayor Jack Gingles.

Also present were Public Works Director/City Engineer Dan Takasugi, City Manager Richard Spittler, City Attorney Michelle Kenyon, Special Litigation Counsel Leah Castella, and City Clerk Susan Sneddon.

Also present: MBK Engineering, Lee Bergfeld.

ORAL COMMUNICATION

ADOPTION OF MEETING AGENDA

It was **MOVED** by **Councilmember Kraus** and **SECONDED** by **Councilmember Canning** to approve the Council Meeting Agenda. The Motion was carried unanimously.

PUBLIC HEARING

1. Public Hearing regarding the Draft Kimball Reservoir Bypass Plan.

(This public hearing was transcribed by Kim Rotherham, Certified Shortland Reporter – see the attached complete transcript)

CITY COUNCIL ADJOURNMENT

Mayor Gingles adjourned the meeting at 6:58 PM to the regular meeting of the Calistoga City Council, on Tuesday, July 19, 2011, Calistoga Community Center, 1307 Washington Street, 5:00 p.m.

Respectfully submitted:

Prepared by: Susan Sneddon, City Clerk

Approved by: Jack Gingles, Mayor

CITY COUNCIL - SPECIAL MEETING

KIMBALL DAM BYPASS PROJECT

PUBLIC HEARING

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, JUNE 29, 2011 - 6:00 P.M.

CALISTOGA COMMUNITY CENTER

1307 WASHINGTON STREET

CALISTOGA, CALIFORNIA

Reported by:

KIM Y. ROTHERHAM

CSR No. 7397

Job No. 163871

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A P P E A R A N C E S

- Mayor Jack Gingles
- Vice Mayor Michael Dunsford
- Council Member Chris Canning
- Council Member Gary Kraus
- Council Member Karen Slusser
- City Manager Richard Spitler
- City Clerk Susan Sneddon
- Public Works Director/City Engineer Dan Takasugi
- City Attorney Michelle Kenyon
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Also present:
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I N D E X

Speakers	Page
Dan Takasugi.....	6, 22, 37
Corinne Gray	8, 33
Michael Quast	10
Matt Hickerson	11, 17, 21
Kurt Larrecou	13, 36
Don Richardson	20
Bill McKinnon	28, 41
Lee Bergfeld	37
Gordon Becker	38
Michelle Kenyon	39, 43
Mr. Canning	42, 43
Mr. Kraus	43

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Calistoga Community Center
City Council - Special Meeting
Wednesday, June 29, 2011 -- 6:00 p.m.

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MAYOR GINGLES: Good evening, everyone. I'd like to call a City Council. We have a special meeting this evening under the auspices here of the Kimball Dam Bypass Project. This is going to be a public hearing, and it's about a minute after 6:00.

Would you please all rise and we'll have a salute to the flag.

(Salute to the flag.)

MAYOR GINGLES: All right. Next item on our agenda is oral communication which is -- gives the individual and the public opportunities to speak on items that are not on the agenda.

Please give us your name and your address and allow your comments to be at least three minutes, and we'll go on from there.

Now, we do have one item on the agenda. As I indicated, it has to do with the Kimball Dam Bypass Project in hopes that -- I have one speaker card so far. Anybody else that would like to speak under the general government portion of it, please get your card up to me

1 so that we can have speakers on that basis.

2 But under the consent calendar -- correction,
3 under the oral communications, anybody have anything that
4 they'd like to bring up that is not on the agenda?

5 Seeing not, I will close the oral
6 communications and move on down to the adoption of the
7 meeting agenda.

8 MR. KRAUS: Motion.

9 MR. CANNING: Second.

10 MAYOR GINGLES: We have a motion and a second.
11 All those in favor signify by saying aye.

12 COUNCIL MEMBERS: Aye (in unison).

13 MAYOR GINGLES: Against? Passes unanimously.
14 Thank you very much.

15 Most of you are aware that we are here today
16 to - to discuss a Draft Kimball Reservoir Bypass Plan
17 that the City has prepared. And we have been -- we have
18 a response from four different entities, and I have, as I
19 said, a speaker card from one. Anybody else of the other
20 four could -- are welcome to talk if they'd like to.

21 We have response letters from the State Water
22 Resources Control Board, Division of Water Rights, a
23 letter we received on 6-24 this year signed by John
24 O'Hagan.

25 Item B, as in boy, is the Department of Fish

1 and Game. It's from the Bay Delta Region signed by Carl
2 Wilcox. Again, that letter was dated the 24th.

3 We received a letter from Grant Reynolds, item
4 number C as in Charles, signed by Grant Reynolds dated
5 6-23. And then we have a report from CEMAR, known as the
6 Center for Ecosystem Management and Research, dated
7 June 17th, 19 -- or 2000 -- listen to me, 19, yeah, 89.
8 6-17 of '11.

9 So if those folks would want to speak and
10 anybody else that we have on the speaker card. I was
11 just handed two other speaker cards. So with that being
12 said, I'm going to turn it over to the -- the staff for a
13 brief report.

14 I'd like to remind the audience and the Council
15 that this is a hearing, a public hearing. We will be
16 taking information and/or testimony from different
17 individuals regarding the proposal. There will be no
18 action taken tonight, so I just want to make sure
19 everybody is aware of that. And Dan.

20 MR. TAKASUGI: Thank you, Mayor and City
21 Council Members. The issue before you tonight is a
22 public hearing to consider the Kimball Reservoir Bypass
23 Plan. I'll just give a brief introduction.

24 The reason for this Draft Plan is that we've
25 been taking water from Kimball Reservoir for many years

1 under two licenses, and we have recently been told by the
2 regulatory agencies that compliance with the licenses
3 alone may not fulfill our public trust obligations under
4 Fish and Game Code 5937. Therefore, we've hired some
5 consultants, MBK Engineering for hydrology and Mike
6 Podlech for biology, to help us to determine that balance
7 between the City's water needs and the public trust
8 values of maintaining the fish in good condition
9 downstream of our reservoir.

10 This Draft Bypass Plan is simply a draft. And
11 we are working cooperatively with Fish and Game, and we
12 will be working cooperatively with Fish and Game to
13 refine this plan over time.

14 So at this time I'd recommend that the City
15 Council accept the written and oral communication on this
16 Draft Bypass Plan and direct staff accordingly.

17 MAYOR GINGLES: All right. Fine. Thank you
18 very much. Anything from -- I want to also acknowledge
19 that at the head table to my right, your left, is City
20 Attorney Michelle Kenyon and her trusty sidekick Leah
21 sitting to her next. We also have a court recorder here
22 today that's over here from Santa Rosa. We'd like to
23 welcome you on aboard. And we'll go from there.

24 Let's open up the public comment in reference
25 to this. First speaker card I have is from Fish and

1 Game, and I believe it's Corinne, Corinne Gray. You will
2 be the first speaker. We have -- I have two other
3 speaker cards, and Michael Quast would be after her and
4 then Kurt Larrecou would be last.

5 Okay.

6 CORINNE GRAY: Mr. Mayor, City Council Members.

7 MAYOR GINGLES: Move your microphone up. There
8 you go.

9 CORINNE GRAY: I'm too tall for the microphone,
10 apparently.

11 My name is Corinne Gray. I'm a staff
12 environmental scientist with the California Department of
13 Fish and Game. I'm also the water rights coordinator for
14 the Bay Delta Region. I'm here today to speak on the
15 Department's behalf.

16 As we've written in our letter to you
17 previously, we do have several concerns with regards to
18 the adequacy of the Bypass Plan that has been proposed.
19 And we are hoping that the City will continue to work
20 with the Department of Fish and Game to develop a more
21 fish-friendly Bypass Plan.

22 The key -- we do want to remind the City that
23 they are still obligated to bypass sufficient flow to
24 keep fish in good condition per 5937 and that there are
25 also other statutory obligations that the City has.

1 We -- we are deeply concerned that the current
2 Bypass Plan is insufficient and will not bypass
3 sufficient flow for fisheries. Specifically we're
4 concerned that the Bypass Plan does not bypass any flow
5 until it spills, in which case it does not provide
6 sufficient flow for passage and spawning of steelhead.
7 And we are also concerned that the flow scenario that was
8 chosen even after the reservoir starts spilling is not
9 sufficient for other life history needs of steelhead.

10 The Department has been meeting with City staff
11 and will continue to do so, but we definitely want to
12 encourage the City to come to the table early and often
13 and we hope we can come to some type of resolution on
14 this issue. Thank you.

15 MAYOR GINGLES: Now, you've pretty much
16 indicated -- everything that I assume that you've
17 indicated is in your communication that we have labeled
18 as A as in Adam; is that correct?

19 CORINNE GRAY: Correct.

20 MAYOR GINGLES: Okay. Has there been any
21 changes to that?

22 CORINNE GRAY: Not that I'm aware of, no.

23 MAYOR GINGLES: Okay. Thank you.

24 CORINNE GRAY: Thank you.

25 MAYOR GINGLES: Thank you very much. Next

1 speaker would be Michael Quast.

2 MICHAEL QUAST: Michael Quast, 1300
3 Washington Street. Having watched our Napa River here
4 for 30 years, I don't know if we've ever had steelhead
5 going all the way up to the dam or if that's the natural
6 feature there, and I think you guys have to sort that
7 out. But what I really wish to take is a side note that
8 while you're dealing with Kimball, I think it's important
9 for you to think of the full use of Kimball for your
10 citizens. And you're going to do a certain amount of
11 improvements and things like that.

12 And for 15 years the City has basically
13 cordoned off and locked Kimball from all its residents,
14 and in essence they're the true owners of it. And it's
15 been noted by past mayors and staff how they can go up
16 there and make use of the facility, but yet the City
17 doesn't trust the owners, the true citizens, to even be
18 able to go up there on any basis. And I think that you
19 should plan on deciding on how you can have people sign
20 in and go up like they used to do 30 years ago. I think
21 it's a very useful resource. People need to be able to
22 use their facilities in a local setting, and we don't let
23 them do that, between hiking or fishing that are up
24 there.

25 We don't expect them to boat on it. We don't

1 expect -- don't want them swimming in it, but you have
2 other facilities such as Conn Dam where we get our water
3 and they do allow those things there. And I ask you to
4 consider those things because it would be an asset to the
5 citizens and they do own it. And it seems a bit
6 hypocritical that the staff doesn't believe that the
7 citizens can be trusted with it. And I think that's an
8 incorrect view, and I want you to just consider that
9 while you're looking at other avenues of Kimball because
10 you're going to have to do some improvements and it could
11 probably work right together with it. Thank you.

12 MAYOR GINGLES: All right. Thank you, Michael.

13 Kurt, before you come up, you'd indicated you
14 wanted to be last. Let me just ask quickly, is anybody
15 from the -- Grant Reynolds is not here?

16 MATT HICKERSON: On myself -- on my behalf, I
17 didn't give you a card.

18 MAYOR GINGLES: Give us your name and your
19 address.

20 MATT HICKERSON: Matt Hickerson, 3225 Lake
21 County Highway.

22 If anybody started this whole thing, it was
23 probably me and I've done a lot of research. And it's
24 disgusting the body of people, the most disingenuous
25 people I've ever run across. I have no faith in any

1 written or verbal agreement for the past 70 years of --
2 through the paperwork, I've watched people promise and
3 agree to do certain things and they haven't been done.
4 They've taken money to put in certain parts of this
5 bypass, monitors, and -- and nothing has ever been
6 enforced.

7 MAYOR GINGLES: Excuse me. Excuse me a moment.
8 I'm -- I'm asking regarding Grant Reynolds.

9 MATT HICKERSON: This is for myself. Okay?
10 Not Grant Reynolds.

11 MAYOR GINGLES: Well, I don't have a card from
12 you --

13 MATT HICKERSON: I'm not going to give you a
14 card. I'm here voluntarily --

15 MAYOR GINGLES: I'd like to have you be seated,
16 then, because I'm asking for primarily one of the four
17 that comes up.

18 MATT HICKERSON: That's voluntary, isn't it?
19 The card?

20 MS. SLUSSER: Yes.

21 MAYOR GINGLES: Yes, but, you know, right now
22 I'm asking for Grant Reynolds.

23 MATT HICKERSON: Okay.

24 MAYOR GINGLES: If you'd like to speak, I'll
25 give you --

1 MATT HICKERSON: Grant Reynolds is not here.

2 MAYOR GINGLES: -- I'll give you that
3 opportunity.

4 Grant Reynolds is not here. Let the record
5 show that he is not here and that we have State Water
6 Resources.

7 MATT HICKERSON: There was a wreck on the
8 highway and there's a few people that are caught up in
9 it. Bill McKinnon. Living Rivers is stuck in the --

10 MAYOR GINGLES: Excuse me. Excuse me. And
11 anybody from CEMAR?

12 Okay. With that being said, then let's go with
13 the cards that I do have. Kurt, would you like to go
14 ahead and speak now? Thank you.

15 KURT LARRECOU: Kurt Larrecou, 1707 Michael
16 Way, Calistoga. I'm a testimony today on the salmon and
17 the steelhead that existed in the Napa River. Seventh
18 generation native Californian from the Borunda family in
19 Monterey. And we had a ranch in St. Helena, 90 acres,
20 next to Spring Mountain. And our whole family were -- on
21 the Swedish side were lumbermen, they were sportsmen,
22 they were fishermen, and I was raised to follow the rules
23 of Fish and Game.

24 In 1962 I was 12 years old, but before that,
25 I'd always gone to the Lincoln Bridge because we would

1 have big family parties from our other family ranch in
2 Sonoma at Calistoga Inn. And you would see -- at
3 Thanksgiving, you would see steelhead in a spawning mode.
4 You would see salmon, huge salmon, right from the bridge.

5 Now, the pattern of that fisheries -- I told my
6 grandfather, "I want to fish that." I had fished the
7 Klamath River same year earlier in September.

8 He said, "You can't fish above Lincoln Avenue."

9 I said, "Why not?"

10 "It's a rule. It's in the Fish and Game Code.
11 That is a spawning area. You cannot" -- "You have to
12 fish below Lincoln Avenue."

13 You know where you've taken the fish if you
14 haven't kept them whole by giving them water. They
15 spawned there before the dam was built in 1939, just
16 spring-fed water. I've been to those springs. I think
17 you're aware of it, that I was with CEMAR when we went up
18 and quantified the springs. Those water sources went
19 back 7,000 years as they sustained the Wappo Indians that
20 lived here without any Cal-Mart, Costco or any other
21 means of living.

22 Now, what has happened is the limit to where
23 you can fish for steelhead has now been moved all the way
24 down to the Oak Knoll Bridge, and you have to wait for 15
25 cubic feet a second of water to be passing through there

1 or you'll get arrested if you're fishing for steelhead or
2 salmon.

3 I also went with the Living Rivers,
4 Mr. Dewberry, to the headwaters on May 8, 2008, when the
5 river was dewatered, completely dewatered. At that point
6 I asked Dr. Dewberry, "How do we get the fish back?"

7 He said you can't go get steelhead and bring
8 them here. These are adaptive selection. The fish that
9 live in this water gets as hot as 78 degrees, and you
10 must bring whatever you have downstream up here and let
11 them acclimate and progress.

12 Well, this fight started with Living Rivers
13 filing a complaint, and I happen to be a forestry degree
14 and also studied environmental design and viticulture, so
15 I'm pretty hip on water.

16 As a young man, I worked for a water company.
17 We diverted water for agriculture in the Santa Clara
18 Valley from Stevens Creek creek, the actual creek, was
19 owned by a winery, and that water later became the city
20 municipality of Cupertino who I later worked for. I
21 worked for them seven years off and on, put myself
22 through college. So I'm kind of aware of certain things.

23 But I am aware, in looking at the plans of the
24 new main that comes out of Kimball Dam, that there are
25 people getting water, quantities of water. There is also

1 the old main still charged with water and recently had
2 valves put in so it can operate separately from the
3 City's finished water. And at this point I think each
4 and every one of you councilmen should get a little more
5 grasp of what's going on from your own attorney and
6 overview this situation. I don't think you could qualify
7 yourself to vote for a draft water plan. I couldn't.

8 But you are in a bad situation here and it has
9 to do with something that happened in court. Mayor, you
10 were there. The State Attorney General came down in.
11 Ms. Castella was in front of the judge. She gave her
12 opinion that the City did not have to follow the laws of
13 the State of California because we were a corporation.
14 I'm just paraphrasing.

15 The Attorney General Senior Counsel stated the
16 City was disingenuous, flat-out wrong, and -- and one
17 other statement; I can't remember what they said. Three
18 sentences. And it would flatten -- you heard it, Mayor.
19 You were there. It took six and a half weeks for
20 Mr. McCann to quit.

21 Now, you understand that this has been going on
22 back to 2001. I was in front of you in 2008, gave you
23 the actual document. We were fined by the State Water
24 Board \$5,000. Of course, the rate payers pay it. Our
25 water code for our City is our municipal water. All

1 fines are paid by the rate payers.

2 You're in a situation right now with Fish and
3 Game and the State Water Board not to get a \$5,000 fine
4 but a \$5 million fine. This happened to Carmel. I told
5 you about Carmel, how the State Water Board shut their
6 water off that they took out of the river. You build a
7 desalinization plant; it's happening right now at Sand
8 City.

9 Now, this has to stop and it has to stop
10 tonight. I don't care what expert you get, I don't care
11 what he thinks, it's a very -- it's a fact that the fish
12 are all the way down to Oak Knoll now and all we have to
13 do is adhere to the agreement of 1939 and act like decent
14 people.

15 MAYOR GINGLES: Thank you very much. Okay. We
16 have no other speaker cards. I'll open the thing up.
17 Matt, you're welcome to come back up if you would. We've
18 already got your name and your address.

19 MATT HICKERSON: Thank you. I'm glad you asked
20 me to sit down because I actually listened to what
21 Mr. Takasugi -- and he said one word, "balancing." The
22 word "balancing" is not in 1157 Code for Fish and Game.
23 And if your attorneys are telling you you have the right
24 to have a balancing equity, that is not right. That
25 might be my opinion; I'm not a lawyer, and I'm sure Fish

1 and Game will back up what I'm saying. You have a
2 responsibility, the public trust, the owners of the
3 water, the fish come first.

4 Now, any one of you Council Members, have you
5 walked up to the reservoir last week? Two weeks ago? Go
6 tomorrow. And the only water that's being put in that
7 river right now is the seepage between the boards that
8 are extra on top of the dam. Now, walk up further. And
9 it's hard because when it gets hot, it's a little bit of
10 a hike. Go to both tributaries that are feeding that
11 reservoir, east and west. East, that's never been
12 calculated for, which in 1960 the Kennedy report says
13 puts in 200 acre-feet a year. Never been calculated.

14 Now go to the west where you guys have been
15 taking a bucket to measure the water, and I -- I dare you
16 to take a five-gallon bucket. And this is the slow
17 season. Try to measure the water and say that you've
18 been giving accurate measurements of what's coming in and
19 what's going out.

20 Now, you have two four-inch pipelines that are
21 supposed to be the output of the water that you're
22 putting in. Sixty percent of the water that is coming in
23 should go out. Now, I dare you to look at the water
24 monitoring system that you've put in and paid for, get
25 the information that it provides. It doesn't provide

1 anything because it's not calculated and it's worthless.
2 And the place that it was put in is ridiculous.

3 So if you're Board members, take the time to do
4 what I'm asking you instead of just getting mad at me and
5 who I am and what I stand for. My grandson is seventh
6 generation on my property, and I feel, I know I was put
7 on earth for kids and fish. He should have the right to
8 go to that river if he wants to fish with a barbless
9 hook, catch it and put it back and look at it.

10 To me it's disgusting the conditions, a dead
11 river. And the people responsible for making it a dead
12 river should fix it.

13 And it is a beautiful reservoir up there. If
14 you embrace it and develop it, it will bring people from
15 Sacramento, San Francisco, just like Oak Hill Mine Road
16 Trail. You will profit. Tourism will come. They love
17 to hike and picnic and look at the beauty. It won't cost
18 you a thing. It will vitalize our town. People looking
19 over the bridge, "Wow, look at the fish come." Believe
20 me. Look at Mammoth; it happened there.

21 Don't just look at the dollars and cents. Open
22 your horizon. Think of what's right. You call yourself
23 a green city; I haven't seen one green action. What's
24 right, what's wrong.

25 Can we fight it? Litigate it? Can we win?

1 Those are the questions you've been asking yourself. Go
2 down to your heart and soul. What is right? The right
3 thing is, is to help bring back those fish. Thank you.

4 MAYOR GINGLES: Thank you very much,
5 Mr. Hickerson.

6 Anybody else in the public that would like to
7 get up that did not submit a card or would like to speak
8 to this issue?

9 DON RICHARDSON: Yeah, I would like to speak.

10 MAYOR GINGLES: Thank you.

11 DON RICHARDSON: My name is Don -- my name is
12 Don Richardson. I'm a Napa County resident, and I just
13 want to urge the Council to make the proper decision.
14 You have been spending money, thousands and thousands of
15 dollars, for decades. You're spending good money after
16 bad money. You're wasting your money and you're
17 accomplishing nothing. You need to change direction,
18 work with the agencies, resolve the problems and put your
19 money to a good use. You haven't been doing that. And
20 I -- for the life of me, I can't understand why.

21 You can fix this problem for everybody
22 concerned. I'm sure there's enough water to meet the
23 City's needs. You have the North Bay Aqueduct water.
24 That should be plenty of water for the City. You have to
25 provide water for the fish, for the resources. The water

1 belongs to the State, to the people of the State of
2 California first, not to the City of Calistoga.

3 So I urge you to reconsider the route you've
4 been going for decades and start working with the
5 agencies and solve the problem once and for all. It's
6 mind-boggling why you keep throwing up hurdles and hiding
7 things and hire these consultants that give you bogus
8 reports and bypass drafts that are ridiculous. For the
9 life of me, I can't understand it. Why don't you work
10 with them and get something resolved and finished so
11 we're not here ten years from now having the same
12 discussion? That's what I have to say.

13 MAYOR GINGLES: Thank you very much. Do we
14 have his address for the record?

15 DON RICHARDSON: No, you don't. I live in
16 St. Helena.

17 MAYOR GINGLES: St. Helena? Okay. Thank you
18 very much. Anybody else?

19 MATT HICKERSON: I forgot. I was given a phone
20 call. Chris Malan and Bill McKinnon -- there was an
21 accident on Highway 29. They're both on their way and
22 somehow they'd like to speak. So I mean, if there's --
23 go on with the rest of your meeting. If they have the
24 opportunity -- I just wanted to let you know that that's
25 what has been told to me.

1 MAYOR GINGLES: Okay.

2 MATT HICKERSON: And that they would like to
3 speak.

4 MAYOR GINGLES: All right. If there's nobody
5 else, then I'm going to close the public hearing on this
6 particular portion and bring it back to the Council.

7 Council, our instructions tonight is to receive
8 the public testimony and then provide direction.

9 MS. KENYON: Actually, Mr. Mayor, if we could
10 have staff respond to some comments. That would --

11 MAYOR GINGLES: That's fine. That's fine.

12 MR. TAKASUGI: Thank you, Mayor. I'd just like
13 to respond quickly to a couple oral comments that were
14 given today.

15 Mr. Larrecou noted that people are getting
16 water off the old transmission main from Kimball, and
17 that's -- that's true; that the old transmission main is
18 still in operation and there are four services that do
19 come off of that old main. He also mentioned that some
20 valves were put in on the new main that service water.
21 Actually, those connections are blanks, and they're
22 intended for the time that we do abandon the old main
23 that we can easily stick a meter and connection into
24 those boxes so that we can serve those same customers on
25 that -- from the new main instead of the old main.

1 I also wanted to address Mr. Hickerson's
2 comment where he stated that the only water coming right
3 now over Kimball Reservoir is from seepage. Well,
4 actually, our two bypass lines right now are running wide
5 open bypassing water as we speak.

6 There's some other comments that came up in the
7 written communications to Council, and if you don't mind,
8 I would like to address those off my notes. One of the
9 comments from the -- both the CEMAR and the Fish and Game
10 communication noted that the City has not adequately
11 explained the process it used to arrive at the selected
12 bypass scenario.

13 Our response is that the City evaluated dozens
14 of proposed bypass schedules. The Table One in the Draft
15 Bypass Plan presented six representative scenarios. The
16 Draft Bypass Plan did not provide details on the water
17 supply costs or the fishery protection of all the plans
18 but stated the recommended plan balanced public trust
19 values and the citizen water needs.

20 The representative scenarios were intended to
21 give an indication in the range of possible scenarios and
22 were only a small sample of the dozens of scenarios that
23 were evaluated.

24 If a scenario such as the 90 percent inflow
25 bypass created a watershed yield unacceptable for the

1 City's water supply, it was discarded. For example, the
2 scenario that proposed that 90 percent of inflow be
3 bypassed would reduce the amount of water available from
4 Kimball to 220 acre-feet. This result is catastrophic to
5 the City's water supply and could not be made up with --
6 with an increase of use from the State Water Project.

7 The City did not, however, select the scenario
8 with the lowest water cost. There were a number of
9 scenarios that were considered that had a lower water
10 cost but were not considered sufficiently protective of
11 fish and were therefore discarded.

12 Indeed both the fourth and fifth scenario
13 referenced in the bypass plan had a lower water supply
14 cost than the selected scenario. And the City is
15 continuing to work with our experts and with the
16 Department of Fish and Game to evaluate modifications to
17 the bypass scenarios selected in the bypass plan.

18 Another comment from CEMAR noted that the
19 City's method of measuring inflow is insufficient. And
20 the City would appreciate the opportunity to discuss
21 options for low cost accurate measurement of reservoir
22 inflow with CEMAR and with others. A key component of
23 any inflow measurement method is the ability to
24 accurately measure inflow over a wide range of flows from
25 less than one cubic foot per second up to approximately

1 20 feet per second.

2 In addition to the reservoir storage and
3 release method described in the bypass plan, the City's
4 plan -- the City plans to continue their current
5 measurement methods during the low flow periods.

6 Another comment also from CEMAR was that the
7 City should consider dredging its reservoir. As you know
8 and has been discussed over time, the City has been
9 interested in dredging Kimball Reservoir for over a
10 decade. In 2005 we commissioned Harrison Engineering to
11 perform a dredging report which showed that the cost to
12 dredge the reservoir in a single year would be
13 approximately \$5.8 million in 2006 dollars, but that cost
14 could rise significantly depending upon further analysis
15 of many project variables.

16 The report did not fully analyze the
17 feasibility of how to dispose of the dredged spoils
18 which brings in environmental concerns. The Harrison
19 Engineering report also did not analyze the
20 environmental, biological, habitat, hydrology and
21 cultural resource impacts that could also affect cost in
22 a major way.

23 The Harrison report also demonstrated that
24 through economic analysis that the cost of dredging would
25 never be recovered in water savings over a 30-year

1 period. If dredging could be performed let's say in
2 2014, we would expect that the 2006 cost, based on the
3 Engineering News Record, escalation would increase that
4 cost by about 25 percent. For Kimball Reservoir to be
5 dredged, a full spring, summer and fall season would be
6 needed. When the reservoir is unusable for potable water
7 production, it would not be advisable for the City to
8 rely on one State Water Project source during a full
9 year, particularly in the late summer season.

10 Another comment from CEMAR and Department of
11 Fish and Game notes the bypass of 40 percent of inflow is
12 insufficient to keep fish in good condition. It is true
13 that the 40 percent bypass during declining and low flow
14 months is not supported by site specific habitat data.
15 However, there is also no site specific data to suggest
16 that 40 percent inflow would not be sufficient to keep
17 steelhead in good condition. It is precisely this lack
18 of meaningful data that led the City to propose interim
19 bypass flow measures that would be modified when an
20 instream flow analysis is complete.

21 Because there is a lack of data, the City's
22 fisheries expert applied the guidelines provided by the
23 Tenant Study of 1976 which rated a 60 percent bypass
24 during the winter as providing excellent flow regimes for
25 fish and a 40 percent bypass during the spring and summer

1 as providing good instream flow regimes for fish.

2 Based on this widely used methodology, the
3 proposed bypass flow plan would be expected to maintain
4 fish below Kimball Reservoir in good condition. However,
5 indicated by the Tenant Study and acknowledged by the
6 City in the Draft Bypass Plan, this determination should
7 be evaluated through a follow-up instream flow study.

8 Department of Fish and Game has suggested in
9 its comments that it does not have some site specific
10 data. The Fish and Game Department has not yet provided
11 the City with that data but has indicated that they will
12 do so. Once it is -- once the data is received, the City
13 will analyze it and refine the selected interim bypass
14 scenario in accordance with that data.

15 Those are some responses to some of the written
16 comments that were provided, and I would welcome
17 Council's direction.

18 MAYOR GINGLES: Is it your understanding that
19 part of the data that you just talked about will be
20 forthcoming prior to the finalization of the draft?

21 MR. TAKASUGI: We would expect to work closely
22 with Fish and Game to get that data, but however if
23 you're talking about the instream flow study, no, that
24 would be provided after.

25 MAYOR GINGLES: Afterwards?

1 MR. TAKASUGI: After.

2 MAYOR GINGLES: Okay. All right. Before we go
3 on any further, there was three gentlemen that just came
4 in. We closed the -- we closed the public hearing, but
5 I'm willing to reopen for comments. Is any -- is one of
6 you representing Grant Reynolds?

7 BILL MCKINNON: Yes, I am. And actually I
8 have --

9 MAYOR GINGLES: Sir. Sir, come up and use the
10 microphone, please, and identify yourself, please. Thank
11 you.

12 BILL MCKINNON: Yeah. My name is Bill
13 McKinnon. I'm the attorney for Grant Reynolds.
14 Mr. Reynolds is not here tonight because, quite honestly,
15 the fact that you're here is what he wanted to
16 accomplish.

17 I wanted to show you why Mr. Reynolds engaged
18 in this process. Can I have access to something and I
19 can show you what's on my computer here? Do we have any
20 sort of display for this?

21 MAYOR GINGLES: No, we don't. We have a screen
22 over here. I mean, how long -- what are we looking at
23 here?

24 BILL MCKINNON: Well, it would take me 90
25 seconds.

1 MAYOR GINGLES: The meeting was noticed -- the
2 meeting was noticed to start at 6:00. It's my
3 understanding that there was a traffic collision that may
4 have deterred you, but --

5 BILL MCKINNON: Correct. On Highway 80 they
6 piled up. And, you know, if -- if there isn't a means to
7 display, then that's unfortunate because I did ask the
8 clerk to -- if I could have access to that in my e-mail
9 when I asked for permission to speak. And if it wasn't
10 going to be available, I would have brought it up.

11 See, the problem is I don't think some of you
12 folks have ever been up above Kimball Reservoir. I don't
13 know, I can't speculate, but I think probably some of you
14 haven't. And so if you haven't been up there, you don't
15 know what it looks like. If you don't know what it looks
16 like, you can't understand why we're doing anything at
17 all.

18 If you were up there, you'd see it is
19 absolutely beautiful. It is sylvan, I believe the
20 expression is. It is gorgeous. And when you go down
21 below your dam, starting at your dry spillway with dry
22 leaves in it, it is weeds. It is algae growth. There
23 are -- it's a concrete slab with graffiti beside it. It
24 is dead.

25 I've got a grandchild. When I was born, my

1 parents would be capable of going out and catching
2 beautiful trout and fish. With any luck at all, with the
3 right decision here, my granddaughter could go and maybe
4 catch a fish or at least look at the fish. But today we
5 know we can't.

6 And if the objective of this meeting is to beat
7 Mr. Reynolds, well, you know, it's not a good purpose.
8 It's not a good intention. If the intention is to say,
9 what can we do to make this better? What can we do? How
10 can we do it? Then we don't have a fight with Calistoga
11 at all. If DFG and Calistoga come to an agreement, the
12 only thing we're going to say is "hurrah." If Calistoga
13 makes a decision and the decision -- the net result of
14 the decision is that what is above Kimball Reservoir
15 looks the same as what's below Kimball Reservoir, honest
16 to God, I will send you people a cake. That's all we
17 want.

18 You know, there's other issues, private issues.
19 Let's not even talk about those. Those don't matter. I
20 never even came into the case on those issues until it
21 became necessary just because of the process. My
22 argument is that -- that what has happened by the
23 operation of the reservoir has done damage. And if you
24 look, you can see it. All of the experts say the one
25 thing that will make a difference is water. You've got

1 access to do that.

2 And I understand that there's -- in a report
3 that you have to have \$350,000 to do this and whatever,
4 all that. But past week, the upper Napa River was
5 dewatered. The only thing that was coming down was a
6 little bit of seepage. Just a little bit of seepage.
7 Just enough to get the soles of your feet wet. Not even
8 your boots.

9 And up above, Mr. Richardson -- I don't know if
10 he's -- Mr. Richardson found 300 gallons a minute coming
11 in. Why, when your reservoir is full, you've got rain
12 yesterday, why didn't you let some water out? All you
13 had to do was crank the valve. You were letting it out
14 before. Why not let it out now? It's coming in; let it
15 out.

16 Well, I'll tell you why, because somebody says
17 we don't have any obligation until July the 1st, and
18 today is June the 28th. What kind of attitude is that?
19 I mean, really. Come on now. Your reservoir is full,
20 the water is coming in; open the valve. It doesn't seem
21 to me to be all that complicated a problem, unless what
22 you're trying to do is make a legal point, make a legal
23 battle. But why not look at this from, what can we do to
24 make it better? And if you do that, I promise you,
25 Mr. Reynolds is not a problem.

1 And that's all I have to say. I wish I could
2 have shown you the pictures. I'm sorry I couldn't.

3 MAYOR GINGLES: All right.

4 BILL McKINNON: Thank you for your time.

5 MAYOR GINGLES: I want to -- I want to thank
6 you for coming up and I'm sorry that you did come late,
7 but I do want to remind you that what we have before us
8 tonight is the Kimball Dam Bypass Project, which is a
9 proposal that was presented by the City, and we've asked
10 the different agencies to respond. Grant was one of
11 them. This has nothing to do with Mr. Grant Reynolds
12 personally or anybody else. We've had responses from
13 State Water Resources, Department of Fish and Game and
14 also CEMAR. And that's what tonight's hearing is
15 basically about.

16 BILL McKINNON: Great.

17 MAYOR GINGLES: As to whether we go up there
18 today and open the switch, that's not my call.

19 BILL McKINNON: No; I understand.

20 MAYOR GINGLES: As far as my concern is
21 concerned, I'm going to let you know, I've been up there
22 several times, many times for the last 35 to 40 years.
23 I'm very familiar with Kimball Dam, so -- but anyway.

24 BILL McKINNON: I'm glad, sir, because when I
25 asked Mr. McCann, he said that he was here for 12 years

1 and he was never there.

2 MAYOR GINGLES: Well, Mr. McCann is no longer
3 here and is not the issue at this point, but thank you
4 very much. We appreciate your comments.

5 BILL MCKINNON: Thank you, sir.

6 MAYOR GINGLES: All right. Since I did reopen
7 the public hearing, I'm going to do it one more time. Is
8 there anybody else that would like to speak in reference
9 to the -- the bypass project? Yes, Corinne.

10 CORINNE GRAY: I'd like a quick opportunity --

11 MAYOR GINGLES: Sure.

12 CORINNE GRAY: -- if that's okay --

13 MAYOR GINGLES: Sure.

14 CORINNE GRAY: -- to make a couple more key
15 points based upon your comments.

16 I think for the purposes of your review of this
17 particular bypass plan, there's a couple critical things
18 that you should probably be aware of. In our meetings
19 with the City, Mike Podlech, the biologist for the City,
20 admitted that the 3 CFS bypass number was not based on
21 fish and that that number was developed more as an
22 operational constraint as opposed to a flow that might be
23 protective of fish. That's one of our concerns.

24 We also wanted to let you know that your
25 statutory obligations under 5937 do not speak of

1 balancing the City's needs versus the fish needs, but you
2 actually need to take a look at the fish, provide them
3 sufficient flow under 5937 regardless of whether or not
4 that's going to impede the City's ability to divert as
5 much water as they need.

6 You do have alternatives. You know, we are
7 sensitive to that, but we are aware that you do have
8 alternative water sources that do not require water out
9 of Kimball Creek.

10 I also wanted to make a last note -- or second
11 to last note. Keep in mind for the purposes of Fish and
12 Game Code 5937, when we talk about the need to bypass
13 sufficient flow for fish, "fish" is defined under Fish
14 and Game code as all finned fish, amphibians, aquatic
15 invertebrates. So it's not just steelhead that we should
16 be focusing on; we also should be focusing on all other
17 fishery resources that are below Kimball Reservoir.

18 We do have a tendency to focus on steelhead
19 because there are some assumptions that if you protect
20 steelhead, then you're more than likely to protect some
21 of those other resources. But be aware that you also
22 have a California endangered -- the California fresh
23 water shrimp, which is a State endangered species and a
24 federally listed species as well, in the Napa River basin
25 and potentially below Kimball Reservoir.

1 And the last thing I would like the City to
2 consider is that we have been working with your engineers
3 and hydrologists, and one of the things that we have
4 noticed and what the engineers have determined is that
5 there's an average flow of 3,500 acre-feet moving through
6 Kimball Reservoir. Our understanding is that the City is
7 requiring 600 acre-feet. So as you can see, we're a
8 little befuddled as to why there isn't sufficient flow to
9 bypass for fish when the City's needs are less than 20
10 percent of the inflow during an average water year.

11 So as I had mentioned previously, we are hoping
12 to work with the City, but we would also ask that the
13 City not approve this plan without developing an
14 alternative that's also not only going to satisfy your
15 needs but is also going to satisfy our needs because
16 regardless of what other things happen, you still need to
17 have a streambed alteration agreement from the Department
18 of Fish and Game. And the conditions of that agreement
19 need to bypass sufficient flow.

20 And there -- this is a very rare scenario. I
21 am the water rights coordinator for the entire region. I
22 have never had a municipality have this much water
23 available to them. So you are in a very rare position
24 where there is sufficient water. It may require some
25 upgrades to your operations, but there is a solution to

1 this that cannot only bypass flow for fish but also can
2 satisfy your needs.

3 I'm available later if you have any questions
4 or my phone number is on the comments list if you have
5 any more specific questions that I could answer for you.

6 MAYOR GINGLES: Okay.

7 CORINNE GRAY: Thank you.

8 MAYOR GINGLES: Thank you very much. We
9 appreciate that.

10 MS. SLUSSER: I have -- I have a question.

11 MAYOR GINGLES: Of Corinne?

12 MS. SLUSSER: Uh-huh. No, I don't.

13 MAYOR GINGLES: Okay. Thank you very much.

14 Kurt, I'm -- this is not -- we're not going to open up
15 for debate --

16 KURT LARRECOU: Sorry, Mr. Mayor --

17 MAYOR GINGLES: We're not going to open up for
18 debate.

19 KURT LARRECOU: But the Board used my name and
20 I'd like just a minute to talk about some of the
21 operational constraints.

22 MAYOR GINGLES: You've got a minute.

23 KURT LARRECOU: You know I'm very versed on it.
24 Our capacity in that reservoir was 270 acre-feet usable
25 in 2008. That was in the State Water license issued by

1 Mr. Burton to Mr. Takasugi.

2 One of the problems we have is you increased to
3 three filter stations at that plant. Before that plant
4 could put out one million gallons a day under a -- under
5 a force; in other words, really running it firm. Now
6 with three stations, it can easily put out a million
7 gallons a day. That's the use our town uses in a day.

8 The operation of the fish against the operation
9 of the reservoir is part of the problem. We need that
10 water at a certain time of the year for us, and the fish
11 need it at the same time. So something's got to give.
12 Thank you.

13 MAYOR GINGLES: Thank you very much. I am
14 going to close the public aspect of the hearing right
15 now, and I'm going to bring it back to staff. Staff.

16 MR. TAKASUGI: I would like to have Lee
17 Bergfeld, our hydrologist, address one of the comments
18 from Fish and Game.

19 MAYOR GINGLES: Okay.

20 LEE BERGFELD: Yes, I just wanted to address
21 Council Members. The comment regarding the quantity of
22 water that's available relative to the City's needs and
23 the numbers that were provided were accurate from Fish
24 and Game, but we've been working with Fish and Game
25 because it's not necessarily just a quantity issue, but

1 it's a very important timing issue as to when those flows
2 are available, when they are needed for fish and for the
3 City.

4 MAYOR GINGLES: Okay. I'm going to bring it
5 back up to the Council. Council, we're -- we're to
6 provide direction on which way we're going. And it's my
7 understanding that we have a document that's going to be
8 prepared, the final draft, taking tonight's testimony,
9 taking information that we received from the public and
10 going any further.

11 I have closed the public hearing, sir.

12 GORDON BECKER: Just a point of clarification.

13 MAYOR GINGLES: I have closed the public
14 hearing, sir.

15 GORDON BECKER: It's a point of clarification.
16 It will take ten seconds.

17 MAYOR GINGLES: Go.

18 GORDON BECKER: You said CEMAR submitted
19 comments. Since this is on record, CEMAR did not submit
20 comments. We wrote comments to Mr. McKinnon and
21 Mr. Reynolds, and we simply copied in the resource
22 agencies. We have not submitted comments. That's not
23 what we do. They're submitted as an appendix, but we,
24 CEMAR, did not submit -- I just wanted to put it on the
25 record --

1 MAYOR GINGLES: Okay. All right. All right.

2 GORDON BECKER: -- that we did not submit --

3 MAYOR GINGLES: All right. Let the record show
4 that they did not submit any -- any comments at all.

5 GORDON BECKER: To Calistoga.

6 MAYOR GINGLES: All right. I'm going to bring
7 it back to the Council. We -- as most of you are aware
8 of, that this is going to be prepared into a final draft
9 and I'm assuming we would have a public hearing in
10 reference to that also. And -- yes, go ahead.

11 MS. KENYON: Yes. If I could just address
12 that. Yes, you know, we -- we have been working closely
13 with Department of Fish and Game. I think there's been
14 at least two, if not three, meetings. We are very much
15 interested in working cooperatively with the Department
16 of Fish and Game to resolve this bypass plan issues that
17 the Department has with our current draft plan and we are
18 hopeful that we will obtain that agreement.

19 We have gotten a request from Department of
20 Fish and Game with regard to the hearing date on
21 July 19th which we had set forth in the staff report as
22 being the date for final approval. I did want to let the
23 Council know that we may be moving that date further out
24 so that we can work further with Department of Fish and
25 Game to get --

1 MAYOR GINGLES: That would be on the final
2 draft?

3 MS. KENYON: On the final draft, correct. So
4 tonight all we are asking for from Council is really if
5 you have any questions, if you have any issues that you
6 would like for us to consider for inclusion in the draft,
7 in the final Kimball Bypass Plan, then please let us know
8 what those are. If -- if you are satisfied with the
9 comments, the questions, the suggestions that have come
10 before you tonight, then not -- then, you know, there may
11 not be any additional comment necessary from the Council.

12 MAYOR GINGLES: Well --

13 MS. KENYON: I would like to point out that,
14 you know, the purpose of this hearing tonight is to
15 receive comments. We will look at those comments. Staff
16 and consultants will analyze the comments. We will then
17 bring back to you, either incorporating those suggestions
18 and comments into a final bypass plan or, if for some
19 reason we cannot, we will then provide written comments
20 as to why we -- we are not incorporating those
21 suggestions or comments. That will then return to the
22 Council at some point. It may not be July 19th, but it
23 will be sometime in the near future for final approval
24 from the Council.

25 But as the Mayor said, we are not asking for

1 any action or direction tonight from the Council. We
2 simply are here. If you have additional questions, we're
3 prepared to answer them tonight.

4 MAYOR GINGLES: I -- I for one personally went
5 through the -- the communications that we have, the A, B
6 and C, corrections on the CEMAR since we have not heard
7 anything from CEMAR, but State Water Resources had some
8 questions as did Fish and Game and so did Mr. Reynolds in
9 his response, and I hope that we respond to that in some
10 kind of light in the final document to where we can look
11 at it and go from there.

12 The Department of Fish and Game, State Water
13 Resources, I know that we worked with them for many, many
14 years and I'm -- they're the ones, in my opinion, that
15 are the professionals, I am not, when it comes to that.
16 And I would -- some of Mr. Larrecou's comments we -- we
17 are addressing or have addressed. Same thing with
18 Mr. Hickerson and -- and Mr. McKinnon. Is it McKinnon?

19 BILL MCKINNON: Yes, Mr. Mayor. And just so
20 that the record is perfectly clear, CEMAR'S comments were
21 attached as an appendix to Mr. Reynolds' --

22 MAYOR GINGLES: Yes, they were. Yes, they
23 were. Thank you.

24 BILL MCKINNON: They have been put on the
25 record.

1 MAYOR GINGLES: Yes. Okay. That's my
2 comments. Any comments from the Council?

3 MR. CANNING: Certainly. While staff is not
4 asking for direction, it is our prerogative should we
5 choose to give some. So I'd like the opportunity to ask
6 a few questions and address a few matters.

7 This seems to me to be a very common situation.
8 We have -- for the purpose of what I'm about to say, we
9 have two parties who have a difference of opinion, the
10 City of Calistoga and our secured experts, but at this
11 point I'll address as the City has a number. The expert,
12 that being Fish and Game, has a number. Can both parties
13 suggest that there has been a fair and reasonable
14 conversation about coming to an agreed-upon number?

15 What I don't want to see happen, and I can
16 appreciate your -- your suggestions, Michelle, is I don't
17 want to see us come back July 19th with information
18 that -- or at least with not a fair play effort at
19 getting to common ground because I see this as being a
20 situation that if that's not allowed for, then we're
21 going to be in the same situation, having the same
22 dialogue a year from now.

23 And as most of you know in the short time I've
24 been here, brevity is my preference and cut to the chase.
25 So whether we're talking about money in the negotiation,

1 we're talking about a number on water, those two parties,
2 the City of Calistoga, Fish and Game -- and I'm not going
3 to put Fish and Game on the spot and ask them if they
4 think we've made a fair and reasonable attempt, but I'm
5 concerned.

6 MAYOR GINGLES: Okay. Any other Council
7 Members?

8 MR. KRAUS: I agree with Chris. I think that
9 there's an amount of water that we should be releasing,
10 keeping in mind that we have to provide water for our
11 citizens and we need to find what that amount is, work
12 towards it and put this behind us.

13 MAYOR GINGLES: Okay. Saying nothing, nothing
14 else, then this will conclude tonight's meeting. And
15 then I'm going to adjourn tonight's meeting until the
16 19th, I believe it is, correct?

17 MR. CANNING: Question. I mean at this point,
18 are we within our realm to give direction that you meet
19 again with Fish and Game to come to a number? There's
20 clearly a gap here.

21 MR. KRAUS: It's my understanding that we are
22 going to continue the dialogue with them and --

23 MAYOR GINGLES: Go ahead.

24 MS. KENYON: Yeah. I'm sorry; if that -- if I
25 didn't make that clear, we absolutely are going to

1 continue to work with the Department of Fish and Game.
2 We have worked with them. My understanding is that the
3 response that we have gotten from Fish and Game, staff
4 has gotten, is that they -- they are very appreciative of
5 our working with them currently. We -- we are not in
6 full agreement, but we are certainly in agreement that we
7 are going to continue to discuss this issue.

8 So there will be more meetings. And as I said
9 before, that may be one of the reasons why we will not be
10 having a hearing on July 19th because, in fact, we have
11 either not reached an agreement or we need more time in
12 order to reach an agreement with the Department of Fish
13 and Game, but that is certainly the goal. So I just
14 wanted to make that clear.

15 MS. SLUSSER: Let's go forward. Progress.

16 MAYOR GINGLES: All right. I'm going to
17 adjourn this meeting until the 19th of July. I want to
18 thank everybody for coming out. I appreciate the
19 comments, and I appreciate the -- the extra work from
20 Santa Rosa. Thank you very much for the -- I don't know
21 what you call it anymore -- dictation. It's no longer
22 stenographer.

23 Court reporter, what have you. But, again, thank you
24 very much. Appreciate that.

25 (Proceedings concluded at 6:57 p.m.)

